



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

The State Land Board met in regular session on February 14, 2017, in the Land Board Room at the Department of State Lands, 775 Summer Street NE, Salem, Oregon.

Present were:

Kate Brown
Dennis Richardson
Tobias Read

Governor
Secretary of State
State Treasurer

Kate Brown
Governor

Dennis Richardson
Secretary of State

Land Board Assistants

Jason Miner
Steve Elzinga
Chelsea Brossard

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

Tobias Read
State Treasurer

Department Staff

Jim Paul Bill Ryan Cyndi Wickham Julie Curtis Chris Castelli
Linda Anderson Lorna Stafford Sabrina Foward Anne Friend

Department of Justice

Matt DeVore
Chris Matthews

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

Governor Brown congratulated and welcomed the two new Board members, Secretary of State Dennis Richardson and State Treasurer Tobias Read. Secretary Richardson introduced his staff, Steve Elzinga, who assists him on government and legislative matters. Treasurer Read introduced his assistant, Chelsea Brossard, the Treasurer's Policy Director.

Governor Brown also noted that it was Oregon Statehood Day.

CONSENT AGENDA

1. a. **Request for approval of the minutes from the December 13, 2016 State Land Board meeting.**
 - b. **Request for approval to initiate the review and determination of the potential sale of approximately 40 acres of state-owned filled lands in Multnomah County.**

Director Paul reviewed the items on the consent agenda. He explained that on item 1b, if approved, the Department will begin the due diligence process to determine whether or not to make a recommendation to the Board for the sale of the parcel. If a sale is recommended, the item will come back before the Board for final approval.

Treasurer Read made a motion to approve the consent agenda. There were no objections to his motion. The consent agenda was approved.

Action Items

2. Request for approval to grant a 20-year easement for a fiber optic communication cable across state-owned submerged and submersible lands in the Territorial Sea in Tillamook County.

Director Paul explained that an easement would be issued to Microsoft Infrastructure, LLC to install a new trans-pacific undersea fiber optic cable system linking the United States to Asia. Microsoft proposes to pay \$300,000 to satisfy the just compensation requirement for the use of state-owned land and for the initial 20-year term of the easement. The Department received one comment during public review. The comment was from the Oregon Department of Fish and Wildlife (ODFW) regarding the timing of the proposed construction, which would occur during the typical migration period of the grey whale, a state endangered species. Microsoft Infrastructure LLC has addressed ODFW's concerns, which were included in the Board's meeting materials.

Terry Thompson, representing the Oregon Fishermen's Cable Committee (OFCC) provided comments to the Board. He told the Board that Oregon's fishing industry and the undersea cable industry have a great relationship. The two groups work together to bury cables in order to fish over them. Since OFCC's inception, there has never been a cable break off the Oregon coast. He said that trawlers from the Columbia River and Newport laid out the route for the Microsoft cable. He added that Microsoft has become a board member of the OFCC, which is a positive thing for Oregon.

Treasurer Read made a motion to approve the granting of a 20-year easement to Microsoft Infrastructure, LLC for a fiber optic communication cable across state-owned submerged and submersible lands within and adjacent to the territorial sea landing near Pacific City in Tillamook County.

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

3. Request for approval to quitclaim approximately 1.54 acres of submerged and submersible land to The Marine Salvage Consortium in Multnomah County.

Director Paul provided information on the history of ownership of the parcel. He explained that looking back over prior transactions with the property, it was never clarified that the parcel was transferred from state ownership to the subsequent owner, who later transferred it to another entity. Director Paul said that the proposed quitclaim will clarify and formalize acknowledgement of legal ownership of the submerged and submersible lands between the line of ordinary low water and the line of ordinary high water at this location. He added that staff and attorneys working on the Portland Harbor Superfund cleanup effort agree that an exchange of quitclaim deeds will mutually benefit both parties.

Treasurer Read made a motion to approve the granting of a quitclaim deed to The Marine Salvage Consortium to clear title of the state's ownership of the submerged and submersible lands at the surveyed 1973 Mean Ordinary Low Water Line.

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

Informational Items

4. Elliott Property Ownership Transfer Opportunity Status Report.

Senate President Peter Courtney provided comments to the Board. He told the Board that he believes the Elliott State Forest should remain in public ownership. He said public ownership is

the only way to guarantee the necessary protections of the sensitive and fragile elements that exist in the Elliott. He suggested that if any bonding is to be involved, that the Board considers revenue bonds. He explained that revenue bonds have to identify a source of funding to pay for the bonds. He acknowledged that the issue is a very difficult and sensitive one and that using lottery bonds may not be possible due to budget constraints.

Secretary Richardson asked if revenue bonds were used to purchase the forest, what source of revenue would be used to pay off the bonds?

President Courtney provided logging and developing parks as possible options. He said all potential revenue sources should be explored.

Director Paul discussed the work that has been done since the December 13, 2016 Land Board meeting. Staff worked with the proposers to clarify the gaps, ambiguities and uncertainties and have confirmed that the proposal is sufficient to demonstrate responsiveness to the protocol. He stated that the next step is initiating negotiations with the proposers and moving forward with the protocol, unless the Board directs the Department otherwise.

Governor Brown asked, if the Board moves forward under the protocol, is the one proposal their only option available?

Director Paul said that under the terms of the protocol, including the supplements, the next steps, unless directed otherwise, would be to proceed with negotiations towards a purchase and sale agreement with the intent of executing the sale. The protocol, as currently written, does not call for the sale coming before the Board again.

Governor Brown asked Director Paul what changes have occurred since the decision was made to enter into the protocol.

Director Paul noted that it has been 18 months since the protocol was adopted and another 18 months of work prior to that. He mentioned two changes that occurred. One was the market value for the forest. In August 2015, the best estimate was between \$280 million and \$410 million. Staff used a median value of \$360 million in documentation, prior to the appraisal. In July of 2016, a thorough appraisal process was completed. A timber cruise of over 18,000 plots was conducted. In addition, three independent appraisers conducted appraisals on the property and provided them to an appraisal consultant who reviewed the three appraisals and determined a single appraised, fair market value for the property. The appraised value came to \$220.8 million. This value was somewhat lower than previously expected.

Another change is the potential to use up to \$100 million in bonding for the purchase. Up to this point, there was no mention of bonding as a possible part of the solution.

Governor Brown added that there was a net revenue gain in 2016, which is also a change from recent years.

Director Paul said that there are preliminary numbers out for 2016. The Department of Forestry's annual report will be presented at the April 11, 2017 meeting. He said estimates show that there is a positive revenue stream for fiscal year 2016 of \$1.3 million.

Governor Brown said she wanted to be sure that Oregonians have the opportunity to have their voices be heard about the outcome of the Elliott during the process. She reiterated her appreciation to Lone Rock Timber Management, the Cow Creek Band of Umpqua Indians, the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians and The Conservation

Fund. She said that after hearing from Oregonians over the past couple of years, it is clear that it is in the best interest of Oregonians to ensure public ownership of the Elliott State Forest for future generations. She said the appraised value was surprisingly low and that retaining the forest as a state asset is the proper exercise of the fiduciary responsibility of the state. She said public access is critical for Oregonians. She said that the Board hoped to have more than one proposal to consider. In addition, she has heard in recent conversations that the terms of the protocol were too restrictive and the timeline was too short. Governor Brown added that the importance of state-owned land has increased as the future of federal public lands has come into question. And, Oregon is still not on track to meet its climate goals. Governor Brown said she supports the Elliott State Forest remaining in public ownership with either the state or the tribes owning or partnering to own the land. Governor Brown reiterated her proposal of up to \$100 million in state bonding capacity to protect critical habitats, including riparian areas, steep slopes and old growth stands. The investment would go toward the Common School Fund to decouple a portion of the forest from the Fund. She proposes to enter into negotiations with the federal services to obtain a habitat conservation plan for the remainder of the forest to allow for sustainable timber harvesting. She said the average harvest under this proposal would be about 20 million board feet per year over the long term. Governor Brown added that she is committed to working with the tribes to partner with them to manage their ancestral lands, while protecting the Common School Fund.

Governor Brown stated that she believes the Board should end the protocol while continuing conversations with tribes, Lone Rock and others about the future of the forest.

Treasurer Read asked Director Paul about the projected revenue gain for 2016, and to what he would attribute it to.

Director Paul explained that at the start of fiscal year 2016 when the protocol was approved, staff began discussions with the Department of Forestry regarding the management of the forest moving forward. At that time, there were a discreet number of timber sales that were still possible to carry out under the current management approach. Prior to the decision to move forward with the protocol, projected revenues hovered around zero and the potential sales were spread out over a longer period of time. Director Paul speculated that since the protocol was put in place, the timber sales were compressed into a shorter period of time allowing for more revenue to be generated. He said that a date was set about a year ago to have all timber sale activity completed by March 2017. He added that revenue of \$1.3 million can equate to just one or two timber sales on the Elliott.

Treasurer Read asked Director Paul to elaborate on how the gaps, uncertainties and ambiguities were resolved.

Director Paul explained that clarification regarding public access, older forest structure, riparian area protections and enforceable mechanisms was needed. Regarding public access, the proposers have included an addendum to their proposal that ensures public access on at least half of the forest in perpetuity. And, he said that the proposers have verbally expressed intent to provide access above and beyond that. Regarding older forest structure, the original proposal discussed the ability to review where older forest structures are protected and the potential for those areas to move over time. The proposers have provided additional information showing that they will define older forest structure, in a measurable way, so that it can be shown at in any point in the future, that there is always twenty-five percent of older stands on the forest. Regarding riparian areas, it was unclear what these would look like beyond the required 100 feet under the Forest Practices Act (FPA). The proposers have confirmed that buffers would exceed FPA requirements up to 120 feet. Regarding the enforceable mechanisms, agreement was reached in concept of the state having the ability in the future to step in, if appropriate, to

take action to ensure easements are enforceable. The concept will be developed further as negotiations progress.

Treasurer Read said the question is how to protect the public interest while meeting the Board's fiduciary obligation to the Common School Fund. He said the question of public ownership is a proxy of public interest, which includes public access and conservation. He said it also includes the Board's obligation to manage trust lands in a way that benefits schoolchildren now and into the future and to right some historic wrongs in terms of restoring land to the state's native peoples. He asked if there is a way to balance these competing interests. He noted that he was not a part of prior Boards' decision-making and is now asked to assess that process. He said the Board affirmed the process previously believing that it was the best way to attempt to reach that balance. He said he feels strongly that the proposal is responsive and he cannot cast it aside. He believes it is the best and most realistic proposal in front of the Board. Treasurer Read said he supports moving forward with the protocol but with some proposed additions.

Governor Brown asked if the Board has the ability to change the current protocol.

Governor Brown called a recess in order for staff and Board members to individually consult with legal counsel.

Governor Brown called the meeting back to order at approximately 12:15 p.m.

Assistant Attorney General Matt DeVore told the Board that they can amend the protocol, but noted that it was a lengthy process to develop the protocol in the first place. He said his concern is that without knowing what the amendment is, there is the potential that it could be inconsistent with the protocol. He suggested that, if an amendment is agreed to, there also be a statement included that gives the director the authority to use his discretion to reconcile any possible inconsistencies or contradictions within the protocol.

Governor Brown asked for an estimate of how long it took to develop the protocol.

Mr. Devore told the Board it took months to develop.

Treasurer Read made a motion to continue with the protocol with amendments to include in any negotiated purchase and sale agreement:

1. The ability for the state to repurchase by June 30, 2018, or up to 90 days after a transfer was completed, up to \$25 million in acreage land from the LLC for key conservation habitat. And, if the legislature approves those funds, the acreage would allow continued access for recreation, hunting, angling and other forms of public access. It could be in the form of a state park or wildlife management area and would require additional direction from the legislature, if they decide to appropriate those funds.
2. Inclusion of Forest Stewardship Council (FSC) principles and criteria as a component of the purchase and sale agreement; and prioritize that inclusion in the management of older tree stands. The Department will work with the proposers to clarify the protections that exist for old growth stands that are older than 250 years. And, in order to keep the Common School Fund whole, the Department can use any unexpended funds from the \$25 million of bonding to secure additional enhancements of the existing conservation measures that are already part of the protocol.
3. A right of first refusal for the five federally recognized western Oregon tribes for any lands that the LLC might decide to sell after the transfer.

Secretary Richardson discussed the history of the Common School Fund and the purpose of the Elliott State Forest. He explained that the Elliott is a land trust for the purpose of supporting education and the members of the Land Board are the Trustees over the Trust. He added that the Board's responsibility is to ensure an undivided loyalty to the Common School Fund and to public education. He said he would not have voted to sell the Elliott because he thinks the established price is too low. He remarked that there were forty-nine organizations that expressed interest in submitting a proposal, but only one was submitted. He said the proposers spent over \$500,000 over the last 18 months complying with the protocol and the Department has spent over \$3.5 million. He said he believes it would be unethical to cancel the protocol at this time. He said he feels he is in a very difficult position because he is not in favor of selling the forest and would not have voted for selling it. But, as a trustee of the Common School Fund he feels the Board should follow through with the protocol as previously agreed upon by the Land Board and to fulfill the fiduciary duty of the Board. He added that, if the \$220.8 million had been invested over the past three years, it would have generated \$54 million for the Common School Fund.

Secretary Richardson said he appreciated Treasurer Read's attempt to balance and protect the assets in the forest with his proposed modification to the protocol.

Governor Brown asked what the Board's legal obligation to the protocol was at this time.

Director Paul asked Assistant Attorney General Chris Matthews to address the question.

Mr. Matthews told the Board that there has not yet been an offer of sale made. The process to date has been to identify a potential ownership transferee. The next steps include the Department making an offer of sale and negotiation of a purchase and sale agreement. It is made clear in the protocol that, until the time that both the State and proponents sign a mutually negotiated purchase and sale agreement, which has not been created yet, the Land Board may terminate the protocol at any time.

Governor Brown said that she was opposed to amending the protocol on the fly. She said the protocol took several months to develop with extensive legal consultation and careful consideration. She suggested that the Board end the protocol in order to discuss other proposals being offered. She said she believes there needs to be a public option on the table.

Treasurer Read clarified that the protocol does not prevent the legislature from taking action between now and the time when a purchase and sale agreement might be completed so that a public ownership option might be considered.

The Board took public comment on the issue.

Governor Brown asked the proposers if they would like to address the Board.

Chief Warren Brainard with the Coos, Lower Umpqua and Siuslaw Indians told the Board that he understands the difficult decision they have before them. He said that because these lands are their traditional home land, the tribes are interested in anything that goes on in the area and they will continue to participate no matter what is decided upon.

Treasurer Read restated his previous motion. He added that he is not happy with this action, but it is his best attempt to try to balance what he views is his obligation as a fiduciary to the trust.

Governor Brown added that the amendment also provides the director with the discretion to address any contradictions the amendments may have with the existing protocol.

Governor Brown asked for a vote.

Treasurer Read and Secretary Richardson both voted yes. Governor Brown voted no. The motion was approved.

Governor Brown said that she does not believe the Board should be bound to a single proposal and she directed the Department and Director Paul to consider a public ownership option going forward and to present the results at the next State Land Board meeting.

Secretary Richardson made a motion to override the direction since it was contrary to the motion that was just passed by the Board.

Governor Brown said it was not contrary and asked if there was a second to the motion. There was no second to the motion.

Governor Brown adjourned the meeting at 1:05 p.m.



Kate Brown, Governor



James T. Paul, Director