STATE LAND BOARD

December 18, 2018
10:00 am – 12:00 pm
Oregon Department of State Lands
Land Board Room
775 Summer St NE
Salem, Oregon

AGENDA

Consent Items

1. Request for approval of the minutes of the August 14, 2018, State Land Board Meeting and the October 16, 2018, State Land Board Meeting.

2. ODOT Bridge Easement – Schooner Creek

3. ODOT Bridge Easement – John Day River

Action Items

4. Easement Rulemaking

5. Coos County Filled Land Sale

6. Clarification of Callan’s Annual Report

7. Elliott State Forest Updates
   • OSU proposal presentation
   • Other proposal presentations
   • Declaration regarding the $100 million in bonding

Continued on next page
Land Board Members and Director Walker,

Secretary Richardson has decided to withdraw the delegation below. As you all know, the Land Board has received verbal advice from the Attorney General disagreeing with part of this delegation. Although our office has a different perspective on this, Secretary Richardson does not want to waste taxpayer resources on a lengthy legal fight to vindicate his rights as a member of the Land Board. Secretary Richardson has always focused on the Land Board’s constitutional and moral duty to prioritize school funding through efficiency and improved management of Common School Fund trust lands. He appreciates your partnership in these efforts.

Thank you,
Steve

P.S. In order to ensure full transparency, Secretary Richardson requests that Director Walker include this email with the December 18 public meeting materials.

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

***********************************************************************

From: RICHARDSON Dennis * SOS
Sent: Monday, October 15, 2018 5:37 PM
To: Governor Brown * GOV <Governor.Brown@oregon.gov>; READ Tobias <Tobias.Read@state.or.us>; WALKER Vicki <Vicki.Walker@state.or.us>
Cc: CUMMINGS Leslie * SOS <Leslie.CUMMINGS@oregon.gov>; ELZINGA Stephen * SOS <Stephen.ELZINGA@oregon.gov>; MINER Jason * GOV <Jason.MINER@oregon.gov>; MANN Ryan <Ryan.Mann@state.or.us>; RYAN Bill <bill.ryan@state.or.us>; STRAIGHT Jean <Jean.Straight@state.or.us>
Subject: Land Board Meeting
Governor Brown, Treasurer Read, and Director Walker,

I am incredibly grateful to serve the people of Oregon as their Secretary of State and work with you on the Land Board. We are doing important work together.

Despite my cancer treatment, I remain focused on the core functions of my office and am working with my executive leadership team daily to provide direction.

In order to focus my time and energy, I have decided to reduce public appearances. Under Section 5, Article VIII of the Oregon Constitution and ORS 177.040, my Deputy Secretary of State will attend Land Board meetings and vote on my behalf for the duration of my cancer treatment. My Governmental and Legal Affairs Director will continue to serve as Land Board Assistant. I have instructed them to continue prioritizing my longstanding focus on the Land Board’s constitutional and moral obligation to improve management of our public lands and generate more education funding for our kids and grandkids. We need to do all we can to invest in smaller class sizes, more school days, expanded career training, more highly-qualified teachers, and provide a fair shot for a bright future to all Oregon children.

Sincerely,

Dennis

P.S. In order to ensure full transparency, I'm asking Director Walker to include this email in the October 16 public meeting materials.
• Review and/or discussion of public comments received regarding Oregon Consensus Report

• Direction from the Land Board on next steps for public engagement

8. UP Transfer Bill (LC 686)

9. Resolution regarding Sough Slough National Estuarine Research Reserve

10. OOST Reappointments

**Informational Items**

11. Other

Livestream available at: [https://www.youtube.com/channel/UCQA7FHTWwl-gjJkQeYPJ1IA](https://www.youtube.com/channel/UCQA7FHTWwl-gjJkQeYPJ1IA)

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

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

When providing testimony, please:

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

Written comments may be submitted before or during the meeting for consideration by the Board. To speak at the meeting, you must sign in on the sheet provided at the information table located near the meeting room’s entrance. The standard time limit is three minutes for each individual. The Board cannot accept testimony on a topic for which a public hearing has been held and the comment period has closed.
The State Land Board (Board) met in regular session on August 14, 2018, in the Land Board Room at the Department of State Lands, 775 Summer Street NE, Salem, Oregon.

Present were:
Kate Brown Governor
Dennis Richardson Secretary of State (by telephone)
Tobias Read State Treasurer

Land Board Assistants
Jason Miner Governor’s Office
Steve Elzinga Secretary of State’s Office (by telephone)
Ryan Mann State Treasurer’s Office

Department Staff
Vicki Walker Bill Ryan Jean Straight Ali Ryan-Hansen
Chris Castelli Arin Smith Anne Friend

Department of Justice
Matt DeVore

Governor Brown called the meeting to order at 10:00 a.m. The topics discussed, and the results of those discussions are listed below. To view the Land Board meeting in its entirety, please visit our YouTube page: https://www.youtube.com/watch?v=tyYtufuxT7c

CONSENT AGENDA

1. Request for approval of the minutes of the June 12, 2018, State Land Board meeting.
   10:03 a.m.

Director Vicki Walker briefly described the items on the consent agenda.
Treasurer Read made a motion to approve the consent agenda.
Secretary Richardson seconded that motion.
There were no objections to this motion. The consent agenda was approved at 10:03 a.m.
**Action Items**

2. Amended Budget Request

10:03 a.m.

Director Walker briefly described package 115, an addition to DSL’s budget submission at the June meeting.

Treasurer Read made a motion to approve agenda item 2. Secretary Richardson seconded that motion. The action item was approved at 10:06 a.m.

3. South Redmond Tract

10:06 a.m.

Director Walker made a request for approval to continue the planning process on the South Redmond Tract by submitting applications to expand the Urban Growth Boundary and for Annexation of the property into the jurisdiction of the City of Redmond, and by applying Large Lot Industrial zoning designation to the property. Request for approval to partition two parcels from the larger parcel for a land exchange with Deschutes County and a land sale to Oregon Military Department.

10:17 a.m.

Director Walker introduced George Endicott, Mayor of the City of Redmond who briefly addressed the Board.

Questions were taken from Governor Brown.

Director Walker then recognized those involved in the project and a representative from the Military Department briefly addressed the Board.

Treasurer Read made a motion to approve agenda item 3. Secretary Richardson seconded that motion. The action item was approved at 10:21 a.m.

A short recess was taken for photos.

**Informational Items**

4. Update on Request for Information (RFI) for Forest Land Management

10:35 a.m.

Director Walker gave a short update on the public information gathering process to look at options and alternatives for the management of state forest lands.
5. Other

10:37 a.m.
Director Walker gave short updates on the following items:
- Elliott State Forest update
- Elliott State Forest Tour
- Bend Tour – Rangeland and Communication site
- UP Auction update

Governor Brown adjourned the meeting at 11:00 a.m.

________________________________________
Kate Brown, Governor

________________________________________
Vicki L. Walker, Director
The State Land Board met in regular session on October 15, 2018, in the Land Board Room at the Department of State Lands, 775 Summer Street NE, Salem, Oregon.

Present were:
Kate Brown          Governor
Leslie Cummings    Deputy Secretary of State
Tobias Read        State Treasurer

Land Board Assistants
Jason Miner         Governor’s Office
Steve Elzinga      Secretary of State’s Office
Ryan Mann          State Treasurer’s Office

Department Staff
Vicki Walker      Bill Ryan     Jean Straight   Ali Hansen   Chris Castelli
Nancy Pustis      Anne Friend   Melissa Pelton

Department of Justice
Matt DeVore

Governor Brown called the meeting to order at 10:31 a.m. The topics discussed, and the results of those discussions are listed below. To view the Land Board meeting in its entirety, please visit our YouTube page:  https://www.youtube.com/watch?v=zHEqDswf-o0

The Governor made a statement for the record that Secretary Richardson would be unable to join the meeting and Deputy Secretary Leslie Cummings would attend in his place.

Consent & Action Items
These items were postponed until the December Land Board meeting.

Informational Items

1. Trust Property Reports

10:33 a.m.

Director Walker gave a short description of the Trust Property Program and its processes.

She then gave an update on the process of moving the Unclaimed Property Program to Treasury.

Comments were taken from Governor Brown and Treasurer Read
2. **Goble Update**

10:46 a.m.

Director Walker gave an update on the cleanup of the Goble Superfund Site. The cost of the cleanup is $11.2 Million and climbing. This cost included the removal of several derelict vessels, including the River Queen.

3. **Chetco Pilot Filled Lands Update**

10:52 a.m.

Director Walker gave an updated on the Chetco Pilot and stated that future work researching possible historically filled lands will most likely be outsourced.

4. **Oregon Consensus Report**

10:55 a.m.

Director Walker stated that the Habitat Conservation Plan (HCP) process is underway. She then introduced Peter Harkama, Director of Oregon Consensus. Peter gave an overview of their report.

Land Board members gave their comments.

Public input regarding the report will be taken through November 15, 2018.

5. **RFI Forest Management Update**

11:20 a.m.

Director Walker gave a summary on the Request for Information (RFI) process and outcome. She also informed the Board on her plans for next steps in finding a solution for the management of forest lands and the generation of revenue for the Common School Fund.

Public testimony was then taken, and Land Board members gave their comments.

6. **Other**

11:30 a.m.

Director Walker recognized DSL’s Multicultural Awareness Committee and members for their work on the very successful diversity trainings that were offered to staff in October.
Bend staff, Randy Wiest and Sheena Miltenberger were then recognized for their work on and completion of the DSL Rangeland Inventory four years ahead of schedule.

Director Walker then gave a short update on the possible transfer in management of the South Slough National Estuarine Research Reserve (SSNERR).

Governor Brown adjourned the meeting at 11:51 a.m.

__________________________________________
Kate Brown, Governor

__________________________________________
Vicki L. Walker Director
SUBJECT

Approval of a perpetual easement for the bridge crossing on Highway 101 over Schooner Creek in the Northeast ¼ of the Northeast ¼ of Section 34 of Township 07 South, Range 11 West of Willamette Meridian in Lincoln County, Oregon.

ISSUE

Whether the State Land Board should approve a request from Oregon Department of Transportation (ODOT) for a perpetual easement to construct and maintain the bridge crossing Schooner Creek on Highway 101.

AUTHORITY

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

ORS 273.171; relating to the responsibilities and authority of the Director for the administration of the department.

OAR 141-122-0010 to 141-122-0120; establishing procedures for granting easements and rights-of-way on trust and non-trust lands and requiring Land Board approval of easements granted in perpetuity.
PUBLIC INVOLVEMENT

The application was not circulated for public comment since the bridge is an existing structure. Local approval for the project would have been granted prior to original construction.

BACKGROUND

This is a bridge preservation project. The Schooner Creek Bridge was constructed between 1930 and 1949, and has significant corrosion, cracking and concrete spalling. The primary purpose of this project is to make structural repairs and provide cathodic protection to the bridge. Minor roadway work is included to match into existing conditions.

Compensation is required as this easement falls within Lincoln City’s city limits, as displayed in Appendix A. Compensation was determined pursuant to OAR 141-122-0070 (7)(c) and totals $100.

RECOMMENDATION

The Department of State Lands recommends that the State Land Board approve the permanent easement to Oregon Department of Transportation 61061-EA to construct, maintain and operate a bridge over and across Schooner Creek, on Highway 101, Lincoln County, Oregon.

APPENDICES

A. Map
B. Draft Easement for 61061-EA
EXHIBIT A:
Waterway Easement 61061-EA
T07S, R11W Section 34
Schooner Creek, Lincoln County

2016 Aerial Photo
This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

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

Date: 6/26/2018

Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet
STATE OF OREGON
Department of State Lands

EASEMENT NO. 61061-EA
S&S Bridge

The STATE OF OREGON, by and through its Department of State Lands, GRANTOR, for and in consideration of $100.00, hereby grants to GRANTEE,

NAME of GRANTEE: Oregon Department of Transportation
ADDRESS: 455 Airport Rd. SE, Building A
Salem, OR 97301

an easement and right to construct, maintain, operate and replace a bridge over, upon, and across the following particularly described property situated in Lincoln County, Oregon, more particularly described as follows:

A parcel of land lying in Section 34, Township 7 South, Range 11 West, W.M., Lincoln County, Oregon; the said parcel being all state-owned submerged and submersible land within Schooner Creek lying below the line of Mean Low Tide on the North and lying below the line of Mean High Tide on the South, and lying Easterly of the West right of way line, said line being parallel with and 30.00' Westerly of the L1 center line of the Oregon Coast Highway and lying Westerly of the East right of way line, said line being parallel with and 70.00' Easterly of the L2 center line of the Oregon Coast Highway, said center lines are described as follows:

L1 Center Line:
Beginning at Engineer’s center line Station 1077+ 71.30, said Station being 720.08 feet North and 532.32 feet East of the North quarter corner of Section 34, Township 7 South, Range 11 West, W.M., Lincoln County, Oregon;

thence South 49°14'22" East 1368.40 feet;

thence on a 477.47 foot radius curve right (the long chord of which bears South 21°56'22" East 437.9 feet) 455.00 feet;

thence South 5°21'38" West 486.30 feet;

thence on a 477.47 foot radius curve to the right (the long chord of which bears South 16°40'08" West 187.25 feet) 188.47 feet to Engineer’s center line Station 1102+69.47.

L2 Center Line:
Beginning at Engineer's center line Station 1079+75.95, said Station being 579.94 feet
North and 693.96 feet East of the North quarter corner of Section 34, Township 7 South, Range 11 West, W.M., Lincoln County, Oregon;

thence South 49°29'11" East 1031.50 feet;

thence on a spiral curve right (the long chord of which bears South 46°19'14" East 199.76 feet) 200.00 feet;

thence on a 603.11 foot radius curve right (the long chord of which bears South 32°46'41" East 151.35 feet) 151.75 feet;

thence on a spiral curve right the long chord of which bears South 1°27'44" East 746.68 feet) 760.00 feet to Engineer's center line Station 1101+19.20 back equals 1101+16.80 ahead;

thence South 10°31'49" West 183.20 feet to Engineer's center line Station 1103+00.

Bearings are based upon Oregon Coordinate Reference System (OCRS), Oregon Coast Zone, NAD83(2011), Epoch 2010.

Containing 0.79 acres or 34,621 square feet, more or less, and as shown on the attached Exhibit A.

TO HAVE AND TO HOLD the same unto GRANTEE in perpetuity, subject to the following conditions:

1. GRANTOR has the right to grant additional easements within the area authorized by this easement subject to the provisions of the administrative rules governing the granting of easements.

2. GRANTEE shall obtain prior written approval from GRANTOR prior to:
   a) Changing the type of use authorized by this easement;
   b) Expanding the number of authorized developments or uses;
   c) Changing the authorized area; and/or
   d) Permitting other persons to utilize the easement for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.

3. The easement area shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or GRANTOR.
4. GRANTOR and/or its authorized representative(s) shall have the right to enter into and upon the easement area at any time for the purposes of inspection or management.

5. Except as expressly authorized in writing by the Department, GRANTEE shall not:
   a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, or
   b) Remove any sand and gravel, or other mineral resources for commercial use or sale, that occur in the easement area except as expressly authorized in writing by GRANTOR.

   Routine right-of-way maintenance including vegetation trimming shall be allowed.

6. GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel resources in the easement area that must be removed during or after placement of the authorized use, or which cannot be developed because of the authorized use.

7. GRANTEE shall conduct all operations within the easement area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, GRANTEE shall reclaim disturbed lands to a condition satisfactory to GRANTOR.

8. GRANTEE shall obtain a surety bond in the amount of $N/A to ensure compliance with the terms and conditions of this easement.

9. The right to use this easement shall automatically terminate if it, or the development authorized by GRANTOR, is not used within five (5) consecutive years of the date this easement was granted, pursuant to the provisions of the administrative rules governing the granting of easements.

10. Unless otherwise approved in writing by GRANTOR, GRANTEE shall remove all cables, pipes, conduits, roads, and other developments placed by GRANTEE on the easement, and shall restore the surface of the easement area to a condition satisfactory to GRANTOR within one (1) year following termination of use or expiration of this easement.

11. GRANTEE shall inspect the condition of the area authorized by this easement and the developments authorized by this easement on a frequency of: Annually.

12. GRANTOR shall have the right to stop operation of the use authorized by this easement for noncompliance with the conditions of this easement, the provisions of the administrative rules governing the granting of easements, and/or any lawful requirement by a regulatory agency of this STATE.
13. If this easement authorizes the use of state-owned submerged and/or submersible land:
   a) Construction in navigable waters shall conform to the standards and specifications
      set by the U.S. Army Corps of Engineers and the U.S. Coast Guard for the use
      authorized by this easement.
   b) Any blasting which may be necessary, or in-water placement, maintenance, or
      repair of the authorized use shall be performed according to the laws of this
      STATE, including strict adherence to Oregon Department of Fish & Wildlife in-
      water work windows.

14. GRANTEE shall pay to GRANTOR the current market value, as determined by
    GRANTOR, for any unnecessary and non-approved damages to state-owned lands caused
    by construction or maintenance of the easement.

15. GRANTEE shall pay all assessments that may be legally charged on public lands which
    are levied against the property subject to this easement, whether or not such assessments
    have been levied against the easement area or STATE by the assessing agency.

16. GRANTEE shall use the authorized easement area only in a manner or for such purposes
    that assure fair and non-discriminatory treatment of all persons without respect to race,
    creed, color, religion, handicap, disability, age, gender or national origin.

17. This easement is freely transferable. However, no transfer may increase the burden on
    the easement area or detract from the value of the underlying state-owned land.

[remainder of page intentionally left blank]
This easement does not convey an estate in fee simple of the lands used for a right-of-way. This grant is for an easement only, and title remains in the State of Oregon.

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

[Signature/Printed Name]

Date

STATE OF OREGON

) ss

County of Marion

This foregoing instrument was acknowledged before me this ___ of ____________, 20__, by ________________, the ________________________ of the Department of State Lands.

[Signature]

My commission Expires __________, 20__. 
CERTIFICATE OF APPROVAL OF CONVEYANCE
(ORS 93.808)

THE OREGON DEPARTMENT OF TRANSPORTATION, Grantee, hereby approves and accepts, pursuant to ORS 93.808, the grant of an interest in real property from THE DEPARTMENT OF STATE LANDS, Grantor, as described in the instrument to which this Certificate is attached.

A copy of this Certificate may be affixed to, and recorded with, the instrument described above.

DATED this 2 day of July, 2018.

Grantee

By: __________________________________________

Name: __________________________________________

Title: __________________________________________

STATE OF OREGON                                     )
County of MARION ss.                                   )

On this 2ND day of JULY, 2018, before me personally appeared JOHN BOALS, who being duly sworn stated that he/she is the REG2 ROW MANAGER of OR DEPT. OF TRANSPORTATION, Grantee, and acknowledged the foregoing instrument to be the voluntary act of said Grantee and that he/she executed the foregoing instrument under authority granted by said Grantee.

[Signature]

NOTARY PUBLIC FOR OREGON
My commission Expires: OCTOBER 8, 2021
Parcel 1 – Permanent Easement for Highway Right of Way Purposes

A parcel of land lying in Section 34, Township 7 South, Range 11 West, W.M., Lincoln County, Oregon; the said parcel being all state-owned submerged and submersible land within Schooner Creek lying below the line of Mean Low Tide on the North and lying below the line of Mean High Tide on the South, and lying Easterly of the West right of way line, said line being parallel with and 30.00' Westerly of the L1 center line of the Oregon Coast Highway and lying Westerly of the East right of way line, said line being parallel with and 70.00' Easterly of the L2 center line of the Oregon Coast Highway, said center lines are described as follows:

L1 Center Line:
Beginning at Engineer's center line Station 1077+71.30, said Station being 720.08 feet North and 532.32 feet East of the North quarter corner of Section 34, Township 7 South, Range 11 West, W.M., Lincoln County, Oregon; thence South 49°14'22" East 1368.40 feet; thence on a 477.47 foot radius curve right (the long chord of which bears South 21°56'22" East 437.9 feet) 455.00 feet; thence South 5°21'36" West 486.30 feet; thence on a 477.47 foot radius curve to the right (the long chord of which bears South 16°40'08" West 187.25 feet) 188.47 feet to Engineer's center line Station 1102+69.47.

L2 Center Line:
Beginning at Engineer's center line Station 1079+75.95, said Station being 579.94 feet North and 693.96 feet East of the North quarter corner of Section 34, Township 7 South, Range 11 West, W.M., Lincoln County, Oregon; thence South 49°29'11" East 1031.50 feet; thence on a spiral curve right (the long chord of which bears South 46°19'14" East 199.76 feet) 200.00 feet; thence on a 603.11 foot radius curve right (the long chord of which bears South 32°46'41" East 151.35 feet) 151.75 feet; thence on a spiral curve right (the long chord of which bears South 1°27'44" East 746.68 feet) 760.00 feet to Engineer's center line station 1101+19.20 back equals 1101+16.80 ahead; thence South 10°31'49" West 183.20 feet to Engineer's center line Station 1103+00.

Bearings are based upon Oregon Coordinate Reference System (OCRS), Oregon Coast Zone, NAD83(2011), Epoch 2010.

This parcel of land contains 34,621 square feet, more or less.
SUBJECT

Request approval to grant a perpetual easement for a bridge crossing the John Day River, in Section 32 of Township 07 South, Range 19 East of the Willamette Meridian in Wheeler and Wasco Counties.

ISSUE

Whether the State Land Board should approve a request from the Oregon Department of Transportation (ODOT) for a perpetual bridge easement crossing the John Day River.

AUTHORITY

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

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

OAR 141-122-0010 to 141-122-0120; establishing procedures for granting easements and rights-of-way on trust and non-trust lands and requiring Land Board approval of easements granted in perpetuity.

BACKGROUND

The existing ODOT bridge has been in place since 1975. This bridge, the Clarno Bridge, is the only ODOT bridge crossing within DSL’s proprietary jurisdiction in Wasco and
Wheeler Counties. ODOT is seeking a permanent easement and has completed the required bridge survey.

This crossing is not within any city limits; therefore, pursuant to OAR 141-122-0060(7)(c), does not require any compensatory payment.

PUBLIC INVOLVEMENT

The application was circulated to adjoining property owners, various city, state and federal resource and permitting agencies, and tribal entities. No significant comments were received from the circulation.

RECOMMENDATION

The Department recommends that the State Land Board approve the perpetual easement 60756-EA to the Oregon Department of Transportation for the bridge crossing to maintain and operate the bridge and cables for right of way purposes on, over, under or across the John Day River.

APPENDICES

A. Map
B. Draft Easement 60756-EA
EXHIBIT A
Easement Application 60756-EA
R.M. 110 John Day River
ODOT Bridge at Clarno
Wasco County

Legend

Clarno_Bridge

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

EASEMENT NO. 60756-EA
Bridge Crossing

The STATE OF OREGON, by and through its Department of State Lands, GRANTOR, for and in consideration of $0.00 hereby grants to GRANTEE,

NAME of GRANTEE: State of Oregon, by and through its Department of Transportation
ADDRESS: 4040 Fairview Industrial Dr. SE MS #2
Salem, OR 97302-1142

an easement and right to construct, maintain, operate and replace a bridge over, upon, and across the following particularly described property situated in Wheeler and Wasco Counties, Oregon, more particularly described as follows:

A parcel of land lying in the SW1/4NE1/4 of Section 32, Township 7 South, Range 19 East, Willamette Meridian, Wasco and Wheeler Counties, Oregon and being a portion of that property lying between the ordinary high water lines of the John Day River; the said parcel being that portion of said property lying between lines at right angles to the center line of the relocated Shaniko – Fossil Highway Highway at Engineer’s Stations 124+17.00 and 128+00.00 and included in a strip of land 100.00 feet in width, lying on the Southerly side of said center line.

ALSO that portion of said property lying between line at right angles to the center line of the relocated Shaniko – Fossil Highway Highway at Engineer’s Stations 124+17.00 and 128+00.00 and included in a strip of land 80.00 feet in width, lying on the Southerly side of said center line.

The centerline of the relocated Shaniko – Fossil Highway is described as follows:

Beginning at Engineer’s center line Station 114+15.33 P.O.T., said station being 310.07 feet North and 2,860.56 feet West of the East quarter corner of Section 32, Township 7 South, Range 19 East, Willamette Meridian; thence North 37° 08’08” East 9.69 feet; thence on a spiral curve right (the long chord of which bears North 40°07’58” East 299.67 feet) 300.00 feet; thence on a 955.54 foot radius curve right (the long chord of which bears North 75°35’22” East 299.67 feet) 300.0 feet; thence on a spiral curve right (the long chord of which bears North 78°35’13” East 463.68 feet to Engineer’s center line Station 128+80.00 P.O.T., on said center line.

This parcel of land contains 40,614 square feet, more or less.

and as shown on the attached Exhibit “A”.

This description is used to establish the approximate location and extent of the area subject to this Department of State Lands authorized use. All locations, bearings, and distances were developed in the Oregon Coordinate Reference System Standard; Oregon Statewide Lambert Conformal Conic, NAD 1983, International Feet, GRS 1980 Spheroid.

TO HAVE AND TO HOLD the same unto GRANTEE in perpetuity, subject to the following conditions:

1. GRANTOR has the right to grant additional easements within the area authorized by this easement subject to the provisions of the administrative rules governing the granting of easements.

2. GRANTEE shall obtain prior written approval from GRANTOR prior to:
   a) Changing the type of use authorized by this easement;
   b) Expanding the number of authorized developments or uses;
   c) Changing the authorized area; and/or
   d) Permitting other persons to utilize the easement for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.

3. The easement area shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or GRANTOR.

4. GRANTOR and/or its authorized representative(s) shall have the right to enter into and upon the easement area at any time for the purposes of inspection or management.

5. Except as expressly authorized in writing by the Department, GRANTEE shall not:
   a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, or
   b) Remove any sand and gravel, or other mineral resources for commercial use or sale, that occur in the easement area except as expressly authorized in writing by GRANTOR.

   Routine right-of-way maintenance including vegetation trimming shall be allowed.

6. GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel resources in the easement area
that must be removed during or after placement of the authorized use, or which cannot be developed because of the authorized use.

7. GRANTEE shall conduct all operations within the easement area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, GRANTEE shall reclaim disturbed lands to a condition satisfactory to GRANTOR.

8. GRANTEE shall obtain a surety bond in the amount of $N/A to ensure compliance with the terms and conditions of this easement.

9. The right to use this easement shall automatically terminate if it, or the development authorized by GRANTOR, is not used within five (5) consecutive years of the date this easement was granted, pursuant to the provisions of the administrative rules governing the granting of easements.

10. Unless otherwise approved in writing by GRANTOR, GRANTEE shall remove all cables, pipes, conduits, roads, and other developments placed by GRANTEE on the easement, and shall restore the surface of the easement area to a condition satisfactory to GRANTOR within one (1) year following termination of use or expiration of this easement.

11. GRANTEE shall inspect the condition of the area authorized by this easement and the developments authorized by this easement on a frequency of: as needed.

12. GRANTOR shall have the right to stop operation of the use authorized by this easement for noncompliance with the conditions of this easement, the provisions of the administrative rules governing the granting of easements, and/or any lawful requirement by a regulatory agency of this STATE.

13. If this easement authorizes the use of state-owned submerged and/or submersible land:
   a) Construction in navigable waters shall conform to the standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard for the use authorized by this easement.
   b) Any blasting which may be necessary, or in-water placement, maintenance, or repair of the authorized use shall be performed according to the laws of this STATE, including strict adherence to Oregon Department of Fish & Wildlife in-water work windows.

14. GRANTEE shall pay to GRANTOR the current market value, as determined by GRANTOR, for any unnecessary and non-approved damages to state-owned lands caused by construction or maintenance of the easement.
15. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the property subject to this easement, whether or not such assessments have been levied against the easement area or STATE by the assessing agency.

16. GRANTEE shall use the authorized easement area only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

17. If a crossing listed in this easement is later found to have a valid easement from the GRANTOR, then the easement with the latest expiration date will be the “prevailing easement.”

18. This easement is freely transferable. However, no transfer may increase the burden on the easement area or detract from the value of the underlying state-owned land.
This easement does not convey an estate in fee simple of the lands used for a right-of-way. This grant is for an easement only, and title remains in the State of Oregon.

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

_________________________________
DSL Authorized Signature/Printed Name

_________________________________
Date

STATE OF OREGON )
) ss
County of Marion )

This foregoing instrument was acknowledged before me this _____ day of ________, 20__, by ________________________, the _______________________ of the Department of State Lands.

_________________________________
Signature
My commission Expires __________, 20__. 
CERTIFICATE OF APPROVAL OF CONVEYANCE
(ORS 93.808)

State of Oregon, by and through its Department of Transportation, Grantee, hereby
approves and accepts, pursuant to ORS 93.808, the grant of an interest in real property
from State of Oregon, by and through its Department of State Lands, Grantor, as described
in the instrument to which this Certificate is attached.

A copy of this Certificate may be affixed to, and recorded with, the instrument described
above.

DATED this ___ day of ____________, 20__.

State of Oregon, by and through its
Department of Transportation,
Grantee

By: ____________________________

Name: __________________________

Title: ____________________________

STATE OF OREGON )
 ) ss
County of ________________ )

On this ________________ day of ____________, 20__, before me
personally appeared ____________________, who being duly sworn stated that
he/she is the ____________________ of Oregon Department of Transportation, Grantee,
and acknowledged the foregoing instrument to be the voluntary act of said Grantee and that
he/she executed the foregoing instrument under authority granted by said Grantee.

________________________________
NOTARY PUBLIC FOR OREGON
My commission Expires: ________________
REQUEST FOR ADOPTION OF CHANGES TO THE ADMINISTRATIVE RULES GOVERNING THE GRANTING OF EASEMENTS ON STATE-OWNED TRUST AND NON-TRUST LAND (OAR 141-122-0010 TO OAR 141-122-0130). SEPARATE OAR 141-122 INTO TWO RULE DIVISIONS: 1. OAR 141-122 – RULES FOR GRANTING EASEMENTS ON TRUST LANDS; AND 2. OAR 141-123 – RULES FOR GRANTING EASEMENTS ON NON-TRUST LANDS.

ISSUE

WHETHER THE STATE LAND BOARD SHOULD ADOPT THE ABOVE REFERENCED CHANGES TO (OAR 141-122).

AUTHORITY

OREGON CONSTITUTION, ARTICLE VIII, SECTION 5

ORS CHAPTER 183; ADMINISTRATIVE PROCEDURES AND RULES OF STATE AGENCIES.

ORS CHAPTER 273; STATE LANDS GENERALLY.

ORS CHAPTER 274; SUBMERGED AND SUBMERSIBLE LANDS.

OAR 141-122; RULES FOR GRANTING EASEMENTS ON TRUST AND NON-TRUST LAND.
BACKGROUND

On June 22, 2011, the State Land Board authorized the Oregon Department of State Lands (Department) to amend its rules for granting easements on Trust and Non-Trust Land.

The purpose of the rulemaking effort was to:

- Separate Division 122 rules into two rule divisions: 1. Division 122 – Rules for Granting Easements on Trust Lands; and 2. Division 123 – Rules for Granting Easements on Non-Trust Lands.
- Accommodate statutory, and rule changes that have occurred in the past several years,
- Update the general provisions section to reflect the current practices of the Department,
- Complete rule language changes recommended by the Oregon Department of Justice,
- Review and update the administrative procedures for reviewing and issuing easements, and
- Review compensation for easements

PUBLIC INVOLVEMENT

Rules Advisory Committee (RAC)

A RAC was convened in January of 2018 to review and make comments on the proposed amendments and changes to the rules. Members of the RAC consisted of:

- Steve Walti, NW Natural Gas
- Brendan J. McCarthy, Portland General Electric
- Kevin Arnold, Comcast
- Ryan Brown Oregon Department of Transportation
- Brian Worley, Association of Oregon Counties
- Samantha Ridderbusch, Century Link
- Jerome Rosa, Oregon Cattleman’s Association
- Brandon Hignite, Central Lincoln PUD
- Erin Doyle, League of Oregon Cities
The RAC met four times over a period of four months as they assisted the Department in preparing a draft rule for public comment.

Public Notice
A Notice of Proposed Rulemaking Hearing was sent to current easement holders that are up for renewal in two years, interested parties and stakeholders, and posted on the Department’s website. Furthermore, the Statement of Need and Fiscal Impact required by the Oregon Secretary of State was sent to the Rules Advisory Committee for their review and comment as well as posted on the agency website.

Public Hearings
The Department held three public hearings on the proposed rules. The hearings were held in Ontario on August 21, 2018, Bend on August 22, 2018, and Salem on August 28, 2018.

RECOMMENDATION
The Department recommends that the Land Board adopt the proposed changes to the administrative Rules for Granting Easements on Trust Land (OAR 141-122-0010 to 141-122-0130) and Rules for Granting Easements on Non-Trust Land (OAR 141-123-0010 to 141-123-0120).

APPENDICES
A. Final Easement Rules for Land Board Consideration
B. Notice of Proposed Rulemaking including Statement of Need and Fiscal Impact, and Draft Easement Rules for Review and Public Comment
C. Public comments received and DSL responses
DEPARTMENT OF STATE LANDS
DIVISION 123

RULES FOR GRANTING EASEMENTS ON NON-TRUST LAND

141-123-0010
Purpose and Applicability
(1) These rules:
(a) Govern the granting and renewal of easements on state-owned Non-Trust land as specified herein.
(b) Do not apply to the:
(A) Granting of easements for State-Owned Trust lands under OAR 141-122 (Rules for Granting Easements on Trust Land)
(B) Granting of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea, an activity governed by OAR 141-083 (Rules for Granting Easements for Fiber Optic and Other Cables on State-Owned Submerged and Submersible Land Within the Territorial Sea);
(C) Granting of authorizations for hydroelectric projects on state-owned Non-Trust Land, an activity governed by OAR 141-087 (Hydroelectric Projects);
(D) Granting of authorizations for remediation and habitat restoration activities governed by OAR 141-145 (Rules Governing the Management of State-Owned Submerged and Submersible Land Subject to Remediation and Habitat Restoration Activities);
(E) Granting of authorizations for leases, licenses and registrations for structures on and uses of state-owned submerged and/or submersible lands governed by OAR 141-082 (Rules Governing the Management Of, And Issuing Of Leases, Licenses and Registrations for Structures On, And Uses of State-Owned Submerged and Submersible Land).
(F) Dedication of roads or rights-of-way required of the Department or its agents by local government resulting from a local land use approval involving state-owned land; or
(G) Existing valid easements or right of ways granted, by the Department of State Lands (Department) or State Land Board, prior to the adoption of these rules.
(c) Require prior authorization for all uses described under OAR 141-123-0010(2) and (3) unless otherwise exempt from easement under the provisions of OAR 141-123-0010(4) of these rules.
(d) Contain specific provisions relating to the granting of easements by the Department to persons who have or will place a structure or facility on state-owned Non-Trust Land necessary to take water for which they have a right to use.
(2) Unless otherwise exempt under the provisions of OAR 141-123-0010(4) of these rules, developments and uses of state-owned Non-Trust Land subject to easement include, but are not limited to the following:
(a) Water, gas, electric and communication service lines (including fiber optic cables) and associated equipment such as pumping stations, transformers and meters;
(b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);
(c) Water supply pipelines, ditches, canals, and flumes;
(d) Drainage and irrigation works;
(e) Sewer, storm, and cooling water lines, including storm water outfalls and other outfalls;
(f) Bridges, skylines, and logging lines;
(g) Railroad and light rail track, bridges, stations, depots, and other related facilities;
(h) Roads and trails of all types;
(i) Overhead transportation lines (for example, tramways, etc.);
(j) Storage of materials (for example, sand, gravel, dredge spoils, etc.); and
(k) Other encroachments
(l) Erosion control structures, dikes, levees, and tide-gates.
(3) The Department Director may determine that other uses and developments similar to those specified in OAR 141-123-0010(2) are also subject to authorization by, or exempted from, an easement and these rules.
(4) An easement is not required:
(a) For uses or developments on state-owned Non-Trust Land that would require an easement under these rules if the person undertaking the use or owning the development has obtained a valid authorization from the Department pursuant to the provisions of OAR 141-082 (Leasing And Registration Of Structures On, And Uses Of State-Owned Submerged And Submersible Lands); OAR141-145 (Authorizations For Remediation And Habitat Restoration Activities); or OAR 141-125 (Authorizing Special Uses On State-Owned Land), provided the proposed use or development is located on the land which is subject of the authorization, is incidental to the specific use that is the subject of the authorization, and does not result in an additional burden on the land; or
(b) For any structure or facility necessary for the use of water crossing or situated on state-owned submersible land if the below conditions apply:
(A) The withdrawal is authorized by a valid right to use the water; and
(B) The water is used exclusively for irrigation or domestic use.
(c) For water, gas, electric and communication lines physically attached to and supported by county or state-owned bridges that cross state-owned waterways which are located outside of city limits. If the water, gas, electric and communication lines are located within a city, or cross a state-owned waterway within a city, they are subject to easement unless otherwise exempt by these rules.
(5) A person who is exempt from obtaining an easement under the provisions of OAR 141-123-0010(4) may apply to obtain an easement and the Department
may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-123-0050.

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0020
General Provisions
(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, 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) The Department shall follow the guiding principles and resource-specific management prescriptions contained in the Real Estate Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land.
(3) 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.
(4) All references in these rules to “state-owned submerged and submersible land” include state-owned submerged lands or submersible lands or both.
(5) State-owned submerged and submersible land is managed to ensure the collective rights of the public 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”.
(6) All uses of state-owned land must conform to applicable local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws.
(7) No applicant or grantee is allowed to request from any government agency a change in the zoning for, or approved uses of, state-owned land without first applying to and receiving written approval from the Department.
(8) The Department shall not grant an easement if:
(a) As a result of its circulation for public comment of the application for easement as described in OAR 141-123-0050(4) it determines that the proposed use or development would unreasonably impact use or developments proposed or already in place within the requested area; or
(b) If the proposed use or development is inconsistent with local, state, or federal laws; or
(c) If the proposed use or development is inconsistent with these rules; or
(d) If the proposed use or development has unacceptable impacts on public health, safety or welfare, or would result in the loss of, or damage to natural, historical, cultural or archaeological resources, as determined by the Department; or
(e) If the proposed use or development is prohibited by a State Land Board or Department-adopted area closure, use restriction, or area management plan (such as the Lower Willamette River Management Plan; or a Total Maximum Daily Load Implementation Plan); or
(f) If the proposed use or development is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192).
(9) The Department may, at its discretion, deny an easement if the applicant’s financial status or past business practices, or both, indicate that the applicant may not:
(a) Be able to fully meet the terms and conditions of an easement offered by the Department; or
(b) Use the land applied for in a way that meets the provisions of OAR 141-123-0020.
(10) The Department may, at its discretion, deny an easement if the applicant is out of compliance with the terms and conditions of any previous authorization issued, or is subject to any enforcement or corrective action, by the Department.
(11) The Department shall:
(a) Recognize all valid easements of record on land acquired by the Department as disclosed at the time of acquisition; and
(b) Honor any renewal provisions contained in existing valid easements granted by the Department if the Holder of the easement has complied with all terms and conditions of the easement and applies to the Department for a new easement as prescribed in these rules.
(12) Except as provided in OAR 141-123-0010(4) and OAR 141-123-0100(2), any person wanting to use or place a development on state-owned land subject to an easement must obtain a written authorization in the form of an easement from the Department prior to beginning the use or placing the development. Additionally, an easement is required for any use or development that encroaches on state-owned land regardless of its height above or below, or manner of crossing the state-owned land.
(13) Unless otherwise exempt by these rules, each individual use of, or development placed on, state-owned land constitutes a separate discrete activity subject to:
(a) An easement specifically authorizing only that individual use or development; and
(b) Payment of compensation as required in these rules.
(14) An easement cannot be established on Department-managed land by adverse possession regardless of the length of time the use or development has been in existence.
(15) The Department may:
(a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with, the terms and conditions of an easement and, if not;
(b) Pursue whatever remedies are available under law and OAR 141-123-0120 to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed. Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0030
Definitions
(1) “Applicant” is any person applying for an easement.
(2) “Appraised Value” means an estimate of current market value of the property (not including improvements) as of a specific date, prepared by a qualified independent appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.
(3) “Authorized Area” is the area of state-owned land defined in the easement for which a use is authorized.
(4) "Cable" means a conductor of electricity or light with insulation, or a combination of conductors insulated from one another within a single jacket or sheath.
(5) "Circuit" means a system of conductors through which an electric current is intended to flow. A single pole or transmission tower may support one or more circuits, each of which may consist of up to four separate conductors.
(6) "City" means a city incorporated under ORS 221.020 through 221.100.
(7) "City Limits" refers to the boundaries of a city incorporated under ORS 221.020 through 221.100.
(8) "Communication Line" is any cable including fiber optic cable which transmits electronic information, telephone or television signals or other data.
(9) "Comparative Compensatory Payment" is the amount of money paid to owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant's requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.
(10) "Compensation" or “Compensatory Payment” is the amount of money paid or something of equal value provided for an easement to the Department for the use of Department managed land.
(11) "Conduit" is a pipe that protects cables from damage. It may be buried or used in above-ground applications such as bridge crossings. Innerducts may be installed within a conduit to facilitate individual cable installation.
(12) “Deflector” is a structural barrier such as a groin or jetty projecting into a waterway to divert flow away from and prevent eroding sections of the banks of a waterway.
(13) “Department” means the Department of State Lands.
(14) "Development" is any structure or physical facility (for example, each cable, innerduct, innerduct and cable, conduit, conduit and cable, pipeline, electrical
line, communication line, bridge, road, fence, ditch, reservoir, or easement-associated building) on state-owned land subject to or authorized by an easement granted by the Department.

(15) "Director" means the Director of the Department of State Lands or designee.

(16) "Domestic Use" means the use of water for human consumption and household purposes that is necessary for the sustenance of an individual, family unit or household. Domestic use may also include water used by an individual family unit or household for heating or cooling purposes.

(17) "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.

(18) "Easement for Conservation Purposes" is a type of easement granted by the Department that limits uses to protect the property for conservation values, such as fish and wildlife habitat or other ecosystem processes. The easement for conservation purposes is conveyed by the Department when the applicant is not eligible to hold a Conservation Easement or otherwise does not conform to ORS 271.715 to 271.775.

(19) "Encroachment" is an unauthorized development or use, such as, but not limited to a structure, fill, or pile of aggregate, that overlaps on, or otherwise occupies or restricts the full use of state-owned land. An encroachment may be a pipe, conduit, or other structure that has been abandoned in place. An encroachment may also occur when the Holder of an easement granted by the Department extends their use outside of the area authorized by that easement or adds a use or development not authorized.

(20) "Erosion Control Structures" mean revetments, attenuators, deflectors, retaining walls, riprap and other structures placed adjacent to, or on Non-Trust Land.

(21) "Fiber Optic Cable" means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

(22) "Gas Lines and Associated Fixtures" are the pipelines and required compressor and gate stations, valves, meters, regulators, relief stacks, marker posts, rectifiers, and all other related fixtures and equipment necessary to deliver natural gas from the point of origin to the user.

(23) "Governmental Body" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof as defined in ORS 271.005.

(24) "Holder" means any person who holds a current authorization from the Department for the use of state-owned lands.

(25) "Individual Use" or "Individual Development" is each separate use of, or development placed on state-owned land.

(26) "Innerduct" is tubing that not only protects fiber optic and other types of cables, but also facilitates their installation. It is often placed inside a conduit or may be buried directly into the ground.
Appendix A

(27) “Intake” is a location or structure through which something is taken in, e.g. water in a channel or pipe from a body of water.

(28) “Irrigation” or “Irrigation Use” means the artificial application of water to crops or plants by controlled means to promote growth or to nourish crops or plants. Examples of irrigation uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course play field or vineyard.

(29) “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 neither is under undue duress.

(30) “Maximum Value Per Square Foot” means the highest price per square foot that the Department may use in determining compensation for easements.

(31) “Multiple-Use Easement” means an authorization issued for a single conduit, through which additional uses may be embedded.

(32) "Non-Trust Land" is 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 ordinary high water)] under navigable and tidally influenced waterways.

(33) “Outfall” is the point of a drain where it discharges to an area of land or body of water.

(34) “Owner” means a person or legal entity that has a property interest in a structure or land

(35) "Permanent Easement" is a type of easement that is issued in perpetuity.

(36) "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.

(37) “Public Trust Use(s)” means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect, and enhance those uses. Examples of Public Trust uses include, but are not limited to, short term moorage, camping, bank fishing, picnicking, and boating.

(38) “Real Estate Asset Management Plan” 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 the Common School Fund’s real estate assets.

(39) “Real Market Value” for land means the current market value of the property (not including improvements) assigned to the land within the tax lot, adjacent riparian tax lot, or comparable tax lot by the county tax assessor.

(40) “Right of Way” is the legal right, established by grant, to pass along a specific route through grounds or property belonging to another.

(41) "Right to Use Water" is a water right permit, water right certificate, or a proposed or final order approving a water right permit granted by the Oregon Water Resources Department, or court decree evidencing a water right,
authorizing a person to take and use a specific quantity of water for a specific use or uses from a specific location under specific terms and conditions.

(42) “Roadway” means a road, driveway, or any other development for the use of vehicles or other traffic.

(43) “Rip-Rap” means crushed rock or concrete placed on the bank of a waterway or lake to prevent or reduce erosion of the bank.

(44) “Single-Use Easement” means an authorization for a crossing with an individual use.

(45) "State Land" or "State-Owned Land" is land owned by the State and managed by the Department or its agents and includes Trust Land and Non-Trust Land.

(46) “State Land Board” means the constitutionally created body consisting of the Governor, Secretary of State, and 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.

(47) “Structure or Facility Necessary for the Use of Water” means the pipelines and required stands, pumps, wiring, fish screens, and similar equipment necessary to convey water from the point of diversion to the place of use.

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

(49) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(50) "Trust Land" is land granted to the state 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.

(51) "Use" means an activity on state-owned lands that requires an easement under these rules.

(52) “Utility” means water, waste water, gas, electric, or communication service lines, fixtures and other related facilities.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0040

Easement Application Requirements

(1) Except as provided by OAR 141-123-0010(4) (Purpose and Applicability) and 141-123-0100 (Easements for Structures and Facilities Necessary for the Use of Water), any person wanting to use state-owned land for any of the purposes described in OAR 141-123-0010(2) and (3) must:

(a) Apply to the Department for the easement using a form provided by the Department; and

(b) Submit a non-refundable application fee as provided in OAR 141-123-0040(3) payable to the Department to cover the administrative costs of processing the
application and issuing the authorization. When applying for an easement for a structure or facility necessary for the use of water as described in OAR 141-123-0100, a person may submit to the Department a copy of their application to the Department of Water Resources for a right to use water in lieu of using the Department's easement application form.

(2) Unless otherwise exempt under the provisions of OAR 141-123-0010(4) (Purpose and Applicability), each individual use of, or development placed on state-owned land must be authorized by a separate easement specifically authorizing only that use or development.

(a) With regard to a conduit, regardless of the number of innerducts or fiber optic cables contained within the conduit, each cable or innerduct is considered an individual use subject to authorization by an easement.

(b) With regard to electric power transmission lines, one transmission line with one or more circuits will constitute an individual use subject to authorization by an easement. Additional parallel transmission lines owned by the same entity with one or more circuits may be included in the same individual use so long as such parallel lines are located within the designated boundaries of the easement.

(3) Except as provided by OAR 141-123-0100 (Easements for Structures and Facilities Necessary for the Use of Water) and OAR 141-123-0040(4), the application fee for all easements is $750; the application fee for all structures or facilities necessary for the use of water on submerged land subject to an easement is $125.

(4) A single easement application form may be used to request:

(a) An easement for a single pipeline, cable, or similar use or development which crosses one or more parcels of state-owned land.

(b) An easement for all state, county or city-owned bridges within a single county, or

(c) An easement for one or more identical uses or developments which cross the same parcel of state-owned land or state-owned waterway, for example, two parallel pipelines.

(5) An easement application for a conduit must include a cross-sectional drawing that shows the proposed use and the remaining conduit space available for future use.

(6) A fully completed application must be submitted to the Department at least 90 calendar days prior to the proposed use or placement of a development subject to a term easement on state-owned land unless otherwise allowed by the Director in writing.

(7) A fully completed application must be submitted to the Department at least 120 calendar days prior to the proposed use or placement of a development that is eligible for a permanent easement on state-owned land, unless otherwise allowed by the Director in writing.

(8) Any person holding a valid easement (other than a permanent easement) granted by the Department prior to the adoption of these rules who wants to continue holding the authorized area following the expiration of the easement for a use subject to easement must:
(a), Apply to the Department for a new easement and pay the required application fee 180 calendar days prior to the expiration of the easement as provided in OAR 141-123-0040(1), unless otherwise allowed by the Director in writing; and
(b) Pay the compensatory payment required by OAR 141-123-0060 at such time that the Department has reviewed and approved the easement application request pursuant to OAR 141-123-0050 (9) and (10).

Stat. Auth.: ORS 274.040, ORS 273.045
Stats. Implemented: ORS 273.058, ORS 273.761, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0050
Easement Application Review and Approval Process

(1) Department staff may require a meeting to discuss a proposed project and use before performing an application completion review. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in an application meeting.

(2) Upon receipt of an application, and the completion of an application meeting if necessary, the Department will determine whether it is complete. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) 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.

(4) If determined by the Department to be complete, the application will be circulated to affected local, state, and federal agencies; Holders of valid authorizations granted by the Department in the requested area; and other interested persons including federally recognized tribal governments and ports for review and comment. As a part of this review, the Department will specifically request comments concerning:

(a) The presence, type and location of state or federal listed threatened and endangered species (including candidate species), and archeological and historic resources within the requested area which may be disturbed by the proposed use;

(b) Whether the proposed easement use:
(A) Conforms with other local, state, and federal law and rules;
(B) Conforms with the local comprehensive land use plan and zoning ordinances;
(C) Conforms with the general provisions described in OAR 141-123-0020 of these rules; and
(D) Would unreasonably impact uses or developments proposed or already in place within the requested area.

(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 use. The Department shall make paper copies of an application available to any person upon request.

(6) The Department may waive the circulation requirement described in OAR 141-123-0050(4) if:

(a) The use or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented in the easement application;
(b) The application is for an easement associated with the right to use water and the Water Resources Department is conducting or has conducted a public interest review sufficient to make the determinations required by OAR 141-123-0050(4); or
(c) The application is for an easement for an energy facility that has been granted a site certificate by the Energy Facility Siting Council under ORS 469.300 et seq. and OAR 345-022, et seq. (Regulation of Energy Facilities), in which case the Department will accept the findings and conclusions of the Energy Facility Siting Council in evaluating the easement application over Non-Trust Land.

(7) An applicant for an easement may be required to amend their application at any time to address issues, concerns, or information needs identified by the Department or others that provided comments.

(8) After receipt of agency and public comment concerning the proposed use, the Department will determine, and advise the applicant in writing if:

(a) Changes to the requested easement area are necessary to respond to agency or public comment;
(b) Additional information is required from the applicant, including but not limited to a survey of:
   (A) State or federal listed threatened and endangered species (including candidate species) within the requested area; or
   (B) Archaeological and historic resources within the requested area.
   (c) The request is denied. Applicants will be given the opportunity to revise their proposed project if the Department denies the request; or
   (d) The easement will be granted with specific terms and conditions.

(9) If the Department decides to grant the easement, the written notification will also indicate:

(a) The amount of compensation pursuant to the requirements of OAR 141-123-0060 that the applicant must remit to the Department to obtain the authorization;
(b) Any surety bond amount required by the Department pursuant to the provisions of OAR 141-123-0070(13); and
(c) The easement terms and conditions.

(10) The Department will not grant an easement to an applicant until it has received all fees and compensation specified in these rules, and evidence of a surety bond (if required). However, the Department, at its discretion, may grant a provisional easement prior to receipt of compensation due for removal of timber, sand and gravel, or other natural resources in the easement area if the fair market value of those resources is based on actual receipts from their sale.

(11) The Director may refer unusual or controversial easement applications to the State Land Board for review and approval.
(12) If requested by the Department, an applicant must present evidence to the Department prior to placing the use or development that they have obtained:
(a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use or development; and
(b) Any authorization that may be required to obtain access to, or to cross land belonging to a person other than the Department to undertake the use or development.
Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0060 Compensation
(1) Except as provided in OAR 141-123-0060(11) and (12), the Department will, prior to granting an easement, require an applicant not otherwise exempt under OAR 141-123-0060(6) or as provided in OAR 141-123-0060(10) to submit to the Department a compensatory payment for each individual crossing or use of state-owned land in an amount equal to the greatest of:
(a) For submerged and submersible lands, compensation is based on 33 1/3 percent of the market value of the adjacent riparian tax lots for uses described in OAR 141-123-0010(2) and (3). Market value is either:
   (A) An appraised value that is acceptable to the Department; or
   (B) The Real Market value of the adjacent riparian tax lots.
   (b) $500; or
   (c) The highest Comparative Compensatory Payment.
(2) For all single-use easements on, over, above, or below state submersible or submerged lands, the value per square feet derived from the real market value of the adjacent riparian tax lot(s) shall not exceed the Maximum Value per Square Foot. The Statewide Maximum Value Per Square Foot is $11.93 starting July 1, 2018 and shall increase each year on July 1st by three percent
(3) For all multiple-use easements on, over, above, or below state submersible or submerged lands, compensation is based upon the real market value of the adjacent riparian tax lot(s) and is not limited by the Statewide Maximum Value per Square Foot.
(4) For each new individual use, proposed to be embedded in existing conduit authorized by the Department prior to January 1, 2019, compensation is required and the Statewide Maximum Value per Square Foot shall apply.
(5) For each new individual use, proposed to be embedded in existing conduit authorized by the Department after January 1, 2019, no additional compensation is required.
(6) The following types of easements located on Non-Trust Land are exempt from the mandatory compensatory payment to the Department specified in OAR 141-123-0060(1):
(a) State and county-owned bridges located outside of city limits.
(b) Gas, electric and communication line easements located outside of city limits, as allowed by ORS 758.010.
(c) Water ditches; water supply pipes; and water supply mains up to a maximum width of 25 feet on each side of the center line, as allowed by ORS 273.761.
(d) Sanitary pressure mains and storm water pipes and storm water outfalls up to a maximum width of 25 feet on each side of the center line, as allowed by ORS 273.761.
(e) Any structure or facility necessary for the use of water crossing or situated on state-owned submersible land, as allowed by ORS 274.040(3) if:
(A) The withdrawal is authorized by a valid right to use the water; and
(B) The water is used exclusively for irrigation or domestic use.
(7) There is granted to all persons constructing railways built after February 21, 1891, within the boundaries of the state, and to their successors and assigns as allowed by ORS 273.751:
(a) A right of way through any unimproved state lands, of the width of 100 feet, being 50 feet in width on each side of the center line of the road.
(b) All necessary grounds for stations, depots, shops, side tracks, turntables and water stations, not exceeding 10 acres in any one place, upon payment to the state of the sum therefor as fixed by the Department of State Lands.
(c) The right to take, from the lands of this state adjacent to the route lines of the road, material necessary for the construction of the roads.
(d) The right to construct and maintain railroad bridges over any navigable waters in this state. All bridges crossing navigable waters shall be subject to such regulations, restrictions and compensation as may be fixed by the department and shall be so constructed as not unnecessarily to interfere with navigation.
(8) Compensatory payments shall be required at the rate specified in OAR 141-123-0060(1) for that part of an easement for the uses specified in OAR 141-123-0060(2) and (3) which exceeds the maximum widths or acreages indicated, or occurs on:
(a) Trust Land (under OAR 141-122), or
(b) Other land not exempt from a mandatory compensatory payment.
(9) If required by the Department, applicants must also submit to the Department a payment in an amount to be determined by the Department for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the easement area which must be removed during or after placement of the proposed use, or which cannot be developed because of the easement use. Such payment shall be due at a date to be determined by the Department.
(10) The Department may, in lieu of a cash compensatory payment, negotiate a non-cash compensatory payment equivalent to or greater than the compensation required under OAR 141-123-0060(1).
(11) Notwithstanding the provisions of OAR 141-123-0060(1), for state, county and city-owned bridges crossing a state-owned waterway on Non-Trust Land, the required compensation will be:
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(a) No compensation for a 30-year easement if none of the bridges listed on a single county application submitted by either the Oregon Department of Transportation or any county is located within a city.
(b) $100 for a 30-year easement if any bridge listed on a single county application submitted by either the Oregon Department of Transportation or any county is located within a city.
(c) $100 for a permanent easement for each state, county or city-owned bridge crossing state-owned land if it is located in a city.
(12) Notwithstanding the provisions of OAR 141-123-0060(1), for People’s Utility Districts (PUD) structures crossing a state-owned waterway on Non-Trust Land, the required compensation will be:
(a) No compensation for a 30-year easement if the structures are not located within a city.
(b) $100 for a 30-year easement if the structures are located within a city.
(13) If in the process of calculating compensation, the assessed value is found to be depressed due to the presence of hazardous substances or some other extenuating circumstance(s) as determined by the Department, another comparable upland tax lot shall be selected by the Department as the basis for calculating the compensation. The applicant may suggest a comparable tax lot or may appeal the Department's selection to the Director.
Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0070

General Easement Terms and Conditions
(1) Easements shall be offered by the Department for the minimum area and term determined by the Department to be required for the requested use or development. Unless otherwise authorized by the Director, the minimum width of an easement shall be no less than 15 feet.
(2) The applicant shall have ninety (90) calendar days from the date of offer to execute an easement with the Department. The Department may revoke the offer after ninety calendar days, at which time the applicant may re-apply for an easement in accordance with OAR 141-123-0040.
(3) The Department may grant additional easements which, as determined by the Department, do not substantially interfere with other authorized easements within a given area.
(4) Easements shall be offered for a term no longer than thirty (30) years, unless otherwise authorized by the Director.
(5) The Department may, upon request of the applicant, grant permanent easements only for the following uses of state-owned land:
(a) State, county and city-owned bridges if the application contains a full surveyed legal description for each bridge and the appropriate compensation required by these rules; and
Appendix A

(b) Structures or facilities necessary for the use of water as provided in OAR 141-123-0100.
(6) Requests for permanent easements shall be taken to the State Land Board for review and approval.
(7) An easement granted by the Department will generally be to a specific person for a specific use, location, and term. The Holder of an easement must apply to and obtain prior written approval from the Department as provided in OAR 141-123-0040 prior to:
(a) Changing the authorized use;
(b) Transfer of ownership;
(c) Expanding the number of authorized developments or uses;
(d) Changing the authorized area; or
(e) Permitting other persons to utilize the authorized area for uses and developments requiring separate authorization by the Department (for example, attachment of cables, conduits, or pipes under a bridge already authorized by an easement).
(8) State-owned submerged and submersible land must remain open to Public Trust Uses unless a restriction is approved by the Department or other agencies with jurisdiction over navigation or public safety.
(a) Notwithstanding the provisions of Division 88, a Holder may close all or a portion of the authorized area to Public Trust Uses, or restrict Public Trust Uses within all or a portion of the authorized area, provided the closure or restriction is:
(A) Reasonably necessary to protect persons and property from harm arising from Holder’s authorized use of the submerged and submersible land;
(B) Limited in duration; and
(C) Limited in scope.
(b) If the proposed closure or restriction is wholly or partially within the navigation channel of the waterway as established by the United States Coast Guard, or is located in such a way as to increase traffic in or otherwise impact use of the navigation channel, Holder shall consult with the United States Coast Guard, the Oregon Marine Board and any applicable port prior to implementing the closure or restriction. Holder must comply with all requirements imposed by the United States Coast Guard and the Oregon Marine Board.
(c) The Holder must provide written notice to the Department no less than fourteen (14) days prior to the implementation of any closure or restriction. The written notice must identify the need for and the scope, and duration of the closure or restriction, and must certify that Holder has consulted and received approval from the United States Coast Guard and the Oregon Marine Board regarding the closure or restriction.
(d) The Department, in its sole discretion, may at any time require Holder to terminate or modify the closure or restriction. The Department, in its sole discretion, may at any time require the closure or restriction to be established pursuant to OAR 141-088.
(9) The Department or its authorized representative(s) shall have the right to enter into and upon the authorized easement area at any time for the purposes of inspection or management.
(10) Routine right-of-way maintenance including, but not limited to vegetation trimming and the application of state-approved herbicides will be allowed as specified by the easement conditions. However, except as expressly authorized in writing by the Department, an easement Holder will not otherwise remove any sand, gravel, or other mineral or natural resources within the authorized area for commercial use or sale.

(11) The Holder of an easement must conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, disturbed lands shall be reclaimed as specified by the Department.

(12) The Holder of an easement must maintain all buildings, pipelines, cables, and other developments or items placed in or on state-owned land in a good state of repair.

(13) Applicants for an easement may be required to obtain:
(a) Insurance, bond or other guarantees of performance required by the Department in the exercise of its reasonable discretion if, in the opinion of the Department, the use constitutes a risk to other users of the area, to public safety, or to the State of Oregon, or if required by Oregon state law. The Department may:
   (A) Request that the applicant for, or the Holder of an easement provide information concerning the use or development to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Department in determining the appropriate amount of insurance coverage based on the nature of the use, and
   (B) Require that the State of Oregon be named as an additional insured party in any such policy.
(b) A surety bond in an amount to be determined by the Department to ensure that the easement Holder will perform in accordance with all terms and conditions of the authorization; or a cash deposit in an amount equal to the amount required for a surety bond.

(14) Easement Holders must inspect the condition of the easement area and the developments placed on it on a frequency to be determined by the Department in consultation with the easement Holder and other interested parties.

(15) Unless otherwise agreed to in writing in the easement, the Holder of an easement which does not have a permanent term must terminate all use and remove any or all developments or uses placed within the easement area upon expiration or cancellation of the easement. If the Holder of the easement refuses to terminate their use or remove their developments, the Department may remove them and charge the Holder for doing so.

(16) The Holder of an easement must indemnify the State of Oregon and the Department against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area resulting from the actions or negligence of the easement Holder.
Appendix A

(17) A term easement that is exempt from fees may be subject to the future imposition by the Department of a consideration payment, and/or usage fee to be established by the State Land Board as authorized by law.
Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0080
Transfer of Easements

(1) An easement in good standing is transferable. Prior written consent of the Department is required prior to any transfer of the easement. No transfer may increase the burden on the estate or detract from the value of the underlying state land.

(2) The Holder of an easement wanting to transfer their easement must submit to the Department:
(a) Notice of proposed transfer on a form provided by the Department at least 60 calendar days prior to the date that the transfer is to occur; and
(b) Non-refundable transfer processing fee of $750 payable to the Department.
Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

141-123-0090
Termination of an Easement

(1) The Department may terminate any easement:
(a) If there is no use of, or development placed on the easement area for five consecutive years;
(b) If the easement is for a structure or facility necessary for the use of water on state-owned submerged and submersible land and the associated right to use water is cancelled by the Oregon Water Resources Department or abandoned by the easement Holder. Upon such termination, the Department will notify the easement Holder in writing using the last known address reported by the easement Holder to the Department. This notification will state that the easement has terminated, and that the easement Holder will have 30 calendar days from the date of the notice to respond in writing to the Director why the easement should be reinstated. The Director will notify the easement Holder in writing of his/her decision within 60 calendar days of receipt of the request for reinstatement of the easement; or
(c) If the Holder of the easement fails to comply with these rules or the terms and conditions of the easement, or violates other laws covering the use of their authorized area, the Department will notify the Holder of the easement in writing of the default and demand correction within a specified time frame. If the Holder of an easement fails to correct the default within the time frame specified, the Department may:
(A) Modify or terminate the easement;
(B) Invoke other remedies as provided in OAR 141-123-0120.

(2) Notwithstanding the provision of OAR 141-123-0090(1), the Department will not terminate a term easement if the Holder of the easement is ready, but unable to commence the requested use within the five-year period due to their inability to obtain other required authorizations within the five-year period.

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

**141-123-0100**

*Easements for Structures and Facilities Necessary for the Use of Water*

(1) Except as otherwise provided in OAR 141-123-0100(2), an easement is required for all structures and facilities placed on Non-Trust Land managed by the Department that are necessary for the use of water.

(2) An easement is not required for those parts of structures and facilities necessary for the use of water placed on state-owned submerged and submersible land managed by the Department if the:
   (a) Owner of the structures and facilities holds a valid right to use the water, and
   (b) Water is used exclusively for domestic and/or irrigation purposes.

(3) Persons who own, use, have placed, intend to place, or have the legal authority to represent the owners or users of structures and facilities necessary for the use of water subject to an easement must apply to the Department for an easement on a form provided by the agency. The applicant must include with the application a non-refundable application fee in the amount of $125 payable to the Department to cover the administrative costs of processing the application and issuing the easement.

(4) An application received by the Department for an easement for a structure or facility necessary for the use of water will be processed pursuant to the provisions of OAR 141-123-0050 and 141-123-0060 (as applicable) of these rules.

(5) The Department will allow a person to include up to three water pipelines and associated fixtures per lot of record on their application for an easement.

(6) An easement issued by the Department under this section will have the same term as that of the associated right to use the water as determined by the Oregon Water Resources Department. Land Board approval will not be required for an easement granted under this section.

(7) The Department may enter into an agreement with the Oregon Water Resources Department to consolidate the processing of easements for structures or facilities necessary for the use of water with the processing of a right to use water.

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

**141-123-0105**
Unauthorized Uses and Penalties
(1) Uses and developments not authorized by an easement issued by the Department, or by another agency as a valid existing right of record on land acquired by the Department, constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Department.
(2) In addition to any other penalties provided or permitted by law, the use or placement of any development on state-owned land without the required Department authorization as described in these rules, or which is otherwise not in compliance with these rules, will constitute a trespass and be prosecuted pursuant to governing law.

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Reconsideration of Decision
An applicant or any person adversely affected by the issuance or denial of an easement by the Department may request the Director or the State Land Board, depending on which entity made the decision, to reconsider the decision. A request for reconsideration must be filed in compliance with ORS 183.482 or 183.484.

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010

Enforcement Actions; Civil Penalties and Other Remedies
(1) The Department may:
(a) Conduct field inspections to determine if uses of, and developments on, in or over state-owned submerged and submersible land are authorized by, or conform with the terms and conditions of an easement and, if not,
(b) Pursue whatever remedies are available under law to ensure that any use that is in violation of the terms or conditions of an easement is either brought into compliance with the requirements of these rules or other applicable law, or removed.
(2) In addition to any other penalty or sanction provided by law, for uses subject to easement located on state-owned submerged and submersible land, the Director may assess a civil penalty of not more than $1,000 per day of violation for the following:
(a) Violations of any provision of OAR 141-123 or ORS 273 or 274; or
(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274.
(3) The Director will give written notice of a civil penalty incurred under OAR 141-123-0120(2) by registered or certified mail to the person incurring the penalty. The notice will include, but not be limited to the following:
Appendix A

(a) The particular section of the statute, rule or written authorization involved;
(b) A short and clear statement of the matter asserted or charged;
(c) A statement of the party’s right to request a hearing within 20 calendar days of the notice;
(d) The time allowed to correct a violation; and
(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-123-0120(3). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(5) In imposing a penalty under OAR 141-123-0120 of these rules, the Director will consider the following factors as specified in ORS 274.994:
(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;
(b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible land or Trust lands;
(c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and
(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.

(6) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-123-0120 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(7) If a civil penalty is not paid as required by OAR 141-123-0120, interest will accrue at the maximum rate allowed by law from the date first due.

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 273.761, ORS 274.040, ORS 274.720, ORS 376.620, ORS 530.050, ORS 530.490 & ORS 758.010
NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILING CAPTION: Amending and adopting rules for Easements on Trust and Non-trust Lands

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/31/2018 5:00 PM
The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Anne Friend
503-986-5245
anne.m.friend@state.or.us
775 Summer Street NE
Suite 100
Salem, OR 97301

Filed By:
Anne Friend
Rules Coordinator

HEARING(S)
Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/21/2018
TIME: 4:00 PM - 6:00 PM
OFFICER: Nancy Pustis
ADDRESS: Clarion Inn, Lewis and Clark Room
1249 Tapadera Ave
Ontario, OR 97914

DATE: 08/22/2018
TIME: 4:00 PM - 6:00 PM
OFFICER: Nancy Pustis
ADDRESS: Deschutes County Road Department
61150 SE 27th St
Bend, OR 97702

DATE: 08/28/2018
TIME: 4:00 PM - 6:00 PM
OFFICER: Gary Cooper
ADDRESS: Department of State Lands Building, Land Board Room
775 Summer Street NE
Salem, OR 97301

NEED FOR THE RULE(S):
• Accommodate statutory, and rule changes that have occurred in the past several years,
• Update the general provisions section to reflect the current practices of the Department,
• Complete rule language changes recommended by the Oregon Department of Justice,
• Review and update the administrative procedures for reviewing and issuing easements, and
• Review compensation for easements

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
ORS Chapter 273 (available at the Oregon State Legislature's website), ORS Chapter 274 (available at the Oregon State Legislature's website), ORS Chapter 376 (available at the Oregon State Legislature's website), draft rules were generated and reviewed by the agency’s rulemaking advisory committee (available on at https://bit.ly/2OsV2KB) and OAR 141-122 (available at the Department of State Lands website)

FISCAL AND ECONOMIC IMPACT:
OAR 141-122 and OAR-141-123
The Department does not anticipate any additional administrative costs to the state with the changes to these rules. This includes administering the application process, working with the applicant and affected stakeholders through
issues, drafting all required authorizations, compliance monitoring, legal defense of agency decisions, and State Land Board review and approval as needed.

COST OF COMPLIANCE:
(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

OAR 141-122

It is anticipated that these rules will have a minimal fiscal impact on state agencies, units of local government and members of the public with an interest in the granting of easements on state-owned submerged and submersible land. We do not expect the revision of these rules to require any other governmental agencies to engage in rulemaking or to adopt subsequent code or ordinance.

OAR 141-123

It is anticipated that these rules will have a minimal fiscal impact on state agencies, units of local government and members of the public with an interest in the granting of easements on state-owned submerged and submersible land. We do not expect the revision of these rules to require any other governmental agencies to engage in rulemaking or to adopt subsequent code or ordinance.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OAR 141-122

It is anticipated that these rules will not have any significant fiscal impacts on small businesses, however, compensation could increase in some cases. There may also be some indirect costs to small business that utilize the services of larger companies that acquire easements. These costs could increase given that there may be increases to large companies acquiring easements, as well as in some cases companies may pay less under these rules than they did under previous rules.

OAR 141-123

It is anticipated that these rules will not have any significant fiscal impacts on small businesses, since compensation in most cases will be lower. There may also be some indirect costs to small business that utilize the services of larger companies that acquire easements. These costs should remain flat or go down due to the fact that companies acquiring easements should pay less under these rules than they did under previous rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

OAR 141-122

There is no expected increase in reporting, recordkeeping and other administrative activities, including professional services for the small business.

OAR 141-123

There is no expected increase in reporting, recordkeeping and other administrative activities for the small business.

c. Equipment, supplies, labor and increased administration required for compliance:

OAR 141-122

There is no expected increase in equipment, supplies, labor or administration for small business.

OAR 141-123

There is no expected increase in equipment, supplies, labor or administration for the Department or the regulated public.
DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

OAR 141-122
The Rulemaking Advisory Committee (RAC) included representatives from businesses and groups most likely to be impacted by easement rule changes. Some of the affected stakeholders included, but are not limited to, Oregon Education Association, Association of Oregon Counties, Oregon Cattleman’s Association, League of Oregon Cities, Lincoln County PUD, and Special Districts Association. RAC members have been instrumental in the development of these revised rules. The RAC members evaluated how they thought that small businesses may be impacted, though it would be rare for a small business to be impacted.

OAR 141-123
The Rulemaking Advisory Committee (RAC) included representatives from businesses and groups most likely to be impacted by easement rule changes. Some of the affected stakeholders included, but are not limited to, Oregon Education Association, Association of Oregon Counties, Oregon Cattleman’s Association, League of Oregon Cities, Lincoln County PUD, and Special Districts Association. RAC members have been instrumental in the development of these revised rules. The RAC members evaluated how they thought that small businesses may be impacted, though it would be rare for a small business to be impacted.

Following is a list of contacts that were asked to participate on the RAC and declined or did not respond:
1. Oregon Peoples Utility Districts Association (OPUDA)
2. Oregon School Employees Association (OSEA)
3. League of Women Voters
4. The Nature Conservative
5. Willamette Partnership
6. Coalition of Oregon Land Trusts
7. Wetlands Conservancy
8. Legislative Commission on Indian Services (Tribes)

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

AMEND: 141-122-0010

RULE SUMMARY: Removed References to non-trust lands, now addressed in 141-123

CHANGES TO RULE:

141-122-0010
Purpose and Applicability

(1) These rules:
(a) Govern the granting and renewal of easements on state-owned Trust and Non-Trust land as specified herein.
(b) Do not apply to the:
(A) Granting of easements for State owned submerged and submersible lands administered under OAR 141-123
(Rules for Granting Easements on Non-Trust Land).

(B) Granting of easements for fiber optic and other cables on state-owned submerged and submersible land within
the Territorial Sea, an activity governed by OAR 141-083 (Rules For Granting Easements For Fiber Optic And
Other Cables On State-Owned Submerged and Submersible Land Within The Territorial Sea).

(C) Granting of authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land, an activity
governed by OAR 141-087; (Hydroelectric Projects).

(D) Dedication of roads or rights-of-way required of the Department or its agents by local government resulting
from a local land use approval involving state-owned land; or

(E) Existing valid easements granted or right of ways granted, by the Department or State Land Board, prior to
the adoption of these rules.

(c) Require prior authorization for all uses described under OAR 141-122-0010(2) and (3) unless otherwise
exempt from easement under the provisions of OAR 141-122-0010(4) of these rules.

(d) Contain specific provisions relating to the granting of easements by:

(A) The Department and the Oregon State Forester on Common School Forest Land; and

(B) The Department to persons who have or will place a structure or facility on state-owned Non-Trust Land
necessary for the use of water to take water for which they have a right to use the water.

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) of these rules, developments and uses
of state-owned land subject to easement include, but are not limited to the following:

(a) Water, gas, electric and communication service lines (including fiber optic cables) and associated equipment
such as pumping stations, transformers and meters;

(b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);

(c) Water supply pipelines, ditches, canals, and flumes;

(d) Drainage and irrigation works;

(e) Sewer, storm, and cooling water lines, including storm water outfalls and other outfalls;

(f) Bridges, skylines, and logging lines;

(g) Railroad and light rail track, bridges, stations, depots, and other related facilities;

(h) Roads and trails of all types;

(i) Overhead transportation lines (for example, skylines, tramways, logging lines, etc.);

(j) Storage of materials (for example, sand, gravel, dredge spoils, etc.); and

(k) Other encroachments.

(3) Erosion control structures, dikes, levees, and tidegates.

(3) The Department Director may determine that other uses and developments similar to those specified in
OAR 141-122-0010(2) are also subject to authorization by, or exempted from an easement and these rules.

(4) An easement is not required:

(a) For uses or developments on either Trust or Non-Trust Land that would require an easement under these
rules if the person undertaking the use or owning the development has obtained a valid authorization from the
Department pursuant to the provisions of OAR 141-082 (Leasing and Registration of Structures on, and Uses of
State-Owned Submerged and Submersible Lands); 141-110 (Management and Leasing of Rangeland Forage); or
OAR 141-125 (Authorizing Special Uses on State-Owned Land), provided the proposed use or development is
located on the land which is subject of the authorization, is incidental to the specific use that is the subject of the
authorization, and does not result in an additional burden on the land.

(b) For any structure or facility necessary for the use of water crossing or situated on state-owned submersible
land if:

(A) The withdrawal is authorized by a valid right to use the water; and

(B) The water is used exclusively for irrigation or domestic use;

(c) For water, gas, electric and communication lines physically attached to and supported by county or state-
owned bridges that cross state-owned waterways which are located outside of city limits. If the water, gas, electric
and communication lines are located within a city, or cross a state-owned waterway within a city, they are subject...
to easement unless otherwise exempt by these rules.¶
(5) A person who is exempt from obtaining an easement under the provisions of OAR 141-122-0010(4) may apply to obtain an easement, and the Department may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-122-0050.
Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0020

RULE SUMMARY: Clarified the Department's constitutional mandate in managing Trust lands, added provision allowing Department to deny an easement if applicant is subject of existing enforcement action.

CHANGES TO RULE:

141-122-0020

Policies ¶

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, 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 addition to the constitutional mandate stipulated in OAR 141-122-0020(1), the Department is required to manage its Trust Land to ensure that full market value is obtained from any use of this asset, maximize revenue to the Common School Fund over the long term. ¶

(3) The Department shall follow the guiding principles and resource-specific management prescriptions contained in the Real Estate Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land. ¶

(4) The Department will manage all uses of state-owned submerged and submersible land to ensure the collective rights of the public to fully use and enjoy this resource for commerce, navigation, fishing, recreation, and other related public purposes consistent with theกฎหมาย local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws. ¶

(5) No applicant or grantee is allowed to request from any government agency a change in the zoning for, or approved uses of, state-owned land without first applying to, and receiving written approval from the Department. ¶

(6) The Department shall not grant an easement if: ¶

(a) As a result of its circulation for public comment of the application for easement as described in OAR 141-122-0050(3) it determines that the proposed use or development would unreasonably impact uses or developments proposed or already in place within the requested area; or ¶

(b) The easement is in an area the Department has closed to the granting of easements or other authorizations offered by the agency. Such area may be identified by contacting the Department (such as the Lower Willamette River Management Plan; or a Total Maximum Daily Load Implementation Plan); or ¶

(c) If the proposed use or development is inconsistent with these rules; or ¶

(d) If the proposed use or development has unacceptable impacts on public health, safety or welfare, or would result in the loss of, or damage to natural, historical, cultural or archaeological resources; or ¶

(e) If the proposed use or development is prohibited by a State Land Board or Department-adopted area closure, use restriction, or areas may be identified by contacting the Department management plan (such as the Lower Willamette River Management Plan; or a Total Maximum Daily Load Implementation Plan); or ¶

(f) If the proposed use or development is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192). ¶

(7) The Department shall: ¶

(a) Recognize all valid easements of record on land acquired by the Department as disclosed at the time of acquisition; and ¶

(b) Honor any renewal provisions contained in existing valid easements granted by the Department if the Holder of the easement has complied with all terms and conditions of the easement and applies to the Department for a new easement as prescribed in these rules. ¶

(78) Except as provided in OAR 141-122-0010(4), 141-122-0100, and OAR 141-122-0105(2), any person wanting to use or place a development on state-owned land subject to an easement must obtain a written
authorization in the form of an easement from the Department prior to beginning the use or placing the development. Additionally, an easement is required for any use or development that encroaches on state-owned land regardless of its height above or below, or manner of crossing the state-owned land.¶

(8) Unless otherwise exempt by these rules, each individual use of, or development placed on, state-owned land constitutes a separate discrete activity subject to:

(a) An easement specifically authorizing only that individual use or development; and

(b) Payment of compensation as required in these rules.¶

(9) The Department may, at its discretion, deny an easement if the applicant’s financial status or past business practices, or both, indicate that the applicant may not:

(a) Be able to fully meet the terms and conditions of an easement offered by the Department; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-122-0020.¶

(10) The Department may, at its discretion, deny an easement if the applicant is out of compliance with the terms of any authorization issued, or is subject to any enforcement or corrective action, by the Department. ¶

(11) An easement cannot be established on Department-managed land by adverse possession regardless of the length of time the use or development has been in existence. ¶

(12) The Department may:

(a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with, the terms and conditions of an easement and, if not;

(b) Pursue whatever remedies are available under law and OAR 141-122-0130 to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed.¶

(13) Pursuant to the provisions of ORS 530.490(2) and (3), the Oregon State Forester may issue easements on Common School Forest Land in accordance with these rules (OAR 141-122-0100) and those adopted by the Oregon State Board of Forestry.¶

(14) The Department will not grant an easement if the proposed use or development is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

CHANGES TO RULE:

141-122-0030
Definitions

(1) "Applicant" is any person applying for an easement.

(2) "Asset Management Plan" 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 the Common School Fund's real estate assets.

(3) "Attenuator" is a device that is placed in the water to absorb or reduce the energy contained in wave energy. Independent appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

(4) "Authorized Area" is the area of state-owned land defined in the easement for which a use is authorized.

(5) "Cable" means a conductor of electricity or light with insulation, or a combination of conductors insulated from one another within a single jacket or sheath.

(6) "Circuit" means a system of conductors through which an electric current is intended to flow. A single pole or transmission tower may support one or more circuits, each of which may consist of up to four separate conductors.

(7) "City" means a city incorporated under ORS 221.020 through 221.100.

(8) "City Limits" refers to the boundaries of a city incorporated under ORS 221.020 through 221.100.

(9) "Common School Forest Land" is Trust Land that has been designated or "certified" by the State Land Board and the Oregon Board of Forestry for management by the Oregon Department of Forestry under contract between the State Forester and the State Land Board as allowed in ORS 530.450 through 530.520.

(10) "Communication Line" is any cable including fiber optic cable which transmits electronic information, telephone or television signals or other data.

(11) "Comparative Compensatory Payment" is the amount of money paid to owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant's requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.

(12) "Compensation" or "Compensatory Payment" is the amount of money paid or provided for an easement to the Department for the use of Department-managed land.

(13) "Conduit" is a pipe that protects cables from damage. It may be buried or used in above-ground applications such as bridge crossings. Innerducts may be installed within a conduit to facilitate individual cable installation.

(14) "Conservation Easement" is a type of easement granted by the Department that limits or prevents uses on a parcel of land in order to protect or enhance the property's ecological or open-space values.

(15) "Deflector" is a structural barrier such as a groin or jetty projecting into a waterway to divert flow away from and prevent eroding sections of the banks of a waterway.

(16) "Department" means the Department of State Lands.

(17) "Development" is any structure or physical facility (for example, each cable, innerduct, innerduct and cable, conduit, conduit and cable, pipeline, electrical line, communication line, bridge, road, fence, ditch, reservoir, or easement-associated building) on state-owned land subject to, or authorized by an easement granted by the Department.

(18) "Director" means the Director of the Department of State Lands or designee.
"Domestic Use" means the use of water for human consumption and household purposes that is necessary for the sustenance of an individual, family unit or household. Domestic use may also include water used by an individual family unit or household for heating or cooling purposes.

"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.

"Easement for Conservation Purposes" is a type of easement granted by the Department that limits uses to protect the property for conservation values, such as fish and wildlife habitat or other ecosystem processes. The easement for conservation purposes is conveyed by the Department when the applicant is not eligible to hold a Conservation Easement or otherwise does not conform to ORS 271.715 to 271.775.

"Encroachment" is an unauthorized development or use, such as, but not limited to a structure, fill, or pile of aggregate, that overlaps on, or otherwise occupies or restricts the full use of state-owned land. An encroachment may be a pipe, conduit, or other structure that has been abandoned in place. An encroachment may also occur when the Holder of an easement granted by the Department extends their use outside of the area authorized by that easement or adds a use or development not authorized.

"Erosion Control Structures" mean revetments, attenuators, deflectors, retaining walls, riprap and other structures placed adjacent to, or on the bank of a waterway or lake to stabilize its position and to prevent or reduce erosion.

"Fair Market Value" is the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts concerning the property.

"Fiber Optic Cable" means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

"Gas Lines and Associated Fixtures" are the pipelines and required compressor and gate stations, valves, meters, regulators, relief stacks, marker posts, rectifiers, and all other related fixtures and equipment necessary to deliver natural gas from the point of origin to the user.

"Governmental Body" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof as defined in ORS 271.005.

"Holder" means any person who holds a current authorization from the Department for the use of state-owned lands.

"Individual Use" or "Individual Development" is each separate use of, or development placed on state-owned land.

"Innerduct" is tubing that not only protects fiber optic and other types of cables, but also facilitates their installation. It is often placed inside a conduit, or may be buried directly into the ground.

"Intake" is a location or structure through which something is taken in, e.g. water in a channel or pipe from a body of water.

"Irrigation" or "Irrigation Use" means the artificial application of water to crops or plants by controlled means to promote growth or to nourish crops or plants. Examples of irrigation uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course play field or vineyard.

"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 neither is under undue duress.

"Miscellaneous Development" means any development placed upon, over or across state land that is not already defined in these rules (e.g. mailboxes, monitoring wells, Helipads).

"Non-Trust Land" is 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 ordinary high
(34) “Owner” means a person or legal entity that has a property interest in a structure or land.

(35) “Permanent Easement” is a type of easement that is issued in perpetuity.

(36) “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.

(37) “Public Trust Use(s)” means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect and enhance those uses. Examples of Public Trust Uses include, but are not limited to, short term moorage, camping, bank fishing, picnicking, and boating.

(38) “Real Estate Asset Management Plan” 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 the Common School Fund’s real estate assets.

(39) “Real Market Value for Land” means the current market value of the property (not including improvements) assigned to the land within the tax lot, adjacent riparian tax lot, or comparable tax lot by the county tax assessor.

(40) “Right of Way” is the legal right, established by grant, to pass along a specific route through grounds or property belonging to another.

(41) “Right to Use Water” is a water right permit, water right certificate, or a proposed or final order approving a water right permit granted by the Oregon Water Resources Department, or court decree evidencing a water right, authorizing a person to take and use a specific quantity of water for a specific use or uses from a specific location under specific terms and conditions.

(42) “Rip-Rap Roadway” means crushed rock or concrete placed on the road, driveway or bank of a waterway or lake to prevent development for reduced erosion of the bank or the use of a vehicle.

(43) “State Land” or “State-Owned Land” is land owned or managed by the Department or its agents and includes Trust Land and Non-Trust Land.

(44) “State Land Board” means the constitutionally created body consisting of the Governor, Secretary of State, and 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.

(45) “Structure or Facility Necessary for the Use of Water” means the pipelines and required stands, pumps, wiring, fish screens, and similar equipment necessary to convey water from the point of diversion to the place of use.

(46) “Submerged Land” means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(47) “Submersible Land” means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(48) “Trust Land” is land granted to the state 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.

(49) “Use” means an activity on state-owned Trust and Non-Trust Land that requires an easement under these rules.

(50) “Utility” means water, waste water, gas, electric or communication service lines, fixtures and other related facilities.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
141-122-0040

Easement Application Requirements ¶

(1) Except as provided by OAR 141-122-0010(4) (Purpose and Applicability) and 141-122-0100 (Easements Issued on Common School Forest Land), any person wanting to use state-owned land for any of the purposes described in OAR 141-122-0010(2) and (3) must:¶

(a) Apply to the Department for the easement using a form provided by the Department; and ¶

(b) Submit a non-refundable application fee as provided in OAR 141-122-0040(3) payable to the Department to cover the administrative costs of processing the application and issuing the authorization. When applying for an easement for a structure or facility necessary for the use of water as described in OAR 141-122-0105, a person may submit to the Department a copy of their application to the Department of Water Resources for a right to use water in lieu of using the Department’s easement application form.¶

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) (Purpose and Applicability), each individual use of, or development placed on state-owned land must be authorized by a separate easement specifically authorizing only that use or development.¶

(a) With regard to fiber optic cables, each single empty conduit, or single conduit containing one fiber optic cable, or every conduit, regardless of the number of innerducts or fiber optic cable places contained within a the conduit after the first fiber optic cable has been installed is, each cable or innerduct is considered an individual use subject to authorization by an easement.¶

(b) With regard to electric power transmission lines, one transmission line with one or more circuits will constitute an individual use subject to authorization by an easement. Additional parallel transmission lines owned by the same entity with one or more circuits may be included in the same individual use so long as such parallel lines are located within the designated boundaries of the easement.¶

(3) Except as provided by OAR 141-122-0105 (Structures or Facilities Necessary for the Use of Water), the application fee for all easements is $750. The application fee for all easements is as follows:¶

(a) Utility Easements $750.¶

(b) All Other Trust Land Easements: $1,500.00¶

(c) Application fee for all structures or facilities necessary for the use of water on submerged land subject to an easement is $125.¶

(4) A single easement application form may be used to request:¶

(a) Multiple easements required for a single pipeline, cable, or similar use or development which cross one or more parcels of state-owned land,¶

(b) An easement for all state, county or city-owned bridges within a single county, or¶

(c) An easement for one or more identical uses or developments which cross the same parcel of state-owned land or state-owned waterway, for example, two parallel pipelines.¶

(5) An easement application for a conduit must include a cross-sectional drawing that shows the proposed use and the remaining conduit space available for future use.¶

(7) A fully completed application must be submitted to the Department at least 90 calendar days prior to the proposed use or placement of a development subject to a term easement on state-owned land, unless otherwise allowed by the Director in writing.¶

(8) A fully completed application must be submitted to the Department at least 60 calendar days prior to the proposed use or placement of a development subject to a term easement on state-owned land that is eligible for a permanent easement on state-owned land, unless otherwise allowed by the Director in writing.¶

(9) Any person holding a valid easement (other than a permanent easement) granted by the Department prior to
the adoption of these rules who wants to continue holding the authorized area following the expiration of the easement for a use subject to easement must:

(a) Unless otherwise allowed by the Director, apply to the Department for a new easement and pay the required application fee 180 calendar days prior to the expiration of the easement as provided in OAR 141-122-0040(1), unless otherwise allowed by the Director in writing; and

(b) Pay the compensatory payment required by OAR 141-122-0060 at such time that the Department has reviewed and approved the easement application request pursuant to OAR 141-122-0050(7) and (8).

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
Easement Application Review and Approval Process

(1) Upon receipt of an application, Department staff may require a meeting to discuss a proposed project and use before performing an application completion review. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in an application meeting.

(2) Upon receipt of an application, and the completion of an application meeting if necessary, the Department will determine whether it is complete. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If a rejected application is resubmitted within 90 calendar days from the date the Department returned it to the applicant, no additional application fee will be assessed.

(4) If determined by the Department to be complete, the application will be circulated to affected local, state, and federal agencies; holders of valid authorizations granted by the Department in the requested area; and other interested parties including federally recognized tribal governments and ports for review and comment. As a part of this review, the Department will specifically request comments concerning:

(a) The presence, type and location of state or federal listed threatened and endangered species (including candidate species), and archeological and historic resources within the requested area which may be disturbed by the proposed use;

(b) Whether the proposed easement use:

(A) Conforms with other local, state, and federal law and rules;

(B) Conforms with the local comprehensive land use plan and zoning ordinances;

(C) Conforms with the general provisions described in OAR 141-122-0020 of these rules; and

(D) Would unreasonably impact uses or developments proposed or already in place within the requested area.

(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 use. The Department shall make paper or electronic copies of an application available to any person upon request.

(6) The Department may waive the circulation requirement described in OAR 141-122-0050(3) if:

(a) The use or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented in the easement application; or

(b) The application is for an easement associated with the right to use water and the Water Resources Department is conducting or has conducted a public interest review sufficient to make the determinations required by OAR 141-122-0050(3).

(7) The application is for an easement for an energy facility that has been granted a site certificate by the Energy Facility Siting Council under ORS 469.300 et seq. and OAR 345-022, et seq. (Regulation of Energy Facilities), in which case the Department will accept the findings and conclusions of the Energy Facility Siting Council in evaluating the easement application over Trust Land.

(8) An applicant for an easement may be required to amend their application at any time to address issues, concerns, or information needs identified by the Department or other commenters.

(a) Changes to the requested easement area are necessary to respond to agency or public comment;

(b) Additional information is required from the applicant, including but not limited to a survey of.
(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or.

(B) Archaeological and historic resources within the requested area.

c) The request is denied. Applicants will be given the opportunity to revise their proposed project if the Department denies the request; or,

d) The easement will be granted with specific terms and conditions.

(79) If the Department decides to grant the easement, the written notification will also indicate:

(a) The amount of compensation pursuant to the requirements of OAR 141-122-0060 that the applicant must remit to the Department to obtain the authorization;

(b) Any surety bond or other guarantees of performance in an amount required by the Department pursuant to the provisions of OAR 141-122-0070(112); and

(c) The easement terms and conditions.

(810) The Department will not grant an easement to an applicant until it has received all fees and compensation specified in these rules, and evidence of a surety bond or other guarantees of performance (if required). However, the Department, at its discretion, may grant a provisional easement prior to receipt of compensation due for removal of timber, sand and gravel, or other natural resources in the easement area if the fair-market value of those resources is based on actual receipts from their sale.

(911) The Director may refer unusual or controversial easement applications to the State Land Board for review and approval.

(1012) If requested by the Department, an applicant must present evidence to the Department prior to placing the use or development that they have obtained:

(a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use or development; and

(b) Any authorization that may be required to obtain access to, or to cross land belonging to a person other than the Department to undertake the use or development.

Statutory/Other Authority: ORS 273.045

Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0060

RULE SUMMARY: Defined the minimum compensation fee for various easement types.

CHANGES TO RULE:

141-122-0060

Compensation ¶

(1) Except as provided in OAR 141-122-0060(23), the Department will, prior to granting an easement, require an applicant not otherwise exempt under 141-122-0060(2) or as provided in 141-122-0060(6) to submit to the Department a compensatory payment for each individual crossing or use of state-owned land in the greatest of:

(a) 100 percent of the fair market value of the area requested for the easement if it is on, over or above state-owned upland for uses as defined in OAR 141-122-0010(2) and (3). Fair market value is either:

(A) Determined by an appraisal that is acceptable to the Department and that has been prepared by a state-certified appraiser; or

(ii) Salaried public employee of the federal government, the State of Oregon or a political subdivision of the federal government or the State of Oregon while engaged in the performance of the duties of the employee as defined in ORS 674.110(2)(h); or

(B) The county assessor’s real market value of the tax lot(s) affected by the easement.

(b) For submerged and submersible lands, compensation is based on 33 1/3 percent of the fair market value of the adjacent riparian tax lots for uses defined in OAR 141-122-0010(2) and (3). Fair market value is either:

(A) Determined by an appraisal that is acceptable to the Department and that has been prepared by a state-certified appraiser; or

(ii) The county assessor’s real market value of the adjacent riparian tax lots.

(c) $250; or

(d) The highest comparative compensatory payment.

(2) The following types of easements located on Non-Trust Land are exempt from the mandatory compensatory payment to the Department specified in OAR 141-122-0060(1):

(a) State and county-owned bridges located outside of city limits.

(b) Gas, electric and communication line easements located outside of city limits.

(c) Water ditches; water supply pipes; and water supply mains up to a maximum width of 25 feet on each side of the center line.

(d) Sanitary pressure mains and storm water pipes and outfalls up to a maximum width of 25 feet on each side of the center line.

(e) Any structure or facility necessary for the use of water crossing or situated on state-owned submersible land if:

(A) The withdrawal is authorized by a valid right to use the water; and

(B) The water is used exclusively for irrigation or domestic use.

(3) The Department is limited to $1.00 per acre consideration for easements on Non-Trust Land for:

(a) Utilities: $3,500.00

(b) Railroad track right-of-way (exclusive of bridges over state-owned submerged and submersible land) up to a maximum width of 50 feet on each side of the center line of the road: $2,500.00

(c) Railroad stations, depots, and other related facilities (exclusive of bridges over state-owned submerged and submersible land) up to a maximum of 10 acres in any one place.

(4) Compensatory payments shall be required at the rate stipulated in OAR 141-122-0060(1) for that part of an easement for the uses specified in OAR 141-122-0060(2) and (3) which exceeds the maximum widths or acreages indicated, or occurs on:

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(a) Trust Land, or
(b) Other land not exempt from a mandatory compensatory payment.

Miscellaneous Development: $1,000.00

(5) If required by the Department, applicants must also submit to the Department a payment in an amount to be
determined by the Department for the fair-market value of any commercially valuable timber, sand and gravel, or
other natural resources in the easement area which must be removed during or after placement of the proposed
use, or which cannot be developed because of the easement use. Such payment shall be due at a date to be
determined by the Department.

(6) The Department may, in lieu of a cash compensatory payment, negotiate a non-cash compensatory payment
equivalent to or greater than the compensation required under OAR 141-122-0060(1).

(7) Notwithstanding the provisions of OAR 141-122-0060(1), for state, county, and city-owned bridges crossing a
state-owned waterway on Non-Trust Land, the required compensation will be:

(a) No compensation for a 30-year easement if none of the bridges listed on a single county application submitted
by either the Oregon Department of Transportation or any county is located within a city.

(b) $100 for a 30-year easement if any bridge listed on a single county application submitted by either the Oregon
Department of Transportation or any county is located within a city.

(c) $100 for a permanent easement for each state, county, or city-owned bridge crossing state-owned land if it is
located in a city.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
 RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.

CHANGES TO RULE:

141-122-0070
General Easement Terms And Conditions ¶

(1) Easements shall be offered by the Department for the minimum area and term determined by the Department to be required for the requested use or development. Unless otherwise authorized by the Director, the minimum width of an easement shall be no less than 15 feet.¶

(2) The applicant shall have ninety (90) calendar days from the date of offer to execute an easement with the Department. The Department may revoke the offer after ninety calendar days, at which time the applicant may re-apply for an easement in accordance with OAR 141-122-0040.¶

(3) The Department may grant additional easements which, as determined by the Department, do not substantially interfere with other authorized easements within a given area. ¶

(4) The Department will, upon request of the applicant, grant permanent easements only for the following uses of state-owned land:¶

(a) Conservation purposes (conservation easements);¶

(b) State, county and city-owned bridges if the application contains a full surveyed legal description for each bridge and the appropriate compensation required by these rules;¶

(c) Water, gas, electric and communication lines; and¶

(d) Structures or facilities necessary for the use of water as provided in OAR 141-122-0105.¶

(4) Easements shall be offered for a term no longer than thirty (30) years unless otherwise authorized by the Director.¶

(5) The Department may, upon request of the applicant, grant permanent easements only for structures or facilities necessary for the use of water as provided in OAR 141-122-0105. ¶

(6) Requests for permanent easements shall be taken to the State Land Board for review and approval.¶

(7) An easement granted by the Department will generally be to a specific person for a specific use, location, and term. The holder of an easement must apply to and obtain prior written approval from the Department as provided in OAR 141-122-0040 prior to:

(a) Changing the authorized use;¶

(b) Transfer of ownership; ¶

(c) Expanding the number of authorized developments or uses; ¶

(d) Changing the authorized area; or;¶

(d) Permitting other persons to utilize the authorized area for uses and developments requiring separate authorization by the Department (for example, attachment of cables, conduits, or pipes under a bridge already authorized by an easement). ¶

(5) State-owned land authorized for a specific use by an easement will remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or the Department. An easement holder may request the Department to partially restrict or close an easement area to partial or total public use if it can be demonstrated to the Department that:

(a) Public entry on the area encumbered by the easement could cause damage to the use of, or development placed on the authorized area; or;¶

(b) The use of the authorized area could cause harm to the public..¶

(6) The Department or its authorized representative(s) shall have the right to enter into and upon the authorized easement area at any time for the purposes of inspection or management. ¶

(7) Routine right-of-way maintenance including, but not limited to vegetation trimming and the application of state-approved herbicides will be allowed as specified by the easement conditions. However, except as expressly authorized in writing by the Department, an easement holder will not otherwise remove any sand, gravel, or
other mineral or natural resources within the authorized area for commercial use or sale.

(8) An applicant for an easement must compensate the Department for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the requested area that must be removed during or after placement of the proposed use, or that cannot be developed because of the use or development.

(9) The holder of an easement must conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, disturbed lands shall be reclaimed as specified by the Department.

(10) The holder of an easement must maintain all buildings, pipelines, cables, and other developments or items placed in or on state-owned land in a good state of repair.

(11) Applicants for an easement may be required to obtain:

(a) Insurance, bond or other guarantees of performance required by the Department in the exercise of its reasonable discretion if, in the opinion of the Department, the use constitutes a risk to other users of the area, to public safety, or to the State of Oregon, or if required by Oregon state law. The Department may:

(A) Request that the applicant for, or the holder of an easement provide information concerning the use or development to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Department in determining the appropriate amount of insurance coverage based on the nature of the use, and

(B) Require that the State of Oregon be named as an additional insured party in any such policy.

(b) A surety bond in an amount to be determined by the Department to ensure that the easement holder will perform in accordance with all terms and conditions of the authorization; or a cash deposit in an amount equal to the amount required for a surety bond.

(12) Easement holders must inspect the condition of the easement area and the developments placed on it on a frequency to be determined by the Department in consultation with the easement holder and other interested parties.

(13) Unless otherwise agreed to in writing in the easement, the holder of an easement which does not have a permanent term must terminate all use, and remove any or all developments or uses placed within the easement area upon expiration or cancellation of the easement. If the holder of the easement refuses to terminate their use or remove their developments, the Department may remove them and charge the holder for doing so.

(14) The holder of an easement must indemnify the State of Oregon and the Department against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area resulting from the actions or negligence of the easement holder.

(17) A term easement exempt from any fees may be subject to the future imposition by the Department of a consideration payment, and/or usage fee to be established by the State Land Board as authorized by law.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0080

RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.

CHANGES TO RULE:

141-122-0080
Assignment of Easements ¶

(1) An easement in good standing is assigntransferrable. Prior written consent of the Department is required prior to any assignmenttransfer of the easement. No transfer may increase the burden on the estate or detract from the value of the underlying state land. ¶

(2) The holder of an easement wanting to assigntransfer their easement must submit to the Department: ¶
(a) Notice of proposed assignmenttransfer on a form provided by the Department at least 60 calendar days prior to the date that the assignmenttransfer is to occur; and ¶
(b) Non-refundable assignmenttransfer processing fee of $75\,1,000.00 payable to the Department.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0090

RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.

CHANGES TO RULE:

141-122-0090
Termination of an Easement ¶

1. With the exception of permanent easements, the Department may terminate any easement:
   (a) If there is no use of, or development placed on the easement area for five consecutive years;
   (b) If the easement is for a structure or facility necessary for the use of water on state-owned submerged and submersible land and the associated right to use water is cancelled by the Oregon Water Resources Department or abandoned by the easement holder. Upon such termination, the Department will notify the easement holder in writing using the last known address reported by the easement holder to the Department. This notification will state that the easement has terminated, and that the easement holder will have 30 calendar days from the date of the notice to respond in writing to the Director why the easement should be reinstated. The Director will notify the easement holder in writing of his/her decision within 60 calendar days of receipt of the request for reinstatement of the easement; or
   (c) If the holder of the easement fails to comply with these rules or the terms and conditions of the easement, or violates other laws covering the use of their authorized area, the Department will notify the holder of the easement in writing of the default and demand correction within a specified time frame. If the holder of an easement fails to correct the default within the time frame specified, the Department may:
      (A) Modify or terminate the easement;
      (B) Request the Attorney General to take or cause to be taken appropriate legal action against the holder of the easement; or
      (C) Invoke other remedies as provided in OAR 141-122-0130.

2. Notwithstanding the provision of OAR 141-122-0090(1), the Department will not terminate an easement that is not permanent if the holder of the easement is ready, but unable to commence the requested use within the five-year period due to their inability to obtain other required authorizations within the five-year period.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0100

RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.

CHANGES TO RULE:

141-122-0100
Easements Issued on Common School Forest Land ¶

(1) The Oregon State Forester may issue an easement not to exceed a term of ten years [temporary easements] on certified Common School Forest Land in accordance with applicable statutes and administrative rules. ¶
(2) Such easements may be issued by the Oregon State Forester for uses such as, but not limited to: ¶
(a) Use of roads for forest management purposes; ¶
(b) Constructing, improving and/or maintaining temporary roads, including spur roads; ¶
(c) Constructing landing sites to deck timber; ¶
(d) Extracting sand, gravel, or quarry rock for the improvement, construction or maintenance of state-owned roads; and ¶
(e) Use of existing roads for forest management purposes. ¶
(3) Any person wanting to obtain an easement on certified Common School Forest Land must apply directly to the Oregon Department of Forestry. ¶
(4) Any person wanting to obtain an easement on Common School Forest Land for the uses or developments described in OAR 141-122-0010(2) and (3), must apply to the Department pursuant to these rules.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.

CHANGES TO RULE:

141-122-0105
Easements For Structures and Facilities Necessary for the Use of Water

(1) Except as otherwise provided in OAR 141-122-0105(2), an easement is required for all structures and facilities placed on Trust or Non-Trust Land managed by the Department that are necessary for the use of water.

(2) An easement is not required for those parts of structures and facilities necessary for the use of water placed on state-owned submersible land managed by the Department if the:
   (a) Owner of the structures and facilities holds a valid right to use the water, and
   (b) Water is used exclusively for domestic and irrigation purposes.

(3) Persons who own, use, have placed, intend to place, or have the legal authority to represent the owners or users of structures and facilities necessary for the use of water subject to an easement must apply to the Department for an easement on a form provided by the agency. The applicant must include with the application a non-refundable application fee in the amount of $125 payable to the Department to cover the administrative costs of processing the application and issuing the easement.

(4) An application received by the Department for an easement for a structure or facility necessary for the use of water will be processed pursuant to the provisions of OAR 141-122-0050 and 141-122-0060 (as applicable) of these rules.

(5) The Department will allow a person to include up to three water pipelines and associated fixtures per lot of record on their application for an easement.

(6) An easement issued by the Department under this section will have the same term as that of the associated right to use the water as determined by the Oregon Water Resources Department. Land Board approval will not be required for an easement granted under this section.

(7) The Department may enter into an agreement with the Oregon Water Resources Department to consolidate the processing of easements for structures or facilities necessary for the use of water with the processing of a right to use water.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0110

RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.

CHANGES TO RULE:

141-122-0110
Unauthorized Uses and Penalties ¶

(1) Uses and developments not authorized by an easement issued by the Department, or by another agency as a valid existing right of record on land acquired by the Department, constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Department. ¶

(2) In addition to any other penalties provided or permitted by law, the use or placement of any development on state-owned land without the required Department authorization as described in these rules, or which is otherwise not in compliance with these rules, will constitute a trespass and be prosecuted pursuant to governing law.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0120

RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.

CHANGES TO RULE:

141-122-0120
Reconsideration of Decision

An applicant or any person adversely affected by the issuance or denial of an easement by the Department may request the Director or the State Land Board, depending on which entity made the decision, to reconsider the decision. A request for reconsideration must be filed in compliance with ORS 183.482 or 183.484.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
AMEND: 141-122-0130  
RULE SUMMARY: Amending this rule to reflect the division of rules for trust and non-trust lands for easements.  
CHANGES TO RULE:

141-122-0130  
Enforcement Actions; Civil Penalties and Other Remedies ¶

(1) The Department may:
(a) Conduct field inspections to determine if uses of, and developments on, in or over state-owned submerged and submersible land Trust Lands are authorized by, or conform with the terms and conditions of an easement and, if not,
(b) Pursue whatever remedies are available under law to ensure that any use that is in violation of the terms or conditions of an easement is either brought into compliance with the requirements of these rules or other applicable law, or removed.
(2) In addition to any other penalty or sanction provided by law, for uses subject to an easement located on state-owned submerged and submersible Trust Lands, the Director may assess a civil penalty of not more than $1,000 per day of violation for the following:
(a) Violations of any provision of OAR 141-122 or ORS 273 or 274; or
(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274.
(3) The Director will give written notice of a civil penalty incurred under OAR 141-122-0130(2) by registered or certified mail to the person incurring the penalty. The notice will include, but not be limited to the following:
(a) The particular section of the statute, rule or written authorization involved;
(b) A short and clear statement of the matter asserted or charged;
(c) A statement of the party's right to request a hearing within 20 calendar days of the notice;
(d) The time allowed to correct a violation; and
(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.
(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-122-0130(3). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.
(5) In imposing a penalty under OAR 141-122-0130 of these rules, the Director will consider the following factors as specified in ORS 274.994:
(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;
(b) Any prior violations of statutes, rules, orders and authorizations pertaining to Trust Lands, or submerged and submersible lands;
(c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and Trust Land.
(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.
(6) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-122-0130 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.
(7) If a civil penalty is not paid as required by OAR 141-122-0130, interest will accrue at the maximum rate allowed by law from the date first due.
Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0010

RULE SUMMARY: Adopting rules for granting easements on non-trust lands

CHANGES TO RULE:

141-123-0010

Purpose and Applicability

(1) These rules:
(a) Govern the granting and renewal of easements on state-owned Non-Trust land as specified herein.
(b) Do not apply to the:
(A) Granting of easements for State-Owned Trust lands under OAR 141-122 (Rules for Granting Easements on Trust Land);
(B) Granting of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea, an activity governed by OAR 141-083 (Rules for Granting Easements for Fiber Optic and Other Cables on State-Owned Submerged and Submersible Land Within the Territorial Sea);
(C) Granting of authorizations for hydroelectric projects on state-owned Non-Trust Land, an activity governed by OAR 141-087 (Hydroelectric Projects);
(D) Granting of authorizations for remediation and habitat restoration activities governed by OAR 141-145 (Rules Governing the Management of State-Owned Submerged and Submersible Land Subject to Remediation and Habitat Restoration Activities);
(E) Granting of authorizations for leases, licenses and registrations for structures on and uses of state-owned submerged and/or submersible lands governed by OAR 141-082 (Rules Governing the Management Of, And Issuing of Leases, Licenses and Registrations for Structures On, And Uses of State-Owned Submerged and Submersible Land);
(F) Dedication of roads or rights-of-way required of the Department or its agents by local government resulting from a local land use approval involving state-owned land;
(G) Existing valid easements or right of ways granted, by the Department of State Lands (Department) or State Land Board, prior to the adoption of these rules.

(c) Require prior authorization for all uses described under OAR 141-123-0010(2) and (3) unless otherwise exempt from easement under the provisions of OAR 141-123-0010(4) of these rules.

(2) Unless otherwise exempt under the provisions of OAR 141-123-0010(4) of these rules, developments and uses of state-owned Non-Trust Land subject to easement include, but are not limited to the following:
(a) Water, gas, electric and communication service lines (including fiber optic cables) and associated equipment such as pumping stations, transformers and meters;
(b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);
(c) Water supply pipelines, ditches, canals, and flumes;
(d) Drainage and irrigation works;
(e) Sewer, storm, and cooling water lines, including storm water outfalls and other outfalls;
(f) Bridges, skylines, and logging lines;
(g) Railroad and light rail track, bridges, stations, depots, and other related facilities;
(h) Roads and trails of all types;
(i) Overhead transportation lines (for example, tramways, etc.);
(j) Storage of materials (for example, sand, gravel, dredge spoils, etc.); and
(k) Other encroachments

(3) The Department Director may determine that other uses and developments similar to those specified in OAR 141-123-0010(2) are also subject to authorization by, or exempted from, an easement and these rules.
(4) An easement is not required:

(a) For uses or developments on state-owned Non-Trust Land that would require an easement under these rules if the person undertaking the use or owning the development has obtained a valid authorization from the Department pursuant to the provisions of OAR 141-082 (Leasing And Registration Of Structures On, And Uses Of State-Owned Submerged And Submersible Lands); OAR141-145 (Authorizations For Remediation And Habitat Restoration Activities); or OAR 141-125 (Authorizing Special Uses On State-Owned Land), provided the proposed use or development is located on the land which is subject of the authorization, is incidental to the specific use that is the subject of the authorization, and does not result in an additional burden on the land; or

(b) For any structure or facility necessary for the use of water crossing or situated on state-owned submersible land if the below conditions apply:

(A) The withdrawal is authorized by a valid right to use the water; and

(B) The water is used exclusively for irrigation or domestic use.

(c) For water, gas, electric and communication lines physically attached to and supported by county or state-owned bridges that cross state-owned waterways which are located outside of city limits. If the water, gas, electric and communication lines are located within a city, or cross a state-owned waterway within a city, they are subject to easement unless otherwise exempt by these rules.

(5) A person who is exempt from obtaining an easement under the provisions of OAR 141-123-0010(4) may apply to obtain an easement and the Department may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-123-0050.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0020

RULE SUMMARY: Adopting rules for the general provisions of the easements on non-trust lands.

CHANGES TO RULE:

141-123-0020

General Provisions

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, 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) The Department shall follow the guiding principles and resource-specific management prescriptions contained in the Real Estate Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land.

(3) 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.

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

(5) State-owned submerged and submersible land is managed to ensure the collective rights of the public 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."

(6) All uses of state-owned land must conform to applicable local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws.

(7) No applicant or grantee is allowed to request from any government agency a change in the zoning for, or approved uses of, state-owned land without first applying to and receiving written approval from the Department.

(8) The Department shall not grant an easement if:

(a) As a result of its circulation for public comment of the application for easement as described in OAR 141-123-0050(4) it determines that the proposed use or development would unreasonably impact use or developments proposed or already in place within the requested area; or

(b) If the proposed use or development is inconsistent with local, state, or federal laws; or

(c) If the proposed use or development is inconsistent with these rules; or

(d) If the proposed use or development has unacceptable impacts on public health, safety or welfare, or would result in the loss of, or damage to natural, historical, cultural or archaeological resources, as determined by the Department; or

(e) If the proposed use or development is prohibited by a State Land Board or Department-adopted area closure, use restriction, or area management plan (such as the Lower Willamette River Management Plan; or a Total Maximum Daily Load Implementation Plan); or

(f) If the proposed use or development is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

(9) The Department may, at its discretion, deny an easement if the applicant's financial status or past business practices, or both, indicate that the applicant may not:

(a) Be able to fully meet the terms and conditions of an easement offered by the Department; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-123-0020.

(10) The Department may, at its discretion, deny an easement if the applicant is out of compliance with the terms and conditions of any previous authorization issued, or is subject to any enforcement or corrective action, by the Department.

(11) The Department shall:
(a) Recognize all valid easements of record on land acquired by the Department as disclosed at the time of acquisition; and

(b) Honor any renewal provisions contained in existing valid easements granted by the Department if the Holder of the easement has complied with all terms and conditions of the easement and applies to the Department for a new easement as prescribed in these rules.

(12) Except as provided in OAR 141-123-0010(4) and OAR 141-123-0100(2), any person wanting to use or place a development on state-owned land subject to an easement must obtain a written authorization in the form of an easement from the Department prior to beginning the use or placing the development. Additionally, an easement is required for any use or development that encroaches on state-owned land regardless of its height above or below, or manner of crossing the state-owned land.

(13) Unless otherwise exempt by these rules, each individual use of, or development placed on, state-owned land constitutes a separate discrete activity subject to:

(a) An easement specifically authorizing only that individual use or development; and

(b) Payment of compensation as required in these rules.

(14) An easement cannot be established on Department-managed land by adverse possession regardless of the length of time the use or development has been in existence.

(15) The Department may:

(a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with, the terms and conditions of an easement and, if not;

(b) Pursue whatever remedies are available under law and OAR 141-123-0120 to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed.

Statutory/Other Authority: ORS 273.045

Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0030

RULE SUMMARY: Definitions were adopted for non-trust lands easements.

CHANGES TO RULE:

141-123-0030

Definitions

(1) "Applicant" is any person applying for an easement.

(2) "Appraised Value" means an estimate of current market value of the property (not including improvements) as of a specific date, prepared by a qualified independent appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

(3) "Authorized Area" is the area of state-owned land defined in the easement for which a use is authorized.

(4) "Cable" means a conductor of electricity or light with insulation, or a combination of conductors insulated from one another within a single jacket or sheath.

(5) "Circuit" means a system of conductors through which an electric current is intended to flow. A single pole or transmission tower may support one or more circuits, each of which may consist of up to four separate conductors.

(6) "City" means a city incorporated under ORS 221.020 through 221.100.

(7) "City Limits" refers to the boundaries of a city incorporated under ORS 221.020 through 221.100.

(8) "Communication Line" is any cable including fiber optic cable which transmits electronic information, telephone or television signals or other data.

(9) "Comparative Compensatory Payment" is the amount of money paid to owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant’s requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.

(10) "Compensation" or "Compensatory Payment" is the amount of money paid or something of equal value provided for an easement to the Department for the use of Department managed land.

(11) "Conduit" is a pipe that protects cables from damage. It may be buried or used in above-ground applications such as bridge crossings. Innerducts may be installed within a conduit to facilitate individual cable installation.

(12) "Deflector" is a structural barrier such as a groin or jetty projecting into a waterway to divert flow away from and prevent eroding sections of the banks of a waterway.

(13) "Department" means the Department of State Lands.

(14) "Development" is any structure or physical facility (for example, each cable, innerduct, innerduct and cable, conduit, conduit and cable, pipeline, electrical line, communication line, bridge, road, fence, ditch, reservoir, or easement-associated building) on state-owned land subject to or authorized by an easement granted by the Department.

(15) "Director" means the Director of the Department of State Lands or designee.

(16) "Domestic Use" means the use of water for human consumption and household purposes that is necessary for the sustenance of an individual, family unit or household. Domestic use may also include water used by an individual family unit or household for heating or cooling purposes.

(17) "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.

(18) "Easement for Conservation Purposes" is a type of easement granted by the Department that limits uses to protect the property for conservation values, such as fish and wildlife habitat or other ecosystem processes. The easement for conservation purposes is conveyed by the Department when the applicant is not eligible to hold a Conservation Easement or otherwise does not conform to ORS 271.715 to 271.775.

(19) "Encroachment" is an unauthorized development or use, such as, but not limited to a structure, fill, or pile of...
aggregate, that overlaps on, or otherwise occupies or restricts the full use of state-owned land. An enclosure may be a pipe, conduit, or other structure that has been abandoned in place. An enclosure may also occur when the holder of an easement granted by the department extends the use outside of the area authorized by that easement or adds a use or development not authorized.

(20) “Erosion Control Structures” mean revetments, attenuators, deflectors, retaining walls, riprap and other structures placed adjacent to, or on non-trust land.

(21) “Fiber Optic Cable” means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

(22) “Gas Lines and Associated Fixtures” are the pipelines and required compressor and gate stations, valves, meters, regulators, relief stacks, marker posts, rectifiers, and all other related fixtures and equipment necessary to deliver natural gas from the point of origin to the user.

(23) “Governmental Body” means an agency of the federal government, the state of Oregon, and every political subdivision thereof as defined in ORS 271.005.

(24) “Holder” means any person who holds a current authorization from the department for the use of state-owned lands.

(25) “Individual Use” or “Individual Development” is each separate use of, or development placed on state-owned land.

(26) “Innerduct” is tubing that not only protects fiber optic and other types of cables, but also facilitates their installation. It is often placed inside a conduit or may be buried directly into the ground.

(27) “Intake” is a location or structure through which something is taken in, e.g., water in a channel or pipe from a body of water.

(28) “Irrigation” or “Irrigation Use” means the artificial application of water to crops or plants by controlled means to promote growth or to nourish crops or plants. Examples of irrigation uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course play field or vineyard.

(29) “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 neither is under undue duress.

(30) “Maximum Value Per Square Foot” means the highest price per square foot that the department may use in determining compensation for easements.

(31) “Multiple-Use Easement” means an authorization issued for a single conduit, through which additional uses may be embedded.

(32) “Non-Trust Land” is 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 ordinary high water)] under navigable and tidally influenced waterways.

(33) “Outfall” is the point of a drain where it discharges to an area of land or body of water.

(34) “Owner” means a person or legal entity that has a property interest in a structure or land.

(35) “Permanent Easement” is a type of easement that is issued in perpetuity.

(36) “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.

(37) “Public Trust Use(s)” means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to, navigation, recreation, commerce and fisheries, and other uses that support, protect, and enhance those uses. Examples of public trust uses include, but are not limited to, short term moorage, camping, bank fishing, picnicking, and boating.

(38) “Real Estate Asset Management Plan” 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 the Common School Fund’s real estate assets.

(39) “Real Market Value” for land means the current market value of the property (not including improvements).
assigned to the land within the tax lot, adjacent riparian tax lot, or comparable tax lot by the county tax assessor.

(40) "Right of Way" is the legal right, established by grant, to pass along a specific route through grounds or property belonging to another.

(41) "Right to Use Water" is a water right permit, water right certificate, or a proposed or final order approving a water right permit granted by the Oregon Water Resources Department, or court decree evidencing a water right, authorizing a person to take and use a specific quantity of water for a specific use or uses from a specific location under specific terms and conditions.

(42) "Roadway" means a road, driveway, or any other development for the use of vehicles or other traffic.

(43) "Rip-Rap" means crushed rock or concrete placed on the bank of a waterway or lake to prevent or reduce erosion of the bank.

(44) "Single-Use Easement" means an authorization for a crossing with an individual use.

(45) "State Land" or "State-Owned Land" is land owned by the State and managed by the Department or its agents and includes Trust Land and Non-Trust Land.

(46) "State Land Board" means the constitutionally created body consisting of the Governor, Secretary of State, and 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.

(47) "Structure or Facility Necessary for the Use of Water" means the pipelines and required stands, pumps, wiring, fish screens, and similar equipment necessary to convey water from the point of diversion to the place of use.

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

(49) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(50) "Trust Land" is land granted to the state 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.

(51) "Use" means an activity on state-owned lands that requires an easement under these rules.

(52) "Utility" means water, waste water, gas, electric, or communication service lines, fixtures and other related facilities.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0040
RULE SUMMARY: Adopting the application review and approval process for easements on the non-trust lands.

CHANGES TO RULE:

141-123-0040
Easement Application Requirements
(1) Except as provided by OAR 141-123-0010(4) (Purpose and Applicability) and 141-123-0100 (Easements for Structures and Facilities Necessary for the Use of Water), any person wanting to use state-owned land for any of the purposes described in OAR 141-123-0010(2) and (3) must:
   (a) Apply to the Department for the easement using a form provided by the Department; and
   (b) Submit a non-refundable application fee as provided in OAR 141-123-0040(3) payable to the Department to cover the administrative costs of processing the application and issuing the authorization. When applying for an easement for a structure or facility necessary for the use of water as described in OAR 141-123-0100, a person may submit to the Department a copy of their application to the Department of Water Resources for a right to use water in lieu of using the Department's easement application form.
(2) Unless otherwise exempt under the provisions of OAR 141-123-0010(4) (Purpose and Applicability), each individual use of, or development placed on state-owned land must be authorized by a separate easement specifically authorizing only that use or development.
   (a) With regard to a conduit, regardless of the number of innerducts or fiber optic cables contained within the conduit, each cable or innerduct is considered an individual use subject to authorization by an easement.
   (b) With regard to electric power transmission lines, one transmission line with one or more circuits will constitute an individual use subject to authorization by an easement. Additional parallel transmission lines owned by the same entity with one or more circuits may be included in the same individual use so long as such parallel lines are located within the designated boundaries of the easement.
(3) Except as provided by OAR 141-123-0100 (Easements for Structures and Facilities Necessary for the Use of Water) and OAR 141-123-0040(4), the application fee for all term easements is $750; the application fee for all structures or facilities necessary for the use of water on submerged land subject to an easement is $125.
(4) There is no application fee for water, gas, electric or communication service lines across non-trust lands outside of city limits.
(5) A single easement application form may be used to request:
   (a) An easement for a single pipeline, cable, or similar use or development which crosses one or more parcels of state-owned land.
   (b) An easement for all state, county or city-owned bridges within a single county, or
   (c) An easement for one or more identical uses or developments which cross the same parcel of state-owned land or state-owned waterway, for example, two parallel pipelines.
(6) An easement application for a conduit must include a cross-sectional drawing that shows the proposed use and the remaining conduit space available for future use.
(7) A fully completed application must be submitted to the Department at least 90 calendar days prior to the proposed use or placement of a development subject to a term easement on state-owned land unless otherwise allowed by the Director in writing.
(8) A fully completed application must be submitted to the Department at least 120 calendar days prior to the proposed use or placement of a development that is eligible for a permanent easement on state-owned land, unless otherwise allowed by the Director in writing.
(9) Any person holding a valid easement (other than a permanent easement) granted by the Department prior to the adoption of these rules who wants to continue holding the authorized area following the expiration of the easement for a use subject to easement must:
   (a) Apply to the Department for a new easement and pay the required application fee 180 calendar days prior to the expiration of the easement as provided in OAR 141-123-0040(1), unless otherwise allowed by the Director in writing; and
(b) Pay the compensatory payment required by OAR 141-123-0060 at such time that the Department has
reviewed and approved the easement application request pursuant to OAR 141-123-0050 (9) and (10).
Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0050

RULE SUMMARY: Adopting easement application review and approval process for easements on non-trust lands.

CHANGES TO RULE:

141-123-0050
Easement Application Review and Approval Process
(1) Department staff may require a meeting to discuss a proposed project and use before performing an application completion review. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in an application meeting. ¶

(2) Upon receipt of an application, and the completion of an application meeting if necessary, the Department will determine whether it is complete. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection. ¶

(3) 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. ¶

(4) If determined by the Department to be complete, the application will be circulated to affected local, state, and federal agencies; Holders of valid authorizations granted by the Department in the requested area; and other interested persons including federally recognized tribal governments and ports for review and comment. As a part of this review, the Department will specifically request comments concerning:
(a) The presence, type and location of state or federal listed threatened and endangered species (including candidate species), and archeological and historic resources within the requested area which may be disturbed by the proposed use; ¶
(b) Whether the proposed easement use:
(A) Conforms with other local, state, and federal law and rules; ¶
(B) Conforms with the local comprehensive land use plan and zoning ordinances; ¶
(C) Conforms with the general provisions described in OAR 141-123-0020 of these rules; and ¶
(D) Would unreasonably impact uses or developments proposed or already in place within the requested area. ¶

(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 use. The Department shall make paper copies of an application available to any person upon request. ¶

(6) The Department may waive the circulation requirement described in OAR 141-123-0050(4) if:
(a) The use or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented in the easement application; ¶
(b) The application is for an easement associated with the right to use water and the Water Resources Department is conducting or has conducted a public interest review sufficient to make the determinations required by OAR 141-123-0050(4); or ¶
(c) The application is for an easement for an energy facility that has been granted a site certificate by the Energy Facility Siting Council under ORS 469.300 et seq. and OAR 345-022, et seq. (Regulation of Energy Facilities), in which case the Department will accept the findings and conclusions of the Energy Facility Siting Council in evaluating the easement application over Non-Trust Land. ¶

(7) An applicant for an easement may be required to amend their application at any time to address issues, concerns, or information needs identified by the Department or others that provided comments. ¶

(8) After receipt of agency and public comment concerning the proposed use, the Department will determine, and advise the applicant in writing if:
(a) Changes to the requested easement area are necessary to respond to agency or public comment; ¶
(b) Additional information is required from the applicant, including but not limited to a survey of: ¶
(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; or ¶
(B) Archaeological and historic resources within the requested area. ¶

(c) The request is denied. Applicants will be given the opportunity to revise their proposed project if the Department denies the request; or ¶

(d) The easement will be granted with specific terms and conditions. ¶

(9) If the Department decides to grant the easement, the written notification will also indicate: ¶

(a) The amount of compensation pursuant to the requirements of OAR 141-123-0060 that the applicant must remit to the Department to obtain the authorization; ¶

(b) Any surety bond amount required by the Department pursuant to the provisions of OAR 141-123-0070(13); and ¶

(c) The easement terms and conditions. ¶

(10) The Department will not grant an easement to an applicant until it has received all fees and compensation specified in these rules, and evidence of a surety bond (if required). However, the Department, at its discretion, may grant a provisional easement prior to receipt of compensation due for removal of timber, sand and gravel, or other natural resources in the easement area if the fair market value of those resources is based on actual receipts from their sale. ¶

(11) The Director may refer unusual or controversial easement applications to the State Land Board for review and approval. ¶

(12) If requested by the Department, an applicant must present evidence to the Department prior to placing the use or development that they have obtained: ¶

(a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use or development; and ¶

(b) Any authorization that may be required to obtain access to, or to cross land belonging to a person other than the Department to undertake the use or development.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0060

RULE SUMMARY: Adopting Compensation rules for the easements on non-trust lands.

CHANGES TO RULE:

141-123-0060
Compensation
(1) Except as provided in OAR 141-123-0060(11) and (12), the Department will, prior to granting an easement, require an applicant not otherwise exempt under OAR 141-123-0060(6) or as provided in OAR 141-123-0060(10) to submit to the Department a compensatory payment for each individual crossing or use of state-owned land in an amount equal to the greatest of:
(a) For submerged and submersible lands, compensation is based on 33 1/3 percent of the market value of the adjacent riparian tax lots for uses described in OAR 141-123-0010(2) and (3). Market value is either:
(A) An appraised value that is acceptable to the Department; or
(B) The Real Market value of the adjacent riparian tax lots.
(b) $500; or
(c) The highest Comparative Compensatory Payment.
(2) For all single-use easements on, over, above, or below state submersible or submerged lands, the value per square feet derived from the real market value of the adjacent riparian tax lot(s) shall not exceed the Maximum Value per Square Foot. The Statewide Maximum Value Per Square Foot is $11.93 starting July 1, 2018, and shall increase each year on July 1st by three percent.
(3) For all multiple-use easements on, over, above, or below state submersible or submerged lands, compensation is based upon the real market value of the adjacent riparian tax lot(s) and is not limited by the Statewide Maximum Value per Square Foot.
(4) For each new individual use, proposed to be embedded in existing conduit authorized by the Department prior to January 1, 2019, compensation is required and the Statewide Maximum Value per Square Foot shall apply.
(5) For each new individual use, proposed to be embedded in existing conduit authorized by the Department after January 1, 2019, no additional compensation is required.
(6) The following types of easements located on Non-Trust Land are exempt from the mandatory compensatory payment to the Department specified in OAR 141-123-0060(1):
(a) State and county-owned bridges located outside of city limits.
(b) Gas, electric and communication line easements located outside of city limits, as allowed by ORS 758.010.
(c) Water ditches; water supply pipes; and water supply mains up to a maximum width of 25 feet on each side of the center line, as allowed by ORS 273.761.
(d) Sanitary pressure mains and storm water pipes and storm water outfalls up to a maximum width of 25 feet on each side of the center line, as allowed by ORS 273.761.
(e) Any structure or facility necessary for the use of water crossing or situated on state-owned submersible land, as allowed by ORS 274.040(3) if:
(A) The withdrawal is authorized by a valid right to use the water; and
(B) The water is used exclusively for irrigation or domestic use.
(7) There is granted to all persons constructing railways built after February 21, 1891, within the boundaries of the state, and to their successors and assigns as allowed by ORS 273.751:
(a) A right of way through any unimproved state lands, of the width of 100 feet, being 50 feet in width on each side of the center line of the road.
(b) All necessary grounds for stations, depots, shops, side tracks, turntables and water stations, not exceeding 10 acres in any one place, upon payment to the state of the sum therefor as fixed by the Department of State Lands.
(c) The right to take, from the lands of this state adjacent to the route lines of the road, material necessary for the construction of the roads.
(d) The right to construct and maintain railroad bridges over any navigable waters in this state. All bridges crossing navigable waters shall be subject to such regulations, restrictions and compensation as may be fixed by the
department and shall be so constructed as not unnecessarily to interfere with navigation.¶
(8) Compensatory payments shall be required at the rate specified in OAR 141-123-0060(1) for that part of an easement for the uses specified in OAR 141-123-0060(2) and (3) which exceeds the maximum widths or acreages indicated, or occurs on:¶
(a) Trust Land (under OAR 141-122), or ¶
(b) Other land not exempt from a mandatory compensatory payment. ¶
(9) If required by the Department, applicants must also submit to the Department a payment in an amount to be determined by the Department for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the easement area which must be removed during or after placement of the proposed use, or which cannot be developed because of the easement use. Such payment shall be due at a date to be determined by the Department. ¶
(10) The Department may, in lieu of a cash compensatory payment, negotiate a non-cash compensatory payment equivalent to or greater than the compensation required under OAR 141-123-0060(1).¶
(11) Notwithstanding the provisions of OAR 141-123-0060(1), for state, county and city-owned bridges crossing a state-owned waterway on Non-Trust Land, the required compensation will be:¶
(a) No compensation for a 30-year easement if none of the bridges listed on a single county application submitted by either the Oregon Department of Transportation or any county is located within a city.¶
(b) $100 for a 30-year easement if any bridge listed on a single county application submitted by either the Oregon Department of Transportation or any county is located within a city.¶
(c) $100 for a permanent easement for each state, county or city-owned bridge crossing state-owned land if it is located in a city.¶
(12) Notwithstanding the provisions of OAR 141-123-0060(1), for People's Utility Districts (PUD) structures crossing a state-owned waterway on Non-Trust Land, the required compensation will be:¶
(a) No compensation for a 30-year easement if the structures are not located within a city.¶
(b) $100 for a 30-year easement if the structures are located within a city.¶
(13) If in the process of calculating compensation, the assessed value is found to be depressed due to the presence of hazardous substances or some other extenuating circumstance(s) as determined by the Department, another comparable upland tax lot shall be selected by the Department as the basis for calculating the compensation. The applicant may suggest a comparable tax lot or may appeal the Department’s selection to the Director.
Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0070

RULE SUMMARY: Adopting Terms and Conditions for easements on non-trust lands

CHANGES TO RULE:

141-123-0070

General Easement Terms and Conditions

(1) Easements shall be offered by the Department for the minimum area and term determined by the Department to be required for the requested use or development. Unless otherwise authorized by the Director, the minimum width of an easement shall be no less than 15 feet. ¶

(2) The applicant shall have ninety (90) calendar days from the date of offer to execute an easement with the Department. The Department may revoke the offer after ninety calendar days, at which time the applicant may re-apply for an easement in accordance with OAR 141-123-0040. ¶

(3) The Department may grant additional easements which, as determined by the Department, do not substantially interfere with other authorized easements within a given area. ¶

(4) Easements shall be offered for a term no longer than thirty (30) years, unless otherwise authorized by the Director. ¶

(5) The Department may, upon request of the applicant, grant permanent easements only for the following uses of state-owned land: ¶

(a) State, county and city-owned bridges if the application contains a full surveyed legal description for each bridge and the appropriate compensation required by these rules; and ¶

(b) Structures or facilities necessary for the use of water as provided in OAR 141-123-0100. ¶

(6) Requests for permanent easements shall be taken to the State Land Board for review and approval. ¶

(7) An easement granted by the Department will generally be to a specific person for a specific use, location, and term. The Holder of an easement must apply to and obtain prior written approval from the Department as provided in OAR 141-123-0040 prior to: ¶

(a) Changing the authorized use; ¶

(b) Transfer of ownership; ¶

(c) Expanding the number of authorized developments or uses; ¶

(d) Changing the authorized area; or ¶

(e) Permitting other persons to utilize the authorized area for uses and developments requiring separate authorization by the Department (for example, attachment of cables, conduits, or pipes under a bridge already authorized by an easement). ¶

(8) State-owned submerged and submersible land must remain open to Public Trust Uses unless a restriction is approved by the Department or other agencies with jurisdiction over navigation or public safety. ¶

(a) Notwithstanding the provisions of Division 88, a Holder may close all or a portion of the authorized area to Public Trust Uses, or restrict Public Trust Uses within all or a portion of the authorized area, provided the closure or restriction is: ¶

(A) Reasonably necessary to protect persons and property from harm arising from Holder's authorized use of the submerged and submersible land; ¶

(B) Limited in duration; and ¶

(C) Limited in scope. ¶

(b) If the proposed closure or restriction is wholly or partially within the navigation channel of the waterway as established by the United States Coast Guard, or is located in such a way as to increase traffic in or otherwise impact use of the navigation channel, Holder shall consult with the United States Coast Guard, the Oregon Marine Board and any applicable port prior to implementing the closure or restriction. Holder must comply with all requirements imposed by the United States Coast Guard and the Oregon Marine Board. ¶

(c) The Holder must provide written notice to the Department no less than fourteen (14) days prior to the implementation of any closure or restriction. The written notice must identify the need for and the scope, and duration of the closure or restriction, and must certify that Holder has consulted and received approval from the
United States Coast Guard and the Oregon Marine Board regarding the closure or restriction. ¶

(d) The Department, in its sole discretion, may at any time require Holder to terminate or modify the closure or restriction. The Department, in its sole discretion, may at any time require the closure or restriction to be established pursuant to OAR 141-088. ¶

(9) The Department or its authorized representative(s) shall have the right to enter into and upon the authorized easement area at any time for the purposes of inspection or management. ¶

(10) Routine right-of-way maintenance including, but not limited to vegetation trimming and the application of state-approved herbicides will be allowed as specified by the easement conditions. However, except as expressly authorized in writing by the Department, an easement Holder will not otherwise remove any sand, gravel, or other mineral or natural resources within the authorized area for commercial use or sale. ¶

(11) The Holder of an easement must conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, disturbed lands shall be reclaimed as specified by the Department. ¶

(12) The Holder of an easement must maintain all buildings, pipelines, cables, and other developments or items placed in or on state-owned land in a good state of repair. ¶

(13) Applicants for an easement may be required to obtain: ¶

(a) Insurance, bond or other guarantees of performance required by the Department in the exercise of its reasonable discretion if, in the opinion of the Department, the use constitutes a risk to other users of the area, to public safety, or to the State of Oregon, or if required by Oregon state law. The Department may: ¶

(A) Request that the applicant for, or the Holder of an easement provide information concerning the use or development to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Department in determining the appropriate amount of insurance coverage based on the nature of the use, and ¶

(B) Require that the State of Oregon be named as an additional insured party in any such policy. ¶

(b) A surety bond in an amount to be determined by the Department to ensure that the easement Holder will perform in accordance with all terms and conditions of the authorization; or a cash deposit in an amount equal to the amount required for a surety bond. ¶

(14) Easement Holders must inspect the condition of the easement area and the developments placed on it on a frequency to be determined by the Department in consultation with the easement Holder and other interested parties. ¶

(15) Unless otherwise agreed to in writing in the easement, the Holder of an easement which does not have a permanent term must terminate all use and remove any or all developments or uses placed within the easement area upon expiration or cancellation of the easement. If the Holder of the easement refuses to terminate their use or remove their developments, the Department may remove them and charge the Holder for doing so. ¶

(16) The Holder of an easement must indemnify the State of Oregon and the Department against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area resulting from the actions or negligence of the easement Holder. ¶

(17) A term easement that is exempt from fees may be subject to the future imposition by the Department of a consideration payment, and/or usage fee to be established by the State Land Board as authorized by law. Statutory/Other Authority: ORS 273.045

Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0080

RULE SUMMARY: Adopting transfer of easement rules for easements on non-trust lands.

CHANGES TO RULE:

141-123-0080
Transfer of Easements
(1) An easement in good standing is transferable. Prior written consent of the Department is required prior to any transfer of the easement. No transfer may increase the burden on the estate or detract from the value of the underlying state land. ¶
(2) The Holder of an easement wanting to transfer their easement must submit to the Department:
   (a) Notice of proposed transfer on a form provided by the Department at least 60 calendar days prior to the date that the transfer is to occur; and ¶
   (b) Non-refundable transfer processing fee of $750 payable to the Department.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0090

RULE SUMMARY: Adopting rules for the termination of an easement for easements on non-trust lands.

CHANGES TO RULE:

141-123-0090
Termination of an Easement
(1) The Department may terminate any easement:
(a) If there is no use of, or development placed on the easement area for five consecutive years;
(b) If the easement is for a structure or facility necessary for the use of water on state-owned submerged and submersible land and the associated right to use water is cancelled by the Oregon Water Resources Department or abandoned by the easement Holder. Upon such termination, the Department will notify the easement Holder in writing using the last known address reported by the easement Holder to the Department. This notification will state that the easement has terminated, and that the easement Holder will have 30 calendar days from the date of the notice to respond in writing to the Director why the easement should be reinstated. The Director will notify the easement Holder in writing of his/her decision within 60 calendar days of receipt of the request for reinstatement of the easement; or
(c) If the Holder of the easement fails to comply with these rules or the terms and conditions of the easement, or violates other laws covering the use of their authorized area, the Department will notify the Holder of the easement in writing of the default and demand correction within a specified time frame. If the Holder of an easement fails to correct the default within the time frame specified, the Department may:
(A) Modify or terminate the easement;
(B) Invoke other remedies as provided in OAR 141-123-0120.
(2) Notwithstanding the provision of OAR 141-123-0090(1), the Department will not terminate a term easement if the Holder of the easement is ready, but unable to commence the requested use within the five-year period due to their inability to obtain other required authorizations within the five-year period.
Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0100


CHANGES TO RULE:

141-123-0100
Easements for Structures and Facilities Necessary for the Use of Water
(1) Except as otherwise provided in OAR 141-123-0100(2), an easement is required for all structures and facilities placed on Non-Trust Land managed by the Department that are necessary for the use of water.
(2) An easement is not required for those parts of structures and facilities necessary for the use of water placed on state-owned submerged and submersible land managed by the Department if the:
   (a) Owner of the structures and facilities holds a valid right to use the water, and
   (b) Water is used exclusively for domestic and/or irrigation purposes.
(3) Persons who own, use, have placed, intend to place, or have the legal authority to represent the owners or users of structures and facilities necessary for the use of water subject to an easement must apply to the Department for an easement on a form provided by the agency. The applicant must include with the application a non-refundable application fee in the amount of $125 payable to the Department to cover the administrative costs of processing the application and issuing the easement.
(4) An application received by the Department for an easement for a structure or facility necessary for the use of water will be processed pursuant to the provisions of OAR 141-123-0050 and 141-123-0060 (as applicable) of these rules.
(5) The Department will allow a person to include up to three water pipelines and associated fixtures per lot of record on their application for an easement.
(6) An easement issued by the Department under this section will have the same term as that of the associated right to use the water as determined by the Oregon Water Resources Department. Land Board approval will not be required for an easement granted under this section.
(7) The Department may enter into an agreement with the Oregon Water Resources Department to consolidate the processing of easements for structures or facilities necessary for the use of water with the processing of a right to use water.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
141-123-0105
Unauthorized Uses and Penalties
(1) Uses and developments not authorized by an easement issued by the Department, or by another agency as a
valid existing right of record on land acquired by the Department, constitute a trespass and must be removed as
directed unless otherwise authorized in writing by the Department.

(2) In addition to any other penalties provided or permitted by law, the use or placement of any development on
state-owned land without the required Department authorization as described in these rules, or which is
otherwise not in compliance with these rules, will constitute a trespass and be prosecuted pursuant to governing
law.

Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0110

RULE SUMMARY: Adopting rules for Reconsideration of Decision for easements on non-trust lands.

CHANGES TO RULE:

141-123-0110
Reconsideration of Decision
An applicant or any person adversely affected by the issuance or denial of an easement by the Department may request the Director or the State Land Board, depending on which entity made the decision, to reconsider the decision. A request for reconsideration must be filed in compliance with ORS 183.482 or 183.484.
Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
ADOPT: 141-123-0120

RULE SUMMARY: Adopting rules for Enforcement Actions; Civil Penalties and Other Remedies for easements on non-trust lands.

CHANGE TO RULE:

141-123-0120
Enforcement Actions; Civil Penalties and Other Remedies
(1) The Department may:
(a) Conduct field inspections to determine if uses of, and developments on, in or over state-owned submerged and submersible land are authorized by, or conform with the terms and conditions of an easement and, if not, (b) Pursue whatever remedies are available under law to ensure that any use that is in violation of the terms or conditions of an easement is either brought into compliance with the requirements of these rules or other applicable law, or removed.
(2) In addition to any other penalty or sanction provided by law, for uses subject to easement located on state-owned submerged and submersible land, the Director may assess a civil penalty of not more than $1,000 per day of violation for the following:
(a) Violations of any provision of OAR 141-123 or ORS 273 or 274; or
(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274.
(3) The Director will give written notice of a civil penalty incurred under OAR 141-123-0120(2) by registered or certified mail to the person incurring the penalty. The notice will include, but not be limited to the following:
(a) The particular section of the statute, rule or written authorization involved;
(b) A short and clear statement of the matter asserted or charged;
(c) A statement of the party's right to request a hearing within 20 calendar days of the notice;
(d) The time allowed to correct a violation; and
(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.
(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-123-0120(3). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.
(5) In imposing a penalty under OAR 141-123-0120 of these rules, the Director will consider the following factors as specified in ORS 274.994:
(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;
(b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible land or Trust lands;
(c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and
(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.
(6) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-123-0120 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.
(7) If a civil penalty is not paid as required by OAR 141-123-0120, interest will accrue at the maximum rate allowed by law from the date first due.
Statutory/Other Authority: ORS 273.045
Statutes/Other Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010
OAR 141-122 & 141-123 Rulemaking Public Comments

PUBLIC COMMENTS RECEIVED and AGENCY RESPONSE

Commenter:
Patty Cate, ODF

Comment/Response:
“I reviewed the proposed changes to the DSL rules and I noticed under 141-122-0010 (2)(d) your proposing to change guylines to guide lines and tailholds to tail holds.

In logging terminology, guylines are cables used to stabilize the yarder. In cable logging, tailholds are used as anchors at the outer end of the skyline, away from the landing. So I believe the existing terminology in the rule is correct.”

Comment:

DSL Response:
The commenter is correct, DSL will need to revise the proposed rule change to ensure that the original rule language is retained for the terms guylines and tailholds.

Commenter:
Mary Anne Cooper/Public Policy Counsel  Oregon Farm bureau

Comment: via e-mail to DSL Rules – rules@dsl.state.or.us

I am trying to get some more information on the Division 122 and 123 rulemaking. Can you let me know who is in charge of it? First, I wanted to see the list of RAC members, as the link online is broken. Second, I was curious if these are brand new rules (where all content is new) or, if not, if there’s a track changes version of the changes available.

Thank you for your help!

Mary Anne
**DSL Response:**

From Gary Cooper via e-mail on August 6, 2018.

I am the POC for the revision of Div. 122 rules, these are not brand new rules. All the information regarding the rulemaking is on the website: https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx

The link has been fixed on our website and the Secretary of State website has our official track changes document. https://secure.sos.state.or.us/oard/viewRedlinePDF.action?filingRsn=38859

If you have any other questions please give me a call.

Thanks

Gary D. Cooper, Northern Operations Manager
Aquatic Resource Management Program
Oregon Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5308
(503)378-4844 (fax)
gary.d.cooper@state.or.us
DSL Web site: www.oregon.gov/dsl

No other comments were received and there were not any attendees or comments from the public at the public hearings held in Ontario, OR, Bend, OR, or Salem OR.
SUMMARY OF OAR 141-122 & 123 RULEMAKING HEARINGS IN
Locations: Ontario, OR; Bend, OR; and Salem, OR
Dates Respectfully: Aug 21; Aug 22; and Aug 28, 2018

ATTENDEES:

None

DSL STAFF:

Name: Hearings Officer in Ontario and Bend – Nancy Pustis, Eastern Region Manager

Name: Hearings Officer in Salem – Gary Cooper, Northern Region Manager

TESTIMONY PROVIDED BY: None

The full audio from this rulemaking hearing is available from the Department upon request and is posted on the Department’s website: http://www.oregon.gov/dsl/Pages/Rulemaking-Activity.aspx
State Land Board

Regular Meeting
December 18, 2018
Agenda Item 5

SUBJECT

Request for approval to sell 0.4 acres of state-owned filled lands in Coos County on Catching Slough to the adjacent riparian property owner.

ISSUE

Whether the State Land Board should authorize the Department to sell the 0.4 acres of state-owned filled land (Appendix A) in a direct land sale

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.
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 1988, the Department requested State Land Board approval for the filling and sale of 0.4 acres of submerged state-owned land (Appendix B). The proposed sale was to Crescent City Marine Ways and Drydock, Inc. for lands that extended beyond the company’s deeded tideland ownership in Township 25 South, Range 12 West, Section
30 & 31 (which the county assessor has recently moved to Township 25 South, Range 13 West, Section 25 to better align the filled land with the riparian upland). This request to create and sell new lands was approved under Removal-Fill Permit 3341 by the Land Board on July 29, 1988.

In 2016, the waterway lease held by Sause Bros. adjacent to their upland riparian ownership was due for renewal, which included the lands created under the 1988 Removal-Fill permit. As a result of the renewal process, Department staff discovered these filled lands were never in fact purchased by Crescent City Marine Ways and Drydock, Inc.

The applicant, Sause Bros. was also unable to produce a record of conveyance of the filled lands, so the Department informed the applicant that the lands either needed to be purchased or leased under a Special Use Lease. In January 2016, Sause Bros. submitted an application for purchase of these filled lands with a survey of the associated area per the Department’s request.

Through the Department’s due diligence of the parcel, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians contacted the Department with some concerns. The Department’s archaeologist worked with the Tribes to clear up some misunderstandings on where the filled parcel was located and when the parcel had been filled. The Tribes then withdrew any concerns they had with the land sale. No other comments were received.

Per the filled lands rules, the value of the land is $3,515.

**RECOMMENDATION**

The Department recommends that the State Land Board authorize the direct sale of the 0.4 acres of state-owned filled land in Coos County to the adjacent riparian land owner for $3,515.

**APPENDICES**

A. Map of the parcel  
B. 1988 Land Board Agenda item
Division of State Lands

1600 STATE STREET, SALEM, OREGON 97310  PHONE (503) 378-3805

STATE LAND BOARD

Regular Meeting
July 29, 1988

Agenda Item 3 j

SUBJECT
Request to fill state-owned submerged land in Coos County.

ISSUE
Whether the Land Board should approve the request of Crescent City Marine Ways and Drydock Company, Inc. ("Crescent City") to create and purchase 0.40 acres of new lands in Coos Bay by filling upon state-owned submerged land and what the purchase price of the new lands should be.

AUTHORITY
ORS 274.905 - 274.940, providing for Land Board approval of requests to create and purchase new lands on state-owned submerged and submersible lands.

SUMMARY
Crescent City requests Land Board approval to create a fill of 0.40 acres at the confluence of South Coos Bay and Catching Slough near Eastside east of the town of Coos Bay. See map attached as Appendix A. The requested fill is to improve the waterfront so that barges can be moved along a bulkhead in conjunction with a barge construction and repair facility. The project would involve placement of approximately 15,000 cubic yards of material pursuant to the division's removal-fill permit no. 3341 (Appendix A).
Crescent City is a Sause Bros. Ocean Towing Company subsidiary. Stockholders of Sause Bros. also own Willamette Leasing Company, which is the upland (riparian) owner of record at the site to be filled. Although Crescent City will be constructing the fill, the parties involved have requested that the deed be issued to Willamette Leasing Company, which is apparently paying for the fill. See Appendix C.

Division staff have calculated a reasonable purchase price for this 0.40 acres of new lands to be approximately $3,700.00, with the final purchase price to be determined upon survey after completion of the fill. The valuation method is shown in Appendix D. Crescent City has agreed to this value.

RECOMMENDATION

The division recommends that the Land Board approve Crescent City's request to fill and purchase 0.40 acres of new land and that the Land Board issue a deed for the new lands in exchange for payment of approximately $3,700.00, with the final purchase price to be determined upon survey after completion of the fill.

APPENDICES:

A. Map
B. State Fill Permit No. 3341
C. Letter from Crescent City Marine Ways & Drydock Company, Inc.
D. Value Determination Worksheet
Appendix B

Purpose: Barge Construction & Repair Facility

Datum: MLLW

Adjacent Property Owners:
1. Port of Coos Bay
2. State Highway Division

Plan View

Property Line

15,000 cu. yd. Fill

Property Line

Finished Yard Grade
+12.5 Top

MHW +6.7

MLLW 0.0

Steel Bulkhead

Existing Ground

Lower Bulkhead to Be Placed

PROPOSED BULKHEAD

Coos River (Mile 2.0)

County of Coos, State of Oregon

Application by Crescent City Marine Ways & Drydock Co.

Date 11 July 1980 (Rev. 3 Dec. 1986)
Sheet 1 of 1
MEMORANDUM

Date: December 18, 2018

To: Governor Kate Brown
Secretary of State Dennis Richardson
State Treasurer Tobias Read

From: Vicki L. Walker
Director

Subject: Clarification of the June 14, 2018 Land Board Decision

At the June 14, 2018 Land Board meeting Senior Investment staff from the Oregon State Treasurer’s Office and Callan Consultants presented the annual Common School Fund Distribution report. The report recommended that the maximum distribution be updated to 3.5%. After the Board approved this recommendation, questions were raised by stakeholders if this distribution amount included the SB 1566 amount.

Considering the confusion, Department staff reached out to Callan to clarify this issue. Attached is the letter from Janet Becker-Wold, Senior Vice President & Manager for Callan. This memo clearly indicates that the 3.5% does not include the SB 1566 amount.
September 24, 2018

Ms. Jean Straight
Deputy Director, Administrative Services
Oregon Department of Lands
775 Summer Street NE #100
Salem, OR 97301-1279

Dear Ms. Straight

I am responding to your request for clarification on the Oregon Common School Fund distribution rate recommendation presented at the State Land Board meeting June 2018.

The summary conclusions stated that a 3.5% distribution rate is sustainable when incorporating the projected SB 1566 transfers. Meaning the SB 1566 transfer is not included in the 3.5% rate

Let me know if you need anything else

Thank you,

Janet Becker-Wold
Senior Vice President & Manager
SUBJECT

Elliot State Forest Public Ownership Updates:

Presentations by Potential Public Owners

Declaration regarding the $100 million in bonding

Review and/or discussion of public comments received regarding Oregon Consensus Report

Direction from the Land Board on next steps for public engagement

ISSUE

Whether the State Land Board should adopt the Declaration of Preservation of Noneconomic Benefits for the Elliot State Forest and record the declaration against the property in Coos and Douglas Counties.

Whether the State Land Board should direct development of a public engagement plan for the Elliot State Forest Public Ownership Project.

The State Land Board will also receive information from potential public owners of the Elliot State Forest and a summary of public comments regarding the Oregon Consensus Report.
**AUTHORITY**

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

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

House Bill 5006, Enrolled, 2017 Legislative Session.

Senate Bill 5505, Enrolled, 2017 Legislative Session.

**SUMMARY**

Presentations by Potential Public Owners

In October 2018, the State Land Board asked potential public owners of the Elliott State Forest to indicate their interest to the Department of State Lands, and to come before the Land Board at its December 18, 2018 meeting. Interest letters submitted to DSL are included as Appendix A.

The following parties are in attendance to indicate their interest.
- President Ed Ray, Oregon State University; Anthony Davis, Interim Dean, OSU College of Forestry
- John Sweet, Coos County Commissioner
- Chris Boice, Douglas County Commissioner
- Cow Creek Band of Umpqua Tribe of Indians
- Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians
- Liz Dent, Oregon Department of Forestry
- Wes Ream, Raw Foundation

Declaration of Preservation of Noneconomic Benefits for the Elliott State Forest

The Department is currently working to complete two Interagency Agreements with the Department of Administrative Services and the Department of Forestry, which will allow the $100 million dollars in bonding approved by the Legislature in 2017 to be issued and the proceeds deposited into the Common School Fund. The bonds are expected to be issued in February 2019.
The bonding statute (ORS 283.085(3)(e), formerly SB 5505 (8)(e)), provides only the following general guidance on the use of the bond money:

(e) To finance:
(A) The release of all or a portion of the Elliott State Forest from restrictions resulting from ownership of that forest by the Common School Fund; or
(B) Compensation paid to the Common School Fund for the preservation of noneconomic benefits of the forest through the imposition, transfer or sale of restrictions such as easements, use requirements or other methods that preserve noneconomic benefits of the forest for the public, including recreation, aesthetics, wildlife or habitat preservation or other environmental and quality of life considerations.

Given only this general direction, the State Land Board should take formal action to implement the statute. To date, the State Land Board has taken no action. The Department, with the assistance of the Oregon Department of Justice, proposes the attached Declaration (Appendix C) for the Board’s consideration.

Review and/or discussion of public comments received regarding Oregon Consensus Report

The Department engaged Oregon Consensus, a program of the National Policy Consensus Center at Portland State University, as a neutral party to assist with outreach and overall work toward decoupling the Elliott State Forest from the Common School Fund.

In October 2018, Oregon Consensus completed stakeholder interviews regarding decoupling the Elliott State Forest from the Common School Fund and submitted their final report to the Department. The report summarized what was heard in the interviews and discussed key themes, issues, and considerations for successful decoupling.

The Department invited the public to read the final report and provide feedback on report findings. Feedback was accepted from October 9 to November 15. The Department received comments representing feedback from more than 50 individuals and organizations.

As Land Board members are aware, and as the Oregon Consensus Report indicated, perspectives vary widely regarding the future of the Elliott State Forest. Comments received illustrated this range of perspective. Specific comments often offered highly
detailed and nuanced feedback. A more detailed comment summary and comments in their entirety are included as Appendix D.

Briefly, comments included feedback regarding:

**Decoupling the Forest from the Common School Fund.** Comments reflected a variety of perspectives related to decoupling, compensating the school fund for the value of the Elliott, and ongoing contributions of the forest to education.

**Use of $100 Million.** Commenters indicated additional information, discussion, and ultimately resolution of how the $100 million in bond proceeds will be used is needed.

**The Forest’s Revenue Potential.** Commenters offered specific ideas for revenue generation, related both to purchase of the forest as well as ongoing revenue generation. Included were a harvest tax on timber revenue, carbon credit sales, and timber harvest. Several commenters did not support any solution that required debt to be serviced from commercial logging or noted that the level of logging they would support would not generate significant revenue.

**Potential Public Owners.** Comments support continued public ownership, with many offering support or concern regarding specific public owners.

**The Need for Additional Information.** Comments indicated the ongoing decoupling process should be informed by further examination of specific issues and topics, including the forest’s carbon potential, role in mitigating climate change, and the non-monetary contributions of the forest to education and future generations. Use of data, facts, and science to support decision-making was mentioned multiple times.

**Development of Habitat Conservation Plan.** Multiple comments indicated that a Habitat Conservation Plan needs to be developed prior to complete decoupling.

**Forest Management Approach.** Many commenters offered specific ideas on future management of the forest and indicated a desire to have further information and input regarding a potential public owner’s management approach.

**Additional Stakeholder and Public Engagement.** Many respondents indicated a desire for increased engagement, specifically inclusion of additional perspectives and ongoing opportunities to provide information and comment at decision points. The approach taken to public engagement was also noted as important. Respondents mentioned need for a transparent process, use of engagement strategies that allow all voices to be heard and that will be effective,
desire for engagement to include decoupling and Habitat Conservation Plan development, and a process that reflects the Land Board as the ultimate decisionmaker.

Finally, many respondents shared their vision for the future of the Elliott State Forest. These desired outcomes again emphasized that the forest is a special place to Oregonians for many reasons, and that the ultimate solution should be carefully crafted to resonate with many.

**Direction from the Land Board on next steps for public engagement**

The Oregon Consensus report, as well as the comments on the report, emphasize the importance of continued stakeholder and public engagement to the Elliott State Forest Public Ownership Project. A third phase of public engagement, to include convening an advisory committee, has long been a planned next step.

Given the importance of a well-designed public engagement plan to the success of the overall project, DSL would like to work with Oregon Consensus to draft a plan for Land Board consideration in February. The Department is seeking Land Board feedback on the following high-level outcomes of a public engagement plan, and formal direction on development of a public engagement plan as the next step.

- Engagement should focus on answering remaining questions and resolving remaining issues, rather than revisiting decisions or direction of the Land Board to-date.
- The role of an advisory group must be clearly defined. In the words of one stakeholder, identifying questions needing to be answered and who needs to be at the table to answer them is essential to an effective stakeholder process.
- The public engagement plan should consider all elements of the ownership project, including how the involvement process relates to or may inform development of a Habitat Conservation Plan.
- The recommendations of the Oregon Consensus report and subsequent comments related to ongoing public engagement should be considered in developing the public engagement plan.

**RECOMMENDATION**

That the State Land Board direct the Department to work with Oregon Consensus to draft a public engagement plan for Board review in February 2019.

The State Land Board approve a Declaration, substantially in the form of the document provided, and delegate to the Director the authority to make any final edits to the
Declaration necessary to correct or clarify the Declaration without changing its scope or purpose and to sign the Declaration on behalf of the Land Board, then record the Declaration against the property in Coos and Douglas Counties.

APPENDICES

A. Letters of Interest
B. Senate Bill 5505, Enrolled, 2017 Legislative Session
C. Declaration of Preservation of Noneconomic Benefits
D. Oregon Consensus Report Comment Summary and Complete Comments Received
4 December 2018

Vicki Walker  
Director of Department of State Lands  
Oregon Department of State Lands  
775 Summer St. NE, Suite 100  
Salem, OR  97301-1279

Dear Director Walker,

I am writing in response to your November 16, 2018 request for an indication of Oregon State University’s interest in serving as a potential owner of the Elliott State Forest.

The university remains interested in participating in discussions to determine the future of the forest.

At the same time, the university wants to make clear that OSU is not in a position to provide the $121 million required to separate the Elliott State Forest from the Common School Fund.

OSU recognizes the importance of forests to Oregon’s culture, ecosystems and economy, and believes that an Elliott State Research Forest could be a source of critical information to inform the conservation and management of forests in Oregon and beyond.

As such, we remain interested in engaging in discussions that allow for creation of a world-class research forest that would produce public benefits for Oregon. We are prepared to discuss how to accomplish this vision for a research forest to be managed by Oregon State’s College of Forestry. Such a visioning process would include public and stakeholder consultation, and discussions and eventual agreement with the state of Oregon regarding financial matters and the management of the forest. We believe that such a process would assure that the objectives and obligations of the state Land Board and university are met.

We look forward to continuing these very important discussions with you and with the state Land Board on December 18.

Sincerely,

Edward Feser  
Provost and Executive Vice President
Director Walker:

The purpose of this email is to express Coos County's interest in acquiring the Common School Fund Lands of the Elliott State Forest.

Most of these lands lies within the boundaries of Coos County. Coos County has its own County Forest, 15,000 acres managed on a sustained yield basis by the County Forestry Department. The forest is held open to the public for recreational activities including hiking, mountain bike riding, mushrooming, hunting, motor bike riding, and target practice at a modern firing range. The forest also provides significant financial support to the county through a timber sales program that provides jobs and raw materials to local mills.

We see no reason that the same multiple use management concept cannot be applied to the Elliott. We would expect to implement a harvest rotation considerably longer than that of our current forest lands to meet Land Board assumptions.

Ali Hansen's email of November 16, 2018, asks that interested parties respond to three DSL concerns relative to the forest. Our responses follow:

Funding: Coos County is exploring four funding avenues as itemized below. We believe it will take no longer than one year to secure funding.

1) Issuance of bonds
2) Partnering with a tribe
3) Partnering with Douglas County
4) Selling cutting (harvest) rights to a local wood products company

Partner possibilities:

1) Douglas County
2) Tribal
3) Wood products company

Meeting Land Board assumptions:

1) Common School Fund responsibility – The county is assuming that the purchase price will be added to the State's $100 million decoupling payment to the CSF to total the appraised value of the forest established for the recent effort to privatize the forest.

2) Complete decoupling – The county anticipates an offer that will be for the entire forest with the intent that management, including public access (except for limitations involving safety and fire), will apply to the entire forest.

3) Public ownership and access – See "2)" above.

4) Conservation values – The county envisions a harvest plan that provides for strong riparian protection, set aside of important cultural and ecological areas, and an extended harvest rotation to minimize disturbance of the forest floor. A considerable part of the forest will be off limits to any harvest. As we know more about the HCP we understand is currently being put in place, we will be able to refine harvest plans. It is worth mentioning that we do not practice mono-culture on our county forest, and that we are open to continuing this practice. We are firm
in our belief that a harvest plan that provides habitat not only for owls and murrelet but also for deer, elk, songbirds, and smaller forest creatures can be accomplished.

5) Working forest features – The management plan will provide for harvest on a long rotation. Harvest is necessary for any of the financing options we are exploring and will compliment forest ecosystem health and fire suppression. The longer rotation envisioned will provide opportunity for forest management research and practice as well.

6) Workforce and local community benefit – The Elliott holds particular importance to the citizens of Coos County as an economic, cultural, ecological, and recreational resource. We will implement a management plan that will provide for all these interests. The County is uniquely positioned to do this.

7) Tribal engagement – The County is open to partnering with the tribes not only relative to financing and management opportunities but also to protect cultural resources important to them.

Please feel free to contact me to address any questions or concerns we have not covered at this point in the process to decouple the Elliott from the Common School Fund. If you need to visit with me, I can be reached on my cell, 541-217-8135. I will be in Salem Tuesday morning, December 4, and can meet in person then if that would be helpful.

John Sweet
Coos County Board of Commissioners
250 N. Baxter
Coquille, OR 97423
jsweet@co.coos.or.us
541-396-7541 office
541-396-1010 fax
December 5, 2018

Via Email: vicki.walker@state.or.us

Vicki Walker, Director
Department of State Lands
775 Summer St. NE, Suite 100
Salem, Oregon, 97301

Re: Statement of Interest of Douglas County to Acquire Elliott State Forest

Dear Director Walker:

Douglas County hereby indicates its interest in acquiring the Elliott State Forest. In accordance with the Department of State Lands’ (DSL) November 16, 2018 inquiry, Douglas County provides the following “high level information” regarding how county ownership would meet the Land Board’s described outcomes for the Elliott State Forest.

1. Funding

Douglas County intends to acquire the Elliott State Forest with a combination of cash and funds accessed through the county’s bonding authorities under ORS Chapters 287A and/or 271. To the extent the Legislature may be considering appropriating additional funds for the purpose of an asset transfer and “decoupling”, Douglas County should also be given an opportunity to qualify for state funds on equal footing with any other public entity under consideration as the new forest owner.

2. Land Board “Assumptions” or Goals

Douglas County’s interest in acquiring the Elliott State Forest is consistent with the Land Board’s desire to “decouple” the forest from the Common School Fund. Douglas County would expect to become the new owner of the forest by buying out the remaining $120.8 million obligation to the Common School Fund based on the 2016 appraised value.

Douglas County presently manages approximately 4,400 acres of County-owned forestland for sustained yield timber production. The County will utilize its forest management knowledge, experience and capacity to manage the Elliott State Forest for sustained yield timber production under a Habitat Conservation Plan or similar approach that takes into account the Legislature’s $100 million in bonding to preserve and protect conservation values. Public access would also be preserved.
Selecting local entities, such as Douglas County, Coos County, local tribes, or a combination, is by far the Land Board’s best choice for ensuring that the Elliott State Forest will be managed in a proactive manner that addresses economic, job and community interests as well as ecosystem health. Douglas County remains fully supportive of the prior proposal that the Cow Creek Band of Umpqua Indians submitted to the State Land Board with Lone Rock Timber Management Company. Since tribes are now being considered “public entities” in this most recent Land Board solicitation, it is unclear why the Cow Creeks’ proposal was ever rejected. Regardless, Douglas County is committed to working with Coos County and local tribes to find a solution that works for local communities. Presently, local constituents are very frustrated by the overall lack of management and progress on the Elliott State Forest, as well as its failure to contribute to the local economy. Putting the forest in the hands of local entities will help rebuild public trust.

3. Potential Partners

Potential partners include, but are not limited to, Coos County and the Cow Creek Tribe.

Thank you for soliciting Douglas County’s interest in acquiring the Elliott State Forest. The County looks forward to the December 18, 2018 Land Board Meeting. If you have any questions about this letter please feel free to contact me directly.

Sincerely,

Chris Boice, Douglas County Commissioner
To: Vicki Walker, Director, Oregon Department of State Lands

From: Dan Courtney, Chairman, Cow Creek Band of Umpqua Tribe of Indians
      Michael Rondeau, CEO, Cow Creek Band of Umpqua Tribe of Indians

Re: Public Ownership of the Elliott State Forest

Date: December 5, 2018

As the record shows, the Cow Creek Band of Umpqua Tribe of Indians (Cow Creek) has been active in the discussions about the future of the Elliott State Forest since 2014, when the issue was first raised about how to meet the State’s obligation to maximize revenue for the Common School Fund, while also preserving the core values of conservation, public access, and sustainable forest practices.

The Elliott State Forest is in Douglas and Coos Counties and part of the land base that was taken from Native People more than 150 years ago. Since then, the federal government ignored our Treaty, withdrew our reservation, and eventually terminated us and the other Western Oregon Tribes. Over the last 50 years, Oregon Tribal governments were re-recognized by the federal government through congressional action. But despite this restoration, our Tribe - like others - still struggles to rebuild our culture, lands, and communities.

During the last solicitation of interest by the Department of State Lands (DSL), and as part of our larger effort to rebuild our land base, Cow Creek developed a comprehensive proposal with our fellow Tribe the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI) for the purchase, public ownership, and management of the Elliott State Forest. Our objective was to partner with CTCLUSI and the State of Oregon to help restore our homeland and diversify our economic base; and to do so in a way that is not only aligned with Oregonians’ values of conservation and sustainability but inherent in how Tribes approach and always have approached the management of natural resource assets.

The DSL Board minutes, public records, and media coverage only told part of how this story unfolded. It is unfortunate and offensive that the public narrative suggested that the Tribe was only superficially involved, serving as a front for a private timber company. That was not the case. We carefully chose a private partner who also has a record of sustainable forest management. There was no other means by which any Oregon Tribe could finance a project like this. That story, while false, fueled long-standing feuds between two powerful interest groups and conveniently allowed an off-ramp for the State to change its course on the Elliot.
To be clear, the Cow Creek Tribe is not an interest group.

The Tribe – like the other federally recognized Tribes in Oregon – is a sovereign government. Like the executives of Oregon, our leadership has a moral and fiduciary responsibility to our members to provide social services such as public health care, education, and land management, as well as economic opportunities to advance self-sufficiency and governmental stability.

We appreciate that there is recognition that Tribal ownership of the Elliott Forest meets the standard of public ownership. However, no Tribe has the kind of capital to purchase a land base of this size without private partners. We explored every option more than two years ago and our last proposal reflected the reality of what it would take financially to secure tribal ownership of the forest. That path was rejected, which does not leave many options for Tribes like the Cow Creek with serious interest in the ownership and management of the Elliott Forest—even though our record of innovative and sustainable forest practices make us more than qualified to do so.

We have monitored the discussion about the Elliott since our application. Our interest in the Elliott Forest has not waned. The simple truth is that the Cow Creek alone does not have the capital to purchase the forest. We also remain skeptical about dedicating time and money, as we did once before, to develop a proposal if there is another vision by DSL for how this land would transition to public ownership and management.

For example, if one path is to create a public research forest, the Tribe has many ways it could potentially participate given the innovative approaches to forest management it has demonstrated and continues to advance. But if there are other ideas for a solution, any opportunity for the Tribe to participate must be meaningful and not symbolic for public perception sake. Any participation on our part must lead to further collaboration with the State on our long-term goal to restore our land base and our mission of cultural preservation and self-sufficiency.

Thank you for your time and we are available to discuss our past experience as well as other ideas for the future of forest management and Tribal partnerships at any time.
December 5, 2018

Vicki Walker
Director
Oregon Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97301-1279

Re: Letter of Interest to Acquire the Elliott

Dear Director Walker:

I write on behalf of The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (“Tribe”) to advise the Oregon Department of State Lands of the Tribe’s interest to become the next public owner of the Elliott State Forest (the “Elliott”). The Elliott lies at the heart of our Tribe’s ancestral territory, which encompasses approximately 1.6 million acres of resource-rich lands lying along the Oregon coast, from Tenmile Creek (Lane County) in the north to between the mouths of Whiskey Run Creek and Cut Creek (Coos County) in the south, and extending inland to encompass the Coast Range. In terms of both historical justice and modern technical capability, it is both appropriate and fitting that our Tribe resume our ancestors’ stewardship role over the Elliott.

We offer the following high-level information regarding how the Tribe’s ownership of the Elliott would meet the Land Board’s desired outcomes:


   The Tribe anticipates securing funding from multiple sources both public and private, including but not limited to:
   a. Partnering with other Oregon federally-recognized Indian tribes
   b. Federal grant funding;
   c. Private grant funding;
   d. Private financings, and
   e. “Public” financings, including financing from other federally-recognized Indian tribes.

   If the Land Board confirms that the Tribe is a viable candidate, the Tribe will explore each of these funding opportunities in earnest, building on the Tribe’s relationships developed during the course of the Tribe’s participation in prior efforts to decouple the Elliott from the Common School Fund.

2. How the Tribe Would Ensure Land Board Assumptions are Met.

   a. Common School Fund Responsibility. The Tribe proposes complete decoupling accomplished by a cash sale for the full appraised value.
b. **Complete Decoupling.** Upon payment of the appraised value, title to the Elliott would be transferred either to the Tribe as sole owner, or to an entity owned by one or more Oregon federally-recognized Indian tribes.

c. **Public Ownership and Access.** Either the Tribe solely, or the Tribe as part of an intertribal entity, would hold title to the Elliott. Part of the $100 million in state legislative bonds would be utilized to fund conservation easements and public access management.

d. **Conservation Values.** The Tribe shares the Land Board’s commitment to an outcome that secures conservation values for the Elliott. Part of the $100 million in state legislative bonds would be utilized to fund conservation easement management to ensure protection of the Elliott’s ecologically important areas and species.

e. **Working Forest Features.** The Elliott would be managed for sustainable timber harvests that are consistent with conservation values and applicable environmental laws, including but not limited to the Endangered Species Act and Cultural Resource laws.

f. **Workforce and Local Community Benefit.** As an integral part of the local community, the Tribe has a demonstrated history of extending economic opportunities to its neighbors: whether through hiring local, or through buying local. The Tribe will extend this customary practice to all economic opportunities related to harvest and management of the Elliott.

g. **Tribal Engagement.** The Tribe expects to partner with at least one other Oregon federally recognized Indian tribe – either as a co-owner or as a co-holder of conservation easements. Further, the Tribe is open to partnering with one or more federally-recognized Indian tribes to secure financing to facilitate the cash purchase.

3. **What Partners the Tribe Has or Anticipates Having in Ownership or Management.**

The Tribe anticipates having at least one other Oregon federally recognized Indian tribe as either a co-owner or are a co-holder of conservation easements. Additionally, the Tribe anticipates partnering with one or more locally-owned timber management companies to assist in timber harvests and timber management activities. Finally, the Tribe anticipates partnerships with environmental organizations and academic institutions to assist in forest management research, education and development of sustainable harvesting and public access, and best management practices.

Thank you for this opportunity to express the Tribe’s desire to become the next public owner of the Elliott. Please do not hesitate to contact me if you have any questions.

Respectfully,

/s

Alexis Barry

Chief Executive Officer
December 5, 2018

Department of State Lands
Attn: Interim Director Vicki Walker
775 Summer Street NE
Salem, OR  97301

Dear Director Walker,

The Board of Forestry and Department of Forestry (ODF) have a rich history with the Elliott State Forest. In 1912, Francis Elliott - Oregon’s first state forester - approached Governor Oswald West with the notion of creating Oregon’s first state forest. Their vision was realized in 1930 after years spent assessing and finally identifying a viable land base, getting support and approval of the state legislature, and successfully negotiating federal acts in Congress. This vision took time, leadership, and a long-term view with an eye towards the purposes of those lands. We remain interested in working with the State Land Board, Department of State Lands, Oregon’s federally recognized tribes, landowners, universities, non-profits, communities and other interested parties to pursue a long-term solution for managing the Elliott State Forest.

Over the last 60 years, the long-standing partnership between ODF and Department of State Lands to manage the Elliott transformed a fire-devastated landscape to a healthy, productive, and biologically diverse forest. The forest is now home to native fish and wildlife including Northern spotted owls, marbled murrelets, and Oregon Coast coho – all listed as threatened under the U.S. Endangered Species Act. While providing these environmental benefits, management of the Elliott has also provided over $600 million in revenue for the Common School Fund, benefiting multiple generations of Oregon’s school children. The State Land Board’s strong leadership and commitment has maintained this forest asset as a priority for the state of Oregon, and today Oregonians recognize that the Elliott holds a distinct position within our forested landscape.

ODF has a long history of managing the Elliott and we remain interested in being a part of the long-term solution. We have earned standing as a leader in professional forestry and have an established tradition of fostering relationships, recognizing community interests, and honoring public values. We are committed to continuous improvement and innovation. A core principle is that forest management policies and programs should be evaluated and appropriately adjusted based on new information, research, and monitoring. A successful outcome for the Elliott will hinge on collaboration, partnerships, and the type of expertise that ODF has developed through decades of managing public forests for public benefits.
The Board of Forestry’s 2011 Forestry Program for Oregon outlines goals and values that are the underpinnings of the Board’s policy direction. Forest management decisions are anchored to these core values, many of which are pertinent to our interests in the Elliott solution.

- **The intrinsic value of Oregon forest resources.** We believe that while Oregon’s native forests, plants, animals, and ecosystems provide economic, scientific, cultural, recreational, and aesthetic values, their existence alone warrants their stewardship and enhancement.

- **Meeting current and future needs.** We believe forest resources should be used, developed, and protected at a rate and in a manner that enables people to meet their current environmental, economic, and social needs, and also provides that future generations can meet their own needs.

- **Forests that contribute to quality of life.** Oregon’s forests and the state’s rural and urban populations are interdependent. We believe Oregon's forests play a significant role in providing all Oregonians a high quality of life, including products, jobs, water and other ecosystem services, recreation, tax revenues for community well-being, and a quality environment.

- **Healthy rural Oregon.** We believe a healthy rural Oregon, which relies on working landscapes, is vital to the quality of life enjoyed by all Oregonians. Forests contribute to this healthy rural economy through generating traditional forest sector jobs and tax revenue and also through a healthy environment that supports associated trades such as salmon fisheries and forest recreation.

We look forward to working with the State Land Board, Department of State Lands, Oregon’s federally recognized tribes, landowners, universities, non-profits, communities and other interested parties to pursue a long-term solution for managing the Elliott State Forest.

Sincerely,

Peter Daugherty
Oregon State Forester

Tom Imeson
Chair, Oregon Board of Forestry
Elliot Forest Land Sale

Summary
By: Raw Foundation
Including 27 auxiliaries throughout Oregon
Christian Ministries

Oregon Department of Forestry
2600 State Street
Salem, OR 97310

November 30, 2018

RE: Elliot Forest Lands

This summary is in regard to the 82,500.00 acres of forest land for sale in the amount of $220.8 million. We are interested in purchase of the property, not for the purposes of logging. We want to sustain the lands as they are, we would like to use part of the lands for recreation. Hunting will continue to be regulated by the state gaming commission, fishing allowed during season.

We will hire 40 workers to maintain the acreage generally, recreational grounds, clean up if any, general management of the lands. Logging will be maintained to a minimum of 500 acres a year, spread out so as not to leave damage to the forest. If in the case that a forester advises us differently, we will act accordingly. Proceeds to fund maintenance of property, taxes and expenses. Our goal to is to maintain the lands as natural forest land.

We are prepared to offer by donation, totaling $320.8 million.

The 27 auxiliary ministries are not 501©3’s.

If you have any questions or ideas regarding our intentions or offer, please call us.

Wes Ream
503-829-9589
AN ACT

Relating to state financial administration; creating new provisions; amending ORS 283.085 and 286A.833; and declaring an emergency.

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

SECTION 1. The amounts authorized, as provided by ORS 286A.035, for issuance of general obligation bonds of the state during the 2017-2019 biennium, notwithstanding section 10, chapter 705, Oregon Laws 2013, are as follows:

GENERAL OBLIGATION BONDS

<table>
<thead>
<tr>
<th>General Fund Obligations</th>
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<tbody>
<tr>
<td>(1) Higher Education Coordinating Commission (Art. XI-G):</td>
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<tr>
<td>(a) Oregon Institute of Technology, Center for Excellence in Engineering and Technology/Cornett Hall Renovation .................. $2,050,000</td>
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<td>(b) Oregon State University:</td>
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<tr>
<td>(A) Quality Foods and Beverage Center .................. $9,100,000</td>
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<td>(B) Gilkey Hall Renovation ........... $2,050,000</td>
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<td>(c) Portland State University, Graduate School of Education Facility ............... $36,485,000</td>
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<tr>
<td>(d) University of Oregon, Campus for Accelerating Scientific Impact .................. $50,620,000</td>
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<td>(e) Western Oregon University:</td>
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<tr>
<td>(A) Information Technology Center Renovation ............. $540,000</td>
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<td>(B) Oregon Military Building Renovation .................. $540,000</td>
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<td>(f) Blue Mountain Community</td>
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</tbody>
</table>
(g) Chemeketa Community College, Agricultural Complex ......................... $ 6,125,000
(h) Clackamas Community College:
   (A) DeJardin Building Addition... $ 8,140,000
   (B) Student Services and Community Commons ........ $ 8,140,000
(i) Clatsop Community College, Marine Science Center Renovation and Expansion.... $ 8,135,000
(j) Columbia Gorge Community College, Middle College Prototype Facility ........ $ 7,400,000
(k) Lane Community College, Health Care Village Facility.. $ 8,140,000
(l) Linn-Benton Community College, Student Advising and Campus Safety Center ... $ 7,635,000
(m) Mt. Hood Community College, Maywood Park Center........ $ 8,140,000
(n) Oregon Coast Community College, Workforce Education and Resiliency Center........ $ 8,140,000
(o) Portland Community College, Health Technology Building Renovation........ $ 8,140,000
(p) Rogue Community College, Elk Building Science Facility Renovation and Expansion.... $ 6,125,000
(q) Southwestern Oregon Community College, Dellwood Hall Remodel and Expansion........ $ 2,805,000
(r) Treasure Valley Community College, Workforce Vocational Center............... $ 2,865,000
(s) Umpqua Community College, Industrial Technology Building................ $ 8,140,000
(2) Department of Environmental Quality (Art. XI-H) ........ $ 10,300,000
(3) Oregon Business Development Department (Art. XI-M) .... $ 101,180,000
(4) Oregon Business Development Department (Art. XI-N) .... $ 20,430,000
(5) Department of Education (Art. XI-P) ...................... $ 100,985,000
(6) Oregon Department of Administrative
Services (Art. XI-Q):

(a) Department of Corrections:
   (A) Capital Improvements and Renewal................................. $ 26,770,000
   (B) Technology Infrastructure.... $ 12,445,000

(b) Department of Education, Oregon School for the Deaf
    Facility Improvements........ $ 4,365,000

(c) Department of Human Services, ONE Integrated
    Eligibility and Medicaid Eligibility System............... $ 34,045,000

(d) Department of Justice, Child Support Enforcement Automated System........ $ 16,585,000

(e) Department of Revenue, Core Tax Revenue Systems Replacement................ $ 4,855,000

(f) Department of Veterans' Affairs:
   (A) Lebanon Veteran's Home Parking Lot........................... $ 1,345,000
   (B) The Dalles Veterans' Home Capital Improvements........... $ 1,195,000
   (C) Roseburg Veterans' Home .... $ 10,720,000

(g) Housing and Community Services Department, Local Innovation and Fast Track Housing Program........ $ 81,090,000

(h) Higher Education Coordinating Commission:
   (A) Public Universities Capital Improvement and Renewal ... $ 50,620,000
   (B) Eastern Oregon University, Loso Hall Renovation ........ $ 5,575,000
   (C) Oregon Institute of Technology:
      (i) Center for Excellence in Engineering and Technology/ Cornett Hall Renovation...... $ 38,475,000
      (ii) Oregon Manufacturing Innovation Center, Research and Development Facility ..... $ 3,940,000

(D) Oregon State University:
   (i) Cordley Hall Renovation ...... $ 15,250,000
   (ii) Fairbanks Hall Renovation ... $ 11,220,000
   (iii) Gilkey Hall Renovation ....... $ 1,045,000
   (iv) Cascades Expansion Site Reclamation ......................... $ 9,145,000

(E) Portland State University, Graduate School of Education Facility........ $ 9,145,000
(F) Southern Oregon University, Central Hall
   Capital Improvements........... $ 6,125,000

(G) Western Oregon University:
   (i) Information Technology
       Center Renovation ............ $ 5,070,000
   (ii) Oregon Military Building
        Renovation.................. $ 7,335,000

(i) Legislative Administration Committee, Capitol
   Accessibility, Maintenance,
   and Safety ...................... $ 13,960,000

(j) Oregon Judicial Department:
   (A) Lane County Courthouse ...... $ 5,115,000
   (B) Multnomah County
       Courthouse..................... $ 102,495,000

(C) Oregon Supreme Court
   Building Renovation........... $ 6,125,000

(k) Oregon Military Department:
   (A) Grants Pass Armory
       Service Life Extension .... $ 3,330,000
   (B) Regional Armory Emergency
       Enhancement Project ........ $ 8,675,000

(C) Regional Training Institute .. $ 6,630,000

(D) Resiliency Grant Fund........ $ 5,070,000

(E) Youth Challenge Armory ..... $ 5,095,000

(L) Oregon Youth Authority:
   (A) Capital Improvements........ $ 17,450,000
   (B) MacLaren West Cottages
       Renovation...................... $ 15,450,000
   (C) Rogue Valley Facility
       Improvements................... $ 7,095,000

(m) State Department of Fish
    and Wildlife................... $ 10,215,000

(n) State Forestry Department,
    Toledo Facility Replacement. $ 774,225

Dedicated Fund Obligations

(7) Department of Veterans' Affairs (Art. XI-A)........... $ 120,000,000

(8) Higher Education Coordinating
    Commission (Art. XI-F(1)):
    (a) Portland State University:
        (A) Land Acquisition for
            University Center Building... $ 15,260,000
        (B) 12th & Market
            Residence Hall................ $ 54,225,000
    (C) Graduate School of
        Education Facility............ $ 6,080,000
    (D) Corbett Building Purchase... $ 5,100,000
    (b) Oregon Institute of
        Technology, Student
        Recreation Center ............ $ 5,115,000
(c) Eastern Oregon University, Track and Field Facilities Restoration $790,000
(9) Department of Environmental Quality (Art. XI-H) $10,000,000
(10) Housing and Community Services Department (Art. XI-I(2)) $25,000,000
(11) Oregon Department of Administrative Services (Art. XI-Q):
   (a) Portland State Office Building Improvements $13,360,000
   (b) State Forestry Department, Toledo Facility Replacement $1,075,775

Total General Obligation Bonds $1,257,310,000

SECTION 2. The amounts authorized, as provided by ORS 286A.035, for issuance of revenue bonds of the state during the 2017-2019 biennium are as follows:

REVENUE BONDS

Direct Revenue Bonds

Housing and Community Services Department $300,000,000
Oregon Business Development Department $30,000,000
Oregon Department of Administrative Services, Lottery Revenue Bonds $199,860,000

Total Direct Revenue Bonds $529,860,000

Pass-Through Revenue Bonds

Oregon Business Development Department, Industrial Development Bonds $400,000,000
Oregon Business Development Department, Beginning and Expanding Farmer Loan Program $10,000,000
Oregon Facilities Authority $1,350,000,000
Housing and Community Services Department $325,000,000

Total Pass-Through Revenue Bonds $2,085,000,000

Total Revenue Bonds $2,614,860,000

SECTION 3. The amount authorized, as provided by ORS 286A.035, for issuance of certificates of participation and other financing agreements of the state during the 2017-2019 biennium for the Oregon Department of Administrative Services is $110,985,000.

SECTION 4. The amounts allocated for private activity bonds, as provided in ORS 286A.615, are as follows:

(1) For calendar year 2018, the amount of $409,346,500
is allocated as follows:

(a) Oregon Business Development Department, Industrial Development Bonds................... $ 40,000,000

(b) Oregon Business Development Department, Beginning and Expanding Farmer Loan Program.................................... $ 5,000,000

(c) Housing and Community Services Department........................................ $125,000,000

(d) Private Activity Bond Committee....................................................... $239,346,500

(2) For calendar year 2019, the amount of $409,346,500 is allocated as follows:

(a) Oregon Business Development Department, Industrial Development Bonds................... $ 40,000,000

(b) Oregon Business Development Department, Beginning and Expanding Farmer Loan Program.................................... $ 5,000,000

(c) Housing and Community Services Department........................................ $125,000,000

(d) Private Activity Bond Committee....................................................... $239,346,500

(3) If an increase in this state's population, a sufficient increase in the region's Consumer Price Index or a change in federal law allows the private activity bond limit as set by the Internal Revenue Code of 1986, as amended, to exceed $409,346,500 during the 2018 calendar year or $409,346,500 during the 2019 calendar year, the increase is allocated to the Private Activity Bond Committee.

SECTION 5. (1) For purposes of Article XI-F(1), section 1, of the Oregon Constitution, the Legislative Assembly determines that the projects authorized to be financed pursuant to section 1 (8) of this 2017 Act with bonds issued under Article XI-F(1) of the Oregon Constitution will benefit higher education institutions or activities.

(2) For purposes of Article XI-G, section 1, of the Oregon Constitution, the Legislative Assembly determines that the projects authorized to be financed pursuant to section 1 (1) of this 2017 Act with bonds issued under Article XI-G of the Oregon Constitution will benefit higher education institutions or activities or community colleges authorized by law to receive state aid.

SECTION 6. Bonds authorized under section 1 (1) of this 2017 Act may not be issued until the constructing authority certifies that the constructing authority has matching funds available for the same or similar purposes as the Article XI-G bonds that will fund the grant to the constructing authority, that the match funds are not proceeds of indebtedness incurred by the state under any other article of the Oregon Constitution, and that the match funds are available to the constructing authority in an amount at least equal to the amount of indebtedness incurred by the state through the issuance of the Article XI-G bonds.

SECTION 7. ORS 286A.833 is amended to read:
286A.833. (1) In accordance with the applicable provisions of this chapter, the State Treasurer, with the concurrence of the [Director of the Oregon Department of Administrative Services] Higher Education Coordinating Commission, may issue Article XI-F(1) bonds for the benefit of a public university if:

(a) The [Higher Education Coordinating Commission] Director of the Oregon Department of Administrative Services requests that bonds be issued for the purposes specified in Article XI-F(1) of the Oregon Constitution, plus an amount determined by the State Treasurer to pay estimated bond-related costs;

(b) The issuance does not exceed the budget authorization for bond issuance established under ORS 286A.035; and

(c) A loan agreement is executed under ORS 286A.836 prior to sale of the bonds.

(2) The State Treasurer may issue Article XI-F(1) bonds for the purpose of refunding Article XI-F(1) bonds, with the concurrence of a public university that received proceeds of Article XI-F(1) bonds to be refunded.

(3) The State Treasurer shall deposit the net proceeds of Article XI-F(1) bonds in one or more project funds established in the State Treasury or with a third party under contract with the Oregon Department of Administrative Services and approved by the State Treasurer. Net proceeds of Article XI-F(1) bonds must be expended for the purposes described in the commission's budget authorization.

(4) If at any time the department and the commission jointly determine that the net proceeds of Article XI-F(1) bonds deposited in a project fund pursuant to subsection (3) of this section exceed the cost of the project described in the commission's budget authorization, the department may allocate and transfer the excess amount as determined by the department to other project funds, the Article XI-F(1) Bond Fund established under ORS 286A.839 or the Article XI-F(1) Bond Administration Fund established under ORS 286A.842. Before transferring an excess amount under this subsection, the department shall consult with the public university for whose benefit the Article XI-F(1) bonds were issued, but the department may transfer an excess amount without the approval of the public university. Excess amounts may not be transferred to a project fund for the project of another public university unless the applicable loan agreements and loan repayment schedules are amended to reflect the transfer.

(5) Article XI-F(1) bonds are direct general obligations of the State of Oregon and must contain a direct promise on behalf of the State of Oregon to pay the principal of, the interest on and the premium, if any, on the Article XI-F(1) bonds. The State of Oregon shall pledge its full faith and credit and taxing power to the payment of the principal of, the interest on and the premium, if any, on Article XI-F(1) bonds, and the ad valorem taxing power of the State of Oregon may be pledged to pay Article XI-F(1) bonds.

SECTION 8. ORS 283.085 is amended to read:
283.085. As used in ORS 283.085 to 283.092:
(1) “Available funds” means funds appropriated or otherwise made available by the Legislative Assembly to pay amounts due under a financing agreement for the fiscal period in which the payments are due, unexpended proceeds of the financing agreement and reserves or other amounts that have been deposited in trust to pay amounts due under the financing agreement.

(2) “Credit enhancement agreement” means any agreement or contractual relationship between the state and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing additional credit on or security for a financing agreement or certificates of participation authorized by ORS 283.085 to 283.092.

(3) “Financing agreement” means a lease purchase agreement, an installment sale agreement, a loan agreement or any other agreement:
(a) To finance real or personal property that is or will be owned and operated by the state or any of its agencies;
(b) To finance infrastructure, including but not limited to telecommunications systems, systems for water, sewage, electricity, steam or natural gas and other equipment or improvements that are necessary or appropriate to support a facility that is, or will be, owned or operated by the state;
(c) To finance infrastructure components that are, or will be, owned or operated by a local
government agency of this state if the Director of the Oregon Department of Administrative Ser-
vices determines that financing the infrastructure facilitates the construction or operation of an
adult or juvenile corrections facility or a public safety training facility owned or operated by the
state or any of its agencies;

(d) To finance all or a portion of the state's pension liabilities for retirement, health care or
disability benefits, in an amount that produces net proceeds that do not exceed the State Treasurer's
estimate of those liabilities based on information provided to the State Treasurer by the Public
Employees Retirement System; [or]

(e) To finance:

(A) The release of all or a portion of the Elliott State Forest from restrictions resulting
from ownership of that forest by the Common School Fund; or

(B) Compensation paid to the Common School Fund for the preservation of noneconomic
benefits of the forest through the imposition, transfer or sale of restrictions such as ease-
ments, use requirements or other methods that preserve noneconomic benefits of the forest
for the public, including recreation, aesthetics, wildlife or habitat preservation or other en-
vironmental and quality of life considerations; or

[(e)] (f) To refinance previously executed financing agreements.

(4) “Financing costs” means costs or expenses that the director determines are necessary or
desirable in connection with entering into financing agreements and maintaining the certificate of
participation program, including but not limited to payment of:

(a) Amounts due under financing agreements;

(b) Costs and obligations the director or any other agency of the state incurs in connection with
the exercise of a power granted by ORS 283.085 to 283.092; and

(c) Amounts due in connection with the investment of proceeds of financing agreements.

(5) “Personal property” means tangible personal property, software and fixtures.

(6) “Property rights” means, with respect to personal property, the rights of a secured party
under ORS chapter 79, and, with respect to real property, the rights of a trustee or lender under a
lease authorized by ORS 283.089 (1)(e).

(7) “Software” means software and training and maintenance contracts related to the operation
of computing equipment.

SECTION 9. (1) A community college for which one project to be funded with general
obligation bonds authorized to be issued under Article XI-G of the Oregon Constitution is
approved in this 2017 Act may not request approval of an additional project to be funded with
general obligation bonds authorized to be issued under Article XI-G of the Oregon Constitu-
tion until the beginning of the regular session of the Legislative Assembly held in 2021, un-
less the community college withdraws the project approved under this 2017 Act.

(2) A community college for which two projects to be funded with general obligation
bonds authorized to be issued under Article XI-G of the Oregon Constitution is approved in
this 2017 Act may not request approval of an additional project to be funded with general
obligation bonds authorized to be issued under Article XI-G of the Oregon Constitution until
the beginning of the regular session of the Legislative Assembly held in 2025, unless the
community college withdraws the project approved under this 2017 Act.

SECTION 10. (1) Out of the amount specified in section 1 (6)(j)(A) of this 2017 Act, the
State Treasurer may issue Article XI-Q bonds in an amount not to exceed $5,000,000 of net
proceeds for the purposes and in the manner specified in section 8, chapter 705, Oregon Laws
2013, plus an amount estimated by the State Treasurer to pay estimated bond-related costs.

(2) Out of the amount specified in section 1 (6)(j)(B) of this 2017 Act, the State Treasurer
may issue Article XI-Q bonds in an amount not to exceed $92,600,000 of net proceeds for the
purposes and in the manner specified in section 8, chapter 705, Oregon Laws 2013, plus an
amount estimated by the State Treasurer to pay estimated bond-related costs.
(3) For purposes of sections 8 and 9, chapter 705, Oregon Laws 2013, and section 64, chapter 723, Oregon Laws 2013, bonds issued pursuant to this section are considered to be bonds issued pursuant to section 8, chapter 705, Oregon Laws 2013.

(4) Bonds may not be issued out of the amounts specified in section 1 (6)(j)(A) and (B) of this 2017 Act except as provided in this section.

SECTION 11. (1) As used in this section:

(a) “Apprentice” has the meaning given that term in ORS 660.010.

(b) “Apprenticeable occupation” has the meaning given that term in ORS 660.010.

(c) “Apprenticeship training program” means the total system of apprenticeship that a particular local joint committee, as defined in ORS 660.010, operates, including the local joint committee’s registered standards and all other terms and conditions for qualifying, recruiting, selecting, employing and training apprentices in an apprenticeable occupation.

(d) “Minority individual” has the meaning given that term in ORS 200.005.

(e) “Qualified contracts” means contracts that:

(A) Are for improvements to real property in connection with the University of Oregon Campus for Accelerating Scientific Impact;

(B) Have a cost that, at the time the contract is executed, is estimated to be greater than $200,000; and

(C) Are to be paid from proceeds of bonds issued under Article XI-G of the Oregon Constitution.

(f) “Woman” has the meaning given that term in ORS 200.005.

(2) The University of Oregon, in all qualified contracts, shall require contractors to:

(a) Employ apprentices to perform 15 percent of the work hours that workers in apprenticeable occupations perform under the contract, in a manner consistent with the apprentices’ respective apprenticeship training programs;

(b) Establish and execute a plan for outreach, recruitment and retention of women and minority individuals to perform work under the contract; and

(c) Require any subcontractors engaged by the contractors to abide by the requirements set forth in paragraphs (a) and (b) of this subsection.

(3) On or before February 1 of each year, the University of Oregon shall report to the Joint Committee on Ways and Means or Joint Interim Committee on Ways and Means on the amount of work performed by apprentices, women and minority individuals under qualified contracts.

SECTION 12. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect July 1, 2017.
DECLARATION OF RELEASE OF RESTRICTIONS AND PRESERVATION OF NONECONOMIC BENEFITS

THIS DECLARATION OF RELEASE OF RESTRICTIONS AND PRESERVATION OF NONECONOMIC BENEFITS (this “Declaration”) is made on this ___ day of ________________, 2019, by the Oregon State Land Board (the “Board”), acting by and through the Oregon Department of State Lands (“DSL”).

RECITALS

A. Approximately 82,500 acres of the 91,000 acre Elliott State Forest (the “Property”), is a land asset of the Common School Fund (the “CSF”), as more particularly described on Exhibit A. Article VIII, Section 2 of the Oregon Constitution provides that, among other things, income derived from assets of the CSF shall be applied to the support of primary and secondary education as prescribed by law.

B. Pursuant to Article VIII, Sections 2 and 5 of the Oregon Constitution, the Board manages certain lands, including the Property, held by the CSF with the objective of obtaining the greatest benefit for the people of the state of Oregon (the “State”), consistent with the conservation of these resources under sound techniques of land management.

C. In 2017, the Oregon Legislature authorized the issuance of certificates of participation in an amount to produce $100,000,000 pursuant to ORS 283.085(3)(e) (2017 Oregon Laws, chapter 570, section (8)(e)):

   (e) to finance:
   (A) The release of all or a portion of the Elliott State Forest from restrictions resulting from ownership of that forest by the Common School Fund; or
   (B) Compensation paid to the Common School Fund for the preservation of noneconomic benefits of the forest through the imposition,
transfer or sale of restrictions such as easements, use requirements or other methods that preserve noneconomic benefits of the forest for the public, including recreation, aesthetics, wildlife or habitat preservation or other environmental and quality of life considerations.

D. The State issued its Certificates of Participation, 2019 Series A (Taxable) (the “COPs”) on ________, 2019.

E. Pursuant to (i) an Interagency Agreement between the Department of Administrative Services and Oregon Department of Forestry (“ODF”) dated ________, 201_, and (ii) an Interagency Agreement between ODF and DSL dated ________, 201_, the proceeds of the COPs have been deposited with DSL as of this date.

F. The Board will transfer such proceeds into the corpus of the CSF for the purposes described herein and to memorialize such transfer in this Declaration to be recorded against the Property.

DECLARATIONS

NOW THEREFORE, the Board declares as follows:

1. Pursuant to ORS 283.085(3)(e)(A), the State issued the COPs, and the Board will deposit the proceeds of the COPs in the amount of $100,000,000, into the corpus of the CSF to release a portion of the Property from restrictions resulting from ownership by the CSF by mitigating the Board’s duty to manage the Property to the benefit of the CSF.

2. The deposit of the COP proceeds in the CSF, and investment pursuant to Article VIII, Section 2(2) of the Oregon Constitution, will advance the Board’s obligations to the CSF with respect to the Property and shall serve as partial decoupling of the Property from the CSF.

3. Alternatively, the $100,000,000 deposit of the COP proceeds to the CSF will serve as compensation to the CSF for the preservation of the noneconomic benefits of the Property pursuant to ORS 283.085(3)(e)(B). The specifics of such management to preserve the noneconomic benefits shall be determined by the Board and implemented by DSL under direction from the Board and must include a method articulated under ORS 283.085(3)(e)(B) and approved by the Oregon Department of Justice.

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IN WITNESS WHEREOF, _______________ has executed this Declaration of Release of Restrictions and Preservation of Noneconomic Benefits as of the date and year first set forth above.

_____________________________________: 

By: ____________________________________  __________________________
Name: _________________________________  Date 
Title: _________________________________

STATE OF OREGON )
County of Marion ) ss

On this ___ day of _________________, 201_, before me the undersigned, a Notary Public for the State of Oregon, personally appeared ________________________, who stated on oath that (he/she) is the ______________________ of ______________________ and is authorized to execute the within instrument on behalf of the State of Oregon and acknowledged said instrument as the free and voluntary act of the State of Oregon for the uses and purposes mentioned therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

Notary Public for the State of Oregon
My Commission expires: ____________________

#8869676v3
Legal Description
Department of State Land Properties
Elliott State Forest

Township 22 South, Range 10 West of the Willamette Meridian, Douglas County, Oregon

All of Sections 18, 19, 20, 26, 27, 28, 29, 30, 31, 32, 33 and 34.

Section 7:

Lots 1, 2, 3, 6, 7, 8 and 9, Excepting therefrom those portions conveyed for highway purposes by Book 140, Page 330 and by Recorder's Nos. 4617, 48086, and 106556, all of Deed Records of Douglas County, Oregon;

The SW1/4 of the NE1/4; SE1/4 of the NW1/4; E1/2 of the SW1/4; W 1/2 of the SE 1/4; SE1/4 of the SE1/4.

Section 8:

Lot 5, excepting therefrom that portion within State Highway No. 38.

Lot 7.

Section 14:

Lot 9 and the SE1/4 of the SW1/4.

Section 15:

The SE1/4 of the SE1/4; and

Government Lot 10, excepting therefrom that part conveyed to Douglas County, Oregon, for road purposes, by deed recorded in Volume 84, page 7, Deed Records of Douglas County, Oregon, and also excepting therefrom that part conveyed to State of Oregon, by and through its State Highway Commission, for road purposes, by deed recorded in Volume 201 of the Deed Records of Douglas County, Oregon, Recorder's No.131667.

Section 17:

All that portion of the following described premises that lies Southerly of the State of Oregon Highway No. 38 right of way, it being understood that said State of Oregon Highway right of way extends 75 feet Southerly from the centerline of said right of way, to-wit:

Lots 6, 7, 8, 10 and the Northeast quarter of the Southwest quarter of, Township 22 South, Range 10 West, Willamette Meridian, Douglas County, Oregon. Excepting, however, that portion acquired by the State of Oregon, by and through its State Highway Commission, by Circuit Court Case No.19977, being 6.2 acres immediately Westerly of Charlotte Creek and same being a rock quarry, together with limited access provisions contained therein;
Lots 5, 11, 12, 13, 14, 15, the SE1/4 of the SW1/4 and the SW1/4 of the SE1/4, excepting therefrom that portion within State Highway No. 38.

**Section 21:**

All of Section 21, excepting therefrom that portion within State Highway No. 38.

**Section 22:**

All of Section 22, excepting therefrom that portion within State Highway No. 38.

Subject to the rights of fishing, navigation and commerce to the State of Oregon, the Federal Government, and the public in and to that portion thereof lying below the ordinary high water mark of Mill Creek, including any ownership rights which may be claimed by the State of Oregon below the high water mark.

**Section 23:**

Lots 5, 6, 7, 8, 9, 10 and 11; the SW1/4 of the NE1/4, E1/2 of the NW1/4, NE1/4 of the SW1/4, and the N1/2 of the SE1/4.

Subject to the rights of fishing, navigation and commerce to the State of Oregon, the Federal Government, and the public in and to that portion thereof lying below the ordinary high water mark of Mill Creek, including any ownership rights which may be claimed by the State of Oregon below the high water mark.

**Township 22 South, Range 11 West of the Willamette Meridian, Douglas County, Oregon**

All of Sections 12, 13, 14, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

**Section 1:**

Lots 5, 9, 10, 11, 12, 13 and 14, excepting therefrom that portion within State Highway No. 38.

**Section 2:**

The SW1/4 of the NE1/4, S1/2 of the NW1/4, NE1/4 of the SW1/4 and the N1/2 of the SE1/4; Lots 5, 6, 7, 8 and 9.

**Section 3:**

Lot 1, the NW1/4 of the NE1/4, SE1/4 of the NE1/4, E1/2 of the SE1/4, less and excepting therefrom that portion of State Highway 38.

And:

Beginning at a point in the center of an existing road on the north boundary of the
Southwest quarter of the Northeast quarter (SW1/4NE1/4) of Section 3, Township 22 South, Range 11 West, Willamette Meridian, said point being North 89° 43' 26" West 459.6 feet from the Northeast corner of said subdivision; thence along the north boundary of said subdivision North 89° 43' 26" West 39.9 feet to a point at the toe of the fill slope of said road; thence continuing along the toe of the main body of said fill slope South 20° 02' East 131.0 feet to a point; thence South 33° 28' East 100.1 feet to a point; thence South 23° 36' West 70.9 feet to a point; thence South 53° 28 East 131.7 feet to a point; thence South 26° 34' West 53.7 feet to a point; thence South 54° 28' West 68.8 feet to a point; thence South 2° 27' East 96.2 feet to a point; thence South 45° 25' West 105.6 feet to a point; thence South 43° 00' East 57.8 feet to a point; thence South 69° 27' East 85.4 feet to a point; thence North 72° 49' East 101.5 feet to a point; thence North 83° 31' East 208.9 feet to a point at the toe of the fill slope of said road, said point being on the east boundary of said subdivision South 1° 33' 54" East 697.8 feet from the Northeast corner of said subdivision; thence North 1° 33' 54" West 697.8 feet to the Northeast corner of said subdivision; thence North 89° 43' 26" West 459.6 feet to the point of beginning, containing 7.06 acres, with the tenements, hereditaments and appurtenances, situated in the County of Douglas and State of Oregon.

Section 10:

A parcel of land situated in the Southwest quarter of the Northeast quarter (SW1/4NE1/4) of Section 10, Township 22 South, Range 11 West, Willamette Meridian, with the tenements, hereditaments and appurtenances situated in the County of Douglas and State of Oregon, said parcel of land being forty (40) feet in width, twenty (20) feet on each side of a center line described as follows, to-wit:

Beginning at a point on the Easterly right of way boundary of the Deans Creek County Road, said point being 1273.5 feet South and 1933.8 feet West of the Northeast corner of Section 10, Township 22 South, Range 11 West, Willamette Meridian, thence South 88° 38' East 610.4 feet, more or less, to a point on the East boundary of the Southwest quarter of the Northeast quarter (SW1/4NE1/4) of Section 10, Township 22 South, Range 11 West, Willamette Meridian, as acquired by Clifford Leach and Wilma Leach, husband and wife, by that certain deed dated October 11, 1952, recorded in Volume 214, page 641, Deed Records, Douglas County, Oregon, in which Robert Holmstedt and Nellie Holmstedt, husband and wife, were grantors.

And:

A parcel of land situated in the Southeast quarter of the Northeast quarter (SE1/4NE1/4) of Section 10, Township 22 South, Range 11 West, Willamette Meridian, with the tenements, hereditaments, and appurtenances situated in the County of Douglas and State of Oregon, said parcel of land being forty (40) feet in width, twenty (20) feet on each side of a center line described as follows, to-wit:

Beginning at a point on the West boundary of the Southeast quarter of the Northeast quarter (SE1/4NE1/4) of Section 10, Township 22 South, Range 11 West, Willamette Meridian, said point being 1288.1 feet South and 1323.6 feet West of the Northeast corner of said Section 10; thence South 88° 38' East 392.0 feet; thence North 58° 08' East 95.7 feet, more or less, to a point on the North boundary of said Southwest quarter of the Northeast quarter (SW1/4NE1/4), said point being 1242.8 feet South and 844.0 feet West of the Northeast corner of said Section 10.
And:

Beginning at a point on the Section line between Sections 10 and 11, Township 22 South, Range 11 West, Willamette Meridian, said point being South 0° 12' East 797.1 feet from the Northeast corner of said Section 10; thence South 0° 12' East 80.5 feet to a point on said section line; thence South 14° 11' West 126.3 feet to a point; thence along the arc of a 31° 11' 31" curve to the right, the long chord of which bears South 55° 11' West 241.0 feet to a point; thence North 83° 49' West 78.1 feet to a point; thence North 64° 29' West 190.4 feet to a point; thence North 57° 53' West 70.6 feet to a point; thence along the arc of a 114° 52' 33" curve to the right, the long chord of which bears South 78° 18' West 69.1 feet to a point; thence South 34° 29' West 43.5 feet to a point; thence South 45° 08' West 265.2 feet more or less to a point on the south boundary of the Northeast one quarter of the Northeast one quarter (NE1/4NE1/4) of said Section 10; thence Westerly on said boundary 92.3 feet to a point; thence North 58° 08' East 67.2 feet more or less to a point; thence North 45° 08' East 260.5 feet to a point; thence North 34° 29' East 38.8 feet to a point; thence along the arc of a 57° 22' 08" curve to the right, the long chord of which bears North 44° 44' East 35.6 feet to a point; thence South 35° 01' East 10.0 feet to a point; thence along the arc of a 63° 45' 06" curve to the right, the long chord of which bears North 75° 29' East 63.0 feet to a point; thence North 5° 59' East 10.0 feet to a point; thence along the arc of a 57° 22' 08" curve to the right, the long chord of which bears South 70° 57' East 45.2 feet to a point; thence South 57° 53' East 67.7 feet to a point; thence South 64° 29' East 123.3 feet to a point; thence South 25° 31' West 10.0 feet to a point; thence South 64° 29' East 57.4 feet to a point; thence South 83° 49' East 71.3 feet to a point; thence along the arc of a 39° 52' 30" curve to the left, the long chord of which bears North 55° 11' East 188.6 feet to a point; thence North 14° 11' East 282.3 feet to a point on the section line between Sections 10 and 11, Township 22 South, Range 11 West, Willamette Meridian; thence South 0° 12' East 80.5 feet to the point of beginning, containing 1.24 acres.

Section 11:

The NE1/4, NE1/4NW1/4, NE1/4SE1/4, Lot 1, 3, 4, 5, 6 and 7.

Excepting therefrom: Beginning at the Northeast corner of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of Section 11, Township 22 South, Range 11 West, Willamette Meridian; thence South 0° 06' 02" East 409.0 feet along the East boundary of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of said Section 11, to an iron pipe; thence North 78° 25' West 239.9 feet to an iron pipe; thence North 79° 35' West 134.3 feet to an iron pipe; thence North 38° 17' West 155.9 feet to an iron pipe; thence North 48° 16' West 132.2 feet to an iron pipe; thence North 34° 03' West 150.1 feet to a galvanized iron pipe on the North boundary of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of said Section 11; thence North 89° 51' 04" East 645.7 feet along the North boundary of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of said Section 11, to the point of beginning.

In addition thereto: All that portion of the Northwest quarter of the Southeast quarter (NW1/4SE1/4) of Section 11, Township 22 South, Range 11 West, Willamette Meridian, described as follows:

Beginning at the Northwest corner of the Northwest quarter of the Southeast quarter (NW1/4SE1/4) of Section 11, Township 22 South, Range 11 West, Willamette Meridian;
thence North 89° 51' 04" East 1280.9 feet to the Northeast corner of the Northwest quarter of the Southeast quarter (NW1/4SE1/4) of said Section 11, thence South 0° 10' 33" West 635.3 feet to the North boundary of a strip of land conveyed to the STATE OF OREGON, acting by and through its Board of Forestry, thence traversing along the North boundary of said strip of land,

thence South 85° 03' West 27.5 feet;
thence North 86° 24' West 320.6 feet;
thence South 75° 59' West 29 L 9 feet;
thence South 60° 39' West 97.4 feet;
thence leaving said strip of land,

North 52° 22' West 109.2 feet to an iron pipe;
thence North 32° 55' West 201.3 feet to an iron pipe;
thence North 41° 12' West 338.9 feet to an iron reinforcing rod;
thence North 29° 26' West 279.9 feet to the point of beginning;

Beginning at Engineers Station 0+00 on the section line between Sections 10 and 11, said point being South 0° 12' East 797.1 feet from the Northeast corner of Section 10, Township 22 South, Range 11 West, Willamette Meridian; thence along the centerline of said strip of land forty (40) feet in width, twenty (20) feet on each side of centerline,

North 14° 11' East 23.2 feet,
thence North 28° 25' East 57.5 feet,
thence North 72° 29' East 60.6 feet to a point on the North boundary of the South half of the Northwest one quarter (SW1/4NW1/4) of said Section 11, said point being 705.8 feet South and 93.6 feet East of the Northeast corner of said Section 10.

Also beginning at a point on the North boundary of the Southwest one quarter of the Northwest one quarter (SW1/4NW1/4) of Section 11, Township 22 South, Range 11 West, Willamette Meridian, said point being 705.6 feet south and 110.9 feet East of the Northeast corner of Section 10; thence along the centerline of said strip of land forty (40) feet in width, twenty (20) feet on each side of centerline,

South 65° 02' East 208.0 feet,
thence South 38° 21' East 135.7 feet,
thence South 21° 20' East 138.3 feet to Station 6+41.8; thence along the centerline of said strip of land fifty (50) feet in width, twenty (20) feet on the right and thirty (30) feet on the left of centerline,

South 21° 20' East 90.0 feet,
thence South 68° 02' East 30.0 feet to Station 7+61.8; thence along the centerline of said strip of land forty (40) feet in width, twenty (20) feet on each side of centerline,
South 68° 02' East 264.3 feet,  
thence South 34° 32' East 261.2 feet,  
thence South 41° 04' East 100.0 feet to Station 13+87.3;  
thence along the centerline of said strip of land fifty (50) feet in width, twenty (20) feet on the right and thirty (30) feet on the left of centerline,  

South 41° 04' East 83.2 feet,  
thence South 52° 04' East 66.8 feet to Station 15+37.3; thence along the centerline of said strip of land forty (40) feet in width, twenty (20) feet on each side of centerline,  
South 52° 04' East 191.7 feet,  
thence South 40° 42' East 263.5 feet,  
thence South 32° 22' East 91.5 feet to a point on the South boundary of said Southwest one quarter of the Northwest one quarter (SW1/4NW1/4), said point being 2015.0 feet South and 1434.9 feet East of the Northeast corner of said Section 10.

A parcel sixty (60) feet in width, thirty (30) feet on each side of the following described center line:  
Beginning at a point on the North boundary of the Northeast quarter of the Southwest quarter (NW1/4SW1/4) of Section 11, Township 22 South, Range 11 West, Willamette Meridian, said point being South 89° 51' 04" West 148.5 feet from the Northeast corner to the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of said Section 11;  
thence South 32° 22' East 45.6 feet to Station 21+33.2;  
thence South 32° 22' East 83.0 feet;  
thence South 69° 23' East 65.5 feet;  
thence South 80° 41' East 18.8 feet to a point on the East boundary of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of said Section 11, said point being South 0° 06’ 02” East 135.1 feet from the Northeast corner of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of said Section 11.

A parcel forty (40) feet in width, twenty (20) feet on each side of the following described center line:  
Beginning at Station 21+33.2 in the above described parcel;  
thence South 37° 08’ West 376 8 feet to a point on the South boundary of the above described parcel, said pipe being 339.2 feet South and 351.6 feet West of the Northeast corner of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of Section 11, Township 22 South, Range 11 West, Willamette Meridian.

Also beginning at a point on the West boundary of the Northeast one quarter of the Southwest one quarter (NE1/4SW1/4) of Section 11, Township 22 South, Range 11 West, Willamette Meridian, said point being 2149.7 feet South and 1583.5 feet East of the Northeast corner of Section 10, Township 22 South, Range 11 West, Willamette Meridian; thence along the centerline of said strip of land fifty (50) feet in width, thirty (30) feet on the right and twenty (20) feet on the left of centerline,  

South 80° 41’ East 168.3 feet,  
thence South 88° 36’ East 242.6 feet,  
thence South 89° 56’ East 240.2 feet to Station 29+51.6; thence along the centerline of said
strip of land fifty (50) feet in width, twenty (20) feet on the right and thirty (30) feet on the left of centerline,

South 73° 07' East 254.2 feet,
thence South 45° 44' East 80.0 feet to Station 32+85.8; thence along the centerline of said strip of land fifty (50) feet in width, thirty (30) feet on the right and twenty (20) feet on the left of centerline,

South 45° 44' East 139.1 feet,
thence South 36° 26' East 171.8 feet to Station 35+96.7; thence along the centerline of said strip of land fifty five (55) feet in width, thirty five (35) feet on the right and thirty (30) feet on the left of centerline,

South 73° 24' East 301.8 feet,
thence South 73° 03' East 155.5 feet to Station 40+54.0; thence along the centerline of said strip of land sixty five (65) feet in width, thirty five (35) feet on the right and thirty (30) feet on the left of centerline,

South 57° 28' East 184.9 feet,
thence South 83° 18' East 89.1 feet,
thence North 60° 39' East 62.6 feet to Station 43+90.6; thence along the centerline of said strip of land forty (40) feet in width, twenty (20) feet on each side of centerline,

North 60° 39' East 86.2 feet,
thence North 75° 59' East 293.2 feet,
thence South 86° 24' East 319.2 feet,
thence North 85° 03' East 27.3 feet to Station 51+16.5 on the East boundary of the Northwest one quarter of the Southeast one quarter (NW1/4SE1/4) of Section 11, said Township and Range, said Station 51+16.5 being 2385.6 feet North and 1264.2 feet West of the section corner common to Sections 11, 12, 13 and 14, said Township and Range.

Also beginning at Station 35+96.7 on the above described centerline in said Northeast one quarter of the Southwest one quarter (NE1/4SW1/4) of Section 11, said station being 2500.7 feet North and 2706.5 feet West of the section corner common to Sections 11, 12, 13 and 14, Township 22 South, Range 11 West, Willamette Meridian; thence along the centerline of a strip of land forty (40) feet in width, twenty (20) feet on each side of centerline,

South 29° 15' East 81.3 feet,
thence South 15° 38' East 294.9 feet,
thence South 4° 52' East 431.4 feet to a point on the South boundary of said subdivision, said point being 1716.0 feet North and 2550.8 feet West of the section corner common to said Sections 11, 12, 13 and 14.
Section 15:
The South 1/2 of the Northeast 1/4; the East 1/2 of the Southeast quarter of Section 15, Township 22 South, Range 11 West of the Willamette Meridian.

SAVE AND EXCEPT: Beginning at an iron pipe which bears 2925.70 feet North and 1758.50 feet West of the Southeast corner of Section Fifteen (15), Township Twenty-two (22) South, Range Eleven (11) West of the Willamette Meridian, Douglas County, Oregon; thence North 51° 53’ West, 226.01 feet; thence North 16° 46’ West, 86.45 feet; thence North 1° 43’ West, 70.27 feet; thence North 7° 00’ West, 167.87 feet; thence North 18° 29’ East, 137.33 feet; thence North 30° 18’ East, 215.91 feet; thence North 39° 13’ East, 269.27 feet to the North boundary of the Southwest quarter of the Northeast quarter (SW 1/4) of said Section 15; thence East along said North boundary of the SW 1/4 the NE 1/4, 100 feet to the center line of Dean Creek; thence Southwesterly along the center line of Dean Creek to a point which bears North 13° 34’ East, 136.47 feet from the point of beginning; thence South 13° 34’ West, 37 feet to an iron pipe on the left bank of Dean Creek; thence continuing South 13° 34’ West, 99.47 feet to the point of beginning;

The SW 1/4 and the West 1/2 of the SE 1/4.

Section 17:
Lots 5, 6 and 7;

The Southeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter, the North half of the Southwest quarter, the Northwest quarter of the Southeast quarter, the Southeast quarter of the Southwest quarter, the Southwest quarter of the Southeast quarter.

Section 19:
The Northeast quarter of the Northeast quarter (NE1/4NE1/4);

The South half of the Northeast quarter;

The Southeast quarter;

Lots 1, 2, 3 and 4.

Section 20:
Lot 1 and the Northwest quarter of the Northeast quarter;

The Southeast quarter of the Northwest quarter, the East half of the Southwest quarter, and the Southwest quarter of the Southeast quarter;

The Southwest quarter of the Northwest quarter and the West half of the Southwest quarter;

Lots 2, 3 and 4, the Southwest quarter of the Northeast quarter and the Northwest of the Southeast quarter.
Section 22:
All of Section 22, except the NE 1/4 of the NE 1/4.

Section 23:
All of Section 23, except the N 1/2 of the NW 1/4.

Township 22 South, Range 12 West of the Willamette Meridian, Douglas County, Oregon

Section 24:
Lot 2, Lot 3, and Lot 4 and the SW 1/4 of the NE 1/4, the SE 1/4 of the NW 1/4, the E 1/2 of the SW 1/4, and the W 1/2 of the SE 1/4.

Section 25:
Lot 4 and the S 1/2 of the SW 1/4 and the SW 1/4 of the SE 1/4.

Section 26:
The N 1/2 of the SE 1/4 and the SE 1/4 of the SE 1/4.

Section 35:
The NE 1/4 of the NE 1/4.
The SW 1/4 of the NE 1/4.

Beginning at the Northeast corner of Lot 4 of Section 35, Township 22 South, Range 12 West, Willamette Meridian, Douglas County, Oregon, said point being marked by a 1986 Oregon State Board of Forestry brass cap; thence along the east line of said Section 35, South 4° 19' 53" East 80.49 feet to a point marked by a 3/4 inch aluminum rod and cap; thence leaving said East line, South 43° 04' 05" West 256.94 feet to a point on top of a spur ridge, said point being marked by a 3/4 inch aluminum rod and cap; thence Northwesterly along the top of said ridge as follows: North 24° 33' 21" West 368.04 feet to a point marked by a 3/4 inch aluminum rod and cap; thence North 19° 4' 23" West 254.56 feet to a point marked by a 3/4 inch aluminum rod and cap; thence North 16° 32' 39" West 327.93 feet to a point marked by a 3/4 inch aluminum rod and cap; thence leaving said ridge top, North 14° 59' 00" East 274.44 feet to a point marked by a 3/4 inch aluminum rod and cap; thence North 53° 14' 36" East 429.26 feet to the West quarter corner of Section 36, said point being referenced by a 1974 Oregon State Board of Forestry brass cap witness corner; thence along the West line of Section 36, South 4° 19' 53" East 1146.08 feet to the point of beginning, all in Douglas County, Oregon.

Section 36:
All of Section 36.
Township 23 South, Range 10 West of the Willamette Meridian, Douglas County, Oregon

All of Section 3, Section 10, Section 15, Section 22, Section 23, and Section 27.

Section 2:
Lots 1 through 13 and Lots 16 through 21.

Section 11:
Lot 1.
Lot 4, Lot 5, Lot 8, and Lot 9 and the SE 1/4 of the NW 1/4, the E 1/2 of the SW 1/4, and the SE 1/4.

Section 14:
N 1/2 of the NE 1/4 and the NW 1/4.

Section 24:
The Northwest quarter of Section 24, Township 23 South, Range 10 West, W.M.
Excepting therefrom, the South 330 feet of the Southwest quarter of the Northwest quarter of Section 24, Township 23 South, Range 10 West, W.M.

Section 26:
The SW 1/4.

Township 23 South, Range 10 West of the Willamette Meridian, Coos County, Oregon

All of Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, and 30, all in Township 23 South, Range 10 West of the Willamette Meridian, Coos County, Oregon.

Section 31:
Lot 1, Lot 2, Lot 3, Lot 4, and Lot 5 and the NE 1/4, E 1/2 of the NW 1/4, NE 1/4 of the SW 1/4, and the NW 1/4 of the SE 1/4.

That portion of Government Lot 6 of Section 31, Township 23 South, Range 10 West of the Willamette Meridian lying West of the West edge of Elliott State Forest Road No. 1000 (also known as Elk Ridge Road), all in Coos County, Oregon.

Section 32:
The NE 1/4 of the NE 1/4, the W 1/2 of the NE 1/4, the NW 1/4, and the NW 1/4 of the SE 1/4.
Section 33:

The W 1/2 of the NE 1/4, the NW 1/4, and the NW 1/4 of the SW 1/4.

All that portion of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE 1/4) of the Northeast one-quarter (NE1/4) of Section 33, Township 23 South, Range 10 West of the Willamette Meridian, lying West of the center of Cedar Creek, all in Coos County, Oregon.

Township 23 South, Range 11 West of the Willamette Meridian, Coos County, Oregon

All of Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29, 31, 32, 33, 34, 35, and 36.

Section 7:

Lot 2, Lot 3, and Lot 4 and the E 1/2 of the NW 1/4, E 1/2 of the SW 1/4, and the E ½.

Section 18:

Lot 1 and Lot 2 and the NE 1/4, the E 1/2 of the NW 1/4, and the N 1/2 of the SE 1/4.

Section 19:

Lot 2, Lot 3, and Lot 4 and the NE 1/4 of the NE 1/4, the S 1/2 of the NE 1/4, the SE 1/4 of the NW 1/4, the E 1/2 of the SW 1/4, and the SE 1/4.

Section 26:

The E 1/2 of the NE 1/4, the NW 1/4 of the NE 1/4, the W 1/2 of the NW 1/4, the W 1/2 of the SW 1/4, the SE 1/4 of the SW 1/4, and the SE 1/4.

The East half of the Northwest quarter (E1/2NW1/4), the Southwest quarter of the Northeast quarter (SW1/4NE1/4), and the Northeast quarter of the Southwest quarter (NE1/4SW1/4) of Section 26, Township 23 South, Range 11 West, Willamette Meridian;

EXCEPT a portion of said SW 1/4 of the NE 1/4 and said E 1/2 of the NW 1/4 of said Section 26, described as follows:

  Beginning at a point North 38° 30' East 307.8 feet from a pipe and brass cap marked C1/4, S26, OSBF 1968, RS359; thence North 86° 30' West 690 feet to the East Bank of the West Fork of the Millicoma River; thence North 8° 46' West 353 feet along the East bank of said river; thence South 86° 30' East 320 feet; thence South 3° 30' West 75 feet; thence South 86° 30' East 445 feet; thence South 3° 30' West 270 feet to the point of beginning.

Section 30:

Lot 1 and the N 1/2 of the NE 1/4, and the NE 1/4 of the NW 1/4.

Lot 3 and Lot 4 and the E 1/2 of the SW 1/4, and the SE ¼.
Township 23 South, Range 12 West of the Willamette Meridian, Coos County, Oregon

Section 1:
Lot 1, Lot 2, Lot 3, and Lot 4.

Section 11:
A strip of land of varying widths located in the South Half of the Southeast Quarter (S1/2SE1/4), Section 11, Township 23 South, Range 12 West of the Willamette Meridian, which strip of land is more particularly described as follows:

Beginning at a point on the North and South center line of Section 11, Township 23 South, Range 12 West of the Willamette Meridian, said point being 495.1 feet North of the one-quarter corner common to Sections 11 and 14, said Township and Range:

(a) thence along the center line of a sixty (60) foot wide strip of land along the arc of a 92° curve to the right the sub chord of which bears South 88° 12' East 7.9 feet,
  thence South 84° 32' East 50.2 feet,
  thence North 61° 51' East 51.1 feet,
  thence North 20° 32' East 72.2 feet,
  thence North 28° 51' East 44.6 feet,
  thence North 47° 01' East 51.0 feet,
  thence along the arc of a 92° curve to the right the long chord of which bears
    South 85° 14' East 92.2 feet,
  thence South 37° 28' East 8.0 feet,
  thence South 33° 22' East 126.0 feet,
  thence South 52° 00' East 72.2 feet,
  thence South 44° 29' East 82.6 feet,
  thence South 28° 15' East 126.0 feet,
  thence South 34° 49' East 54.9 feet,
  thence South 87° 42' East 74.0 feet,
  thence North 62° 24' East 67.9 feet,
  thence North 74° 07' East 67.6 feet,
  thence North 86° 43' East 52.5 feet,
  thence North 88° 27' East 56.0 feet,
  thence North 75° 47' East 70.4 feet,
  thence North 66° 55' East 148.1 feet,
  thence North 70° 29' East 59.2 feet,
  thence North 76° 27' East 66.6 feet,
  thence North 71° 53' East 53.0 feet,
  thence North 83° 16' East 42.0 feet,
  thence North 77° 15' East 77.5 feet,
  thence along the arc of a 29° curve to the right the long chord of which bears
    North 83° 45' East 44.7 feet,
  thence South 89° 45' East 253.1 feet,
(b) thence continuing along the center line of an eighty (80) foot wide strip of land
  South 89° 45' East 130.4 feet,
  thence along the arc of a 29° curve to the left the long chord of which bears
  North 84° 45' East 37.9 feet,
  thence North 79° 15' East 13.4 feet,
  thence along the arc of a 48° curve to the right the long chord of which bears
  South 71° 15' East 117.6 feet;

(c) thence continuing along the center line of a sixty (60) foot wide strip of land
  South 41° 45' East 92.5 feet,
  thence along the arc of a 72° curve to the left the long chord of which bears
  South 78° 45' East 95.8 feet,
  thence along the arc of a 73° curve to the right the long chord of which bears
  South 88° 45' East 71.3 feet,
  thence South 61° 45' East 400.5 feet,
  thence South 84° 01' East 6.5 feet more or less to a point on the Section line between
  Sections 11 and 12, said point being 337.8 feet North and 4.2 feet East of the Section
  corner common to Sections 11, 12, 13 and 14, Township 23 South, Range 12 West of the
  Willamette Meridian, Coos County, Oregon.

Section 25:

The E 1/2 of the SE 1/4.

Section 27:

The SE 1/4 of the SE 1/4.

Section 34:

The E 1/2 of the NE 1/4 and the E 1/2 of the SE 1/4.

The S 1/2 of the SW 1/4 and the SW 1/4 of the SE 1/4.

Section 35:

The NW 1/4 of the NW 1/4, the S 1/2 of the NW 1/4, and the N 1/2 of the SW 1/4.

Section 36:

The North half of the Northeast quarter (N1/2NE1/4) of Section 36, Township 23 South, Range 12
West of the Willamette Meridian, excepting therefrom the North half of the Southwest quarter of the
Northeast quarter of the Northeast quarter (N1/2SW1/4 NE1/4NE1/4) of said Section 36.

The North half of the Southwest quarter of the Northeast quarter of the Northeast quarter (N1/2SW1/4
NE1/4NE1/4) of Section 36, Township 23 South, Range 12 West of the Willamette Meridian.
The South one half of the Northeast one quarter (S1/2NE1/4) and the North one half of the Southeast one quarter (N1/2SE1/4) of Section 36, Township 23 South, Range 12 West of the Willamette Meridian.

Except that portion described as follows:

Beginning at the Southeast corner of the Southeast one quarter of the Northeast one quarter (SE1/4NE1/4) of Section 36, Township 23 South, Range 12 West of the Willamette Meridian;

thence North 00° 14' 12" East 465.53 feet;

thence South 90° 00' 00" West 1852.52 feet;

thence North 00° 00' 00" West 400.00 feet;

thence South 90° 00' 00" West 870.38 feet;

thence South 00° 10' 42" West 985.78 feet;

thence South 65° 39' 11" East 283.95 feet;

thence South 25° 36' 37" East 463.46 feet;

thence South 45° 02' 23" East 378.04 feet;

thence North 86° 23' 50" East 158.12 feet;

thence North 46° 07' 05" East 219.73 feet;

thence North 40° 25' 11" East 363.41 feet;

thence North 70° 20' 45" East 1033.54 feet;

thence South 69° 36' 36" East 399.90 feet;

thence North 90° 00' 00" West 98.08 feet;

thence North 00° 06' 48" West 275.16 feet to the point of beginning.

**Township 24 South, Range 10 West of the Willamette Meridian, Coos County, Oregon**

**Section 6:**

Lot 1, Lot 2, Lot 3, Lot 4, Lot 8, Lot 9, Lot 10, and Lot 11.

**Township 24 South, Range 11 West of the Willamette Meridian, Coos County, Oregon**

All of Section 1, Section 2, Section 5, Section 6, Section 7, Section 8, and Section 18.

**Section 3:**

Lot 1, Lot 2, Lot 3, and Lot 4 and the S 1/2 of the NE 1/4, the SE 1/4 of the NW 1/4, the E 1/2 of the SW 1/4, and the SE 1/4.

Subject to the rights of fishing, navigation and commerce to the State of Oregon, the Federal Government, and the public in and to that portion thereof lying below the ordinary high water mark of Millicoma River, including any ownership rights which may be claimed by the State of Oregon below the high water mark.

The Southwest quarter of the Northwest quarter (SW1/4NW1/4) of Section 3 in Township 24 South, Range 11 West of the Willamette Meridian.
The W 1/2 of the SW 1/4 of Section 3, Township 24 South, Range 11 West of the Willamette Meridian, Coos County, Oregon.

Excepting from the above description:

That portion in the W 1/2 of the SW 1/4 of Section 3; and the E 1/2 of the SE 1/4 of Section 4, Township 24 South, Range 11 West, of the Willamette Meridian described as follows:

Beginning at the section corner common to Sections 3, 4, 9 and 10, Township 24 South, Range 11 West, Willamette Meridian, thence South 89° 42' 32" East 1340.31 feet along the section line between Sections 3 and 10 to the southeast corner of the W1/2SW1/4 of Section 3, Township 2 South, Range 11 West, Willamette Meridian,

thence North 17° 06' 27" West 122.17 feet;
thence North 17° 14' 06" West 135.10 feet;
thence South 89° 37' 29" West 335.06 feet;
thence North 62° 43' 31" West 79.90 feet.;
thence North 25° 51' 37" West 126.76 feet;
thence North 75° 49' 00" West 71.26 feet;
thence North 46° 19' 19" West 98.05 feet;
thence North 20° 29' 28" West 386.85 feet;
thence North 00° 45'36" West 481.62 feet;
thence North 11° 02' 24" West 367.51 feet;
thence North 27° 42' 21" West 291.17 feet;
thence South 48° 54' 26" West 394.34 feet;
thence South 37° 32' 00" East 219.10 feet;
thence South 27° 07' 03" East 242.02 feet;
thence South 03° 52' 47" East 176.11 feet;
thence South 17° 05' 02" West 370.00 feet;
thence North 82° 03' 04" West 116.93 feet;
thence North 45° 40' 09" West 331.53 feet to a point referred to in the easement
description below as the "road bearing point";
thence North 25° 15' 52" West 169.12 feet;
thence South 68° 09' 41" West 176.41 feet;
thence South 19° 19' 55" West 136.24 feet;
thence South 03° 41' 11" East 176.11 feet;
thence South 10° 53' 08" East 161.15 feet;
thence South 84° 02' 21" East 369.19 feet;
thence South 06° 04' 51" East 512.14 feet to the point of beginning.

Easement Description Provided per Reference in the Above Described Exception

Grantors reserve and retain a perpetual non-exclusive easement and right-of-way for purposes of ingress to and egress from the parcel of land excepted from the foregoing conveyance as set forth above, said easement and right-of-way shall be 60 feet in width, being 30 feet on each side of the centerline of the existing road leading from the end of the county road to the excepted property, said centerline being more particularly described as follows:

Beginning at a point which lies South 37° 42' 47" East 1729.81 feet from the NE corner of Section 9, Township 24 South, Range 11 West of the Willamette Meridian, Coos County,
Oregon. Thence North 18° 14’ 13” West 180.76 feet; thence on a 30 degree curve to the right through a central angle of 26° 05’ 07” for an arc distance of 86.953 feet; thence North 07° 50’ 54” East 170.48 feet; thence on a 16 degree curve to the right through a central angle of 44° 08’ 33” for an arc distance of 275.892 feet, thence North 51° 59’ 27” East 239.86 feet; thence on a 40 degree curve to the right through a central angle of 29° 44’ 46” for an arc distance of 74.367 feet; thence North 81° 44’ 15” East 68.12 feet; thence on a 48 degree curve to the left through a central angle of 38° 41’ 57” for an arc distance of 80.626 feet; thence North 43° 02’ 18” East 225.65 feet; thence on a 14 degree curve to the left through a central angle of 57° 12’ 09” for an arc distance of 408.594 feet; thence North 14° 09’ 51” West 422.51 feet; thence on a 4 degree curve to the right through a central angle of 03° 09’ 39” for an arc distance of 79.021 feet; thence North 11° 00’ 12” West 241.97 feet; thence on a 22 degree curve to the right through a central angle 32° 12’ 10” for an arc distance of 146.379 feet; thence North 21° 11’ 58” East 63.64 feet; thence on a 56 degree curve to the right through a central angle 45° 17’ 20” for an arc distance of 80.87 feet; thence North 66° 29’ 18” East 67.69 feet; thence on a 56 degree curve to the right through a central angle of 85° 24’ 06” for an arc distance of 152.497 feet; thence South 28° 06’ 36” East 193.94 feet to the property line boundary at a point which lies South 45° 40’ 09” East a distance of 99.43 feet from the point on the property line boundary which is designated as the road bearing point in the description of the excepted parcel hereinabove.

Subject to the rights of fishing, navigation and commerce to the State of Oregon, the Federal Government, and the public in and to that portion thereof lying below the ordinary high water mark of Millicoma River,

Section 4:

Lot 1, Lot 2, Lot 3, and Lot 4 and the S 1/2 of the NW 1/4, the SW 1/4, the W 1/2 of the SE 1/4.

The E 1/2 of the SE 1/4 and the S 1/2 of the NE 1/4 of Section 4 in Township 24 South, Range 11 West of the Willamette Meridian, Coos County, Oregon.

Excepting from the above description:

That portion in the W 1/2 of the SW 1/4 of Section 3; and the E 1/2 of the SE 1/4 of Section 4, Township 24 South, Range 11 West, of the Willamette Meridian described as follows:

Beginning at the section corner common to Sections 3, 4, 9 and 10, Township 24 South, Range 11 West, Willamette Meridian, thence South 89° 42’ 32” East 1340.31 feet along the section line between Sections 3 and 10 to the southeast corner of the W1/2SW1/4 of Section 3, Township 2 South, Range 11 West, Willamette Meridian, thence North 17° 06’ 27” West 122.17 feet; thence North 17° 14’ 06 ” West 135.10 feet; thence South 89° 37’ 29” West 335.06 feet; thence North 62° 43’ 31” West 79.90 feet; thence North 25° 51’ 37” West 126.76 feet; thence North 75° 49’ 00” West 71.26 feet; thence North 46° 19’ 19” West 98.05 feet; thence North 20° 29’ 28” West 386.85 feet; thence North 00° 45’36” West 481.62 feet;
thence North 11° 02' 24" West 367.51, feet;
thence North 27° 42' 21" West 291.17 feet;
thence South 48° 54' 26" West 394.34 feet;
thence South 37° 32’ 00” East 219.10 feet;
thence South 27° 07’ 03” East 242.02 feet;
thence South 03° 52’ 47” East 258.68 feet;
thence South 17° 05’ 02” West 370.00 feet;
thence North 82° 03’ 04” West 116.93 feet;
thence North 45° 40’ 09” West 331.53 feet to a point referred to in the easement
description below as the "road bearing point’’;
thence North 25° 15’ 52” West 169.12 feet;
thence South 68° 09’ 41” West 176.41 feet;
thence South 19° 19’ 55” West 136.24 feet;
thence South 03° 41’ 11” East 176.11 feet;
thence South 10° 53’ 08” East 161.15 feet;
thence South 84° 02’ 21” East 369.19 feet;
thence South 06° 04’ 51” East 512.14 feet to the point of beginning.

Grantors reserve and retain a perpetual non-exclusive easement and right-of-way for purposes of
ingress to and egress from the parcel of land excepted from the foregoing conveyance as set forth
above, said easement and right-of-way shall be 60 feet in width, being 30 feet on each side of the
centerline of the existing road leading from the end of the county road to the excepted property, said
centerline being more particularly described as follows:

Beginning at a point which lies South 37° 42’ 47” East 1729.81 feet from the NE corner of
Section 9, Township 24 South, Range 11 West of the Willamette Meridian, Coos County,
Oregon. Thence North 18° 14’ 13” West 180.76 feet; thence on a 30 degree curve to the
right through a central angle of 26° 05’ 07” for an arc distance of 86.953 feet; thence North
07° 50’ 54” East 170.48 feet; thence on a 16 degree curve to the right through a central
angle of 44° 08’ 33” for an arc distance of 275.892 feet, thence North 51° 59’ 27” East
239.86 feet; thence on a 40 degree curve to the right through a central angle of 29° 44' 46" for an arc distance of 74.367 feet; thence North 81° 44’ 15” East 68.12 feet; thence on a 48
degree curve to the left through a central angle of 38° 41’ 57” for an arc distance of
80.626 feet; thence North 43° 02’ 18” East 225.65 feet; thence on a 14 degree curve to the
left through a central angle of 57° 12’ 09” for an arc distance of 408.594 feet; thence North
14° 09’ 51” West 422.51feet; thence on a 4 degree curve to the right through a central angle
of 03° 09’ 39” for an arc distance of 79.021 feet; thence North 11° 00’ 12” West 241.97
feet; thence on a 22 degree curve to the right through a central angle 32° 12’ 10” for an arc
distance of 146. 379 feet; thence North 21° 11’ 58” East 63.64 feet; thence on a 56 degree
curve to the right though a central angle 45° 17’ 20” for an arc distance of 80.87 feet;
thence North 66° 29’ 18” East 67.69 feet; thence on a 56 degree curve to the right through a
central angle of 85° 24’ 06” for an arc distance of 152.497 feet; thence South 28° 06’ 36”
East 193.94 feet to the property line boundary at a point which lies South 45° 40’ 09 ” East a
distance of 99.43 feet from the point on the property line boundary which is designated as
the road bearing point in the description of the excepted parcel hereinabove.

Subject to the rights of fishing, navigation and commerce to the State of Oregon, the Federal
Government, and the public in and to that portion thereof lying below the ordinary high water mark
of Millicoma River, including any ownership rights which may be claimed by the State of Oregon below the high water mark.

Section 9:

The NE 1/4 of the NE 1/4 of Section 9 in Township 24 South, Range 11 West of the Willamette Meridian, Coos County, Oregon.

The NW 1/4 of the NE 1/4, the S 1/2 of the NE 1/4, the NW 1/4, the N 1/2 of the SW 1/4, the SW 1/4 of the SW 1/4, the W 1/2 of the W 1/2 of the SE 1/4 of the SW 1/4, the NW 1/4 of the SE 1/4, the E 1/2 of the SW 1/4 of the SE 1/4, and the E 1/2 of the W 1/2 of the SW 1/4 of the SE 1/4.

Subject to the rights of fishing, navigation and commerce to the State of Oregon, the Federal Government, and the public in and to that portion thereof lying below the ordinary high water mark of Millicoma River, including any ownership rights which may be claimed by the State of Oregon below the high water mark.

Section 10:

The NW 1/4.

The NE 1/4 of the SE 1/4.

The Northeast one quarter (NE ¼) of Section 10, Township 24 South, Range 11 West of the Willamette Meridian.

Subject to the rights of fishing, navigation and commerce to the State of Oregon, the Federal Government, and the public in and to that portion thereof lying below the ordinary high water mark of Millicoma River, including any ownership rights which may be claimed by the State of Oregon below the high water mark.

Section 11:

The N 1/2 and the N 1/2 of the SE 1/4 of Section 11.

The North half of the Southwest quarter (N1/2SW1/4) of Section 11, Township 24 South, Range 11 West, Willamette Meridian.

Section 12:

The N 1/2 of the NE 1/4, the SE 1/4 of the NE 1/4, and the NW 1/4.

The Southwest quarter of the Northeast quarter (SW1/4NE1/4) of Section 12 in Township 24 South, Range 11 West of the Willamette Meridian

Section 15:

The W 1/2 of the SW 1/4.
Section 16:
The E 1/2 of the SW 1/4.

Section 17:
Lot 1, Lot 2, and Lot 3 and the W 1/2 of the NE 1/4, the NW 1/4, the N 1/2 of the SW 1/4, and the NW 1/4 of the SE 1/4.

That portion of U. S. Government Lot 4 of Section 17 lying South and West of the West Fork Millicoma River, in Township 24 South, Range 11 West of the Willamette Meridian.

Section 19:
The North half of the Northeast quarter of Section 19, Township 24 South, Range 11 West of the Willamette Meridian, Coos County, Oregon.

EXCEPT that portion deeded to the State of Oregon as described in Volume 281; Page 284, Deed Records of Coos County, Oregon.

ALSO EXCEPTING the following described parcel:

Beginning at an iron pipe on the West boundary of the Northwest quarter of the Northeast quarter of Section 19, Township 24 South, Range 11 West of the Willamette Meridian, 444.43 feet North of the Southwest corner of the said Northwest quarter of the Northeast quarter; thence South 79° 23' 30" East, 207.50 feet to an iron pipe; thence North 23° 35' East, 222.35 feet to an iron pipe on the Southwest boundary of the West Fork County Road; thence North 55° 12' West, 275.04. feet to the center of Totten Creek; thence South 29° 38' 24" West downstream along the center line of Totten Creek, 140.73 feet to the West boundary of the Northwest quarter of the Northeast quarter of said Section 19; thence South. 0° 43' 33" East along the West boundary of the said Northwest quarter of the Northeast quarter, 200.35 feet to the point of beginning. Being a portion of the Northwest quarter of the North-east quarter of Section 19, Township 24 South, Range' 11 West of the Willamette Meridian, Coos County, Oregon.

ALSO EXCEPTING that part deeded to Coos County by deed recorded May 20, 1976 as No. 76-5-7458.

All that portion of the Northwest one-quarter of the Northwest one-quarter of the Northeast one-quarter (NW1/4NW1/4NE1/4) of Section 19, Township 24 South, Range 11 West, Willamette Meridian, lying West of the West or right bank of Totten Creek and North of the Northerly right-of-way line of the county road, all in Coos County, Oregon.

Section 20:
Lot 2.

Lot 4, Lot 5, and Lot 6.
The NE 1/4 of the SE 1/4.

That portion of U.S. Government Lot 1 and the East half of the Northeast quarter (E1/2NE1/4) of Section 20 lying South of the West Fork Millicoma River, all in Township 24 South, Range 11 West of the Willamette Meridian.

**Section 21:**

The NE 1/4 of the NW 1/4 and the SW 1/4 of the NW 1/4.

The Northwest quarter of the Northwest quarter (NW1/4NW1/4) of Section 21, all in Township 24 South, Range 11 West of the Willamette Meridian.

Government Lot 3 of Section 21 in Township 24 South, Range 11 West of the Willamette Meridian.

**Section 27:**

Northwest quarter of the Northwest quarter of the Southwest quarter, Southwest quarter of the Northwest quarter of the Southwest quarter, and North Half of the Northwest quarter of the Southwest quarter, Section 27, Township 24 South, Range 11, West of the Willamette Meridian, Coos County, Oregon, reserving to Coos County a 60 foot in width right of way though said premises.

**Section 29:**

Lot 3 and Lot 4.

**Section 30:**

That portion of U.S. Government Lot 1 of Section 30, Township 24 South, Range 11 West of the Willamette Meridian, described as follows:

- Beginning at the Northeast corner of U.S. Government Lot 1 of Section 30, Township 24 South, Range 11 West of the Willamette Meridian;
- thence South 00° 19’ 00” West 1368.15 feet to a 5/8 inch iron rod at the Southeast corner of said Lot 1;
- thence South 89° 11’ 30” West 654.84 feet along the South line of said Lot 1 to a 3/4 inch iron pipe set by R.E. Stuntzner;
- thence North to a point on the section line between Sections 19 and 30;
- thence easterly along said section line to the point of beginning, all in U.S. Government Lot 1 of Section 30, Township 24 South, Range 11 West of the Willamette Meridian.

**Section 33:**

The West half of the Northwest quarter Section 33, Township 24, South, Range 11 West of the Willamette Meridian, Coos County Oregon.
Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon

All of Section 11, Section 12, and Section 13.

Section 1:

Lot 5, Lot 6, the SW 1/4 of the NE 1/4, and the SE 1/4 of the NW 1/4.

Government Lots 1, 2, 3, 4 and the West half of the Southwest quarter (Wl/2SW1/4) of Section 1 in Township 24 South, Range 12 West of the Willamette Meridian, excepting therefrom the Southeast quarter (SEl/4) of Government Lot 1 and Northeast quarter (NEl/4) of Government Lot 4 of said Section 1.

The Northeast quarter (NEl/4) of Government Lot 4, the Southeast quarter of the Southwest quarter (SE1/4SW1/4) and Southwest quarter of the Southeast quarter (SW1/4SE1/4) of Section 1, Township 24 South, Range 12 West of the Willamette Meridian.

The Southeast quarter (SEl/4) of Government Lot 1 of Section 1, Township 24 South, Range 12 West of the Willamette Meridian.

Section 2:

Lot 2, Lot 3, Lot 4, Lot 7 and the SE 1/4 of the SW 1/4.

Government Lot 6, Northeast quarter of the Southwest quarter (NE1/4SW1/4) and Southeast quarter (SEl/4) of Section 2 in Township 24 South, Range 12 West of the Willamette Meridian.

Section 3:

The SE 1/4 of the SE 1/4.

Government Lots 1, 2, 3 and North half of the Southeast quarter of the Northwest quarter (NI/2SE1/4NW1/4) of Section 3 in Township 24 South, Range 12 West of the Willamette Meridian.

Government Lot 4, the Southwest quarter of the Northwest quarter (SW1/4NW1/4) and Northwest quarter of the Southwest quarter (NW1/4SW1/4) of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon, excepting therefrom that portion of the Northwest quarter of the Southwest quarter (NW1/4SW1/4) of said Section 3 lying South and West of a line described as follows:

Beginning at the one quarter corner common to Sections 3 and 4, Township 24 South, Range 12 West, Willamette Meridian, Coos County, Oregon, thence easterly along the center line of said Section 3 to the point of intersection with the westerly boundary of the forty (40) foot width of the easement from Albert C. Lane, et ux, to the State of Oregon, dated December 30, 1965 and recorded December 31, 1965 as No. 65-12-4819, Book of Records, Coos County, Oregon, thence southeasterly along said westerly boundary of said easement to the northerly right of way boundary of Haynes Slough County Road No. 16,
thence easterly along said County Road right of way boundary to the point of intersection with the east line of said legal subdivision.

The S 1/2 of the SE 1/4 of the NW 1/4 of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

The E 1/2 of the NE 1/4 of the SW 1/4 of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

That part of the W 1/2 of the NE 1/4 of the SW 1/4 lying North and West of Haynes Slough County Road, in Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

NW 1/4 of SE 1/4; W 1/2 of the NE 1/4 of the SE 1/4 and the SW 1/4 of the NE 1/4 of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

The East half of the Northeast quarter of the Southeast quarter (E 1/2 NE 1/4 SE 1/4) of Section 3, Township 24 South, Range 12 West of the Willamette Meridian.

The W 1/2 of the SE 1/4 of the NE 1/4 of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

The E 1/2 of the SE 1/4 of the NE 1/4 of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

The Southeast quarter of the Southwest quarter; the Southwest quarter of the Southeast quarter, save and except therefrom the Northeast quarter of said Southwest quarter of the Southeast quarter, all in Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

The North half of the Northeast quarter of the Southwest quarter of the Southeast quarter of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

A parcel of land lying Southeast of Haynes Slough County Road located in the NW 1/4 of the SW 1/4 and the W 1/2 of the NE 1/4 of the SW 1/4 of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon, more specifically described as follows:

Beginning at a 1-1/2 inch iron pipe at the SW 1/16th corner of said Section 3; thence South 89°22'35" West 534.51 feet along the South line of the NW 1/4 of the SW 1/4 of said Section 3; thence North 38°32'09" West 39.27 feet to a 5/8 inch iron rod; thence continuing North 38°32'09" West 185.64 feet to a 5/8 inch iron rod on the Easterly right of way of the Haynes Slough County Road; thence Northeasterly along said County Road to its intersection with the East line of the W 1/2 of the NE 1/4 of the SW 1/4 of said Section 3; thence South 6°49'05" East 1000 feet, more or less, along said East line to the CESW 1/64th corner; thence South 89°22'35" West 664.31 feet to the point of beginning.

That portion of the NW 1/4 of the SW 1/4 of Section 3, Township 24 South, Range 1 2 West of the Willamette Meridian, Coos County, Oregon, lying South and West of a line described as follows:

Beginning at the one quarter corner common to Sections 3 and 4, Township 24 South, Range 1 2 West of the Willamette Meridian, Coos County, Oregon; thence Easterly along
the center line of said Section 3 to the point of intersection with the westerly boundary of the 40 foot wide easement to the State of Oregon, recorded December 31, 1965 as bearing Microfilm Reel No. 65-12-4819, Records of Coos County, Oregon; thence Southeasterly along said westerly boundary of said easement to the northerly right of way boundary of Haynes Slough County Road No. 16 and North and West of Haynes Slough County Road No. 16.

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 3, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon, more specifically described as follows:

All that portion of the above described parcel lying West of the Haynes Slough County Road.

Section 4:

The NE 1/4 of the SE 1/4 and the SE 1/4 of the Northeast quarter of Section 4, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

Section 9:

The SE 1/4 of the SE 1/4.

Section 10:

Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, and Lot 7 and the SW 1/4 of the NE 1/4, the N 1/2 of the SW 1/4, and the NW 1/4 of the SE 1/4.

A parcel of land located in the NW 1/4 of the NW 1/4 of Section 10, Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon, more specifically described as follows:

All that portion of the above described parcel lying West of the Haynes Slough County Road.

Section 14:

The NE 1/4, S 1/2 of the NW 1/4, the N 1/2 of the SE 1/4, and the SE 1/4 of the SE 1/4.

The North half of the Northwest quarter (N1/2 NW1/4) of Section 14 in Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

The Southwest quarter (SW1/4) and Southwest quarter of the Southeast quarter (SW1/4SE1/4) of Section 14 in Township 24 South, Range 12 West of the Willamette Meridian, excepting therefrom the North half of the Northeast quarter of the Northeast quarter of the Southwest quarter (N1/2NW1/4NE1/4SE1/4), West half of the Northwest quarter of the Southwest quarter (W1/2NW1/4SW1/4) and South half of the Southeast quarter of the Northwest quarter of the Southwest quarter (S1/2SE1/4NW1/4SW1/4) of said Section 14.

The West half of the Northwest quarter of the Southwest quarter (W1/2NW1/4SW1/4) of Section 14, Township 24 South, Range 12 West, Willamette Meridian, Coos County, Oregon.
The South half of the Southeast quarter of the Northwest quarter of the Southwest quarter (S1/2SE1/4NW1/4SW14) of Section 14, Township 24 South, Range 12 West of the Willamette Meridian.

**Section 15:**

Lot 1 and the NE 1/4 of the NW 1/4.

The S 1/2 of the NE 1/4 and the SE 1/4.

The North half of the Northeast quarter (N1/2 NE1/4) of Section 15; and beginning at the Northwest corner of Lot 2 of Section 15, thence South 208 feet, thence East 208 feet, thence North 208 feet, thence West 208 feet to the place of beginning, being a portion of Lot 2 of Section 15, all in Township 24 South, Range 12 West of the Willamette Meridian, Coos County, Oregon.

That portion of the Southeast one quarter of the Southwest one quarter (SE1/4SW1/4) of Section 15, Township 24 South, Range 12 West of the Willamette Meridian, described as follows:

Beginning at the one quarter corner common to Sections 15 and 22, Township 24 South, Range 12 West of the Willamette Meridian;

thence South 89° 25' 06.0" West 215.88 feet along the South line of said Section 15;

thence North 15° 51' 40.8" East 107.26 feet ;

thence North 6° 58' 46.1" West 73.15 feet;

thence North 28° 19' 10.0" East 185.90 feet;

thence North 17° 30' 47.3" West 274.10 feet;

thence North 9° 53' 47.9" East 139.33 feet;

thence North 5° 28' 30.3" West 94.04 feet;

thence North 9° 53' 47.9" East 139.33 feet;

thence North 5° 28' 46.1" West 94.04 feet;

thence North 8° 06' 20.8" West 62.79 feet;

thence North 48° 55' 22.0" East 261.13 feet to a point on the East line of said legal subdivision;

thence South 0° 00' 51.0" East 1201.43 feet along said East line to the point of beginning.

**Section 16:**

The N 1/2 of the NE 1/4 and the SE 1/4 of the NE 1/4.

**Section 22:**

The NW 1/4 of the NE 1/4.

Including therein, a parcel of state-owned property lying in the Northwest quarter of the Northeast quarter of Section 22, Township 24 South, Range 12 West, Willamette Meridian, Coos County, Oregon, located within the following described parcel:

Beginning at an iron pipe located South 47°26'50" East a distance of 1471.65 feet from the iron pipe at the North quarter corner of Section 22, Township 24 South, Range 12 West, Willamette Meridian, Coos County, Oregon;

thence South 37°20'30" West a distance of 175.00 feet to an iron pipe;
thence South 52°39'30" East a distance of 175.00 feet to an iron pipe;
thence North 37°20'30" East a distance of 175.00 feet to an iron pipe;
thence North 52°39'30" West a distance of 175.00 feet to the TRUE POINT OF
BEGINNING.

Section 23:

The NE 1/4 of the NE 1/4.

The SE 1/4 of the SW 1/4, the NE 1/4 of the SE 1/4, and the S 1/2 of the SE 1/4.

The Northwest quarter of the Northeast quarter of the Northwest quarter (NW1/4NE1/4NW1/4) of
Section 23, Township 24 South, Range 12 West, Willamette Meridian.

The West half of the Northeast quarter (W1/2NE1/4), Southeast quarter of the Northeast quarter
(SE1/4NE1/4), East half of the Northwest quarter (E1/2NW1/4), Northeast quarter of the Southwest
quarter NE1/4SW1/4) and Northwest quarter of the Southeast quarter (NW1/4/4SE1/4) of Section 23 in
Township 24 South, Range 12 West of the Willamette Meridian, excepting therefrom the Southeast
quarter of the Southeast quarter of the Northeast quarter (SE1/4SE1/4NE1/4), Northwest quarter of
the Northeast quarter of the Northwest quarter (NW1/4NE1/4NW1/4) and Northeast quarter of the
Northwest quarter of the Southeast quarter (NE1/4NW1/4SE1/4) of said Section 23.

The Northeast quarter of the Northwest quarter of the Southeast quarter (NE1/4NW1/4SE1/4) of
Section 23 Township 24 South, Range 12 West, Willamette Meridian.

Section 24:

Lot 1 and Lot 2 and the NE 1/4 of the NE 1/4, the W 1/2 of the NE 1/4, the S 1/2 of the NW 1/4, the
SW 1/4, the W 1/2 of the SE ¼, and the SE 1/4 of the SE ¼.

The Southeast quarter of the Northeast quarter of Section 24, Township 24 South, Range 12 West, of
the Willamette Meridian, except the South 200 feet thereof and except the East 532.9 feet of the
North 1120 feet thereof, County of Coos and State of Oregon.

Section 25:

Lot 2 and the NE 1/4, SW 1/4 of the NW 1/4, and the W 1/2 of the SW 1/4.

Excepting therefrom, all that portion of the south half of the Southwest quarter of the Northwest
quarter lying South of the center of the Kentuck Creek and the West half of the Southwest quarter
and the South half of the Northeast quarter of Section 25, Township 24 South, Range 12 West, W.M.

Government Lot 1 and the Southeast quarter of the Northwest quarter (SE1/4NW1/4) of Section 25,
all in Township 24 South, Range 12 West of the Willamette Meridian.
Comment Summary: Oregon Consensus report on the Elliott State Forest

The Oregon Department of State Lands (Department) engaged Oregon Consensus, a program of the National Policy Consensus Center at Portland State University, as a neutral party to assist with outreach and overall work toward decoupling the Elliott State Forest from the Common School Fund.

In October 2018, Oregon Consensus completed stakeholder interviews regarding decoupling the Elliott State Forest from the Common School Fund and submitted their final report to the Department. The report summarized what was heard in the interviews and discussed key themes, issues, and considerations for successful decoupling.

The Department invited the public to read the final report and provide feedback on report findings.

Feedback was accepted from October 9 to November 15, 2018. The Department received comments representing feedback from more than 50 individuals and organizations.

As the Oregon Consensus Report indicated, perspectives regarding the future of the Elliott State Forest vary widely. Comments received illustrated this range of perspective. Though specific comments often offered highly detailed and nuanced feedback, general themes within the comments include:

Decoupling the Forest from the Common School Fund. Comments reflected a variety of perspectives related to decoupling, compensating the school fund for the value of the Elliott, and ongoing contributions of the forest to education. Themes within the comments included:

- The school fund needs to be fully compensated for the forest. Multiple commenters noted concerns with the current appraisal undervaluing the forest, and with previous approaches or litigation devaluing the forest. Some commenters indicated that funding schools should be the primary driver for any solution.
- Potential for forest to continue to contribute to Oregon schools. Perspectives ranged from not supporting decoupling at all, to interest in developing some kind of ongoing monetary contribution to the school fund, to finding non-monetary ways the forest can benefit education.
- Support for decoupling. Most comments supported decoupling. Several indicated partial decoupling as desirable. Commenters that did not support decoupling indicated multiple reasons, including a process that does not adequately consider the non-monetary values of the forest, loss of potential ongoing revenue, a false sense of urgency for decoupling, and an undervalued appraisal.

Use of $100 million. Commenters indicated additional information, discussion, and ultimately resolution of how the $100 million in bond proceeds will be used is needed. Specific feedback mentioned use of the $100 million:

- To preserve non-economic benefits.
- To preserve assets not protected by the Habitat Conservation Plan or Endangered Species Act.
- To preserve critical habitats.
- To protect specific forest parcels.
• Needs to be prioritized to decouple land unavailable for logging under a Habitat Conservation Plan or Incidental Take Permit, and then applied to specific parcels.

The Forest’s Revenue Potential. Commenters offered specific ideas for revenue generation, related both to purchase of the forest as well as ongoing revenue generation. Included were a harvest tax on timber revenue, carbon credit sales, and timber harvest. Several commenters did not support any solution that required debt to be serviced from commercial logging, or noted that the level of logging they would support would not generate significant revenue.

Comments regarding timber harvest varied widely. Perspectives ranged from, no logging should be allowed, to commercial log sale only as a byproduct of thinning, to supporting harvest within specific parameters.

Potential Public Owners. Comments support continued public ownership, with many offering support or concern regarding specific public owners. Generally:

• Some commenters indicated that ongoing transparency, public accountability and involvement, and oversight by elected officials would not be possible with some public owners.
• Some commenters indicated concern with ownership that emphasized financial returns, experimental research, or that included ties to timber companies.
• Some commenters indicated an ownership/management partnership by multiple public entities as a possible solution, with different roles/oversight of different areas of the forest.

Need for additional information. Comments indicated the ongoing decoupling process should be informed by further examination of specific issues and topics, including:

• The forest’s carbon potential and carbon market value.
• The forest’s role in mitigating climate change.
• The non-monetary values of the forest, particularly to education institutions and communities and other benefits to future generations.
• Context regarding related education funding issues.

Use of data, facts, and science to support decision-making was mentioned multiple times, specifically on issues of climate change, carbon, recreational use, and timber production and employment.

Several commenters also noted the need for outstanding litigation to be settled in order for a permanent solution to be reached.

Development of Habitat Conservation Plan. Multiple comments indicated that a Habitat Conservation Plan needs to be developed prior to complete decoupling. Reasons varied, but included:

• HCP has impacts on multiple remaining decoupling issues.
• An incomplete HCP process opens any decoupling solution to litigation.
• A future public owner should play a role in development of a Habitat Conservation Plan.
Forest Management Approach. Many commenters offered specific ideas on future management of the forest, and indicated a desire to have further information and input regarding a potential public owner’s management approach. Themes within the comments included:

- The forest could be a model for emerging or alternative management approaches.
- Management could allow for multiple uses of the forest, including recreation, habitat, conservation, preservation of old growth, and harvest (though perspectives on harvest vary. See discussion in Revenue Potential).
- State agencies may have an ongoing role to play, either in an advisory capacity or economic development capacity.
- Climate change, carbon must be considered in management.
- Solutions must consider the realities around how the forest can be managed.
- Concern regarding private or for-profit business involvement.

Additional stakeholder and public engagement. Many respondents indicated a desire for increased engagement, specifically:

- Inclusion of additional perspectives. Specifically mentioned were tribes, environmental groups, scientists, labor, communities of color, state agencies such as health, labor & industry, and tourism, the global warming commission, carbon scientists and economists, recreation groups, and education groups.
- Ongoing opportunities to provide information regarding remaining issues and comment at decision points.

The approach taken to public engagement was also noted as important. Respondents mentioned:

- A transparent process.
- A process that allows the public a voice in any final decision.
- Use of engagement strategies that allow all voices an opportunity to be heard.
- Desire for the engagement process to include decoupling as well as Habitat Conservation Plan development. Creation of a multi-agency technical team to advise the Habitat Conservation Plan development process was mentioned.
- If an advisory committee is formed, the voice of the committee must be heard by the Land Board. The unlikelihood of advisory committee agreement on some issues was also mentioned.
- The process should reflect that the Land Board is the ultimate decisionmaker.

Finally, many respondents shared their vision for the future of the Elliott State Forest. These desired outcomes again emphasized that the forest is a special place to Oregonians for many reasons and that the ultimate solution should be carefully crafted to resonate with many. Desired outcomes mentioned included:

- An Elliott State Forest that is beautiful, wild, and preserved in its natural state.
• An Elliott State Forest that supports study and cultivation of natural forest practices, modern forest management, forest carbon, sustainable and environmentally appropriate timber harvest practices, endangered species management, and other topics.
• An Elliott State Forest that is managed to provide multiple benefits to people, species, and environments.
• An Elliott State Forest where habitat is provided and protected.
• An Elliott State Forest where recreational and educational opportunities abound.
• An Elliott State Forest that sets the standard for how to manage and maintain public forest land.
• An Elliott State Forest that is preserved for the wide-ranging legacies it provides to our children and our planet.
• An Elliott State Forest that benefits all Oregonians.
## Complete Comments Received

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| 1 | **Robert “Bob” Main**  
   Organization/Affiliation: Chair, Coos County Board of Commissioners  
   Having the majority of the Elliott in Coos County I find it unacceptable to not interview myself. (board chair) and Coos County Commissioner Melissa Cribbins! Also, only one of the three county commissioners from Douglas County was interviewed. |
| 2 | **Kevin Strong**  
   I am hopeful that the State Land Board will fulfill its fiduciary duty to manage the Elliott State Forest to maximize revenue for Oregon’s schools.  
   The Elliott State Forest, when managed well, can provide jobs, products, renewable energy, recreation, environmental benefits and revenue for Oregon schools for many generations to come.  
   Please make Oregon schools a priority. Thank you! |
| 3 | **Ramona Garrison**  
   The Elliott State Forest should continue to contribute to the Common School Fund. Coos and Douglas Counties have provided more timber land to our state and nation than any other region nationwide. Promises were made that need to be kept regarding school funding. These regions (Douglas & Coos) have gone from prosperous regions in Oregon to now generational poverty that will continue without strong schools. The Elliott State Forest should not become yet another unkept promise. |
| 4 | **John Rexford**  
   The Common School Fund must receive full appraised value in return for transfer of the Elliott Forest away from supporting schools. The current proposal cheats school children by under compensating the Common School Fund. |
| 5 | **Scott Mills**  
   Organization/Affiliation: OSBA, Columbia Conservation Association, IUPAT, VFW,  
   Do not allow the forest to be sold off ever |
| 6 | **Barb Shamet**  
   Organization or affiliation: West Fork Millicoma coalition  
   As per DSL request, my comment regarding the next steps in the Elliot forest school fund decoupling project is as follows: please do it. Also, regarding the 100 million Kate Brown secured from Oregon’s 2017 legislature earmarked specifically for and ONLY for the preservation of critical habitat which includes native stands 80 years and older. This is the critical aspect of the entire |
project, proposal and controversy. Revenues can be generated from the plantations already in operation. Approximately 50% of the Elliot is a natural native forest and must be left intact securing the survival of the salmon species, the carbon sequestration balancing our present climate crisis as well as the preservation of threatened and endangered species, and the prevention of major catastrophic flooding. It is imperative to conserve what remains in the Elliot’s native stands. With the $100 million intended for just this purpose, we shall accept no other option except to preserve what is left that has been untouched. To enter any other agreement is a breech of the 60 year contract agreed upon by the Dept of Forestry and State Land Division. Recent climate crisis litigation assures us of a rule in favor of conservation as opposed to extraction for profit. Whom ever assumes the responsibility of the Elliott must be made aware of these non negotiable terms, thank you. It’s a matter of simple preservation, Barb Shamet

Additional comment:
Since the US forest service is interested in rejoining the Siuslaw National forest with the Elliott State forest, as it originally once was, and its primary focus is CONSERVATION, the state would not even have to use the $100 mill to secure the old trees, the critical habitat for which it was intended. A lot of well informed, educated people I have talked to think this is the way to go. A second option would be to split the forest in half, preserving and protecting the old growth in carbon credit storage and critical habitat protection for the salmon species which is all standing fir 80 years and older. Scientific research proves these old trees sequester more carbon than any new plantation growth. This half could be placed in state park status, national park status, monument status, whatever is the most viable means of protecting and preserving these old trees. The plantations which make up roughly the other 50% can be managed for revenues as it has been, and people suggest thinning this half. I don’t trust OSU or the tribes only because their bottom line is money or experimental research. But if the half we are trying to save is PROTECTED for all time in an effort to stop massive fires, sequester carbon, and save species facing extinction, then it does not matter who manages the plantations, but we hope it will be without massive clear cuts and poisonous chemical sprays. We have worked long and hard to find solutions, I call DeFazio, Wyden and Merkely and could work on them helping secure the USFS in the federal capacity if you choose. What ever you think is best, but know that if we don't save that half of the Elliott which has never been logged, but is a native biodiverse ecologically sensitive and supremely unique forest on the planet, well, there will be a lot of tree sitting in the woods, in peace always, I pray we find the right solution for everyone, thank you so very much for all your time, your work and your efforts regarding this irreplaceable piece of Oregon, on a global spectrum. sincerely, Barb Shamet, Allegany, 541-269-2147. Ps, there are really no salmon yet this year running by my house, I saw maybe four sore backs coming up to spawn, we have no rain, we have to have a forest to have a rain forest. I hope you understand.

7 Alan Bartl

I would like to see the Elliot forest preserved for future generations and not used as logging revenue.

8 Ron Wallace
Organization or affiliation: Many Rivers Group of the Sierra Club , Executive Committee Member

I support the decoupling of the Elliott State Forest from the Common School Fund.
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<td>I believe that this forest will become an asset in Oregon's Carbon Sequestering portfolio as well as a respite for salmon and other threatened wildlife. I would also encourage OSU's involvement as a research forest, but stipulating that any harvest be limited to thinning with no clear cutting at all. Thank you for your work thus far on this project. Ron Wallace</td>
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<tr>
<td>9 Barbara Taylor</td>
<td>Ms.</td>
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<td>A partnership between OSU, SSNERR, and one or more of the five western Oregon tribes may be the best option for successful public ownership and management of the Elliott. I oppose county ownership, and I feel that ODF already had their turn.</td>
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<td>10 Patricia Phillips</td>
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<td>The Elliott Forest lands, being pretty contiguous, are very important ecologically for salmon, as well as some other important species. Earlier generations' timber harvest levels in the area were unsustainable. Hopefully the future timber harvests can be put under a 100+ year cycle and rather than clear cuts, have selective harvests. The tribal history of the area is well known, it is just that tribal descendants are split between multiple confederations today. Much of the Elliott is part of Hanis (Coos) territory, with the northern bit Quuiich (Lower Umpqua). Most Hanis Coos and Lower Umqqua descendants are part of the Conf. Tribes CLUS but some are in Conf. Tribes Siletz.</td>
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<td>11 Alan Baas</td>
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<td>Frankly, I feel the issues around the Elliott Forest continue to be way more murky than need be. PLEASE protect that forest into perpetuity for its legacy value. I am disgusted, and am a retired educator and so that disgust is deep, by our state school board assn pushing to sell forests today to give a pittance of relative cash to kids today at the expense of tomorrow's kids. FAR Better I wld have that OSBA perhaps get its act together and encourage its membership to speak directly to the issue of what kind of planet are we leaving those kids we keep claiming us educators are here to serve and protect! Whatever your latest intents are, pls just keep the darn forest as it is and get on with developing a realistic, deep-systems-oriented conversation around how are we in our aging generation really looking to our children's future----way beyond all the political misinformations. Pls excuse the crankiness--I am aging and getting more weary and disenchanted with govt these days......ab</td>
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<td>12 Patt Komar</td>
<td>David Douglas School District</td>
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<tr>
<td>This seems like quite a defeat for education. If I am reading correctly, your bonding is $120M less</td>
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than the appraised value? Someone is getting a deal at the expense of education. When we are discussing the continual need for funding for education and the inability to meet sustainability in times when revenues are good, how can we even consider something like this? Who actually is benefiting from this deal? It surely doesn’t seem like schools will.

13  **David Petrie**  
Organization or affiliation: Indigenous person - Coos

I am adamantly opposed to decoupling the Elliot State Forest from the Common School Fund. Observing the dominant cultures lack of understanding, as an indigenous person of Coos heritage, it's evident the current Governor, and other State Land Board officials, lack understanding of the unintended, or intended, consequences of this effort. The OR State Forestry Departments outdated management policies are what's driven special interest groups to lockup this land base, for no benefit to students educational needs. Institutions conducting future research projects within this land base will only benefit a few academics while producing data that isn't already available...threatened species will continue to be threatened...nothing has changed for the past 40-years to ensure specie survival...humans included.

Until the dominant culture recognizes a holistic approach to timber management and harvest practices is implemented all species are at risk. Keep in mind the dominant culture arrived in our traditional territory September 1853, and since that arrival the environment is 90 + % compromised. Isn't it time to consider both Traditional Indigenous Knowledge and contemporary science when managing our landscapes. Taking this forestland out of production isn't a benefit to any specie...but adjusting stewardship practices will ensure future generations some hope of survival...instead of this continued nonsensical exercise of people educated beyond their intelligence thinking they can solve problems.

14  **Pamela Driscoll**

I have been following the research and latest science on the carbon our forests in western Oregon sequester and hold and climate change across the globe for over 20 years. The Elliott State Forest is one of the MOST important forests in the world as it is much less likely to experience forest fires as we encounter hotter and dryer conditions due to climate change/global warming. As habitats become more and more stressed, the Elliott State Forest may hold some of the last and best habitats for many endangered and soon to be endangered species. Water filtration and holding water is also extremely important. I am hoping the logging industry takes a back seat on any final decisions on how we care for the Elliott. I say "care for" because this is a state/national/global treasure that should be protected. About 47% of the carbon stored in the forest is in the soil. So ANY disturbance/type of logging will release vast amounts of carbon. Please consider what the Elliott State Forest is doing for wildlife habitat, water filtration, carbon sequestration, hunters, fishers, etc. and keep the forest intact and restore it for all the important ecosystem services it provides as other forests will inevitable burn, be logged and will not grow back due to increases in drought and higher temperatures.

15  **Elizabeth A Lockwood**
Organization or affiliation: Cascadia Wildlands; OSU alumnus

As a former student at Oregon State, I can think of no better caretaker of the Elliott Forest than
Oregon State University. With their extensive programs in forestry, fish and wildlife, and natural resources, they would be much more acquainted with preserving forest health. In addition, OSU is not run by the political forces that seek to pit people against each other. Please strongly allowing OSU to acquire this beautiful and wild part of the Oregon landscape.

16 **Helgaleena Healingline**  
Organization or affiliation: White Rabbit Grove RDNA

Among the options being considered is a possible acquisition of the Elliott State Forest by Oregon State University. Cascadia Wildlands will be meeting with OSU officials in December to gain a better understanding of what an ownership under the school means for this treasured forest.

Please take heed of what Cascadia Wildlands proposes.

17 **William O’Brien**  
Organization or affiliation: Mazamas

The consensus of the voters in Oregon wanted to keep the Elliot State Forest in public hands not with logging interests. The Elliot State Forest should be managed in a sustainable best practices method allowing for recreational use and a refuge for old growth forest, wildlife, some on the endangered species list, and clean water for salmon and trout. The Elliot SF could become a model for how we manage the other state forests in Oregon.

18 **Benton Elliott**

I support conserving the Elliott State Forest in its natural state for future generations. It should be preserved and enjoyed by all Oregonians, not managed as a money tree for schools, government, and industry.

19 **Jen Velinty**

Thank you for taking comments on the decisions for the ELLIOTT Forest in Oregon.

Essential steps.

1. Keep the Elliott Forest intact. Minimal logging to preserve the natural habitat. Ownership of the Elliott Forest must be public with no areas owned outright by adjacent counties.

   No government agencies such as Fish and Wildlife or BLM should be involved.

   De-couple the tie between OR Schools and clear cut timber harvesting.

   Forests are perfect educational sites to teach children about preserving carbon sinks, clean air and water. Youth involvement of observing bird life and animals native to the area.

2. Make the buy down bonds available to the general public.
3. Include the Tribes for their historical views of preservation of what the earth provides. Tribal oversight could be considered.

4. Save the Marbled Murrelet from extinction. No fish hatchery activity permitted. No hunting permitted for safety of the general public and youth education. No businesses or concessions permitted.

5. Decommission as many roads as possible in the Elliott Forest. No motorized recreational vehicles permitted. Thank you for your efforts to preserve the Elliot Forest for public education.

---

20 Elizabeth Watts

It's horrible and undignified to pit school funding and the environment against each other.

21 Joseph Metzler
Organization or affiliation: OOHA, Cape Arago Audubon, Backcountry Hunters and Anglers, Trout Unlimited

The Elliott State Forest and public lands like it should be first and foremost kept in public ownership. Conflicts about how to utilize our public lands should never compromise the priority of maintaining ownership of our public lands. Please do your best to find a solution that maintains Public ownership and access to all our beloved State Forests and Parks. User groups and extraction industries will change and come and go over time. But the Land shall remain in Public Hands, preserved and managed for future generations of Oregonians and all visitors.

I believe the the Elliott State Forest could be used as a research forest for OSU to find best logging practices and endangered species management. With ODFW, ODF, helping to find best management practices using peer reviewed science. Wood products generated in the Elliott and other State Forest should be promoted and certified as Wildlife and Fish friendly and sustainability harvested. Then sold at a premium as Organic and Sustainable.

Recreational trails and Public use should be promoted. Sustainable logging should also be promoted. All watersheds should be protected and managed for native fish.

Thank you all for doing your best to find a solution to keeping Our Elliott State forest intact for all future generations. I am willing to help promote and establish trails and public use of the Elliott, and help in any way to keep Public Lands in Public Hands.

22 Kian Daniel

Oregon’s 82,500-acre Elliott State Forest was and always should be LEFT ALONE and not touched by businesses for profit (i.e. the effort by timber companies to make it private). This land is and always should be left as is - a wild and beautiful area not touched by human greed. Please keep this land as wild and beautiful as it is. If we lose this beautiful piece of wild, we will never be able to get it back.

Thank you,
Kian Daniel
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<th>Commenter</th>
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<tr>
<td><strong>Michael Friedmann</strong></td>
<td>Please do what is good, and kind, for the trees, animals, and environment. Thank You</td>
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<tr>
<td><strong>Philip Ratcliff</strong></td>
<td>The Oregon Consensus Report outlined a number of possible paths forward to sever the Elliott's archaic tie to schoolchildren in Oregon. Once resolved, Oregonians will no longer have to pit school children against our environment. Among the options being considered is a possible acquisition of the Elliot State Forest by Oregon State University. That would be a positive solution. I'm hopeful that the forest will remain intact, won't be privatized, and serves as a good example for the maintenance of Oregon's public land.</td>
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<td><strong>RF</strong></td>
<td>Dear DSL, State Land Board Oct. 18 2018 meeting was not held? Did the Oct. 18 SLB meeting get rescheduled? We can possibly not comment to Oregon Consensus Report for Elliott State Forest Common School Fund Decoupling if we do not see resulting minutes from the cancelled Oct. 18, 2018 SLB meeting. Or, can you send a copy of minutes from OCT 18 SLB or from the date this meeting was rescheduled to. Arin is out until Nov 13, and Anne is not responding. Thanks, Rana.</td>
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| **Gary L. Johnson** | Organization or affiliation: retired forester/independent  
The Elliott State Forest has been undervalued by the appraisal of $220 million. It is worth at least $425 million. The value of standing timber and growth potential make it one of the most valuable chunks of land in the State. If sold, the Common School fund should get what it is worth, not a token amount. The only public entity in Oregon capable of managing the Elliott forest is the Oregon State Department of Forestry. No other State agency has the capacity to handle the job. I began my career as a forester on the Elliott State Forest, so I do have some knowledge to back up my statements. |
| **Marguery Lee Zucker** | The Elliot is a gem, a pleasure, a peaceful place, and rare for its degree of intactness. It is not acceptable to damage, reduce, or compromise its pristine nature in any way: It is a public treasure and must remain so at any cost. De-coupling it from any obligation to produce revenue for the State is vital. |
| **Sue Craig** | Organization or affiliation: Sierra Club, 350.org, InterFaith Earthkeepers Eugene/Springfield  
To the Oregon State Lands Board,  
Thank you for beginning the process of saving Elliot Forest for future generations. This was a very positive step forward for which I am grateful, along with my grandchildren! |
I just finished reading the Oregon consensus report: Next Steps. I am rather taken aback by its rather shallow review and process to determine “Next Steps”.

There were many errors, not the least was concerning the vital idea that Elliot is indeed a huge carbon sequestering operation, without anyone having to do anything! This was not really even given a cursory thought. One of the statements in the report was on page 14, alluding to old trees not being able to sequester carbon at the level that younger growth does. This is not correct. Aged trees sequester much better then younger ones. So of course we need as many mature trees as we can get!

The second point that I wish to make is very simple.

I lived in Colorado for 26 years. I hiked with my young family mostly around the area of Estes Park. We also drove to many isolated areas in Colorado. The observation that I wish to share is this: Colorado is extremely dry. It has been dry for eons, tho now is experiencing a bit more moisture. When the trees burn, or are cut in Colorado, they take literally 100s of years to grow back. We would see forests that had been burned 70 or 80 years past, that were just burned over, dead debris. The trees had not even begun to grow back.

So please consider this. I live near Eugene. We have had so little rain, and none in sight. It will not take long for our trees (which are already stressed) to be blown over in a wind storm since the roots are very dry and very shallow. Once they are gone, it will be very hard to restore them. It take a lot of water, and since I am on a well, I do worry. Though my well is 90 feet, it produces only 9 gallons a minute;

One of my neighbors encouraged me to take with me, hiking, emergency supplies, just in case. In those supplies, he told me to take a candle and matches, because he explained “it takes a lot to start a campfire in Oregon, because everything is wet and damp”.

What I am feeling, is that it is no longer wet and damp. And when you clear-cut a forest, and scrape it clean, and spray it, I will bet that new seedlings will be hard pressed to grow at all!

Please take some time to consider how much we could benefit from using the Elliot old growth as a great carbon sink that we could have California, or even Oregon use as carbon credits with the money going to buy out the rest of the forest.

Thank you Sue Craig

29 James Nielsen
Organization or affiliation: I am a member of the Coos Chapter - Society of American Foresters
After reading the consensus report I have the following comments:

! The background & context section should include a discussion of the critical need for funds that our public school systems have. I have read that Oregon schools as a group do not rate very high nationally. One of the reasons for this is that PERS is taking a large amount of funds that would otherwise go to improving education for our children. This need for funds must be a driver for any
decision made regarding the Elliott State Forest

2) I believe that a major reason the Land Board made a decision to decouple the Elliott from its obligation to provide funds to the school fund was to reduce "pressure" on the environmental preservationists (EP) from their efforts to reduce or stop timber harvest on the Elliott State Forest. This should be stated as background for this consensus report.

3) The value of the Elliott to the School Fund should be based on the average income from timber sales up until the latest shutdown due to lawsuits by the EP. I like others believe the 2016 assessed value is low.

4) I must have missed it, somewhere, but what is the CTCLUSI tribe??

30 Haley Lutz
Organization or affiliation: Coos Watershed Association

November 13, 2018 Department of State Lands
775 Summer St. NE, Ste. 100
Salem, OR 97301


To our partners at the Oregon Department of State Lands,

The Coos Watershed Association (CoosWA) is a nonprofit organization established by diverse stakeholders in 1993 to help landowners and communities work together to improve watershed health—always with the goal to support environmental integrity and economic stability.

The Common School Fund (CSF) lands within the Elliott State Forest are ecologically critical to the health of the Coos Watershed and the species that depend on its function. The Coos basin contains 48% of the Elliott State Forest (44% CSF lands) and 95 miles of fish-bearing streams running through the Forest, making it the highest density basin of fish streams within the Elliott.

Our Association began implementing restoration projects on land within the Elliott State Forest in the mid-1990’s. Since then, in collaboration with our partners, we have invested more than $3 million of on-the-ground restoration projects to improve watershed conditions within the Elliott. Additionally, the CoosWA professional staff have conducted extensive aquatic inventory and road surveys throughout the entire Elliott State Forest, as well as continuously monitored water quality and quantity of the West Fork Milllicoma River, the main drainage basin within the Elliott.

The CoosWA has also worked with a wide variety of partners including Oregon Department of Forestry, Oregon Department of Fish & Wildlife, Weyerhaeuser Timber Company, Oregon Department of State Lands, and Oregon State University to identify and prioritize approximately $10 million worth of potential restoration work to be completed in the future. Our Association is committed to continuing this critical work in the Elliott State Forest and looks forward to partnering with any new landowner.

Thank you for the opportunity to comment.
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<th>Name</th>
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<tr>
<td>Haley Lutz</td>
<td>Executive Director</td>
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<td>Howard Saxion</td>
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<td>November 14, 2018</td>
<td>Governor Kate Brown</td>
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<td>Secretary of State Dennis Richardson</td>
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<td>State Treasurer Tobias Read</td>
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<td>State Capitol Building Salem, OR 97310</td>
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Honorable members of the State Land Board:

I have reviewed the report from Oregon Consensus (OC) entitled “Elliott State Forest: Next Step Considerations for Decoupling from Oregon's Common School Fund,” (OC Report) dated October 2018 and presented to the State Land Board (SLB). I appreciate the opportunity to provide comments on the next steps in fully decoupling the Elliott State Forest (ESF) from the Common School Fund (CSF).

Application of Decoupling: The term and concept of “decoupling” should apply to the entire Elliott State Forest under the ownership of the CSF.

Public Ownership: Public ownership should be limited to a state or federal agency. In this context, ownership by a federally recognized tribe directly or in trust by the U.S. Bureau of Indian Affairs or county government is not public ownership. Otherwise, such ownership would lack public transparency, oversight, and accountability.

Habitat Conservation Plan: The SLB should consider the HCP/ITP process as a precursor to complete decoupling. After completion of the HCP, it will be known which CSF lands on the ESF are still jeopardized by the constitutional requirements of the CSF.

Revenue: The OC report makes several statements regarding revenue as factual without citing references or attribution. Of particular concern is the discussion on “carbon” which minimizes this potential ESF revenue stream. There is recent research indicating that large, old growth forests capture more carbon that younger forests. Obviously, forest dynamics are complex. The OC report should be revised to delete such perfunctory statements or least provide citations to support similar statements. Carbon offset markets are relatively new and verification process are evolving. However, the OC report should not minimize the possibility of using the ESF as a potential carbon offset revenue source. Carbon offsets in Oregon will increase in importance as the Legislature and local governments enact greenhouse gas reduction requirements.

Threatened and Endangered Species: In addition to the ESA-listed northern spotted owl, marbled murrelet and coho salmon, there are other species that inhabit the ESF that may eventually come under ESA protection. One is the red tree vole, which relies extensively on older forests. The ESF is also in the historical range of the fisher, an imperiled mammal.

Remaining Funding to Decouple ESF: I support the comments submitted my Mr. Andy Kerr, et. al.,
I urge the SLB to not accept a funding mechanism that requires debt to be serviced from commercial logging on the forestlands that remain unaffected by the final HCP/ITP. The volume of commercial logs from such management would not be enough to materially contribute to the debt service of the remaining $121 million.

Thank you for consideration of these comments.

Sincerely,
Howard Saxion, Ph.D.

32 Peggy Lynch
Organization or affiliation: League of Women Voters of Oregon

Response to Oregon Consensus on Elliott State Forest Report
November 14, 2018
Amy, Peter and Brett:

Thank you for a comprehensive report on the challenges and decision points for the State Land Board (SLB). The report seems to clearly share multiple interests and possible steps forward. My comments will draw on past official League testimony. In 2015, our letter said: The best transition scenario, and the best management strategy, decouples old-growth clearcutting from school funding, protects the Elliott’s remaining native forests, wild salmon and imperiled wildlife, safeguards the Elliott drinking water, public recreational and educational opportunities, and promotes timber jobs by restoratively thinning the second-growth tree farms. We continue to believe that scenario.

We believe in the need that any process selected should continue to be transparent and allow the public a voice in any final decisions. If an advisory committee will help AND the final decisionmakers, the State Land Board, clearly hears these voices, then we would support. The key for us is transparency and access to comment on all the decisions along the way. We understand that there are multiple interests that often are at odds. That won’t change whether or not an advisory committee is chosen. They won’t go away. So selecting a method to allow all voices to be heard is a very important one for the SLB. If the SLB goes forward with an advisory committee, we support your recommendations on pages 32-33 of this report.

The League believes in the importance of preserving our public lands for future generations and keeping them in public hands. Oregonians recognize that, when the Elliott became a Common School Fund asset in 1930, it was a different time. With the ESA and at least three species finding the Elliott home, the Elliott as a funding asset has become more challenging. But it is still an asset for Oregonians of all ages. We supported the $100 million in bonding to help bridge those two issues. That money should “buy” assets not otherwise protected by the ESA and any HCP.

We support continuation of the HCP—an HCP that can be upheld in court. We believe strongly in the reality of climate change (and have filed a brief to support Our Children’s Trust so that governments actively address this issue). The SLB cannot ignore the current court decision rejecting the 2014 sale, so we can hope that any Supreme Court decision is quick! Until that decision is made, it will be perilous for continued SLB action around divestment.
Although no state agency has the money to “buy out” the rest of the current assessed value, we continue to believe that they might have a role to play, from Parks to Fish & Wildlife to Education (outdoor school potential) to OWEB grants among others. Those agencies might provide some of the important family wage jobs that were a part of the original discussions around the Elliott. We certainly support a multi-agency technical team to advise the HCP process. The 9,000 acres of Board of Forestry lands within the Elliott needs to be a part of any final decision. So discussions should occur with the BOF to find a reasonable solution.

Since the reason we are here is the lack of funding to the CSF and the amount of harvest that has been available due to the many circumstances that have changed how the Forest can be managed, that issue will continue no matter what public entity owns the Forest. That fact should not be lost in developing a final answer. The League is NOT supportive of connecting the South Slough with the Elliott discussion. As the first National Estuarine Research Reserve and its value for research with climate change, it seems unnecessary to try to link these two important properties.

These comments are mine and not official League of Women Voters of Oregon comments. But I believe you can be assured that LWVOR’s voice can be heard in these comments.

Thank you again for your work in listening to so many voices and for clearly framing the complicated issues surrounding this very special place.

Peggy Lynch, LWVOR Natural Resources Coordinator

Fergus Mclean
Organization or affiliation: Many Rivers Sierra Club

At your May 2017 meeting the State Land Board directed the Division of State Lands to analyze various possible methods for decoupling management of the Elliott State Forest from the Common School Fund. To carry out this mission, DSL contracted with Oregon’s public policy conflict resolutions program, Oregon Consensus, which produced the October, 2018 report Elliott State Forest: Next Step Considerations for Decoupling from Oregon’s Common School Fund. Though a good effort on the part of staff, the Decoupling report falls short in that it fails to address key and developing conditions or to bring us closer to a satisfactory outcome for the Elliott, and so responsibility for guiding the process of transitioning the Elliott away from the Common School Fund of necessity must come back to the Land Board.

The Consensus Report presents an interesting snapshot of the opinions of a somewhat limited study population. Researchers failed to interview DEQ, the Global Warming Commission and the Oregon Climate Change Research Institute. This could explain their trivialization of the topic of carbon sequestration and markets for forest carbon credits. Had the authors of the Global Warming Commission’s Forest Carbon Accounting Project Report to Oregon Department of Forestry been interviewed, the Consensus Report would have reached far different conclusions about forest carbon, and about the economic potential of the Elliott.

Tremendous developments in the science of forest carbon were taking place even while the Consensus Report was being prepared, developments which are summarized in the GWC's Forest Carbon Accounting Project 2019 Report to ODF.
Prior to 2016 data was inadequate to permit quantifying the carbon contained in Oregon’s forests. Since then we have learned that our forests constitute one of planet earth’s greatest carbon storehouses, as shown in this image from the Accounting Project report: Oregon’s south coast is very special; its forests capture more biomass than almost anywhere else on earth. It is pure folly to consider future management of the Elliott without taking this enormous resource into consideration, yet the Consensus Report trivializes and dismisses serious consideration of the Land Board’s responsibility for stewarding one of planet earth’s greatest storehouses of carbon.

All indications are that the 2019 legislature will pass a cap and trade system, with a goal of reducing the state’s carbon footprint by around a million and a half tons of carbon a year. New US Forest Service Forest Inventory Analysis data shows that our state’s total carbon reduction target through 2035 is only about 5% of the carbon stored in our forests, so that carbon management of our forests must play an crucial role in our global warming policies, and we must have a specialized institution to carry out the basic science and also lead the state in its development of the capacity for measuring and storing forest carbon.

As the Accounting Project’s report to ODF make clear, the study of forest carbon is a young science far beyond the institutional or educational capacity of ODF to explore. The Elliott Forest can be home to a new forest science institution consistent with our preeminent forest carbon resources and one which can also address the other key goals of the forests’ founders: sound scientific forestry as well as public education and recreation.

It would be appropriate to levy a harvest tax of $2/thousand board feet on timber harvested in Oregon to meet the payments on the $100 million Elliott bonds, and suggest a unique new combined forest research and management institution which could be called the Elliott Forest Carbon and Wildfire Institute to explore not only basic forest carbon science and wildfire mitigation strategies but also to address the entrenched arguments over forest management which have plagued and hampered forest resource management policy and taxation since the days of free-wheeling cutting of old growth timber petered out in the ‘70s. Here’s what the Oregon Climate Change Research Institute has to say about the need for research on forests and carbon:

Management principles to foster resilience to disturbance while conserving ecosystem services include: 1) managing dynamically and experimentally through a sustained commitment to adaptive management, 2) managing for ecological processes and functional characteristics instead of specific structures and species compositions, 3) considering trade-offs and conflicts that include ecological and socioeconomic sensitivities, 4) prioritizing choices that are likely to work within a range of possible futures and in crucial areas that are most exposed to changing disturbance regimes, 5) managing for realistic outcomes by focusing on a broader set of ecosystem services, and 6) treating disturbance as a management opportunity for applying adaptation strategies (Seidl et al., 2016).

The Global Warming Commission’s Forest Carbon Accounting Project draft report contains a host of complex scientific questions which are far beyond the capacity of ODF to address. OSU has the world’s leading forest carbon scientists. These are the researchers who should be given a hand in a new institution for the brand-new science of forest carbon they are already creating, along with the Global Warming Commission and the Oregon Climate Change Research Institute.
An intriguing industry-oriented experimental approach being suggested for management of the Elliott State Forest, called the Giesy Plan. This plan has been around for decades, and has served as a template for major forest management laws. Under the Giesy Plan, riparian areas are set aside and protected, and the remaining timberland is divided in two pieces, with half being managed for maximum industrial logging production and the other half set aside as a reserve. When modified to include the value of carbon offsets, the Giesy Plan can generate a self-funding strategy for a research institution based in the Elliott State Forest, and at the same time address with good science many of the fundamental disagreements about forest management which have polarized and paralyzed advances in forest policy and science.

A modified Giesy Plan for the Elliott, after setting aside enough of the land base to serve as riparian reserves to protect coho salmon, would divide the remaining forest into three rather than two pieces, with 25,000 acres used for maximum timber production on a 30-year rotation; a 25,000 acre block of older forest including key owl and murrelet habitat set aside as a carbon reserve; and 25,000 acres dedicated to experimental forestry on a 100-year rotation, to carry out the kinds of experimental, adaptive management called for but never carried through under the North West Forest Plan. Careful harvest design and meticulous monitoring of the economic and ecological impacts of various harvest practices will develop a scientifically sound basis for forest management, and make Oregon the global leader in forest carbon research.

I support the proposals of Wayne Giesy and Dr Bob Zybach for a needed research capacity on the Elliott, and also endorse the great work Dr Zybach has done with Southwestern Oregon Community College in developing an ambitious recreation plan for the Elliott. Even though we may have quite different philosophies about forestry, and different beliefs about the best way to go about forest management and even argue about what the best techniques for maximizing forest carbon are, we are fully agreed that forest policy should be based on sound science, and the the Elliott is the perfect place to create such an institution to carry out that exploration of scientific adaptive management, promised but never followed through under the NorthWest Forest Plan.

The economics of combining elements of high-intensity logging with long-term carbon offset sales is very powerful. Research of the carbon offset rules of the California Air Resources will show that states may register and sell state-owned forest carbon credits in the California offset market. In stands with a carbon density which exceeds that of a normal 60-year old stand that excess may be sold as carbon credits. Here’s how it could pencil out with Oregon selling Elliott Forest carbon credits:

Harvest on 15,000 acres of the 25,000 acre industrial block, 30-year rotation:
500 acres/year X 35,000 board feet/acre = 17.5 million board feet/year
17.5 mmbf X $265/thousand = $4.6 million net revenue/year

Create a 25,000 acre carbon reserve in the North/NorthWest portion of the forest. All carbon reserves above the level of those on a 60-year old stand are eligible for sale in the California carbon market. It we assume an average of 400 excess tons of CO2e/acre, that would provide 10 million tons of CO2e, worth $150 million today. (At the carbon price Canada has announced they will set by 2022, $50/ton CO2e, those Elliott carbon credits would be worth half a billion dollars, far more than the $120 million needed to finish purchasing the Elliott from the Common School Fund.)

Harvest in experimental block:
15,000 acres out of 25,000 harvested on 100-year rotation = 150 acres/year
150 acres X 35,000 board feet/acre = 5.2 million board feet
5.2 mmbf X $265 = $1.4 million/year

Ongoing annual Carbon Credit sales from 25,000 acres @ 5 tons/acre/year
125,000 tons carbon credits/year
@ $15/ton = $1.9 million/year
@ $50/ton = $6.2 million/year

So an Elliott Forest Carbon and Wildfire Institute could theoretically generate an initial $150 million (enough to finish paying off the Common School Fund and completing the decoupling process) and in addition generate between $8 and $12 million a year in revenue while making Oregon the global leader in carbon science and providing unique educational and recreational opportunities to Oregon’s citizens and our visitors.

The broad base of public sentiment which opposed privatizing the Elliott can be drawn upon to support the increase in the harvest tax to retire the initial Elliott bonds, an increase which would still leave Oregon’s timber taxed at a much lower rate than timber harvested in either California or Washington.

I support the Land Board in your duty and privilege of being in the position of leadership in preserving and enhancing Oregon’s crown jewel- the Elliott State Forest- for present and future generations of Oregonians and the world.

34 Amber Gayle Thalmayer

I appreciate the efforts made in this report to hear a variety of voices and to find consensus for this precious forest. I hope decision makers will keep in mind the long term benefits of protecting a place valued by so many, compared to the very small, and very short term gains to made by logging. Schools must be funded more sustainably in Oregon, whatever that takes. Schools are not a luxury, they are a necessity, and should never have been linked to timber funds. This mistake has to be rectified now.

Sincerely,
Dr. Amber Gayle Thalmayer

35 Greg Stone
Organization or affiliation: Several, but my comment are my own.

The State Land Board really screwed up years ago when you didn’t defend your own forest management plan on the Elliott against threats of litigation. You spent millions of dollars over the years to develop that plan that includes justification for conservative harvest levels and resources protection measures beyond requirements in the forest practice act. The notion that you ‘decouple’ school lands may be unconstitutional, but then you can have the spineless AG who wouldn’t defend your forest plan defend you. Shame on you!

36 Cathy Seitz
I am one of the people who submitted a letter of interest during the proposed sale of the Elliott. I applaud the land board for the decision to keep the Elliott in public hands. I have a suggestion, if no one comes forward with the remaining money to buy out the school fund obligation. That would be placing the uncut areas under roadless or Wilderness status, and keeping the remaining areas in the school fund, assigning each section to whatever state agency would oversee them.

The sections which have been logged could remain in the school fund, but without any obligation to produce revenue. If revenue results, beyond maintenance and reasonable costs, in the future the school fund would receive it. Instead of heavily leaning on the forest for timber, I am proposing an approach to logging which would be gentle on the forest, but would still produce revenue, although it might not get much to start. It is referred to as ecosystem-based forestry, ecoforestry or ecoculture. The way the Cow Creek tribe talked in their proposal, I wonder if they might have something like this in mind. I apologize that time prevents me from contacting them and would be happy to discuss this with them in the future.

I have contacted the leading Eco-Forester on the west coast, Herb Hammond. Hammond has been designing ecosystem-based forest management for many years on large parcels, and is very interested in working with us. Ecoforestry focuses on maintaining and restoring ecological integrity in a forest. Timber is a byproduct of this management focus. Under ecoforestry, as the trees get older and larger, ecosystem services, like air purification, carbon sequestration and storage, water conservation, and biological diversity all increase. In addition, the value of the timber (and other forest products like mushrooms or game) also increases. Some timber may be removed throughout the process, the sale of which provides forestry and logging jobs for the local community, and furnishes wood products for local manufacturing. Areas in the Elliott that currently require thinning would constitute priority areas to apply ecoforestry.

Ecoforestry maintains a continuous forest cover by using single-tree and small group selection systems in cutting trees in the forest. Roads have small footprints and are carefully fit into stable portions of the terrain. Ecoforestry often includes the use of small mills, often portable sawmills. All of the approaches to ecoforestry are labor intensive, guaranteeing employment opportunities for the local community.

On the unlogged portions, I suggest leaving some or all of the existing roads in place, while adding hiking and horseback trails, which could connect to the parks near Lakeside and the Dunes reserves on the ocean, and the Siuslaw National forest just to the north. This would make a long trail which would attract backpackers. I understand that the Pacific Crest Trail (north to south borders backpacking) is now being heavily used, so a new trail would likely be welcome.

The Elliott might be too steep for bicycles, as their use may erode any trails, particularly in wet conditions. The Elliott is both remote and in competition with a nearby tourist destination--the ocean--so developing it as a campground etcetera would not be likely to pay off. Existing campgrounds near the beach are easier to get to and on flatter ground. Most of the Elliot is extremely steep and hard to reach.

I understand that OSU may make an offer to acquire the Elliott. If this happens, I would transfer the idea of ecoforestry to them. I assume they will be held to the standards which were imposed when the sale idea was proposed, including protection of the old growth forest. In fact, I propose that the old growth not be transferred to them unless it is also protected by wilderness or roadless area
The Consensus Report said some people were concerned that environmental standards could be changed by the approach taken in the Elliott. I hope they are, and that they become more protective. This is in the interest of the greater good. In particular, I want to increase protection for standing trees on the entire forest. While some thinning may be appropriate for fire avoidance, that thinning must be guided by the priority of protecting, and where necessary, restoring ecological integrity. This will ensure the protection of vital ecosystem services.

One often ignored reason to protect intact forests is their value in holding water and cooling the surrounding areas. We face increasing summer temperatures, droughts, and fires. Many call for heavy thinning of forests because of fire, but a growing body of scientists caution against excessive reduction of forest cover along the world’s coasts. Even replanting needs assessment to be sure that any replanting focuses on re-establishing natural forest composition, structure, and function. Also, young trees need large amounts of water to get established.

On the coasts, water is taken into the clouds from the ocean and dropped as precipitation, primarily rain, on the forest, incorporated into trees and other plants through photosynthesis, and then released to the atmosphere where it is taken up again by clouds which move inland. Because very large trees pump thousands of gallons of water into the atmosphere, coastal forests are responsible for water supplies far inland. The high humidity in these old coastal forests, coupled with multi-layered canopies, canopy gaps, and the very thick bark of many old-growth trees make these forests very resistant to fire. Ecoforesty aims to maintain this type of forest structure, providing both fire resistant forests, and water supplies.

One of the issues I know you face is the likelihood of lawsuits. My suggestion would avoid two potential suits in the future...from environmentalists, and from the schools, some of whose representatives are not happy with the current arrangement. It is possible that a third lawsuit could be avoided by including Lone Rock Timber and the Cow Creek tribe in the harvest process, if they would be interested in ecoforestry. I note that Lone Rock claims to log sustainably, but Sustainably Harvested Certification does not represent adequate forest protection for forest integrity, in my view. The tribe, as I said above, may have ideas that are more in line with true sustainability for the forest.

Our Oregon forests will not continue producing timber indefinitely with current logging practices. With so much clear cutting or near clear cutting on short rotation cycles and so much spraying of pesticides, the soil will become exhausted. Soil is being degraded structurally from too few remaining old roots, internally from the loss of fungi and microorganisms which forests need to regenerate. Some of our forests already are not coming back as they should, due to overharvesting. Other areas in the world such as the Middle East which were once forested are now largely deserts. This could happen here as well. This is why we need to drastically improve our forestry practices (and start using less new wood, reusing and recycling old houses and lumber).

We have already suffered numerous years of drought on the West Coast, and do not know if that is over. In 1930, when the Elliot was pledged to fund the schools, Oregon, Washington, and California had many more large trees than they do today. Our two neighboring coast states both have more protected forests than Oregon. We can get smarter about this, and change our ways to maintain healthy forests in the face of climate change, which could include producing bigger, healthier trees.
I have written this paper with added input from Herb Hammond to be sure that what I am saying falls in line with the approach he could help us carry out.

Cathy Seitz

Relevant websites:

Herb Hammond’s Ecosystem Based Conservation Planning: http://www.silvafor.org/ Article from French biodiversity association Envol-Vert, entitled Forests and Rainfall: http://envol-vert.org/en/forests-services-2/role-forests/2015/06/forests-and-rainfall/ “The forest creates fresh water runoff for the streams and rivers, and helps pull rainfall in coastal areas inland. In India, deforestation has caused a 30% drop in rainfall...forests play the role of natural pumps, sending precipitation which gathers in coastal areas further inland.”

A report on a study on the Science Direct website, entitled Trees, Forests and Water: Cool insights for a Hot World: https://www.sciencedirect.com/science/article/pii/S0959378017300134 “Forests and trees must be recognized as prime regulators within the water, energy and carbon cycles. If these functions are ignored, planners will be unable to assess, adapt to or mitigate the impacts of changing land cover and climate. Our call to action targets a reversal of paradigms, from a carbon-centric model to one that treats the hydrologic and climate-cooling effects of trees and forests as the first order of priority.” (from abstract) and “Precipitation is recycled by forests and other forms of vegetation and transported across terrestrial surfaces to the other end of continents.”

Article from Yale School of Forestry and Environmental Studies entitled Rivers in the Sky: How Deforestation Is Affecting Global Water Cycles: https://e360.yale.edu/features/how-deforestation-affecting-global-water-cycles-climate-change “A growing body of research suggests that this hitherto neglected impact of deforestation could in many continental interiors dwarf the impacts of global climate change. It could dry up the Nile, hobble the Asian monsoon, and desiccate fields from Argentina to the Midwestern United States.”

World Wildlife Fund 200 most outstanding and representative areas of global biodiversity: https://www.worldwildlife.org/ecoregions/na0510 They specifically mention the Elliott as “among 31 proposed high priority reserves that together cover 5,065 km2, or over 23 percent of the Oregon Coast Range Bioregion...The high priority areas must be linked and insulated by reserves under slightly less strict protection and by multiple-use buffer zones. Together, these three classes of reserves would form a continuous network through the Coast Range.”

37 Cristina Hubbard
Organization or affiliation: Forest Web of Cottage Grove

November 15, 2018
To: Oregon Department of State Lands
Elliott State Forest Project, 775 Summer St. NE, Ste. 100, Salem OR 97301
RE: The Elliott State Forest: Next Step Considerations for Decoupling from Oregon’s Common School Fund Report

Writing on behalf of over 2,100 supporters, Forest Web of Cottage Grove is submitting the
following comments on The Elliott State Forest: Next Step Considerations for Decoupling from Oregon’s Common School Fund report released in October 2018.

Our main requirement for the Elliott State Forest is that well established guidelines are in place for protection of all old-growth and late successional habitat as well as riparian areas with significant buffers established for these ecosystems. There should also be connectivity maintained between these habitats with no large gaps created by logging. Also, we strongly recommend that logging should be restricted to thinning and restoration projects in mature second-growth stands.

We agree a federal Habitat Conservation Plan (HCP) needs to be developed as soon as possible to achieve these goals. However, we have concerns with the associated Incidental Take Permit as this gives leeway to timber companies regarding the death of any individual members of an ESA-listed species that occur during logging operations.

The legislation specifically directed the $100 million be used to preserve non-economic benefits of Elliott State Forest. This report leaves us with concerns as to how that will be accomplished as it also states the funds will be used as a “buy-down” of the School Fund. While we support the funds going to the School Fund, it needs to be clear that the preservation of the non-economic values of the Elliott State Forest be at the forefront of all planning decisions. Under Cap-and-Harvest (Section 2, Subsection 2.2) it also states: the $100 million is meant to define the state’s contribution to achieving conservation, recreation, and non-revenue values on Elliott State Forest. Whether retained by DSL and managed as a School Fund asset, or owned and managed by another entity through decoupling, the $100 million would be applied towards achieving these values.

However, this subsection also states: The remainder of Elliott State Forest would be placed under timber management. This would seem to be taking us back to how the issue of saving the Elliott State Forest began, treating it as a commercial enterprise rather than valuing it for its critical environmental benefits. Yes, logging should be a component of management and restoration, which will generate income, but the focus of these projects should be the rehabilitation of the second-growth stands. Logging should not continue to be the driving force in managing the Elliott State Forest.

As for future ownership of the Elliott State Forest, the report cites both the ability to manage the forest as well as to raise the remaining cash reserves for the School Fund to be the primary criteria. Of all the options listed in the report, only the United States Forest Service (USFS) currently meets those requirements. The report states: As an adjacent landowner and manager, the United States Forest Service (USFS) indicated interest in seeing the Elliott State Forest consolidated into and managed as part of the Siuslaw National Forest. The similar forest type and proximity were seen as advantages, as well as the historic connection between acreage on the Elliott State Forest and National Forest lands. It was also noted that the USFS would likely need a congressional appropriation to pay the School Fund. It should be noted that with the results of the recent election, the new Congress might well be willing to approve this.

Under Carbon (Section 4, Subsection 4.5) the report states: Among the constraints cited were the relatively large and older class of trees already on Elliott State Forest, which reduces their potential carbon uplift and, therefore, value on the carbon market. This is statement is not accurate nor based on current science. Recent studies show old-growth trees are rich and valuable carbon sinks, continuing to sequester carbon throughout their life-cycles. We have included an excerpt from one
study as well as the full text of the abstract for another study below:

"The Role of Old-Growth Forests in Carbon Sequestration"
26 JULY 2016 Geoffrey Craggs, JP, Research Analyst, Northern Australia and Land Care "...Until recently it was believed only young forests sequestered atmospheric carbon in early growth and that old-growth forests were only sinks in which the carbon was stored. Recent studies, however, have identified that intact old-growth forests continue to take up carbon from the atmosphere even past the point at which they reach maturity. By measuring growth rates, researchers have identified that carbon sequestration in trees increases continuously because the overall leaf area increases as they grow, enabling bigger trees to absorb more carbon from the atmosphere. Older, larger deciduous trees reproduce more new leaves, thus capturing the most carbon from the atmosphere... " [Link to article]

"Old-growth forests as global carbon sinks"
Sebastiaan Luyssaert, E.-Detlef Schulze, Annett Börner, Alexander Knohl, Dominik Hessenmöller, Beverly E. Law, Philippe Ciais & John Grace
Abstract
"Old-growth forests remove carbon dioxide from the atmosphere at rates that vary with climate and nitrogen deposition. The sequestered carbon dioxide is stored in live woody tissues and slowly decomposing organic matter in litter and soil. Old-growth forests therefore serve as a global carbon dioxide sink, but they are not protected by international treaties, because it is generally thought that ageing forests cease to accumulate carbon. Here we report a search of literature and databases for forest carbon-flux estimates. We find that in forests between 15 and 800 years of age, net ecosystem productivity (the net carbon balance of the forest including soils) is usually positive. Our results demonstrate that old-growth forests can continue to accumulate carbon, contrary to the long-standing view that they are carbon neutral. Over 30 per cent of the global forest area is unmanaged primary forest, and this area contains the remaining old-growth forests. Half of the primary forests (6 × 108 hectares) are located in the boreal and temperate regions of the Northern Hemisphere. On the basis of our analysis, these forests alone sequester about 1.3 ± 0.5 gigatonnes of carbon per year. Thus, our findings suggest that 15 per cent of the global forest area, which is currently not considered when offsetting increasing atmospheric carbon dioxide concentrations, provides at least 10 per cent of the global net ecosystem productivity. Old-growth forests accumulate carbon for centuries and contain large quantities of it. We expect, however, that much of this carbon, even soil carbon, will move back to the atmosphere if these forests are disturbed." [Link to article]

Missing from the report was any mention of Climate Change or the role the Elliott State Forest could play in mitigating this global crisis. With our federal government taking little or no action on this critical issue it is imperative Oregon, with its vast forestlands, lead the way in providing solutions. According to the most current scientific studies and reports, forests are the key to saving our planet.

The Intergovernmental Panel on Climate Change (IPCC) recently released their latest report on Climate Change in September 2018. The report, drafted in response to a request by the United Nations Framework Convention on Climate Change (UNFCCC), evaluates the differences between a 1.5°C and a 2°C future and whether different emissions trajectories can achieve a future with less
warming. It makes clear that we need a global commitment to move away from fossil fuels and focus on the removal of carbon dioxide already in the atmosphere (not just reduction of future emissions) to prevent irreversible effects that would have devastating consequences across the globe. Such an approach is especially vital to the ocean, where achieving a 2°C future (the official goal of the Paris Accord) would still result in destructive changes to the ocean and coastal areas around the world.

The IPCC report is comprised of three years of work by more than 130 authors, synthesizing over 6,000 scientific references and fielding over 42,000 comments during the extensive peer review process. The IPCC report confirms the vital role of forests as an essential climate change solution. Link to IPCC Summary: http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf Link to all IPCC documents: http://www.ipcc.ch/report/sr15/

Global Forest Watch, which monitors deforestation in real time, estimates that between 2001 and 2017, 800 million acres of tree cover was lost. Much of that was driven by agriculture, logging, and cattle ranching. Oregon must reprioritize how it manages our public forests, making conservation the primary focus. To emphasis this point, we also submit the following information on how forests, including the Elliott State Forest, are critical to combatting Climate Change.

The following is from the Food and Agriculture Organization of the United Nations: "Roles of forests in climate change" "As more scientific information about global warming accumulates, climate change is emerging as perhaps the greatest environmental challenge of the twenty-first century. What is more, a virtual Pandora's box of major global threats, such as hunger, poverty, population growth, armed conflict, displacement, air pollution, soil degradation, desertification and deforestation are intricately intertwined with and all contribute to climate change, necessitating a comprehensive approach to a solution. Rising to this challenge will entail unprecedented cooperation among the world's nations and strong support from international organizations concerned. FAO is particularly implicated, as its domain encompasses major sources of greenhouse gases, major potential victims of climate change, and major mitigation potentials though carbon pools and "sinks".

Forests have four major roles in climate change: they currently contribute about one-sixth of global carbon emissions when cleared, overused or degraded; they react sensitively to a changing climate; when managed sustainably, they produce woodfuels as a benign alternative to fossil fuels; and finally, they have the potential to absorb about one-tenth of global carbon emissions projected for the first half of this century into their biomass, soils and products and store them - in principle in perpetuity." http://www.fao.org/forestry/climatechange/53459/en/

"The Great American Stand: US Forests & The Climate Emergency" "Standing forests are the only proven system that can remove and store vast amounts of carbon dioxide from the atmosphere at the scale necessary to keep global temperature rise below 1.5 degrees Celsius this century. It is therefore essential to not only prevent further emissions from fossil fuels, deforestation, forest degradation, and bioenergy, but also to expand our forests’ capacity to remove carbon from the atmosphere and store it long-term. If we halted deforestation, protected existing forests, and expanded and restored degraded forests, we could reduce annual emissions by 75 percent in the next half a century.

If fossil fuels were rapidly phased out during this same time period, we could reduce the amount of
carbon in the atmosphere, meet the goals of the Paris Agreement and avoid catastrophic climate change. But, we cannot solve the climate crisis without a major scale-up in forest protection and restoration across the planet. We must not only protect remnant primary, intact forests, but also conserve and restore less pristine landscapes." [https://www.dogwoodalliance.org/wp-content/uploads/2017/03/The-Great-American-Stand-Report.pdf](https://www.dogwoodalliance.org/wp-content/uploads/2017/03/The-Great-American-Stand-Report.pdf)

Since 2011, Forest Web of Cottage Grove has campaigned on behalf of the Elliott State Forest, organizing hikes and providing educational information to the public on its diverse habitat and the value of its ecological resources. We have attended and testified at numerous State Land Board meetings and provided written comments on its management, working in cooperation with other environmental organizations to promote its protection.

We acknowledge the issues included in this report regarding the Elliott State Forest report: how to decouple the forest from the School Fund; how to provide the remainder of the funds to the School Fund; and who will manage the forest in the future. But what we manage this forest for is the most critical issue to be addressed, and Climate Change must be included in this discussion when making any management decisions for the Elliott State Forest.

Thank you for your time and consideration.
Cristina M. Hubbard, Executive Director
Forest Web of Cottage Grove

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<th>Jennifer Haynes</th>
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<td>I support the environmental group’s letter (Cascadia Wildlands, Oregon Wild, Portland Audubon), with this added concern:</td>
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<td>I do not want the Elliott to be sold to OSU because the public needs oversight into what happens. The Administrative Procedures Act (APA) allows for that oversight, but only if an agency is in charge of management. I am also concerned that because OSU gets so much money from timber companies, they may have an incentive to misuse the Elliott and/or skew their research to support timber priorities (this makes me very sad because I attended OSU). I think the problem really is the &quot;old school&quot; leadership in the Department of Forestry.</td>
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<td>Thank you so much for considering my comments, Jennifer</td>
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<th>39</th>
<th>John Charles</th>
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<td>Organization or affiliation: Cascade Policy Institute</td>
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<td>A fundamental problem with the report is that it treats the 2016 ESF valuation of $220.8 million as a meaningful number. The fact is, the moment Gov. Brown brought down the gavel last year to void the 2015 ESF Sale Protocol, the appraisal connected with that protocol also disappeared.</td>
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<td>The appraisal process was governed by the four limitations embedded in the protocol, all of which acted to diminish the market value to the forest. Those constraints are no longer in effect; therefore appraisal of $220.8 million is null and void.</td>
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<td>Previous appraisals had estimated the ESF to be worth far more than $220.8 million - possibly</td>
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100% more, depending on various factors. This means that the $100 million loan will "buy down" much less of the forest than assumed by many legislators when they approved it.

Moreover, there is no obvious way to determine how to best spend the loan funds, since the majority of the forest would remain in SLB ownership even after spending $100 million. This is especially the case given the parallel process of adopting an HCP. Previous efforts took 10 years of negotiation, and in the end the state walked away with nothing. Why will things be different now? How will that affect the "de-coupling" process?

Finally, the SLB has a fiduciary responsibility to manage the Trust Lands for the benefit of public schools and students of those schools. Borrowing $100 million and then paying $199 million in debt service to bond holders for the next 25 years by diverting income tax revenues from other purposes harms the very families the Board is mandated to help. The only morally or legally defensible way to dispose of Trust Lands is to sell them to private parties, something the Land Board voted to do in 2015 and then reversed in 2017. The Board has now boxed itself in; the ESF is no longer a productive asset, it's a liability, and the Board is at risk of being sued for breach of fiduciary trust by adversely affected beneficiary groups.

The Board should indefinitely delay the February bond sale and re-consider selling the ESF and other under-performing Trust assets to private parties, in order to meet its fiduciary obligations.

40 Lon Otteryby
Organization or affiliation: Many Rivers Group Sierra Club

Attention: Oregon State Lands Board
Regarding: Oregon Consensus Report: Next Steps
From: Lon Otterby
Chair Many Rivers Group Sierra Club

The Many Rivers Group of the Oregon Sierra Club (MRG) represents a little over 3000 members in Coos, Douglas and Lane Counties. We have been actively participating in exploring the Elliott State Forest (ESF) with our membership and our allies for the last several years. We have also been participants in the SLB’s efforts to find solutions to the management challenges of the ESF. The onsite field trips sponsored by the DSL and the SLB have been most helpful in understanding the landscape of the forest, the local economic challenges, and local indigenous people’s historical relationship with the Elliott State Forest.

I am very disappointed in the lack of hard information and the limited scope of interviewees in this report. It may be this is what the Department of State Lands (DSL) and the State Lands Board (SLB) had asked for, but there is very little here to be helpful moving ahead with the ownership and management of the Elliott State Forest (ESF) and possibly other state forests. The majority of the those interviewed are the usual suspects primarily paid but also some volunteer lobbyists that show up and testify at the SLB hearings on the dilemmas facing the Common School Fund (CSF) and the DSL. The interview list is populated primarily with lobbyists from groups and businesses in the Portland-Salem area. There was almost no representation from the scientific community or from labor. The communities of color were only represented by the Tribes in the ESF area and the former member of the Coalition of Communities of Color in Portland.
I am very unhappy with this report because the Oregon Consensus staff only attempted to interview two labor groups while interviewing several management groups in education and timber business folks. We were pleased to see Laurie Wimmer, the Oregon Education Association, interviewed. It would have been good to know what her responses to the questions were. Jeff McGillivray, Secretary Treasurer of the Building Trades Council in Curry, Coos, Douglas and Lane Counties, would have been a good addition since he represents much of the labor force that benefits from keeping the ESF in public ownership.

Oregon Consensus interviewed several state agencies especially those connected to timber harvest. We would have liked to read what Curt Melcher and the rest of the folks from the Oregon Department of Fish and Wildlife had to say about the status of wildlife in the ESF with different management plans. Oregon Consensus did not interview the folks at the Global Warming Commission, the Department of Health, Oregon Department of Labor and Industry, or Travel Oregon. That is a large group of agencies to ignore. It is no wonder that there is very limited information about the huge carbon sequestration and recreational benefit of the ESF.

There was a lack of independent scientists and economists interviewed. The experts from OSU like Beverly Law, Mark Harmon, and Kim Nelson were not included. The scientists at the Hatfield Marine Science Center at Newport and Oregon Institute of Marine Biology at Charleston were left out of the interview process. So, we do not have information for the very important Land Sea Connection in the Coos Bay region of Oregon. 30% of Oregon’s Coho Salmon spawn in the ESF. We do not hear about this valuable economic and natural asset for Oregon The Lamprey Eels that migrate from and back to the ESF are left out. The multi-decadal weather and ocean cycles that influence upwelling and forest fire patterns are not here. The local and migratory marine mammals and birds are dependent on the nutrients from the ESF. This is why you cannot move forward without an adequate HCP.

The Oregon Consensus Assessment Report had several vague references to numbers of respondents and a lack of inclusion of several key stakeholders in our opinion. The common references to who said what are described with terms such as many, some, a few, etc. The level of mistrust of the SLB and DSL is not spelled out, and we think exaggerated. There is a huge difference between mistrust and unhappiness with different outcomes of the process.

Also, the Oregon Consensus group plowed forward without a Habitat Conservation Plan in place. We are not sure who you can do a plan for how to use the $100 Million Bonding or how you can plan to decouple the Common School Fund from the ESF.

The outdated assumption that timber was the driving economic force for paying off the Common School Fund. Timber has for several years been a declining economic driver in Oregon. In Lane County for instance Timber has to be combined with Mining and together they still do not represent 1% of the employment opportunities in Lane Count. Meanwhile recreation use of our forests is booming. The three recreational groups, Oregon Hunters, Rocky Mountain Elk, and Trout Unlimited were very good interviewees. We were not told what they had to say. There are many non-extractive forms of recreation in the ESF that the Oregon Consensus other than the Oregon Parks and Recreation Department did not investigated in their interview process. Hiking, mountain biking, off highway vehicle, and camping groups especially local to the ESL area were not interviewed, nor were the questions asked pertaining to these groups’ use of the ESF.
We were happy to see that Forest Economist, Brent Davies from Eco-Trust, was included in the process, we were greatly disappointed that knowledgeable economists like Wayne Giesy and Ernie Niemi were not included in the interview process.

There is scant information about the possible management of the forest by Oregon State University. The educational value of the ESF driven by the Tribes, the K-12 School systems, the Community Colleges, and Oregon’s universities was missing. The CSF has never taken responsibility for the educational value of the Elliott. The Fund and the school board groups have just stood there with their hands out looking for dollars. The CSF did not join with the teacher associations, universities and labor groups in lobbying for programs like outdoor education, forestry skills classes, building a carbon credit policy and program, and understanding the forestry science with climate change. The fact that the ESF was undervalued is the Common School Boards responsibility for being absentee landlords.

Finally, the carbon value of the Elliott is huge not only monetarily but for the health of the land, the wildlife, and the people. The scientific community of Oregon State and other scientific experts were not included in the process. Those would be Beverly Law & Mark Harmon at OSU School of Forestry, land use expert Paul Engelmeyer, manager of the Ten Mile Creek Conservancy for Portland Audubon, James Johnston, history and future of forest fire expert from OSU,

This Oregon Consensus Report is of little to no use. Please call on the scientific community to inform the DS L and the SLB, please listen to the Global Warming Commission and please finish the HCP so that we have something to work with to manage this impressive forest.

Thankyou,
Lon Otterby
Chair Many Rivers Group Sierra Club

Samuel Schwarz
Organization or affiliation : Stakeholder in the Elliott

Nov 15, 2018

Oregon Department of State Lands,

I believe the consensus report to offer very helpful and valid information that will assist us, as stakeholders in the Elliott, to ensure that this forest continue to be a vital asset to the entire State of Oregon.

I look forward to hearing what OSU might present in December. The Elliott is so diverse in its forest ecology and it has so much to offer for study and cultivation of more natural forest practices. Opportunity for field research and facilities in the Elliott are phenomenal. Native salmon population should be a key factor in this conversation. Tribal interests are extremely important and are key to restoring this lost connection to the natural world. Watching log barge after barge from Tribal Lands, being loaded and exported from Coos Bay to markets overseas is difficult to witness. With strong leadership, I believe that Tribal influence in the Elliott should shift from resource extraction and focus on native tradition and culturally enriching opportunities. Survival skills training, hunting, fishing and medicinal knowledge be revitalized for the youth and prosperity of
Native Heritage.

There are a great deal many potential directions still ahead (many undiscovered) and decisions that need to be made concerning one of Oregon's most valuable assets. I don't believe we are there yet. The future health of this region depends on strong leadership, not just business as usual. These opportunities lend to more creative avenues yet to be explored.

As a lifelong resident of Allegany and having been fully engaged throughout the process that has lead to the decoupling of the CSF from the ESF, I am pleased to continue shaping the future of our unique and diverse emerald forest. Far long have we removed precious resource from this land, striving to maintain a sustainable harvest, pressured by the timber industries desire to increase yield in order to maximize monetary gain. I state here, in my comment, that as a local inhabitant of this coastal region, that I will forever act as steward of the Elliott State Forest and ensure just and intelligent decisions be made by any said owner or manager of this land. I am of this land and I stand for this land. I stand as a voice for the natural world, that is all too often ignored.

Sincerely,
Samuel J Schwarz
Ford Family Fellow
Bachelor of Arts, U of O
SAMIO Lighting, Patented Lighting Device
F/V Nor' Gale LLC, Commercial Fishery

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<th>Kaola Swanson</th>
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<td>Organization or affiliation: Pacific Forest Trust</td>
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November 9, 2018

To the Oregon State Land Board regarding the Elliott State Forest Project,

The Pacific Forest Trust (PFT) is grateful for the opportunity to support the process and conclusions outlined by the Oregon Consensus Center’s Assessment Report “Elliott State Forest: Next Step Considerations for Decoupling from Oregon’s Common School Fund.” Expediency in decoupling should be balanced with the proper time and consideration needed to meet multiple objectives. As outlined by the report, these multiple objectives include meeting fiduciary responsibilities to the School Fund, managing the forest for revenue production as well as conservation, cultural, and public values; local community benefit; and tribal engagement. Further, public ownership and access as well as complete decoupling are identified as goals of this project.

PFT would like to remain engaged as a stakeholder, though we do not intend to submit either a letter of interest or a formal proposal for ownership. However, we would like to encourage the State Land Board to consider the potential of a Working Forest Conservation Easement (WFCE) to meet the many goals outlined for the Elliott State Forest. In particular, this tool could help a public landowner to partner with conservation entities to lower the costs associated with complete decoupling, and if carefully structured, meet the goals of an HCP on a shorter timeline.

Working Forest Conservation Easements are legally binding agreements that permanently protect forests as forests for all their values, including habitat, climate, and cultural values, in addition and complementary to forest management for economic return. While conservation easements are
often focused on preventing development or avoiding subdivision of a parcel of land, working forest easements add another layer of responsibility by guiding future management to achieve desired outcomes. Annual monitoring and reporting by a third party is required for compliance with the terms of the easement and the associated management plan, granting the public regular insight into the management of their asset and its appreciation over time.

A WFCE would benefit the Elliott State Forest in several ways:

• Creates public trust in the permanent protection of the land for its multiple values,
• allows for ongoing forest management which includes economic returns and local jobs,
• an easement would maximize the investment from the $100 million bond, as it would buy the public trust values, reducing the market value of the land while keeping it in desired productive use.
• Finally, easements are a flexible tool that can work in conjunction with any potential future public owner and can be used as the foundation for an ongoing adaptive management plan.

PFT currently holds WFCEs on approximately 10,000 acres of working, productive forest land in Oregon and more than 100,000 acres in California. These properties are managed for timber production and profit as well as benefits to climate, wildlife, and water. Forest managers, loggers, truck drivers, as well as monitoring and conservation staff are all employed as part of meeting the terms of the easement and each landowner’s objectives. We’d welcome the opportunity to discuss this tool further with the Land Board, potential public owners, and interested stakeholders. Please feel free to contact me by phone or email at your convenience.

Sincerely,
Kaola Swanson
November 14, 2018

Governor Kate Brown  
Secretary of State Dennis Richardson  
State Treasurer Tobias Read  
State Capitol Building  
Salem, OR 97310

Honorable members of the State Land Board.

The undersigned organizations have reviewed the report from Oregon Consensus (OC) entitled “Elliott State Forest: Next Step Considerations for Decoupling from Oregon’s Common School Fund,” (OC Report) dated October 2018 and presented to the State Land Board (SLB). Several of our organizations engaged with Oregon Consensus during their process and found it helpful. We are taking this public comment opportunity to share with you our views as to the next steps in fully decoupling the Elliott State Forest (ESF) from the Common School Fund (CSF).

We are including our views on the habitat conservation plan (HCP) and incidental take permit (ITP) under the federal Endangered Species Act (ESA) process in which the Oregon Department of State Lands (ODSL) is beginning to engage with NOAA Fisheries and the U.S. Fish and Wildlife Service.

1. **Application of Decoupling.** The term and concept of “decoupling” should apply to the entire Elliott State Forest under the ownership of the CSF.

2. **Public Ownership.** The ESF should be placed in the hands of a public state or federal agency where there is direct public accountability through oversight by elected officials.

3. **Use of the $100 Million.** The $100 million of bonds to be issued in February 2019 to buydown the revenue-producing requirements for the CSF ESF lands should be linked to specific parcels (“Parcelization” as described in the OC Report) of lands, not just a general relief of that obligation. This is consistent with the language adopted by the Oregon Legislative Assembly ([Sec. 124, H.B. 5006 enrolled](#)). We recommend that the State Land Board (SLB) temporarily treat the $100 million as a buydown, giving time for the HCP process to be completed. Upon such completion, the $100 million should be specifically spent to decouple specific high-value conservation parcels (e.g. older forest, streamside areas, etc.) that are otherwise excluded from being logged due to the requirements of the finalized and accepted HCP/ITP. In the interim, interest on the $100 million should go to the CSF.

4. **Prioritizing Use of the $100 Million.** We strongly recommend that the SLB not treat the $100 million as a “cap-and-harvest” (again in the parlance of the OC Report). We do not anticipate the HCP and ITP to fully embrace all of the older (mature and old-growth) forest and streamside areas of the CSF’s ESF lands. The social license to log—via clearcutting or otherwise—previously unlogged native forest with large trees on the ESF, as well as along stream sides of fish-bearing waterways with ESA-listed species, has expired. In addition, allocation of the $100 million should be prioritized to first decouple the underlying “bare land” value of those lands made unavailable for logging under an HCP/ITP. The 2016 appraisal
estimated 42,255 acres of CSF ESF would be unavailable for logging under an HCP and valued the underlying non-timber value of those lands to be $6 million. The remaining $94 million should be used to decouple specific parcels of the remaining older forest stands (beginning with the oldest) and along streams (beginning with those that are fish-bearing).

5. **The Habitat Conservation Plan Process.** The SLB should consider the HCP/ITP process as a precursor to complete decoupling. After completion of the HCP, it will be known which CSF lands on the ESF are still jeopardized by the constitutional requirements of the CSF. The $100 million should then be applied per (4) above.

6. **Advisory Group.** While we are happy to sincerely and constructively engage in an advisory group to make recommendations to the SLB as how to proceed, in the end the decision is that of the SLB, not an advisory group. We feel obligated to warn you that the chances of the environmental community and the timber industry coming to agreement on how to manage the ESF are very low.

7. **Continued Litigation.** The OC Report addresses concerns about continued litigation that could include the ESF. Such is certainly a possibility. Some of our organizations have been successful in blocking a sale of a portion of the ESF to a private interest (the state has requested the Oregon Supreme Court to review). The more conservative (“conservation-oriented”) the HCP and ITP, the less it is vulnerable to litigation.

8. **Imperiled Species.** In addition to the ESA-listed northern spotted owl, marbled murrelet and coho salmon, there are imperiled species that inhabit the ESF that may eventually come under ESA protection. One is the red tree vole (RTV), which relies extensively on older forests. The North Oregon Coast Range (NOCR) Distinct Population Segment (DPS) has already been found warranted for ESA listing, but precluded by higher priorities. While the ESF is located south of the NOCR DPS for the RTV, it is otherwise in the heart of the range of the RTV and, because of its generally older forest condition, excellent habitat for the species. The RTV is limited to older forests in western Oregon and northwestern California. The ESF is also in the historical range of the fisher and coastal marten, both being imperiled mammals.

9. **South Slough National Estuarine Research Sanctuary.** The OC Report mentions the possibility of involving the South Slough National Estuarine Research Reserve (SSNERR). Though managed by ODSL, the SSNERR is not CSF land and we don’t view it as necessary or desirable to resolving the ESF issue or that of other CSF forestlands in western Oregon.

10. **Other Common School Fund Forestlands.** Our interest in CSF forest and range lands being decoupled and the assets managed in the public interest for conservation values is not limited to the ESF. While these CSF lands provide little return to the CSF, much of the lands have high public conservation value or are lands that should be exchanged for lands with high conservation values—all while making the CSF whole. We and other conservation organizations stand ready to work with the SLB and other stakeholders to develop a rational and timely strategy for decoupling these lands (or replacement lands) from the CSF while maintaining public ownership.
11. **The Remaining $120.8 Million.** We are strongly committed to helping the SLB obtain the remaining ~$120.8 million to fully decouple the ESF from the CSF. In regard to this, we urge the SLB to not accept a funding mechanism that requires debt to be serviced from commercial logging on the forestlands that remain unaffected by the final HCP/ITP. Such forests are in two categories: (1) natural forest stands of any age that have not been logged; and (2) monoculture plantations established after clear-cutting natural forest. As the public will not accept logging of the former, these stands are best dedicated to conservation. The latter stands should not be allocated to timber production neither via traditional production (industrial) forestry nor ecological forest management. Rather the plantations should be put on a course to again be naturally diverse and older forest stands. Such a course is best achieved by the application of scientifically sound ecological restoration thinning that also results in a very significant byproduct of commercial logs for several decades. The net operating revenues from the sale of such logs likely could cover the annual management costs for two or three decades, until no additional plantation treatment is needed. Depending upon market prices for logs and management costs, it may also be possible that a portion of these revenues could be placed in an endowment to aid future management costs. The volume of commercial logs from such management would not be enough to materially contribute to the debt service of ~$120.8 million.

12. **Carbon Credits.** After completion of the HCP, it may be that the value of not logging natural forest that is allowed by the HCP could be sold into the carbon market. Our initial review suggests this might be a one-time payment of ~$10 million. While far from the $120.8 million, it is nonetheless worth doing.

13. **Research Forest.** It has been suggested that ESF could become a research forest with revenues from the sale of timber from experimental logging being used for debt service. As we understand it, the kind of research being suggested centers along the notion of extending timber rotations and/or logging in ways that are less than a clearcut that would also result in the minimal persistence of ESA-listed species. It is further suggested that such research could serve as a model for private timberlands or public forestlands. In the case of the former, the alternative management scheme would conflict with profit maximization especially by disregarding the time-value of money, so would not be of interest to almost all private timberland owners. In the case of the latter, most public forestlands in the Oregon Coast Range are administered as no-logging reserves.

14. **Reappraisal.** Depending how the Cascadia Wildlands v. Oregon Department of State Lands litigation turns out, the results of the HCP process and the passage of time, it may be necessary and/or desirable to reappraise the residual values.

Thank you very much for your consideration and continued interest in ensuring that the Elliott State Forest is managed in the best interest of this and future generations.

For the Elliott State Forest,

Andy Kerr, Director, The Larch Company  
Bob Sallinger, Conservation Director, Audubon Society of Portland  
Cameron La Follette, Executive Director, Oregon Coast Alliance
Rhett Lawrence, Conservation Director, Oregon Sierra Club
Steve Pedery, Conservation Director, Oregon Wild
Noah Greenwald, M.S., Endangered Species Director, Center for Biological Diversity
Josh Laughlin, Executive Director, Cascadia Wildlands

Cc Oregon Department of State Lands (Vicki Walker)
    Oregon Consensus (Peter Harkema, Brett Brownscombe, & Amy Delahanty)

    Oregon State University School of Forestry (Anthony Davis and Geoff Huntington)
    Ecotrust (Brent Davies, Ken Margolis & Lisa Watt)
November 15, 2018

To:
Oregon Department of State Lands
Governor Kate Brown
Secretary of State Dennis Richardson
State Treasurer Tobias Read
State Capitol Building
Salem, OR 97310

Regarding the Oregon Consensus report: Elliott State Forest: Next Step Considerations for Decoupling from Oregon’s Common School Fund.

Dear members of the State Land Board,

We have received the report by Oregon Consensus, and appreciate the thorough summary of the issues we all face in moving forward to a solution for the Elliott State Forest. We believe that it will be critical to learn from the Elliott’s history if we are to attain a sustainable solution for the forest that can be accepted by a diverse group of stakeholders.

As the local group that lead the Save the Elliott Campaign in the Coos Bay area, we continue to support public ownership options for the Elliott State Forest and the protection of its native forest and endangered species habitat. Having conducted marbled murrelet surveys in old growth stands throughout the Elliott since 2013, we would be happy to share any of our data or knowledge of the forest where it applies. We would like to remain engaged in the Habitat Conservation Plan and decoupling processes, and are continuing to update our supporters at each new juncture.

Sincerely,

Teresa Bird
Co-director, Coast Range Forest Watch
To: Oregon State Land Board  
From: Bob Zybach, Secretary, ORWW  
RE: Current PSU Oregon Consensus Elliott Decoupling Report  
Date: November 15, 2018

To the Members of Oregon State Land Board:

Oregon Websites and Watersheds Project, Inc. (ORWW), is a nonprofit 501 c(3) corporation based in Philomath that has continuously created and maintained a series of online educational websites for more than 20 years – likely making us the longest continuously operating educational website ever. Since beginning in December 1996, our Mission Statement has been:

\[
\text{Oregon Websites and Watersheds Project, Inc. shows students how to use Internet communications and scientific methodology to help manage Oregon’s natural and cultural resources. Students are encouraged to use computer technology, historical documentation, scientific reasoning, community outreach, environmental enhancement projects, and effective long-term monitoring strategies to help make decisions which affect Oregon’s quality of life.}
\]

On behalf of myself and the other ORWW Board Members, Russ Sapp (President) and Wayne Giesy (Treasurer), we would like to make the following four statements regarding the October 2018 Portland State University (PSU) Community Consensus Assessment Report, “Elliott State Forest: Next Step Considerations for Decoupling from Oregon’s Common School Fund.”

[First, please note that we think this report was very well written and considered and, despite our continued opposition to the decoupling process, believe there is strong value in completing the third phase “advisory committee” of this agreement for informational purposes; whether a decision is ultimately made to decouple or not.]

1. ORWW does not support the proposed decoupling of the Elliott State Forest (“the Elliott”) from the statutory obligation and responsibility of the State Land Board to manage the Elliott for the advantage of Oregon schoolchildren and the Common School Fund. We believe there is a false and unnecessary urgency to adopt this “solution” to effectively and legally manage the Elliott; that the 2016 appraisal of the Elliott for $220 million grossly underestimates its true timber and land value, and doesn’t adequately consider potential research, education, and recreational values; and that this process – for those two reasons alone – is greatly unfair to Oregon school children, to the Common School Fund, to Oregon taxpayers, and to residents and businesses of Coos and Douglas counties.
2. “Elliott State Educational Forest.” Instead of “decoupling” the State Land Board from its fiscal and legal responsibilities we continue to support adoption of the proposed self-funding, 20-year “Giesy Plan Alternative” for the management of the Elliott at this time. This proposal was first formally presented to the Land Board at the February 14, 2017 meeting and provided with greater detail at the May 9, 2017 meeting. This proposal has also been discussed in detail in a series of public meetings, magazine articles, radio interviews, and newspaper editorials:

http://www.orww.org/Elliott_Forest/Research/Giesy_Plan

The basic design of the Giesy Plan proposal is to first divide the Elliott State Forest into 18 to 24 subbasins, at an average size approaching 5,000 acres. Subbasins would be further separated into contiguous riparian areas containing fish bearing streams, floodplains, roadways, and bridges; which would be managed separately from the upland forest, perhaps in collaboration with local Indian Tribes. One-half of the subbasins, about 40,000 acres, would be managed entirely for “old-growth habitat,” while the other subbasins would be systematically clearcut and reforested at the historical rate of 50 million board feet per year for 20 years. During this time careful records would be kept of nesting and foraging activities of local wildlife populations, carbon sequestration changes, and economic benefits to the Common School Fund and to local communities; and all resulting information would be made publicly available online.

Old-growth Habitat. Would be actively managed to maintain current access roads and viability of older trees. Salvage logging, prescribed fires on culturally significant meadows and berry patches, and considered reforestation would be allowed.

Active Management. These lands would be systematically clearcut on a subbasin basis to provide a direct contrast to the old-growth habitat subbasins, and then carefully reforested. These would be the principal source of the 50 million feet of harvest, supplementing any salvage logging, thinnings, or other prescribed harvest on old-growth and riparian reserves. Reforestation planning, plan implementation, and maintenance would be performed by Oregon students and local Tribes and businesses, based on historical survey patterns, comprehensive cultural resource inventories, and development of native, non-timber resources as meadows, prairies, trails, myrtle groves, cedar stands, etc.

Riparian Zones. These would be defined as a contiguous polygon including all fish bearing streams in the Elliott, and the streamside roads, trails, bridges, and culverts that adjoin them. Management would be in cooperation with local Indian Tribes and public schools.

In this way the Giesy Plan Alternative for managing the Elliott for 20 years would:

1) Provide a scientific demonstration as to how to help end the “forest wars” of the past 30 years in order to better manage our federal forest lands for local and wildlife benefits;

2) Produce more than 430 full-time local jobs in Coos and Douglas Counties;

3) Produce an estimated $460+ million for the Oregon School Fund over 20 years;
4) Retain (and actively study) more than 40,000 acres of “old-growth habitat” for native animal species;

5) Provide an excellent scientific basis for researching nesting and foraging habitat for marbled murrelets and spotted owls; carbon sequestration measures for differing forest management approaches; and effects of active management on native coho and lamprey populations.

These results would be of direct benefit to Oregon schools, teachers, and students; to western US forest and wildlife managers; to local timber producing communities; and to native wildlife.

3. “Jerry Phillips Heritage Grove.” Jerry Phillips successfully managed the Elliott State Forest for most of his career and was responsible for many of the land transactions that helped build it to its current dimensions. He was also personally responsible for the creation of the Silver Creek Heritage Grove, which has never been formally recognized. David Gould has championed permanent boundaries for the reserve and a name change to honor Phillips’ work and we strongly support this proposal.

http://www.orww.org/Elliott_Forest/History/Phillips

ORWW recommends using the 1000 Line as the northern boundary to the proposed reserve for all of the State land in Section 12, Township 24 S., Range 11 W. (see attached map: 1000 Line is fairly close to historical Indian Trail). This area, about 100 acres in size, should be devoted to actively managing the largest and oldest trees in the Elliott in perpetuity and as an educational demonstration of reforestation, thinning, and salvage logging to achieve those objectives. This land base could be extended further westward to a private ownership interested in promoting recreational use of the Forest and include the North Marlow Ridge clearcut for related educational and recreational purposes.

4. During the past 2 ½ years ORWW has spent a significant amount of donated time and private funding to produce a comprehensive Elliott Forest educational website for the benefit of Oregon students, teachers, researchers, and taxpayers. This process has involved students and instructors from Southwestern Oregon Community College (SWOCC) and the website is currently comprised of multiple local history books, government reports, news articles and editorials, radio interviews, and hundreds of historical maps and photographs -- in addition to documenting six educational field trips and a student written draft plan with recommendations for expanding Elliott Forest recreational opportunities (see attachments):

http://www.orww.org/Elliott_Forest/Recreation

Our interest is to continue building the Elliott website for the direct benefit to Oregon high schools, community colleges, and universities. Other ORWW content and resources can likewise be used and developed into accredited online courses and school-related reports that can be used to correct, supplement, challenge, or further illuminate existing content. Proposed research projects regarding wildlife habitat, economics, and carbon sequestration can likewise be transparently shared and considered by all Oregonians with an interest in these topics.
Thank you for considering these proposals for the future ownership and management of the Elliott State Forest.

Sincerely,

<signature>

Bob Zybach (ORWW Secretary)

<signature>

Russ Sapp (ORWW President)

<signature>

Wayne Giesy (ORWW Treasurer)
Jerry Phillips’ June 23, 2018 historical map of Silver Creek Heritage Grove as 40-acre land exchange from Weyerhaeuser following salvage logging operation. Tsp. 24 S., Rng. 11 W., Sec. 12.
October 28, 2017 Eugene Register-Guard editorial by Fergus McLean supporting the Giesy Plan proposal for its potential research value for carbon sequestration income scientifically compared to active management income.

The Elliott a forest carbon research hub

By Fergus McLean

October 28, 2017 Eugene Register-Guard editorial by Fergus McLean supporting the Giesy Plan proposal for its potential research value for carbon sequestration income scientifically compared to active management income.
This page shows how the 2018 SWOCC Draft Elliott Forest Recreation Plan appears online, including HTML hyper-text “Recommendation” links to individual online chapters authored by student teams. The following page shows how the students’ Recommendations appear in their complete form, as page 47 in the printable PDF format of the Draft Plan.

2018 SWOCC Elliott State Forest Draft Recreation Plan

RECOMMENDATIONS


Students were asked to develop topical recommendations for maintaining or improving recreational opportunities on the Elliott State Forest for the advantage of the landowner, the Oregon School Trust. These opportunities would focus on legal requirements of net income and/or educational value for Oregon students and interested public.

Consensus Elliott Recommendations: Investment and Income

1) Signage. The Elliott does not have road signs and only one historical marker. Signage is needed for safety, educational, and recreational purposes. (Chapters 1, 2, 4, 5, 6, 7, 9, 10, 11, 12)

2) Maps. Good road and/or trail maps do not exist for the Elliott or for its potential recreational and educational attractions. These could be made and sold for income. (Chapters 1, 2, 5, 7, 9)

3) Improve Roads and Trails. At the time of the field trips the roads were in very poor condition, needing rock, grading, and clearing; trails were overgrown. (Chapters 1, 2, 5, 7, 8, 9, 10, 11, 12)

4) Install Campgrounds. Commercial campgrounds could be developed for seasonal recreational and educational uses, including hunting, fishing, sightseeing, harvesting. (Chapters 3, 6, 10, 12)

Potential Elliott Forest Recreational Income
RECOMMENDATIONS

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Consensus Elliott Recommendations: Investment and Income

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4) Install Campgrounds. Commercial campgrounds could be developed for seasonal recreational and educational uses, including hunting, fishing, sightseeing, harvesting. (Chapters 3, 6, 10, 12)

Potential Elliott Forest Recreational Income

5) User Fees. Recreational users of the Elliott could pay access and parking fees for activities such as hunting, fishing, camping, sightseeing, and harvesting. (Chapters 1, 3, 4, 5, 6, 9, 10, 12)

6) Strategic Logging. Commercial logging could create and maintain scenic vistas, game foraging areas, berry fields, roads, trails, campgrounds, etc. (Chapters 5, 7, 10, 11, 12)

7) Grant Applications. A number of existing sources for installing signage, increasing fish runs, developing wildlife habitat, etc., already exist and can be used. (Chapters 1, 2, 6, 9)

8) Local Business Networks. Existing recreational businesses on the perimeter of the Elliott could benefit by increased forest recreations, map and supply sales, etc. (Chapters 2, 7, 9)

9) Donations. Another potential source of income could be voluntary donations by people or organizations directly using the Elliott or supporting its uses. (Chapters 2, 4, 7, 9, 12)

Other Recommendations

Chapter 2: 1) Forest “zipline” attraction(s).
Chapter 7: 1) Increase hatchery fish runs; 2) improve hatchery visits; 3) conduct fish research.
Chapter 8: 1) Improve fish habitat.
Chapter 9: 1) Limit access to birds during nesting season; 2) conduct bird research.
Chapter 10: 1) Use of herbicides for vegetation management.
Chapter 12: 1) Install commercial communication towers.
SUBJECT

Request endorsement of Legislative Concept 686 (LC 686). This concept would transfer the administration of Uniform Disposition of Unclaimed Property Act, unclaimed estates and escheating funds from Department of State Lands to State Treasurer.

ISSUE

Whether the State Land Board should endorse LC 686 and authorize the Department of State Lands (DSL) to support LC 686 during the 2019 Legislative Session.

AUTHORITY

ORS 273.041 directing DSL to exercise all of the administrative functions of the State Land Board.

ORS 98.050, 98.302, 98.329, 98.348, 98.352, 98.353, 98.354, 98.356, 98.362, 98.366, 98.372, 98.376, 98.382, 98.384, 98.386, 98.388, 98.392, 98.396, 98.402, 98.412, 98.416, 98.422, 98.424, 98.991, 98.992 relating to unclaimed property.

**BACKGROUND**

In March 2018, Vicki Walker began serving as Department of State Lands Interim Director. Walker was directed to review the department with an eye towards the core mission and efficient operations. To that end, one of the specific tasks was to evaluate whether Unclaimed Property should continue to reside at State Lands; or, whether there was a more appropriate agency that would better align with the mission of Unclaimed Property.

DSL has since researched the history of Oregon’s program, as well as national best practices for unclaimed property programs. In most states, the program is housed in the State Treasurer’s Office. Other states, the program resides in a revenue agency or comptroller’s office, state auditor or attorney general. North Dakota is the only other state to house unclaimed property in a state lands department.

Working with Treasurer Read’s staff, DSL has explored potential for a successful transition of the Unclaimed Property program to the Treasurer’s Office. Discussion with stakeholders has largely been positive. They wanted assurances the Unclaimed Property and Estate funds would stay in the Common School Fund, and that will not change; we are simply changing who will manage the program. Treasury consulted with DSL staff and requested a legislative concept, LC 686, for introduction in the 2019 session.

**RECOMMENDATION**

The Department of State Lands recommends the Land Board endorse LC 686 and approve DSL staff support to assist Treasury in its passage; and, that DSL will work with the State Treasurer’s office to assure a collaborative and successful transition if approved by the 2019 Legislative Assembly.

**APPENDIX**

A. Draft LC 686
SUMMARY

Transfers administration of Uniform Disposition of Unclaimed Property Act, unclaimed estates and escheating funds from Department of State Lands to State Treasurer.

Eliminates additional requirements for recovering proceeds of unclaimed United States savings bonds.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT


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

TRANSFER OF ADMINISTRATION

SECTION 1. The duties, functions and powers of the Department
of State Lands are imposed upon, transferred to and vested in the
State Treasurer as they relate to:

(1) The Uniform Disposition of Unclaimed Property Act in ORS
98.302 to 98.436 and 98.992.

(2) Administration of estates as provided in ORS 112.055, 113.085,
113.235, 113.238, 113.242 and 114.505 to 114.560 and the duties of an estate
administrator as personal representative of an estate under ORS
chapters 111, 112, 113, 114, 115, 116 and 117; and

(3) Property escheated to the state and held under ORS 112.055,
113.085, 113.242, 114.555, 116.193, 116.203, 116.253, 652.405, 708A.430 and
723.466, or any other source of escheated property or funds.

SECTION 2. (1) The Director of the Department of State Lands
shall:

(a) Deliver to the State Treasurer all records and property within
the jurisdiction of the director that relate to the duties, functions and
powers transferred by section 1 of this 2019 Act; and

(b) Transfer to the State Treasurer those employees engaged pri-
marily in the exercise of the duties, functions and powers transferred
by section 1 of this 2019 Act.

(2) The State Treasurer shall take possession of the records and
property, and shall take charge of the employees and employ them in
the exercise of the duties, functions and powers transferred by section
1 of this 2019 Act, without reduction of compensation but subject to
change or termination of employment or compensation as provided by
law.

(3) The Governor shall resolve any dispute between the Department
of State Lands and the State Treasurer relating to transfers of records,
property and employees under this section. The Governor’s determi-
nation is final.

SECTION 3. The transfer of duties, functions and powers to the
State Treasurer by section 1 of this 2019 Act does not affect any action,
proceeding or prosecution with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the State Treasurer may be substituted for the Department of State Lands in the action, proceeding or prosecution.

SECTION 4. (1) Nothing in sections 1 to 6 of this 2019 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1 of this 2019 Act. The State Treasurer may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Department of State Lands under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1 of this 2019 Act with respect to the duties, functions and powers transferred by section 1 of this 2019 Act are transferred to the State Treasurer. For the purpose of succession to these rights and obligations, the State Treasurer is a continuation of the Department of State Lands and not a new authority.

SECTION 5. Notwithstanding the transfer of duties, functions and powers by section 1 of this 2019 Act, the rules of the Department of State Lands with respect to such duties, functions or powers transferred under section 1 of this 2019 Act in effect on the operative date of section 1 of this 2019 Act continue until superseded or repealed by rules of the State Treasurer. References in such rules to the Department of State Lands or an officer or employee of the Department of State Lands are considered references to the State Treasurer or an officer or employee of the State Treasurer.

SECTION 6. In any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, within the context of the duties, functions and powers transferred by section 1 of this 2019 Act, wherever reference is made to the Department of State Lands, or an officer or
employee of the Department of State Lands, whose duties, functions or powers are transferred by section 1 of this 2019 Act, the reference is considered to be a reference to the State Treasurer or an officer or employee of the State Treasurer charged with carrying out such duties, functions and powers.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

SECTION 7. ORS 98.302 is amended to read:
98.302. As used in ORS 98.302 to 98.436 and 98.992, unless the context otherwise requires:
[(1) “Administrator” means the Director of the Department of State Lands.] [(2) (1) “Apparent owner” means the person whose name appears on the records of the holder as the person entitled to property held, issued or owing by the holder.
[(3) (2) “Business association” means a nonpublic corporation, joint stock company, business trust, partnership, investment company or an association for business purposes of two or more individuals, whether or not for profit, including a financial institution, insurance company or utility.
[(4) (3) “Domicile” means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.
[(5) (4) “Financial institution” means a financial institution or a trust company, as those terms are defined in ORS 706.008, a safe deposit company, a private banker, a savings and loan association, a building and loan association or an investment company.
[(6) (5) “Holder” means a person, wherever organized or domiciled, who is in possession of property belonging to another, a trustee or indebted to another on an obligation.
[(7) (6) “Insurance company” means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, [which] that is
engaged in providing insurance coverage, including accident, burial, casualty, workers' compensation, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety and wage protection insurance.

[(8)] (7) “Intangible property” includes:

(a) Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid wages, unused airline tickets and unidentified remittances;

(b) Stocks and other intangible ownership interests in business associations;

(c) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(d) Amounts due and payable under the terms of insurance policies;

(e) Amounts distributed from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits; and

(f) Moneys, checks, drafts, deposits, interest, dividends and income.

[(9)] (8) “Last-known address” means a description of the location of the apparent owner sufficient for the purpose of delivery of mail.

[(10)] (9) “Lawful deduction” means a deduction related to the purpose of an account or deposit, for example, to satisfy unpaid utility bills.

[(11)] (10) “Owner” means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person’s legal representative, having a legal or equitable interest in property.

[(12)] (11) “Person” means an individual, business association, state or other government or political subdivision or agency, public corporation, public authority, two or more persons having a joint or common interest, or any other legal or commercial entity.
“Service charge” means fees or charges that are limited to a specific situation and that meet basic contractual and notice requirements.

“State” means any state, district, commonwealth, territory, insular possession or any other area subject to the legislative authority of the United States.

“Utility” means a person who owns or operates for public use, any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

SECTION 8. ORS 98.329 is amended to read:

98.329. A holder, with the written consent of the [Department of State Lands] State Treasurer, and in compliance with rules prescribed by the [department] State Treasurer, may report and deliver property before the property is presumed abandoned.

SECTION 9. ORS 98.348 is amended to read:

98.348. (1) At any time after property has been paid or delivered to the [Department of State Lands] State Treasurer under ORS 98.352, another state may recover the property if one or more of the following is true:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last-known address of the apparent owner when the property was presumed abandoned under ORS 98.302 to 98.436 and 98.992; and the other state establishes that the last-known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state.

(b) The last-known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state.

(c) The records of the holder were erroneous in that they did not accurately reflect the owner of the property and the last-known address of the
(d) The property was subjected to custody by this state and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state.

(e) The property is the sum payable on a traveler’s check, money order or other similar instrument that was subjected to custody by this state under ORS 98.309, and the instrument was purchased in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or unclaimed property must be presented in a form prescribed by the State Treasurer. The State Treasurer shall decide the claim within 90 days after it is presented.

(3) The State Treasurer shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

SECTION 10. ORS 98.352 is amended to read:

98.352. (1) [Every person holding funds or other property, tangible or intangible,] A holder of property presumed abandoned under ORS 98.302 to 98.436 and 98.992 [shall report and pay or deliver to the Department of State Lands all property presumed abandoned as provided in this section, except that] shall deliver to the State Treasurer the report described in subsection (2) of this section and shall pay or deliver to the State Treasurer all property presumed abandoned, except that for the following funds the holder is not required to deliver the funds presumed abandoned to the State Treasurer:

(a) Funds transferred to the General Fund under ORS 293.455 (1)(a) [shall only be reported to the department].

(b) Funds in the possession of the Child Support Program described in ORS 180.345 [shall only be reported to the department].
(c) Funds described in ORS 9.725 (3) or 98.386 (2) that are held in lawyer trust accounts [shall only be reported to the department] or in the possession of the Oregon State Bar.

(2) [The report shall be verified as to the accuracy of the information contained and shall] A report must include:

(a) Except with respect to traveler’s checks and money orders, the name, if known, and address, if known, of each person appearing from the records of the holder to be the owner of any property of value of $50 or more presumed abandoned under ORS 98.302 to 98.436 and 98.992;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and last-known address according to the life insurance corporation’s records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $50 each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Other information that the [department] State Treasurer prescribes by rule as necessary for the administration of ORS 98.302 to 98.436 and 98.992.

(3) If the [person holding] holder of property presumed abandoned is a successor to other [persons who previously held the property for the owner,] holders or [if the holder] has had a name change while holding the property, the holder shall file with the report all prior known names and addresses and effective dates of changes [if known of each holder of the property].

(4) The [report shall be filed] holder shall file the report after October 1, but no later than November 1, of each year for accounts dormant as of June 30. Upon written request from any person required to file a report, the [department] State Treasurer may postpone the reporting date [upon written request by any person required to file a report]. All records are
exempt from public review for 12 months from the time the property is re-
portable and for 24 months after the property has been remitted to the [de-
partment] **State Treasurer**. All lists of records or property held by a
government or public authority under ORS 98.336 [shall be] **are** exempt from
public review until 24 months after the property is remitted to the [depar-
tment] **State Treasurer**.

(5) If the holder of property presumed abandoned under ORS 98.302 to
98.436 and 98.992 knows the whereabouts of the owner and if the owner’s
claim [has not been] **is not** barred by the statute of limitations, the holder
shall, before filing the [annual] report, communicate with the owner and take
necessary steps to prevent abandonment from being presumed. The holder
shall exercise due diligence to ascertain the whereabouts of the owner.

(6) If the property presumed abandoned is a lawyer trust account estab-
lished by an attorney or law firm, the report required by this section must
indicate that the account is a lawyer trust account [in addition to providing
the information required by subsection (2) of this section].

(7) **The holder shall verify the accuracy of the information con-
tained in the report.** Verification[,] **must be executed by a partner** if
made by a partnership, [shall be executed by a partner;] **by an officer** if made
by an unincorporated association or private corporation[, by an officer;] and
**by the chief fiscal officer** if made by a public corporation[, by its chief
fiscal officer].

**SECTION 11.** ORS 98.353 is amended to read:

98.353. (1) The [Department of State Lands] **State Treasurer** shall [, on
a regular basis,] **regularly** provide educational or informational materials
to persons required to file a report under ORS 98.352. The educational or
informational materials [shall contain, but shall not be limited to,] **must in-
clude** information describing:

(a) The types of property, tangible and intangible, that are subject to re-
porting;

(b) Persons who typically hold, knowingly or unknowingly, unclaimed
property;

(c) Record keeping requirements for persons holding unclaimed property;

and

(d) Any penalties for failing to comply with the provisions of ORS 98.302 to 98.436.

(2) Upon request by the [Department of State Lands, the Department of Revenue and the Office of the Secretary of State shall] State Treasurer:

[(a) Assist the Department of State Lands in determining which persons are required to file a report under ORS 98.352; and]

[(b) Allow the Department of State Lands to include information about unclaimed property reporting requirements in the regular mailings of the Department of Revenue.]

(a) The Department of Consumer and Business Services, the Department of Revenue and the office of the Secretary of State shall assist the State Treasurer in determining which persons are required to file a report under ORS 98.352 or who may make a claim under ORS 98.392; and

(b) The Department of Consumer and Business Services, the Department of Revenue, the Employment Department and the office of the Secretary of State shall allow the State Treasurer to include information about unclaimed property reporting requirements and claims in the regular mailings of the departments and office and in electronic communications and resources.

SECTION 12. ORS 98.354 is amended to read:

98.354. (1) Every holder required to file a report under ORS 98.352 as to any property for which the holder has obtained an address of the owner, shall maintain a record of the name and last-known address of the owner and such signature cards and other evidence [which] that would assist in the identification of the owner for three years after the property has been remitted to the [Department of State Lands] State Treasurer.

(2) Any business association that sells in this state traveler’s checks,
money orders or other similar written instruments, other than third party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue, for five years after the date the property has been remitted to the [department] State Treasurer.

SECTION 13. ORS 98.356 is amended to read:

98.356. (1) The [Department of State Lands] State Treasurer shall publish notice of owners’ unclaimed accounts reported under ORS 98.352. The notice shall be published at least twice in a newspaper or other generally circulated periodical published in this state. The [department] State Treasurer may publish such notices at intervals to locate owners of accounts received under ORS 98.352 (4) in an expedient manner, but shall complete publication of all such accounts within one year of remittance.

(2) The [department] State Treasurer is not required to publish in such notice any item of less than $100 unless the [department] State Treasurer deems such publication to be in the public interest.

(3) This section is not applicable to sums payable on traveler’s checks or money orders presumed abandoned under ORS 98.309.

(4) The [department] State Treasurer shall undertake reasonable efforts to locate owners of unclaimed property reported to the [department] State Treasurer under ORS 98.352. The costs of such efforts may be deducted from the proceeds that are paid to the owners when and if an owner is located. The [department] State Treasurer shall specify, by rule, a maximum percentage of costs that may be deducted from a verified claim for unclaimed property.

(5) The [Department of State Lands] State Treasurer may not disclose to the general public any confidential information provided by the Department of Revenue from taxpayer returns.

SECTION 14. ORS 98.362 is amended to read:

98.362. (1) The holder of an intangible equity ownership interest presumed
abandoned under ORS 98.322 shall deliver a certificate of ownership or other evidence of ownership to the [Department of State Lands] **State Treasurer** as follows:

(a) The original certificate shall be delivered to the [department] **State Treasurer** when it is held by the business association, transfer agent, registrar or other person acting on behalf of the business association.

(b) A duplicate certificate shall be issued to the [department] **State Treasurer** when the business association, transfer agent, registrar or other person acting on behalf of the holder does not hold the original.

(2) After issuance of a duplicate certificate under subsection (1) of this section, the rights of a protected purchaser of the original certificate [shall be] **are** governed by ORS 78.4050. In such event, [recovery by] the protected purchaser [shall be] **may seek recovery** against the [department] **State Treasurer** to the extent allowed under the Oregon Constitution.

**SECTION 15.** ORS 98.366 is amended to read:

98.366. (1) Upon the payment or delivery of unclaimed property to the [Department of State Lands] **State Treasurer**, the state shall assume custody and [shall be] **is** responsible for [the] **its** safekeeping [thereof]. Any person who pays or delivers unclaimed property to the [department] **State Treasurer** under ORS 98.352 is relieved of all liability to the extent of the value of the property [so] paid or delivered for any claim [which] **that** then exists or [which thereafter] may arise [or be made] in respect to the property.

(2) A holder who has paid money to the [department] **State Treasurer** under ORS 98.352 may make payment to any person appearing to the holder to be entitled to payment. The [department] **State Treasurer** shall reimburse the holder within 60 days of receiving proof that payment was made to a person who appeared to the holder to be entitled to payment. **The department shall reimburse the holder for the payment** without imposing any fee or other charge.

**SECTION 16.** ORS 98.372 is amended to read:

98.372. The owner is not entitled to receive income or other increments
that have accrued on the property after the property is paid or delivered to the [Department of State Lands] State Treasurer under ORS 98.352.

SECTION 17. ORS 98.376 is amended to read:
98.376. The expiration of any period of time specified by statute or court order, during which an action, suit or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, [shall] does not prevent the money or property from being presumed abandoned [, nor] and does not affect any duty to file a report required by ORS 98.352 or to pay or deliver unclaimed property to the [Department of State Lands, provided that] State Treasurer. This section [shall] does not affect any property interests [which became] that vested prior to August 20, 1957.

SECTION 18. ORS 98.382 is amended to read:
98.382. (1)(a) The State Treasurer shall sell all unclaimed property [other than money and securities] delivered to the [Department of State Lands] State Treasurer under [ORS 98.362 shall be sold by the department] ORS 98.352, except money and securities, to the highest bidder at public sale by the method and at the location that the [department] State Treasurer determines are the most favorable for receiving the highest price for the property involved. The [department] State Treasurer may decline the highest bid and reoffer the property for sale if the [department] State Treasurer considers the price bid insufficient. The [department] State Treasurer need not offer any property for sale if, in the [department’s] State Treasurer’s opinion, the probable cost of sale exceeds the value of the property.

(b) In choosing the most favorable method for the sale of property under this subsection, the [department] State Treasurer may consider:
(A) A public oral auction;
(B) An electronic commerce forum; and
(C) Any other method for sale that ensures the highest returns and provides for open, public participation.
(c) In choosing the most favorable location for the sale of property under this subsection, the [department] State Treasurer may consider:

(A) The population of the location;

(B) The cost of conducting the sale in the location;

(C) The type of property being sold;

(D) The public access to the proposed sale location, including parking; and

(E) Any other indicator of market potential of the location.

(2) For a sale by public oral auction held under subsection (1) of this section, the [department] State Treasurer shall publish at least a single notice of the sale at least 10 days in advance of the sale in a newspaper of general circulation in the county where the property is to be sold. For a sale by a method other than public oral auction, the [department] State Treasurer shall publish at least a single notice in a newspaper of general circulation in Marion County.

(3) Securities listed on an established stock exchange shall be sold on the exchange at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the [administrator] State Treasurer considers advisable.

(4) The State Treasurer shall sell all securities and other intangible properties presumed abandoned [under ORS 98.362 and delivered to the department shall be sold by the department] and received under ORS 98.362 at such time and place and in such manner as [in the department's judgment will] the State Treasurer determines will bring the highest return.

(5) The [department] State Treasurer shall indemnify the holder of securities presumed abandoned under ORS 98.322 to the extent allowed by the Oregon Constitution. The [department] State Treasurer shall establish procedures by administrative rule to pay the rightful owner proceeds received from securities that were sold before the owner filed a claim to recover such securities.
(6) The purchaser at a sale conducted by the [department] State Treasurer pursuant to this section shall receive title to the property purchased, free from all claims of the owner or prior holder of the property and of all persons claiming through or under them. The [department] State Treasurer shall execute all documents necessary to complete the transfer of title.

SECTION 19. ORS 98.384 is amended to read:
98.384. If the [Department of State Lands] State Treasurer determines after investigation that any property delivered under ORS 98.352 has insubstantial commercial value, the [department] State Treasurer may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the [department] State Treasurer pursuant to this section.

SECTION 20. ORS 98.386 is amended to read:
98.386. (1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the [Department of State Lands] State Treasurer in the Common School Fund Account [with the State Treasurer]. Before making the deposit, the [department] State Treasurer shall record the name and last-known address of each person appearing from the holders’ reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.

(2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the [person holding the amounts] holder to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar[,] and may be used only for the funding of legal services provided through the Legal Services Pro-
gram established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(3) Before making a deposit to the credit of the Common School Fund Account, the [department] State Treasurer may deduct:

(a) Any costs in connection with sale of unclaimed property;

(b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and

(c) Reasonable service charges.

SECTION 21. ORS 98.388 is amended to read:

98.388. There is created from unclaimed property funds an Unclaimed Property Revolving Fund. The moneys in the fund are appropriated continuously to the [Department of State Lands] State Treasurer for the purpose of repaying claims [as provided] under ORS 98.396.

SECTION 22. ORS 98.392 is amended to read:

98.392. (1) A person claiming an interest in unclaimed property reported to the [Department of State Lands] State Treasurer may file a claim to the property or to the proceeds from the sale of the property at any time after the [person learns that the] property has been reported to the [department] State Treasurer. Claims shall be filed on the form prescribed by the [department] State Treasurer. The [department] State Treasurer may require the person to provide a lost instrument bond if the claim is for securities and the person does not surrender the original certificate to the [department] State Treasurer.

(2) If a claim is filed under this section for amounts identified as lawyer trust account funds in the report required by ORS 98.352, the [department] State Treasurer shall forward the claim to the Oregon State Bar for review and for payment by the Oregon State Bar if the claim is allowed. The [department] State Treasurer and the Oregon State Bar shall adopt rules for the administration of claims subject to this subsection.

SECTION 23. ORS 98.396 is amended to read:

[16]
98.396. (1) The [Department of State Lands] **State Treasurer** shall consider any claim filed under ORS 98.392 and may hold a hearing and receive evidence concerning the claim. If a hearing is held, the [department] **State Treasurer** shall prepare findings and a decision in writing on each claim filed, stating the substance of any evidence heard by the [department] **State Treasurer** and the reasons for the decision. **[The]** A decision [shall be] is a public record.

(2) If the claim allowed is for property deposited in the Common School Fund Account, the [department] **State Treasurer** shall return the property or make payment of the proceeds of the sale of the property to the claimant.

(3) If the claim allowed is for funds deposited in the General Fund, the [department] **State Treasurer** shall pay the claim [and file a request for reimbursement with the State Treasurer. The State Treasurer shall reimburse the department within five working days] from the fund against which the check or order represented in the claim was issued.

**SECTION 24.** ORS 98.402 is amended to read:

98.402. (1) A person aggrieved by a decision of the [administrator] **State Treasurer** under ORS 98.302 to 98.436 may request a [hearing regarding the decision. The Department of State Lands shall conduct the hearing as a contested case] [hearing in accordance with ORS 183.413 to 183.470].

(2) If the [administrator] **State Treasurer** fails to act on a claim within 120 days after a person files the claim under ORS 98.392, the [person] **claimant** may [file a] petition a court under ORS 183.484 [to request a court] to compel the [department] **State Treasurer** to act [pursuant to ORS 183.490].

**SECTION 25.** ORS 98.412 is amended to read:

98.412. (1) The [Department of State Lands] **State Treasurer** may require a person who has not filed a report under ORS 98.352 to file a verified report stating whether [or not] the person [is holding] **holds** any unclaimed property reportable or deliverable [under ORS 98.352].
(2) The [department] State Treasurer may at reasonable times and upon reasonable notice examine the records of any person to determine whether the person has complied with the provisions of ORS 98.352. The [department] State Treasurer may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this section.

(3) To the extent possible, the [department] State Treasurer shall enter into agreements with state and federal agencies that regularly examine the records of financial institutions, trust companies, financial holding companies and bank holding companies, as defined in ORS 706.008, and of subsidiaries of such financial institutions, trust companies, financial holding companies and bank holding companies. Under the agreements, the state and federal agencies shall examine the records of the financial institution, trust company, financial holding company, bank holding company or subsidiary to determine compliance with ORS 98.352. If a state or federal agency does not enter into an agreement with the [department] State Treasurer under this subsection, the [department] State Treasurer shall conduct the examination of the records of financial institutions, trust companies, financial holding companies and bank holding companies to determine compliance with ORS 98.352.

(4) If a holder fails to maintain the records required by ORS 98.354 and the records of the holder available for the periods subject to ORS 98.302 to 98.436 and 98.992 are insufficient to permit the preparation of a report, the [department] State Treasurer may issue a finding that requires the holder to report and pay the amounts that the [department] State Treasurer reasonably estimates from the report and available records. [The department shall include in its finding a notice substantially similar to that specified under ORS 183.415. Additionally, the notice shall include]

(5) In addition to the information required under ORS 183.413 and 183.415, the State Treasurer shall provide a holder subject to findings under subsection (4) of this section with information about opportunities
to resolve disputes through a collaborative dispute resolution process in lieu of a contested case hearing under ORS 183.413 to 183.470.

(5) Any holder subject to examination under this section may request a hearing regarding the findings issued by the department. The department shall conduct a hearing under this subsection as a contested case proceeding in accordance with ORS 183.413 to 183.470.]

SECTION 26. ORS 98.416 is amended to read:

98.416. (1) [If any person refuses to deliver property to the Department of State Lands as required under ORS 98.352, the department] The State Treasurer may bring a suit or action in a court of appropriate jurisdiction to enforce delivery of [the] property not delivered by a holder as required under ORS 98.352.

(2) The [department] State Treasurer may require [a person] a holder who fails to pay or deliver property within the time prescribed by ORS 98.302 to 98.436 and 98.992 to pay interest from the date the [department] State Treasurer determines interest should have been paid. Interest shall be paid at the rate set by the Director of the Department of Revenue pursuant to ORS 305.220 (1) and (3).

SECTION 27. ORS 98.422 is amended to read:

98.422. The [administrator] State Treasurer is authorized to adopt necessary rules to carry out the provisions of ORS 98.302 to 98.436 and 98.992.

SECTION 28. ORS 98.424 is amended to read:

98.424. (1) The [Department of State Lands] State Treasurer may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that this state or another state may be entitled to subject to a claim of custody under ORS 98.348. The [department] State Treasurer may adopt rules requiring the other states to report information needed to enable compliance with agreements made pursuant to this section and prescribing the form for making a claim of custody under ORS 98.348.

(2) **Before adopting, amending or repealing any rules under this**
section, to avoid conflicts between the [department’s] State Treasurer’s procedures and the procedures of administrators in other jurisdictions that enact an unclaimed property act, [the department, so far as is] consistent with the purposes, policies and provisions of ORS 98.302 to 98.436 and 98.992, [before adopting, amending or repealing rules,] the State Treasurer shall advise and consult with administrators in other jurisdictions that enact a substantially similar unclaimed property act and take into consideration the rules of administrators in other jurisdictions that enact an unclaimed property act.

(3) The [department] State Treasurer may join with other states to seek enforcement of ORS 98.302 to 98.436 and 98.992 against any person who is or may be holding property reportable under ORS 98.352.

(4) At the request of another state, the Attorney General of this state may bring an action in the name of another state to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in bringing the action, including attorney fees.

(5) The [department] State Treasurer, through the Attorney General of this state, may request the attorney general of another state or any other person to bring an action in the other state in the name of the [department] State Treasurer against the holder of property in the other state that is subject to escheat or a claim of abandonment by this state. This state shall pay all expenses including attorney fees in any action under this subsection. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under ORS 98.302 to 98.436 and 98.992.

(6) The [Department of State Lands shall] State Treasurer may not disclose to any other state any confidential information provided by the Department of Revenue from taxpayer returns.

SECTION 29. ORS 98.991 is amended to read:
98.991. (1) Any person who willfully fails to render any report or perform other duties required under this Act is guilty of a misdemeanor.

(2) Any person who willfully refuses to pay or deliver unclaimed property to the [Department of State Lands] State Treasurer as required under this Act is guilty of a misdemeanor.

SECTION 30. ORS 98.992 is amended to read:

98.992. A person who willfully fails to render any report, to pay or deliver property or to perform other duties required by ORS 98.302 to 98.436 and 98.992 may be required to forfeit and pay to the State Treasurer to be deposited in the Common School Fund Account, an amount determined by the [Department of State Lands] State Treasurer pursuant to ORS 183.745 of not more than $1,000 for individuals and $50,000 for corporations. This penalty shall be assessed only after at least one reporting cycle, and only after the [department] State Treasurer has provided the person with written instructions, including copies of applicable laws and policies. The [department] State Treasurer may waive any penalty due under this section with appropriate justification.

ESTATE ADMINISTRATION AND ESCHATELED PROPERTY

SECTION 31. ORS 112.055 is amended to read:

112.055. (1) If, after diligent search and inquiry that is appropriate to the circumstances, taking into account the value of the decedent’s estate, no person takes under ORS 112.025 to 112.045, the net intestate estate escheats to the State of Oregon.

(2) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found, the share of that person escheats to the State of Oregon.

(3) If a devisee or a person entitled to take under ORS 112.025 to 112.045 is not identified or found:

(a) The [Department of State Lands] State Treasurer has the same pref-
ereference as the missing devisee or person for the purpose of appointment as personal representative under ORS 113.085;
(b) Title to property of the decedent that would vest in the missing devisee or person under ORS 114.215 vests in the [Department of State Lands] State Treasurer; and
(c) The [Department of State Lands] State Treasurer has all of the rights of the missing devisee or person for the purposes of ORS chapters 111, 112, 113, 114, 115, 116 and 117, including but not limited to the following:
(A) The right to contest any will of the decedent under ORS 113.075; and
(B) The right to information under ORS 113.145.

SECTION 32. ORS 113.045 is amended to read:
113.045. (1) Upon appointment, a personal representative shall deliver or mail to the [Department of State Lands] State Treasurer a copy of the petition filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative has not identified and found all heirs and devisees of the decedent. The personal representative shall file proof of the delivery or mailing with the court.
(2) If at any time after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to the [Department of State Lands] State Treasurer a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file proof of the delivery or mailing with the court.
(3) This section does not affect the requirements of ORS 113.085 (3).

SECTION 33. ORS 113.075 is amended to read:
113.075. (1) Any interested person may contest the probate of the will or the validity of the will or assert an interest in the estate for the reason that:
(a) The will alleged in the petition for probate to be the will of the decedent is ineffective in whole or part;
(b) There exists a will that has not been alleged in the petition to be the will of the decedent; or
(c) The decedent agreed, promised or represented that the decedent would make or revoke a will or devise, or not revoke a will or devise, or die intestate.

(2) An action described in subsection (1) of this section must be commenced by the filing of a petition in the probate proceedings, except that an action described in subsection (1)(c) of this section may be commenced by the filing of a separate action in any court of competent jurisdiction.

(3) An action described in subsection (1) of this section must be commenced before the later of:
   (a) Four months after the date of delivery or mailing of the information described in ORS 113.145 if that information was required to be delivered or mailed to the person on whose behalf the action under subsection (1) of this section is filed; or
   (b) Four months after the first publication of notice to interested persons if the person on whose behalf the action under subsection (1) of this section is filed was not required to be named in the petition for probate as an interested person.

(4)(a) A person who commences an action under subsection (1) of this section shall give notice of the action to heirs and devisees identified in the petition for probate or amended petition for probate, and to the [Department of State Lands] State Treasurer if the personal representative has delivered or mailed information to the [department] State Treasurer under ORS 113.045.

(b) If any devisee under the contested will is a charitable trust as described in ORS 130.170, a public benefit corporation as defined in ORS 65.001 or a religious organization, a person who commences an action under subsection (1) of this section shall give notice to the Attorney General of the action.

(5) A cause of action described in subsection (1)(c) of this section may not be presented as a claim under ORS chapter 115.

SECTION 34. ORS 113.085 is amended to read:
113.085. (1) Except as provided in subsection (3) of this section, upon the
filing of the petition under ORS 113.035, if there is no will or if there is a
will and it has been proved, the court shall appoint a qualified person the
court finds suitable as personal representative, giving preference in the fol-
lowing order:

(a) The personal representative named in the will.
(b) If the surviving spouse of the decedent is a distributee of the estate,
the surviving spouse of the decedent or the nominee of the surviving spouse
of the decedent.
(c) If the person is a distributee of the estate, a person who would be
entitled to property of the decedent under intestate succession.
(d) Any other distributee of the estate.
(e) The Director of Human Services or the Director of the Oregon Health
Authority, or an attorney approved under ORS 113.086, if the decedent re-
ceived public assistance as defined in ORS 411.010, received medical assist-
ance as defined in ORS 414.025 or received care at an institution described
in ORS 179.321 (1) and it appears that the assistance or the cost of care may
be recovered from the estate of the decedent.
(f) The Department of Veterans’ Affairs, if the decedent was a protected
person under ORS 406.050 (10) and the department has joined in the petition
for such appointment.
(g) Any other person.

(2) Before the court appoints a personal representative under subsection
(1)(b) to (g) of this section, the court may require the petitioner to make a
reasonable attempt to notify persons of higher priority than the proposed
personal representative under subsection (1)(b) to (g) of this section.

(3) Except as provided in subsection (4) of this section, the court shall
appoint the [Department of State Lands] State Treasurer as personal rep-
resentative if it appears that the decedent died wholly intestate and without
known heirs. The Attorney General shall represent the [Department of State
Lands] State Treasurer in the administration of the estate. The State
Treasurer shall deposit any funds received by the [Department of State Lands] State Treasurer in the capacity of personal representative [may be deposited] in accounts, separate and distinct from the General Fund, established in the State Treasury. Interest earned by such account shall be credited to that account.

(4) The court may appoint a person other than the [Department of State Lands] State Treasurer to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from the [Department of State Lands] State Treasurer approving the filing of the petition by the person. Except as provided by rule adopted by the [Director of the Department of State Lands] State Treasurer, the [department] State Treasurer may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

SECTION 35. ORS 113.105 is amended to read:

113.105. (1)(a) Except as provided in subsections (2) to (4) of this section, the personal representative may not act, and letters may not be issued to the personal representative, until the personal representative provides a bond to the clerk of the court. The bond must be for the security and benefit of all interested persons and must be conditioned upon the personal representative faithfully performing the duties of the position. The bond must be executed by a surety qualified under ORCP 82 D to G.

(b) The amount of the bond set by the court under this subsection must be adequate to protect interested persons. In setting the amount of the bond, the court shall consider:

(A) The nature, liquidity and apparent value of the assets of the estate.
(B) The anticipated income during administration.
(C) The probable indebtedness and taxes.

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

(a) The will provides that no bond is required, but the court may, for good cause, require a bond notwithstanding any provision in a will that no bond
is required;
(b) The personal representative is the sole heir or devisee, but the court may, for good cause, require a bond notwithstanding the fact that the personal representative is the sole heir or devisee; or
(c) The personal representative is the [Department of State Lands] State Treasurer, the Department of Veterans’ Affairs, the Director of Human Services, the Director of the Oregon Health Authority or [an attorney] a person approved under ORS 113.085 or 113.086.
(3) Upon a request by the personal representative, the court may waive the requirement of a bond if:
(a) The request states the reasons why the waiver is requested; and
(b) The request describes the known creditors of the estate.
(4) The court may waive or reduce the requirement of a bond to the extent that:
(a) The personal representative provides written confirmation from a financial institution that property of the estate is held by the financial institution subject to withdrawal only on order of the court; or
(b) The court restricts the sale, encumbrance or other disposition of property of the estate without prior court approval.
(5) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative.

SECTION 36. ORS 113.235 is amended to read:
113.235. The [Director of the Department of State Lands] State Treasurer shall appoint one or more estate administrators to [act for the Department of State Lands in administration of] administer any estate in which the [Department of State Lands] State Treasurer is appointed personal representative. An estate administrator appointed under this section is an employee of the [Department of State Lands] State Treasurer.

SECTION 37. ORS 113.238 is amended to read:
113.238. (1) A person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and
that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to the [Department of State Lands] State Treasurer.

(2) Except as provided by ORS 708A.430 and 723.466, a person may not dispose of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned property subject to probate in Oregon and who died without a known heir unless the person has prior written approval of the [Department of State Lands] State Treasurer. The prohibition of this subsection:

(a) Applies to a guardian or conservator for the decedent; and

(b) Does not apply to a personal representative appointed under ORS 113.085 (4) or to an affiant authorized under ORS 114.520 to file an affidavit under ORS 114.515.

(3) For purposes of this section, a known heir is an heir who has been identified and found.

SECTION 38. ORS 113.242 is amended to read:

113.242. (1) An estate administrator of the [Department of State Lands] State Treasurer appointed under ORS 113.235 may take custody of the property of a decedent who died owning property subject to probate in Oregon upon the department State Treasurer receiving notice that:

(a) The decedent died wholly intestate and without a known heir as described in ORS 113.238 (3); or

(b) The decedent left a valid will, but no devisee has been identified and found.

(2) For any estate described in subsection (1) of this section, an estate administrator of the [Department of State Lands] State Treasurer appointed under ORS 113.235 may:

(a) Incur expenses for the funeral of the decedent in a manner suitable to the condition in life of the decedent;

(b) Incur expenses for the protection of the property of the estate;

(c) Incur expenses searching for a will or for heirs or devisees of the
(d) Have access to the property and records of the decedent other than records that are made confidential or privileged by statute;

(e) With proof of the death of the decedent, have access to all financial records of accounts or safe deposit boxes of the decedent at banks or other financial institutions; and

(f) Sell perishable property of the estate.

(3) The reasonable funeral and administrative expenses of the [Department of State Lands] State Treasurer incurred under this section, including a reasonable attorney fee, shall be paid from the assets of the estate with the same priority as funeral and administration expenses under ORS 115.125.

SECTION 39. ORS 114.325 is amended to read:

114.325. (1) Except as provided in subsection (2) of this section, and subject to ORS 113.105, a personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order.

(2) Exercise of the power of sale by the personal representative is improper, except after notice, hearing and order of the court, if:

(a) The sale is in contravention of the provisions of the will; or

(b) The property is specifically devised and the will does not authorize its sale.

(3) Notwithstanding ORS chapters 270, 273 and 274, an estate administrator of the State Treasurer appointed under ORS 113.235 or the Director of Human Services or Director of the Oregon Health Authority serving as a personal representative may deal with property of the estate as a personal representative under this section.

SECTION 40. ORS 114.505 is amended to read:

114.505. As used in ORS 114.505 to 114.560:

(1) “Affiant” means the person or persons signing an affidavit filed under ORS 114.515.

(2) “Claiming successors” means:
(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an estate administrator of the [Department of State Lands] State Treasurer appointed under ORS 113.235;
(b) If the decedent died testate, the devisee or devisees of the decedent; and
(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545 (1)(d) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent’s death.
(3) “Estate” means decedent’s property subject to administration in Oregon.

SECTION 41. ORS 114.520 is amended to read:
114.520. (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received written authorization from an estate administrator of the [Department of State Lands] State Treasurer appointed under ORS 113.235. Except as provided by rule adopted by the [Director of the Department of State Lands] State Treasurer, an estate administrator [shall] may not consent to the filing of an affidavit under ORS 114.515 by a creditor [only if] unless it appears after investigation that the estate is insolvent.
(2) A creditor of an estate who is subject to subsection (1) of this section may give written notice to an estate administrator of the [Department of State Lands] State Treasurer informing the estate administrator that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice permitted by this subsection, the estate administrator shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the estate administrator shall either:
(a) Give written authorization to the creditor for the filing of an affidavit by the creditor under ORS 114.515; or
(b) Inform the creditor that the [Department of State Lands] State
Treasurer will file an affidavit as claiming successor under ORS 114.515. 

(3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit by the creditor from an estate administrator of the [Department of State Lands] State Treasurer. The written authorization may be a copy of a memorandum of an interagency agreement between the [Department of State Lands] State Treasurer and another state agency.

SECTION 42. ORS 114.535 is amended to read:

114.535. (1) Not sooner than 10 days after the filing of an affidavit under ORS 114.515, the affiant may deliver a certified copy of the affidavit to any person who was indebted to the decedent or who has possession of personal property belonging to the estate. Except as provided in this section, upon receipt of the copy, the person shall pay, transfer, deliver, provide access to and allow possession of the personal property to the affiant.

(2) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person that controls access to personal property belonging to the estate of the decedent, including personal property held in a safe deposit box for which the decedent was the sole lessee or the last surviving lessee, the person shall:

(a) Provide the affiant with access to the decedent’s personal property; and

(b) Allow the affiant to take possession of the personal property.

(3) Subject to ORS 114.537, if a copy of an affidavit is delivered under subsection (1) of this section to a person who has received property of the decedent under ORS 446.616, 708A.430, 723.466 or 803.094, or a similar statute providing for the transfer of property of an estate that is not being probated, the person shall pay, transfer, deliver, provide access to or allow possession
of the property to the affiant if the person would be required to pay, transfer, deliver, provide access to or allow possession of the property to a personal representative of the estate.

(4) Any person that pays, transfers, delivers, provides access to or allows possession of property of a decedent in the manner provided by this section is discharged and released from any liability or responsibility for the property in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(6) If a person to whom an affidavit is delivered refuses to pay, deliver, transfer, provide access to or allow possession of any personal property as required by this section, the property may be recovered or payment, delivery, transfer of or access to the property may be compelled upon proof of the transferee’s entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(7) If the affidavit was signed by the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, the Director of Human Services, the Director of the Oregon Health Authority or the attorney may certify a copy of the affidavit for the purposes described in this section.

(8) Notwithstanding ORS chapters 270, 273 and 274, an estate administrator of the State Treasurer appointed under ORS 113.235 or the Director of Human Services or Director of the Oregon Health Authority serving as an affiant may deal with property of the estate as an affiant under this section.

SECTION 43. ORS 116.193 is amended to read:

116.193. If it appears to the court, at any time after the expiration of four
months after the date of the first publication of notice to interested persons, that there is no known person to take by descent the net intestate estate, the court shall order that the estate escheat to the State of Oregon and that the whole of the estate, after payment of claims, taxes and expenses of administration, be distributed to the [Department of State Lands] State Treasurer. There shall be no further proceeding in the administration of the estate, and the estate shall summarily be closed.

SECTION 44. ORS 116.203 is amended to read:

116.203. If a report filed in the estate proceeding by the personal representative not less than 30 days after the date of entry of the judgment of distribution shows that payment or delivery of property in the possession of the personal representative or under the control of the personal representative cannot be made to a distributee entitled thereto, either because the distributee refuses to accept the property or because the distributee cannot be found, the court may direct the personal representative to pay or deliver the property to the [Department of State Lands] State Treasurer, to be placed in the escheat funds of the state. The personal representative shall take the receipt of the [Department of State Lands] State Treasurer stating from whom the property was received, a description of the property and the name of the person entitled to the property. The person entitled thereto may apply for and recover the property in the manner provided for recovery of escheat funds.

SECTION 45. ORS 116.243 is amended to read:

116.243. A court clerk of any county in which the county court has judicial functions, the clerk of any county court that has jurisdiction over probate matters under ORS 111.075 or a court administrator, upon request, shall furnish to the [Department of State Lands] State Treasurer the titles of estates of decedents that have remained open for more than three years and in which no heirs, or only persons whose right to inherit the proceeds thereof is being contested, have appeared to claim the estate.

SECTION 46. ORS 116.253 is amended to read:
Within 10 years after the death of a decedent whose estate escheated in whole or in part to the state, or within eight years after the entry of a judgment or order escheating property of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a person who at the time of the escheat was unable to prove entitlement to the escheated property.

(2) The claim shall be made by a petition filed with the [Director of the Department of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition] State Treasurer. The petition must include:

(a) A declaration by the petitioner under penalty of perjury in the form required by ORCP 1 E[,] or an unsworn declaration under ORS 194.800 to 194.835[,] if the declarant is physically outside the boundaries of the United States[, and shall state];

[(a)] (b) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(c) A brief description of the property or source of funds believed to have been escheated to the state;

[(b)] (d) That the claimant lawfully is entitled to the property or proceeds[, briefly describing the property or proceeds];

[(c)] (e) That at the time the property escheated to the state the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement;

[(d)] (f) That the claimant claims the property or proceeds as an heir or devisee or as the personal representative of the estate of an heir or devisee, setting forth [the] any relationship[, if any, of] between the claimant [to] and the decedent who at the time of death [was the owner] owned the escheated property;

[(e)] (g) That 10 years have not elapsed since the death of the
decedent[,] or that eight years have not elapsed since the entry of the judgment or order escheating the property to the state; and

[(f)] (h) If the petition is not filed by the claimant, the status of the petitioner.

(3) If [it is determined] the State Treasurer determines that the claimant is entitled to the property or the proceeds thereof, the [Director of the Department of State Lands] State Treasurer shall deliver the property to the petitioner, subject to and charged with any tax on the property and the costs and expenses of the state in connection therewith.

(4) If the person whose property escheated or reverted to the state was at any time a patient of a state institution in Oregon for persons with mental illness or of the Eastern Oregon Training Center, the reasonable unpaid cost of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property. The reasonable unpaid cost of care and maintenance shall be determined in accordance with ORS 179.701.

(5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent’s certified copy of the death record or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

(6) A person aggrieved by a determination of the State Treasurer under this section may seek a contested case hearing under ORS 183.413 to 183.470.

CONFORMING AMENDMENTS

SECTION 47. ORS 60.674 is amended to read:

60.674. Assets of a dissolved corporation that should be distributed to a creditor, claimant or shareholder of the corporation who cannot be found shall be reduced to cash and, within one year after the final distribution in
such liquidation or winding up is payable, deposited with the [Department of State Lands] **State Treasurer**. The receiver or other liquidating agent shall prepare in duplicate and under oath a statement containing the names and last-known addresses of the persons entitled to such funds. One of the statements shall be filed with the [Department of State Lands] **State Treasurer** with the cash and another shall be delivered to the office for filing. The [owner, heirs or personal representatives of the owner,] **person** entitled to the distribution may file a claim with the [Department of State Lands] **State Treasurer** in the manner provided by ORS 98.392 and 98.396.

**SECTION 48.** ORS 62.720 is amended to read:

62.720. (1) All intangible [personal] property distributable in the course of a voluntary or involuntary dissolution of a cooperative that is unclaimed by the owner within two years after the date for final distribution is presumed abandoned. Such property [shall be] **is** subject to the provisions of ORS 98.302 to 98.436 and 98.992, except that with respect to agricultural cooperatives, a copy of the report of unclaimed property [shall be] **is** filed with the [Department of State Lands as set forth in] **State Treasurer** under ORS 98.352. A copy of the report [shall also be filed with Oregon State University.]

(2) All unclaimed property specified in the report required by ORS 98.352 shall be **paid or delivered** [within the time specified in ORS 98.362] to the [Department of State Lands which shall assume custody and shall be responsible for the safekeeping thereof.] **State Treasurer. Any person that pays or delivers unclaimed property to the State Treasurer under this section is relieved of all liability to the extent of the value of the property paid or delivered for any claim made in respect to the property.**

(3) The [department] **State Treasurer** shall reconcile the report to the delivered funds, deduct the costs as provided for in subsection [(3)] (4) of this section[,] and forward the **balance of the** funds to Oregon State University within 14 working days of receipt of the funds. [Any person who pays or delivers unclaimed property to the Department of State Lands under this section is relieved of all liability to the extent of the value of the property so paid or
delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

[(3)] (4) All funds received by Oregon State University under subsection (3) of this section shall be used in such programs related to agricultural research as the university may determine except for:

(a) The payment of claims [which] that may be made pursuant to this section; [and]

(b) The payment of expenses of mailing and publication in connection with any unclaimed property;

(c) Reasonable service charges; and

(d) Expenses of the [Department of State Lands] State Treasurer in connection with claims made pursuant to ORS 98.392 to 98.402.

[(4)] (5) The provisions of ORS 98.392, 98.396 and [to] 98.402 are applicable to claims against unclaimed property delivered to Oregon State University pursuant to this section. Oregon State University shall pay such claims from funds delivered to it pursuant to this section within 30 days of receipt of a verified copy of a finding and decision of the [Department of State Lands] State Treasurer made pursuant to ORS 98.396 or a certified copy of a judgment made pursuant to ORS 98.402.

[(5)] (6) As used in this section, [an] “agricultural cooperative” [is] means any cooperative in which farmers act together in producing, processing, preparing for market, handling or marketing the agricultural products of such farmers, and any cooperative in which farmers act together in purchasing, testing, grading, processing, distributing and furnishing farm supplies or farm business services.

[(6)] (7) The provisions of this section are applicable with respect to the voluntary or involuntary dissolution of any cooperative, [which] if the dissolution was commenced on or after January 1, 1970.

SECTION 49. ORS 63.674 is amended to read:

63.674. Assets of a dissolved limited liability company that should be distributed to a creditor, claimant or member of the limited liability company...
who cannot be found or who is not competent to receive them shall be re-
duced to cash and, within six months after the final distribution of such
liquidation or winding up is payable, deposited with the [Department of State
Lands] State Treasurer. The receiver or other liquidating agent shall pre-
pare in duplicate and under oath a statement containing the names and
last-known addresses of the persons entitled to such funds. One of the
statements shall be filed with the [Department of State Lands] State
Treasurer and another shall be delivered to the office for filing. The funds
shall then escheat to and become the property of the State of Oregon and
shall become a part of the Common School Fund [of the state]. The [owners,
heirs or personal representatives of the owner] person entitled to the dis-
tribution may reclaim any funds so deposited in the manner provided in
ORS 116.253 for estates [which] that have escheated to the state.

SECTION 50. ORS 65.674 is amended to read:

65.674. Assets of a dissolved corporation [which] that should be trans-
ferred to a creditor, claimant or member of the corporation who cannot be
found or who is not competent to receive them shall be reduced to cash un-
less they are subject to known trust restrictions and deposited with the
[Department of State Lands] State Treasurer for safekeeping. However, in
the discretion of the [Director of the Department of State Lands] State
Treasurer, property of unusual historic or aesthetic interest may be received
and held in kind. The receiver or other liquidating agent shall prepare in
duplicate and under oath a statement containing the names and last-known
addresses of the persons entitled to such funds. One of the statements shall
be filed with the [Department of State Lands] State Treasurer and another
shall be delivered to the Secretary of State for filing. The funds shall then
escheat to and become the property of the State of Oregon and shall become
part of the Common School Fund [of the state]. The [owner, heirs or personal
representatives of the owner,] person entitled to the transfer may reclaim
any funds so deposited in the manner provided in ORS 116.253 for estates
[which] that have escheated to the state.
SECTION 51. ORS 87.691 is amended to read:

87.691. (1) After the time specified in the notice given under ORS 87.689 expires, if the owner determines, based on the owner’s previous experience, that the personal property subject to the lien created by ORS 87.687 has a value of $300 or less, the owner may dispose of the property at the owner’s sole discretion.

(2) After the time specified in the notice given under ORS 87.689 expires, if the owner determines, based on the owner’s previous experience, that the personal property subject to the lien created by ORS 87.687 has a value of more than $300, the owner shall cause an advertisement of the sale to be published once a week for two consecutive weeks in a newspaper of general circulation in the city or county in which the self-service storage facility is located. If there is no newspaper of general circulation in the city or county, the advertisement must be posted in not fewer than six conspicuous places in the neighborhood in which the self-service storage facility is located. The advertisement must include:

(a) The address of the self-service storage facility, the number, if any, of the space where the personal property is located and the name of the occupant.

(b) The time, place and manner of the sale.

(3) The sale of the personal property may not take place earlier than 15 days after the first advertisement, publication or posting concerning the sale. The sale must conform to the terms stated in the advertisement published or posted under this section.

(4) The owner may conduct the lien sale without obtaining a license and may offer the personal property for sale on a publicly accessible website that regularly offers personal property for auction or sale, but the owner shall complete the sale of the personal property at the self-service storage facility or at a suitable place closest to where the personal property is held or stored.

(5)(a) If the owner does not receive any bids at the public sale held under
this section, the owner may dispose of the personal property in another
manner at the owner’s sole discretion. The owner may satisfy the lien cre-
ated by ORS 87.687 and reasonable expenses associated with the disposition
from the proceeds of the disposition but shall hold the balance, if any, for
delivery on demand to the occupant. If the occupant does not claim the bal-
ance of the proceeds within two years after the date of the disposition, the
owner shall presume the balance is abandoned and shall report and deliver
the balance to the State Treasurer as provided in ORS 98.352.

(b) The owner, an employee of the owner, an affiliate or relative of the
owner or an associate or relative of the employee may not acquire, directly
or indirectly, property that is subject to disposal under this section.

(6)(a) If personal property that is subject to the lien is a motor vehicle,
watercraft or trailer, the owner may have the personal property towed away
from the self-service storage facility if:

(A) Rent and other charges for storing the personal property at the self-
service storage facility remain unpaid for 60 days or more; and

(B) The owner sends notice as provided in ORS 87.689.

(b) An owner is not liable for damage to personal property that a tower
removes from the self-service storage facility once the tower takes possession
of the personal property.

(c) A tower has a lien on personal property the tower removes from the
self-service storage facility for reasonable towing and storage charges as
provided in ORS 98.812.

(7) Before a sale or other disposition of personal property under this
section, the occupant may pay the amount necessary to satisfy the lien and
the reasonable expenses incurred under this section and thereby redeem the
personal property. Upon receiving payment, the owner shall return the per-
sonal property, and thereafter the owner has no liability with respect to the
personal property.

(8) After a sale under this section, the owner may satisfy the lien created
by ORS 87.687 from the proceeds of the sale, but shall hold the balance, if
any, for delivery on demand to the occupant. If the occupant does not claim the balance of the proceeds within two years after the date of sale, the owner shall presume that the balance of the proceeds is abandoned and shall report and deliver the balance to the State Treasurer as provided in ORS 98.352.

(9) A purchaser in good faith of the personal property sold to satisfy a lien created by ORS 87.687 takes the property free of any rights of persons against whom the lien was valid, even if the owner does not comply with the requirements of this section and ORS 87.689.

SECTION 52. ORS 90.425 is amended to read:

90.425. (1) As used in this section:

(a) “Current market value” means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for a manufactured dwelling or floating home by an informed buyer to an informed seller, each acting without compulsion in an arm’s-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) “Dispose of the personal property” means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) “Goods” includes those goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rental space outside a recreational vehicle, manufactured dwelling or floating home, whether the recreational vehicle, dwelling or home is located inside or outside of a facility.

(d) “Lienholder” means any lienholder of an abandoned recreational vehicle, manufactured dwelling or floating home, if the lien is of record or the lienholder is actually known to the landlord.

(e) “Of record” means:

(A) For a recreational vehicle that is not a manufactured structure as
defined in ORS 446.561, that a security interest has been properly recorded
with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and
803.097.

(B) For a manufactured dwelling or recreational vehicle that is a manu-
factured structure as defined in ORS 446.561, that a security interest has
been properly recorded for the manufactured dwelling or recreational vehicle
in the records of the Department of Consumer and Business Services pursu-
ant to ORS 446.611 or on a certificate of title issued by the Department of
Transportation prior to May 1, 2005.

(C) For a floating home, that a security interest has been properly re-
corded with the State Marine Board pursuant to ORS 830.740 to 830.755 for
a home registered and titled with the board pursuant to ORS 830.715.

(f) “Owner” means any owner of an abandoned recreational vehicle,
manufactured dwelling or floating home, if different from the tenant and ei-
ther of record or actually known to the landlord.

(g) “Personal property” means goods, vehicles and recreational vehicles
and includes manufactured dwellings and floating homes not located in a
facility. “Personal property” does not include manufactured dwellings and
floating homes located in a facility and therefore subject to being stored,
sold or disposed of as provided under ORS 90.675.

(2) A landlord is responsible for abandoned personal property and shall
store, sell or dispose of abandoned personal property as provided by this
section. This section governs the rights and obligations of landlords, tenants
and any lienholders or owners in any personal property abandoned or left
upon the premises by the tenant or any lienholder or owner in the following
circumstances:

(a) The tenancy has ended by termination or expiration of a rental
agreement or by relinquishment or abandonment of the premises and the
landlord reasonably believes under all the circumstances that the tenant has
left the personal property upon the premises with no intention of asserting
any further claim to the premises or to the personal property;
(b) The tenant has been absent from the premises continuously for seven
days after termination of a tenancy by a court order that has not been exe-
cuted; or
(c) The landlord receives possession of the premises from the sheriff fol-
lowing restitution pursuant to ORS 105.161.

(3) Prior to storing, selling or disposing of the tenant’s personal property
under this section, the landlord must give a written notice to the tenant that
must be:
(a) Personally delivered to the tenant; or
(b) Sent by first class mail addressed and mailed to the tenant at:
   (A) The premises;
   (B) Any post-office box held by the tenant and actually known to the
   landlord; and
   (C) The most recent forwarding address if provided by the tenant or ac-
tually known to the landlord.

(4)(a) In addition to the notice required by subsection (3) of this section,
in the case of an abandoned recreational vehicle, manufactured dwelling or
floating home, a landlord shall also give a copy of the notice described in
subsection (3) of this section to:
   (A) Any lienholder of the recreational vehicle, manufactured dwelling or
   floating home;
   (B) Any owner of the recreational vehicle, manufactured dwelling or
   floating home;
   (C) The tax collector of the county where the manufactured dwelling or
   floating home is located; and
   (D) The assessor of the county where the manufactured dwelling or
   floating home is located.

(b) The landlord shall give the notice copy required by this subsection by
personal delivery or first class mail, except that for any lienholder, mail
service must be both by first class mail and by certified mail with return
receipt requested.
(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section must state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder or owner must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored at a place of safekeeping, except that if the property includes a manufactured dwelling or floating home, the dwelling or home must be stored on the rented space;

(d) The tenant or any lienholder or owner, except as provided by subsection (18) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder or owner, except as provided by subsection (18) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of removal and storage charges, as provided by subsection (7)(d) of this section, prior to releasing the personal property to the tenant or any lienholder or owner;

(g) If the personal property is considered to be abandoned pursuant to
subsection (2)(c) of this section, the landlord may not require payment of
storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder or owner fails to contact the landlord
by the specified date, or after that contact, fails to remove the personal
property within 30 days for recreational vehicles, manufactured dwellings
and floating homes or 15 days for all other personal property, the landlord
may sell or dispose of the personal property. If the landlord reasonably be-
lieves that the personal property will be eligible for disposal pursuant to
subsection (10)(b) of this section and the landlord intends to dispose of the
property if the property is not claimed, the notice shall state that belief and
intent; and

(i) If the personal property includes a recreational vehicle, manufactured
dwelling or floating home and if applicable, there is a lienholder or owner
that has a right to claim the recreational vehicle, dwelling or home, except
as provided by subsection (18) of this section.

(6) For purposes of subsection (5) of this section, the specified date by
which a tenant, lienholder or owner must contact a landlord to arrange for
the disposition of abandoned personal property is:

(a) For abandoned recreational vehicles, manufactured dwellings or
floating homes, not less than 45 days after personal delivery or mailing of
the notice; or

(b) For all other abandoned personal property, not less than five days
after personal delivery or eight days after mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section,
the landlord:

(a) Shall store any abandoned manufactured dwelling or floating home on
the rented space and shall exercise reasonable care for the dwelling or home;

(b) Shall store all other abandoned personal property of the tenant, in-
cluding goods left inside a recreational vehicle, manufactured dwelling or
floating home or left upon the rented space outside a recreational vehicle,
dwelling or home, in a place of safekeeping and shall exercise reasonable
care for the personal property, except that the landlord may:

(A) Promptly dispose of rotting food; and

(B) Allow an animal control agency to remove any abandoned pets or livestock. If an animal control agency will not remove the abandoned pets or livestock, the landlord shall exercise reasonable care for the animals given all the circumstances, including the type and condition of the animals, and may give the animals to an agency that is willing and able to care for the animals, such as a humane society or similar organization;

(c) Except for manufactured dwellings and floating homes, may store the abandoned personal property at the dwelling unit, move and store it elsewhere on the premises or move and store it at a commercial storage company or other place of safekeeping; and

(d) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal, including any cost of removal to a place of storage.

In the case of an abandoned manufactured dwelling or floating home, the storage charge may be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant, lienholder or owner, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord’s notice that the tenant, lienholder or owner intends to remove the personal property from the premises or from the place of safekeeping, the landlord must make that personal property available for removal by the tenant, lienholder or owner by appointment at reasonable times during the 15 days or, in the case of a recreational vehicle, manufactured dwelling or floating home, 30 days following the date of the response, subject to subsection (18) of this section.

If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of removal and storage charges, as provided in subsection (7)(d) of this section, prior to allowing the tenant, lienholder or owner to remove the personal property. Acceptance by a land-
lord of such payment does not operate to create or reinstate a tenancy or
create a waiver pursuant to ORS 90.412 or 90.417.

(9) Except as provided in subsections (18) to (20) of this section, if the
tenant, lienholder or owner of a recreational vehicle, manufactured dwelling
or floating home does not respond within the time provided by the landlord’s
notice, or the tenant, lienholder or owner does not remove the personal
property within the time required by subsection (8) of this section or by any
date agreed to with the landlord, whichever is later, the tenant’s, lienholder’s
or owner’s personal property is conclusively presumed to be abandoned. The
tenant and any lienholder or owner that have been given notice pursuant to
subsection (3) or (4) of this section shall, except with regard to the distrib-
ution of sale proceeds pursuant to subsection (13) of this section, have no
further right, title or interest to the personal property and may not claim
or sell the property.

(10) If the personal property is presumed to be abandoned under sub-
section (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that
prior to the sale of a recreational vehicle, manufactured dwelling or floating
home:

(A) The landlord may seek to transfer ownership of record of the personal
property by complying with the requirements of the appropriate state agency;
and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in
which the recreational vehicle, manufactured dwelling or floating home is
located. The notice shall state:

(I) That the recreational vehicle, manufactured dwelling or floating home
is abandoned;

(II) The tenant’s and owner’s name, if of record or actually known to the
landlord;

(III) The address and any space number where the recreational vehicle,
manufactured dwelling or floating home is located, and any plate, registration or other identification number for a recreational vehicle or floating home noted on the certificate of title, if actually known to the landlord;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the recreational vehicle, manufactured dwelling or floating home;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder and owner, by personal delivery or first class mail, except that for any lienholder, mail service must be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes and assessments on the manufactured dwelling or floating home have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (13) of this section;

(b) Destroy or otherwise dispose of the personal property if the landlord determines that:

(A) For a manufactured dwelling or floating home, the current market value of the property is $8,000 or less as determined by the county assessor; or

(B) For all other personal property, the reasonable current fair market value is $1,000 or less or so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) Consistent with paragraphs (a) and (b) of this subsection, sell certain
items and destroy or otherwise dispose of the remaining personal property.

(11)(a) A public or private sale authorized by this section must:

(A) For a recreational vehicle, manufactured dwelling or floating home, be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable; or

(B) For all other personal property, be conducted under the provisions of ORS 79.0610.

(b) If there is no buyer at a sale of a manufactured dwelling or floating home, the personal property is considered to be worth $8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of a manufactured dwelling or floating home, the landlord is not liable for the condition of the dwelling or home to:

(a) A buyer of the dwelling or home at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the dwelling or home pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) If the sale was of a manufactured dwelling or floating home, after deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes and assessments owed on the dwelling or home.

(c) If the sale was of a recreational vehicle, manufactured dwelling or floating home, after deducting the amounts listed in paragraphs (a) and (b)
of this subsection, if applicable, the landlord shall remit the remaining pro-
ceeds, if any, to any lienholder to the extent of any unpaid balance owed on
the lien on the recreational vehicle, dwelling or home.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of
this subsection, if applicable, the landlord shall remit to the tenant or owner
the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant or owner cannot after due diligence be found, the land-
lord shall deposit the remaining proceeds with the county treasurer of the
county in which the sale occurred. If not claimed within three years, the
deposited proceeds revert to the general fund of the county and are available
for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes and
assessments owed on a manufactured dwelling or floating home, as provided
under ORS 311.790, only under one of the following circumstances:

(a) The landlord disposes of the manufactured dwelling or floating home
after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the manufactured dwelling or floating home at
a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the manufactured dwelling or floating home at
a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating
home is $8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property
taxes and assessments owed on the dwelling or home after distribution of the
proceeds pursuant to subsection (13) of this section.

(d)(A) The landlord buys the manufactured dwelling or floating home at
a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating
home is more than $8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property
taxes and assessments owed on the manufactured dwelling or floating home
after distribution of the proceeds pursuant to subsection (13) of this section;
and

(D) The landlord disposes of the manufactured dwelling or floating home.

(15) The landlord is not responsible for any loss to the tenant, lienholder
or owner resulting from storage of personal property in compliance with this
section unless the loss was caused by the landlord’s deliberate or negligent
act. In the event of a deliberate and malicious violation, the landlord is lia-
ble for twice the actual damages sustained by the tenant, lienholder or
owner.

(16) Complete compliance in good faith with this section shall constitute
a complete defense in any action brought by a tenant, lienholder or owner
against a landlord for loss or damage to such personal property disposed of
pursuant to this section.

(17) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises
caused by conduct that was not deliberate, intentional or grossly negligent
and for unpaid rent and may recover from the landlord up to twice the actual
damages sustained by the tenant;

(b) A lienholder or owner aggrieved by the noncompliance may recover
from the landlord the actual damages sustained by the lienholder or owner.
ORS 90.255 does not authorize an award of attorney fees to the prevailing
party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover
from the landlord the actual damages sustained by the tax collector, if the
noncompliance is part of an effort by the landlord to defraud the tax col-
lector. ORS 90.255 does not authorize an award of attorney fees to the pre-
vailing party in any action arising under this paragraph.

(18) In the case of an abandoned recreational vehicle, manufactured
dwelling or floating home, the provisions of this section regarding the rights
and responsibilities of a tenant to the abandoned vehicle, dwelling or home
also apply to any lienholder except that the lienholder may not sell or re-
move the vehicle, dwelling or home unless:

(a) The lienholder has foreclosed its lien on the recreational vehicle, manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (26) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(19)(a) In the case of an abandoned manufactured dwelling or floating home but not including a dwelling or home abandoned following a termination pursuant to ORS 90.429 and except as provided by subsection (20)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the dwelling or home may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder’s right to a storage agreement arises upon the failure of the tenant, owner or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by
subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(d) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in ORS 90.532, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges described in the rental agreement between the landlord and the tenant; and

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement between the landlord and the tenant.

(e) During the term of an agreement described under this subsection, the lienholder has the right to remove or sell the property, subject to the provisions of the lien. Selling the property includes a sale to a purchaser who wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord’s approval of a purchaser or, if there was no such agreement, any reasonable conditions by the landlord regarding approval of any purchaser who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser of the property upon payment of all unpaid
storage charges and maintenance costs.

(f)(A) If the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days’ written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days’ written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days’ written notice to the landlord and may remove the property from the rented space if the lienholder has paid all storage charges and other charges as provided in the agreement.

(g) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(20) If the personal property is a manufactured dwelling or floating home and is considered abandoned as a result of the death of a tenant who was the only tenant and who owned the dwelling or home, this section applies, except as follows:

(a) The following persons have the same rights and responsibilities regarding the abandoned dwelling or home as a tenant:
(A) Any personal representative named in a will or appointed by a court to act for the deceased tenant.

(B) Any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant’s death.

(b) The notice required by subsection (3) of this section must be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person, if actually known to the landlord.

(c) The notice described in subsection (5) of this section must refer to any personal representative or designated person, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the dwelling or home may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (19)(c), (d) and (f)(C) of this section applies, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person has the right to remove or sell the dwelling or home, including a sale to a purchaser or a transfer to an heir
or devisee where the purchaser, heir or devisee wishes to leave the dwelling
or home on the rented space and become a tenant, subject to any conditions
previously agreed to by the landlord and tenant regarding the landlord's
approval for occupancy of a purchaser, heir or devisee or, if there was no
such agreement, any reasonable conditions by the landlord regarding ap-
proval for occupancy of any purchaser, heir or devisee who wishes to leave
the dwelling or home on the rented space and become a tenant. The landlord
also may condition approval for occupancy of any purchaser, heir or devisee
of the dwelling or home upon payment of all unpaid storage charges and
maintenance costs.

(g) If the representative or person violates the storage agreement, the
landlord may terminate the agreement by giving at least 30 days’ written
notice to the representative or person stating facts sufficient to notify the
representative or person of the reason for the termination. Unless the rep-
resentative or person corrects the violation within the notice period, the
agreement terminates as provided and the landlord may sell or dispose of the
dwelling or home without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage
agreement as provided by this subsection or upon termination of an agree-
ment, unless the parties otherwise agree or the representative or person has
sold or removed the manufactured dwelling or floating home, the landlord
may sell or dispose of the property pursuant to this section without further
notice to the representative or person.

(21) If the personal property is other than a manufactured dwelling or
floating home and is considered abandoned as a result of the death of a
tenant who was the only tenant and who owned the personal property, this
section applies except as follows:

(a) The following persons have the same rights and responsibilities re-
garding the abandoned personal property as a tenant:

(A) An heir or devisee.

(B) Any personal representative named in a will or appointed by a court

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(C) Any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant’s death.

(b) The notice required by subsection (3) of this section must be:

(A) Sent by first class mail to the deceased tenant at the premises;

(B) Personally delivered or sent by first class mail to any heir, devisee, personal representative or designated person, if actually known to the landlord; and

(C) Sent by first class mail to the attention of an estate administrator of the [Department of State Lands] State Treasurer.

(c) The notice described in subsection (5) of this section must refer to the heir, devisee, personal representative, designated person or estate administrator of the [department] State Treasurer, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) The landlord shall allow a person that is an heir, devisee or personal representative of the tenant, or an estate administrator of the [department] State Treasurer, to remove the personal property if the person contacts the landlord within the period provided by subsection (6) of this section, complies with the requirements of this section and provides the landlord with reasonable evidence that the person is an heir, devisee or personal representative, or an estate administrator of the [department] State Treasurer.

(e) If [neither an] no heir, devisee [nor] or personal representative of the tenant, [nor an] or no estate administrator of the [department] State Treasurer, contacts the landlord within the time period provided by subsection (6) of this section, the landlord shall allow removal of the personal property by the designated person of the tenant, if the designated person contacts the landlord within that period and complies with the requirements of this section and provides the landlord with reasonable evidence that the person is the designated person.

(f) A landlord who allows removal of personal property under this subsection is not liable to another person that has a claim or interest in the
personal property.

(22) If a governmental agency determines that the condition of a manufactured dwelling, floating home or recreational vehicle abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the immediate vicinity and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, owner, personal representative or designated person must contact a landlord to arrange for the disposition of the property must be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, owner, personal representative or designated person must remove the property must be not less than seven days after the tenant, lienholder, owner, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section must be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property must be consistent with this subsection;

(B) The notice must state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency’s determination to the notice.

(d) If the tenant, a lienholder, owner, personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

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(e) A landlord is not required to enter into a storage agreement with a lienholder, owner, personal representative or designated person pursuant to subsection (19) of this section.

(23)(a) If an official or agency referred to in ORS 453.876 notifies the landlord that the official or agency has determined that all or part of the premises is unfit for use as a result of the presence of an illegal drug manufacturing site involving methamphetamine, and the landlord complies with this subsection, the landlord is not required to comply with subsections (1) to (22) and (24) to (27) of this section with regard to personal property left on the portion of the premises that the official or agency has determined to be unfit for use.

(b) Upon receiving notice from an official or agency determining the premises to be unfit for use, the landlord shall promptly give written notice to the tenant as provided in subsection (3) of this section. The landlord shall also attach a copy of the notice in a secure manner to the main entrance of the dwelling unit. The notice to the tenant shall include a copy of the official’s or agency’s notice and state:

(A) That the premises, or a portion of the premises, has been determined by an official or agency to be unfit for use due to contamination from the manufacture of methamphetamine and that as a result subsections (1) to (22) and (24) to (27) of this section do not apply to personal property left on any portion of the premises determined to be unfit for use;

(B) That the landlord has hired, or will hire, a contractor to assess the level of contamination of the site and to decontaminate the site;

(C) That upon hiring the contractor, the landlord will provide to the tenant the name, address and telephone number of the contractor; and

(D) That the tenant may contact the contractor to determine whether any of the tenant’s personal property may be removed from the premises or may be decontaminated at the tenant’s expense and then removed.

(c) To the extent consistent with rules of the Department of Human Services, the contractor may release personal property to the tenant.
(d) If the contractor and the department determine that the premises or
the tenant’s personal property is not unfit for use, upon notification by the
department of the determination, the landlord shall comply with subsections
(1) to (22) and (24) to (27) of this section for any personal property left on
the premises.

(e) Except as provided in paragraph (d) of this subsection, the landlord
is not responsible for storing or returning any personal property left on the
portion of the premises that is unfit for use.

(24) In the case of an abandoned recreational vehicle, manufactured
dwelling or floating home that is owned by someone other than the tenant,
the provisions of this section regarding the rights and responsibilities of a
tenant to the abandoned vehicle, dwelling or home also apply to that owner,
with regard only to the vehicle, dwelling or home, and not to any goods left
inside or outside the vehicle, dwelling or home.

(25) In the case of an abandoned motor vehicle, the procedure authorized
by ORS 98.830 for removal of abandoned motor vehicles from private property
may be used by a landlord as an alternative to the procedures required in
this section.

(26)(a) A landlord may sell or dispose of a tenant’s abandoned personal
property without complying with subsections (1) to (25) and (27) of this sec-
tion if, after termination of the tenancy or no more than seven days prior
to the termination of the tenancy, the following parties so agree in a writing
entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a
tenant who was the only tenant, the personal representative, designated
person or other person entitled to possession of the personal property, such
as an heir or devisee, as described in subsection (20) or (21) of this section;
and

(C) In the case of a manufactured dwelling, floating home or recreational
vehicle, any owner and any lienholder.

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(b) A landlord may not, as part of a rental agreement, require a tenant, a personal representative, a designated person or any lienholder or owner to waive any right provided by this section.

(27) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property.

SECTION 53. ORS 97.170 is amended to read:

97.170. (1) As used in this section, “indigent person” means a deceased person who does not have a death or final expense benefit or insurance policy that pays for disposition of the deceased person’s body or other means to pay for disposition of the deceased person’s body and:

(a) Who does not have a relative or other person with the legal right to direct and the means to pay for disposition of the deceased person’s body;

(b) Whose relative, or other person, with the legal right to direct the disposition of the deceased person’s body does not pay or arrange to pay for, or refuses to direct, the disposition of the deceased person’s body within 10 days of being notified of the death; or

(c) For whom no person other than a person described in paragraph (a) or (b) of this subsection wishes to direct and pay for the disposition of the deceased person’s body.

(2) The State Mortuary and Cemetery Board shall maintain a list of institutions that may accept or process bodies for education or research purposes.

(3)(a) A funeral establishment licensed under ORS 692.146 that takes custody of the unclaimed body of a deceased person shall, within five days after taking custody of the body:

(A) Submit a report of death under ORS 432.133;

(B) Obtain all contact information known to the medical examiner, a health care facility or law enforcement regarding persons listed in ORS 97.130;

(C) Attempt to locate and notify the persons listed in ORS 97.130;
(D) Arrange with any person listed in ORS 97.130 who will pay the expenses to make disposition of the body;

(E) If no person listed in ORS 97.130 can be located to pay the expenses to make disposition of the body, arrange with a person or institution not listed in ORS 97.130 that will pay the expenses to make disposition of the body;

(F) Determine whether the [Department of State Lands] State Treasurer or other person is appointed as the personal representative of the deceased person pursuant to ORS 113.085; and

(G) Contact the Department of Veterans’ Affairs to determine whether the decedent is eligible for any state or federal benefits.

(b) If no one claims the body within 10 days after the funeral establishment takes custody of the body, or if the persons notified acquiesce, or if the decedent is not eligible for any benefits described in paragraph (a)(G) of this subsection, the funeral establishment may transfer the body to an institution on the list of institutions described in subsection (2) of this section that desires the body for education or research purposes.

(c) If no person or institution claims the body as provided in paragraphs (a) and (b) of this subsection, the funeral establishment may cremate or bury the body without the consent of persons listed in ORS 97.130 and is indemnified from any liability arising from having made such disposition. The method of disposition must be in the least costly and most environmentally sound manner that complies with law, and that does not conflict with known wishes of the deceased. If the deceased person is an indigent person, the board shall reimburse the funeral establishment for the costs of disposition under subsection (5) of this section.

(4) If the deceased person is a child over whom the Department of Human Services held guardianship at the time of death, the department shall promptly attempt to locate and notify the relatives of the deceased child or any other person who has an interest in the deceased child and shall arrange with any person who will pay the expenses to make disposition of the body.
If no relatives or interested persons claim the body, the department may transfer the body to an institution that is on the list maintained by the board under subsection (2) of this section that desires the body for education or research purposes, or may authorize burial or cremation of the body. The department shall pay expenses related to burial or cremation authorized by the department under this subsection.

(5) Upon receipt of a qualifying statement as required by the board by rule that the deceased person is an indigent person, the board shall reimburse a funeral establishment the reasonable costs for disposition of the body of any unclaimed deceased indigent person. The method of disposition must be in the least costly and most environmentally sound manner that complies with law. The board shall adopt rules establishing the requirements and process for reimbursement and setting the amount that may be reimbursed to a funeral establishment under this subsection.

SECTION 54. ORS 98.050 is amended to read:

98.050. (1) The State Treasurer may compile information or data [in the possession of the Department of State Lands] into finder’s reports at the request of any person to assist in finding the owners of abandoned or unclaimed property.

(2) The State Treasurer shall adopt by rule a fee charged for copies of finder’s reports[. The fee charged shall be] that is commensurate with preparation costs including production, duplication and staff time involved.

[(3) Any person requesting a copy of a finder’s report shall be charged the fee.] [(4) As used in subsections (1) to (3) of this section:] [(a) “Administrator” has the same meaning as given by ORS 98.302.] [(b) “Person” includes any natural person, corporation, partnership, firm or association.] [(c) “Finder’s report” means any report prepared by the administrator for the benefit of any person to assist in finding the owners of abandoned or un-]
SECTION 55. ORS 146.125 is amended to read:

146.125. (1) The medical examiner, medical-legal death investigator, district attorney or sheriff may temporarily retain possession of any property found on the body or in the possession of the deceased [which] that in the opinion of the medical examiner, medical-legal death investigator, district attorney or sheriff may be useful in establishing the cause or manner of death or may be used in further proceedings.

(2) When a medical examiner, medical-legal death investigator, district attorney or sheriff assumes control or custody of money or personal property found on the body or in the possession of the deceased, the medical examiner, medical-legal death investigator, district attorney or sheriff shall:
   (a) Make a verified inventory of such money or property.
   (b) File the inventory in the district medical examiner’s office.
   (c) Deposit the money with the county treasurer to the credit of the county general fund.

(3) If personal property is not retained by the medical examiner, medical-legal death investigator, district attorney or sheriff, and is not claimed within 30 days, the inventory shall be filed with the board of county commissioners to be disposed of as follows:
   (a) If the property has value, the board may order it sold and after deducting the cost of sale, shall deposit the proceeds of the sale with the county treasurer to the credit of the county general fund.
   (b) If the property has no value in the judgment of the board, the board may order the sheriff to destroy such property.

(4) Any expenses incurred by the county in transporting or disposing of the body may be deducted from the money or proceeds of the sale of personal property before it is delivered to a claimant.

(5) If it appears that the person whose death required investigation died wholly intestate and without heirs, the county whose official has control or custody of the property shall notify an estate administrator of the [Depart-
ment of State Lands] **State Treasurer** appointed under ORS 113.235 within 15 days after the death.

(6) If a legally qualified personal representative, spouse, [or] next of kin **or estate administrator of the State Treasurer:**

(a) Claims the money of the deceased, the **county** treasurer shall, subject to the provisions of subsection (4) of this section, deliver such money to the claimant.

(b) Within 30 days, claims the personal property of the deceased, the property shall be delivered to such claimant subject to the provisions of subsections (1) and (5) of this section.

(7) If money of the deceased is not claimed within seven years, [and] the **money** is presumed abandoned as provided by ORS 98.302 to 98.436 and 98.992[,] and the board of county commissioners shall order the county **treasurer to deliver and report** the money [paid] to the **State Treasurer** as required by [law] ORS 98.352.

**SECTION 56.** ORS 183.635 is amended to read:

183.635. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) Attorney General.

(b) Boards of stewards appointed by the Oregon Racing Commission.

(c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(d) Department of Corrections.

(e) Department of Education, State Board of Education and Superintendent of Public Instruction.

(f) Department of Human Services for vocational rehabilitation services
cases under 29 U.S.C. 722(c) and disability determination cases under 42

(g) Department of Revenue.
(h) Department of State Police.
(i) Employment Appeals Board.
(j) Employment Relations Board.
(k) Energy Facility Siting Council.
(L) Fair Dismissal Appeals Board.
(m) Governor.
(n) Land Conservation and Development Commission.
o) Land Use Board of Appeals.
p) Local government boundary commissions created pursuant to ORS
199.430.
(q) Public universities listed in ORS 352.002.
(r) Oregon Youth Authority.
s) Psychiatric Security Review Board.
t) Public Utility Commission.
u) State Accident Insurance Fund Corporation.
v) State Apprenticeship and Training Council.
w) State Board of Parole and Post-Prison Supervision.
x) State Land Board.
y) State Treasurer, except the State Treasurer shall use an admin-
istrative law judge for contested cases involving claims arising under
ORS 98.302 to 98.436, 98.992 or 116.253 or any other claim to escheated
or unclaimed property.
(3) The Workers’ Compensation Board is exempt from using administra-
tive law judges assigned from the office for any hearing conducted by the
board under ORS chapters 147, 654 and 656. Except as specifically provided
in this subsection, the Department of Consumer and Business Services must
use administrative law judges assigned from the office only for contested
cases arising out of the department’s powers and duties under:
(a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;
(b) ORS chapter 455;
(c) ORS chapter 674;
(d) ORS chapters 706 to 716;
(e) ORS chapter 717;
(f) ORS chapters 723, 725 and 726; and
(g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:
(a) Federal law requires that a different administrative law judge or hearing officer be used; or
(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

SECTION 57. ORS 273.125 is amended to read:

273.125. Whenever it appears to the Department of State Lands that any moneys have been erroneously paid to it, the department may make an appropriate refund, or may deliver the moneys to the State Treasurer if the moneys appear to have been misdelivered to the department and to be unclaimed property described under ORS 98.302 to 98.436 or escheated funds, including those described under ORS 116.203, 652.405, 708A.430 or 723.466.
SECTION 58. ORS 273.141 is amended to read:

273.141. In order to provide the Department of State Lands with the specialized assistance necessary to its operations and the transaction of its business, and in addition to other agreements that may be entered into under ORS 273.135, the department may enter into written agreements with the state agencies designated in this section for the operation of programs and activities assigned to the department. Subject to final review and approval by the State Land Board:

(1) The State Forestry Department may perform the functions assigned by the board that relate to forest resources.

(2) The State Department of Geology and Mineral Industries may perform the functions of the Department of State Lands that relate to mineral resources.

(3) The Department of Veterans’ Affairs may perform the functions of the Department of State Lands that relate to investment of funds in mortgages secured by real property.

(4) The State Treasurer may perform the functions of the Department of State Lands that relate to investments of funds administered by the Department of State Lands not described in subsection (3) of this section[, and that relate to escheated property].

(5) The State Department of Agriculture may perform the functions assigned by the board and the functions pertaining to management and regulation of grazing land and other agricultural lands.

SECTION 59. ORS 273.183 is amended to read:

273.183. For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the Department of State Lands may require the fingerprints of a person who:

(1)(a) Is employed or applying for employment by the department; or

(b) Provides services or seeks to provide services to the department as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position:
(a) In which the person has direct access to persons under 18 years of age, elderly persons or persons with disabilities;

(b) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(c) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(d) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

[(e) In which the person has responsibility for auditing unclaimed property;]

[(f)] (e) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, personal financial information or criminal background information;

[(g)] (f) In which the person has access to tax or financial information of individuals or business entities;

[(h)] (g) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms or munitions, access to firearms or munitions or the training of others in the use or handling of firearms; or

[(i)] (h) In which the person provides security, design or construction services for government buildings, grounds or facilities.

SECTION 60. ORS 287A.474 is amended to read:

287A.474. (1) The county fiscal officer shall prepare a report of all warrants and checks issued more than two years prior to July 1 of that year
[which] that have not been paid, pursuant to ORS 98.352.

(2) The lawful owner of any warrant or check included in any list referred to in subsection (1) of this section, not presented to the county treasurer for payment and not paid, thereafter may file a claim with the [Department of State Lands] State Treasurer in the manner provided by ORS 98.392 and 98.396.

SECTION 61. ORS 293.450 is amended to read:

293.450. (1) Before October 1 of each year, [the] an agency that maintains an account pursuant to ORS 293.445 shall prepare a report pursuant to ORS 98.352 of all checks or orders drawn by it that have been outstanding for a period of more than two years prior to July 1, and that have not been paid by the State Treasurer.

(2) The report shall not include checks or orders that have already been paid pursuant to indemnity bonds.

(3) The agency shall forward the report to the [Department of State Lands] State Treasurer before November 1.

(4) The [Department of State Lands shall] State Treasurer may not require the Department of Revenue to remit funds being held by the department [of Revenue] prior to January 1, 1994.

SECTION 62. ORS 293.455 is amended to read:

293.455. (1) After October 1, the State Treasurer may refuse payment of the unpresented checks or orders included in the report referred to in ORS 293.450. [In accordance with procedures developed by the Department of State Lands and approved by the State Treasurer, the agency shall instruct the State Treasurer to do the following] The State Treasurer shall:

(a) Transfer and credit the amounts of the unpresented checks or orders dedicated for general funding to the General Fund.

(b) Transfer all other funds to the [Department of State Lands for deposit in the] Unclaimed Property Revolving Fund within the Common School Fund Account.

(c) Transfer and credit the amounts of the unpresented checks issued un-
der ORS chapters 316 and 317 to the [Department of State Lands for deposit in the] Unclaimed Property Revolving Fund within the Common School Fund Account.

(2) In each instance, the State Treasurer shall issue an official receipt for the amount so transferred or credited.

(3) If the State Treasurer pays the owner of an un presented check or order included in the report referred to in ORS 293.450 before the funds are transferred to the Department of State Lands, this information shall be reported to the Department of State Lands.

SECTION 63. ORS 293.460 is amended to read:

293.460. The lawful owner of any check or order included in the report referred to in ORS 293.450, not presented to the State Treasurer for payment and not paid, thereafter may file a claim with the [Department of State Lands] State Treasurer in the manner provided by ORS 98.392 and 98.396.

SECTION 64. ORS 293.701 is amended to read:

293.701. As used in ORS 293.701 to 293.857, unless the context requires otherwise:

(1) “Council” means the Oregon Investment Council.

(2) “Investment funds” means:

(a) Public Employees Retirement Fund referred to in ORS 238.660;

(b) Industrial Accident Fund referred to in ORS 656.632;

(c) Consumer and Business Services Fund referred to in ORS 705.145;

(d) Employment Department Special Administrative Fund referred to in ORS 657.822;

(e) Insurance Fund referred to in ORS 278.425;

(f) Funds under the control and administration of the Department of State Lands;

(g) Oregon Student Assistance Fund referred to in ORS 348.570;

(h) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.569 or rules adopted thereunder;

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(i) Forest Development Revenue Bond Fund referred to in ORS 530.147 and State Forestry General Obligation Bond Fund referred to in ORS 530.280;
(j) Oregon War Veterans’ Fund referred to in ORS 407.495;
(k) Oregon War Veterans’ Bond Sinking Account referred to in ORS 407.515;
(L) World War II Veterans’ Compensation Fund;
(m) World War II Veterans’ Bond Sinking Fund;
(n) Funds in the hands of the State Treasurer that are not required to meet current demands and that are invested in the Oregon Short Term Fund established under ORS 293.728 or in another commingled investment vehicle;
o) State funds that are not subject to the control and administration of officers or bodies specifically designated by law;
p) Funds derived from the sale of state bonds;
(q) Social Security Revolving Account referred to in ORS 237.490;
(r) Public University Fund established by ORS 352.450;
s) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;
t) Elderly and Disabled Special Transportation Fund established by ORS 391.800;
u) Education Stability Fund established by ORS 348.696;
v) Deferred Compensation Fund established under ORS 243.411;
w) Trust for Cultural Development Account established under ORS 359.405; [and]
x) The State Library Donation Fund and the Talking Book and Braille Library Endowment Fund subaccount established under ORS 357.195[.]; and
(y) Funds in the Unclaimed Property Revolving Fund created in ORS 98.388.

(3) “Investment officer” means the State Treasurer in the capacity as investment officer for the council.

SECTION 65. ORS 314.840 is amended to read:

314.840. (1) The Department of Revenue may:
(a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, representative or designee, with a copy of the taxpayer’s income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return, or with any other information the department considers necessary.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer’s name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report or return required in the administration of any local tax under ORS 305.620 or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor with respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(A) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(B) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(C) Has been assessed any penalty under the Oregon personal income tax
laws and the nature of the penalty.

(D) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(b) An officer or employee of the Oregon Department of Administrative Services duly authorized or employed to prepare revenue estimates, or a person contracting with the Oregon Department of Administrative Services to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.201 to 291.224, or required for submission to the Emergency Board or the Joint Interim Committee on Ways and Means, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer or Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes of this paragraph only if:

(A) The request for information is made in writing, specifies the purposes for which the request is made and is signed by an authorized representative of the Oregon Department of Administrative Services. The form for request for information shall be prescribed by the Oregon Department of Administrative Services and approved by the Director of the Department of Revenue.

(B) The officer, employee or person receiving the information does not remove from the premises of the Department of Revenue any materials that would reveal the identity of a personal or corporate taxpayer.

(c) The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.

(d) For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

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(A) A state;
(B) A city, county or other political subdivision of a state;
(C) The District of Columbia; or
(D) An association established exclusively to provide services to federal,
    state or local taxing authorities.
(e) The Multistate Tax Commission or its authorized representatives, for
tax administration and compliance purposes only. The Multistate Tax Com-
mission may make the information available to the Commissioner of Internal
Revenue or the proper officer or authorized representative of any govern-
mental entity described in and meeting the qualifications of paragraph (d)
of this subsection.
(f) The Attorney General, assistants and employees in the Department of
Justice, or other legal representative of the State of Oregon, to the extent
the department deems disclosure or access necessary for the performance of
the duties of advising or representing the department pursuant to ORS
180.010 to 180.240 and the tax laws of the state.
(g) Employees of the State of Oregon, other than of the Department of
Revenue or Department of Justice, to the extent the department deems dis-
closure or access necessary for such employees to perform their duties under
contracts or agreements between the department and any other department,
agency or subdivision of the State of Oregon, in the department’s adminis-
tration of the tax laws.
(h) Other persons, partnerships, corporations and other legal entities, and
their employees, to the extent the department deems disclosure or access
necessary for the performance of such others’ duties under contracts or
agreements between the department and such legal entities, in the
department’s administration of the tax laws.
(i) The Legislative Revenue Officer or authorized representatives upon
compliance with ORS 173.850. Such officer or representative shall not remove
from the premises of the department any materials that would reveal the
identity of any taxpayer or any other person.
(j) The Department of Consumer and Business Services, to the extent the department requires such information to determine whether it is appropriate to adjust those workers’ compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

(k) Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under Article VI, section 2, of the Oregon Constitution; the Department of Human Services pursuant to ORS 412.094; the Division of Child Support of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy, pursuant to ORS 673.415.

(L) The Director of the Department of Consumer and Business Services to determine that a person complies with ORS chapter 656 and the Director of the Employment Department to determine that a person complies with ORS chapter 657, the following employer information:

(A) Identification numbers.
(B) Names and addresses.
(C) Inception date as employer.
(D) Nature of business.
(E) Entity changes.
(F) Date of last payroll.

(m) The Director of the Oregon Health Authority to determine that a person has the ability to pay for care that includes services provided by the Oregon State Hospital, or the Oregon Health Authority to collect any unpaid cost of care as provided by ORS chapter 179.

(n) Employees of the Employment Department to the extent the Department of Revenue deems disclosure or access to information on a combined
tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657.

(o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

(p) Employees of the [Department of State Lands] State Treasurer for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds [as required by the provisions of chapter 694, Oregon Laws 1993] under ORS 98.302 to 98.436. The information [shall be] is limited to the taxpayer's name, address and the refund amount.

(q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement agencies to assist in the investigation or prosecution of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(r) The United States Postal Inspection Service or a federal law enforcement agency, including but not limited to the United States Department of Justice, to assist in the investigation of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.
(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(s) The United States Financial Management Service, for purposes of facilitating the offsets described in ORS 305.612.

(t) A municipal corporation of this state for purposes of assisting the municipal corporation in the administration of a tax of the municipal corporation that is imposed on or measured by income, wages or net earnings from self-employment. Any disclosure under this paragraph may be made only pursuant to a written agreement between the Department of Revenue and the municipal corporation that ensures the confidentiality of the information disclosed.

(u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS 314.843.

(v) The Public Employees Retirement Board, to the extent necessary to carry out the purposes of ORS 238.372 to 238.384, and to any public employer, to the extent necessary to carry out the purposes of ORS 237.635 (3) and 237.637 (2).

(w) The Secretary of State for the purpose of initiating or supporting a recommendation under ORS 60.032 (3) or 63.032 (3) to administratively dissolve a corporation or limited liability company that the Director of the Department of Revenue determines has failed to comply with applicable tax laws of the state.

(3)(a) Each officer or employee of the department and each person described or referred to in subsection (2)(a), (b), (f) to (L), (n) to (q) or (w) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such dis-
closure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835.

(b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a written agreement has been entered into between the Department of Revenue and the person described in subsection (2)(r) of this section to whom disclosure or access to the tax information is given, providing that:

(A) Any information described in ORS 314.835 that is received by the person pursuant to subsection (2)(r) of this section is confidential information that may not be disclosed, except to the extent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of this section;

(B) The information shall be protected as confidential under applicable federal and state laws; and

(C) The United States Postal Inspection Service or the federal law enforcement agency shall give notice to the Department of Revenue of any request received under the federal Freedom of Information Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

(4) The Department of Revenue may recover the costs of furnishing the information described in subsection (2)(L), (m) and (o) to (q) of this section from the respective agencies.

SECTION 66. ORS 327.405 is amended to read:

327.405. (1) The Common School Fund shall be composed of the proceeds from the sales of the 16th and 36th sections of every township or of any lands selected in lieu thereof; all the moneys and clear proceeds of all property that may accrue to the state by escheat or forfeiture; the proceeds of all

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gifts, devises and bequests made by any person to the state for common school purposes; the proceeds of all property granted to the state when the purpose of such grant is not stated; all proceeds of the sale of submerged and submersible lands as described in ORS 274.005; all proceeds of the sale of the South Slough National Estuarine Research Reserve as described in ORS 273.553 in the event such property is sold; all proceeds of the sale of the 500,000 acres of land to which this state is entitled by an Act of Congress approved September 4, 1841, and of all lands selected for capitol building purposes under Act of Congress approved February 14, 1859; and all proceeds derived from the investment of moneys that compose the fund. All such proceeds shall become a part of the fund. Except as otherwise provided by law, the income from the fund shall be applied exclusively to the support and maintenance of common schools in each school district.

(2) The State Treasurer shall audit all lawful claims for repayment of moneys under [the provisions of] ORS 98.302 to 98.436 and 98.992, or out of escheated estates and [for] funds, including attorney fees and all other expenses in any suit or proceeding relating to escheated estates [shall be audited by the Department of State Lands] and [paid] shall pay each lawful claim from the Common School Fund Account.

SECTION 67. ORS 652.405 is amended to read:

652.405. (1) The Commissioner of the Bureau of Labor and Industries shall attempt for a period of not less than three years to make payment of wages collected under ORS 652.310 to 652.414 to the person entitled thereto.

(2) By July 30 of each year, wages collected by the commissioner under ORS 652.310 to 652.414 and remaining unclaimed for a period of more than three years from the date of collection shall [, by July 30 of each year, be forfeited] escheat to the state and [shall be paid by] the commissioner shall pay those wages to the [Department of State Lands] State Treasurer for the benefit of the Common School Fund [of this state]. The [department] State Treasurer shall issue a receipt for the money to the commissioner. [The] No later than 10 years after the State Treasurer receives the
escheated funds, a person entitled to claim the wages [or the person’s heirs or personal representatives may reclaim the wages paid into the Common School Fund pursuant to this section within the time and in the manner provided for estates which have escheated to the state] may file a claim with the State Treasurer in the manner provided by ORS 116.253.

SECTION 68. ORS 657.665 is amended to read:

657.665. (1) Except as provided in subsections (2) to (5) of this section, all information in the records of the Employment Department pertaining to the administration of the unemployment insurance, employment service and workforce and labor market information programs:

(a) Is confidential and for the exclusive use and information of the Director of the Employment Department in administering the unemployment insurance, employment service and workforce and labor market information programs in Oregon.

(b) May not be used in any court action or in any proceeding pending in the court unless the director or the state is a party to the action or proceeding or unless the proceeding concerns the establishment, enforcement or modification of a support obligation and support services are being provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

(c) Is exempt from disclosure under ORS 192.311 to 192.478.

(2) The Employment Department shall disclose information:

(a) To any claimant or legal representative, at a hearing before an administrative law judge, to the extent necessary for the proper presentation of an unemployment insurance claim.

(b) Upon request to the United States Secretary of Labor. The Employment Department shall disclose the information in a form and containing the information that the United States Secretary of Labor may require. The information disclosed is confidential and may not be used for any other purpose.

(c) Pursuant to section 303(a)(7) of the Social Security Act, upon request
to any agency of the United States charged with the administration of public works or assistance through public employment. Under this paragraph, the Employment Department shall disclose the name, address, ordinary occupation and employment status of each recipient of unemployment insurance benefits and a statement of the recipient’s right to further benefits under this chapter. The information disclosed is confidential and may not be used for any other purpose.

(d) Pursuant to section 303(c)(1) of the Social Security Act, to the Railroad Retirement Board. Under this paragraph, the Employment Department shall disclose unemployment insurance records. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the board.

(e) Pursuant to section 303(d) of the Social Security Act, upon request to officers and employees of the United States Department of Agriculture and to officers or employees of any state Supplemental Nutrition Assistance Program agency for the purpose of determining an individual’s eligibility for or the amount of supplemental nutrition assistance. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the United States Department of Agriculture.

(f) Pursuant to section 303(e)(1) and (2)(A)(ii) of the Social Security Act, to state or local child support enforcement agencies enforcing child support obligations under Title IV-D of the Social Security Act for the purposes of establishing child support obligations, locating individuals owing child support obligations and collecting child support obligations from those individuals. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the child support enforcement agency.

(g) Pursuant to sections 303(f) and 1137 of the Social Security Act, to agencies participating in the income and eligibility verification system for the purpose of verifying an individual’s eligibility for benefits, or the amount
of benefits, under unemployment insurance, temporary assistance for needy families, Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security Income, child support enforcement or Social Security programs. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the requesting agency.

(h) Pursuant to section 303(h) of the Social Security Act and section 3304(a)(16)(B) of the Federal Unemployment Tax Act, to the United States Department of Health and Human Services National Directory of New Hires. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the United States Department of Health and Human Services.

(i) Pursuant to section 303(i) of the Social Security Act, to officers and employees of the United States Department of Housing and Urban Development and to representatives of a public housing agency for the purpose of determining an individual’s eligibility for benefits, or the amount of benefits, under a housing assistance program of the United States Department of Housing and Urban Development. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the United States Department of Housing and Urban Development or the public housing agency.

(j) Pursuant to regulations of the United States Secretary of Health and Human Services issued under section 3304(a)(16)(A) of the Federal Unemployment Tax Act, and except as required by section 303 of the Social Security Act, to the state, a political subdivision or a federally recognized Indian tribe that has signed an agreement with the Department of Human Services to administer Part A of Title IV of the Social Security Act for the purpose of determining an individual’s eligibility for assistance, or the amount of assistance, under a program funded under Part A of Title IV of the Social Security Act. The information disclosed is confidential and may not be used for any other purpose.
(k) Upon request, to the United States Attorney’s Office. Under this paragraph, the Employment Department may disclose an individual’s employment and wage information in response to a federal grand jury subpoena or for the purpose of collecting civil and criminal judgments, including restitution and special assessment fees. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the United States Attorney’s Office.

(3) The Employment Department may disclose information secured from employing units:

(a) To state agencies, federal agencies, local government agencies, public universities listed in ORS 352.002 and the Oregon Health and Science University established under ORS 353.020, to the extent necessary to properly carry out governmental planning, performance measurement, program analysis, socioeconomic analysis or policy analysis functions performed under applicable law. The information disclosed is confidential and may not be disclosed by the agencies or universities in any manner that would identify individuals, claimants, employees or employing units. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the agency or university requesting the information.

(b) As part of a geographic information system. Points on a map may be used to represent economic data, including the location, employment size class and industrial classification of businesses in Oregon. Information presented as part of a geographic information system may not give specific details regarding a business’s address, actual employment or proprietary information. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the party requesting the information.

(c) In accordance with ORS 657.673.

(4) The Employment Department may:
(a) Disclose information to public employees in the performance of their
duties under state or federal laws relating to the payment of unemployment
insurance benefits, the provision of employment services and the provision
of workforce and labor market information.

(b) At the discretion of the Director of the Employment Department and
subject to an interagency agreement, disclose information to public officials
in the performance of their official duties administering or enforcing laws
within their authority and to the agents or contractors of public officials.
The public official shall agree to assume responsibility for misuse of the in-
formation by the official’s agent or contractor.

(c) Disclose information pursuant to an informed consent, received from
an employer or claimant, to disclose the information.

(d) Disclose information to partners under the federal Workforce Inno-
vation and Opportunity Act for the purpose of administering state workforce
programs under the Act. The information disclosed is confidential and may
not be used for any other purpose. The costs of disclosing information under
this paragraph shall be paid by the requesting partner.

(e) Disclose the names and addresses of employing units to the Bureau
of Labor and Industries for the purpose of disseminating information to em-
ploying units. The names and addresses disclosed are confidential and may
not be used for any other purpose. If the information disclosed under this
paragraph is not prepared for the use of the Employment Department, the
costs of disclosing the information shall be paid by the bureau.

(f) Disclose information to the Commissioner of the Bureau of Labor and
Industries for the purpose of performing duties under ORS 279C.800 to
279C.870, 658.005 to 658.245 or 658.405 to 658.503 or ORS chapter 652, 653 or
659A. The information disclosed may include the names and addresses of
employers and employees and payroll data of employers and employees. The
information disclosed is confidential and may not be used for any other
purpose. If the information disclosed under this paragraph is not prepared
for the use of the Employment Department, the costs of disclosing the in-
(g) Disclose information required under ORS 657.660 (3) and (4) to the Public Employees Retirement System for the purpose of determining the eligibility of members of the retirement system for disability under ORS chapters 238 and 238A. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the Public Employees Retirement System.

(h) Disclose to the Oregon Business Development Commission and the Oregon Business Development Department information required by the commission and the department in performing their duties under ORS 285A.050 and 285B.630 to verify changes in employment levels following direct employer participation in department programs or indirect participation through municipalities under ORS 285B.410 to 285B.482. The information disclosed to the commission and the department may include an employer's employment level, total subject wages payroll and whole hours worked. The information disclosed is confidential and may not be used for any other purpose. The commission and the department may not disclose the information in any manner that would identify an employing unit or employee except to the extent necessary to carry out the commission’s and the department’s duties under ORS 285A.050 and 285B.630. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the commission or the Oregon Business Development Department.

(i) Disclose information to the Department of Revenue for the purpose of performing its duties under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Revenue in any manner that would identify an employing unit or employee except to the extent necessary to carry out the department’s duties under ORS 293.250 or in auditing or reviewing any report or return
required or permitted to be filed under the revenue and tax laws administered by the department. The Department of Revenue may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Revenue.

(j) Disclose information to the Department of Consumer and Business Services for the purpose of performing its duties under ORS chapters 654 and 656. The information disclosed may include the name, address, number of employees and industrial classification code of an employer and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Consumer and Business Services in any manner that would identify an employing unit or employee except to the extent necessary to carry out the department’s duties under ORS chapters 654 and 656, including administrative hearings and court proceedings in which the Department of Consumer and Business Services is a party. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Consumer and Business Services.

(k) Disclose information to the Construction Contractors Board for the purpose of performing its duties under ORS chapter 701. The information disclosed to the board may include the names and addresses of employers and status of their compliance with this chapter. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the board.

(L) Disclose information to the State Fire Marshal to assist the State Fire Marshal in carrying out duties under ORS 453.307 to 453.414. The information disclosed may include the name, address, telephone number and industrial classification code of an employer. The information disclosed is confidential and may not be disclosed by the State Fire Marshal in any manner that would identify an employing unit except to the extent necessary.
to carry out duties under ORS 453.307 to 453.414. If the information disclosed
under this paragraph is not prepared for the use of the Employment De-
partment, the costs of disclosing the information shall be paid by the office
of the State Fire Marshal.

(m) Disclose information to the Higher Education Coordinating Commiss-
ion for the purpose of performing the commission’s duties under ORS chap-
ter 348 and Title IV of the Higher Education Act of 1965. The information
disclosed may include the names and addresses of employers and employees
and payroll data of employers and employees. The information disclosed is
confidential and may not be disclosed by the commission in any manner that
would identify an employing unit or employee except to the extent necessary
to carry out the commission’s duties under ORS chapter 348 or Title IV of
the Higher Education Act of 1965. If the information disclosed under this
paragraph is not prepared for the use of the Employment Department, the
costs of disclosing the information shall be paid by the commission.

(n) Disclose information to the Department of Transportation to assist the
Department of Transportation in carrying out the duties of the Department
of Transportation relating to collection of delinquent and liquidated debts,
including taxes, under ORS 184.610 to 184.665, 184.670 to 184.733 and 805.263,
ORS chapter 319 and the Oregon Vehicle Code. The information disclosed
may include the names and addresses of employers and employees and payroll
data of employers and employees. The information disclosed is confidential
and may not be disclosed by the Department of Transportation in any man-
ner that would identify an employing unit or employee except to the extent
necessary to carry out the Department of Transportation’s duties relating to
collection of delinquent and liquidated debts or in auditing or reviewing any
report or return required or permitted to be filed under the revenue and tax
laws administered by the Department of Transportation. The Department of
Transportation may not disclose any information received to any private
collection agency or for any other purpose. If the information disclosed under
this paragraph is not prepared for the use of the Employment Department,
the costs of disclosing the information shall be paid by the Department of Transportation.

(o) Disclose information to the Department of Human Services and the Oregon Health Authority to assist the Department of Human Services and the Oregon Health Authority in the collection of debts that the Department of Human Services and the Oregon Health Authority are authorized by law to collect. The information disclosed may include the names, addresses and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Human Services or the Oregon Health Authority in a manner that would identify an employing unit or employee except to the extent necessary for the collection of debts as described in this paragraph. The Department of Human Services and the Oregon Health Authority may not disclose information received under this paragraph to a private collection agency or use the information for a purpose other than the collection of debts as described in this paragraph. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Human Services or the Oregon Health Authority.

(p) Disclose to the Alcohol and Drug Policy Commission information required by the commission in evaluating and measuring the performance of alcohol and drug prevention and treatment programs under ORS 430.242 or the impact of the programs on employment. The information disclosed to the commission may include total subject wages payroll and whole hours worked. The information disclosed under this paragraph is confidential and may not be used for any other purpose. The commission may not disclose the information in any manner that would identify an employing unit or employee except to the extent necessary to carry out the commission’s duties under ORS 430.242. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the commission.

(q) Disclose to any person establishment level information secured pur-
suant to this chapter from federal, state and local government agencies, public universities listed in ORS 352.002 or the Oregon Health and Science University established under ORS 353.020. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the person requesting the information.

(r) Disclose to any person the industrial classification code assigned to an employing unit. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the person requesting the information.

(s) Disclose information to the State Treasurer useful for the purpose of performing the State Treasurer’s duties under ORS 98.302 to 98.436, 98.992 and 116.253 and the role of an estate administrator under ORS 113.235. The information disclosed is confidential and may not be used by the State Treasurer for any other purpose. If the information disclosed is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the State Treasurer.

(5) The Employment Department may make public all decisions of the Employment Appeals Board.

(6) Any officer appointed by or any employee of the Director of the Employment Department who discloses confidential information, except with the authority of the director, pursuant to rules or as otherwise required by law, may be disqualified from holding any appointment or employment with the Employment Department.

(7) Any person or any officer or employee of an entity to whom information is disclosed by the Employment Department under this section who divulges or uses the information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure may be disqualified from performing any service under contract or disqualified from holding any appointment or employment with the state agency that...
engaged or employed that person, officer or employee. The Employment De-
partment may immediately cancel or modify any information sharing agree-
ment with an entity when a person or an officer or employee of that entity
discloses confidential information, other than as specified in law or agree-
ment.

SECTION 69. ORS 708A.430 is amended to read:

708A.430. (1) On the death of a depositor of an insured institution, if the
deposit is $25,000 or less, the insured institution, after receiving an affidavit
as provided in subsection (3) of this section from a person that claims the
deposit, or a declaration from the Department of Human Services or the
Oregon Health Authority as provided in subsection (4) of this section, may
pay the moneys on deposit to the credit of the deceased depositor, in the
following order of priority, to:

(a) The surviving spouse at the surviving spouse’s demand at any time
after the depositor’s death;

(b) The Oregon Health Authority or the Department of Human Services,
if the authority or the department demands the payment not less than 46
days and no more than 75 days after the death of the depositor if the
depositor does not have a surviving spouse and if the authority or depart-
ment has a preferred claim under ORS 411.708, 411.795 or 416.350;

(c) The depositor’s surviving children 18 years of age or older, if the
depositor does not have a surviving spouse and the authority and department
do not have a claim;

(d) The depositor’s surviving parent, if the depositor does not have a
surviving spouse or surviving child 18 years of age or older and if the au-
thority and department do not have a claim; [or]

(e) The depositor’s surviving brothers and sisters 18 years of age or older,
if the depositor does not have a surviving spouse, surviving child 18 years
of age or older or surviving parent and the authority and department do not
have a claim[.]; or

(f) Any other surviving heir of the depositor, if there is no surviving
spouse, authority claim, department claim, surviving child 18 years of age or older, surviving parent or surviving brothers or sisters 18 years of age or older.

(2)(a) An insured institution may not pay moneys on deposit under subsection (1)(c), (d) or (e) to (f) of this section earlier than 46 days after the death of the depositor.

(b) An insured institution may not pay moneys on deposit under subsection (1)(c), (d) or (e) to (f) of this section earlier than 76 days after the death of the depositor unless the financial institution obtains prior verbal or written authorization from the Oregon Health Authority or its designated representative and the Department of Human Services or its designated representative.

(3) An affidavit or declaration submitted under this section must:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed $25,000;

(c) Show the relationship of the affiant or declarant to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased depositor out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons that are entitled to the moneys by law.

(4) An insured institution shall accept from the Department of Human Services or the Oregon Health Authority, without additional requirements, a declaration under penalty of perjury meeting the requirements of subsection (3) of this section. A declaration submitted under this section must be signed by the declarant and must include the following sentence immediately above the signature line of the declarant: “I hereby declare under penalty of perjury that I am authorized by the Department of Human Services or the Oregon Health Authority to make this declaration, that the
above statement is true to the best of my knowledge and belief, and that I understand that it is subject to penalty for perjury.”

(5) In the event the depositor died intestate without known heirs, an estate administrator of the Department of State Lands State Treasurer appointed under ORS 113.235 is the affiant and shall receive the moneys as escheat property.

(6) The insured institution shall determine the relationship of the affiant or declarant to the deceased depositor, but paying the moneys in good faith to the affiant or declarant discharges and releases the insured institution from any liability or responsibility for the transfer in the same manner and with the same effect as if the insured institution transferred, delivered or paid the moneys to a personal representative of the estate of the deceased depositor.

(7) A probate proceeding is not necessary to establish the right of the surviving spouse, Oregon Health Authority, Department of Human Services, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands State Treasurer to withdraw the deposits after filing the affidavit or declaration. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person that withdraws the deposits shall account for the deposits to the personal representative.

(8) If an insured institution transfers moneys under subsection (1) of this section, the insured institution may require the transferee to furnish the insured institution with a written indemnity agreement that indemnifies the insured institution against loss for moneys the insured institution transferred to the extent of the amount of the deposit.

(9)(a) Moneys disbursed to the Department of Human Services under subsection (1) of this section may be made payable only to the department.

(b) Moneys disbursed to the Oregon Health Authority under subsection (1) of this section may be made payable only to the authority.

(10) This section is subject to the rights of other parties in the account
under ORS 708A.455 to 708A.515.

1 **SECTION 70.** ORS 708A.655 is amended to read:
2 708A.655. (1) This section applies to the safe deposit box of any person
3 who is the sole lessee or last surviving lessee of the box and who has died.
4 (2) Subject to ORS 114.537, upon being furnished with a certified copy of
5 the decedent’s death record or other evidence of death satisfactory to the
6 Oregon operating institution, the Oregon operating institution within which
7 the box is located shall cause or permit the box to be opened and the con-
8 tents of the box examined at the request of an individual who furnishes an
9 affidavit stating:
10 (a) That the individual believes the box may contain the will of the
11 decedent, a trust instrument creating a trust of which the decedent was a
12 trustor or a trustee at the time of the decedent’s death, documents pertaining
13 to the disposition of the remains of the decedent, documents pertaining to
14 property of the estate of the decedent or property of the estate of the
15 decedent; and
16 (b) That the individual is an interested person and wishes to open the box
17 to conduct a will search or trust instrument search, obtain documents re-
18 lating to the disposition of the decedent’s remains, inventory the contents
19 of the box or remove property of the estate of the decedent pursuant to a
20 small estate affidavit filed under ORS 114.515.
21 (3) For the purpose of this section, “interested person” means any of the
22 following:
23 (a) A person named as personal representative of the decedent in a pur-
24 ported will of the decedent;
25 (b) The surviving spouse or any heir of the decedent;
26 (c) A person who was serving as the court-appointed guardian or
27 conservator of the decedent or as trustee for the decedent immediately prior
28 to the decedent’s death;
29 (d) A person named as successor trustee in a purported trust instrument
30 creating a trust of which the decedent was a trustor or a trustee at the time
of the decedent’s death;

(e) A person designated by the decedent in a writing that is acceptable to the Oregon operating institution and is filed with it prior to the decedent’s death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney;

(g) If there are no heirs of the decedent, an estate administrator of the [Department of State Lands] State Treasurer appointed under ORS 113.235; or

(h) A person who is authorized to file an affidavit under ORS 114.515.

(4) If the box is opened for the purpose of conducting a will search, the Oregon operating institution shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent’s personal representative, or if no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the Oregon operating institution shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent’s death, make a true and correct copy of it and deliver the original trust instrument to a person designated in the trust instrument to serve as the successor trustee on the death of the decedent. If no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the trust instru-
ment. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent’s remains, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent found in the box, and may in its discretion either:

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory must be attested to by a representative of the Oregon operating institution and may be attested to by the interested person, if the interested person is present when the inventory is made. The Oregon operating institution shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the Oregon operating institution shall provide to the affiant access to the decedent’s property. The Oregon operating institution shall comply with subsection (4) or (5) of this section if a will or trust instrument of the decedent is found in the box. Subject to ORS 114.537, the Oregon operating institution shall allow the affiant to take possession of the personal property in the box.
(9) The Oregon operating institution may presume the truth of any statement contained in the affidavit required to be furnished under this section or ORS 114.535, and when acting in reliance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with the personal representative of the decedent. The Oregon operating institution is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the Oregon operating institution or its employees, directors, officers or agents. If the Oregon operating institution is not satisfied that the requirements of this section have been satisfied, the Oregon operating institution may decline to open the box.

(10) If the interested person or affiant does not furnish the key needed to open the box, and the Oregon operating institution must incur expense in gaining entry to the box, the Oregon operating institution may require that the interested person or affiant pay the expense of opening the box.

(11) Any examination of the contents of a box under this section shall be conducted in the presence of at least one employee of the Oregon operating institution.

SECTION 71. ORS 711.225 is amended to read:

711.225. [(J) Six months after the mailing of the written notice described in ORS 711.220 (3), the Oregon stock bank shall deliver a report and all deposits that remain unclaimed after six months from the date of the written notice mentioned in ORS 711.220 (3), shall be reported and transferred by the Oregon stock bank to the Department of State Lands] to the State Treasurer as unclaimed property under ORS [98.302 to 98.436 and 98.992] 98.352[.]

[(2) A] and deliver a copy of the report [of unclaimed deposits] filed with the [Department of State Lands shall be filed with] State Treasurer to the Director of the Department of Consumer and Business Services.

SECTION 72. ORS 711.230 is amended to read:
711.230. (1) Claims of all persons, other than depositors, against the in-
stitution shall be presented in writing to the institution within one year af-
ster the date of first publication provided for in ORS 711.220, unless barred
by an earlier period of limitation. Claims arising out of the expense of liq-
uidation may be filed at any time prior to the closing of the liquidation.

(2) The board of directors shall, within 30 days after the presentment of
a claim, allow or reject the claim, in whole or in part, noting the same in
their minutes. The board shall notify the claimants in writing of its action,
either by personal service or by mail. Any claim rejected or disallowed is
barred unless action to adjudicate the claim is commenced within 60 days
after the date of service or mailing of notice of disallowance or rejection.

(3) The board of directors may extend the time within which to receive
claims and continue the liquidation after the expiration of the time allowed
in this section for the filing of claims. Any new claims filed after the time
shall be allowed and paid or rejected in the same manner as provided for
other claims. If the liquidation is continued, the transfer of unclaimed de-
posits to the [Department of State Lands] State Treasurer may be delayed
to such time as designated by the Director of the Department of Consumer
and Business Services.

SECTION 73. ORS 711.235 is amended to read:

711.235. (1) After the expiration of the time provided in ORS 711.230 for
the filing of claims or if the board of directors has extended the time of
liquidation then after the time set by them and after payment of unclaimed
deposits to the [Department of State Lands] State Treasurer, the board of
directors shall make a complete report of the liquidation to the Director of
the Department of Consumer and Business Services and shall certify to the
director that all claims have been paid or finally determined.

(2) Any claims received and approved after the report has been filed with
the director shall be paid if the remaining assets are sufficient.

(3) When the report has been approved by the director the board of di-
rectors may proceed to liquidate the remaining assets and distribute them
to the stockholders or other persons entitled to receive them according to
their respective rights and interests without further report to the director.

SECTION 74. ORS 711.590 is amended to read:

711.590. (1) Two years after the date of the final order closing the liqui-
dation of an institution, the Director of the Department of Consumer and
Business Services may withdraw any unclaimed deposits or balances re-
maining to the credit of dividend accounts, representing the aggregate of
undelivered checks or unpaid dividend funds in the possession of the De-
partment of Consumer and Business Services, and report and pay the funds
to the [Department of State Lands] State Treasurer as unclaimed property
[to be disposed of as provided in ORS 98.302 to 98.436 and 98.992] under ORS
98.352.

(2) The interest earned on the dividend accounts while they remain in the
possession of the director shall be paid to the State Treasurer to be credited
to the Consumer and Business Services Fund and [the owner, the heirs or
personal representative of the owner have no] no person entitled to the ac-
counts has any claim to the interest.

SECTION 75. ORS 716.905 is amended to read:

716.905. (1) [Acting under] Upon approval of a plan under ORS
716.900, the directors shall [direct the mailing of a] mail written notice of
their intention to close the Oregon nonstock bank to the last-known address
of all depositors and other creditors.

(2) All deposits and amounts reserved for creditors that remain unclaimed
after six months from the date of the written notice required under sub-
section (1) of this section shall be reported and transferred by the directors
to the [Department of State Lands] State Treasurer as unclaimed property
under ORS [98.302 to 98.436 and 98.992] 98.352.

(3) A copy of the report of unclaimed deposits and amounts reserved for
creditors filed with the [Department of State Lands] State Treasurer shall
be filed with the Director of the Department of Consumer and Business
Services.

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SECTION 76. ORS 716.910 is amended to read:

716.910. After the directors of an Oregon nonstock bank have filed their report and deposited the unclaimed funds with the [Department of State Lands] State Treasurer as required under ORS 716.905, the directors shall report their proceedings to the Director of the Department of Consumer and Business Services. Upon filing the report and the petition of the directors with the Director of the Department of Consumer and Business Services, the director shall order the charter surrendered, the directors discharged from liability accruing after the order, and the existence of the Oregon nonstock bank terminated.

SECTION 77. ORS 723.466 is amended to read:

723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is $25,000 or less, the credit union may, upon receipt of an affidavit from a person claiming the deposit as provided in subsection (3) of this section, or a declaration from the Department of Human Services or the Oregon Health Authority as provided in subsection (4) of this section, pay the moneys on deposit:

(a) To the surviving spouse on demand of the surviving spouse at any time after the death of the member;

(b) If there is no surviving spouse, to the Oregon Health Authority or the Department of Human Services, on demand of the authority or the department no less than 46 days and no more than 75 days after the death of the member when there is a preferred claim arising under ORS 411.708, 411.795 or 416.350;

(c) If there is no surviving spouse and no authority or department claim, to the member’s surviving children 18 years of age or older;

(d) If there is no surviving spouse, authority claim, department claim or surviving child 18 years of age or older, to the member’s surviving parents;

(e) If there is no surviving spouse, authority claim, department claim, surviving child 18 years of age or older or surviving parent, to the member’s
surviving brothers and sisters 18 years of age or older[.]; or

(f) If there is no surviving spouse, authority claim, department claim, surviving child 18 years of age or older, surviving parent or surviving brothers or sisters 18 years of age or older, to any other surviving heir of the member.

(2)(a) A credit union may not pay moneys on deposit under subsection (1)(c), (d) or (e) to (f) of this section earlier than 46 days after the death of the [depositor] member.

(b) A credit union may not pay moneys on deposit under subsection (1)(c), (d) or (e) to (f) of this section earlier than 76 days after the death of the [depositor] member unless the financial institution obtains prior verbal or written authorization from the Oregon Health Authority or its designated representative and the Department of Human Services or its designated representative.

(3) An affidavit or declaration submitted under this section must:

(a) State where and when the member died;

(b) State that the total deposits of the deceased member in all financial institutions in this state do not exceed $25,000;

(c) Show the relationship of the affiant or declarant to the deceased member; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased member out of the deposit, to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(4) A credit union shall accept from the Department of Human Services or the Oregon Health Authority, without additional requirements, a declaration under penalty of perjury meeting the requirements of subsection (3) of this section. A declaration submitted under this section must be signed by the declarant and must include the following sentence immediately above the signature line of the declarant: “I hereby declare under penalty of per-
jury that I am authorized by the Department of Human Services or the Oregon Health Authority to make this declaration, that the above statement is true to the best of my knowledge and belief, and that I understand that it is subject to penalty for perjury.”

(5) In the event the member died intestate without known heirs, an estate administrator of the [Department of State Lands] State Treasurer appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(6) The credit union shall determine the relationship of the affiant or declarant to the deceased member. However, payment of the moneys in good faith to the affiant or declarant discharges and releases the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the deceased member.

(7) A probate proceeding is not necessary to establish the right of the surviving spouse, Oregon Health Authority, Department of Human Services, surviving children, surviving parents, surviving brothers and sisters or an estate administrator of the [Department of State Lands] State Treasurer to withdraw the deposits upon the filing of the affidavit or declaration. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(8) When a credit union transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor with a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(9)(a) Moneys disbursed to the Department of Human Services under subsection (1) of this section may be made payable only to the department.

(b) Moneys disbursed to the Oregon Health Authority under subsection (1) of this section may be made payable only to the authority.

(10) This section is subject to the rights of other parties to the account.
SECTION 78. ORS 723.844 is amended to read:

ORS 723.844. (1) This section applies to the safe deposit box of any person who is the sole lessee or last surviving lessee of the box and who has died.

(2) Subject to ORS 114.537, upon being furnished with a certified copy of the decedent's death record or other evidence of death satisfactory to the credit union, the credit union within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

(a) That the individual believes the box may contain the will of the decedent, a trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death, documents pertaining to the disposition of the remains of the decedent, documents pertaining to property of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains or inventory the contents of the box or remove property of the estate of the decedent pursuant to a small estate affidavit filed under ORS 114.515.

(3) For the purpose of this section, “interested person” means any of the following:

(a) A person named as personal representative of the decedent in a purported will of the decedent;

(b) The surviving spouse or any heir of the decedent;

(c) A person who was serving as the court-appointed guardian or conservator of the decedent or as trustee for the decedent immediately prior to the decedent’s death;

(d) A person named as successor trustee in a purported trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent’s death;
(e) A person designated by the decedent in a writing that is acceptable to the credit union and is filed with it prior to the decedent’s death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney;

(g) If there are no heirs of the decedent, an estate administrator of the [Department of State Lands] **State Treasurer** appointed under ORS 113.235; or

(h) A person who is authorized to file an affidavit under ORS 114.515.

(4) If the box is opened for the purpose of conducting a will search, the credit union shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent’s personal representative, or if no such person is designated or the credit union cannot, despite reasonable efforts, determine the whereabouts of such person, the credit union shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the credit union shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent’s death, make a true and correct copy of it and deliver the original trust instrument to a person designated in the trust instrument to serve as the successor trustee on the death of the decedent. If no such person is designated or the credit union cannot, despite reasonable efforts, determine the whereabouts of such person, the credit union shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.
(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent’s remains, the credit union shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent found in the box, and may in its discretion either:

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the credit union shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory must be attested to by a representative of the credit union and may be attested to by the interested person, if the interested person is present when the inventory is made. The credit union shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the credit union shall provide to the affiant access to the decedent’s property. The credit union shall comply with subsection (4) or (5) of this section if a will or trust instrument of the decedent is found in the box. Subject to ORS 114.537, the credit union shall allow the affiant to take possession of the personal property in the box.

(9) The credit union may presume the truth of any statement contained in the affidavit required to be furnished under this section and ORS 114.535, and when acting in reliance upon such an affidavit, the credit union is discharged as if it had dealt with the personal representative of the decedent. The credit union is not responsible for the adequacy of the description of any
property included in an inventory of the contents of a box, or for the con-
version of the property in connection with actions performed under this
section, except for conversion by intentional acts of the credit union or its
employees, directors, officers or agents. If the credit union is not satisfied
that the requirements of this section have been satisfied, the credit union
may decline to open the box.

(10) If the interested person or affiant does not furnish the key needed to
open the box, and the credit union must incur expense in gaining entry to
the box, the credit union may require that the interested person or affiant
pay the expense of opening the box.

(11) Any examination of the contents of a box under this section shall be
conducted in the presence of at least one employee of the credit union.

SECTION 79. Section 2, chapter 91, Oregon Laws 2018, is amended to
read:

Sec. 2. (1) As used in this section:
(a) “Armed Forces of the United States” has the meaning given that term
in ORS 348.282.
(b) “Descendant” has the meaning given that term in ORS 111.005.
(c) “Military medal” means a medal or decoration awarded to a person for
military service in the Armed Forces of the United States and presumed to
be abandoned under ORS 98.302 to 98.436.
(d) “Service member” means the person to whom a military medal was
initially awarded by the Armed Forces of the United States.

(2) Notwithstanding ORS 98.382 and 98.384, the [Department of State
Lands] State Treasurer may not sell or destroy a military medal. Except
as provided in subsection (4) of this section, upon receiving a military medal,
the [department] State Treasurer shall retain the military medal until a
claim is filed for the military medal by a service member or by a descendant
of a deceased service member.

(3) The [department] State Treasurer may make a photograph or other
visual depiction of the military medal available to the public, together with
any information in the records of the holder, excluding Social Security numbers, that the [department] State Treasurer determines is necessary to facilitate the identification and location of a service member or a descendant of a deceased service member.

(4) The [department] State Treasurer may deliver a military medal to one of the following custodians if the recipient custodian agrees[,] in writing[,] to retain the military medal for the service member or a descendant of a deceased service member:

(a) A military veterans’ organization qualified under section 501(c)(19) of the Internal Revenue Code;
(b) The agency that awarded the military medal;
(c) A state or federal agency; or
(d) The Oregon Military Museum established under ORS 396.555.

(5) If the [department] State Treasurer transfers custody of a military medal as provided in subsection (4) of this section, the [department] State Treasurer is relieved of any duty to safeguard the military medal.

(6) The [department] State Treasurer may adopt rules to implement the provisions of this section, including:

(a) Identifying procedures the [department] State Treasurer must take to reasonably identify a service member or a descendant of a deceased service member.
(b) Specifying documentation necessary for a service member or a descendant of a deceased service member to submit a claim for a military medal.
(c) Prioritizing claims if more than one of a deceased service member’s descendants submits a claim for a military medal.

SECTION 80. Section 2, chapter 95, Oregon Laws 2018, is amended to read:

Sec. 2. (1) As used in this section, “U.S. savings bonds” or “bonds” means:
(b) Definitive United States savings bonds, series EE and HH, governed by 31 C.F.R. 353; and
(c) Definitive United States savings bonds, series I, governed by 31 C.F.R. 360.

(2) Notwithstanding any other provision of law, U.S. savings bonds subject to the custody of the State of Oregon as unclaimed property shall escheat to the state [only] in accordance with this section.

(3) The holder of U.S. savings bonds presumed abandoned under ORS 98.302 to 98.436 shall report, and deliver possession of, the bonds to the [administrator] **State Treasurer**.

(4) After obtaining possession of the U.S. savings bonds under subsection (3) of this section, the [administrator] **State Treasurer** shall cause:

(a) Each person listed on the face of the bonds, each apparent owner of the bonds and each person otherwise appearing to be an owner of the bonds to be contacted at the last-known address of the person; and

(b) Notice of the bonds to be published of the bonds in such form as in the discretion of the [administrator] **State Treasurer** is most likely to attract the attention of all persons having a legal or beneficial interest in the bonds.

(5) The notice required under subsection (4)(b) of this section must contain the following information:

(a) The name of each person described in subsection (4)(a) of this section;

(b) The last-known address or location of each person described in subsection (4)(a) of this section, if known by the [administrator] **State Treasurer**;

(c) A statement explaining that the U.S. savings bonds are presumed to be abandoned and have been taken into the protective custody and possession of the [administrator] **State Treasurer**;

(d) A statement that information about the U.S. savings bonds can be obtained upon inquiry to the [administrator] **State Treasurer** at any time by any person having a legal or beneficial interest in the bonds;
(e) A statement that a claim for the U.S. savings bonds may be made under ORS 98.392 and 98.396;

(f) A description of the escheat proceedings under this section; and

(g) Any other information the [administrator] State Treasurer considers appropriate or necessary to locate all persons having a legal or beneficial interest in the bonds.

(6) The [administrator] State Treasurer shall create and maintain on the official website of the [Department of State Lands] State Treasurer a webpage on which the public may obtain information about U.S. savings bonds in the custody and possession of the [administrator] State Treasurer as unclaimed property.

(7) If no person has been identified as the owner of U.S. savings bonds within three years after the first public notice provided under subsection (4)(b) of this section with respect to the bonds:

(a) Title to the bonds shall vest in the State of Oregon; and

(b) The [administrator] State Treasurer may seek an order from the Marion County Circuit Court escheating the bonds to the State of Oregon.

(8) The Marion County Circuit Court shall issue an order escheating U.S. savings bonds to the State of Oregon if the court determines that:

(a) With respect to the bonds, all provisions of this section have been complied with; and

(b) The bonds:

(A) Have, within the meaning of the applicable federal regulations, reached the final extended maturity date or the final maturity, or have stopped earning interest;

(B) Are in the possession of the state; and

(C) Have been abandoned by all persons entitled to payment for the bonds under the applicable federal regulations.

(9)(a) Upon issuance of an order of escheat with respect to U.S. savings bonds, the [administrator] State Treasurer may apply to the United States Treasury for payment to the state for the bonds.

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(b) ORS 98.386 applies to any payments received by the state pursuant to this subsection.

[(10)(a) U.S. savings bonds escheated to the state under this section or the amount of any payments received by the state for the bonds may be recovered by a claim filed by or on behalf of any person having a legal or beneficial interest in the bonds that did not have actual knowledge of the escheat proceedings with respect to the bonds or that at the time of the order of escheat was unable to prove entitlement to the bonds.]

[(b) The claim shall be made by a petition filed with the administrator. The claim shall be considered a contested case for purposes of ORS chapter 183 and a person adversely affected or aggrieved by a final order with respect to the claim is entitled to judicial review under ORS 183.480.]

[(c) The petition must include a declaration made under penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the United States, and must state:]

[(A) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;]

[(B) That the claimant is lawfully entitled to the U.S. savings bonds or the amount of the payments received by the state for the bonds;]

[(C) That at the time the bonds escheated to the state, the claimant had no actual knowledge of the escheat proceedings or was unable to prove entitlement to the bonds and has subsequently acquired new evidence of that entitlement;]

[(D) That the claimant claims the bonds or the payments received by the state for the bonds as an heir or devisee, or as the personal representative of the estate of an heir or devisee, setting forth the relationship, if any, of the claimant to the decedent who at the time of death was the owner of the bonds; and]

[(E) If the petition is not filed by the claimant, the status of the petitioner.]
[(d) If it is determined that the claimant is entitled to the bonds or the payments received by the state for the bonds, the administrator shall deliver the bonds or the payments received for the bonds to the claimant, after deduction of any costs and expenses of the state in connection with the escheat proceedings and the claim hearing.]

[(e) A claimant is not entitled to payment of interest on payments received by the state for the bonds earned during the period in which title to the bonds was vested in the State of Oregon in accordance with this section.]

[(II) (10) This section does not apply to a claim of title by the state to U.S. savings bonds as heir to a deceased owner.

SECTION 81. Section 22, chapter 105, Oregon Laws 2018, is amended to read:

Sec. 22. (1) On January 1 of each year, the [Department of State Lands] State Treasurer shall transfer from the Common School Fund Account to the School Districts Unfunded Liability Fund established in section 24, [of this 2018 Act] chapter 105, Oregon Laws 2018, all or part of the interest earned in the previous calendar year from the cumulative unclaimed property deposited in the Common School Fund Account under ORS 98.386 to which the state has not taken title, as described in subsection (2) of this section.

(2) The amount made available under subsection (1) of this section may not exceed an amount equal to the proceeds from unclaimed property received by the Department of State Lands or State Treasurer in the previous calendar year, minus:

(a) The amount paid for unclaimed property claims under ORS 98.396 in the previous calendar year;

(b) The [department's] investment expenses of the department or State Treasurer related to the Common School Fund for the previous calendar year; and

(c) Operating expenses that the department or State Treasurer is entitled to recover for the previous calendar year.

SECTION 82. Section 22, chapter 105, Oregon Laws 2018, as amended by
section 81 of this 2019 Act, is amended to read:

Sec. 22. (1) On January 1 of each year, the State Treasurer shall transfer from the Common School Fund Account to the School Districts Unfunded Liability Fund established in section 24, chapter 105, Oregon Laws 2018, all or part of the interest earned in the previous calendar year from the cumulative unclaimed property deposited in the Common School Fund Account under ORS 98.386 to which the state has not taken title, as described in subsection (2) of this section.

(2) The amount made available under subsection (1) of this section may not exceed an amount equal to the proceeds from unclaimed property received by the [Department of State Lands or] State Treasurer in the previous calendar year, minus:

(a) The amount paid for unclaimed property claims under ORS 98.396 in the previous calendar year;

(b) The investment expenses of the [department or] State Treasurer related to the Common School Fund for the previous calendar year; and

(c) Operating expenses that the [department or] State Treasurer is entitled to recover for the previous calendar year.

SECTION 83. Section 23, chapter 105, Oregon Laws 2018, is amended to read:

Sec. 23. Section 22, chapter 105, Oregon Laws 2018, as amended by sections 81 and 82 of this 2019 Act, [of this 2018 Act] is repealed on January 2, 2027.

CAPTIONS

SECTION 84. The unit captions used in this 2019 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 2019 Act.
OPERATIVE DATES

SECTION 85. (1) Sections 1 to 6 of this 2019 Act become operative on July 1, 2020.

(2) The amendments to statutes and session law by sections 7 to 80 of this 2019 Act become operative on July 1, 2020.


(5) The State Treasurer, the Department of State Lands and the State Land Board may take any actions before the operative dates specified in subsections (1) to (4) of this section necessary to enable the State Treasurer to exercise, on and after the operative dates specified in subsections (1) to (4) of this section, the duties, functions and powers required under this 2019 Act.

EFFECTIVE DATE

SECTION 86. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.
December 18, 2018

RESOLUTION

Supporting Increased Efficiency to Benefit the Common School Fund

Whereas Oregon schoolchildren, both present and future, benefit from the Common School Fund;

Whereas the Land Board is the manager of the Common School Fund and has a responsibility to manage the Common School Fund for the benefit of the K-12 schools;

Whereas the Land Board has identified two opportunities to generate additional money and more efficiently use Common School Fund allocations through structural reform of the Department of State Lands;

Whereas there are opportunities to increase efficiency and generate more revenue by moving Oregon’s unclaimed property program to the Oregon State Treasury;

Whereas the South Slough National Estuarine Reserve provides education services and important environmental research, and there are opportunities to increase efficiency and reduce costs to the Common School Fund by identifying an alternative funding source and/or moving management of the Reserve out of the Department of State Lands, where it is costing the Common School Fund approximately $900,000 per year; now, therefore,

Be It Resolved by the State Land Board:

That we, the members of the State Land Board, call on the Oregon Legislative Assembly to pass legislation moving management of the unclaimed property division from the Department of State Lands to the State Treasury in order to improve efficiency and increase funding for the Common School Fund; and be it further

Resolved, that we, the members of the State Land Board, call on the Oregon Legislative Assembly to pass a bill shifting South Slough management costs from the Common School Fund to other sources, and/or identify alternative management options to avoid continued diversion of these funds from their intended use for the benefit of the school children of Oregon.
State Land Board

Regular Meeting
December 18, 2018
Agenda Item 10

SUBJECT

Reappointment of one (1) voting member to the Oregon Ocean Science Trust (OOST) by the State Land Board.

ISSUE

Whether the Land Board should reappoint the recommended voting member to the Trust.

AUTHORITY

Oregon Constitution, Article VIII, Section 5
ORS 196.565; regarding appointment of the Ocean Science Trust
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

BACKGROUND

At the October 13, 2015 regular meeting, the Land Board appointed the following five individuals as voting members to the Trust:

• **Jim Sumich** – appointed for a term ending December 31, 2018.

• **Krystyna Wolniakowski** – appointed for a term ending December 31, 2019.

The terms of Emily Goodwin Martin and Jim Sumich end in December. Mr. Sumich is interested in reappointment to a new 4-year term. Ms. Martin has resigned from the Trust. The Department thanks her for her service and participation on the Trust.

**TRUST DUTIES AND VOTING MEMBER REQUIREMENTS**

The duties of the Trust include:

1. Promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon’s ocean and coastal resources;
2. Promote innovative, collaborative, community-oriented, multi-institutional approaches to research and monitoring related to Oregon’s ocean and coastal resources;
3. Enhance this state’s capacity for peer-reviewed scientific ocean and coastal research; and
4. Subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon’s ocean and coastal resources.

The Trust is also responsible for submitting a report to the Legislative Assembly by March 31 of each even-numbered year. The report shall describe the progress of the Trust in carrying out its duties, and may include relevant issues and trends of significance, including emerging scientific research and public policy.

Pursuant to the amendments created by SB 1545, the Trust is comprised of seven members. The Land Board is required to appoint the five voting members to the Trust (The President of the Senate and the Speaker of the House appoint one member from each respective chamber).

Voting members need to be residents of this state who demonstrate a commitment and interest in the stewardship of Oregon’s ocean and coastal resources; and have not less than five years of experience in competitive granting, marine science, foundations or fiscal assurance.

The term of office of each voting member is four years, but a voting member serves at the pleasure of the Board. Before the expiration of the term of a voting member, the Board shall appoint a successor whose term begins on January 1 next following. A voting member is eligible for reappointment. If there is a vacancy for any cause, the Board shall make an appointment to become immediately effective for the unexpired term.
Section 6 of Senate Bill 737 (Appendix A) directs the appointments to be staggered, with two voting members to serve for a term ending December 31, 2018; and the other three voting members to serve for a term ending December 31, 2019.

TRUST NOMINEES

The following Trust member’s term ends on December 31, 2018. Mr. Sumich is interested in reappointment to a new four-year term.

Jim Sumich, Ph.D., retired, former professor of marine biology and zoology at Grossmont Community College (CA), marine mammal expert and marine biology textbook author (Corvallis, OR).

Vacancy

The Trust currently has a vacancy for one voting member. The Department is assisting Executive Director Solliday in the search to fill this vacancy.

RECOMMENDATION

The Department recommends that the State Land Board reappoint the following individual to the Trust as a voting member:


APPENDICES

A. Oath of Office for Jim Sumich
B. OOST Vacancy Announcement
Oregon Ocean Science Trust Seeking New Member
The Oregon Ocean Science Trust is seeking a volunteer committed to stewardship of Oregon’s ocean and coastal resources to join the seven-member Trust. The new Trust member would be one of five voting members appointed by the State Land Board.

Desired Qualities
- The member must be a resident of Oregon.
- Members must have not less than five years experience in competitive granting, marine science, foundations or fiscal assurance. The Trust is particularly interested in hearing from candidates with experience in foundations and/or fundraising.

Member Commitments
- Members are appointed to four-year terms, but serve at the pleasure of the State Land Board. Members are eligible for reappointment. The Trust meets at least twice per year, typically at the Oregon Department of State Lands offices in Salem.

About the Oregon Ocean Science Trust
In establishing the Trust, the Oregon Legislature created an opportunity for our state to understand how our ocean is changing and to help ensure a thriving coastal environment and economy for future generations. The Trust is charged with:

Connecting the many ways ocean science matters for Oregon. Understanding the changes occurring off our coast matters to many, from communities whose economies depend on fishing to the millions of Oregonians and visitors who explore our shoreline every year. The Trust aims to promote innovative, collaborative, community-oriented approaches to research and monitoring of Oregon’s ocean and coastal resources.

Supporting science Oregon can count on. By promoting peer-reviewed competitive research and monitoring, the Trust increases the availability of reliable science that answers priority questions for understanding and managing Oregon’s coastal resources.

Investing in essential ocean research for a thriving environment and economy. By establishing a competitive grant program, the Trust will put independent science in the hands of the communities, businesses, and governments that need better information about Oregon’s ocean and coastal resources.

For more information, visit www.oregon.gov/dsl/OOST

To Be Considered
Please submit a letter of interest to Trust Executive Director Louise Solliday at OceanScienceTrust@dsl.state.or.us by 5:00 PM, Friday, November 30, 2018. For more information, please contact Senior Policy and Legislative Analyst Chris Castelli at 503-986-5280.