



# Oregon

Kate Brown, Governor

*Public Wi-Fi logon: LandsDSL*

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## STATE LAND BOARD

**October 17, 2017**

**10:00 am – 12:00 pm**

**Oregon Department of State Lands**

**Land Board Room**

**775 Summer St NE**

**Salem, Oregon**

Kate Brown

Governor

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

## AGENDA

### Consent Items

1. a. Request for approval of the minutes of the May 9, 2017 State Land Board meeting.
- b. Request for approval to initiate the review and determination of the sale of the Helvetia property, a 2.78 acre parcel located at Township 1N, Range 2W, Section 15, Tax Lot 100 in Washington County.
- c. Request for approval to initiate the review and determination of the sale of the Millican Road parcel, a 158.87 acre parcel located at Township 15S Range 15E, Section 14, Tax Lot 2300 in Crook County.
- d. Request for approval to initiate the review and determination of the sale of the Stevens Road Tract, a 640 acre parcel located at Township 18 South, Range 12 East, Section 11, Tax Lot 2300 in Deschutes County.
- e. Request for approval of a perpetual easement for two bridge crossings on Highway 101 over Southport Slough in Section 23C of Township 26 South, Range 13 West of Willamette Meridian in Coos County.

### Action Items

2. Request for adoption of amendments to the administrative rules governing the placement of an ocean renewable energy facility on, in or over state-owned land within the territorial sea (OAR 141-140-0010 to OAR 141-140-0130)

*Continued on next page*

### **Informational Items**

3. Annual update on the Oregon Ocean Science Trust (OOST)
4. Annual report on the Common School Fund Real Property program for fiscal year 2016.
5. Elliott Public Ownership Project Update
6. Other

Livestream available at: <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](mailto:arin.n.smith@state.or.us) at least two working days prior to the meeting.*

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

When providing testimony, please:

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

Written comments may be submitted before or during the meeting for consideration by the Board. 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.



# Oregon

Kate Brown, Governor

## Department of State Lands

1645 NE Forbes Rd., Suite 112

Bend, OR 97701

(541) 388-6112

FAX (541) 388-6480

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## State Land Board

Kate Brown

Governor

### Regular Meeting

October 17, 2017

Agenda Item 1b

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

### SUBJECT

Request for approval to initiate the review and determination for a potential sale of the Helvetia property, a 2.78 acre parcel located at Township 1N, Range 2W, Section 15, Tax Lot 100 in Washington County.

### ISSUE

Whether the Land Board should authorize the Department to initiate the review and determination for the potential sale of the Helvetia property in Washington County (Appendix A).

### 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.

Central Oregon Area Management Plan (COAMP), adopted by the Land Board; October 2011

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012

### SUMMARY

The Department purchased the Helvetia property in 2012 as part of an effort to reposition the land portfolio to generate greater returns for the Common School Fund

(Appendix B). This property was purchased consistent with the direction under the State Land Board's 2012 Real Estate Asset Management Plan (REAMP):

*"A key purpose of the REAMP is to reposition the land portfolio in order to generate greater land-based returns to the Common School Fund. Thus, lower performing lands are being evaluated for disposal and higher performing lands are being targeted for acquisition; specifically commercial and industrial properties. In evaluating land for acquisition, the REAMP targets lands with immediate or near-term, rather than potential long-term, returns. The minimum return on property investment is to meet or exceed the ten-year average of the CSF (currently about 6.4%), with a targeted return of 8%, including appreciation." (Oct. 2012 Land Board Agenda Item #8)*

Since 2012 the Department has made some improvements to the property to improve its desirability for lease and value to the Common School Fund. It is currently leased at full capacity with three tenants for a variety of light industrial uses. On September 18, 2017, the Department received a request to purchase the property from Pacific NW Properties (Appendix C).

Three key factors supporting due diligence on the subject property at this time include:

1. The Department has just recently been able to get the property fully leased again, after working for a period of time to fill building vacancies. The market value of the property is generally highest when fully occupied.
2. The real estate market has sufficiently rebounded post-2008 and currently appears to be driving a seller's market in some real estate sectors.
3. The property has generated sale interest, and current market conditions may be 'ripe' for divesting of the property and realizing the investment return rate projected when purchased in 2012.

## **RECOMMENDATION**

The Department recommends that the State Land Board authorize the Department to initiate the review and determination for the potential sale of the Helvetia property, a 2.78-acre parcel located at Township 1N, Range 2W, Section 15, Tax Lot 100 in Washington County.

## **APPENDIX**

- A. Map of Property
- B. October 2012 State Land Board Agenda Item #8
- C. Offer to Purchase

State of Oregon  
Department of State Lands



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

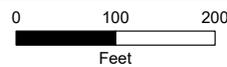
**APPENDIX A**

**Helvatia Property  
LAS 3221**

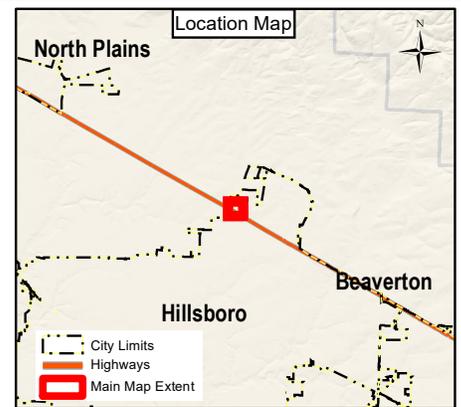
**T10N, R02W, Section 15  
Tax Lot 100  
Washington County**

 **DSL Property Boundary**

This product is for informational purposes only and has not have been prepared for, nor is 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.



Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet  
State of Oregon  
Department of State Lands  
775 Summer St NE, Suite 100  
Salem, OR 97301  
503-986-5200  
www.oregon.gov/DSL  
Date: 9/26/2017





# Oregon

John A. Kitzhaber, MD, Governor

APPENDIX B

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregonstatelands.us](http://www.oregonstatelands.us)

### State Land Board

## State Land Board

### Regular Meeting

October 9, 2012

### Agenda Item 8

John A. Kitzhaber, MD

Governor

Kate Brown

Secretary of State

Ted Wheeler

State Treasurer

### SUBJECT

Request for authorization to purchase property located at 6103 NW Casper Place, in Hillsboro for \$2,912,287.

### ISSUE

Whether the Land Board should give approval for the Director to complete an acquisition of 2 light industrial/commercial office buildings (6103 NW Casper Place), located at the northeast corner of the interchange of Oregon Highway 26 and Helvetia Road for \$2,912,287. The buildings total 31,155 square feet and the property is 2.78 acres.

### 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 in February 2012.

### SUMMARY

This proposed purchase is the first significant acquisition towards implementation of the Real Estate Asset Management Plan (REAMP). The REAMP specifically addresses acquisition of properties in the ICR land class (Industrial, Commercial and Residential),

and includes specific guidelines to better inform staff in conducting due diligence on potential acquisitions. This buildings are light industrial/flex office space.

### ***REAMP Investment Guidelines***

The REAMP guidelines for Commercial Office Buildings (REAMP, p. 27-29) include:

<b><u>REAMP Guidelines – Industrial/ Flex Buildings</u></b>	<b><u>6103 Casper Place Conformance</u></b>
<p>General Type</p> <ul style="list-style-type: none"> <li>- Concrete tilt with 3/1,000 s.f. parking, with multiple tenants.</li> </ul>	<ul style="list-style-type: none"> <li>- The property consists of two buildings. One is about 5,155 s.f. and the other is about 26,000 s.f. on 2.78 acres. Each are one-story low rise buildings with high ceilings, 6 drive-in doors and 4 drive-in doors in each tenant space and ample parking. There are 6 store fronts on the buildings between the two buildings.</li> </ul>
<p>Tenant type</p> <ul style="list-style-type: none"> <li>- preference for high-grade, multi-tenant buildings in an industrial park setting. 3-5 year average term for multi-tenant buildings with staggered rent roll. Preference given to office park setting.</li> </ul>	<ul style="list-style-type: none"> <li>- The buildings are about 3 years old. Property inspection indicates no problems with high quality construction. No environmental issues discovered. It is located in an office/ light industrial park type setting.</li> </ul>
<p>Lease Term</p> <ul style="list-style-type: none"> <li>- Core: +/- five-year average</li> </ul>	<ul style="list-style-type: none"> <li>- The buildings are fully leased with four tenants that have varying lease terms of 2-6 years.</li> </ul>
<p>Location</p> <ul style="list-style-type: none"> <li>- Areas with significant economic generators. Area must have an efficient infrastructure. Job infrastructure is important.</li> </ul>	<ul style="list-style-type: none"> <li>- The buildings, located in Hillsboro, are 2-3 miles from the Hillsboro Airport, Genentech, Solar World and the Intel Ronler Acres Campus. The property is on an interchange with US 26 and Helvetia, at the edge of the urban growth boundary that is recommended for expansion. It is a high growth employment area.</li> </ul>
<p>Construction</p> <ul style="list-style-type: none"> <li>- Concrete tilt up, masonry, or pre-cast.</li> </ul>	<ul style="list-style-type: none"> <li>- The buildings are concrete tilt up buildings.</li> </ul>
<p>Physical Amenities – Design Type</p> <ul style="list-style-type: none"> <li>- Modern light industrial; preference for multi-tenant.</li> </ul>	<ul style="list-style-type: none"> <li>- The buildings are modern light industrial and 100% leased, with 4 tenants.</li> </ul>
<p>Physical Amenities – Loading: Dock/semi-dock/grade level</p>	<ul style="list-style-type: none"> <li>- The buildings have 6 garage doors at grade and four loading dock doors for semi-trailers in the large building.</li> </ul>
<p>Physical Amenities – Bay depth: 100 – 200 feet.</p>	<ul style="list-style-type: none"> <li>- The large building is 100 feet deep and the small building is 50 feet deep and is set up for office and small warehouse space.</li> </ul>
<p>Physical Amenities – Clear ceiling height.</p>	<ul style="list-style-type: none"> <li>- The minimum clear ceiling height is over 18 feet.</li> </ul>

Physical Amenities – Parking Ratio: 2.5/1,000 s.f.	- The buildings have 66 parking spaces; about 2.13 spaces/1,000 s.f. If looking at parking for the predominant industrial uses, the property exceeds the industrial standard of 1.5 spaces/1,000 s.f.
Physical amenities – Office Finish: 70% or less.	- Approximately half of the smaller building is finished for office use. The large building is in light industrial finishes.
Physical Amenities: Site Coverage: Less than 50%.	- The buildings contain about 31,000 s.f. on 2.78 acres; about 26% site coverage.
Amenities: - Code compliant sprinkler system - Attractive landscaping - ADA compliant - Signage - NNN (triple net) leases	- The buildings meets all of the amenity guidelines.
Minimum Size: 20,000 s.f., \$2,000,000	The buildings total about 31,000 s.f. and the price is \$2,912,287.

### ***Financial Returns***

A key purpose of the REAMP is to reposition the land portfolio in order to generate greater land-based returns to the Common School Fund. Thus, lower performing lands are being evaluated for disposal and higher performing lands are being targeted for acquisition; specifically commercial and industrial properties. In evaluating land for acquisition, the REAMP targets lands with immediate or near-term, rather than potential long-term, returns. The minimum return on property investment is to meet or exceed the ten-year average of the CSF (currently about 6.4%), with a targeted return of 8%, including appreciation. Staff believes that significant appreciation is likely for this property due to the quality construction and the location.

In analyzing returns for this property, relatively conservative assumptions were used. The estimated 15-year net operating income annual average, after deducting capital costs and reserves (assumes \$37,500 accumulated over the first five years), is \$235,513. Based on a final sale price of \$2,912,287, the projected 15-year average return on the property, assuming 50% tenant turnover and excluding maintenance reserves and investments, is 8.09%. This meets and exceeds the targeted return in the REAMP without including any assumptions for appreciation of the property.

### ***Physical and Environmental Inspections***

A building condition assessment was conducted by Tim Rippey Consulting Engineers of Portland. The report on the buildings addressed structural, mechanical, electrical systems and the roof. No areas of concerns with the buildings were noted in the report. A Phase 1 environmental analysis was also completed for the property. No recommended environmental conditions were identified.

***Property Management***

If the Land Board approves the purchase of the property, staff will immediately initiate a Request for Proposal process for professional property management services. The estimated costs of property management are included in the assumptions of returns on the property.

***Appraisal***

The appraised value of the property is \$2,915,000. The appraiser used a combination of the sales comparison and income capitalization approaches to derive this property value.

***Land Revolving Fund***

The Land Revolving Fund is the source for acquiring land. Revenues from sales of trust lands are placed in the Revolving Fund for this purpose. The balance of the Revolving Fund as of September 19 is \$13,261,668.

***Analysis***

As the first ICR property acquisition to implement the REAMP, staff carefully evaluated the property prior to negotiating its purchase. The buildings are about 3 years old and in excellent shape, with no concerns reported from inspections. The buildings are also located in a current and anticipated future high employment growth area, with high visibility from Highway 26 at the interchange with Helvetia Road. These factors lead staff to believe that significant appreciation in value is likely in future years. In addition to appreciation, the building cash flow is projected to provide an average return of 8.09% over a 15-year period.

**RECOMMENDATION**

The Department recommends that the Land Board give approval for the Director to complete the acquisition of 6103 NW Casper Place, in Hillsboro.

**APPENDICES**

- A. Map of property location
- B. Photos of property
- C. Site plan

# LOI Offer to Purchase

---

9.18.17

## PSI Business Park

---

Hillsboro, Oregon



6600 SW 105th Ave., Suite 175, Beaverton, OR 97008

(503) 626-3500 Fax (503) 671-0211  
website: [www.pnwprop.com](http://www.pnwprop.com)

September 18, 2017

Mr. Charles Safley  
Capital Markets | Advisory & Transaction Services  
CB Richard Ellis  
1300 SW 5th Avenue, Suite 3000  
Portland, OR 97201

**RE: Letter of Intent (LOI) to Purchase – PSI Business Park**

Charles:

Pacific NW Properties, LP (Pacific) (“Buyer”) has sincere interest in acquiring PSI Business Park from Oregon Department of State Lands (“Seller”).

#### **WHO WE ARE**

Pacific NW Properties, LP is a family-owned, privately held real estate development, investment and property management company that started in 1990, with approximately 3,500,000 square feet of multi-tenant business parks in the Portland Metro Area under ownership and management. We have over 500 quality tenants in our PNWP portfolio with the “bread and butter” of it made up of small, light industrial customers (just like PSI Business Park). More info about the Buyer at [www.pnwprop.com](http://www.pnwprop.com). I’ve enclosed a map showing our other properties in the Portland Metro Area as a reference. You’ll notice that we own several projects very close in proximity to the subject site on Casper Place.

#### **RECENT ACQUISITIONS AND PERFORMANCE CREDIBILITY**

In the past few years Pacific has acquired over \$70 Million worth of properties in Portland/SW Washington, including (closing next month) I-84 Corporate Center in Troutdale (135,000 SF), Twin Oaks Business Park in Beaverton (166,000 SF), Milwaukie Business Park (101,000 SF) and several others. We are **proud to share that we have successfully closed the last ten (10) properties we’ve tied up.** As the Portland market knows, if the Seller chooses to work with PNWP, we are apt to perform and close.

#### **WHY WE LIKE THIS SITE**

- We designed these buildings as part of our (directly adjacent) Sunset Highway Business Park development, before selling the plans to the Sackhoff family (previous owners).
- We know the neighborhood, and this asset fits in nicely with our other holdings in the Sunset Corridor.
- Due to the fact that we own approximately 108,000 SF next door, we can justify “stretching” to pay the premium appraised value price, which we don’t think others could do (came in higher than expected).

#### **OUR COMMITMENT**

We commit to working hard to successfully consummate this transaction, working in good faith, and doing what we say we’re going to do. We’re excited for the opportunity.

We are hopeful that the Oregon Department of State Lands engages with Pacific and moves toward a successful disposition under the following terms:

1. Buyer: Pacific NW Properties, LP and/or assigns
2. Seller: Oregon Department of State Lands (official entity to be inserted into PSA)
3. Property: PSI Business Park, an approximate 31,155 SF multi-tenant industrial park situated on approximately 2.78 acres.
4. Price: Three Million, Seven Hundred Thousand and no/100 dollars (\$3,700,000.00) cash.
5. Earnest Money Deposit: One Hundred Thousand and no/100 dollars (\$100,000.00) promissory note converted to a nonrefundable cash deposit and held in Escrow upon written removal of contingencies.
6. Due Diligence Period: This acquisition will be our TOP PRIORITY. In fact, we will complete our due diligence in just 10 days following PSA execution and receipt of pertinent Seller Documents.
7. Closing: Within five (5) business days of Seller approval (at December 2017 board meeting), (assuming contingencies have been removed). Or sooner, if State of Oregon approval can be secured prior to December 2017. Please note, Buyer is willing to Close in 2017 OR early 2018, whichever is best for State of Oregon.
8. Broker: Charles Safley and Scott Weigel of CB Richard Ellis represent the Seller and are the only brokers involved. Seller shall pay entirety of brokerage fee pursuant to a separate agreement at Closing.
9. Title Company: Our preference would be Fidelity National Title, attention Shawnda Reszel - 900 SW 5th Avenue - Lobby Level, Portland, OR 97204
10. PSA: Upon acceptance of these terms, Seller shall prepare the Purchase and Sale Agreement.

*(signature block on following page)*

Charles, please discuss this non-binding offer with your client and get back to us as soon as possible to put an action plan in place.

With appreciation,



Evan Bernstein  
Director of Acquisitions, Partner  
Pacific NW Properties, LP

Cc: Clara Taylor, State  
Cc: Tom Stern, PNWP  
Cc: Scott Weigel, CBRE

**If these terms and conditions are acceptable, please sign and return to me via email at [evan.bernstein@pnwprop.com](mailto:evan.bernstein@pnwprop.com)**

**AGREED AND ACCEPTED: SELLER**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**AGREED AND ACCEPTED: BUYER**

**By:**  \_\_\_\_\_  
**Title:** Director of Acquisitions, Partner  
**Date:** 9.18.17



## EXHIBIT B PNWP Holdings in the Sunset Corridor

**SUNSET CORRIDOR HOLDINGS**  
Pacific NW Properties

**PACIFIC NW PROPERTIES**

**SUNSET HIGHWAY BUSINESS PARK**  
108,000 SF

**CORNELIUS PASS BUSINESS PARK**  
76,000 SF

**PSI BUSINESS PARK**

**TANASBOURNE BUSINESS PARK**  
112,000 SF

**TWIN OAKS BUSINESS PARK**  
166,000 SF

**CORNELL BUSINESS PARK**  
78,000 SF

For More Information, Please Contact:  
**Pacific NW Properties | (503) 626-3500**  
6600 SW 105th Ave Suite 175 Beaverton, OR 97008 | [www.pnwprop.com](http://www.pnwprop.com)

The information contained herein is believed to be accurate but is not warranted as to its accuracy and may change or be updated without notice.

We'd love to add PSI Business Park to our portfolio!



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 986-5200  
FAX (503) 378-4844  
[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown  
Governor

Dennis Richardson  
Secretary of State

Tobias Read  
State Treasurer

## State Land Board

**Regular Meeting**  
**October 17, 2017**  
**Agenda Item 1c**

### **SUBJECT**

Request for approval to initiate the review and determination for a potential sale of the Millican Road parcel, a 159-acre parcel located at Township 15S Range 15E, Section 14, Tax Lot 2300 in Crook County.

### **ISSUE**

Whether the Land Board should authorize the Department to initiate the review and determination for the potential sale of the Millican Road parcel in Crook County.

### **AUTHORITY**

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; 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

Central Oregon Area Management Plan (COAMP), adopted by the Land Board; October 2011

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012

### **SUMMARY**

The Millican Road parcel is located on the west side of the City of Prineville, south of the Prineville airport (Appendix A). The site was slated for conversion to industrial use in the Central Oregon Area Management Plan (COAMP) adopted by the Land Board in October 2011. On June 12, 2012, the Land Board authorized an equal exchange of

land with Premier Bank, the adjacent property owner (Appendix B). The due diligence conducted for that exchange also included altering the boundaries of both properties from long narrow parcels to square parcels, and gave DSL road access to the reconfigured Millican Road parcel. This was done to improve the marketability of both parcels for future commercial and industrial development and use.

As part of the exchange agreement, the City of Prineville agreed to annex the DSL parcel as an industrial parcel. Upon the completion of the exchange the parcel was annexed to the city and became certified as a “Shovel Ready” site under Business Oregon’s Certified Industrial Site identification process. The property reconfiguration enabled by the land exchange, annexation by the City, and certification as “Shovel Ready” all support the recommendation from the COAMP to increase the value of the site by preparing it for industrial use. The property was actively marketed in 2012 and 2013 under a joint marketing agreement but received no offers. Recently DSL received an application to purchase the property by one of the neighbors, Legacy Ranches.

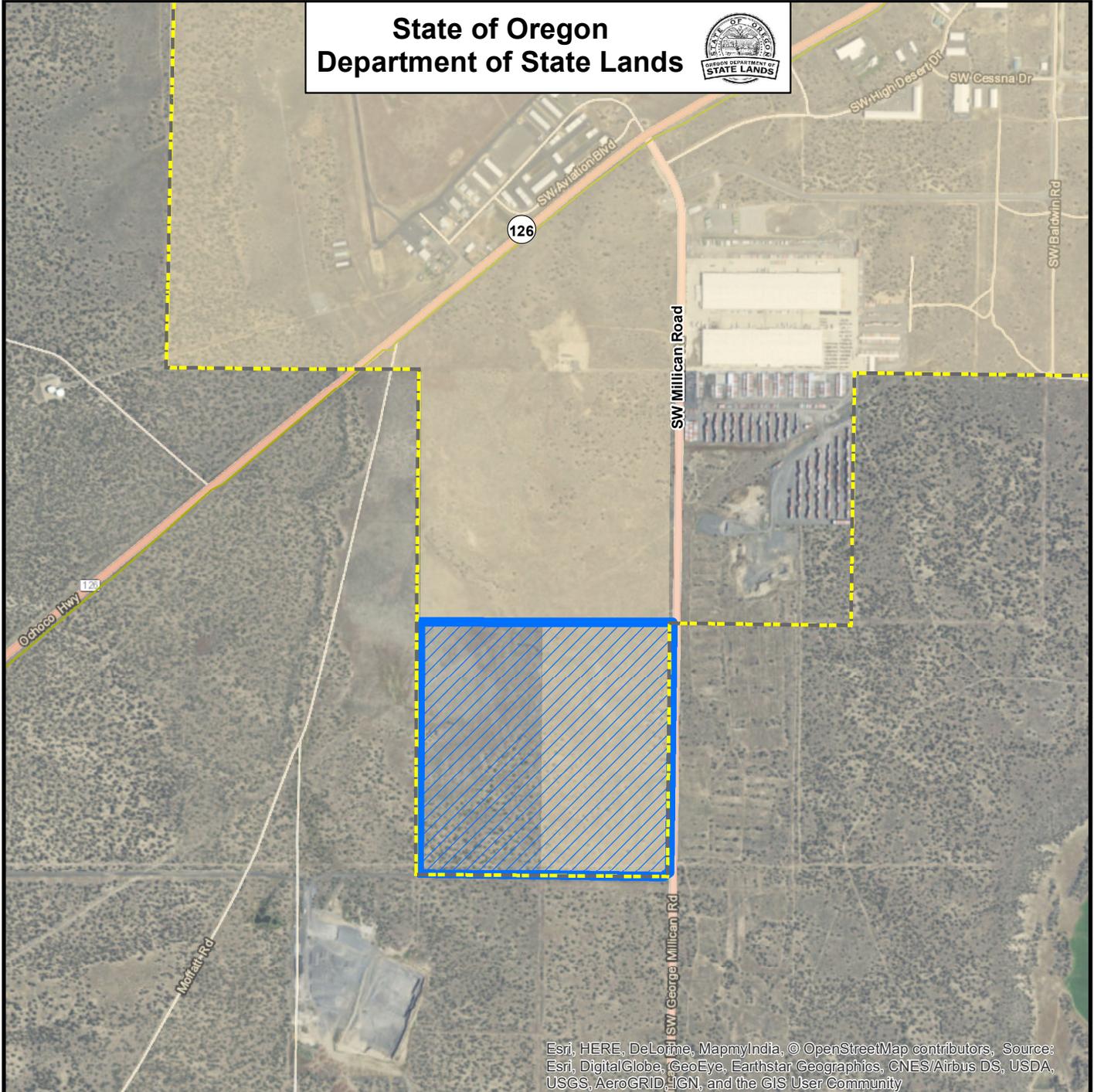
## **RECOMMENDATION**

The Department recommends that the State Land Board authorize the Department to initiate the review and determination for a potential sale of the Millican Road parcel, a 159-acre parcel located at Township 15S Range 15E, Section 14, Tax Lot 2300 in Crook County.

## **APPENDIX**

- A. Map of Property
- B. June 2012 State Land Board Agenda Item 3

State of Oregon  
Department of State Lands



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**APPENDIX A**

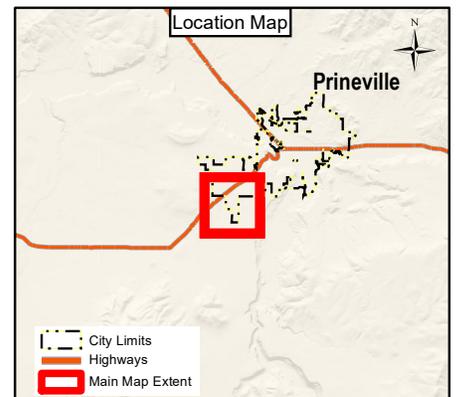
**Millican Road Property**  
**T15S, R15E, Section 14**  
**Tax Lot 2300**  
**Crook County**

-  DSL Property Boundary
-  Prinevill 2015 City Limits
-  Prinevill 2015 UGB

This product is for informational purposes only and has not been prepared for, nor is 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.



Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet  
State of Oregon  
Department of State Lands  
775 Summer St NE, Suite 100  
Salem, OR 97301  
503-986-5200  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)  
Date: 9/26/2017





# Oregon

John A. Kitzhaber, MD, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregonstatelands.us

### State Land Board

John A. Kitzhaber, MD

Governor

## State Land Board

### Regular Meeting

June 12, 2012

Agenda Item 3

Kate Brown

Secretary of State

Ted Wheeler

State Treasurer

### SUBJECT

Request for authorization to sign a Land Exchange Agreement for an equal area land exchange between PremierWest Bank, an Oregon banking corporation, and the State Land Board.

### ISSUE

Whether the Land Board should give approval for the Director to sign a Land Exchange Agreement for an equal area land exchange (approximately 80 acres) between PremierWest Bank (PWB) and the State Land Board for the following properties:

- Lands to be acquired by PWB from the Land Board
  - Approximately 80 acres (the north half) of DSL's 160-acre Millican Road parcel (T15S-R15E-14; TL 2300), which is vacant, currently landlocked without legal or physical road access, located south of Highway 126 and west of the PWB property. Millican Road and the Les Schwab distribution facility are near to the site, which is adjacent to, but outside of the Prineville Urban Growth Boundary (UGB) and city limits, in Crook County, Oregon. This DSL property is zoned Exclusive Farm Use (EFU).
- Lands to be acquired by the Land Board from PWB
  - Approximately 80 acres (the south half) of PWB's 160-acre LivingWaters Industrial Site (T15S-R15E-14; TL 1224), which is vacant, located immediately east of DSL's Millican Road parcel, south of Highway 126 and abutting Millican Road. The PWB site is directly across Millican Road from Les Schwab, inside the Prineville UGB and city limits, in Crook County, Oregon. The PWB property is zoned Industrial and is a Business Oregon Certified Industrial Site with urban services.

These properties are located on the west side of Prineville, south of the airport. The UGB and city limits will be adjusted to retain Industrial urban zoning for the reconfigured PWB site (square - the north half of T15S-R15E-14; TLs 2300 and 1224).

**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 270.010; pertaining to the sale of state surplus property

ORS 273.055; relating to the power to acquire and dispose of real property

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

ORS 273.316 and .321; relating to the exchange of state lands

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

Central Oregon Area Management Plan (COAMP), adopted by the Land Board; October 2011

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012

**SUMMARY**

This proposed land exchange is being undertaken to reconfigure two adjacent, long, rectangular parcels (1/4 mile by 1 mile) into square parcel configurations (1/2 mile by 1/2 mile) that are more easily developed and thus more attractive to prospective industrial site selectors. Both properties benefit from this equal area land exchange including the DSL property which will become developable and marketable with direct road access and inclusion in the UGB and city limits. This initiative is very strongly supported by Prineville and Crook County who are taking the lead to adjust the Prineville UGB and city limits to retain the reconfigured PWB property within the UGB and city limits. This local UGB adjustment initiative is viewed as helping the community provide marketable industrial sites creating local employment opportunities.

Prineville's recent successes in attracting data centers (i.e. Facebook and Apple) has both consumed available land supply and generated national interest from other such industries seeking building sites. The proposed land exchange and boundary adjustments will aid Prineville/Crook County in industrial recruitment efforts by availing needed industrial sites sought by such industries including real-time, current inquiries.

PWB representatives and DSL staff, along with Prineville and Crook County staff, have met with Department of Land Conservation and Development and Oregon Department of Transportation staff to identify appropriate UGB adjustment procedures and transportation issues. No major obstacles were identified. Additionally, such discussions have also included plans to bring the reconfigured DSL Millican Road site into Prineville's UGB and city limits as industrial property. This is the identified highest and best use recommendation of the October 2011 Land Board adopted Central Oregon Area Management Plan (COAMP) for this site and is considered by Prineville

and Crook County as replenishment of the industrial land supply recently consumed to support data center development. Prior planning activities undertaken by the city and county have greatly facilitated readying the sites for development, including recent adoption of a Highway Corridor Plan for State Highway 126, which serves these properties.

The proposed agreement is a simple equal area land exchange. Recognizing the joint effort between PWB and DSL, additional “side agreements” addressing issues such as land use entitlement actions, order of sale, marketing and brokerage will be negotiated that will facilitate the future sale of the property. The goal by both parties will be to sell the two parcels to one buyer, but that is not assured. PWB has retained the project manager and real estate broker who were involved in bringing Facebook to Prineville, and DSL will benefit from this prior experience. The exchange agreement is included as Appendix A.

### ***Conditions of Exchange***

It is proposed that DSL and PWB will exchange subsurface mineral rights (after DOGAMI review) concurrent with transfer of surface ownership. Industrial buyers would be very concerned with purchasing only surface rights to a site of this nature.

### ***Agency and Public Review***

The Oregon Department of Administrative Services has been informed of this proposed land exchange and sent out the required Surplus Property Notification to state agencies in April – no replies have been received to date. In addition, staff sent broader notices to other local, state and federal agencies, abutting property owners and members of the public who have previously expressed interest in being notified of land sales.

The effects of the land exchange proposal with PWB will facilitate the implementation of the recommendations found in the COAMP for this site, which have been reviewed by the agencies and the public (in public meetings in Prineville and Redmond, and at the special Land Board Meeting in Bend in September 2011) as part of the COAMP process. COAMP was adopted by the Land Board in October 2011.

## **RECOMMENDATION**

The Department recommends that the Land Board give approval for the Director to sign a Land Exchange Agreement providing final authorization for a land exchange, including a transfer of mineral rights (pending DOGAMI evaluation), between PWB and the State Land Board. (Appendix A).

## **APPENDICES**

- A. Land Exchange Agreement
- B. Map of DSL and PWB properties

## EXCHANGE AGREEMENT

BETWEEN: PREMIERWEST BANCORP, an Oregon corporation (“PWB”)

AND: STATE OF OREGON acting by and through the Oregon State Land Board on behalf of the Oregon Department of State Lands (“DSL”)

### RECITALS

- A. PremierWest Bank “PWB” is the record owner of certain real property located in Crook County, Oregon that is known as Township 15 South, Range 15 East, Section 14, Tax Lot 1224 (“PWB Property”). The PWB Property is close to 160 acres in size. A legal description of the Property is attached hereto as Exhibit A. PWB is currently in the process of sales and marketing efforts to sell this parcel of land. The current zoning of the PWB Property is M1, Light Industrial. PWB has acquired Enterprise zone status, State site certifications and a power easement agreement that support development of a medium to large data center project on the PWB Property.
- B. The PWB Property is configured in a long, rectangular shape. This shape makes it difficult for larger industrial users to make efficient use of the property.
- C. STATE OF OREGON acting by and through the Oregon State Land Board on behalf of the Oregon Department of State Lands “DSL” is the record owner of certain real property located in Crook County, Oregon, that is known as Township 15 South, Range 15 East, Section 14, Tax Lot 2300 (“DSL Property”). The DSL Property is approximately 160 acres in size. A more particular description of the DSL Property is attached hereto as **Exhibit B**. The DSL Property is configured in the same approximate size and shape as the PWB Property. Additionally, the DSL Property lacks the industrial zone and plan designation, road frontage, power easements, enterprise zone and certified site status typically needed to develop its property for industrial uses.
- D. PWB and DSL wish to reconfigure the properties so that each property will have a square shape that is better suited for the marketplace. Both parties will benefit from this exchange. Upon completion of the conditions precedent and subsequent entitlement actions for the DSL Property the reconfiguration will create two parcels of approximately equal size and value. PWB and DSL also wish to make their properties available for purchase and development as one unit of land. PWB and DSL agree that the DSL Property should obtain the enterprise zone and certified site status it currently lacks. In addition, the ability to obtain needed utility service and easement should be assured by the PWB and DSL Joint Management Agreement.

## AGREEMENT

The parties agree as follows:

1. **Recitals.** The parties acknowledge and agree that the Recitals set forth above are incorporated herein and deemed a material part of this Agreement.
2. **Acquisition and Transfer of Properties.** PWB shall convey to DSL the south one-half of the PWB Property and DSL shall convey to PWB the north half of the DSL Property, on the terms and conditions set forth in this Agreement. The exchange is, also, subject to conditions precedent.
3. **Consideration.** The consideration for this Agreement is the respective properties to be exchanged and, the completion by DSL of the conditions precedent to the exchange.
4. **Conditions Precedent.** The obligation to exchange properties and to proceed to closing is conditioned upon fulfillment of each of the conditions precedent listed in subsections 4.1 through 4.6, below. All of these conditions are for the benefit of PWB and DSL as indicated above. Subsection 4.1 is for the benefit of DSL and may be waived, in whole or in part, only by DSL. Subsection 4.2 is for the benefit of PWB and may be waived, in whole or in part, only by PWB. Subsections 4.3 through 4.6 are for the benefit of both parties and may be waived, in whole or in part, by agreement of DSL and PWB. Any waiver must be in writing. Unless waived, if these conditions are not satisfied by the Closing Date, this Agreement may be terminated only by the party who benefits from the condition. Neither party shall be liable to the other for damages arising from such termination.

### 4.1 DSL's Conditions.

- a. Approval of the exchange by the Oregon State Land Board;
- b. Approval of the Phase I Environmental Audit of the PWB Property that has been obtained by and paid for by PWB; and
- c. Approval of the appraisals of the values of the DSL Property and the PWB property shown in Exhibit A;
- d. PWB's performance of all of its obligations under this Agreement, including its obligations under Section 4.3 of this Agreement.

### 4.2 PWB's Conditions.

- a. Approval of the Phase I Environmental Audit of the DSL Property that shall be obtained by and paid for by DSL; and
- b. DSL shall enter into a mutually acceptable agreement with PWB or, at the election of PWB, an easement in a form suitable for recording with the Crook County Clerk that assures PWB that the Northern Parcel will be served by electric power from Central Electric Cooperative ("CEC"). The general terms of this

agreement or easement are described as the DSL Easement Agreement in Section 4.5, below.

c. Approval of the appraisals of the values of the State Property and the PWB Property shown in Exhibit A;

d. DSL's performance of all of its obligations under this Agreement, including its obligations under Section 4.3 of this Agreement.

**4.3 Land Use Entitlements and Site Certifications.** The parties agree to jointly submit the following land use applications. The following shall occur prior to Closing of the Exchange:

a. Step 1. Obtain final approval of a lot line adjustment approval by the City of Prineville and Crook County that approves a reconfiguration of the PWB and DSL Properties as shown on Exhibit C. Two parcels are depicted on the Exhibit C map. One parcel is labeled Parcel 1 and the other is labeled Parcel 2. For purposes of this Exchange Agreement, Parcel 1 is the "Northern Parcel" and Parcel 2 is the "Southern Parcel."

b. Step 2. Obtain final approval of an amendment of the Prineville urban growth boundary ("UGB") that will result in all parts of the Northern Parcel being located inside the UGB and zoned M1 and plan map-designated for industrial development and all of the Southern Parcel being located outside of the UGB. This will result in a net zero change in amount of land inside the UGB and be reviewed by the Department of Land Conservation of Development ("DLCD") "in the manner of periodic review."

c. Step 3. The parties shall jointly seek enterprise zone and site certification approval for the Northern and Southern Parcel. The approval of these designations for the Northern Parcel is a condition precedent to Closing. Approval of these designations for the Southern Parcel is not a condition precedent to Closing.

**4.4 Joint Marketing Agreement.** It is the intent of the parties to jointly market their properties for sale to a large site industrial user. PWB and DSL shall enter into a mutually acceptable joint marketing agreement ("JMA") prior to the date the properties are to be exchanged that addresses how the properties will prescribe how costs associated with jointly marketing the property and placing the properties in a condition that makes them attractive for sale to an industrial user shall be paid. The JMA will address the following issues:

a. A second-step land use review and approval to bring the Southern Parcel into the UGB and to apply M1 zoning and an industrial plan map designation to the Southern Parcel.

b. The retention and compensation of a sales agent to jointly market the Northern and Southern Parcels.

c. Cost sharing for costs associated with the JMA and the Exchange Agreement, including, but not limited to, land use application fees, surveys, Environmental Site Assessments, transportation impact analysis, and appraisals. Costs do not include attorney fees or staff time for working on all matters covered by the Exchange Agreement and JMA.

d. Updating the prospector data base (Business Oregon) to reflect the changed status of the DSL Property and PWB Property.

e. A provision that addresses the order of sale of the Northern and Southern Parcels in the event that a buyer (end-user) cannot or will not purchase the entire 320-acre jointly-marketed property.

**4.5. Power Easement.** PWB has executed a 100'-wide power line and substation easement agreement ("PWB Easement Agreement") with an adjacent landowner that grants PWB the right to create a utility easement ("PWB Easement") that will provide power service to the PWB Property. The agreement allows the easement to be assigned to CEC. It is the intent of the parties to make the benefits of the agreement available to a future purchaser of the combined 320-acre property and to the future purchaser of the Northern Parcel. The parties agree that DSL and PWB shall execute a second easement agreement ("DSL Easement Agreement") that will be recorded in the records of the Crook County Clerk that creates a utility easement ("DSL Easement") that will provide CEC power to the Northern Parcel.

**4.6. Status of Mineral Rights.** The conveyance of the PWB Property to DSL must include all mineral and geothermal rights as defined by ORS 273.775. The conveyance of the DSL Property and, if applicable, the conveyance of the Southern Parcel to PWB must include all mineral and geothermal rights as defined by ORS 273.775. DSL shall obtain approval from the State Land Board to transfer its land with mineral rights, as allowed by ORS 273.780(3), and pending a review by the Oregon Department of Geology and Mineral Industries.

## **5. Closing.**

**5.1 Escrow Instructions.** Upon execution of this Agreement and completion of the conditions precedent described in Section 4, above, the parties shall deposit a copy of this Agreement with Western Title & Escrow, 360 SW Bond Street, Suite 100, Bend, Oregon 97701 ("Escrow Agent"). PWB and DSL shall execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable Escrow Agent to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement will control.

**5.2 Closing Date and Location.** Subject to the satisfaction of all conditions and the obtaining of all approvals described in this Agreement, the closing of the exchange of Properties

(“Closing”) is to be held and delivery of all items to be made at the Closing under the terms of this Agreement are to be made at the offices of Escrow Agent within 60 days of the date the conditions precedent have been met and final approval of the exchange has been granted by the State Land Board (the “Closing Date”) and within one year of the date this Exchange Agreement is signed by both parties. The parties, may, however, agree to extend the Exchange Agreement for one additional period of up to one year. Each party shall proceed with due diligence to remove or satisfy all other conditions and obtain all approvals listed in the Agreement with all reasonable speed, and the parties agree that the time of closing may be extended if reasonably necessary or desirable in order to allow for removal or satisfaction of conditions and for obtaining approvals.

**5.3 Closing Costs.** The parties shall share the costs of escrow.

**5.4 Recording Fees.** The parties shall each pay their own recording fees.

**5.5 Attorney Fees.** The parties shall pay the fees and costs of their own attorneys.

**5.6 Prorations.** All other costs (real property taxes, utilities if any and costs of closing) are to be prorated as of the Closing Date.

**5.7 PWB’s Obligations at Closing.** On or before closing, PWB shall deliver to the Escrow Agent and shall execute as necessary the following documents:

- a. A bargain and sale deed conveying the southern half of the PWB Property described on Exhibit A to DSL; and
- b. PWB’s supplemental escrow instructions, if any; and
- c. A certification of non-foreign status; and
- d. Any additional documentation required by the Escrow Agent in order to close; and
- e. Sufficient funds to close the transaction.

**5.8 DSL’s Obligations.** On or before closing, DSL shall deliver to the Escrow Agent and shall execute as necessary the following documents:

- a. A bargain and sale deed conveying the northern part of the DSL Property to PWB; and
- b. A signed and acknowledged acceptance of the conveyance of the DSL Property; and
- c. DSL’s supplemental escrow instructions; and
- d. Any additional documentation required by the Escrow Agent in order to close; and

e. Sufficient funds to close the transaction.

## **6. Preliminary Title Report.**

6.1 Within 15 business days after execution of this Agreement by both parties, each party shall furnish to the other a preliminary title report showing the condition of title to each Property, together with copies of all exceptions listed in the report ("Title Report").

6.2 Each party will have 20 business days following receipt of the Title Report to review the Title Report and to notify the other party, in writing, of the notifying party's disapproval of any exceptions shown in the Title Report. If a party notifies the other party that it disapproves of any exceptions, the party receiving notice will have 20 business days after receiving the disapproval notice to either: (a) remove the exceptions; or (b) provide the notifying party with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes; or (c) inform the notifying party that the exceptions, or one or more of them, will not be removed.

6.3 If the party that has been notified does not remove the exceptions or provide the notifying party with such assurances, or if a party, in its sole discretion, is dissatisfied with any exception that the other party has said it will not remove, the dissatisfied party may terminate this Agreement by written notice to the other party given within five days after expiration of the 20 day period. If a party does not so terminate this Agreement, any exceptions which the other party has not agreed to remove will be "Permitted Exceptions." Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds are deemed to be Permitted Exceptions.

6.4 Within 15 business days after completion of the conditions precedent, each party shall furnish to the other an updated preliminary title report showing the condition of title to the Property ("Updated Title Report"). If any exceptions other than the Permitted Exceptions burden the property, they shall be removed by the responsible property owner prior to Closing.

7. **Possession.** Possession of each Property will pass to the other party upon Closing.

## **8. Acknowledgment of Condition of Property.**

**8.1 DSL's Acknowledgment.** DSL represents that it has executed this Agreement on the basis of its own examination and personal knowledge of the PWB Property; that PWB has made no representations, warranties or agreements concerning matters relating to the PWB Property other than as set forth herein; that PWB has made no agreement or promise to alter, repair or improve the PWB Property and that DSL takes the PWB Property in the condition, known or unknown, existing at the time of this Agreement. DSL acknowledges that DSL is purchasing the PWB Property "AS IS" and that PWB is making no warranties (except as reflected herein and in the deed to be delivered at Closing) regarding the condition of the PWB Property.

**8.2 PWB's Acknowledgment.** PWB represents that it has executed this Agreement on the basis of his own examination and personal knowledge of the DSL Property; that DSL has made no representations, warranties or agreements concerning matters relating to the DSL Property other than as set forth herein; that DSL has made no agreement or promise to alter,

repair or improve the DSL Property and that PWB takes the DSL Property in the condition, known or unknown, existing at the time of this Agreement. PWB acknowledges that PWB is purchasing the DSL Property "AS IS" and that DSL is making no warranties (except as reflected herein and in the deed to be provided at Closing) regarding the condition of the DSL Property.

**9. Default Remedies.** If either party fails to perform as required by this Agreement, the other party may (i) bring an action for damages for breach of contract; (ii) file and maintain a suit against the defaulting party for specific performance of this Agreement; or (iii) pursue any other legal remedy against the defaulting party as may be allowed at law or in equity.

**10. Instruments of Further Assurance; Good Faith.** Each of the parties shall, at its own expense, execute and deliver to the other at or after Closing any further instruments and documents as either may reasonably request in order to carry out any of the provisions of this Agreement. PWB and DSL shall act in good faith in all respects relative to the transactions contemplated by this Agreement.

**11. Notices.** Any notice required or permitted by this Agreement must be in writing and will be deemed delivered if personally delivered or five business days after being sent by United States first class mail, postage prepaid, to PWB or DSL at the following addresses:

To PWB: PremierWest Bancorp  
Attn: LeArta Romero, Vice President  
PO Box 40  
Medford, Oregon 97501

To State: Oregon Department of State Lands  
Attn: John Russell  
775 Summer Street NE  
Salem OR 97301

Notices may be addressed to any other person and address as may be specified from time to time by any party by written notice to the other party.

**12. Brokerage.** DSL represents that it has not employed any real estate broker or licensee in negotiating this Agreement. The parties agree that no broker or licensee is entitled to receive a fee or commission from DSL as a result of the exchange of the DSL Property and PWB Property, and any claims for fees or commissions arising from or associated with this Agreement must be paid by PWB.

**13. No Third-Party Benefits.** This Agreement is not intended, and may not be deemed or construed, to confer any rights, power or privileges on any person, firm, partnership, corporation or other entity that is not named as a party to the Agreement.

**14. Time of the Essence.** Time is specifically declared to be of the essence of this Agreement, and of acts required to be done and performed by DSL and PWB.

**15. Governing Law.** This offer is executed and delivered and is to be performed in, and governed by and construed in accordance with the laws of the State of Oregon.

**16. Entire Agreement.** This Agreement constitutes and contains the entire agreement

between PWB and DSL and supersedes any and all prior negotiations, correspondence, understandings, and agreements between the parties respecting the subject matter contained in the Agreement.

**17. Amendment.** This Agreement may be amended only by a writing signed by PWB and by the Director of the Oregon Department of State Lands.

**18. Survival.** Paragraphs 8, 10 and 12 will survive closing.

**19. Statutory Disclaimer.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2011.

**20. Counterparts.** This Exchange Agreement may be executed in two or more counterparts, which together will constitute one agreement.

The parties have signed this Agreement and it is effective as of the latest date noted below.

**Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.**

**DSL:**

State of Oregon, acting by and through  
the Oregon State Land Board  
on behalf of the Oregon Department of State Lands

By: \_\_\_\_\_

Its: Director

**PWB:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**PWB Property (known as PWB Property)**

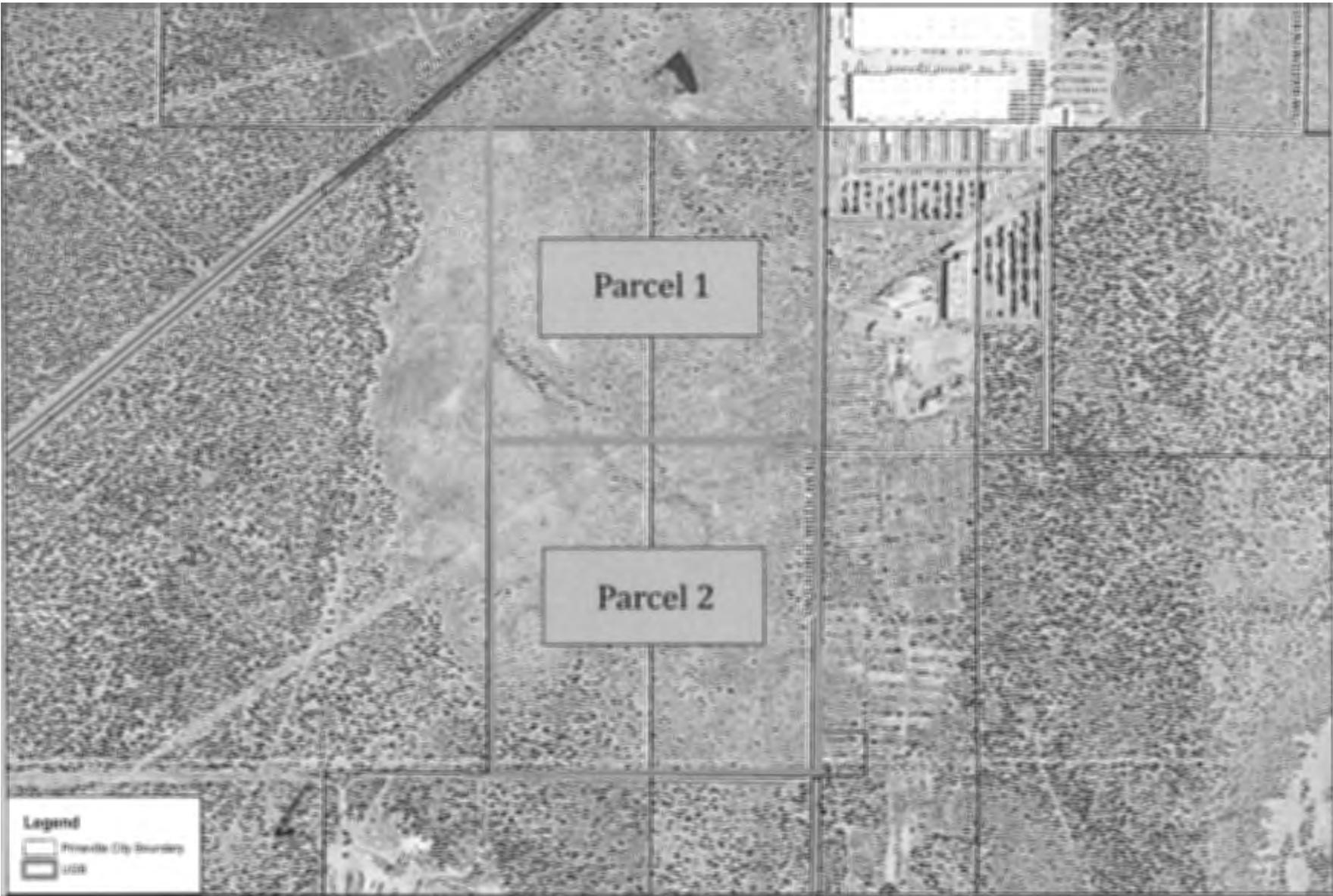
**Legal Description**

Parcel 1 of Partition Plat No. 2004-20 located in the E½ of Section 14, Township 15 South, Range 15 East of the Willamette Meridian, Crook County, Oregon

**EXHIBIT B**  
**DSL Property**

**Legal Description**

The East half of the Northwest quarter and the East half of the Southwest quarter of Section Fourteen in Township Fifteen South, of Range Fifteen East of the Willamette Meridian in Crook County, Oregon.



### Consolidation - Exhibit C

0 1,000 2,000 Feet





**DSL CURRENT OWNERSHIP**

The West Half of the East Half of Section 14, Township 15 South, Range 15 East of the Willamette Meridian, Crook County, Oregon. Tax Lot 2003; 159.67 Acres.

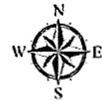


**RECONFIGURED PARCELS (Parcel 1 – PWB, Parcel 2 –DSL)**



**Consolidation - Exhibit C**

0 1,000 2,000 Feet





# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown

Governor

## State Land Board

### Regular Meeting

October 17, 2017

Agenda Item 1c

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

### **SUBJECT**

Request for approval to initiate the review and determination for a potential sale of the Millican Road parcel, a 159-acre parcel located at Township 15S Range 15E, Section 14, Tax Lot 2300 in Crook County.

### **ISSUE**

Whether the Land Board should authorize the Department to initiate the review and determination for the potential sale of the Millican Road parcel in Crook County.

### **AUTHORITY**

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; 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

Central Oregon Area Management Plan (COAMP), adopted by the Land Board; October 2011

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012

### **SUMMARY**

The Millican Road parcel is located on the west side of the City of Prineville, south of the Prineville airport (Appendix A). The site was slated for conversion to industrial use in the Central Oregon Area Management Plan (COAMP) adopted by the Land Board in October 2011. On June 12, 2012, the Land Board authorized an equal exchange of

land with Premier Bank, the adjacent property owner (Appendix B). The due diligence conducted for that exchange also included altering the boundaries of both properties from long narrow parcels to square parcels, and gave DSL road access to the reconfigured Millican Road parcel. This was done to improve the marketability of both parcels for future commercial and industrial development and use.

As part of the exchange agreement, the City of Prineville agreed to annex the DSL parcel as an industrial parcel. Upon the completion of the exchange the parcel was annexed to the city and became certified as a “Shovel Ready” site under Business Oregon’s Certified Industrial Site identification process. The property reconfiguration enabled by the land exchange, annexation by the City, and certification as “Shovel Ready” all support the recommendation from the COAMP to increase the value of the site by preparing it for industrial use. The property was actively marketed in 2012 and 2013 under a joint marketing agreement but received no offers. Recently DSL received an application to purchase the property by one of the neighbors, Legacy Ranches.

## **RECOMMENDATION**

The Department recommends that the State Land Board authorize the Department to initiate the review and determination for a potential sale of the Millican Road parcel, a 159-acre parcel located at Township 15S Range 15E, Section 14, Tax Lot 2300 in Crook County.

## **APPENDIX**

- A. Map of Property
- B. June 2012 State Land Board Agenda Item 3



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## State Land Board

**Regular Meeting  
October 17, 2017  
Agenda Item 1d**

Kate Brown  
Governor

Dennis Richardson  
Secretary of State

Tobias Read  
State Treasurer

### **SUBJECT**

Request for approval to initiate the review and determination for a potential sale of the Stevens Road Tract, a 640-acre parcel located at Township 18 South, Range 12 East, Section 11, Tax Lot 2300 in Deschutes County.

### **ISSUE**

Whether the Land Board should authorize the Department to initiate the review and determination for the potential sale of the Stevens Road Tract in Deschutes County.

### **AUTHORITY**

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; 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.

Central Oregon Area Management Plan (COAMP), adopted by the Land Board; October 2011

Real Estate Asset Management Plan (REAMP), adopted by the Land Board; February 2012

### **SUMMARY**

The Stevens Road Tract is located directly adjacent to the current eastern boundary of the City of Bend, located at the intersection of 27<sup>th</sup> Avenue and Stevens Road (Appendix A). In 2007, DSL completed the *Stevens Road Tract Conceptual Master Plan*

for the subject property demonstrating the future potential for mixed-use urban development (Appendix B). In 2016, the City of Bend approved 320 acres of the subject property be brought inside the Urban Growth Boundary, and be eligible for future annexation to the City. In 2017, DSL has applied to Deschutes County to rezone the 260 acres of the subject property remaining outside the City of Bend Urban Growth Boundary from Exclusive Farm Use (EFU) to Multiple Use Agriculture (MUA-10).

The current condition of the property is as follows: The western half of the Stevens Road Tract property is located inside the Urban Growth Boundary of the City of Bend and is eligible for annexation into the City of Bend according to the requirements of the appropriate jurisdictional authorities. The eastern half will be zoned for multi-use purposes appropriate for a property adjacent to developing or urbanized land.

Three key factors supporting due diligence on the subject property at this time include:

1. Expansion of the City of Bend UGB was delayed for several years creating a developable-lands deficit in the key jurisdiction of the Central Oregon region.
2. The real estate market has sufficiently rebounded since 2008 and real estate development is again driving the economy of Central Oregon.
3. The Stevens Road Tract property and its developmental potential is generating interest and inquiries from public and private entities in Central Oregon.

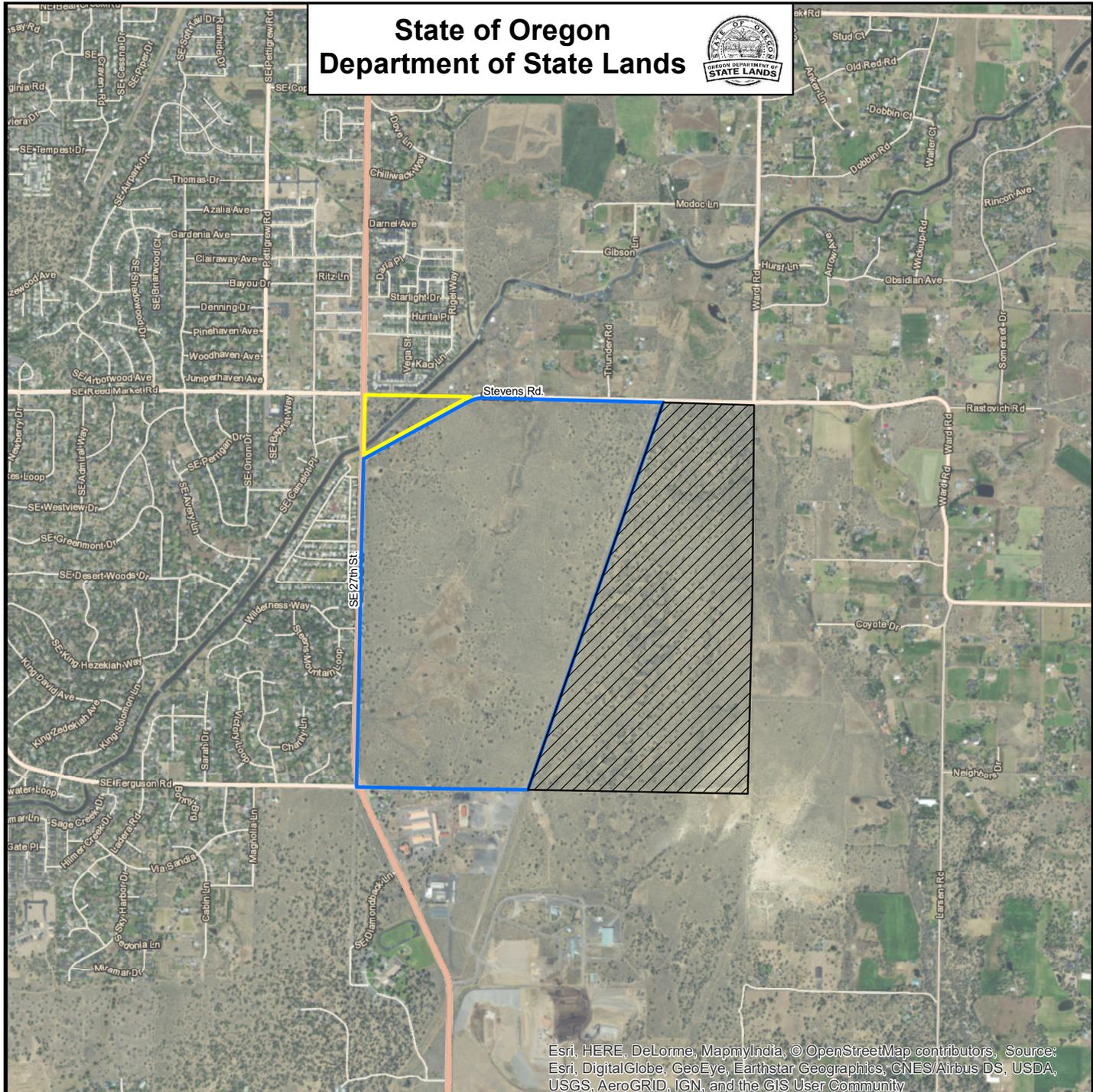
## **RECOMMENDATION**

The Department recommends that the State Land Board authorize the Department to initiate the review and determination for a potential sale of the Stevens Road Tract, a 640-acre parcel located at Township 18 South, Range 12 East, Section 11, Tax Lot 2300 in Deschutes County.

## **Appendices**

- A. Map of Property
- B. June 2007 State Land Board Agenda Item 7
- C. Stevens Road Tract Conceptual Master Plan

# State of Oregon Department of State Lands



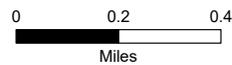
Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

## APPENDIX A

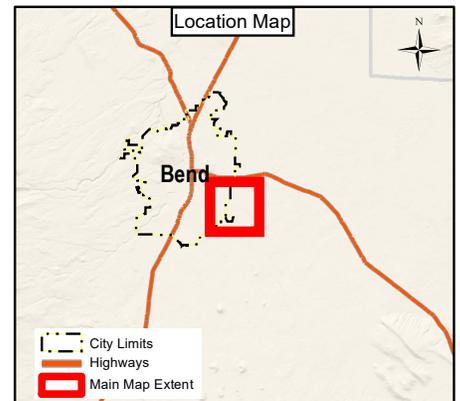
**Stevens Road Tract**  
**T18S, R12E, Section 11**  
**Tax Lot 2300**  
**Deschutes County**

- 60 Acres: Within UGB
- 320 Acres: 2016 UGB Expansion
- 260 Acres: 2017 Rezone Application

This product is for informational purposes only and has not been prepared for, nor is 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.



Map Projection:  
 Oregon Statewide Lambert  
 Datum NAD83  
 International Feet  
 State of Oregon  
 Department of State Lands  
 775 Summer St NE, Suite 100  
 Salem, OR 97301  
 503-986-5200  
[www.oregon.gov/DSL](http://www.oregon.gov/DSL)  
 Date: 9/26/2017





# Oregon

Theodore R. Kulongoski, Governor

APPENDIX B

**Department of State Lands**

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 378-3805

FAX (503) 378-4844

www.oregonstatelands.us.

## State Land Board

**Regular Meeting**

**June 12, 2007**

**Agenda Item 7**

**State Land Board**

Theodore R. Kulongoski

Governor

Bill Bradbury

Secretary of State

Randall Edwards

State Treasurer

### **SUBJECT**

Adoption of the revised Conceptual Master Plan for the Stevens Road Tract in Bend (Deschutes County).

### **ISSUE**

Whether the Land Board should:

- Approve the revised Conceptual Master Plan for the Stevens Road Tract in Bend (Deschutes County); and
- Direct the Department to work with the City of Bend and Deschutes County for inclusion of the Tract within the Bend Urban Growth Boundary (UGB) at the appropriate time.

### **AUTHORITY**

Oregon Admission Act

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, State Lands Generally.

ORS 273.245, Asset Management Plan.

Asset Management Plan adopted by the Land Board October 2006

### **SUMMARY**

Managing Common School Fund lands to meet the tenets of the Oregon Constitution and the Admission Act trust requires advance planning for economic and efficient use, development and management of these lands. Similarly, advance planning is needed for urban uses and infrastructure to position Common School Lands within urban or urbanizing areas for future development.



The Stevens Road Tract Conceptual Master Plan (Appendix A) will guide the use and development for the next 20 to 30 years of the 640-acre tract bordered by 27<sup>th</sup> Street and Stevens Road at the southeast edge of the Bend UGB. As an asset of the Common School Fund, the Stevens Road Tract offers a significant investment opportunity to produce revenue for the Fund over the long term. The Tract is one of the largest single ownership and readily developable parcels within Bend's UGB/Urban Reserve Study Area.

The Conceptual Master Plan calls for a "complete community" on this site, providing phased, mixed-use development that creates opportunities for residents to live, work, shop and play in the same area, reducing transportation and other public facility needs. A mix of housing types would be provided to help Bend meet its needs for affordable housing. Other areas are planned for retail, commercial, solar energy production and light industrial use. Significant areas are also planned for open space, parks, trails and public facilities. The plan also calls for the development to be designed and constructed using sustainable development principles.

## **BACKGROUND**

The Department acquired this 640-acre parcel on the east edge of the Bend UGB from the U.S. Bureau of Land Management as an in lieu selection in 1996. About 11-12 undeveloped acres are *within* the current Bend city limits and UGB. An appraisal in 1998 valued the entire ownership at \$786,000; a recent estimate of value conducted for the Asset Management Plan placed the value at between \$15.6 to \$18.8 million. Some recent estimates place the raw land value at as much as two or three times that amount.

A Master Plan for the property was completed in 1997. Short-term uses of the site were identified as those fitting in with the agriculture-oriented zoning (EFU) of the non-UGB portion of the Tract. A major component of the short-term plan included a soccer field complex, equestrian center and open space uses. The Long Range Conceptual Plan called for urban uses that would require the site to be fully included within the Bend UGB. These uses included park, open space, schools, residential, institutional (public works/government offices), commercial and retail. Since completion of the plan, no leased uses have occurred on the site and management has been focused on site protection (e.g. control of ATV use, littering/dumping).

In spring 2005, staff met with the City of Bend planning staff to discuss the future of the Stevens Road Tract. The City advised staff that it planned to expand its UGB as well as designate Urban Reserve Areas and that an updated Master Plan would assist the City and County in that planning process. As a result, the Department embarked on an update/revision to its 1997 Master Plan by hiring a consultant team headed by Cogan Owens Cogan and including Century West Engineering and SERA Architects.

Deschutes County owns a 137-acre tract adjacent to the Stevens Road Tract to the south. Deschutes County Solid Waste manages most of this county property. This property is undeveloped although additional contiguous county land is developed for the

County's Public Works Department offices and equipment facility, animal shelter, Knott Landfill and solid waste offices. The County partnered with the Department in developing a Master Plan for the undeveloped land adjacent to the Stevens Road Tract. As a result, the two master plans are integrated and complementary.

### **Public Involvement/Interagency Coordination**

Throughout the Master Plan revision process, the active involvement of local and state agency staff, particularly from Bend and Deschutes County planning and public works departments, has been important. In addition, there have been numerous meetings with interested citizens over the past year and a half.

The cooperation of Deschutes County in co-planning for the adjacent county land under the same process and contract has been exemplary.

A public hearing was held in Bend on May 8 on the Draft Master Plan; about 25 people, mostly neighbors, attended (Appendix B). Testimony was taken; public comments were also allowed until May 18. There were no objections to the overall plan, though neighbors to the east were concerned with buffering their uses from the planned residential development; others offered concerns about the increased traffic that would be generated by the development and requested street improvements be made prior to development. No significant comments were received after the public hearing. The *Bend Bulletin* covered the Master Plan in a front-page story on May 9 and an editorial on May 10 (Appendix C).

Another purpose of the May 8 public hearing was to assist the Department in determining the compatibility of the Master Plan with the Bend and Deschutes County comprehensive land use plans as required by the Department's State Agency Coordination Plan (OAR 141-095). Master planning for the Stevens Road Tract is predicated on future inclusion of the entire property into the Bend UGB. As a result, planned land uses would not be expected to be compatible with current county planning and zoning. Rather, DSL expects that future Master Plan development would be brought into compliance with local land use plans at the time of implementation through appropriate local comprehensive plan amendments or zone changes.

The Department has made the following conclusions concerning land use compatibility:

- A small portion of the Tract (12.49 acres) is zoned by the City of Bend for residential use (RS-Standard Density Residential). This portion of the Tract is within the UGB and Bend city limits and could be developed for urban uses at this time. However, the Master Plan proposes that this area be developed for mixed uses in conjunction with the remainder of the Tract, rather than independently. Proposed Master Plan uses for this portion of the Tract would require a zone change, which would be requested by DSL as part of approval of a Master Plan development for the entire Tract and/or refinement plans for specific portions of the Tract.

- The remainder of the Tract (627.51 acres) is zoned by Deschutes County for Exclusive Farm Use (EFU), and has a minimum lot size of 80 acres. This area has not historically, nor is currently used for agriculture. The EFU zoning was applied because of its past federal ownership. Proposed Master Plan uses would not be in compliance with current EFU zoning and could not be pursued without inclusion of the property within the Bend UGB and city limits.
- While the proposed Master Plan is not in compliance with current city and county zoning, development is not being proposed at this time and would not be pursued in the future under current zoning. Upon inclusion within the Bend UGB and city limits, DSL would seek approval from the City of Bend of Comprehensive Plan designations and the zoning needed to accommodate proposed Master Plan uses, based upon a Master Plan development for the entire Tract and/or refinement plans for specific portions of the Tract.

### **Conformance with Asset Management Plan (AMP)**

The Stevens Road Tract is classified as Industrial/Commercial/Residential (ICR) land in the Board's 2006-2016 Asset Management Plan and managed under an 'active' management strategy. The AMP calls for the Tract to be managed for urban development potential; directs the development of an updated Master Plan along with inclusion in the Bend UGB or Urban Reserve; allows for investments in improvements to increase value; and promotes seeking a partner (e.g. master lessee) to develop the site at urban densities. The Master Plan fully implements the management strategy stated in the AMP.

### **Next Steps**

Full realization of this conceptual Master Plan rests on two dynamic processes:

- The local government (Bend/Deschutes County) Urban Growth Boundary and Urban Reserve amendment process; and
- Local real estate market conditions.

The Department has been working closely with City and County planning staff on inclusion of the Stevens Road Tract within the UGB. The City's new long-range sewer master plan recognizes the future urban-level development of the Stevens Road Tract by identifying a southeast sewer trunk line and collectors sized to serve the future load. Despite that, the City's latest proposal would exclude about 75% of the Tract from the UGB study area. Just this past month, City staff briefed a joint meeting of the City and County Planning Commissions on the UGB process and anticipated release of their recommendations by late May. However, that schedule is now slipping and there is some speculation that the UGB 'plan' may not be available for public review until mid-summer and not finalized until early 2008. The Urban Reserve designation process is likely limited to the same timetable.

The super-heated residential real estate market in Bend and Central Oregon has cooled somewhat but interest in developing the Tract has not. Development interests motivated to join in the development of the Tract have approached the Department as both the Master Plan and the City's UGB process have gained more attention and momentum. The Department will need to carefully evaluate how to capitalize on the value of the Tract as represented by the Master Plan. A public/private partnership (e.g. master lessee/developer) for the development, marketing and sale of the land could prove very profitable to the Common School Fund if structured to minimize risk and maximize return.

The Master Plan calls for the following implementation actions:

### **UGB Actions**

- Monitor and participate in the Bend Residential Lands Study and UGB amendment process.
- Pursue inclusion of the Tract within the UGB.
- Present information about proposed DSL plans to City, County and other officials, when appropriate (e.g., the Technical Advisory Committee for the residential lands study or its subcommittees, members of the Bend City Council, as well as the Bend City Planning Commission, the Deschutes County Board of Commissioners, Bend Metro Parks and Recreation District (BMPRD) Board and others).

### **Refined Site Planning & Development**

- Work with the Oregon Department of Administrative Services and other state agencies to define regional state facility needs that could be met at this site.
- Complete a Phase One Environmental Assessment of former waste disposal areas and develop a remediation plan, as needed.
- Develop a cave management plan, with protection of habitat for sensitive bat species; secure cave entrances as needed.
- Explore partnerships to develop affordable housing, while generating revenues for the Common School Fund (e.g., through ground-leasing of multi-family housing developments).
- Coordinate further with the Bend School District and BMPRD to assess, locate and design schools, parks and recreation lands and facilities.
- Explore options for development of the Tract, such as agreement with a master developer(s) to conduct detailed planning and development of the Tract.
- Continue to coordinate with the County on the compatibility of Stevens Road Tract development with land uses on the adjacent county property.

- Coordinate planning with DSL's 2006-2016 Asset Management Plan.

### **RECOMMENDATION**

The Department recommends that the Land Board:

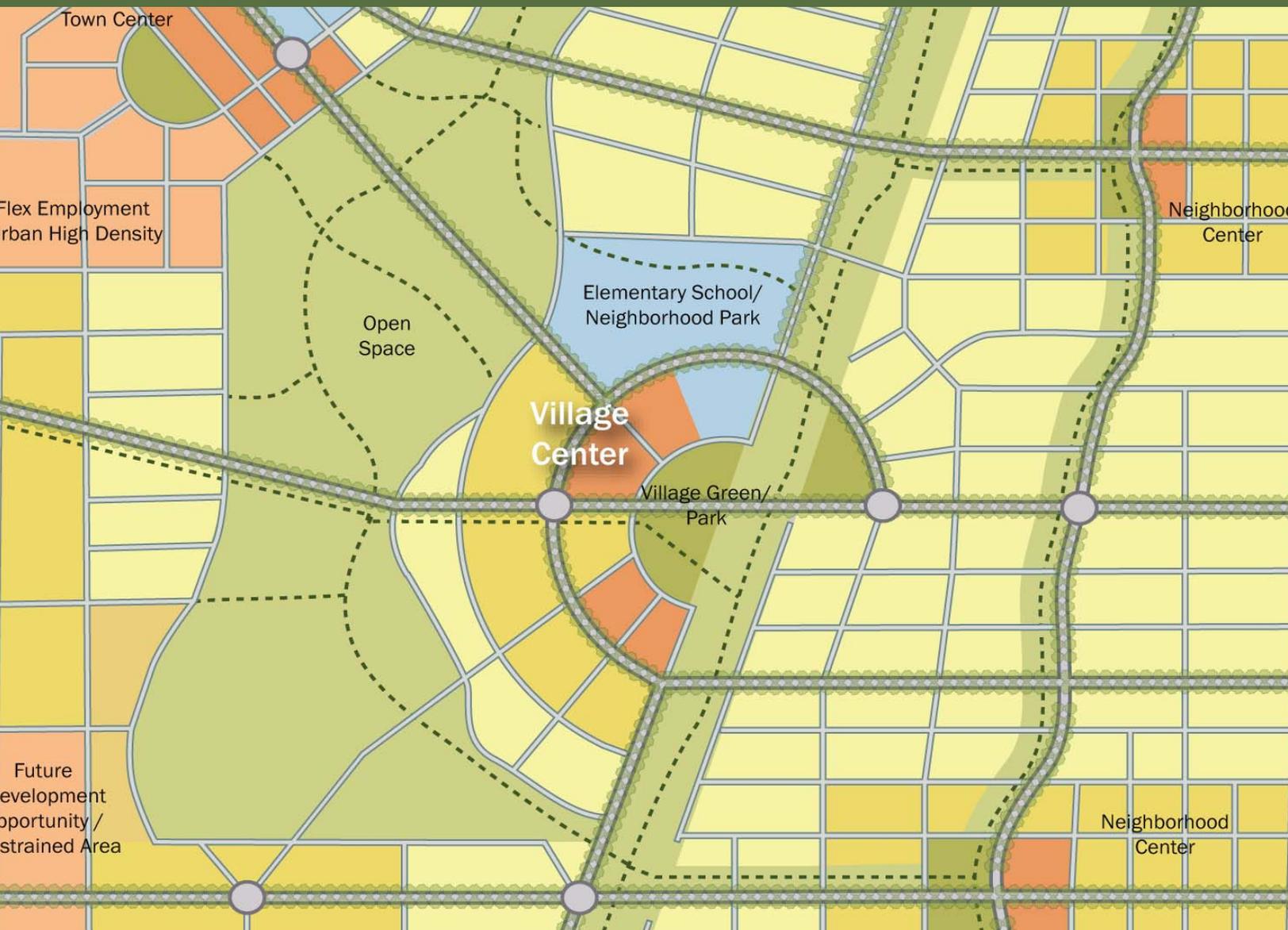
- Approve the revised conceptual Master Plan for the Stevens Road Tract in Bend (Deschutes County); and
- Direct the Department to work with the City of Bend and Deschutes County for inclusion of the Tract within the Bend UGB at the appropriate time.

### **APPENDICES**

- A. Stevens Road Conceptual Master Plan April 2007
- B. May 8 2007 Public Hearing Summary
- C. May 9 *Bend Bulletin* article and May 10 2007 *Bend Bulletin* editorial

# Stevens Road Tract Conceptual Master Plan

Adopted June, 2007



# **Stevens Road Tract Conceptual Master Plan**

**Adopted June, 2007**

## **Adopted by:**

### **THE STATE LAND BOARD**

Ted Kulongoski - Governor  
Bill Bradbury - Secretary of State  
Randall Edwards - State Treasurer

## **Prepared by:**

### **OREGON DEPARTMENT OF STATE LANDS ASSET MANAGEMENT SECTION LAND MANAGEMENT DIVISION**

Louise Solliday - Director

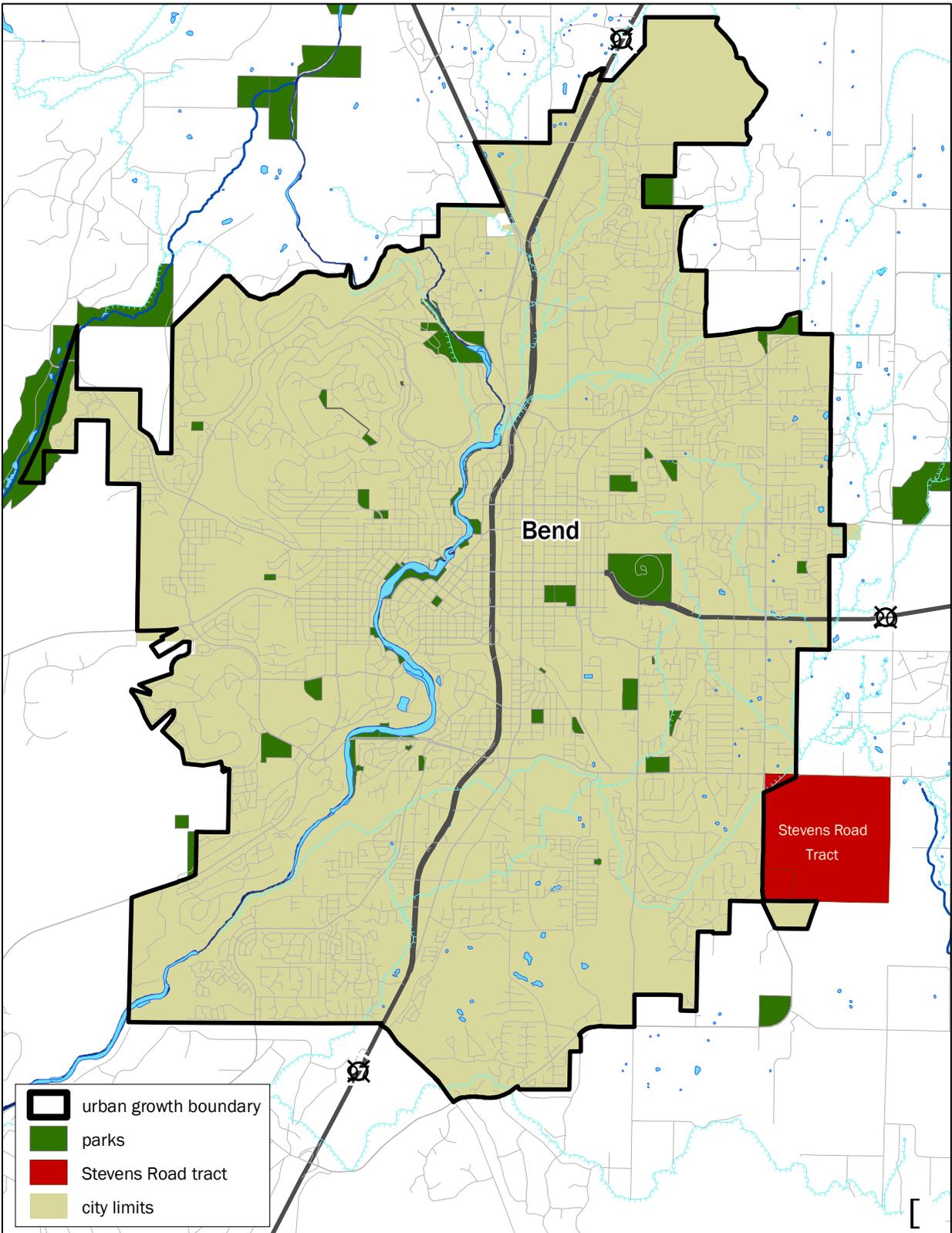
## **In Conjunction with:**

Cogan Owens Cogan, LLC  
SERA Architects, Inc.  
Century West Engineering

# TABLE OF CONTENTS

<b>Introduction</b>	<b>1</b>
<b>Opportunities &amp; Constraints</b>	<b>3</b>
<b>Design Principles &amp; Overall Objectives</b>	<b>4</b>
<b>Major Plan Elements</b>	<b>5</b>
Housing	7
Employment	7
Parks & Open Space	9
School & Other Community Facilities	10
Transportation & Site Access	10
Energy Production	13
Sustainable Design & Development	13
<b>Public Facilities and Services</b>	<b>14</b>
Water & Wastewater Facilities	14
Stormwater Drainage Facilities	15
Power & Other Utilities	16
Site Remediation	16
<b>Land Use Compatability</b>	<b>16</b>
<b>Conformance with Asset Management Plan</b>	<b>17</b>
<b>Implementation</b>	<b>17</b>
UGB Recommendations	17
Refined Site Planning & Development	17
<b>For More Information</b>	<b>18</b>
<b>Figures</b>	
<b>Vicinity Map</b>	<b>i</b>
<b>Master Plan</b>	<b>6</b>
<b>Road System</b>	<b>12</b>

# Stevens Road Tract – Vicinity Map



Stevens Road Tract: Regional Context

1 Miles

# Introduction

In 1997, the Oregon Department of State Lands (DSL) completed a Master Plan for a 640-acre tract near Bend (Deschutes County). The property is known as the “Stevens Road Tract,” as it is located at the intersection of Stevens Road and 27th Street in Section 11, Township 18 South, Range 12 East. The 1997 Conceptual Master Plan identified potential long-term uses of the property to include school sites, civic buildings, residential and commercial uses, and parks and open space.

The Stevens Road Tract is one of many properties throughout the state which are managed by the State Land Board (through DSL) to benefit the state’s Common School Fund (CSF), with revenues dedicated to the support of K-12 education in Oregon. The property was acquired from the federal Bureau of Land Management (BLM) in the 1990’s to satisfy a 1991 court decision that the State of Oregon was owed approximately 5,200 acres of public domain lands from admission into the Union.

CSF lands are managed by the State Land Board as a “trust” to maximize short- and long-term revenues consistent with sound stewardship and business management principles. As the trustee, the State Land Board has a duty to maximize the value of, and revenue from, CSF lands over the long term.

Specific management direction for the Stevens Road Tract is provided by DSL’s 2006-2016 Asset Management Plan:

Complete and implement a revised Master Plan for the Stevens Road Tract, secure a development

partner, and work with the City of Bend and Deschutes County to pursue an Urban Growth Boundary amendment.

Since the 1997 Master Plan was completed, the Stevens Road Tract has remained undeveloped. Currently, 12 easements and rights-of-way are authorized on the property, including utility easements. There are no leased uses of the Tract. Overnight camping, discharge of firearms,



dumping of waste and motor vehicle use are not allowed. DSL enforces these restrictions in response to complaints from the public and/or neighboring

landowners. The Tract is surrounded by urban, semi-urban and rural land uses.

Except for a 12.49-acre portion at its northwest corner, the Tract is currently outside the Bend urban growth



boundary (UGB) and zoned by Deschutes County for Exclusive Farm Use (EFU). This small portion of the Tract is within the Bend city limits and zoned for residential use.



When DSL prepared the initial Master Plan in 1997, the agency did not expect to develop the property for urban uses for a significant period of time, given that it was not in the City of Bend's UGB and was not expected to come into the boundary for more than a decade. However, the pace of growth in the Bend area has increased significantly during the past 10 years, increasing the likelihood that the property may be eligible for inclusion in the UGB sooner than initially expected. To ensure that it is prepared for that possibility, DSL has updated its Conceptual Master Plan to identify current proposals for future use of the property once it is eligible for inclusion in the UGB and annexation to the City of Bend.

Deschutes County owns a large tract of land directly south of the DSL site. The master planning process also addressed a portion of that property so that DSL and the County could plan for the two areas in an integrated manner. A proposed concept plan for that property is described in a March, 2006 *Deschutes County Tract Master Plan*.

In preparing this Conceptual Master Plan, DSL and their consultants (Cogan Owens Cogan, SERA Architects and Century West Engineers), conducted

the following activities:

- ❖ Reviewed the existing master plan and other relevant materials, including land use planning, park, transportation and planning documents prepared by the BLM, City of Bend, Deschutes County, the Oregon Department of Environmental Quality (DEQ) and the Bend Metro Park and Recreation District (BMPR).
- ❖ Contracted a March, 2005 appraisal of the Tract.
- ❖ Conducted an opportunities and constraints analysis.
- ❖ Convened a meeting of state and local agency representatives to discuss future land needs, opportunities and constraints associated with the site in June, 2005.
- ❖ Conducted follow-up meetings with County and City officials to discuss plans to accommodate future growth in the Bend area.
- ❖ Prepared preliminary design concepts and reviewed and refined them in consultation with DSL staff, including a design charrette conducted on September 14, 2005.
- ❖ Conducted and summarized a meeting on November 8, 2005 with state and local agency representatives to further review, discuss and refine preliminary design concepts.
- ❖ Followed up with agency representatives to discuss specific topics raised during the



- November 8 meeting.
- ❖ Circulated a December, 2005 Preliminary Draft Master Plan for agency review.
- ❖ Consulted with the Oregon High Desert Grotto of the National Speleological Society on cave locations and protection measures.
- ❖ Reviewed and commented on Bend's updated *Collection System Master Plan*.
- ❖ Monitored Bend's residential land needs study and UGB amendment process, as well as Deschutes County's urban area reserve (UAR) process.
- ❖ Prepared an April, 2007 Draft Conceptual Master Plan for public review and posted it on



the DSL web site.

- ❖ Conducted a May 8, 2007 public meeting to obtain input on the Conceptual Master Plan. (A meeting summary is attached as an appendix.)
- ❖ Presented a Draft Conceptual Master Plan for adoption by the State Land Board at its June 12, 2007 meeting.

## Opportunities & Constraints

The Stevens Road Tract represents a unique set of opportunities for the state, the City of Bend, Deschutes County and the community:

- ❖ Generation of revenues from development of the site to benefit public schools statewide through the Oregon Common School Fund.
- ❖ Ability to help meet a variety of community needs for housing, including affordable housing opportunities, employment, parks, open space, and other community facilities.
- ❖ A single, large, vacant parcel, with relatively few environmental constraints.
- ❖ Ability to meet the housing, shopping, recreational and employment needs of future residents of this site and to some degree, the surrounding area.
- ❖ A location directly adjacent to the City's existing urban growth boundary (UGB) and to existing developed areas; a portion of the property is already located within the Bend UGB.
- ❖ Access to existing sewer and water lines and a major roadway with capacity for additional traffic.
- ❖ Relatively flat topography and outstanding views of the Cascades to the west and other mountains to the south.
- ❖ The adjacent County property represents an opportunity to buffer future urban uses on the DSL property from existing and future operations at the County's solid waste facilities to the south.

As previously noted, the Stevens Road Tract is currently undeveloped. It is a relatively flat property, with few constraints to development. Key constraints include:

- ❖ Presence of a number of caves and collapsed lava tubes, with a sensitive bat species known to inhabit at least some of the caves.

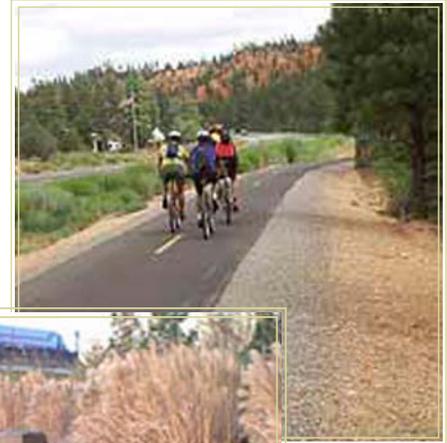
- ❖ Historic disposal of solid and liquid waste on approximately 40 acres of the Tract.
- ❖ Irrigation canal running diagonally across the Tract's northwest corner.
- ❖ Natural gas transmission line, with a 600-foot buffer, running north/south through approximately the center of the property.
- ❖ Perpetual easement for electrical substation on approximately two acres at the northeast corner of the Tract.

## Design Principles & Overall Objectives

DSL envisions development of a “complete community” on this site, with opportunities for residents to live, work, shop and play in the same area, reducing transportation and other public facility needs. This overall approach to a self-sustaining development will be coupled with sustainable development design and construction techniques to create a unique neighborhood within the City.

Master Plan objectives and principles include:

- ❖ Develop a mixture of uses that creates opportunities for living, working, recreating and shopping within the development, reduces the need for automobile travel, and increases opportunities for bicycling and walking.
- ❖ Maximize revenues for the Oregon Common School Fund through a public-private partnership for development in accordance with this Master Plan.
- ❖ Coordinate with the City of Bend, Deschutes County, other public agencies and citizens to ensure that future development is consistent and integrated with overall goals for community-wide growth and development.
- ❖ Create a mixture of housing types that meet the needs of households with a range of incomes, including affordable housing needs.
- ❖ Coordinate development of the Stevens Road Tract and potential uses on the County property with long-term use of the adjacent County-owned solid waste facilities and associated property.
- ❖ Help meet short and long-term community needs and objectives for land use, housing, and economic development.
- ❖ Protect sensitive environmental features and resources from the impacts of development.
- ❖ Incorporate sustainable development and design principles and practices, including but not limited to the following:
  - ➔ Energy efficient building materials and building construction practices (e.g., energy



efficient windows, building orientation, high-efficiency heating and cooling systems, recycled building materials, etc.)

- ➔ Alternative energy sources, including solar power.
- ➔ Native vegetation and other landscaping practices that minimize irrigation needs.
- ➔ Natural drainage facilities and practices (e.g., bio-swales, detention ponds, rolled curbs)
- ➔ Permeable or semi-permeable surfaces for low impact areas such as driveways, bike paths or similar areas.

## Major Plan Elements

The Conceptual Master Plan incorporates the following key features:

- ❖ A **wide range of housing types** adequate to accommodate approximately 2,600 dwellings (6,300 people, based on a projected average household size for the Bend area), including single-family attached and detached homes, duplexes, tri-plexes, multi-family dwellings and mixed use residential/commercial development (homes over businesses).



- ❖ A **comprehensive system of parks and open spaces**, with three neighborhood parks and an interconnected system of trails and passive open space, including a significant trail corridor parallel to the gas pipeline. The County-owned site to the south includes a proposed community park



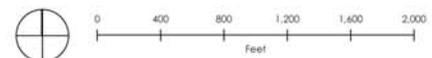
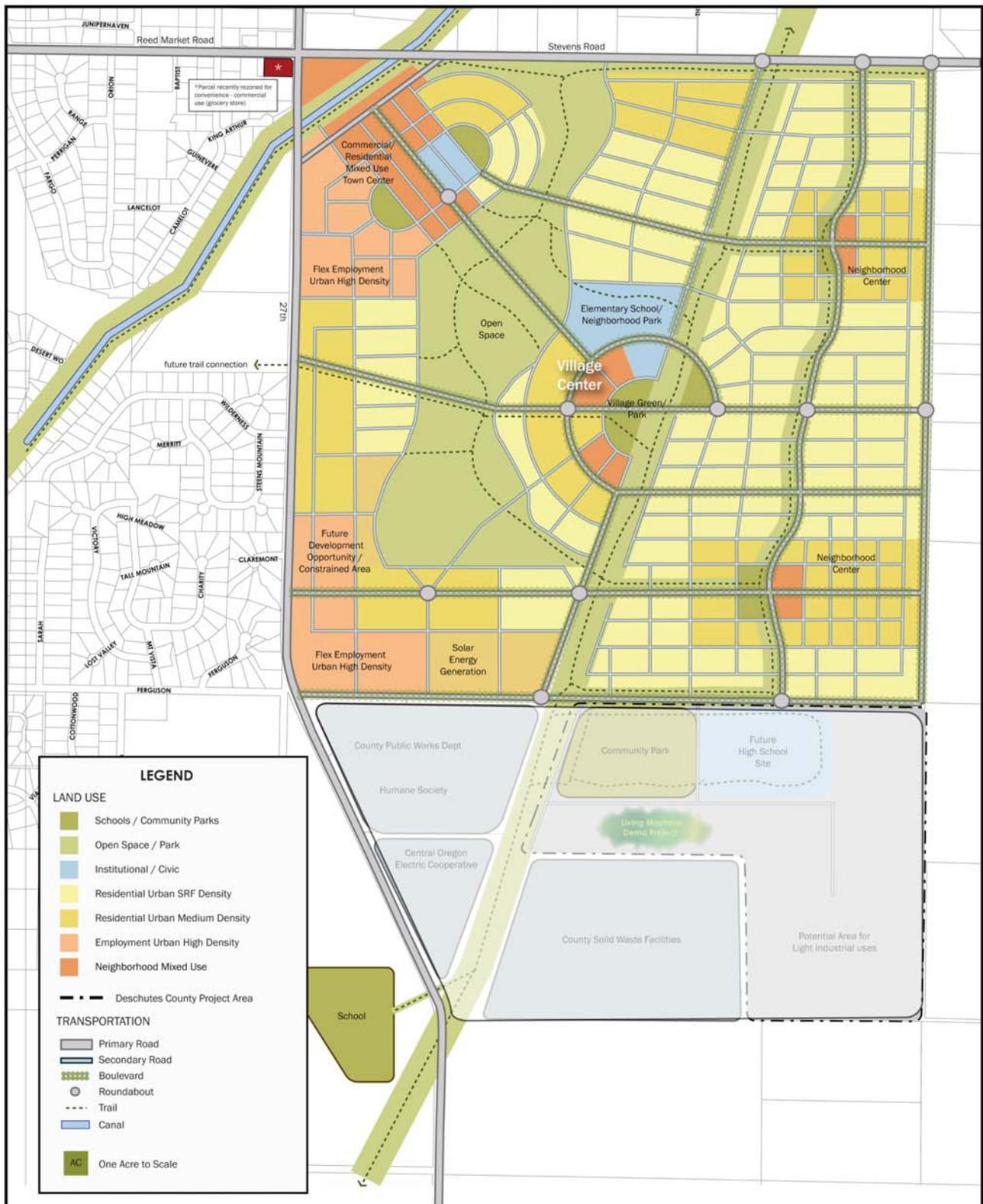
adjacent to a new high school.

- ❖ A commercial **mixed-use center** at the northwest corner of the site within the existing UGB, including a small complex of offices, as well as a mix of retail commercial shops and housing, flanking a diagonal main street. This would serve this property, as well as the surrounding area.
- ❖ A **village center** primarily serving residents in this area, and located in approximately the center of the Tract. It could include public buildings such as a branch library or community center, a neighborhood park and possibly an elementary school, as well as a modest amount of neighborhood commercial development.
- ❖ A flexible amount of land zoned for **employment** use adjacent to 27<sup>th</sup> Avenue (e.g., light industrial, tech/flex or office use) intended to meet long or short-term economic needs, and located adjacent to available transportation, water and sewer services.
- ❖ **Solar energy generation or storage** facilities in the southwest portion of the site that could provide or store power for or from homes on site, with linkages to opportunities for passive solar production and use.



Each of these elements is described in more detail on the following pages.

# Stevens Road Tract – Conceptual Master Plan





## Housing

A significant portion of the Tract is proposed to be devoted to housing (approximately

400 acres or 62.5 percent). This land could accommodate approximately 2,630 housing units, assuming an average density of about 6.6

units per acre. This is slightly higher than the target density identified in the City of Bend's residential land and housing needs analysis.

Housing is expected to include a mix and range of housing types, including higher density and multi-family housing that can help meet overall community needs for affordable housing. It also would be expected to meet the needs of a variety of different types of people or households, including families, seniors and others. As a state agency landowner, DSL is in a unique position to help meet these community needs through partnering with other governmental agencies, affordable housing developers and others to help meet affordable housing needs for low and moderate income families, seniors and others who face an increasing shortage of affordable housing.



Approximately 15 to 25 percent of residential acres are targeted towards higher density residential development (duplexes, tri-plexes, four-plexes and apartments). Given the relatively higher densities of these types of housing, that would translate into potentially 40 percent or more of the total number of housing units. This exceeds projected needs identified by the City of Bend in its current residential land and housing needs analysis.

Different housing types are proposed to be distributed throughout the Tract. Integrating single-family detached and other housing units can help reduce concentrations of multi-family housing and/or lower-income households. At the same time, some multi-family or higher-density housing is proposed to be concentrated near commercial development and potential future transit corridors to help support future transit services and commercial businesses.

Single family housing would be located on a range of lot sizes, though most lots would be 5,000 to 6,000 square feet or less, consistent with Bend's development code and in an effort to reduce land prices associated with housing, and to meet the projected needs of future residents.



## Employment

Recognizing that other areas within the community are planned to accommodate much of the City's long-term employment growth (e.g., the downtown/Central Bend

area and Juniper Ridge), employment uses are allocated to a relatively modest proportion of the

Tract (approximately 5 to 12 percent and 35 to 85 acres). About half of this area would be devoted to neighborhood commercial or mixed use residential/commercial uses in four different areas within the site. These would include:

- ❖ **A commercial hub is proposed at the northwest corner of the Tract.** This area would



serve residents within and outside the Stevens Road Tract. It would include commercial and office uses, possibly incorporating a state office complex. This would help accommodate a growing demand for state office space, create opportunities for centralized services and help jumpstart development of commercial services and housing on the Tract. This area also would include a main street area, with commercial and mixed use development area radiating to the southeast. Neighborhood commercial uses would provide opportunities for pedestrian and bicycle travel for residents within ¼ to ½ mile or more from this area.

- ❖ **A village center, located approximately in the center of the Tract,** would include a modest amount of commercial development to serve residents within the Stevens Road Tract. This area also would include an elementary school, park and other civic uses. It would be adjacent to the gas line bicycle/pedestrian corridor and bordered by higher density housing to improve

access and proximity to these services and amenities.

- ❖ **Two additional, small neighborhood commercial areas are identified in the eastern half of the site** and likely to occur in later stages of development. They also would primarily serve residents within this area and possibly some neighbors to the east.

In total, neighborhood commercial and mixed use areas would account for approximately 15 to 25 acres, with the potential for 500 to 750 jobs, assuming an average of 30 employees per acre. Schools proposed for the Tract also would also generate employment. A typical elementary school includes just over 40 full time employees, while a high school includes about 110 workers.

Flexible employment areas are proposed in the northwest and southwest corners of the Tract. These areas could be zoned for a mix of tech-flex, office, light industrial or other, similar uses to meet short-term and long-term land needs for these types of uses. A portion of these areas also could function to promote live/work opportunities and accommodate the needs of public agencies that need larger sites to store vehicles and equipment. They are located in areas that will be easiest to develop in the short term and have the best access to roads (i.e., 27<sup>th</sup> Avenue) and sewer and water lines. Approximately 20 to 60 acres (3 to 12 percent of the site) are designated for this type of use. This area could be expanded or reduced, depending on needs for this type of land identified by the City as it updates its estimates of future employment land needs. This could translate to approximately 600 to 3,000 jobs, assuming 30 to 50 jobs per acre (average employment density for a mix of office

and tech/flex employment or less dense types of employment). These uses would serve this Tract and to some degree the entire community. They also represent opportunities to generate long-term revenue for the Common School Fund.

## Parks & Open Space

A significant portion of the site is proposed to be dedicated to a mix of passive and active recreation



and open space, including paths and trails, neighborhood parks and passive open space associated with environmentally sensitive areas. Trails will provide

both recreational opportunities for residents, as well as routes between community uses within and outside the Stevens Road Tract, including parks, schools, residential and neighborhood commercial areas. Specific facilities are proposed to include the following:

- ❖ **Passive open space.** About 160 acres of the Tract are identified for open space, in large part to protect caves and associated bat species located on the property. These areas would be managed to protect these sensitive resources, while allowing some use for passive open space enjoyment, where feasible. DSL will prepare a cave management plan per its commitment to protect sensitive bat species. Conditions of that plan will apply to any future owners of the property.
- ❖ **Comprehensive trail network.** A system of trails is proposed to include a major diagonal north/south trail along the gas transmission line which would provide access through the area between the centrally located civic center

and with connections to proposed neighborhood parks and schools within the Stevens



Road Tract. It also would link these areas to a community park proposed for the County-owned site to the south and an adjacent new high school. The open space and trail network also would connect residents within the area to an existing middle school site to the southwest and to possible future trail corridors along the canal that runs through the northwest corner of the DSL Tract. Although this canal may be moved underground in the future, the Parks District would still expect to create a trail easement adjacent to it.

- ❖ **Neighborhood parks.** Three neighborhood parks, totaling approximately 12 to 15 acres, are proposed, consistent with expected residential development within the area and level of service standards adopted by Bmpr. At least one of these parks would be co-located with a new elementary school, providing opportunities for shared use of school and park district recreational facilities and potentially reducing overall land needs for them. One of the other parks would be located within the Village Center, in close proximity to other community facilities that could be located in that area (e.g., a library, fire station, etc.).
- ❖ **Community park.** A community park of approximately 25 acres in size is proposed on the County-owned property to the south. This park could have a broad range of facilities and uses, possibly including but not limited

to playing fields, picnic shelters, paths and walkways, play equipment, and natural areas or open space. Location, design and development of this and other parks would be consistent with BMPR goals, policies and identified facility needs. The community park would help meet park needs for the Tract and buffer the County's landfill to the south from residential and commercial development on the Stevens Road Tract. It also would be co-located next to a proposed high school, also on the County-owned property, that would serve the DSL and County-owned properties, as well as the larger surrounding area. The park would be located to avoid potential impacts on surrounding properties from lighting or other activities.



efficient land use and development. One school could be located within the village center area, along with other possible community facilities to serve residents (e.g., a library, fire station, and/or small community center). Schools would be

accessible by all modes of transportation, including the open space and trail network proposed for the site.

A high school is proposed for the County-owned property to the south. As noted above, it would serve the DSL and County-owned properties, as well as the larger surrounding area.

No middle school sites are incorporated in the Plan, given the close proximity to the existing middle school site to the southwest.

The amount of land devoted to parks and open space would impact BMPR in terms of future operation and maintenance needs. Detailed planning for parks and open space will need to be closely coordinated with BMPR to address these issues and identify adequate means and funding sources to operate and maintain facilities developed on this Tract.

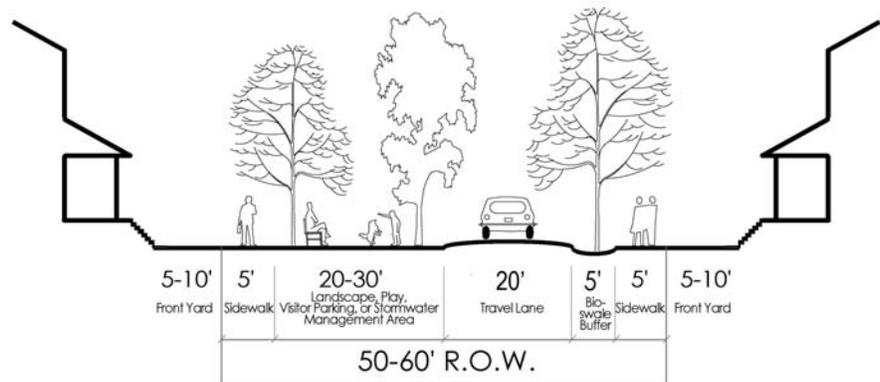
## Schools & Other Community Facilities

Development of the Stevens Road Tract will drive the need for additional elementary schools and possibly a middle school. Approximately 10 acres have been identified for development of an elementary school, based on typical standards for school sizes, the proportion of school age children, and goals for

## Transportation & Site Access

The Stevens Road Tract is adjacent to 27<sup>th</sup> Street and Reed Market Road, which are major arterial streets serving this part of Bend. Future planned improvements to street infrastructure include straightening of Stevens Road to connect to Reed Market Road, and widening of Reed Market Road, which will improve traffic circulation to the west. Ultimately, 27<sup>th</sup> Street may also be widened to a five-lane configuration, which would improve circulation to the north and south. Traffic signalization improvements along 27<sup>th</sup> Street also could be needed. The location and type of improvements

would be identified during future, more detailed planning phases. Future connections to 27<sup>th</sup> will need to be planned in a way that ensure adequate connectivity to the Stevens Road site, while minimizing impacts on congestion along 27<sup>th</sup>.



Master Plan development also would require construction of an internal road system of arterial, collector and local roads, as illustrated in the map that follows. The road system would include the following elements and attributes:

- ❖ Provide circulation within and through the Tract, with adequate connections to adjacent roads such as 27<sup>th</sup> Avenue, Stevens Road and Ferguson Road. The layout and orientation of the road network would promote connectivity and mobility.
- ❖ Create adequate east-west and north-south through streets within the Tract to ensure connectivity through the Tract and to surrounding areas.
- ❖ Enhance opportunities for use of alternative modes of transportation, including bicycling, walking and transit use. This would include construction of bicycle lanes and sidewalks on all major roads within the Tract, as well as the connected system of pathways described previously. It also would entail designation of transit routes and stops to serve residents and workers, particularly in higher density residential and mixed use portions of the Tract.
- ❖ Use a boulevard design for major roads, such as the north/south diagonal road, that provides

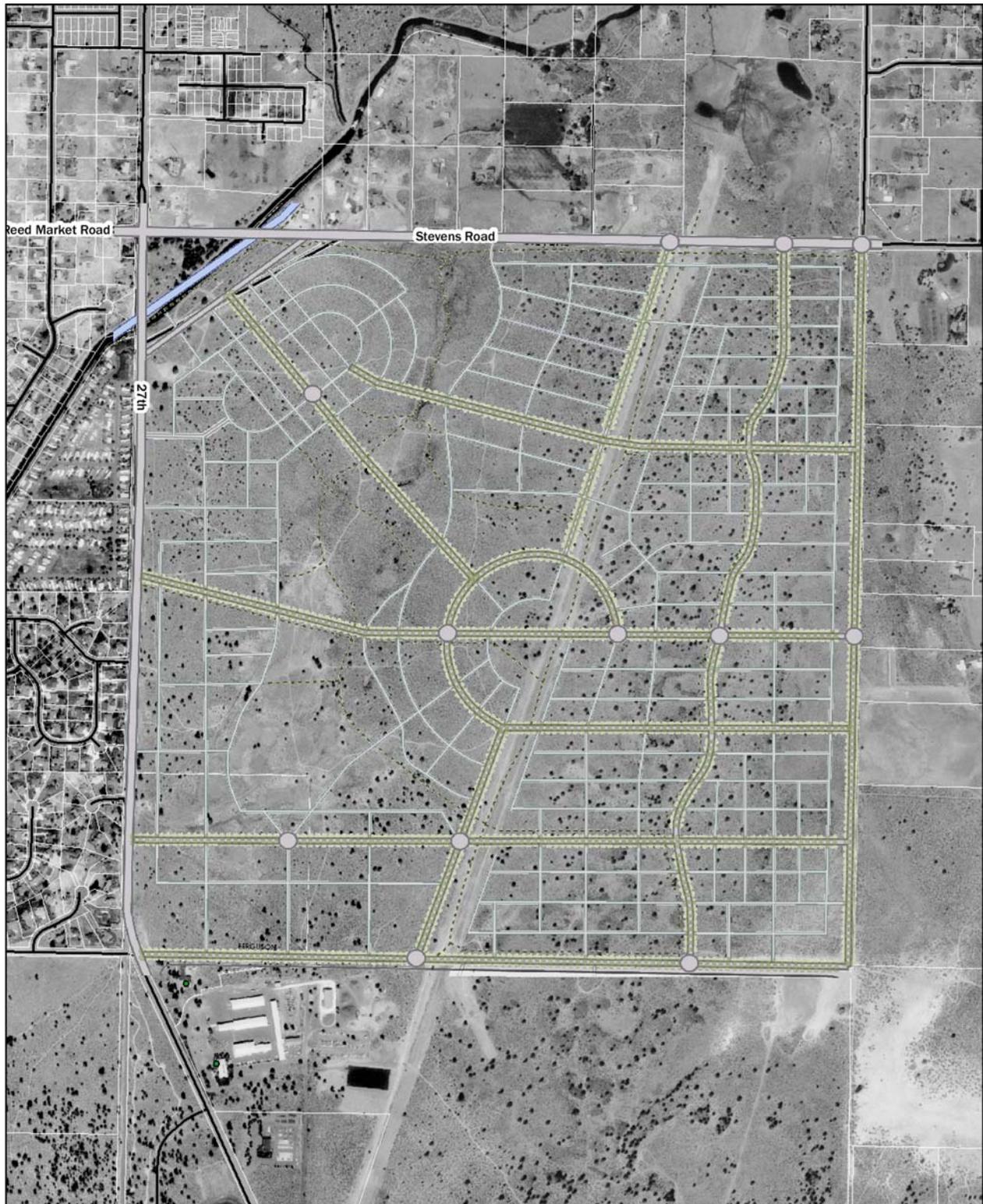
access to the village center and possibly along a portion of 27<sup>th</sup> Avenue, adjacent to proposed residential development.

- ❖ Design and build local neighborhood streets that calm traffic, encourage bicycle and pedestrian use and improve safety.
- ❖ Create street orientations that allow for and enhance opportunities for solar power generation and use.
- ❖ Use roundabouts, where feasible. These could provide possible locations for transit stops and improve mobility.
- ❖ Consider and address the impacts of transit, pedestrian, bike and auto traffic from adjacent areas to the Stevens Road Tract.

Interior roads would connect to adjacent roads using a combination of stop signs and signals, where warranted to manage and control traffic at intersections.

The Master Plan shows the approximate location and orientation of major roads and an example of a local street pattern. Street designs and layouts would be refined during detailed design and development of the site, consistent with land use patterns, traffic analysis and City road standards.

# Stevens Road Tract – Conceptual Road System



## Energy Production

As well as supporting the overall goal of environmental sustainability, solar energy's economic benefits are continually increasing with advances in technology and institutional practices. The Stevens Road Tract offers a number of unique opportunities to employ leading-edge solar energy production and utilization practices to enhance environmental sustainability and create revenue-generation opportunities. These could include concentrated solar power generation, distributed solar power generation, and passive solar design. To effectively implement these strategies, discussions with power utilities should occur early in the planning and site development process.

A portion of the Tract (about three to 10 acres) along the southern boundary is proposed to be used for production of solar and possibly other alternative energy sources (e.g., methane or other solid waste facility by-products). A significant amount of energy could be produced within a relatively modest area and used to support other proposed development.

In addition to exploring opportunities for solar energy generation or use, DSL will explore use of other potential alternative energy sources. Consultation with the Energy Trust or similar organizations will occur to further investigate these issues.

In addition to a concentrated solar energy generation facility, the homes could be built with the option of incorporating distributed solar power generation capabilities into roofs, possibly using integrated solar roof tiles.

Passive solar design concepts also should be included in the overall planning process for the development and design of individual homes. This would require proper orientation of the streets from east to west as the plan indicates. It also would entail orienting house lots north to south, to optimize solar access and reduce shading. Additionally, individual homes should incorporate passive solar architectural concepts, such as day-lighting, solar gain, thermal mass and natural ventilation.

## Sustainable Design & Development

A variety of sustainability principals are proposed to be used as the Tract is planned and designed in more detail and developed. They include, but would not be limited to:

- ❖ An overall mix of uses that balances jobs and housing to the greatest extent possible, consistent with the City's residential and employment land needs and goals, and that allows people to live, work, shop and play within the area, with a minimal need to drive.
- ❖ Multi-modal transportation facilities that encourage people to walk, bicycle and use transit.
- ❖ Residential densities that support transit use within, to and from the site.
- ❖ Energy-efficient building materials and construction practices (e.g., energy-efficient windows, building orientation, high-efficiency heating and cooling systems, recycled building materials, and other similar practices).
- ❖ Power generation from alternative energy

- sources, including solar power.
- ❖ Use of distributed solar power generation from individual homes.
- ❖ Incorporation of solar energy principles in design of street layouts, building orientation, and building design during the early planning and design stages.
- ❖ Native vegetation and other landscaping practices that minimize irrigation needs.
- ❖ Natural and other drainage facilities and practices that retain stormwater within the site and minimize drainage impacts (e.g., bio-swales, detention ponds, rolled curbs).
- ❖ Permeable or semi-permeable surfaces for low impact areas such as driveways, bike paths or similar areas.
- ❖ Irrigation using “gray” water for landscaping or other feasible uses.
- ❖ Possible development of a “living machine” on the County-owned site to the south, using biological processes to treat wastewater produced on the DSL and County properties.

These practices would benefit the community in a variety of ways and could result in a model for self-sufficient and sustainable design practices, including:

- ❖ Reducing impacts on the natural environment.
- ❖ Enhancing the physical health of residents.
- ❖ Reducing long-term energy, public facility and other costs of developing and maintaining homes, businesses and public facilities.

- ❖ Reducing impacts on municipal infrastructure.
- ❖ Supporting Bend’s long-term goals for implementation of a transit system.
- ❖ Improving residents’ quality of life by reducing the amount of time needed to travel and allowing more time to pursue other activities.
- ❖ Creating potential revenue opportunities for DSL (e.g., through solar energy production).

## Public Facilities & Services

In addition to the transportation facilities previously described, the proposed Master Plan would require construction of water, wastewater and stormwater facilities on site, as well as improvements to storage and distribution facilities off-site. Following is a summary of needed improvements.

### Water & Wastewater Facilities

Average flows for water and wastewater have been calculated based on the types of development and the approximate flows typically observed for various land uses in Bend. Resulting needed improvements to existing or new facilities are described below. The need for some improvements may be reduced by incorporating sustainable design and development principles, which is an important objective of this project.

An estimated approximately 0.81 million gallons per day (Mgd) would be generated at full build-out. Existing sewer facilities in the vicinity of the site include a 6-inch force main in 27<sup>th</sup> Street. This force main discharges to an 8-inch gravity sewer between the site and the intersection of Highway 20. At

Highway 20, the 8-inch sewer discharges to a 12-inch sewer.

The current sewer collection master plan for the City of Bend forecasts that these sewers will be at capacity when the area within the urban growth boundary (UGB) is fully built out. The current master plan did not consider areas outside the UGB. Therefore additional sewer infrastructure will be required before development of this Tract can take place.



to construction of or use of a new trunkline, it may be possible to provide wastewater service through the “Living Machine” proposed for the site. Construction would be subject to review and approval by DEQ.

Water demand is projected to be 2.48 million gallons per day (Mgd). This assumes that the open spaces would be seeded with turf and irrigated. If alternative landscaping is used, as

proposed and consistent with sustainable design principles, less water would be needed.



However, the City currently is in the process of updating its sewer master plan and is considering areas outside the UGB, including the Stevens Road Tract. Improvements under consideration in the *Collection System Master Plan* include a major trunkline named the Southeast Interceptor that will

follow the canal alignment at the NW corner of the property. This trunkline will have sufficient capacity to accept wastewater generated at the site. Any required additions to the City’s wastewater treatment plant capacity would be funded through system development charges paid to the City.

No timeframe has been given by the City for the construction of this trunkline. As an alternative

The areas adjacent to the Tract are currently served by Avion Water Company, a private water supplier. Avion would be the likely supplier of water service for the Tract, and has considered its development in their long-range planning. Based on their data and the flow volumes calculated above, the following improvements to their distribution system would be required:

- ❖ Three acres for a reservoir and pumping facility.
- ❖ A 5 Mgd reservoir.
- ❖ A booster pump station.
- ❖ A new transmission line to the site, with approximately 1,500 feet of 24-inch pipe anticipated.

## Stormwater Drainage Facilities

The primary means for treatment and disposal of stormwater in Bend is onsite disposal through the use of drainage swales, ponds, filters, and drywells. Historically, drywells have been used most frequently; however, due to increasing scrutiny by DEQ, these structures are becoming more difficult to install. Drywells may still be installed for disposal of

roof drainage, and may be used in residential areas and open spaces. In all other areas, the preferred methods for site drainage are the use of ponds, swales, and filters, eco-roofs, porous pavement and other sustainable stormwater treatment techniques.

## Power & Other Utilities

Adequate facilities are available to provide electrical power, gas, telephone and cable television service to the site.

Trans-Canada GTN operates a gas transmission line that crosses the site, including a 36-inch pipeline and a 42-inch pipeline within an 80-foot right-of-way (ROW). Trans-Canada typically allows perpendicular crossings of their ROW for streets and utilities, although they prefer to minimize the number of crossings when possible. Planning for the Tract reflects this condition.

A trail along the length of the ROW would be located so that it is not directly above either pipeline. This will allow Trans-Canada to expose their pipeline without excavating through the pathway.

## Site Remediation

In the past, a portion of the site currently proposed for use as open space was used for disposal of municipal solid and liquid waste. A more detailed assessment of the site is needed to determine the extent of municipal waste remaining and appropriate remediation.

The first step to determine what remediation is needed is to perform a Phase 1 Environmental Site Assessment. This assessment is currently

being conducted. Depending on this investigation, it may become necessary to perform additional investigations before proceeding with site cleanup operations. Site cleanup, if needed, will be coordinated with DEQ.

## Land Use Compatibility

Pursuant to DSL's 2006 State Agency Coordination Program, the following findings and conclusions are made regarding the compatibility of this Conceptual Master Plan with the comprehensive plans and land use ordinances for the City of Bend and Deschutes County:

- ❖ A small portion of the Tract (12.49 acres) is zoned by the City of Bend for residential use (RS-Standard Density Residential). This portion of the Tract is within the UGB and Bend city limits and could be developed for urban uses at this time. However, the Conceptual Master Plan proposes that this area be developed for mixed uses in conjunction with the remainder of the Tract, rather than independently. Any zone changes needed to accommodate Conceptual Master Plan uses for this portion of the Tract would be requested by DSL as part of approval of a Master Plan development for the entire Tract and/or refinement plans for specific portions of the Tract.
- ❖ The remainder of the Tract (627.51 acres) is zoned by Deschutes County for Exclusive Farm Use (EFU), and has a minimum lot size of 80 acres. This area has not historically nor is currently used for agriculture. The EFU zoning was applied because of its past federal

ownership. Conceptual Master Plan uses would not be in compliance with current EFU zoning and could not be pursued without inclusion of the property within the Bend UGB and city limits.

- ❖ While the Conceptual Master Plan is not in compliance with current City and County zoning, development is not being proposed at this time and would not be pursued in the future under current zoning. Upon inclusion within the Bend UGB and city limits, DSL would seek approval by the City of Bend of Comprehensive Plan designations and zoning needed to accommodate Conceptual Master Plan uses, based upon a Master Plan development for the entire Tract and/or refinement plans for specific portions of the Tract.

## Conformance with Asset Management Plan (AMP)

The Stevens Road Tract is classified as Industrial/Commercial/Residential (ICR) land in the Board’s 2006-2016 Asset Management Plan and managed under an ‘active’ management strategy. The AMP calls for the Tract to be managed for urban development potential; directs the development of an updated Master Plan along with inclusion in the Bend UGB or UAR; allows for investments in improvements to increase value; and promotes seeking a partner (e.g., master lessee) to develop the site at urban densities. This Master Plan fully implements the management strategy stated in the AMP.

## Implementation

### UGB Recommendations

DSL staff and its consulting team will conduct the following tasks to implement a strategy for inclusion of all or a portion of the Tract in the Bend UGB:

- ❖ Monitor and participate in the Bend and Deschutes County UGB and UAR amendment processes.
- ❖ Pursue inclusion of the Tract within the Bend UGB, based on results of the City’s UGB amendment study and consultation with local officials; assist in preparing findings that support the proposed UGB amendment strategy.
- ❖ Present information about proposed DSL and County plans to City, County and other officials, when appropriate (e.g., the Technical Advisory Committee for the residential lands study or its subcommittees, members of the City Council, as well as the City Planning Commission, the Deschutes County Board of Commissioners, BMPR Board and others).

### Refined Site Planning & Development

Following adoption of the Plan, DSL will undertake a variety of actions to further implement the Plan, including but not limited to:

- ❖ Work with the Oregon Department of Administrative Services and other state agencies to define regional state facility needs that could be met at this site.

- ❖ Complete a Phase 1 Environmental Assessment of former waste disposal areas and develop a remediation plan, as needed.
- ❖ Develop a cave management plan, with protection of habitat for sensitive bat species; secure cave entrances as needed.
- ❖ Explore partnerships to develop affordable housing, while generating revenues for the Common School Fund (e.g., through ground-leasing of multi-family housing developments).
- ❖ Coordinate further with the Bend School District and BMRP to assess, locate and design schools, parks and recreation lands and facilities.
- ❖ Explore options for development of the Tract, such as agreement with a master developer(s) to conduct detailed planning and development of the site upon its inclusion in the UGB.
- ❖ Continue to coordinate with the County on the compatibility of Stevens Road Tract development with land uses on the adjacent County property.
- ❖ Coordinate planning with DSL's 2006-2016 *Asset Management Plan*.

## For More Information

In addition to managing Common School Fund lands, the Department of State Lands provides some direct services to the public and regulates certain aspects of the protection of Oregon's waterways. DSL administers Oregon's Removal-Fill Law, which requires a permit to remove, fill, or alter more than 50 cubic yards of material in the

state's waterways. Wetlands conservation and management also is a key responsibility of DSL.

DSL also acts as a trustee for unclaimed property, administers estates with no known heirs, manages the South Slough National Estuarine Research Reserve (near Coos Bay), and provides support to the Oregon Natural Heritage Advisory Council. Moreover, DSL also maintains historical records on all state land transactions.

Contact our Salem office for further information about this Plan or any of the other services DSL provides. You may also access the Plan on the Department's Web site: <http://www.oregonstatelands.us>.

### Oregon Department of State Lands

775 Summer Street, NE  
Suite 100  
Salem, Oregon 97301-1279  
503-986-5200  
503-378-4844 FAX

#### John Lilly

Manager, Asset Management Section  
Land Management Division  
503-986-5281

### Other DSL Offices

**South Slough National  
Estuarine Research Reserve**  
P.O. Box 5417  
Seven Devils Road  
Charleston, OR 97420  
541-888-5558  
541-888-5559 FAX

**DSL Eastern Region**  
1645 NE Forbes Road, Suite 112  
Bend, OR 97701  
541-388-6112  
541-388-6480 FAX

# APPENDIX A: Public Meeting Summary

## Stevens Road Tract Master Plan

### Public Meeting

High Desert Middle School, Bend  
Tuesday, May 8, 2006; 6:00 pm – 8:00 pm

#### Introduction and Meeting Objectives

The Department of State Lands (DSL) conducted a public meeting on May 8, 2007 to present and obtain input on the Draft Stevens Road Tract Master Plan (April, 2007). Approximately 25 persons attended. Representing DSL were John Lilly, Clara Taylor, and Julie Curtis; and Jim Owens, Cogan Owens Cogan, representing the planning firm hired to assist in updating the Master Plan for the Stevens Road property. Representing Deschutes County were Timm Schimke and Peter Gutowsky.

The Stevens Road Tract Master Plan will guide the use and development for the next 20 - 30 years of the 640-acre tract bordered by 27<sup>th</sup> Street and Stevens Road at the southeast edge of the Bend Urban Growth Boundary. The Stevens Road Tract is Common School Fund Trust land that is to be managed to maximize revenues to support K-12 education in Oregon. Also presented at the meeting was a Draft Deschutes County Tract Master Plan (April, 2007) that addresses 137 acres managed by the Deschutes County Department of Solid Waste directly to the south of the Stevens Road Tract.

#### Public Notice

Notice of the public meeting was provided through publication in *The Bulletin* and through direct notice to neighbors and other interested parties. *The Bulletin* ran a front-page story on the meeting and plan on May 9.

#### Meeting Format and Comment Opportunities

Following welcoming remarks and introductions, a PowerPoint presentation on the Draft Master Plan was provided. This was then followed by a question/answer session and the opportunity for attendees to provide recorded statements on the record. Information was provided on Opportunities and Constraints, Design Principles and Overall Objectives, and Key Plan Elements.

Comment opportunities included:

- Questionnaire posted on the DSL Web site and distributed at the public meeting.
- Flip charts at the public meeting stations.
- Recorded public statements at the public meeting.
- Via Web, e-mail and written formats.

#### Summary of Comments

##### *Written Correspondence*

- Concerns about traffic safety at Ferguson and 27<sup>th</sup> Street.
- Request for short-term right-of-entry.
- Recommendations for cave protection and management.

*Public Meeting Comments*

- Concerns about trespass onto adjacent eastside properties.
- Infrastructure needs will be significant. Sewer – eventually the city will want the adjacent (east-side) property owners to hook up to the city sewer. What is the projected timing; will sewer lines be extended down 27<sup>th</sup>?
- What are the “first-phase” elements? What happens if the entire property doesn’t come into the UGB?
- County landfill seems very close to proposed housing. Will it be moved? (County answered that the landfill will be in place until 2025 at the very latest, and may be moved sooner. The transfer station will remain. The buffer is ¼ mile.)
- The “urban and semi-urban” description does not apply to the north and east sides of the property which are primarily rural-agricultural.
- Intersection of Ferguson Road and 27<sup>th</sup> Street is problematic due to lack of sight distance. There have been a number of accidents in this area.
- Consider having a “volunteer center” within the village center.
- Concerns about a north-south arterial along the east side of the property.
- Cul-de-sacs might be a good solution for quieter neighborhoods, especially those adjacent to the east-side properties.
- Stevens Road will need to be significantly improved to handle increased traffic volumes.
- Road improvements should occur prior to development.
- A buffer zone along the eastern border would transition adjacent land uses.

*Station Comments*

- The Central Oregon Irrigation District canal may be viewed as a “constraint” but it also provides a unique opportunity for a trail connection all the way northwest to the Deschutes River and northeast to BLM and park lands.
- This tract of land is the “Shevlin Park” of southeast Bend. There are few parks and open space in the southeast. The Senior Center is not safely accessible for young families. If the parkland could stay connected via canals and rural trails, people will feel it’s a better use of the area. Is the open space requirement currently being met in the southeast if this is developed?
  - Teenage boys need dirt bike trails.
  - People need areas for dog walking.
  - Natural areas needed for peace of mind.
- The pipeline is the ugliest part of the land; how will this be improved?

---

Department of State Lands  
775 Summer St. NE  
Suite 100  
Salem, OR 97301-1279  
(503) 986-5200  
[www.oregonstatelands.us](http://www.oregonstatelands.us)



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## State Land Board

**Regular Meeting  
October 17, 2017  
Agenda Item 1e**

Kate Brown  
Governor

Dennis Richardson  
Secretary of State

Tobias Read  
State Treasurer

### **SUBJECT**

Request for approval to grant a permanent easement for two bridge crossings on Highway 101 over Southport Slough in Section 23C of Township 26 South, Range 13 West of Willamette Meridian in Coos County. (Appendix A)

### **ISSUE**

Whether the State Land Board should approve a request from Oregon Department of Transportation (ODOT) for a permanent easement to construct and maintain the bridges crossing the Southport Slough 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.

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**

Currently, this Highway 101 crossing over Southport Slough, is a reinforced concrete box culvert that needs repair. The ODOT project planned for this crossing includes replacing the culvert with two bridges, one for two lanes northbound and one for two

lanes southbound. The easement will also authorize access for ODOT to repair and maintain the bridges after construction.

Pursuant to OAR 141-122-0060(2)(a) no compensation is required. Easements located on Non-Trust Land for state and county-owned bridges outside of city limits are exempt from the mandatory payments.

### **PUBLIC INVOLVEMENT**

The application was circulated to adjoining property owners, various 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 granting of a permanent easement to Oregon Department of Transportation 60243-EA to maintain and operate two bridges on, over, under or across the Southport Slough, on Highway 101. (Appendix B)

### **APPENDICES**

- A. Map
- B. Draft Easement 60243-EA

State of Oregon  
Department of State Lands



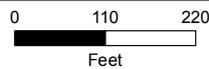
National Agriculture Imagery Program (NAIP) under contract for the United States Department of Agriculture (USDA) for the Farm Service Agency's (FSA). Oregon Imagery Framework Implementation Team., Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**Appendix A**

**60243-EA**  
**26S13W23C**  
**8,582 Square Feet**  
**Coos County**

 Authorization Area

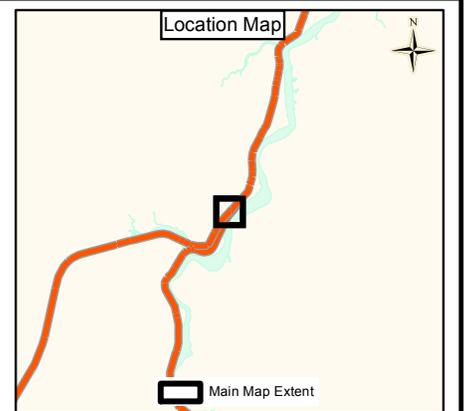
This map depicts the approximate location and extent of a Department of State Lands Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review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



Map Projection:  
Oregon Statewide Lambert  
Datum NAD83  
International Feet

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

Date: 6/9/2017



# DRAFT

## STATE OF OREGON Department of State Lands

### EASEMENT NO. 60243-EA S&S Bridge

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

NAME of GRANTEE:	ADDRESS:
State of Oregon, by and through its Department of Transportation	3500 NW Stewart Pkwy Roseburg, OR 97470

an easement and right to construct, maintain, operate and replace two (2) bridges, one north bound and one south bound on Highway 101 at Southport Slough over, upon, and across the following particularly described property situated in Coos County, Oregon, more particularly described in the attached Exhibits A and B.

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: N/A.
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.

WITNESS the seal of the Department of State Lands affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20 .



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

\_\_\_\_\_  
DSL Authorized Signature/Printed Name

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\_\_.



EXHIBIT A - Page 1 of 1

File 9132003  
Drawing 11B-8-21  
7/12/16**Permanent Easement for Highway Right of Way Purposes**

A parcel of land lying in Lot 8 of Section 23, Township 26 South, Range 13 West, W.M., Coos County, Oregon; said parcel being all state-owned submerged land lying between lines of mean low tide on the Northeasterly and Southwesterly banks of the original channel of Southport Slough, a tidally influenced tributary of Isthmus Slough, and lying Southeasterly of a line parallel and 100 feet Northwesterly of the center line of the relocated Oregon Coast Highway, which center line is described as follows:

Beginning at Engineer's center line Station 285+00.00, said station being 573.81 feet South and 1234.78 feet East of the South sixteenth corner common to Sections 22 and 23, Township 26 South, Range 13 West, W.M.; thence South  $41^{\circ}24'19''$  West 150.43 feet; thence on a spiral curve left (the long chord of which bears South  $40^{\circ}04'19''$  West 399.91 feet) 400.00 feet; thence on a 2864.79 foot radius curve left (the long chord of which bears South  $31^{\circ}40'19''$  West 572.38 feet) 573.33 feet; thence on a spiral curve left (the long chord of which bears South  $23^{\circ}16'19''$  West 399.91 feet) 400.00 feet; thence South  $21^{\circ}56'19''$  West 8.23 feet to Engineer's center line Station 300+32.00, said station being 524.96 feet South and 419.20 feet East of the Southwest corner of Section 23, Township 26 South, Range 13 West, W.M.

Bearings are based on the Oregon Coordinate Reference System, Oregon Coast zone, NAD 83(2011 adjustment, epoch 2010)

This parcel of land contains 8,582 square feet, more or less.



EXPIRES: 12/31/2017

**EXHIBIT B**

LOT 8, SEC. 23, T. 26 S., R. 13 W., W.M.

Southport Rd.

293+42.20 P.I.

US 101 - SOUTHBOUND

US 101 - NORTHBOUND

1003

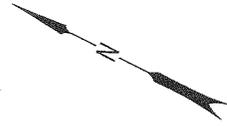
State of Oregon, Department of State Lands  
 Permanent Easement for Highway Right of Way Purposes  
 9132003  
 8582 (12)

290+50.43 P.S.C.

290+00

**ACTIVE DRAWING**  
 THIS DRAWING SHOWS THE PROPOSED R/W NEEDED TO BE ACQUIRED TO SUPPORT THE PROJECT DESIGN  
**SUBJECT TO CHANGE**

**APPENDIX B**



SCALE 1" = 50'



OREGON DEPARTMENT OF TRANSPORTATION  RIGHT OF WAY ENGINEERING SKETCH MAP	Section	US 101: Southport Slough Culvert Replacement	Scale	1" = 50'
	Highway	Oregon Coast Highway	Date	July 12, 2016
	County	Coos County	File	9132003
	Purpose	Permanent Easement for Highway Right of Way Purposes	See Drawing 11B-8-21	



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown

Governor

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

## State Land Board

**Regular Meeting  
October 17, 2017  
Agenda Item 2**

### **SUBJECT**

Request for adoption of amendments to the administrative rules governing the placement of an ocean renewable energy facility on, in or over state-owned land within the territorial sea (OAR 141-140-0010 to OAR 141-140-0130).

### **ISSUE**

Whether the State Land Board should adopt amendments to the above referenced rule.

### **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 141-140; Rules Governing the Placement of an Ocean Renewable Energy Facility on, in or over State-Owned Land within the Territorial Sea.

### **BACKGROUND**

On August 13, 2015 the State Land Board authorized the Oregon Department of State Lands (DSL) to amend its rules governing the placement of an ocean renewable energy facility on, in or over state-owned land within the territorial sea. These rules had not been amended since their adoption in 2007.

A number of actions have transpired since 2007, including:

- The adoption of "Part 5 of the Oregon Territorial Sea Plan – Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related

Structures, Equipment or Facilities” by the Land Conservation and Development Commission.

- The enactment of HB 2469 during the 2013 regular legislative session. This bill requires developers to share any seafloor data collected with the Oregon territorial sea mapping project at Oregon State University. This requirement is effective upon DSL issuing an authorization to the developer.
- The enactment of SB 606 during the 2013 regular legislative session. This bill amended the financial assurance and civil penalty statutes for ocean renewable energy projects.
- The enactment of SB 319 during the 2015 regular legislative session. This bill further refined DSL’s regulatory and proprietary roles in the siting of ocean renewable energy projects in the territorial sea.

## **PUBLIC INVOLVEMENT**

### **Rules Advisory Committee (RAC)**

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

- Jason Busch, Oregon Wave Energy Trust
- Justin Klure, Pacific Energy Ventures
- Richard Williams, Leidos & Oregon Applied Research
- Joanne Manson, Oregon Military Department
- Nick Edwards, Commercial Fisherman
- Hugh Link, Oregon Dungeness Crab Commission
- Scott McMullen, Oregon Fisherman’s Cable Committee
- Delia Kelly, Oregon Department of Fish and Wildlife
- Robin Hartmann, Oregon Shores Conservation Coalition
- Charlie Plybon, Surfrider Foundation
- Onno Husing, Lincoln County
- Keith Tymchuk, Former Mayor City of Reedsport, Port of Umpqua Commissioner
- Walter Chuck, Port of Newport
- Andy Lanier, Department of Land Conservation and Development
- Laurel Hillman, Oregon Parks and Recreation Department

The RAC had eight public meetings between June 2016 and April 2017. Five were held in Salem and three were held at the Oregon coast. The RAC had a consensus agreement that the draft rules were ready for public review and comment.

## **Public Notice**

The Notice of Proposed Rulemaking Hearing and the Statement of Need and Fiscal Impact required by the Oregon Secretary of State were sent to the RAC for their review and comment, as well as posted on the agency website.

The rulemaking notice went out to both the rule specific listserv, and the agency's general rulemaking listserv. In addition, the rulemaking notice was sent to:

- All current and past holders of DSL issued ocean renewable energy authorizations;
- The Ocean Policy Advisory Council listserv;
- The Oregon Coastal Zone Management Association listserv;
- Environmental Justice Task Force listserv;
- Legislative Commission on Indian Services Natural Resource Group & Cultural Resource Cluster;
- All of the state legislators, plus an additional notice sent specifically to the Coastal Caucus.

DSL published a press release about the rulemaking effort and the public hearings.

## **Public Hearings and Comment Period**

DSL had a 45-day public comment period that was open from June 1 to July 14, 2017. A summary of comments received and agency responses is attached (Appendix A). DSL held three public hearings in Coos Bay (June 20), Newport (June 21) and Astoria (June 28). DSL held a subsequent public meeting in Portland on July 6.

## **LEGAL SUFFICIENCY AND AGENCY RULE REVIEW**

The draft rules were reviewed by the Oregon Department of Justice for legal sufficiency. DSL will review these rules no later than five years after adoption (pursuant to ORS 183.405). (Appendix B and C) DSL will provide the RAC with a copy of the review report.

## **RECOMMENDATION**

The Department recommends that the Land Board adopt the proposed amendments to the administrative rules governing the placement of an ocean renewable energy facility on, in or over state-owned land within the territorial sea (OAR 141-140-0010 to OAR 141-140-0130).

## **APPENDICES**

- A. Rulemaking Summary of Comments Received and Responses
- B. Draft Rule for Review and Public Comment Redline Version
- C. Final Draft Rule for Land Board Consideration

# **OAR 141-085, 093 & 140 Rulemaking Summary of Comments Received and Responses**

## **PUBLIC COMMENTS RECEIVED and AGENCY RESPONSE**

### ***Commenters:***

***Cyndi Karp, Ecosystem Advocate  
Scott McMullen, Oregon Fisherman's Cable Committee  
Susan M. Barthel, Portland  
Delia Kelly, Oregon Department of Fish and Wildlife  
Anne Nelson, Collaborative Ocean Planning  
Meagan Flier, Confederated Tribes of Grand Ronde  
Bernard Bjork, Lower Columbia Alliance  
State Representative Deborah Boone  
Doug Heiken, Oregon Wild  
Marlies Wierenga, Portland  
Rick Williams, Oregon Applied Research  
Joanne Manson, Oregon Military Department***

## **COMMENT/RESPONSE**

**Comment #1:** There were a few comments specific to the siting of ocean renewable energy facilities adjacent to the Camp Rilea Armed Forces Training Center in Clatsop County. One commenter emphasized the importance of that area to commercial and recreational fishing. Other commenters noted that the territorial sea adjacent to Camp Rilea is designated as a federal marine danger zone due to the gun range.

**DSL Response:** *The territorial sea adjacent to Camp Rilea is designated as a Renewable Energy Facility Suitability Study Area (REFSSA) in Part 5 of the Territorial Sea Plan (Part 5). Any prospective development in this area must complete a resource inventory and effects evaluation, most projects will also need to develop an operation plan. The submitted materials will be evaluated by a JART and DSL to determine if the proposed project meets the requirements of Part 5 for a project in a REFSSA.*

**Comment #2:** There were some requests for an extension of the public review and comment period, in conjunction with holding additional public meetings in multiple locations around the state. There were a few questions about the notification process for the rulemaking effort. There were also questions about how the rules advisory committee (RAC) was chosen, and how to access RAC materials.

**DSL Response: The RAC consisted of:**

- **Jason Busch, Oregon Wave Energy Trust**
- **Justin Klure, Pacific Energy Ventures**
- **Richard Williams, Leidos**
- **Joanne Manson, Oregon Military Department**
- **Nick Edwards, Commercial Fisherman**
- **Hugh Link, Oregon Dungeness Crab Commission**
- **Scott McMullen, Oregon Fisherman's Cable Committee**
- **Delia Kelly, Oregon Department of Fish and Wildlife**
- **Robin Hartmann, Oregon Shores Conservation Coalition**
- **Charlie Plybon, Surfrider Foundation**
- **Onno Husing, Lincoln County**
- **Keith Tymchuk, Former Mayor City of Reedsport, Port of Umpqua Commissioner**
- **Walter Chuck, Port of Newport**
- **Andy Lanier, Department of Land Conservation and Development**
- **Laurel Hillman, Oregon Parks and Recreation Department**

***When appointing the RAC, DSL looked for a balance of stakeholders that would be affected by the draft rules; and that were experienced in Part 5 and the subsequent legislation that led to the rulemaking. The RAC had eight public meetings between June 2016 and April 2017. Five were held in Salem and three were held at the Oregon coast. The RAC had a consensus agreement that the draft rules were ready for public review and comment. All of the RAC work and meeting materials were posted on the rules webpage over the past year while they were deliberating. The RAC materials were archived off of the DSL website once the rules moved to the public review and comment phase. All RAC materials are available from DSL upon request.***

***DSL developed an ocean renewable energy specific rulemaking listserv for this effort. Anyone could sign up to be on this listserv through the agency website or by contacting the rules coordinator.***

***The rulemaking notice went out to both the rule specific listserv, and the agency's general rulemaking listserv. There are roughly a thousand persons and organizations signed up for the latter listserv. Rulemaking notices typically go out as an e-mail, but DSL also sends a postcard to persons upon request. In addition, the rulemaking notice was sent to:***

- ***All current and past holders of ocean renewable energy authorizations (that DSL issued);***
- ***The Ocean Policy Advisory Council listserv;***
- ***The Oregon Coastal Zone Management Association listserv;***
- ***Environmental Justice Task Force listserv;***
- ***Legislative Commission on Indian Services Natural Resource Group & Cultural Resource Cluster;***

- ***All of the state legislators, plus an additional notice sent specifically to the Coastal Caucus.***

***DSL published a press release about the rulemaking effort and the public hearings.***

***DSL had a 45 day public comment period that was open from June 1 to July 14. DSL held three public hearings in Coos Bay (June 20), Newport (June 21) and Astoria (June 28). DSL held a subsequent open house public meeting in Portland on July 6. DSL deemed this level of public outreach sufficient, and did not extend the public comment period or schedule additional hearings.***

**Comment #3: There were several comments about scientific data gaps, lack of scientists on the RAC, cumulative effects of multiple projects on ocean resources, and requiring baseline assessments prior to permit issuance. There was a comment that different types of ocean renewable energy technologies should be listed out, with review criteria, in the rule. There was also a comment that the JART should be convened for all projects.**

**DSL Response: *The goal of this rulemaking is to put into place the administrative process, review criteria and effects evaluation that were developed through Part 5. Part 5 and the draft rules provide flexibility for each project to be evaluated on a case-by-case basis, taking into consideration location, technology, footprint, ocean resources and user conflicts. The composition of the JART is established in Part 5 and is codified in OAR 141-140-0020(12). Federal agencies with regulatory or planning authority will be invited to participate on the JART. The draft rules include a pre-application process where the JART will be convened to discuss the specific project with a developer. This includes guidance on completing the resource inventory and effects evaluation as required by Part 5. This is the appropriate place for DSL and the JART to bring up data gaps, baseline assessments, and new scientific information that are specific to the prospective project, location and technology.***

***The draft rules provide for DSL and the JART to require new or further scientific studies in order to determine that a proposed project is consistent with Part 5. OAR 141-140-0060(11) states “Should the Department, in consultation with the applicant, the JART and other interested parties, determine that it is necessary to conduct environmental or other studies necessary to assist in evaluating the project's compliance with the requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan, the applicant shall be directly responsible for retaining and paying for the consultants and completing the required research.” DSL believes that any environmental study requirements are best evaluated by the agency and the JART on a case-by-case basis. The draft rules provide that ability, and the flexibility, to address these issues as they arise.***

**Research and demonstration projects that test at the Northwest National Marine Renewable Energy Center Mobile Test Berth Site are exempt from a number of Part 5 requirements, including the convening of a JART.**

**Part 5 is scheduled to be reviewed in 2020 by the Department of Land Conservation and Development (DLCD), or when one percent of the territorial sea has been permitted and the facilities developed (to address possible cumulative impacts). DSL believes that this is the appropriate venue to address scientific gaps and the planning process.**

**Comment #4: It is not appropriate for one industry to regulate another. For example, having the fishing, crabbing, or telecommunication cable industry, participate as formal members of the JART.**

**DSL Response: The JART composition, roles and responsibilities are delineated in Part 5, and are reiterated in the draft rules. Per OAR 141-140-0060(7); “The JART shall make recommendations to the Department on:**  
**(a) If the information provided by the applicant for the proposed project meets the requirements of the Territorial Sea Plan, and;**  
**(b) If the Department should approve the request for a temporary use authorization or ocean renewable energy facility lease, and;**  
**(c) Any additional conditions or stipulations that the Department should consider upon issuance of a temporary use authorization or ocean renewable energy facility lease.”**

**The JART is a review team, charged with making recommendations to DSL. The JART’s role is strictly advisory, and the JART has no decision making authority. The final permitting authority lies with DSL.**

**Comment #5: The definition of “commercial operation” only uses “financial profit as a goal” as the benchmark. This should be clarified in rule, so that it isn’t vague and is enforceable.**

**DSL Response: DSL cannot change the definition of “commercial project”, because it is derived from statute (ORS 274.870). Any further clarification of this definition will likely need to occur through legislative action. The [Merriam-Webster](#) dictionary defines “profit” as:**

- 1: a valuable return : [gain](#)**
- 2: the excess of returns over expenditure in a transaction or series of transactions; especially: the excess of the selling price of goods over their cost**
- 3: net income usually for a given period of time**
- 4: the ratio of profit for a given year to the amount of capital invested or to the value of sales**

***5: the compensation accruing to entrepreneurs for the assumption of risk in business enterprise as distinguished from wages or rent***

**Comment #6:** The definition of “ocean renewable energy” does not encompass all possible projects that could occur. For example, sea water pumped ashore and converted into mechanical energy would not be defined as ocean renewable energy.

**DSL Response:** *DSL cannot change the definition of “ocean renewable energy”, because it is derived from statute (ORS 274.870). Any further clarification of this definition will likely need to occur through legislative action.*

*DSL consulted with DLCD on this comment, and the agencies believe that conversion of pumped seawater to mechanical energy would occur based on the natural properties of the ocean; and would therefore be subject to Part 5 and these rules.*

**Comment #7:** DSL should be obligated to include local stakeholders to provide the best possible JART to review projects.

**DSL Response:** *The list of invitees to participate in the JART is found in Part 5 and OAR 141-140-0020(12). The Department will invite local stakeholders to participate in the JART should they have the ability, knowledge and resources to represent the identified stakeholder groups in reviewing a proposed project.*

*Participation on a JART is voluntary. DSL cannot require participation on a JART.*

**Comment #8:** DSL rules should avoid and minimize other significant ecological impacts such as bird impacts of off-shore wind turbines and the impacts of large networks of undersea anchor cables. DSL rules should require decommissioning of projects after they are no longer used.

**DSL Response:** *Part 5 and the draft rules establish a robust review and permitting process for ocean renewable energy projects. This includes convening a JART, the completion of a resource inventory, effects evaluation and an operation plan. In addition, Part 5 established a precautionary approach to ocean renewable energy development and requires significant ocean resources to be protected.*

*Part 5, state statute (ORS 274.879), and the draft rules require the decommissioning of a facility upon permanent cessation of the project. Financial assurance is also required to make sure that the decommissioning occurs.*

**Comment #9:** DSL should adopt more stringent regulations and/or guidelines regarding the process of how and when materials are to be decommissioned in place and to use best available science regarding the effect of decommissioned

pipes, cables, and conduit in place on benthic ecosystems in its analysis and guideline development.

***DSL Response: ORS 274.879 allows decommissioning in place for cables and other structures that lie at least one meter beneath submerged lands in the territorial sea. The draft General Permit requires that any intent to decommission in-place be disclosed for consideration by the JART and evaluation by DSL through the permitting process. The General Permit additionally requires a final verification by the operator confirming that the minimum burial depth was achieved and what methods were used to determine such. Finally, statute (ORS 196.817) gives DSL the authority to evaluate individual and cumulative effects (such as those from multiple decommissioning proposals) and rescind a General Permit if those effects are unacceptable.***

***Comment #10: There were a few comments in support of the draft rules and the rulemaking process.***

***DSL Response: No response.***

***Comment #11: DSL received several scientific studies and documentation along with the public comments. They include:***

- Marine Mammals and Marine Renewable Energy Investigation and Planning.
- Nearshore Ecological Data Atlas: Preliminary list of data gaps.
- Oregon Conservation Strategy for Gray Whales.
- Preliminary Evaluation of Oregon Marine Map Data and Information.

***DSL Response: This information has been retained by DSL, and may be helpful to a potential developer or in the evaluation of a specific project. DSL has also shared this information with DLCD. DLCD plans to review Part 5 in 2020. DSL believes that this information is best suited to policy examinations when Part 5 comes up for re-evaluation.***

**DRAFT RULE FOR PUBLIC REVIEW AND COMMENT**  
**REDLINE VERSION**

**DIVISION 140**  
**RULES GOVERNING THE PLACEMENT OF AN OCEAN RENEWABLE ENERGY**  
**FACILITY CONVERSION DEVICES ON, IN OR OVER**  
**STATE-OWNED LAND WITHIN THE TERRITORIAL SEA**

**141-140-0010****Applicability and Purpose**

(1) These rules apply to the construction and operation of:-

~~(a) Ocean renewable energy monitoring equipment and ocean energy facilities placed on, in or over state-owned submerged and submersible land in the Territorial Sea, for a research project, demonstration project or commercial operation; and~~

~~(b) Other equipment and structures that are necessary for ocean energy monitoring equipment or an ocean energy conversion device. This includes infrastructure physically connected to an ocean renewable energy facility that crosses state-owned submerged and submersible lands adjacent to the territorial sea.~~

~~(2) The purpose of these rules is to describe the requirements for, and process of issuing proprietary authorizations for the construction, installation, operation, maintenance and removal of ocean energy monitoring equipment and ocean energy facilities located on, in or over state-owned submerged and submersible land in the Territorial Sea.~~

~~(3) These rules do not apply to:~~

~~(a) Docks, infrastructure, facilities or structures on, in or over state-owned submerged and submersible land in the Territorial Sea that are not related or supporting structures part of an ocean renewable energy facility. Proprietary authorizations for such docks, infrastructure, facilities or structures which are not defined as related or supporting structures are governed by the provisions of OAR 141-082 ~~(Rules Governing the Management of, and Issuing of Leases, Authorizations, Temporary Use Permits and Registrations for Structures on, and Uses of State-Owned Submerged and Submersible Land)~~;~~

~~(b) Scientific experiments and scientific equipment that are not part of an ocean renewable energy facility placed on, in or over state-owned submerged and submersible land in the territorial sea. Proprietary authorizations for such uses are governed by the provisions of OAR 141-125;~~

~~(c) The granting and renewal of easements for electricity transmission, telecommunication and other cables in the territorial sea that are not related to an ocean renewable energy facility authorized under these rules. These cables are governed by the provisions of OAR 141-083.~~

~~(4) Prior to constructing, installing, operating, maintaining or removing ocean energy monitoring equipment or an ocean energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea a person shall obtain a temporary use authorization or an ocean energy facility lease from the Department.~~

~~(5) The issuance of a temporary use authorization or an ocean renewable energy facility lease provides the holder with the State of Oregon's proprietary authorization for the ocean renewable energy monitoring equipment or ocean energy facility to occupy the authorized area specified in~~

## Appendix B

~~the temporary use authorization or lease in the authorization. Regulatory approvals for the construction, installation, operation, maintenance or removal of the ocean energy monitoring equipment or ocean energy facility also may be required.~~ Other federal, state or local authorizations may also be required.

~~(46) A temporary use authorization and an ocean energy facility lease issued by the Department shall be conditional and shall not authorize the use of the authorized area. Construction and operation shall not commence until the holder has received all other authorizations required by the Department (such as a Removal-Fill Authorization under ORS 196.800 to 196.990,) and other required authorizations from local, state (such as an Ocean Shores Permit from the Oregon Department of Parks and Recreation), and federal entities (such as a preliminary permit or similar authorization from the Federal Energy Regulatory Commission) for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or the ocean energy facility).~~

~~(7) Except for educational/research institutions conducting research projects, the holder of a temporary use authorization to conduct a demonstration project shall be given a first right to apply for an ocean energy facility lease for the authorized area specified in the temporary use authorization. If such first right to apply is not exercised within 30 calendar days of the expiration date of the temporary use authorization, the first right to apply shall expire.~~

**141-140-0020****Definitions**

(1) "Applicant" is any person applying for a temporary use authorization or ocean renewable energy facility lease.

~~(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 State Lands (Department) of the Common School Fund's real estate assets.~~

~~(23) "Authorized Area" is the maximum area of state-owned land on, in or over which the Department will allow a person to construct, operate, maintain or remove ocean energy monitoring equipment or and operate an ocean renewable energy facility under the terms and conditions of a temporary use authorization or ocean renewable energy facility lease. Included within the authorized area are:~~

~~(a) Any corridors on state-owned submerged and submersible land within, and adjacent to, the Territorial sSea for a related or supporting structure, including but not limited to electricity transmission or other cables necessary to connect the ocean energy monitoring equipment or ocean renewable energy facility to land-based facilities; and~~

~~(b) Any required buffers, exclusionary or safety zones.~~

~~(34) "Closure" means the permanent cessation of operation of all or part of a research project or ocean energy an ocean renewable energy facility and the subsequent removal of ocean renewable energy conversion devices and ocean energy monitoring equipment authorized by a temporary use authorization or an ocean renewable energy facility lease granted by the Department.~~

~~(45) "Commercial Operation" as defined in ORS 274.870(1), means a project undertaken to generate ocean renewable energy for a purpose other than research, demonstration or personal use and that has financial profit as a goal.~~

~~is when an ocean energy facility is:~~

~~(a) Operated for, or associated with any monetary consideration or gain (as contrasted to being operated as a research project or a demonstration project);~~

## Appendix B

~~(b) Connected to the regional power grid and used to meet local or regional demand for electricity;~~

~~(c) Used to meet all or a part of the electricity demand by a person who may otherwise have to purchase the electricity from another source; or~~

~~(d) Operated as a commercial operation under a license or similar authorization granted by the Federal Energy Regulatory Commission.~~

(56) "Corrective Action" is an activity performed by the holder of a temporary use authorization or an ocean renewable energy facility lease, or their agent, to comply with the terms and conditions of their temporary use authorization or ocean renewable energy facility lease, or to correct a violation or threatened violation, or meet a requirement of applicable local, state or federal law.

(67) "Demonstration Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction, ~~installation, operation, or removal~~ and operation of an ocean renewable energy facility on, in or over state-owned submerged and submersible land in the ~~Territorial~~ Sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.

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

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

(9) "Educational/Research Institution" is any accredited public or private university or college, or non-profit research organization.

~~(10) "Holder" is a person who has been issued an authorization under these rules. "Director" means the Director of the Department of State Lands or designee.~~

~~(11) "Holder in good standing" is a holder of an authorization by the Department that is not currently in default or non-compliance with any proprietary or regulatory authorization that has been issued by the Department. "Gross Revenue" is defined as all revenues earned, whether or not received, relating to the power generated by the holder of a temporary use authorization or an ocean energy facility lease.~~

(12) "Joint Agency Review Team" or "JART" is a team of representatives from agencies, jurisdictions and organizations that will review the adequacy of applications with respect to the applicable standards and screening criteria of the Territorial Sea Plan, and make recommendations to the Department on the approval of authorizations. The Department shall invite representatives from the following agencies, jurisdictions and organizations to be members of the JART:

(a) Oregon Departments of Fish and Wildlife, Oregon Parks and Recreation, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Water Resources Department, Energy, and Oregon Department of Geology and Mineral Industries;

(b) Federal agencies, as invited, with regulatory or planning authority applicable to the proposed project and location;

(c) Local jurisdictions including representatives from affected cities, counties, and their affected communities, and affected port districts;

(d) Statewide and local organizations and advisory committees, as invited, to participate in the JART application of specific standards, including but not limited to those addressing areas important to fisheries, ecological resources, recreation and visual

## Appendix B

impacts; and.

(e) Federally recognized Coastal Tribes in Oregon.

~~"Lessee" refers to a person holding an ocean energy facility lease.~~

(13) "Northwest National Marine Renewable Energy Center" or "NNMREC", as described in Part Five of the Territorial Sea Plan, is an established ocean test site to conduct experimental marine renewable energy device testing. References to NNMREC in this rule pertain to the Mobile Ocean Test Berth, as described in Part Five of the Territorial Sea Plan.

~~"Non-Commercial" means a use that does not result in or is not associated with any monetary gain.~~

(14) "Ocean Renewable Energy Conversion Device" as defined in ORS 274.870(2), means electricity that is generated through:

(a) The conversion of energy contained in the natural properties of the ocean, including but not limited to energy contained in waves and swells, the tides and currents, ocean temperature and salinity gradients; and

(b) Ocean offshore wind power.

~~is the equipment or structure that converts the kinetic or potential energy from one or more of the following sources into electrical energy: waves, currents, tides, or the temperature differences found at different ocean depths.~~

(15) "Ocean Renewable Energy Facility" as defined in ORS 274.870(3), means any energy conversion technology or device that is used as a necessary component of a research project, demonstration project or commercial operation to generate ocean renewable energy, including but not limited to all buoys, anchors, energy collectors, cables, control and transmission lines, and other equipment necessary or useful to the project or operation.~~means an ocean energy conversion device and any related or supporting structure.~~

(16) "Ocean Renewable Energy Facility Lease" is a written authorization issued by the Department to a person to occupy an authorized area for one or more ocean renewable energy facilities comprising a commercial operation.

~~(17) "Ocean Energy Monitoring Equipment" means the test buoys, floats, platforms, and/or other similar devices and any related or supporting structures for such equipment that are:~~

~~(a) Placed on, in or over the state-owned submerged and submersible land in the Territorial Sea; and~~

~~(b) Used in a research project or demonstration project to collect data including, but not limited to the heights, contours and frequency of waves as well as environmental conditions.~~

(17) "Ocean Users" include, but are not limited to persons using the Territorial Sea for commerce, navigation, fishing or recreation as well as for the conservation of resources and the provision of ecological services.

(18) "Operating Fees" means compensation due to the Department for the commercial generation of power authorized by an ocean renewable energy facility lease.

(19) "Person" as defined in ORS 274.870(4), means a person as defined in ORS 174.100, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity. 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.

## Appendix B

- (20) "Permanent Cessation" means the permanent closure of the facility by the expiration or termination of the temporary use authorization or ocean renewable energy facility lease, or a final legally effective order to permanently cease operation(s) has come into effect.  
"Related or Supporting Structure" includes, but is not limited to any buoy, anchor, energy collector, cable, control or transmission line, energy collector or hub, acoustic harassment and avoidance devices, or other equipment or structure that is:  
 (a) Placed on, in or over state-owned submerged and submersible land in the Territorial Sea; and  
 (b) Required for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy conversion device.
- (21) "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.
- (22) "Research Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to an educational/research institution for the placement of ocean energy monitoring equipment and/or construction and operation an ocean renewable energy facility on, in or over state-owned submerged and submersible land in the Territorial Sea. The purpose of a research project is to obtain scientific data relating to ocean wave energy and/or renewable energy and to test the technology used in, or functionality of, an experimental ocean energy conversion device.
- (23) "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. The Department is the administrative arm of the State Land Board.
- (24) "Statewide Planning Goal 19" or "Goal 19" is the Statewide Planning Goal of the Oregon Land Conservation and Development Commission to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.
- (25) "Structure" means anything placed, constructed, or erected on, in, or over state-owned submerged and submersible land that is associated with a use that requires an authorization under these rules.
- (26) "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.
- (27) "Submersible Land" means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.
- (28) "Temporary Use Authorization" is a written authorization issued by the Department to a person to use an authorized area for an ocean renewable energy monitoring equipment or an ocean energy facility comprising a research project or demonstration project.
- (29) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction coastline in conformance with federal law.
- (30) "Territorial Sea Plan" has the same meaning as provided in ORS 196.405(6). It is the plan for managing Oregon's Territorial Sea and ocean shore as required under ORS 196.405 through 196.580.

**141-140-0030**  
**Policies**

## Appendix B

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, manages all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

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

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

(4) The Department will follow the guiding principles and resource-specific management prescriptions contained in its Real Estate Asset Management Plan, and consider the comments received from various local, state and federal agencies, other interested persons including, but not limited to tribal governments, port districts, business and community organizations, and fisher, recreationist and conservation groups, and the holders of Department-issued authorizations within or immediately adjacent to the requested area when determining whether to authorize or condition a temporary use authorization or ocean renewable energy facility lease.

(5) Pursuant to Part Five of the Territorial Sea Plan, "Oregon prefers to develop renewable energy through a precautionary approach that supports the use of pilot projects and phased development in the initial stages of commercial development."

(6) Pursuant to ORS 274.873:

(a) A person may not construct or operate an ocean renewable energy facility within Oregon's territorial sea without a proprietary authorization issued by the Department of State Lands and as provided by the Department by rule, or in a manner contrary to the conditions set out in the authorization;

(b) An application for a proprietary authorization under this section must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea;

(c) The Department may not issue a proprietary authorization for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea; and

(d) The department shall incorporate the terms and conditions of the removal or fill permit required for the ocean renewable energy facility into the proprietary authorization.

(7) The Department shall not grant a temporary use authorization or an ocean renewable energy facility lease if it determines that the proposed use or development:

(a) Does not meet the requirements of Statewide Planning Goal 19 and the Oregon Ocean Resources Management Plan and the Territorial Sea Plan; or

(b) Substantively impairs lawful uses or developments already occurring within the proposed authorized area. This determination will be made by the Department after consulting with holders of leases, authorizations, permits and easements in, and immediately adjacent to the requested area, and other interested persons.

(8) Any transmission line or other cable authorized as part of a facility under these rules is subject to the implementation requirements of Part Four of the Territorial Sea Plan.

(9) All administrative fees delineated in these rules shall be adjusted on January 1 of

## Appendix B

every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest dollar.

~~(2) The Department will manage temporary use authorizations and ocean energy facility leases with the goal of ensuring the collective rights of the public to fully use and enjoy the Territorial Sea for commerce, navigation, fishing, recreation, and other related public purposes consistent with applicable federal and state laws including but not limited to ORS 273.051.~~

~~(3) The Department will follow the guiding principles and resource specific management prescriptions contained in its Asset Management Plan, and consider the comments received from various local, state and federal agencies, other interested persons including, but not limited to tribal governments, port districts, business and community organizations, and fisher, recreationist and conservation groups, and the holders of Department issued authorizations within or immediately adjacent to the requested area when determining whether to authorize or condition a temporary use authorization or ocean energy facility lease.~~

~~(4) The Department shall not grant a temporary use authorization or an ocean energy facility lease if it determines that the proposed use or development:~~

~~(a) Does not meet the requirements of Statewide Planning Goal 19 and the Oregon Ocean Resources Management Plan and the Territorial Sea Plan; or~~

~~(b) Substantively impairs lawful uses or developments already occurring within the proposed authorized area. This determination will be made by the Department after consulting with holders of leases, authorizations, permits and easements in, and immediately adjacent to the requested area, and other interested persons.~~

#### **141-140-0040**

##### **Preliminary -Application Requirements**

Before submitting an application to the Department, a person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy conversion facility for a research project, demonstration project or commercial operation shall meet with:

(1) Prospective applicants shall meet with Department staff to discuss the proposed project and use before submitting a preliminary application to the Department. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in this meeting. Common invitees include city and county representation, the Oregon Department of Fish and Wildlife, the Department of Land Conservation and Development and the Oregon Parks and Recreation Department.

~~Department staff to discuss the proposed project; and~~

(2) A person wanting to attain a temporary use authorization or ocean renewable energy facility lease must submit a preliminary application on a form provided by the Department.

(3) A preliminary application shall be accompanied by a non-refundable fee payable to the Department in the amount of \$1,000.

(4) A person applying to attain a temporary use authorization to test at the NNMREC is exempt from the provisions of OAR 141-140-0040(2) through (3), and may submit an application for a temporary use authorization upon completion of OAR 141-140-0040(1).

(5) Upon receipt of a preliminary application for a temporary use authorization or ocean renewable energy facility lease, the Department will determine if it is complete. Applications determined by the Department to be incomplete shall be returned to the applicant with an explanation of the reason(s) for rejection.

## Appendix B

(6) If a rejected application is resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected, no additional preliminary application fee will be assessed.

(7) If more than one application for a proposed area is received by the Department for the same or conflicting uses, the Department reserves the right to determine which proposed use(s) best fulfills the policies specified in OAR 141-140-0030, and accept and proceed with that application and deny the other(s).

(8) Upon acceptance by the Department of a preliminary application as complete, the Department will convene the JART as described in Part Five of the Territorial Sea Plan.

(9) The JART will review the preliminary application, and comment on the adequacy of the preliminary application, areas of concern, and areas where more information is needed.

(10) The Department and the JART will meet with the applicant to discuss the preliminary application:

(a) The Department and the JART will provide input to the applicant on how to complete the Resource and Use Inventory and Effects Evaluation and the Special Resource and Use Review Standards as described in Part Five of the Territorial Sea Plan.

(b) The Department and the JART will provide input to the applicant on the development of the Operation Plan, if required, as described in Part Five of the Territorial Sea Plan.

(11) The Department, with review of the JART, may waive inventory content when items are deemed non-applicable. ~~Affected ocean users and other government agencies having jurisdiction in the Territorial Sea to discuss possible use conflicts, impacts on habitat, and other issues related to the proposed use of an authorized area for the installation, construction, operation, maintenance or removal of ocean energy monitoring equipment or an ocean energy facility.~~

#### **141-140-0045**

##### **First Right to Apply**

(1) A holder in good standing of a special use license administered under OAR 141-125 to collect scientific data on ocean renewable energy resources in the territorial sea shall be given a first right to apply for a temporary use authorization for a demonstration project under these rules. This first right applies to one contiguous authorized area per licensee, and for no larger of an area than 53 acres. For example, an area of 0.25 nautical miles by 0.25 nautical miles. The first right shall terminate if not exercised within 60 calendar days of the expiration date of the special use license:

(a) Upon receipt of a preliminary application from the licensee, the Department will review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the preliminary application is complete and the use conforms to the provisions of these rules, the licensee's application will be deemed accepted by the Department.

(b) If the licensee's preliminary application is incomplete, then the application must be resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected. Failure to resubmit a complete preliminary application within the allotted 60 calendar days shall result in the termination of the first right to apply.

(c) If the Department receives a complete preliminary application from another person for an area covered under the special use license, the Department shall provide written notice to the

## Appendix B

licensee of the existing authorization that an application has been received by the Department. Within 60 calendar days from the date of written notice from the Department, the licensee must provide the Department written notice of the licensee's intent to exercise the first right to apply, and submit a preliminary application for a temporary use authorization to the Department. Failure to provide written notice and a preliminary application within 60 calendar days from the date of the Department's written notice shall result in the termination of the first right to apply

(2) A holder in good standing of a temporary use authorization to conduct a demonstration project shall be given a first right to apply for an ocean renewable energy facility lease under these rules. This first right applies to one contiguous authorized area per holder, and for no larger of an area than 53 acres. For example, an area of 0.25 nautical miles by 0.25 nautical miles. The first right shall terminate if not exercised within 60 calendar days of the expiration date of the temporary use authorization:

(a) Upon receipt of a preliminary application for an ocean renewable energy facility lease from the holder of a temporary use authorization, the Department will review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the application will be deemed accepted by the Department.

(b) If the holder of a temporary use authorization's preliminary application is incomplete, then, the application must be resubmitted within 60 calendar days from the date that the Department returned it (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected. Failure to resubmit a complete application within the allotted 60 calendar days shall result in the termination of the first right to apply.

(c) If the Department receives a complete preliminary application from another person for an area covered under the temporary use authorization, the Department shall provide written notice to the holder of the existing temporary use authorization that an application has been received by the Department. Within 60 calendar days from the date of written notice from the Department, the holder of a temporary use authorization must provide the Department written notice of their intent to exercise the first right to apply, and submit a preliminary application for a lease to the Department. Failure to provide written notice and a preliminary application within 60 calendar days from the date of the Department's written notice shall result in the termination of the first right to apply.

**141-140-0050****Application Requirements**

(1) ~~Any person wanting to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy facility for a research project, demonstration project or commercial operation on, in or over state owned submerged and submersible land in the Territorial Sea~~attain a temporary use authorization or ocean renewable energy facility lease under these rules shall:

(a) Comply with the provisions of OAR 141-140-0040;

(b) Apply in writing to the Department for either a temporary use authorization or an ocean renewable energy facility lease using a form provided by the Department; and

(c) Submit an ~~non-refundable~~ application processing fee ~~of \$750~~ payable to the Department to cover the administrative costs of processing the application and issuing the authorization.

(A) The non-refundable application processing fee for a temporary use authorization is \$5,000.

(B) The application processing fee for an ocean renewable energy lease includes:

## Appendix B

- (i) A non-refundable application processing fee of \$5,000; and
- (ii) \$1,000 per megawatt for each megawatt capacity in excess of five megawatts. A portion of this fee may be refundable upon written consent between the applicant and the Director.
- (C) Considerations for a partial refund under OAR 141-140-0050(1)(c)(B) may include:
- (i) The estimated expenditures accrued by the Department in processing all phases of the application;
- (ii) The reason for the withdrawal of the application; and
- (iii) Any other foreseeable expenditure that may be associated with the Department's administration of the proposed action.
- (2) Pursuant to Part Five of the Territorial Sea Plan, an applicant shall include with their application a(n):
- (a) Resource and Use Inventory and Effects Evaluation, and;
- (b) Special Resource and Use Review Standards, and;
- (c) Operation Plan, if required.
- ~~Notwithstanding the provisions of OAR 141-140-0050(1)(c), the non-refundable application processing fee for a temporary use authorization for an educational/research institution to install, construct, operate, maintain or remove ocean energy monitoring equipment or an ocean energy facility is \$250 if the equipment or facility is:~~
- ~~(a) Operated by the education/research institution; and~~
- ~~(b) Used exclusively for a research project and is/are not part of a commercial operation.~~
- (3) An applicant shall include with their application an analysis of, and any relevant supporting documents or studies, that demonstrate how the use requested for authorization by the proposed temporary use authorization or energy facility lease will comply with the provisions of OAR 141-140-0030, the requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan were used to address the requirements of the Territorial Sea Plan and other applicable state policies.
- (4) Any person holding a temporary use authorization for a research project or demonstration project is required to submit a new application and the required application processing fee to the Department pursuant to the provisions of these rules if they want to:
- (a) Apply for a new temporary use authorization;
- (b) Apply for an ocean renewable energy facility lease to install, construct, operate, maintain or remove a commercial operation; or
- (c) Substantially change the scope of a research or demonstration project that has been previously authorized by the Department.
- (5) Unless otherwise allowed by the Director, a fully completed application for:
- (a) A temporary use authorization and an ocean renewable energy facility lease for a demonstration project, or an ocean energy facility lease for a commercial project shall be submitted to the Department at least 180 calendar days prior to the proposed installation, construction and, operation, maintenance or removal of the ocean energy monitoring equipment or of the ocean renewable energy facility.
- (b) A temporary use authorization for a research project to test at NNMREC shall be submitted to the Department at least 15090 calendar days prior to the proposed installation, construction and, operation, maintenance or removal of the ocean energy monitoring equipment or of the ocean renewable energy facility.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

## Appendix B

(c) The Department and the JART shall discuss a proposed timeline for attaining an ocean renewable energy facility lease with the applicant during the preliminary application process.  
(6) An applicant wanting to attain a temporary use authorization to test at the NNMREC is exempt from the provisions of OAR 141-140-0050(2).

**141-140-0060****Application Review Process**

(1) Upon receipt of an application for a temporary use authorization or ocean renewable energy facility lease, the Department will determine if it is complete. Applications determined by the Department to be incomplete may be returned to the applicant with an explanation of the reason(s) for rejection.

(2) If a rejected application is resubmitted within 6+20 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.

~~(3) If more than one application for an authorized area is received by the Department for the same or conflicting uses, the Department reserves the right to determine which proposed use(s) best fulfills the policies specified in OAR 141-140-0030, and accept and proceed with that application and deny the other(s).~~

~~(34) The Department may, at its discretion, deny an application for a temporary use authorization or ocean renewable energy facility lease if the applicant is currently in default or non-compliance with any proprietary or regulatory authorization that has been issued by the Department; or if the applicant's financial status or past business or management practices indicate that the applicant may not:~~

(a) Fully meet the terms and conditions of the authorization or lease; or

(b) Use the authorized area applied for in a way that meets the provisions of ~~OAR 141-140-0030~~these rules.

~~(45) Upon acceptance by the Department as complete, the application will be circulated to various local, state and federal agencies, other interested persons including, but not limited to tribal governmentsfederally recognized tribes, port districts, business and community organizations, and fisher, recreationist and conservation groupsocean users, and the holders of Department-issued authorizations within or immediately adjacent to the requested area for review and comment. As part of this review, the Department will specifically request comments concerning:~~

(a) Conformance of the proposed use with:

(A) The ~~policies described in OAR 141-140-0030~~provisions of these rules;

(B) Other local, state, and federal laws ~~and rules;~~

(C) The requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan; and

(b) Potential conflicts between the proposed use and existing uses that occur within the requested authorized area.

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

(6) The Department shall reconvene the JART to evaluate the:

(a) Submitted application, and;

## Appendix B

(b) Resource and Use Inventory and Effects Evaluation, and;

(c) Special Resource and Use Review Standards, and;

(d) Operation Plan, if required.

(7) The JART shall make recommendations to the Department on:

(a) If the information provided by the applicant for the proposed project meets the requirements of the Territorial Sea Plan, and;

(b) If the Department should approve the request for a temporary use authorization or ocean renewable energy facility lease, and;

(c) Any additional conditions or stipulations that the Department should consider upon issuance of a temporary use authorization or ocean renewable energy facility lease.

(8) Nothing in these rules prohibits or limits a JART member's ability to provide their individual comment on an application to the Department or the State Land Board through the public comment process. All comments received during the public comment period become part of the permanent record.

~~(9)~~ After receipt of a JART recommendation, in addition to agency and public comment concerning the application, the Department will advise the applicant in writing:

(a) If changes in the requested area are necessary to respond to agency or public comment; and

(b) If additional information is required from the applicant.

~~(10)~~ The Department ~~shall~~will not grant a temporary use authorization or an ocean renewable energy facility lease until it has received:

(a) All fees and compensation specified in these rules;

(b) Evidence of decommissioning financial assurance as required ~~for the cost of closure and post-closure maintenance of the ocean energy monitoring equipment and ocean energy facility as provided in OAR 141-140-0080(10) through (13), and the cost of any action(s) required to be taken at the site under OAR 141-140-0095;~~ and

(c) Evidence of any required insurance and/or surety bond under OAR 141-140-0090.

~~(8) No authorization will be given until the requirements of OAR 141-140-0080(4) of these rules have been met.~~

~~(11)~~ Should the Department, in consultation with the applicant, the JART and other interested parties, determine that it is necessary to conduct environmental or other studies necessary to assist in evaluating the project's compliance with the requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan, the applicant shall be directly responsible for retaining and paying for the consultants and completing the required research.

#### **141-140-0070**

##### **Compensation**

(1) The holder of a temporary use authorization to conduct a research project or demonstration project shall annually remit to the Department a payment in the greater amount of \$500 or \$5.00 per acre of land within the authorized area. This annual payment shall be due to the Department until such time that the:

(a) Research project or demonstration project is completed and the ocean renewable energy ~~monitoring equipment and ocean energy~~ facility is removed from the authorized area pursuant to the terms and conditions of the temporary use authorization and these rules;

## Appendix B

(b) ~~The temporary use authorization Temporary use authorization authorizing the research project or demonstration project~~ expires or is terminated by either the holder of the authorization or the Department and the ocean renewable energy ~~monitoring equipment and/or the ocean energy~~ facility is removed pursuant to the terms and conditions of the temporary use authorization and these rules; or

(c) Placement of an ocean renewable energy facility for commercial operation is authorized by an ocean renewable energy facility lease issued by the Department.

(2) ~~The amount of annual compensation owed to the Department for an ocean renewable energy facility lease shall be the greater amount of \$500 or the sum of:~~

~~(a) \$3.00 per acre of land within the authorized area per year, and;~~

~~(b) Operating fees as calculated in subsection (3).~~

(3) The operating fees are determined by the following formula:

$F = M * H * c * P * r$ , where:

(a) F is the dollar amount of the annual operating fee;

(b) M is the nameplate capacity expressed in megawatts;

(c) H is the number of hours in a year, equal to 8,760, used to calculate an annual payment;

(d) c is the “capacity factor” representing the anticipated efficiency of the facility’s operation expressed as a decimal between zero and one;

(e) P is a measure of the annual average wholesale electric power price expressed in dollars per megawatt hour, as discussed below; and

(f) r is the operating fee rate expressed as a decimal between zero and one. ~~Unless the Director specifies otherwise, the operating fee rate (r) is 0.02. The Director may use discretion to set a different operating fee rate. For example, a reduced rate may be established for new, smaller project. Conversely, an increased rate may be established for a larger, mature project. The amount of compensation owed to the Department for an ocean energy facility lease shall be established by the Director.~~

~~(3) To determine the amount of compensation owed for an ocean energy facility lease, the Director shall consider, among other factors, the:~~

~~(a) Provisions of OAR 141-140-0030(1);~~

~~(b) Annual compensation received by other persons for the placement of ocean energy facilities on, in or over land under their jurisdiction; and~~

~~(c) The amount of electricity generated by the ocean energy facility, the value of the electricity produced, and gross revenue resulting from that generation.~~

(4) Compensation is not owed to the Department for electricity generated when an ocean renewable energy facility is connected to the regional power grid for testing purposes during a demonstration project if the holder of the temporary use authorization does not receive any revenue from the sale of that electricity. However, if the holder of the temporary use authorization does receive revenue from the sale of that electricity, the electricity produced shall be subject to payment of compensation at a rate to be determined by the Director.

(5) Data concerning the amount of generation ~~and its value~~ will be recorded and reported by the holder ~~of a temporary use authorization or lessee~~ to the Department on a basis to be determined by the Department ~~and contained in the authorization or lease.~~

## Appendix B

~~(6) In addition to the compensation required under OAR 141-140-0070(1), (2) and (4), the holder of a temporary use authorization or lessee is required to pay the compensation due for any uses of state-owned land that are not within the area authorized by the temporary use authorization or ocean energy facility lease.~~

**141-140-0080****General Terms and Conditions**

~~(1) The Department shall only offer a standard form of temporary use authorization or ocean renewable energy lease that has been approved by the Department of Justice.~~

~~Except for temporary use authorizations granted to an educational/research institution for a research project, the term of a temporary use authorization shall be determined by the Director based on the policies in OAR 141-140-0030 and the nature of the proposed project.~~

~~(2) An ocean renewable energy facility lease issued under these rules shall require approval by the State Land Board.~~

~~(3) Unless otherwise approved by the Director, (The term of a temporary use authorization granted to an educational/research institution for a research project shall not be more than five calendar years.~~

~~(4) Unless otherwise approved by the State Land Board, the term of an ocean renewable energy facility lease shall not be more than 30 years.~~

~~(5) Temporary use authorizations and ocean renewable energy facility leases shall be offered by the Department for an authorized area that is the minimum amount of area (including whatever exclusionary or safety zones may be necessary) determined by the Department to be required for the proposed ocean renewable energy monitoring equipment or proposed ocean energy facility.~~

~~(6) The applicant shall have 60 calendar days from the date of offer to execute a temporary use authorization or ocean renewable energy facility lease with the Department. The Department may revoke the offer after 60 calendar days, at which time the applicant may re-apply for an authorization in accordance with the provisions of these rules.~~

~~A temporary use authorization and an ocean energy facility lease shall be on a form supplied by the Department that has been approved for legal sufficiency by the Department of Justice pursuant to ORS 291.045 to 291.0476 (Public Contract Approval).~~

~~(7) The holder of a temporary use authorization or lessee shall:~~

- ~~(a) Take all reasonable precautions to protect persons, property and equipment from harm; and~~
- ~~(b) Dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waters of the state; and~~
- ~~(c) Conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat and protects marine water and air quality pursuant to the requirements of Statewide Planning Goal 19; and-~~

~~(d) Maintain all buildings, machinery, equipment and similar structures and improvements located within the authorized area in a good state of repair.~~

~~(e) Remove ocean energy monitoring equipment, ocean energy facilities and any other material, substance or related or supporting structure from the authorized area as directed by the Department within a period of time to be established by the Department as a condition of the authorization. If the holder of the temporary use authorization or lessee fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization or lessee shall be liable for all costs incurred by the State of Oregon for such removal.~~

## Appendix B

~~(86) A~~ The holder ~~of a temporary use authorization or lessee~~ may request the Department to temporarily close all or portions of the authorized area to the public, or to cooperate with other state and federal agencies to accomplish such a closure. However, the issuance of a temporary use authorization or an ocean renewable energy facility lease does not, by itself, grant the holder ~~or lessee~~ the right to use the authorized area to the exclusion of other public uses. A regulated navigation area, or safety and security zone established by the United States Coast Guard does not require a closure or restriction to be established through the Department.

~~(7) The holder of a temporary use authorization or lessee shall not change the number or types of ocean energy conversion devices or make any use of the authorized area that is not specifically authorized by a prior written authorization issued by the Department.~~

~~(98)~~ The Department and its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for any purpose.

~~(109)~~ The Department shall require that an applicant for a temporary use authorization or an ocean renewable energy facility lease present evidence to the Department prior to commencing the use that they have obtained:

(a) All authorizations required by applicable local, state and federal entities to undertake the proposed use; and

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

~~(11)~~ Pursuant to ORS 274.873, the Department shall incorporate the terms and conditions of a removal or fill state permit required for the ocean renewable energy facility into any temporary use authorization or ocean renewable energy facility lease issued.

~~(12)~~ A holder shall share any geologic and geophysical data, including bathymetry, backscatter, seismic reflection and sample data, generated by the holder regarding Oregon's Territorial Sea Floor with the State of Oregon.

~~(13)~~ A holder shall initiate removal of all structures, excluding qualifying structures that lie at least one meter beneath submerged lands in the territorial sea, within 12 months after the permanent cessation of use of the facility. An authorization from the Department must remain in place until all required structures are removed.

~~(14)~~ A holder shall complete removal of all structures, excluding anchors, cables and any other equipment that lies at least one meter beneath submerged lands in the territorial sea, within 24 months after the permanent cessation of use of the facility; or

~~(a)~~ In limited instances, the Director may extend this deadline if the holder can show good cause and has undertaken a good faith effort to remove the required structures.

~~(15)~~ A holder may be required to remove all structures that lie at least one meter beneath submerged lands in the territorial sea, if removal is deemed necessary by the Director, in consultation with the holder, and is permitted by the applicable requirements of federal regulatory agencies.

~~(c)~~ A surety bond and/or comprehensive or commercial general liability insurance as required by the Department or Oregon state law; and

~~(d)~~ Financial assurance as required in OAR 141-140-0080(10).

~~(10)~~ The holder of a temporary use authorization or lessee must maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate to the Department evidence that the holder or lessee has in effect the amount and form of required financial assurance, for:

## Appendix B

~~(a) The costs of closure and post-closure maintenance, excluding the removal of anchors that lie beneath submerged lands in the Territorial Sea, of ocean energy monitoring equipment and ocean energy facilities; and~~

~~(b) Any corrective action required by the Department or any other local, state or federal government agency with jurisdiction over the site to be taken at the site of the ocean energy monitoring equipment or ocean energy facility.~~

~~(11) Such cost estimates and evidence of the required financial assurance must be provided in writing to the Department:~~

~~(a) Prior to the granting of the temporary use authorization or ocean energy facility lease; and~~

~~(b) On an annual basis to be received by the Department by January 31 of every calendar year following the granting of the temporary use authorization or ocean energy facility lease by the Department or, if necessary, on a more frequent basis as required by the Department.~~

~~(12) The required financial assurance required by OAR 141-140-0080(10) may be satisfied by any one, or a combination of the following:~~

~~(a) Insurance;~~

~~(b) Establishment of a trust fund;~~

~~(c) Surety bond;~~

~~(d) Letter of credit; or~~

~~(e) Qualification as a self insurer.~~

~~(13) The Department:~~

~~(a) Shall determine the amount of, and terms of financial assurance required based on the cost estimates of the holder or lessee, and consider the nature and location of the use in relation to other uses and resources, any requirements of law, and any other unique factors of the proposed use or holder determined to be relevant by the Department; and~~

~~(b) May consult with the Risk Management Division of the Oregon Department of Administrative Services in determining the amount of, and terms of financial assurance required.~~

~~(14) The Department has the right to audit the records of a holder of a temporary use authorization or lessee to ensure compliance with these rules and the terms and conditions of an authorization granted under the provisions of these rules. Additionally, holders of temporary use authorizations or lessees a holder shall make their records available to Department staff or agents for such audit following receipt of a written request by the Department.~~

~~(17) The Department may terminate a temporary use authorization or lease if the development granted by the authorization has not commenced within two years of the date the authorization was granted. The Department shall notify the holder at least 30 calendar days prior to terminating the authorization.~~

~~(18) The Department may terminate a temporary use authorization or lease if the applicant has withdrawn their application, or been denied, authorizations required by applicable local, state and federal entities to undertake the proposed use. The Department shall notify the holder at least 30 calendar days prior to terminating the authorization.~~

~~(19) The holder of a temporary use authorization or lessee shall indemnify the State of Oregon and the Department of State Lands against any claim, liability or costs arising from or related to an action by the holder of the authorization or lease, or failure of the holder to act with respect to the ocean energy monitoring equipment or ocean energy facility. Such indemnification shall specifically include any release of a hazardous substance on or from the the ocean renewable energy monitoring equipment or an ocean energy facility facility or physical damage caused by~~

## Appendix B

any part of the ocean renewable energy ~~monitoring equipment or ocean energy~~ facility to persons or coastal structures.

**141-140-0090****Insurance and Bond**

(1) The Department ~~shall~~may require ~~the a~~ holder ~~of a temporary use authorization or lessees~~ to obtain ~~liability~~ insurance in specified amounts if the use, in the opinion of the Department, constitutes a risk to other uses of the ocean or the ocean shore, to public safety or to the State of Oregon, or if required by Oregon state law. The Department ~~shall~~may require that the State of Oregon be named as an additional insured party in any such policy.

(2) The Department:

(a) Shall determine the coverages and amounts of the insurance the holder ~~of a temporary use authorization and lessees~~ must obtain based on the nature and location of the use, any requirements of law, and any other unique factors of the proposed use determined to be relevant by the Department, and

(b) May consult with the Risk Management Division of the Oregon Department of Administrative Services, the Oregon Department of Justice, the JART, or any other qualified person, to determine the amount of insurance coverage required.

(3) The Department may, at its discretion, require that the holder of a temporary use authorization ~~or lessee~~ obtain a surety or bid bond in an amount specified by the Department (or a cash deposit which has the equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) or as required by Oregon state law to secure performance of all terms and conditions of ~~a temporary use authorization or an ocean energy facility lease~~the authorization.

(4) The Department shall require that the holder of an ocean renewable energy facility lease to obtain a surety or bid bond in an amount specified by the Department (or a cash deposit which has the equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) or as required by Oregon state law to secure performance of all terms and conditions of an ocean renewable energy facility lease. The value of the bond shall not be less than \$100,000.

**141-140-0095****Financial Assurance**

(1) A holder must maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate to the Department evidence that the holder has in effect the amount and form of required financial assurance for:

(a) The costs of closure and post-closure maintenance of the facility or device, excluding the removal of anchors, cables or any other equipment that lies at least one meter beneath submerged lands in the territorial sea; and

(b) Any corrective action, required by the Department or any other local, state or federal government agency with jurisdiction over the site, to be taken at the site of the ocean renewable energy monitoring equipment or ocean renewable energy facility.

(2) Such cost estimates must be prepared by a person qualified by experience and knowledge to prepare such cost estimates.

## Appendix B

- (3) Such cost estimates and evidence of the required financial assurance must be provided in writing to the Department prior to the granting of the temporary use authorization or ocean renewable energy facility lease.
- (4) The required financial assurance may be satisfied by any one, or a combination of the following:
- (a) Insurance specific to the development, operation, and decommissioning of ocean renewable energy projects; or
  - (b) Establishment of a trust fund with cash to the required dollar amount; or
  - (c) Surety bond; or,
  - (d) Letter of credit.
- (5) The State of Oregon, Department of State Lands shall be named as the beneficiary of any approved financial assurance instrument.
- (6) The holder shall update the information required under OAR 141-140-0095, and provide to the Department an updated form of financial assurance, by January 31<sup>st</sup> of each calendar year or on a more frequent basis as required by the Department.
- (7) The Department:
- (a) Shall determine the amount of and terms of financial assurance required based on the cost estimates of the holder, and consider the nature and location of the use in relation to other uses and resources, any requirements of law, and any other unique factors of the proposed use or holder determined to be relevant by the Department; and
  - (b) May consult with the Oregon Department of Justice, Risk Management Division of the Oregon Department of Administrative Services, the JART, or other qualified persons in determining the amount of and terms of financial assurance required.

**141-140-0100****Termination of a Temporary Use Authorization or Ocean Renewable Energy Facility Lease**

- (1) ~~If the holder of a temporary use authorization or lessee fails~~ ~~The failure of a holder~~ to comply with these rules or the terms and conditions of a temporary use authorization or an ocean renewable energy facility lease, or violation of es other laws covering the use of their authorized area, shall constitute a default.
- (2) ~~T~~he Department shall notify the holder ~~of the temporary use authorization or lessee~~ in writing of the default and demand correction within ~~a specified time frame~~ 30 calendar days from the date of notice.
- (3) ~~The~~ Director may extend the time period allowed to correct a default. An extension by the Director must be in writing.
- (4) If the holder ~~of a temporary use authorization or lessee~~ fails to correct the default within the time frame specified, the Department may:
- (a) Modify or terminate the temporary use authorization or an ocean renewable energy facility lease; and/or
  - (b) Request the Attorney General to take or cause to be taken appropriate legal action against the lessee or holder of the temporary use authorization.
- (5) The Department may require the holder to remove all or a part of the ocean renewable energy facility to cure a default, or if the authorization is terminated. If the holder fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure,

## Appendix B

the Department may remove them or cause them to be removed, and the holder of the authorization shall be liable for all costs incurred by the State of Oregon for such removal.

**141-140-0105****Renewal of Authorizations**

(1) A temporary use authorization is not renewable. A holder of an expiring temporary use authorization may apply for a new authorization under the provisions of these rules.

(2) A holder in good standing of an ocean renewable energy facility lease may renew for an additional term.

(a) A holder in good standing must exercise a right to renew no less than 12 months prior to the expiration of the ocean renewable energy lease.

(b) To exercise the right to renew, a holder in good standing must:

(A) Notify the Department of the holder's intent to renew on a form provided by the Department;

(B) Submit a non-refundable renewal fee of \$1,000 payable to the Department.

(C) Certify that the uses or structures that are the subject of the existing authorization are consistent with local, state, and federal law; and

(D) Certify that the existing uses and structures are consistent with the existing authorization.

The Department will not approve a renewal request that involves development of a type of ocean renewable energy not originally authorized in the lease or a subsequent modification.

(c) Upon receipt of the required information and renewal fee, the Department shall determine, in its sole discretion, whether:

(A) The right to renew was exercised not less than 12 months prior to the expiration of the then current term of the authorization;

(B) The holder has fully complied with the terms of the current authorization, the applicable statutes, or Oregon Administrative Rules; and

(C) The holder has fully complied with any other authorizations granted to them by the Department.

(d) The holder must provide any additional information that is requested by the Department in order to further evaluate the proposed renewal.

(e) If the Department determines that the renewal complies with the requirements of OAR 141-140-0105, the Department will provide written notice to the holder that the authorization has been renewed for the additional term stated in the notice.

(f) Compensation for the use of state-owned land shall be re-calculated upon renewal in accordance with the rules in place at the time of renewal. Compensation shall be due prior to the issuance of the renewal.

(g) As a condition of renewal, the Department may amend the terms and conditions of the authorization at the time of renewal. Amendments made through this process may be subject to JART and public review.

(h) If the Department determines that the renewal does not comply with the requirements of OAR 141-140-0105, the Department will provide written notice to the holder that the authorization will not be renewed. In that event, the authorization will terminate at the expiration of the current term. A holder of an expiring ocean renewable energy facility lease may apply for a new authorization under the provisions of these rules.

Formatted: Normal

**141-140-0110**

## Appendix B

**Assignment**

- (1) A temporary use authorization is not assignable.
- (2) An ocean renewable energy facility lease in good standing is assignable with prior written consent of the Department.
- (~~a~~3) To assign an ocean renewable energy facility lease, the lessee shall submit to the Department a:
- (~~A~~a) Notice of proposed assignment on a form provided by the Department at least 90~~60~~ calendar days (unless otherwise approved by the Director in writing) prior to the date that the assignment is to occur; and
- (~~B~~b) Non-refundable assignment processing fee of \$1,000~~750~~ payable to the Department.
- (~~b~~4) The ~~Department may request~~holder must provide any additional information that is requested by the Department concerning the proposed assignment.
- (~~c~~) The Department may request comment from the local, state, or federal agencies, the JART, or other affected persons.
- (~~d~~5) The Department may condition the assignment on the assignor retaining responsibility for some or all of the terms and conditions in the lease or guaranteeing the performance of the assignee.
- (~~e~~6) An assignment does not take effect until the Department authorizes it in writing.

**141-140-0115****Modifications for Use or Size**

- (1) A holder shall not change the number, location or types of structures, or make any use of the authorized area that is not specifically authorized by a prior written authorization issued by the Department.
- (2) In order to modify an authorization, the holder shall submit to the Department a:
- (a) Notice of proposed modification on a form provided by the Department at least 90 calendar days (unless otherwise approved by the Director in writing) prior to the date that the modification is to occur; and
- (b) Non-refundable processing fee of \$1,000 payable to the Department.
- (3) The Department shall request comment from the local, state, or federal agencies, the JART, or other affected persons.
- (4) The Department will evaluate the proposed modification and comments in order to determine if:
- (a) The proposed modification is consistent with Part Five of the Territorial Sea Plan; and
- (b) Is consistent with other applicable laws; and
- (c) Is consistent with the other provisions of these rules;
- (5) Upon evaluation, the Department may:
- (a) Approve the proposed modification;
- (b) Approve the proposed modification with conditions;
- (c) Request additional information in order to further evaluate the proposed modification;
- (d) Deny the proposed modification; or

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

## Appendix B

- (e) Determine that the proposed modification is a significant variation from the authorized use, and require the holder to complete a new application pursuant to OAR 141-140-0050.
- (6) Compensation for the use of state-owned land may be re-calculated upon modification of the authorization in accordance with the rules in place at the time of the modification. Any additional compensation shall be due prior to the issuance of the modification.

Formatted: Font: Bold

**141-140-0120****Reconsideration of Decision**

- (1) An applicant for a temporary use authorization or ocean **renewable** energy facility lease, or any other person adversely affected by the issuance or denial of temporary use authorization or an ocean **renewable** energy facility lease may request that the Director or the State Land Board, depending on which entity made the decision, reconsider the decision. A request for reconsideration must be filed **within 30 days of the issuance or denial, consistent with the authority in in compliance with ORS 183.482 or 183.484** ORS 183.480.
- (2) When an applicant for an authorization under these rules or any other person adversely affected by a decision of the Department concerning an authorization under these rules has exhausted the appeal process before the Director, s/he may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.

**141-140-0130****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 are authorized by, or conform with the terms and conditions of a temporary use authorization or an ocean **renewable** energy facility lease 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 a temporary use authorization, an ocean **renewable** energy facility lease, or other Department issued authorizations 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, 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-~~1040~~ or ORS 273 or 274 in connection with ~~ocean energy monitoring equipment~~ or an ocean **renewable** energy facility; or
  - (b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274, or rules promulgated under these statutes.
- (3) The Director shall give written notice of a civil penalty by registered or certified mail to the person incurring the penalty. The notice shall 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 141-140-0130(3). Such a request must be in writing. If no

## Appendix B

written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, or if the party requesting a hearing withdraws their request, the Director may make a final order by default imposing the penalty.

(5) In imposing a penalty under OAR 141-140-0130 of these rules, the Director shall 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;
- (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.~~745090(2)~~, a civil penalty imposed under OAR 141-140-0130 shall 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 141-140-0130, interest shall accrue at the maximum rate allowed by law from the date first due.

<b>FINAL DRAFT RULE FOR LAND BOARD CONSIDERATION</b>
--

**DIVISION 140**  
**RULES GOVERNING THE PLACEMENT OF AN OCEAN RENEWABLE ENERGY**  
**FACILITY ON, IN OR OVER**  
**STATE-OWNED LAND WITHIN THE TERRITORIAL SEA**

**141-140-0010****Applicability and Purpose**

(1) These rules apply to the construction and operation of ocean renewable energy facilities placed on, in or over state-owned submerged and submersible land in the territorial sea. This includes infrastructure physically connected to an ocean renewable energy facility that crosses state-owned submerged and submersible lands adjacent to the territorial sea.

(2) These rules do not apply to:

(a) Docks, infrastructure, facilities or structures on, in or over state-owned submerged and submersible land in the territorial sea that are not part of an ocean renewable energy facility. Proprietary authorizations for such docks, infrastructure, facilities or structures which are not defined as related or supporting structures are governed by the provisions of OAR 141-082;

(b) Scientific experiments and scientific equipment that are not part of an ocean renewable energy facility placed on, in or over state-owned submerged and submersible land in the territorial sea. Proprietary authorizations for such uses are governed by the provisions of OAR 141-125;

(c) The granting and renewal of easements for electricity transmission, telecommunication and other cables in the territorial sea that are not related to an ocean renewable energy facility authorized under these rules. These cables are governed by the provisions of OAR 141-083.

(3) The issuance of a temporary use authorization or an ocean renewable energy facility lease provides the holder with the State of Oregon's proprietary authorization for the ocean renewable energy facility to occupy the authorized area specified in the authorization. Other federal, state or local authorizations may also be required.

(4) Construction and operation shall not commence until the holder has received a Removal-Fill Authorization under ORS 196.800 to 196.990, and other required authorizations from local, state (such as an Ocean Shores Permit from the Oregon Department of Parks and Recreation), and federal entities (such as a preliminary permit or similar authorization from the Federal Energy Regulatory Commission).

**141-140-0020****Definitions**

(1) "Applicant" is any person applying for a temporary use authorization or ocean renewable energy facility lease.

(2) "Authorized Area" is the maximum area of state-owned land on, in or over which the Department will allow a person to construct and operate an ocean renewable energy facility under the terms and conditions of a temporary use authorization or ocean renewable energy facility lease. Included within the authorized area are:

(a) Any corridors on state-owned submerged and submersible land within, and adjacent to, the territorial sea for a related or supporting structure, including but not limited to electricity

## Appendix C

transmission or other cables necessary to connect the ocean renewable energy facility to land-based facilities; and

(b) Any required buffers, exclusionary or safety zones.

(3) "Closure" means the permanent cessation of operation of all or part of an ocean renewable energy facility and the subsequent removal of ocean renewable energy equipment authorized by a temporary use authorization or an ocean renewable energy facility lease granted by the Department.

(4) "Commercial Operation" as defined in ORS 274.870(1), means a project undertaken to generate ocean renewable energy for a purpose other than research, demonstration or personal use and that has financial profit as a goal.

(5) "Corrective Action" is an activity performed by the holder of a temporary use authorization or an ocean renewable energy facility lease, or their agent, to comply with the terms and conditions of their temporary use authorization or ocean renewable energy facility lease, or to correct a violation or threatened violation, or meet a requirement of applicable local, state or federal law.

(6) "Demonstration Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction and operation of an ocean renewable energy facility on, in or over state-owned submerged and submersible land in the territorial sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.

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

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

(9) "Educational/Research Institution" is any accredited public or private university or college, or non-profit research organization.

(10) "Holder" is a person who has been issued an authorization under these rules.

(11) "Holder in good standing" is a holder of an authorization by the Department that is not currently in default or non-compliance with any proprietary or regulatory authorization that has been issued by the Department.

(12) "Joint Agency Review Team" or "JART" is a team of representatives from agencies, jurisdictions and organizations that will review the adequacy of applications with respect to the applicable standards and screening criteria of the Territorial Sea Plan, and make recommendations to the Department on the approval of authorizations. The Department shall invite representatives from the following agencies, jurisdictions and organizations to be members of the JART:

(a) Oregon Departments of Fish and Wildlife, Oregon Parks and Recreation, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Water Resources Department, Energy, and Oregon Department of Geology and Mineral Industries;

(b) Federal agencies, as invited, with regulatory or planning authority applicable to the proposed project and location;

(c) Local jurisdictions including representatives from affected cities, counties, and their affected communities, and affected port districts;

(d) Statewide and local organizations and advisory committees, as invited, to participate in the JART application of specific standards, including but not limited to those addressing areas important to fisheries, ecological resources, recreation and visual

## Appendix C

impacts; and,

(e) Federally recognized Coastal Tribes in Oregon.

(13) "Northwest National Marine Renewable Energy Center" or "NNMREC", as described in Part Five of the Territorial Sea Plan, is an established ocean test site to conduct experimental marine renewable energy device testing. References to NNMREC in this rule pertain to the Mobile Ocean Test Berth, as described in Part Five of the Territorial Sea Plan.

(14) "Ocean Renewable Energy" as defined in ORS 274.870(2), means electricity that is generated through:

(a) The conversion of energy contained in the natural properties of the ocean, including but not limited to energy contained in waves and swells, the tides and currents, ocean temperature and salinity gradients; and

(b) Ocean offshore wind power.

(15) "Ocean Renewable Energy Facility" as defined in ORS 274.870(3), means any energy conversion technology or device that is used as a necessary component of a research project, demonstration project or commercial operation to generate ocean renewable energy, including but not limited to all buoys, anchors, energy collectors, cables, control and transmission lines, and other equipment necessary or useful to the project or operation.

(16) "Ocean Renewable Energy Facility Lease" is a written authorization issued by the Department to a person to occupy an authorized area for one or more ocean renewable energy facilities comprising a commercial operation.

(17) "Ocean Users" include, but are not limited to persons using the territorial sea for commerce, navigation, fishing or recreation as well as for the conservation of resources and the provision of ecological services.

(18) "Operating Fees" means compensation due to the Department for the commercial generation of power authorized by an ocean renewable energy facility lease.

(19) "Person" as defined in ORS 274.870(4), means a person as defined in ORS 174.100, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(20) "Permanent Cessation" means the permanent closure of the facility by the expiration or termination of the temporary use authorization or ocean renewable energy facility lease, or a final legally effective order to permanently cease operation(s) has come into effect.

(21) "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.

(22) "Research Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to an educational/research institution for the construction and operation an ocean renewable energy facility on, in or over state-owned submerged and submersible land in the territorial sea. The purpose of a research project is to obtain scientific data relating to ocean renewable energy and to test the technology used in, or functionality of, an experimental ocean energy conversion device.

(23) "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. The Department is the administrative arm of the State Land Board.

(24) "Statewide Planning Goal 19" or "Goal 19" is the Statewide Planning Goal of the Oregon Land Conservation and Development Commission to conserve marine resources and ecological

## Appendix C

functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

(25) "Structure" means anything placed, constructed, or erected on, in, or over state-owned submerged and submersible land that is associated with a use that requires an authorization under these rules.

(26) "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.

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

(28) "Temporary Use Authorization" is a written authorization issued by the Department to a person to use an authorized area for an ocean renewable energy facility comprising a research project or demonstration project.

(29) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from coastline in conformance with federal law.

(30) "Territorial Sea Plan" has the same meaning as provided in ORS 196.405(6). It is the plan for managing Oregon's territorial sea and ocean shore as required under ORS 196.405 through 196.580.

### **141-140-0030**

#### **Policies**

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, manages all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

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

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

(4) The Department will follow the guiding principles and resource-specific management prescriptions contained in its Real Estate Asset Management Plan, and consider the comments received from various local, state and federal agencies, other interested persons including, but not limited to tribal governments, port districts, business and community organizations, and fisher, recreationist and conservation groups, and the holders of Department-issued authorizations within or immediately adjacent to the requested area when determining whether to authorize or condition a temporary use authorization or ocean renewable energy facility lease.

(5) Pursuant to Part Five of the Territorial Sea Plan, "Oregon prefers to develop renewable energy through a precautionary approach that supports the use of pilot projects and phased development in the initial stages of commercial development."

(6) Pursuant to ORS 274.873:

## Appendix C

- (a) A person may not construct or operate an ocean renewable energy facility within Oregon's territorial sea without a proprietary authorization issued by the Department of State Lands and as provided by the Department by rule, or in a manner contrary to the conditions set out in the authorization;
- (b) An application for a proprietary authorization under this section must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea;
- (c) The Department may not issue a proprietary authorization for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea; and
- (d) The department shall incorporate the terms and conditions of the removal or fill permit required for the ocean renewable energy facility into the proprietary authorization.
- (7) The Department shall not grant a temporary use authorization or an ocean renewable energy facility lease if it determines that the proposed use or development:
- (a) Does not meet the requirements of Statewide Planning Goal 19 and the Oregon Ocean Resources Management Plan and the Territorial Sea Plan; or
- (b) Substantively impairs lawful uses or developments already occurring within the proposed authorized area. This determination will be made by the Department after consulting with holders of leases, authorizations, permits and easements in, and immediately adjacent to the requested area, and other interested persons.
- (8) Any transmission line or other cable authorized as part of a facility under these rules is subject to the implementation requirements of Part Four of the Territorial Sea Plan.
- (9) All administrative fees delineated in these rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest dollar.

**141-140-0040****Preliminary Application Requirements**

- (1) Prospective applicants shall meet with Department staff to discuss the proposed project and use before submitting a preliminary application to the Department. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in this meeting. Common invitees include city and county representation, the Oregon Department of Fish and Wildlife, the Department of Land Conservation and Development and the Oregon Parks and Recreation Department.
- (2) A person wanting to attain a temporary use authorization or ocean renewable energy facility lease must submit a preliminary application on a form provided by the Department.
- (3) A preliminary application shall be accompanied by a non-refundable fee payable to the Department in the amount of \$1,000.
- (4) A person applying to attain a temporary use authorization to test at the NNMREC is exempt from the provisions of OAR 141-140-0040(2) through (3), and may submit an application for a temporary use authorization upon completion of OAR 141-140-0040(1).
- (5) Upon receipt of a preliminary application for a temporary use authorization or ocean renewable energy facility lease, the Department will determine if it is complete. Applications determined by the Department to be incomplete shall be returned to the applicant with

## Appendix C

an explanation of the reason(s) for rejection.

(6) If a rejected application is resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected, no additional preliminary application fee will be assessed.

(7) If more than one application for a proposed area is received by the Department for the same or conflicting uses, the Department reserves the right to determine which proposed use(s) best fulfills the policies specified in OAR 141-140-0030, and accept and proceed with that application and deny the other(s).

(8) Upon acceptance by the Department of a preliminary application as complete, the Department will convene the JART as described in Part Five of the Territorial Sea Plan.

(9) The JART will review the preliminary application, and comment on the adequacy of the preliminary application, areas of concern, and areas where more information is needed.

(10) The Department and the JART will meet with the applicant to discuss the preliminary application:

(a) The Department and the JART will provide input to the applicant on how to complete the Resource and Use Inventory and Effects Evaluation and the Special Resource and Use Review Standards as described in Part Five of the Territorial Sea Plan.

(b) The Department and the JART will provide input to the applicant on the development of the Operation Plan, if required, as described in Part Five of the Territorial Sea Plan.

(11) The Department, with review of the JART, may waive inventory content when items are deemed non-applicable.

### **141-140-0045**

#### **First Right to Apply**

(1) A holder in good standing of a special use license administered under OAR 141-125 to collect scientific data on ocean renewable energy resources in the territorial sea shall be given a first right to apply for a temporary use authorization for a demonstration project under these rules. This first right applies to one contiguous authorized area per licensee, and for no larger of an area than 53 acres. For example, an area of 0.25 nautical miles by 0.25 nautical miles. The first right shall terminate if not exercised within 60 calendar days of the expiration date of the special use license:

(a) Upon receipt of a preliminary application from the licensee, the Department will review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the preliminary application is complete and the use conforms to the provisions of these rules, the licensee's application will be deemed accepted by the Department.

(b) If the licensee's preliminary application is incomplete, then the application must be resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected. Failure to resubmit a complete preliminary application within the allotted 60 calendar days shall result in the termination of the first right to apply.

(c) If the Department receives a complete preliminary application from another person for an area covered under the special use license, the Department shall provide written notice to the licensee of the existing authorization that an application has been received by the Department. Within 60 calendar days from the date of written notice from the Department, the licensee must

## Appendix C

provide the Department written notice of the licensee's intent to exercise the first right to apply, and submit a preliminary application for a temporary use authorization to the Department.

Failure to provide written notice and a preliminary application within 60 calendar days from the date of the Department's written notice shall result in the termination of the first right to apply

(2) A holder in good standing of a temporary use authorization to conduct a demonstration project shall be given a first right to apply for an ocean renewable energy facility lease under these rules. This first right applies to one contiguous authorized area per holder, and for no larger of an area than 53 acres. For example, an area of 0.25 nautical miles by 0.25 nautical miles. The first right shall terminate if not exercised within 60 calendar days of the expiration date of the temporary use authorization:

(a) Upon receipt of a preliminary application for an ocean renewable energy facility lease from the holder of a temporary use authorization, the Department will review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the application will be deemed accepted by the Department.

(b) If the holder of a temporary use authorization's preliminary application is incomplete, then, the application must be resubmitted within 60 calendar days from the date that the Department returned it (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected. Failure to resubmit a complete application within the allotted 60 calendar days shall result in the termination of the first right to apply.

(c) If the Department receives a complete preliminary application from another person for an area covered under the temporary use authorization, the Department shall provide written notice to the holder of the existing temporary use authorization that an application has been received by the Department. Within 60 calendar days from the date of written notice from the Department, the holder of a temporary use authorization must provide the Department written notice of their intent to exercise the first right to apply, and submit a preliminary application for a lease to the Department. Failure to provide written notice and a preliminary application within 60 calendar days from the date of the Department's written notice shall result in the termination of the first right to apply.

### **141-140-0050**

#### **Application Requirements**

(1) A person wanting to attain a temporary use authorization or ocean renewable energy facility lease under these rules shall:

(a) Comply with the provisions of OAR 141-140-0040;

(b) Apply in writing to the Department for either a temporary use authorization or an ocean renewable energy facility lease using a form provided by the Department; and

(c) Submit an application processing fee payable to the Department to cover the administrative costs of processing the application and issuing the authorization.

(A) The non-refundable application processing fee for a temporary use authorization is \$5,000.

(B) The application processing fee for an ocean renewable energy lease includes:

(i) A non-refundable application processing fee of \$5,000; and

(ii) \$1,000 per megawatt for each megawatt capacity in excess of five megawatts. A portion of this fee may be refundable upon written consent between the applicant and the Director.

(C) Considerations for a partial refund under OAR 141-140-0050(1)(c)(B) may include:

## Appendix C

- (i) The estimated expenditures accrued by the Department in processing all phases of the application;
  - (ii) The reason for the withdrawal of the application; and
  - (iii) Any other foreseeable expenditure that may be associated with the Department's administration of the proposed action.
- (2) Pursuant to Part Five of the Territorial Sea Plan, an applicant shall include with their application a(n):
- (a) Resource and Use Inventory and Effects Evaluation, and;
  - (b) Special Resource and Use Review Standards, and;
  - (c) Operation Plan, if required.
- (3) An applicant shall include with their application an analysis of, and any relevant supporting documents or studies, that were used to address the requirements of the Territorial Sea Plan and other applicable state policies.
- (4) Any person holding a temporary use authorization for a research project or demonstration project is required to submit a new application and the required application processing fee to the Department pursuant to the provisions of these rules if they want to:
- (a) Apply for a new temporary use authorization;
  - (b) Apply for an ocean renewable energy facility lease to install, construct, operate, maintain or remove a commercial operation; or
  - (c) Substantially change the scope of a research or demonstration project that has been previously authorized by the Department.
- (5) Unless otherwise allowed by the Director, a fully completed application for:
- (a) A temporary use authorization and an ocean renewable energy facility lease shall be submitted to the Department at least 180 calendar days prior to the proposed construction and operation of the ocean renewable energy facility.
  - (b) A temporary use authorization to test at NNMREC shall be submitted to the Department at least 150 calendar days prior to the proposed construction and operation of the ocean renewable energy facility.
  - (c) The Department and the JART shall discuss a proposed timeline for attaining an ocean renewable energy facility lease with the applicant during the preliminary application process.
- (6) An applicant wanting to attain a temporary use authorization to test at the NNMREC is exempt from the provisions of OAR 141-140-0050(2).

**141-140-0060****Application Review Process**

- (1) Upon receipt of an application for a temporary use authorization or ocean renewable energy facility lease, the Department will determine if it is complete. Applications determined by the Department to be incomplete may be returned to the applicant with an explanation of the reason(s) for rejection.
- (2) If a rejected application is resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.
- (3) The Department may deny an application for a temporary use authorization or ocean renewable energy facility lease if the applicant is currently in default or non-compliance with any proprietary or regulatory authorization that has been issued by the Department; or if the

## Appendix C

applicant's financial status or past business or management practices indicate that the applicant may not:

- (a) Fully meet the terms and conditions of the authorization or lease; or
- (b) Use the authorized area applied for in a way that meets the provisions of these rules.
- (4) Upon acceptance by the Department as complete, the application will be circulated to various local, state and federal agencies, other interested persons including, but not limited to federally recognized tribes, port districts, business and community organizations, ocean users, and the holders of Department-issued authorizations within or immediately adjacent to the requested area for review and comment. As part of this review, the Department will specifically request comments concerning:
  - (a) Conformance of the proposed use with:
    - (A) The provisions of these rules;
    - (B) Other local, state, and federal laws;
    - (C) The requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan; and
  - (b) Potential conflicts between the proposed use and existing uses that occur within the requested authorized area.
- (5) The Department may post a notice of an application and opportunity to comment at local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.
- (6) The Department shall reconvene the JART to evaluate the:
  - (a) Submitted application, and;
  - (b) Resource and Use Inventory and Effects Evaluation, and;
  - (c) Special Resource and Use Review Standards, and;
  - (d) Operation Plan, if required.
- (7) The JART shall make recommendations to the Department on:
  - (a) If the information provided by the applicant for the proposed project meets the requirements of the Territorial Sea Plan, and;
  - (b) If the Department should approve the request for a temporary use authorization or ocean renewable energy facility lease, and;
  - (c) Any additional conditions or stipulations that the Department should consider upon issuance of a temporary use authorization or ocean renewable energy facility lease.
- (8) Nothing in these rules prohibits or limits a JART member's ability to provide their individual comment on an application to the Department or the State Land Board through the public comment process. All comments received during the public comment period become part of the permanent record.
- (9) After receipt of a JART recommendation, in addition to agency and public comment concerning the application, the Department will advise the applicant in writing:
  - (a) If changes in the requested area are necessary to respond to agency or public comment; and
  - (b) If additional information is required from the applicant.
- (10) The Department shall not grant a temporary use authorization or an ocean renewable energy facility lease until it has received:
  - (a) All fees and compensation specified in these rules;
  - (b) Evidence of decommissioning financial assurance as required under OAR 141-140-0095; and

## Appendix C

(c) Evidence of any required insurance and/or surety bond under OAR 141-140-0090.

(11) Should the Department, in consultation with the applicant, the JART and other interested parties, determine that it is necessary to conduct environmental or other studies necessary to assist in evaluating the project's compliance with the requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan, the applicant shall be directly responsible for retaining and paying for the consultants and completing the required research.

**141-140-0070****Compensation**

(1) The holder of a temporary use authorization to conduct a research project or demonstration project shall annually remit to the Department a payment in the greater amount of \$500 or \$5.00 per acre of land within the authorized area. This annual payment shall be due to the Department until such time that the:

(a) Research project or demonstration project is completed and the ocean renewable energy facility is removed from the authorized area pursuant to the terms and conditions of the temporary use authorization and these rules;

(b) The temporary use authorization expires or is terminated by either the holder of the authorization or the Department and the ocean renewable energy facility is removed pursuant to the terms and conditions of the temporary use authorization and these rules; or

(c) Placement of an ocean renewable energy facility for commercial operation is authorized by an ocean renewable energy facility lease issued by the Department.

(2) The amount of annual compensation owed to the Department for an ocean renewable energy facility lease shall be the greater amount of \$500 or the sum of:

(a) \$3.00 per acre of land within the authorized area per year, and;

(b) Operating fees as calculated in subsection (3).

(3) The operating fees are determined by the following formula:

$F = M * H * c * P * r$ , where:

(a) F is the dollar amount of the annual operating fee;

(b) M is the nameplate capacity expressed in megawatts;

(c) H is the number of hours in a year, equal to 8,760, used to calculate an annual payment;

(d) c is the "capacity factor" representing the anticipated efficiency of the facility's operation expressed as a decimal between zero and one;

(e) P is a measure of the annual average wholesale electric power price expressed in dollars per megawatt hour, as discussed below; and

(f) r is the operating fee rate expressed as a decimal between zero and one. Unless the Director specifies otherwise, the operating fee rate (r) is 0.02. The Director may use discretion to set a different operating fee rate. For example, a reduced rate may be established for new, smaller project. Conversely, an increased rate may be established for a larger, mature project.

(4) Compensation is not owed to the Department for electricity generated when an ocean renewable energy facility is connected to the regional power grid for testing purposes during a demonstration project if the holder of the temporary use authorization does not receive any revenue from the sale of that electricity. However, if the holder of the temporary use

## Appendix C

authorization does receive revenue from the sale of that electricity, the electricity produced shall be subject to payment of compensation at a rate to be determined by the Director.

(5) Data concerning the amount of generation will be recorded and reported by the holder to the Department on a basis to be determined by the Department.

**141-140-0080****General Terms and Conditions**

(1) The Department shall only offer a standard form of temporary use authorization or ocean renewable energy lease that has been approved by the Department of Justice.

(2) An ocean renewable energy facility lease issued under these rules shall require approval by the State Land Board.

(3) Unless otherwise approved by the Director, the term of a temporary use authorization shall not be more than five calendar years.

(4) Unless otherwise approved by the State Land Board, the term of an ocean renewable energy facility lease shall not be more than 30 years.

(5) Temporary use authorizations and ocean renewable energy facility leases shall be offered by the Department for an authorized area that is the minimum amount of area determined by the Department to be required for the proposed ocean renewable energy facility.

(6) The applicant shall have 60 calendar days from the date of offer to execute a temporary use authorization or ocean renewable energy facility lease with the Department. The Department may revoke the offer after 60 calendar days, at which time the applicant may re-apply for an authorization in accordance with the provisions of these rules.

(7) The holder shall:

(a) Take all reasonable precautions to protect persons, property and equipment from harm; and

(b) Dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waters of the state; and

(c) Conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat and protects marine water and air quality pursuant to the requirements of Statewide Planning Goal 19; and

(d) Maintain all structures and improvements located within the authorized area in a good state of repair.

(8) A holder may request the Department to temporarily close all or portions of the authorized area to the public, or to cooperate with other state and federal agencies to accomplish such a closure. However, the issuance of a temporary use authorization or an ocean renewable energy facility lease does not, by itself, grant the holder the right to use the authorized area to the exclusion of other public uses. A regulated navigation area, or safety and security zone established by the United States Coast Guard does not require a closure or restriction to be established through the Department.

(9) The Department and its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for any purpose.

(10) The Department shall require that an applicant for a temporary use authorization or an ocean renewable energy facility lease present evidence to the Department prior to commencing the use that they have obtained:

(a) All authorizations required by applicable local, state and federal entities to undertake the proposed use; and

## Appendix C

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

(11) Pursuant to ORS 274.873, the Department shall incorporate the terms and conditions of a removal or fill state permit required for the ocean renewable energy facility into any temporary use authorization or ocean renewable energy facility lease issued.

(12) A holder shall share any geologic and geophysical data, including bathymetry, backscatter, seismic reflection and sample data, generated by the holder regarding Oregon's Territorial Sea Floor with the State of Oregon.

(13) A holder shall initiate removal of all structures, excluding qualifying structures that lie at least one meter beneath submerged lands in the territorial sea, within 12 months after the permanent cessation of use of the facility. An authorization from the Department must remain in place until all required structures are removed.

(14) A holder shall complete removal of all structures, excluding anchors, cables and any other equipment that lies at least one meter beneath submerged lands in the territorial sea, within 24 months after the permanent cessation of use of the facility; or

(a) In limited instances, the Director may extend this deadline if the holder can show good cause and has undertaken a good faith effort to remove the required structures.

(15) A holder may be required to remove all structures that lie at least one meter beneath submerged lands in the territorial sea, if removal is deemed necessary by the Director, in consultation with the holder, and is permitted by the applicable requirements of federal regulatory agencies.

(16) The Department has the right to audit the records of a holder to ensure compliance with these rules and the terms and conditions of an authorization granted under the provisions of these rules. Additionally, a holder shall make their records available to Department staff or agents for such audit following receipt of a written request by the Department.

(17) The Department may terminate a temporary use authorization or lease if the development granted by the authorization has not commenced within two years of the date the authorization was granted. The Department shall notify the holder at least 30 calendar days prior to terminating the authorization.

(18) The Department may terminate a temporary use authorization or lease if the applicant has withdrawn their application, or been denied, authorizations required by applicable local, state and federal entities to undertake the proposed use. The Department shall notify the holder at least 30 calendar days prior to terminating the authorization.

(19) The holder shall indemnify the State of Oregon and the Department of State Lands against any claim, liability or costs arising from or related to an action by the holder. Such indemnification shall specifically include any release of a hazardous substance on or from the ocean renewable energy facility or physical damage caused by any part of the ocean renewable energy facility to persons or coastal structures.

#### **141-140-0090**

##### **Insurance and Bond**

(1) The Department shall require a holder to obtain insurance in specified amounts if the use, in the opinion of the Department, constitutes a risk to other uses of the ocean or the ocean shore, to public safety or to the State of Oregon, or if required by Oregon state law. The Department shall require that the State of Oregon be named as an additional insured party in any such policy.

## Appendix C

(2) The Department:

(a) Shall determine the coverages and amounts of the insurance the holder must obtain based on the nature and location of the use, any requirements of law, and any other unique factors of the proposed use determined to be relevant by the Department, and

(b) May consult with the Risk Management Division of the Oregon Department of Administrative Services, the Oregon Department of Justice, the JART, or any other qualified person, to determine the amount of insurance coverage required.

(3) The Department may, at its discretion, require that the holder of a temporary use authorization obtain a surety or bid bond in an amount specified by the Department (or a cash deposit which has the equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) or as required by Oregon state law to secure performance of all terms and conditions of the authorization.

(4) The Department shall require that the holder of an ocean renewable energy facility lease to obtain a surety or bid bond in an amount specified by the Department (or a cash deposit which has the equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) or as required by Oregon state law to secure performance of all terms and conditions of an ocean renewable energy facility lease. The value of the bond shall not be less than \$100,000.

#### **141-140-0095**

##### **Financial Assurance**

(1) A holder must maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate to the Department evidence that the holder has in effect the amount and form of required financial assurance for:

(a) The costs of closure and post-closure maintenance of the facility or device, excluding the removal of anchors, cables or any other equipment that lies at least one meter beneath submerged lands in the territorial sea; and

(b) Any corrective action, required by the Department or any other local, state or federal government agency with jurisdiction over the site, to be taken at the site of the ocean renewable energy monitoring equipment or ocean renewable energy facility.

(2) Such cost estimates must be prepared by a person qualified by experience and knowledge to prepare such cost estimates.

(3) Such cost estimates and evidence of the required financial assurance must be provided in writing to the Department prior to the granting of the temporary use authorization or ocean renewable energy facility lease.

(4) The required financial assurance may be satisfied by any one, or a combination of the following:

(a) Insurance specific to the development, operation, and decommissioning of ocean renewable energy projects; or

(b) Establishment of a trust fund with cash to the required dollar amount; or

(c) Surety bond; or,

(d) Letter of credit.

(5) The State of Oregon, Department of State Lands shall be named as the beneficiary of any approved financial assurance instrument.

## Appendix C

(6) The holder shall update the information required under OAR 141-140-0095, and provide to the Department an updated form of financial assurance, by January 31<sup>st</sup> of each calendar year or on a more frequent basis as required by the Department.

(7) The Department:

(a) Shall determine the amount of and terms of financial assurance required based on the cost estimates of the holder, and consider the nature and location of the use in relation to other uses and resources, any requirements of law, and any other unique factors of the proposed use or holder determined to be relevant by the Department; and

(b) May consult with the Oregon Department of Justice, Risk Management Division of the Oregon Department of Administrative Services, the JART, or other qualified persons in determining the amount of and terms of financial assurance required.

### **141-140-0100**

#### **Termination of a Temporary Use Authorization or Ocean Renewable Energy Facility Lease**

(1) The failure of a holder to comply with these rules or the terms and conditions of a temporary use authorization or an ocean renewable energy facility lease, or violation of other laws covering the use of their authorized area, shall constitute a default.

(2) The Department shall notify the holder in writing of the default and demand correction within 30 calendar days from the date of notice.

(3) The Director may extend the time period allowed to correct a default. An extension by the Director must be in writing.

(4) If the holder fails to correct the default within the time frame specified, the Department may:

(a) Modify or terminate the temporary use authorization or an ocean renewable energy facility lease; and/or

(b) Request the Attorney General to take or cause to be taken appropriate legal action against the lessee or holder of the temporary use authorization.

(5) The Department may require the holder to remove all or a part of the ocean renewable energy facility to cure a default, or if the authorization is terminated. If the holder fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization shall be liable for all costs incurred by the State of Oregon for such removal.

### **141-140-0105**

#### **Renewal of Authorizations**

(1) A temporary use authorization is not renewable. A holder of an expiring temporary use authorization may apply for a new authorization under the provisions of these rules.

(2) A holder in good standing of an ocean renewable energy facility lease may renew for an additional term.

(a) A holder in good standing must exercise a right to renew no less than 12 months prior to the expiration of the ocean renewable energy lease.

(b) To exercise the right to renew, a holder in good standing must:

(A) Notify the Department of the holder's intent to renew on a form provided by the Department;

(B) Submit a non-refundable renewal fee of \$1,000 payable to the Department.

(C) Certify that the uses or structures that are the subject of the existing authorization are

## Appendix C

consistent with local, state, and federal law; and

(D) Certify that the existing uses and structures are consistent with the existing authorization.

The Department will not approve a renewal request that involves development of a type of ocean renewable energy not originally authorized in the lease or a subsequent modification.

(c) Upon receipt of the required information and renewal fee, the Department shall determine, in its sole discretion, whether:

(A) The right to renew was exercised not less than 12 months prior to the expiration of the then current term of the authorization;

(B) The holder has fully complied with the terms of the current authorization, the applicable statutes, or Oregon Administrative Rules; and

(C) The holder has fully complied with any other authorizations granted to them by the Department.

(d) The holder must provide any additional information that is requested by the Department in order to further evaluate the proposed renewal.

(e) If the Department determines that the renewal complies with the requirements of OAR 141-140-0105, the Department will provide written notice to the holder that the authorization has been renewed for the additional term stated in the notice.

(f) Compensation for the use of state-owned land shall be re-calculated upon renewal in accordance with the rules in place at the time of renewal. Compensation shall be due prior to the issuance of the renewal.

(g) As a condition of renewal, the Department may amend the terms and conditions of the authorization at the time of renewal. Amendments made through this process may be subject to JART and public review.

(h) If the Department determines that the renewal does not comply with the requirements of OAR 141-140-0105, the Department will provide written notice to the holder that the authorization will not be renewed. In that event, the authorization will terminate at the expiration of the current term. A holder of an expiring ocean renewable energy facility lease may apply for a new authorization under the provisions of these rules.

### **141-140-0110**

#### **Assignment**

(1) A temporary use authorization is not assignable.

(2) An ocean renewable energy facility lease in good standing is assignable with prior written consent of the Department.

(a) To assign an ocean renewable energy facility lease, the lessee shall submit to the Department a:

(A) Notice of proposed assignment on a form provided by the Department at least 90 calendar days (unless otherwise approved by the Director in writing) prior to the date that the assignment is to occur; and

(B) Non-refundable assignment processing fee of \$1,000 payable to the Department.

(b) The holder must provide any additional information that is requested by the Department concerning the proposed assignment.

(c) The Department may request comment from the local, state, or federal agencies, the JART, or other affected persons.

## Appendix C

(d) The Department may condition the assignment on the assignor retaining responsibility for some or all of the terms and conditions in the lease or guaranteeing the performance of the assignee.

(e) An assignment does not take effect until the Department authorizes it in writing.

**141-140-0115****Modifications for Use or Size**

(1) A holder shall not change the number, location or types of structures or make any use of the authorized area that is not specifically authorized by a prior written authorization issued by the Department.

(2) In order to modify an authorization, the holder shall submit to the Department a:

(a) Notice of proposed modification on a form provided by the Department at least 90 calendar days (unless otherwise approved by the Director in writing) prior to the date that the modification is to occur; and

(b) Non-refundable processing fee of \$1,000 payable to the Department.

(3) The Department shall request comment from the local, state, or federal agencies, the JART, or other affected persons.

(4) The Department will evaluate the proposed modification and comments in order to determine if:

(a) The proposed modification is consistent with Part Five of the Territorial Sea Plan; and

(b) Is consistent with other applicable laws; and

(c) Is consistent with the other provisions of these rules;

(5) Upon evaluation, the Department may:

(a) Approve the proposed modification;

(b) Approve the proposed modification with conditions;

(c) Request additional information in order to further evaluate the proposed modification;

(d) Deny the proposed modification; or

(e) Determine that the proposed modification is a significant variation from the authorized use, and require the holder to complete a new application pursuant to OAR 141-140-0050.

(6) Compensation for the use of state-owned land may be re-calculated upon modification of the authorization in accordance with the rules in place at the time of the modification. Any additional compensation shall be due prior to the issuance of the modification.

**141-140-0120****Reconsideration of Decision**

(1) An applicant for a temporary use authorization or ocean renewable energy facility lease, or any other person adversely affected by the issuance or denial of temporary use authorization or an ocean renewable energy facility lease may request that the Director or the State Land Board, depending on which entity made the decision, reconsider the decision. A request for reconsideration must be filed within 30 days of the issuance or denial, consistent with the authority in ORS 183.480.

(2) When an applicant for an authorization under these rules or any other person adversely affected by a decision of the Department concerning an authorization under these rules has exhausted the appeal process before the Director, s/he may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.

## Appendix C

**141-140-0130****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 are authorized by, or conform with the terms and conditions of a temporary use authorization or an ocean renewable energy facility lease 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 a temporary use authorization, an ocean renewable energy facility lease, or other Department issued authorizations 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, 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 141-140 or ORS 273 or 274 in connection with an ocean renewable energy facility; or

(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274, or rules promulgated under these statutes.

(3) The Director shall give written notice of a civil penalty by registered or certified mail to the person incurring the penalty. The notice shall 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 141-140-0130(3). Such a 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, or if the party requesting a hearing withdraws their request, the Director may make a final order by default imposing the penalty.

(5) In imposing a penalty under OAR 141-140-0130 of these rules, the Director shall 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;

(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 183.745, a civil penalty imposed under OAR 141-140-0130 shall 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 141-140-0130, interest shall accrue at the maximum rate allowed by law from the date first due.



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## M E M O R A N D U M

Kate Brown  
Governor

October 17, 2017

Dennis Richardson  
Secretary of State

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

Tobias Read  
State Treasurer

**From:** Louise Solliday  
Executive Director of the Oregon Ocean Science Trust (OOST)

**Subject:** 2017 OOST Update

Legislation creating the OOST was initially passed in 2013, with amendments occurring to that legislation during the 2014 session. (Appendix A) The 5 voting OOST members were appointed by the Land Board in October 2015 and OOST held its first meeting in December 2015. (Appendix B and C)

No budget has been approved for OOST during the legislative sessions since its creation. Despite that, some work has been accomplished. The OOST has:

1. Adopted by-laws;
2. Hosted a 2 day science summit, with financial support from The Nature Conservancy through a Packard Foundation Grant, to set priorities for research and monitoring in Oregon's nearshore. The OOST approved 5 priority questions that need to be answered to better inform decision making by managers and policy makers. (Appendix D)
3. Developed an inventory of current research and monitoring projects in the nearshore;
4. Invited the California Ocean Science Trust to visit with OOST to share their efforts with us;

5. Adopted rules for a grant program for funding nearshore research and monitoring projects, should money be made available for the grant program in the future; and
6. Coordinated with other nearshore efforts including the Ocean Acidification Hypoxia Work Group, Ocean Policy Advisory Council, Oregon Coastal and Ocean Information Network, and Ocean Acidification Fishermen's Roundtable.

DSL staff provide administrative support to OOST. This includes staffing OOST meetings, maintaining a listserv of interested parties, processing travel reimbursements, and hosting the OOST Web site.

The OOST is next scheduled to meet on December 7 at which time we will discuss future direction, given the lack of state funding for our efforts. This will include discussion of alternative sources of funding. The Lincoln County Board of Commissioners has provided us with a \$5,000 grant which we have not yet decided how to spend. The Nature Conservancy has expressed interest in continuing to support our work also.

We will be providing a report to the legislature by March 31, 2018 as required in the statute.

#### **APPENDIX**

- A. ORS 196.565 Amendment
- B. October 8, 2013 Land Board Agenda Item 1e
- C. October 13, 2015 Land Board Agenda Item 4
- D. Priority Nearshore Research and Monitoring Questions

## CHAPTER 2

AN ACT

SB 1545

Relating to the Oregon Ocean Science Trust; amending ORS 196.565 and 196.568; and declaring an emergency.

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

**SECTION 1.** ORS 196.565 is amended to read:

196.565. (1) The Oregon Ocean Science Trust is established, consisting of *[five]* **seven** members appointed *[by the State Land Board.]* **as follows:**

(a) **The President of the Senate shall appoint one member from among members of the Senate.**

(b) **The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives.**

(c) **The State Land Board shall appoint five members who:**

(A) **Are residents of this state who demonstrate a commitment and interest in the stewardship of Oregon's ocean and coastal resources; and**

(B) **Have not less than five years' experience in competitive granting, marine science, foundations or fiscal assurance.**

(2) The term of office of each **voting** member **appointed under subsection (1)(c) of this section** is four years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall appoint a successor whose term begins on January 1 next following. A 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.

*[(3) The members specified in subsection (1) of this section must:]*

*[(a) Be residents of this state who demonstrate a commitment and interest in the stewardship of Oregon's ocean and coastal resources; and]*

*[(b) Have not less than five years' experience in competitive granting, marine science, foundations or fiscal assurance.]*

*[(4)]* **(3)** A majority of the **voting** members of the trust constitutes a quorum for the transaction of business.

*[(5)]* **(4)** The trust shall select one of its **voting** members to be the executive director of the trust, for such terms and with the duties and powers that the trust determines are necessary for the performance of the office.

*[(6)]* **(5)** The trust shall meet at least twice each year at a place, day and hour determined by the trust. The trust may also meet at other times and places specified by the call of the executive director or of a majority of the **voting** members of the trust.

*[(7)]* **(6)** The trust may adopt any rules necessary to carry out the duties of the trust.

*[(8) Members of the trust are not entitled to compensation or reimbursement for expenses and serve as volunteers for the trust.]*

**(7) Members of the trust who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the trust shall be paid out of funds appropriated to the Department of State Lands for purposes of administering the trust.**

**(8) Members of the Legislative Assembly appointed to the trust are nonvoting members of the trust and may act in an advisory capacity only.**

(9) The Department of State Lands shall provide a facility and administrative support for the meetings of the trust as requested. Other agencies shall provide support as requested by the trust in order to provide the trust with assistance on the priority marine science needs of the state.

**SECTION 2.** ORS 196.568 is amended to read:

196.568. (1) Moneys deposited in the Oregon Ocean Science Fund may be used to reimburse:

(a) The State Treasurer for the costs of administering the fund as provided in ORS 196.567.

(b) The Department of State Lands for the costs of administering the Oregon Ocean Science Trust as provided in ORS 196.565 **(7) and (9)**.

(c) Other agencies for the costs of providing support to the trust as requested under ORS 196.565 **(9)**.

(2) The total amount of costs paid under this section may not exceed five percent of the total amount of moneys deposited in the fund during the biennium.

**SECTION 3. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.**

Approved by the Governor February 26, 2014

Filed in the office of Secretary of State February 26, 2014

Effective date February 26, 2014



# Oregon

John A. Kitzhaber, MD, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregonstatelands.us](http://www.oregonstatelands.us)

### State Land Board

John A. Kitzhaber, MD

Governor

Kate Brown

Secretary of State

Ted Wheeler

State Treasurer

## State Land Board

**Regular Meeting  
October 8, 2013  
Agenda Item 1e**

### **SUBJECT**

Appointment of the Oregon Ocean Science Trust (Trust) by the State Land Board.

### **ISSUE**

Whether the Land Board should direct the Department to move forward with recommendations for the appointment of trust members.

### **AUTHORITY**

Oregon Constitution, Article VIII, Section 5

ORS 183; regarding administrative procedures and rules of state agencies

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

ORS 274; regarding submerged and submersible lands in general

Oregon Laws 776

### **BACKGROUND**

Senate Bill 737 was signed into law on August 14, 2013. This bill establishes the Oregon Ocean Science Trust and Fund. The Board is responsible for appointing the 5 member Trust.

The duties of the Trust are to:

- Promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon's ocean and coastal resources;
- Promote innovative, collaborative, community-oriented, multi-institutional approaches to research and monitoring related to Oregon's ocean and coastal resources;

- Enhance this state's capacity for peer-reviewed scientific ocean and coastal research; and
- Subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon's ocean and coastal resources.

In order to qualify for appointment to the Trust, members must:

- 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' experience in competitive granting, marine science, foundations or fiscal assurance.

The first term of the Trust is staggered. Two serve for a term ending December 31, 2014; and three serve for a term ending December 31, 2015. The term of office for each member henceforth is four years, but members serve at the pleasure of the Board. Before the expiration of the term of a member, the Board shall appoint a successor whose term begins on January 1 of the following year. A 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 remainder of the term.

### **RECOMMENDATION**

The Department recommends that the Land Board direct the Department to move forward with recommendations for appointments to the Oregon Ocean Science Trust, to be presented to the Board at their December 2013 meeting.

### **APPENDIX**

A. Enrolled Senate Bill 737

77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

**Enrolled**  
**Senate Bill 737**

Sponsored by Senator ROBLAN; Senators JOHNSON, KRUSE, WHITSETT

CHAPTER .....

AN ACT

Relating to ocean resources; appropriating money; and declaring an emergency.

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

**OREGON OCEAN SCIENCE TRUST**

**SECTION 1.** (1) The Oregon Ocean Science Trust is established, consisting of five members appointed by the State Land Board.

(2) The term of office of each member is four years, but a member serves at the pleasure of the board. Before the expiration of the term of a member, the board shall appoint a successor whose term begins on January 1 next following. A 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.

(3) The members specified in subsection (1) of this section must:

(a) Be residents of this state who demonstrate a commitment and interest in the stewardship of Oregon's ocean and coastal resources; and

(b) Have not less than five years' experience in competitive granting, marine science, foundations or fiscal assurance.

(4) A majority of the members of the trust constitutes a quorum for the transaction of business.

(5) The trust shall select one of its members to be the executive director of the trust, for such terms and with the duties and powers that the trust determines are necessary for the performance of the office.

(6) The trust shall meet at least twice each year at a place, day and hour determined by the trust. The trust may also meet at other times and places specified by the call of the executive director or of a majority of the members of the trust.

(7) The trust may adopt any rules necessary to carry out the duties of the trust.

(8) Members of the trust are not entitled to compensation or reimbursement for expenses and serve as volunteers for the trust.

(9) The Department of State Lands shall provide a facility and administrative support for the meetings of the trust as requested. Other agencies shall provide support as requested by the trust in order to provide the trust with assistance on the priority marine science needs of the state.

**DUTIES OF THE TRUST**

**SECTION 2.** The Oregon Ocean Science Trust shall:

- (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.

**OREGON OCEAN SCIENCE FUND**

**SECTION 3.** (1) The Oregon Ocean Science Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Ocean Science Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Ocean Science Trust for the purpose of carrying out the provisions of sections 1, 2, 4 and 5 of this 2013 Act.

(2) The trust may accept grants, donations, contributions or gifts from any source for deposit in the fund.

(3) The fund shall consist of:

- (a) Moneys accepted by the trust pursuant to subsection (2) of this section;
- (b) Moneys appropriated by the Legislative Assembly;
- (c) Interest earned on moneys in the fund; and
- (d) Any moneys described in subsection (4) of this section.

(4) Subject to and consistent with federal law, any moneys received by the State of Oregon from the federal government that constitute the state's distributive share of the amounts collected under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., shall be deposited in the fund.

(5) Of the moneys in the fund that are derived from the state's distributive share of the amounts collected under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., the coastal county adjacent to the lands containing tracts for which the moneys are received by the state shall receive 30 percent of the distributive share received by the state for those lands. Where the lands containing tracts for which moneys are received are located adjacent to more than one county of this state, each county adjacent to the lands shall receive a portion of the 30 percent allocation that is proportionate to the area of the lands that are adjacent to the county.

**SECTION 4.** (1) Moneys deposited in the Oregon Ocean Science Fund may be used to reimburse:

(a) The State Treasurer for the costs of administering the fund as provided in section 3 of this 2013 Act.

(b) The Department of State Lands for the costs of administering the Oregon Ocean Science Trust as provided in section 1 (9) of this 2013 Act.

(c) Other agencies for the costs of providing support to the trust as requested under section 1 (9) of this 2013 Act.

(2) The total amount of costs paid under this section may not exceed five percent of the total amount of moneys deposited in the fund during the biennium.

**REPORT TO LEGISLATIVE ASSEMBLY**

**SECTION 5.** The Oregon Ocean Science Trust shall submit a report to the Legislative Assembly, in the manner provided by ORS 192.245, by March 31 of each even-numbered year, describing the progress of the trust in carrying out its duties specified in section 2 of this

2013 Act. The report may include relevant issues and trends of significance, including emerging scientific research and public policy.

MISCELLANEOUS

SECTION 6. Notwithstanding the term of office specified by section 1 of this 2013 Act, of the members first appointed to the Oregon Ocean Science Trust:

- (1) Two shall serve for a term ending December 31, 2014.
- (2) Three shall serve for a term ending December 31, 2015.

SECTION 7. The unit captions used in this 2013 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 2013 Act.

EMERGENCY CLAUSE

SECTION 8. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate June 25, 2013

.....  
 Robert Taylor, Secretary of Senate

.....  
 Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

.....  
 John Kitzhaber, Governor

Passed by House June 28, 2013

.....  
 Tina Kotek, Speaker of House

Filed in Office of Secretary of State:

.....M.,....., 2013

.....  
 Kate Brown, Secretary of State



Kate Brown, Governor

**Department of State Lands**

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)**State Land Board**

Kate Brown

Governor

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

**State Land Board****Regular Meeting  
October 13, 2015  
Agenda Item 4****SUBJECT**

Appointment of five (5) voting members to the Oregon Ocean Science Trust (Trust) by the State Land Board.

**ISSUE**

Whether the Land Board should appoint the recommended voting members 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 8, 2013 regular meeting, the Land Board directed the Department to make recommendations for appointments of voting members to the Oregon Ocean Science Trust, which would be presented to the Board at their December 2013 meeting (Appendix A).

Soon after the October 2013 Land Board meeting, the Department was informed that legislation was being introduced to amend some of the requirements of the Trust and Trust membership. As a result of this legislation, the Department suspended its work on finding and recommending voting members to the Trust. Senate Bill 1545 (Appendix B) was introduced and passed during the 2014 legislative session. The Department has

worked with the Governor's Natural Resources Office as well as interested legislators since the 2014 session to identify appropriate candidates for 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, 2014; and the other three voting members to serve for a term ending December 31, 2015. In order to meet the requirements of the 2013 law, the Department recommends that the Board appoint two voting members to serve for a term ending December 31, 2018; and three voting

members to be appointed for a term ending December 31, 2015, with a recommendation to immediately reappoint these three voting members to a full four-year term that will end on December 31, 2019.

### **TRUST NOMINEES**

The Governor's Natural Resources Office has coordinated with the Department in selecting nominees to serve on the Trust based on their background and the requirements of ORS 196.565. Below are the nominees for the Board's consideration.

**Louise Solliday**, retired, former Department of State Lands Director and Governor's natural resources policy advisor (Tidewater, OR).

**Laura Anderson**, Owner, Local Ocean Seafood and Commissioner, Oregon Fish and Wildlife Commission (Newport, OR).

**Emily Goodwin**, Executive Director, Cascade Mountain School and former foundation ocean program officer (Hood River, OR).

**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).

**Krystyna Wolniakowski**, Executive Director, Columbia River Gorge Commission and former director, northwest region, National Fish and Wildlife Foundation. (Lake Oswego, OR).

### **RECOMMENDATION**

The Department recommends that the State Land Board appoint the following individuals to the Trust as voting members:

- **Laura Anderson** – recommendation of appointment for a term ending December 31, 2015, and reappointment for a 4-year term ending December 31, 2019.
- **Emily Goodwin** – recommendation of appointment for a term ending December 31, 2018.
- **Louise Solliday** – recommendation of appointment for a term ending December 31, 2015, and reappointment for a 4-year term ending December 31, 2019.
- **Jim Sumich** – recommendation of appointment for a term ending December 31, 2018.
- **Krystyna Wolniakowski** – recommendation of appointment for a term ending December 31, 2015, and reappointment for a 4-year term ending December 31, 2019.

### **APPENDICIES**

- A. State Land Board Agenda Item 1e from the October 8, 2013 Regular Meeting
- B. SB 1545, Oregon Laws 2014

## Priority Nearshore Research and Monitoring Questions –Adopted by the Ocean Science Trust at the August 3, 2016 meeting

---

- What are the distribution and abundance of economically and ecologically important species, and the habitats on which they depend, in the nearshore environment?
- How are economically and ecologically important species and their habitats affected by changes in the physical, chemical and biological nearshore environment?
- How do changes in ocean conditions affect state and local community vulnerability/resilience? What are the local drivers of changing ocean conditions?
- What options exist for adapting to, mitigating and possibly minimizing changes in ocean conditions that affect economically and ecologically important species, and the habitats on which they depend, in the nearshore environment?
- How does ocean health relate to livability, health and wellbeing, economic prosperity and safety in Oregon and its coastal communities?



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

## M E M O R A N D U M

Kate Brown  
Governor

October 17, 2017

Dennis Richardson  
Secretary of State

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

Tobias Read  
State Treasurer

**From:** James T. Paul, Director

**Subject:** Annual Report on Common School Fund Real Property for  
Fiscal Year 2016 (July 1, 2015 to June 30, 2016).

The primary purpose of this report is to provide the State Land Board a year-end summary of the financial performance of the Common School Fund (CSF) trust lands under the Department of State Lands' oversight. Included in the summary are the overall revenues and expenditures associated with these lands, which are the result of a broad range of real property management activities including leases, easements, licenses, special uses, and land sales and exchanges. This annual report presents outcomes from the 2016 fiscal year (July 1, 2015 to June 30, 2016), and includes discussion of future real property management direction and priorities.

### **Status of Real Property Asset Classes**

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

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

	Trust Lands (acres)	Statutory Lands (acres)	Total
Forestlands	121,032	119	<b>121,151</b>
Agricultural Lands	7,848	111	<b>7,959</b>
Rangelands	596,784	23,569	<b>620,353</b>
Industrial/Commercial/Residential	6,468	369	<b>6,837</b>
Mineral and Energy Resources	767,092		<b>767,092</b>
Waterways		1,264,558	<b>1,264,558</b>
Special Stewardship Lands	5,480	7,686	<b>13,166</b>
Total	1,504,704	1,296,412	<b>2,801,116</b>

### *Trust Lands*

Trust lands (Table 1) are those lands granted by the federal government to Oregon “for the use of schools” upon its admission into the Union – also known as “Admission Act” lands. Trust lands make up 98% of all the uplands managed by DSL for the Land Board, and also include sub-surface minerals and energy resources. The Land Board is directed by Oregon’s Constitution to manage these lands for the primary purpose of generating revenues for K-12 public education. This mandate places a trust obligation on the Board to maximize revenue to benefit multiple generations of K-12 students, and requires obtaining market value from the sale, rental or use of Admission Act lands.

### *Statutory Lands*

Statutory lands (Table 1) – also referred to as “non-trust” lands – includes 1,264,558 acres of waterways (navigable waters, tidally influenced waters, and the territorial sea). These lands are held and managed by the Land Board for the greatest benefit of all Oregonians. The Land Board has considerably more latitude in managing statutory lands than it does in managing trust lands. Neither the Oregon Constitution nor statutes require that statutory lands be managed principally for generating revenue for the Common School Fund, and allows such lands to be used for a variety of purposes. Revenues produced from statutory lands, however, are used to protect the public trust values on these lands, in accordance with the Oregon Public Use Doctrine. Additionally, the state’s management of these waterways is conducted so as to avoid unreasonable interference with public navigation, recreation, fisheries and commerce<sup>1</sup>.

## **FY 2016 Revenue and Expenditures By Land Class from Authorizations**

Appendix B includes a summary of revenues and expenditures organized by land classification for Fiscal Year 2016 (FY2016).

---

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

## **FY 2016 Land Sales and Exchanges**

In FY2016, the Department conducted a total of three land sale transactions, generating a total of \$1,149,022 in gross revenues. These transactions resulted in a total net divestment of 161 acres of Common School Fund trust lands.

## **2012 REAMP Asset Management Performance Measures**

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

### **1. Return on Asset Value (ROAV)**

Appendix C includes an estimate (by land class) of total asset value for the Common School trust lands. Market value estimates allow for a Return on Asset Value (ROAV) calculation for four trust land classes (forestlands, agricultural lands, rangelands, and ICR lands), and for these land classes combined. In FY2016, the ROAV for all trust lands averaged 0.4%. This measure was primarily influenced this year by a combination of rangeland fire suppression costs and forestland revenues.

### **2. Annual Increase in Net Operating Income (NOI)**

The total NOI for FY2016 was about \$1.90 million, an increase of \$1.26 million (or 195%) from FY2015 primarily due to an increase in revenues from forestlands. When considering land classifications other than forestland, the NOI for FY2016 decreased by about \$1.01 million (or -222%) as compared to FY2015. (Appendix B)

### **3. Annual Increase in Gross Annual Revenue (AR)**

The FY2016 Gross Annual Revenue was approximately \$9.13 million, an increase of about \$2.63 million (or 40%) as compared to FY2015. An increase of about \$0.40 million (or 22%) occurred for all land classifications when excluding forestlands. The increase on non-forestlands was primarily due to an increase in gross revenues from rangelands. (Appendix B)

### **4. Annual Land Value Appreciation (LVA)**

This performance measure is not reported for FY2016 due to the frequency and general nature of the methodology used by DSL to assess land values for the different land classifications. (Appendix C)

## **2012 Real Estate Asset Management Plan (REAMP) Implementation**

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

Approximately 118,000 acres of trust lands (or 15%) are currently not generating positive revenues for the Common School Fund, and it's estimated these acres make up about 60% of the total asset value of the Common School Fund trust lands. The large majority of these acres are forestlands managed for DSL by the Oregon Department of Forestry, also referred to as "certified" forestlands, which include lands within the Elliott State Forest. Current projections do not anticipate a change in the performance of these lands in the future.

The 2012 REAMP Implementation Outcomes include "a rebalanced portfolio through acquisition of assets with high performance potential and the strategic disposal of selected non- or lower-performing assets." DSL will continue to evaluate these non-performing lands in the "none/minimal" category for potential divestment. Net proceeds from trust land sales are deposited into the land revolving account (a sub-account within the Common School Fund), unless otherwise directed by the State Land Board.

**Table 2.** Summary of revenue potential for lands managed by DSL, by land classification and asset performance category (APC), excluding mineral and energy resources and waterways ownership.

<b>LAND CLASSIFICATION</b>	<b>PROPERTY REVENUE POTENTIAL (acres)</b>				
	Long-term <sup>1</sup> Potential	Short-term <sup>2</sup> Potential	Current <sup>3</sup>	None/ Minimal <sup>4</sup>	<b>Total Acres</b>
Forestlands		120	19,153	102,878	<b>122,151</b>
Agricultural Lands		275	7,491	193	<b>7,959</b>
Rangelands <sup>5</sup>	3,508	2,696	612,412	1,737	<b>620,353</b>
Industrial/Commercial/ Residential	1,260	1,180	3,033	1,364	<b>6,837</b>
Special Stewardship Lands	278		891	11,997	<b>13,166</b>
<b>Total Acres</b>	5,046	4,271	642,980	118,169	<b>770,466</b>

<sup>1</sup> Not currently producing revenue, but with strong potential to produce revenue within 10 years.

<sup>2</sup> A strong potential to produce revenue within two years, but not presently generating revenue.

<sup>3</sup> Currently producing annual revenues for the Common School Fund.

<sup>4</sup> Generating minimal or no annual revenue, and low potential for generating revenue in the future.

<sup>5</sup> Included here are the statutory rangelands (see Table 1), managed by the Real Property program with the trust lands.

About 9,300 acres across all five upland land classes are currently classified as having either short- or long-term potential to generate revenues. DSL will continue to actively evaluate potential opportunities to manage those lands in the future in order to improve revenue performance. If at a future point in time it's determined these acres are unlikely to be able to generate revenues, they would then be reclassified as "none/minimal" category lands and shifted into the pool of acres to be evaluated for possible divestment.

The balance of the remaining lands – about 643,000 acres – are currently generating revenue, and DSL will continue to manage these lands accordingly (also see Appendix B, and three-year average net revenues). DSL will look for opportunities to increase revenues and decrease expenditures from these lands, consistent with the REAMP Implementation Outcome for "a more aggressively managed portfolio, including

evaluation of all lands, with a focus on ICR and agricultural lands and mineral and energy resources to generate new revenues.” A current example of this is the Eastern Region’s continued efforts to identify opportunities to develop rangelands into irrigated agricultural production, which can result in as much as a 30-fold increase in per-acre income.

The primary factor affecting the reduced performance on rangelands (see Appendix B) was payment of fire suppression expenditures totaling \$1.8 million dollars from wildfires in 2014 and 2015 that were invoiced in 2016. Fluctuations in leasing rates and drought conditions are also important factors that affect the financial performance of these lands. Uncertainty in future conditions relative to these three factors will impact their potential performance. Fire protection costs are unique in that there are steps DSL can take to potentially reduce such costs in the future, and thereby improve the performance of these lands. The Department currently has an agreement with the Bureau of Land Management for providing fire protection for rangelands, and that agreement is up for renewal in 2017. The Department will be exploring various options towards reducing fire protection costs as part of the agreement-renewal process. The goal will be to explore options for reducing fire protection costs, while still maintaining an appropriate level of resource protection across these lands in the future.

Finally, DSL will continuously re-evaluate the entire portfolio of trust lands to ensure the revenue generating status is properly categorized (Table 2). The Real Property program will make on-going adjustments as needed to reflect changes in our knowledge of the lands, any physical changes to the lands (ex. infrastructure investments), and any changes to potential revenue-generating opportunities.

### **Current and Future Real Property Management Priorities**

Moving forward, the Department will continue implementing the 2012 REAMP’s General Management Principles, which include the following (pp.17-18):

1. The Land Board and Department will continue to meet their obligations on trust lands.
2. The Land Board and Department will continue to manage CSF lands to create a sustained and consistent stream of revenue to assist in building the principal of the CSF, thereby increasing annual distributions to schools.
3. The plan balances revenue enhancement and resource stewardship.
4. Consistent with the legacy of the Admission Act, the Land Board will maintain a real property asset portfolio of CSF lands. The allocation of land among land classifications may change over time based on management, reinvestment and disposal [i.e. divestment] strategies.

5. The Land Board and Department will actively strive to increase the total annual revenues from the real property asset portion of the CSF portfolio through the disposal of trust lands that are not actively managed or are low revenue producers.

The Common School Fund trust land property portfolio, with an estimated value of approximately \$538 million (Appendix C), is a substantial asset of the Common School Fund as a whole. This \$538 million value is equivalent to about one-third of the Common School Fund investment holdings, currently valued at approximately \$1.5 billion.

Common School trust lands hold a unique position with the primary role of providing revenue for Oregon's public schools. A key element of meeting this mandate is maintaining an accurate and comprehensive inventory of all real property assets and asset values, and continually evaluating their current and potential revenue-generating status. The primary framework for this will be the regular asset performance category (APC) review as discussed in the previous section of this report. These reviews are intended to further fine-tune the evaluation of the various APCs for these lands over time.

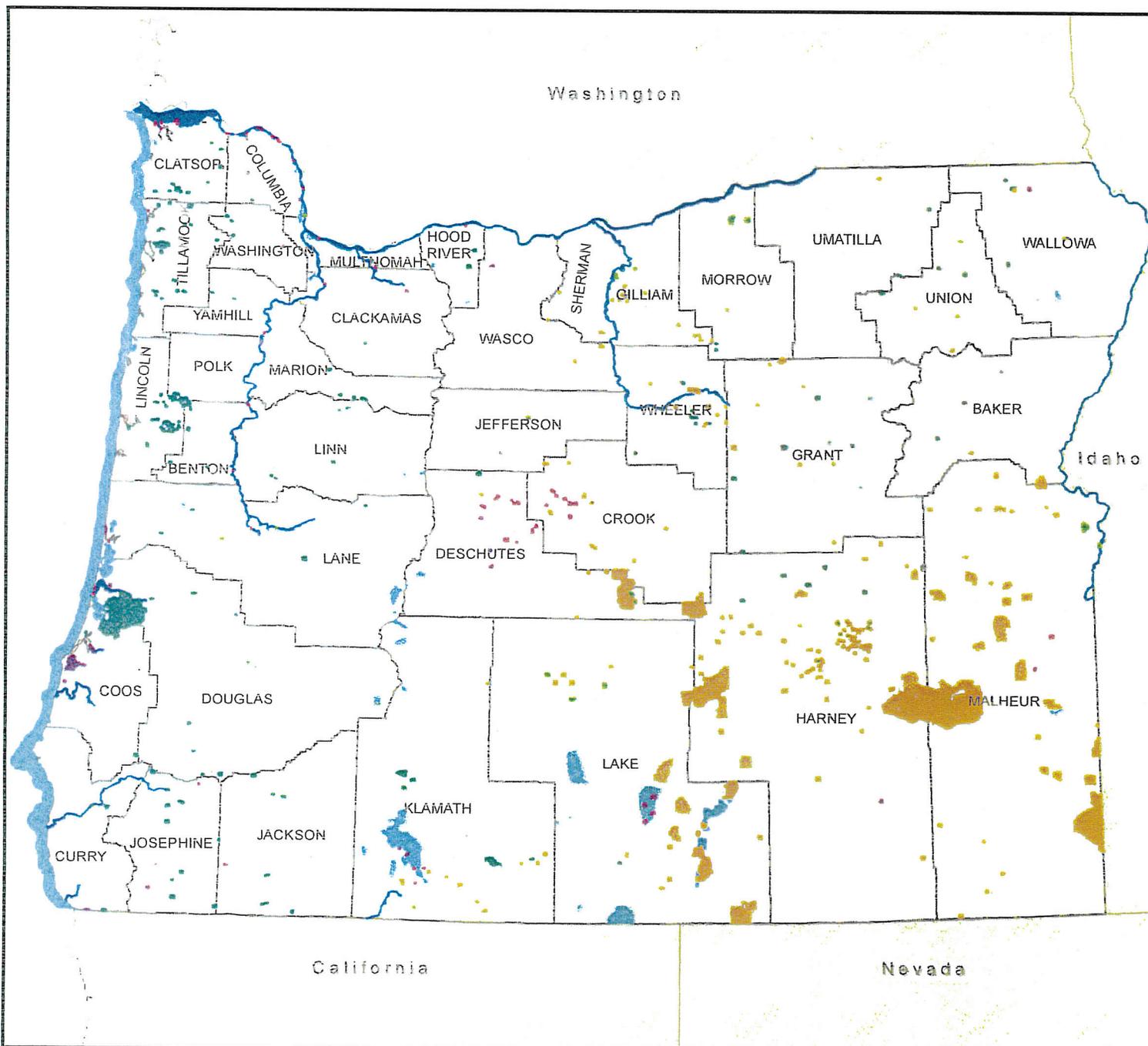
For example, consider the overall performance of lands in the "current" category (Table 2). Although they are providing a positive benefit to the Common School Fund over time, the relative performance of these lands is currently low. In FY2016, the three-year average return on asset value for agricultural, rangelands and ICR lands is 0.6%, -0.3%, and 0.4%, respectively. Given these are averages, there are parcels performing at both higher and lower levels than this, and some potentially at a net deficit to the Common School Fund. To the extent that DSL can conduct a more sophisticated approach to the asset performance category review of these lands in the future, there is the potential to parse out sub-categories within land classification categories to allow for a more refined assessment of specific lands that are higher- versus lower-performing. This would better inform future Department and Land Board decision-making concerning land retention and divestment.

## **Summary**

The Department continues to work through finding a resolution to the revenue challenges associated with trust lands within the Elliott State Forest. Revenue streams from some of the rangeland properties continue to improve by converting several hundred acres of rangeland to irrigated agriculture by construction of wells and placement of irrigation pivots. Additional property improvement efforts include noxious weed treatment and removal of juniper trees. These activities result in increased site productivity of the property, which in turn result in the potential for a higher rate of revenue as well as property value. The Department will continue to focus on identification of low revenue-producing properties for transferring out of the Common School Fund portfolio, and where possible improve the potential for revenues to be generated from those lands that are retained in the portfolio.

## **APPENDICES**

- A. Map of all lands under the authority of the Department of State Lands, by Land Use Class
- B. FY 2014 – 2016 Real Property Revenue, Expenditures, and Net Operating Income by Land Class
- C. FY 2016 Financial Performance by Land Class



## State of Oregon Department of State Lands

- Land Use Class**
- Agriculture
  - Forest
  - ICR
  - Mineral Energy
  - Rangeland
  - Special Stewardship
  - Navigable Rivers
  - Meandered Lakes & Territorial Sea



Printing Date: March 17, 2017

Map Projection:  
Oregon Lambert Conformal Conic  
Datum NAD 83  
International Feet



Department of State Lands  
775 Summer St. N.E., Suite 100  
Salem, OR 97302-1279  
503-986-5200

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

APPENDIX B

FY2014-FY2016 Real Property Revenues, Expenditures (Direct only) and Net Operating Income by Land Class

(Does not include land sales/exchanges, South Slough expenditures/revenues, or capital expenditures. Also excludes associated agency administrative expenditures.)

Land Classification	Fiscal Year 2014			Fiscal Year 2015			Fiscal Year 2016			3-Year Avg. Annual Net Operating Income (\$)
	Gross Revenue (\$)	Expenditures (\$)	Net Operating Income (\$)	Gross Revenue (\$)	Expenditures (\$)	Net Operating Income (\$)	Gross Revenue (\$)	Expenditures (\$)	Net Operating Income (\$)	
Agricultural Land	\$ 225,398	\$ 119,772	\$ 105,626	\$ 237,244	\$ 127,229	\$ 110,015	\$ 242,752	\$ 127,449	\$ 115,303	\$ 110,315
Rangeland	\$ 578,940	\$ 420,391	\$ 158,549	\$ 586,907	\$ 716,223	\$ (129,316)	\$ 919,624	\$ 2,165,581	\$ (1,245,957)	\$ (405,575)
ICR*	\$ 1,139,053	\$ 826,819	\$ 312,234	\$ 1,037,108	\$ 849,944	\$ 187,164	\$ 1,112,497	\$ 865,370	\$ 247,127	\$ 248,842
Forestland	\$ 3,573,368	4,208,891	\$ (635,523)	\$ 4,270,904	4,080,482	\$ 190,422	\$ 6,499,393	4,037,200	\$ 2,462,193	\$ 672,364
Mineral & Energy Resource**	\$ 559,291	\$ 86,650	\$ 472,641	\$ 352,726	\$ 70,509	\$ 282,217	\$ 342,569	\$ 30,681	\$ 311,888	\$ 355,582
Special Stewardship**	\$ 13,672	\$ 10,511	\$ 3,161	\$ 14,875	\$ 9,481	\$ 5,394	\$ 14,172	\$ 374	\$ 13,798	\$ 7,451
Revenues do not include land sales or mineral releases.										
Totals	6,089,722	5,673,034	416,688	6,499,764	5,853,868	645,896	9,131,007	7,226,655	1,904,352	\$ 988,979
Totals without Forestlands	2,516,354	1,464,143	1,052,211	2,228,860	1,773,386	455,474	2,631,614	3,189,455	(557,841)	\$ 316,615

\*Figure reported for FY 2016 expenditures reflects an accounting adjustment of \$523,117, to ensure reporting is comparable to previous years.

\*\* Figure reported for FY2016 expenditures reflects an adjustment in payroll expense allocation, in addition other miscellaneous reduced costs.

APPENDIX B

## Appendix C: FY 2016 Market Value and Performance by Land Class

Land Classification	Total Acres	Approximate Market Value (millions)	% of Total Market Value	Annual Net Operating Income (NOI)	Return on Asset Value (ROAV)
Forestlands: Elliott State Forest	82,500	\$220.8 <sup>(1)</sup>	41%	\$1,378,936	0.6%
Forestlands: Other than Elliott SF	38,000	\$103.3 – 113.9 <sup>(2)</sup>	20%	\$1,083,257	1.0%
Agricultural Lands	8,000	\$18.0 – 19.0 <sup>(3)</sup>	3%	\$115,303	0.6%
Rangelands	620,000	\$117.8 – 136.4 <sup>(4)</sup>	24%	(\$1,245,957)	-1.0%
ICR Lands	6,800	\$59.7 – 65.7 <sup>(5)</sup>	12%	\$247,127	0.4%
Special Stewardship Lands	13,200	<sup>(6)</sup>	-	\$13,798	-
Mineral and Energy Resources	767,100	<sup>(6)</sup>	-	\$311,888	-
Totals	1,540,000	\$538	100%	\$1,904,352	0.4% <sup>(7)</sup>

## Notes:

- (1) Final appraised value as determined by a Department-contracted appraisal process in 2016.
- (2) Values reported in the FY 2011 Annual Report, using the per-acre equivalent. These are the most recent estimated values with documented DSL methodology.
- (3) Value estimate is based on figures provided by USDA's report on land sales of Oregon's farm land. The 2016 average price per acre for Oregon's farm land is \$2,200 as determined by USDA which collects land sales information. This includes all types of farming from dry farming to irrigated produce farming which is very lucrative. Irrigated farm land sales reflect values of \$2,500 to \$6,600 per acre in the areas in which DSL owns agricultural land. Most of DSL's agricultural land has water rights but does not own the irrigation equipment so the USDA average value has been adjusted to \$2,500 to \$2,700 per acre for the range of values.
- (4) Blocked ranch values per acre are increasing (\$500 per acre for ranches over 3,000 acres with recreational appeal is typical) but can take years to market successfully with a very limited number of these selling annually. Individual properties with smaller acreage average around \$200 to \$300 per acre. An average individual tract value was designated for each county. DSL's rangeland ownership would take over 50 years to sell and would depress rangeland values because of the large supply. To reflect this, a discount of 30% to 35% has been used to create the value range. The values in LAS reflect a more individual tract value.
- (5) Each property was valued individually through research of comparable sale properties and those properties with lease income were valued by the income approach. DSL's land in Bend is still rebounding in value despite the addition of the Stevens Road tract to the UGB. The Forked Horn property was sold last year. The Eugene motorpool property and the Helvetia property were valued with full USPAP-compliant appraisals.
- (6) Data not available.
- (7) The total ROAV does *not* include NOI derived from special stewardship lands, since the asset value of those lands are not reported here. The NOI for mineral and energy resources is included here because those revenues are derived from parcels in one of the other surface land classifications.



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100  
Salem, OR 97301-1279  
(503) 986-5200  
FAX (503) 378-4844  
[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

### State Land Board

Kate Brown  
Governor

Dennis Richardson  
Secretary of State

Tobias Read  
State Treasurer

## MEMORANDUM

October 17, 2017

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

**From:** James T. Paul, Director

**Subject:** Elliott Public Ownership Project Update.

The Department has continued its past practice of maintaining a dedicated Elliott State Forest webpage to provide consistent and transparent information to the public on this project. It can be accessed via the DSL homepage, or directly at the following address:

<http://www.oregon.gov/dsl/Land/Pages/Elliott.aspx>

The information shared on this site is updated periodically to ensure the public has full access to the most up-to-date project information. In addition to the project status, this site also provides access to background information on the following forest-specific topics:

- Title Research
- Physical
- Financial
- Management
- Timber data
- GIS data
- HCP materials

The Department will provide an update to the State Land Board on the status of the Elliott Public Ownership Project during the October 17, 2017 meeting.