



# Oregon

Tina Kotek, Governor

## Department of State Lands

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## State Land Board

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**Regular Meeting  
October 10, 2023  
Agenda Item 4**

Tina Kotek

Governor

LaVonne Griffin-Valade

Secretary of State

Tobias Read

State Treasurer

### **SUBJECT**

Request for approval to enter into a settlement agreement to exchange quitclaim deeds and perpetual access easements between the Department of State Lands and the Port of Portland at West Hayden Island in Multnomah County (DSL file 55904-LE). The land is classified as historic fill and is located at Township 2 North, Range 1 East, Sections 19, 28, 29 and 30, and Township 2 North, Range 1 West, Section 24.

### **ISSUE**

Whether the State Land Board should authorize the Department to sign a settlement agreement to exchange perpetual access easements and quitclaim deeds with the Port of Portland to clarify disputed ownership boundaries of Department property and Port of Portland property located on the "South Shore," the "North Shore" and "Government Lot 4" of West Hayden Island.

### **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.

ORS 274.915; relating to the sale, lease or trade of submersible and submerged lands.

OAR 141-068; relating to the sale, exchange or reservation of historically filled land.

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

## **BACKGROUND**

Since statehood, West Hayden Island has been altered by artificial fill, dredging of the Columbia River, and natural deposits or erosion related to the movement of the river and North Portland Harbor (Oregon Slough). Although there have been several ownership studies completed in the past, the dividing line between The Port of Portland's deeded ownership and DSL's ownership of previously submerged waterway, that is now historical fill, in certain portions of West Hayden Island have remained unclear.

In 2021, DSL received an application from the Port of Portland to clear title of disputed properties and to request a land exchange at West Hayden Island. On October 12, 2021, the State Land Board approved DSL's request to conduct due diligence related to the Port of Portland's application.

During the due diligence process, both DSL and the Port conducted their own historical research regarding the disputed properties. Both parties provided their evidence of artificial fill or dredging that had occurred within state-owned submerged and submersible lands, and evidence of natural movement of the waterway that resulted in creation of additional land on the island.

Once the parties agreed on which properties were owned by each party, the Port of Portland commissioned a survey of each of the properties to describe the boundaries included in the quitclaim deeds. Both parties discussed establishing permanent access to each respective party's property, and both agreed that including access easements in a settlement agreement would clear up all concerns regarding property rights moving forward.

## **STAFF FINDINGS**

The in-depth historical ownership reviews by both DSL and the Port of Portland, determined that the filled lands in question are DSL ownership; the Port will provide a quitclaim deed for those lands to DSL. To clarify Port ownership on Government Lot 4, DSL will provide a quitclaim deed to the Port. The Port and DSL agreed to enter into a settlement agreement which can be recorded with the county and formally establish a line where the Port's ownership ends, and DSL's ownership begins on West Hayden Island.

### **Port Quitclaim Deed to DSL**

As a result of the settlement agreement, the Port will quitclaim approximately 65 acres of historic artificially filled lands, and lands that have been added to the island due to accretion on the South Shore to DSL. These lands are located in Township 2 North, Range 1 East, Section 19, a portion of Government Lots 5 and 6, and Section 30, a portion of Government Lots 8 and 9.

On the North Shore, the Port will quitclaim to DSL approximately 8 acres of historic artificially filled lands and lands that have been added due to accretion in Township 2

North, Range 1 East, Section 29, a portion of government lot 8 and a portion of the NW1/4.

In Government Lot 4 of Section 28, the Port will quitclaim to DSL approximately 5 acres of historic artificially filled lands, and lands that have been added to the island due to accretion in Township 2 North, Range 1 East. Initially, the Port was claiming Government Lot 4 to the current high water line, including filled lands. DSL's analysis of ownership, and the Port's subsequent review of DSL's analysis, ultimately resulted in agreement that the Port had no title to the filled lands.

### **DSL Quitclaim Deed to the Port**

In Government Lot 4 of Section 28, DSL will quitclaim to the Port approximately 12 acres of land in Township 2 North, Range 1 East. This is upland that was originally granted by the federal government to a private party and eventually purchased by the Port. DSL and the Port have agreed the survey from 1908 used for Government Lot 4 was the most accurate description of the ownership boundary prior to any placement of fill. Quitclaim of these 12 acres clarifies Port ownership.

### **Easement Access**

Additionally, both parties will grant each other access easements to their respective properties allowing uninterrupted continuation of land management for both parties.

### **PUBLIC INVOLVEMENT**

The Department circulated the proposed exchange for public review and comment from November 24, 2021 – December 24, 2021. Notice for the public comment period was sent to interested parties, government agencies, and other affected stakeholders. This request was circulated to the local affected Tribes, all surrounding property owners, local governments, State and Federal wildlife and natural resource managers. The Department received three comments:

- An adjoining landowner expressed concern over the impact a land exchange may have on their ownership of their property. DSL addressed the concern by informing the commentor that the applicants' property ownership was not in question and was not associated with the subject land exchange request.
- A request was made for additional descriptors of the property to identify the subject properties more clearly for public review. DSL made the necessary changes to the maps.
- A DSL staff member commented regarding removal/fill law, indicating that a portion of the properties listed in the proposed transaction contain State protected mitigation sites. Any proposed work with the mitigation sites would most likely require State removal/fill authorization.

As the form of land transaction had shifted from a proposed exchange to a settlement agreement, the Department initiated a second public review and comment period from April 10, 2023 – May 10, 2023. This notice was sent to the same interested parties as the previous notice with the updated information, clarifying this is for a settlement

agreement. One comment was received, and the interested party raised concerns to ensure lands were not released that the Department has claim over.

### **RECOMMENDATION**

The Department recommends that the State Land Board authorize the Department entering into a settlement agreement to exchange quitclaim deeds and permanent access easements with the Port of Portland to clear title of portions of West Hayden Island and establish the state ownership boundaries.

### **APPENDICES**

Appendix A - Map

Appendix B – Draft Settlement Agreement

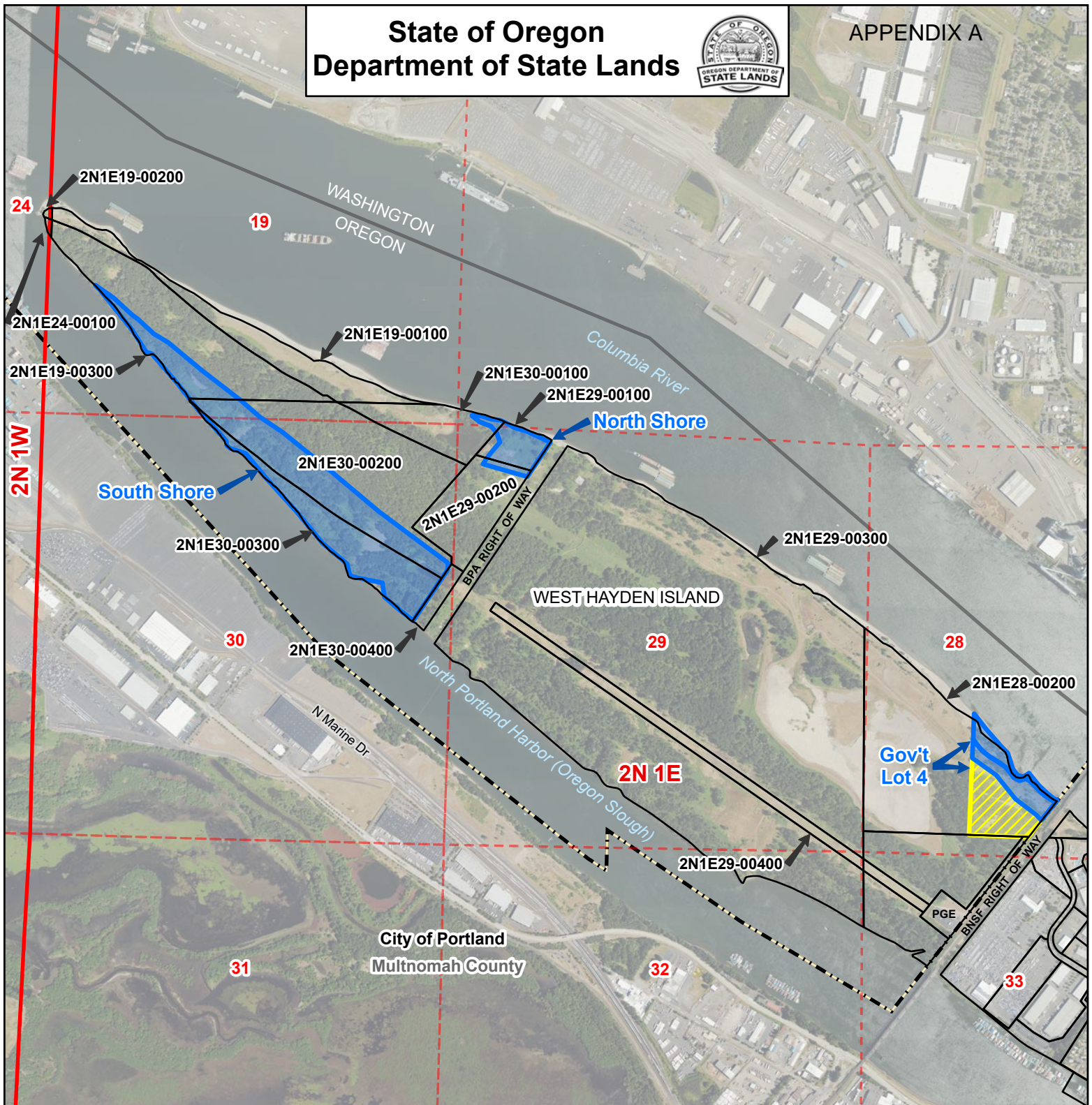
Appendix C – Public Comments



# State of Oregon Department of State Lands



APPENDIX A



## APPENDIX A

55904-LE Settlement Agreement  
Between DSL and Port of Portland  
T2N, R1E, Sec. 19, 28, 29, 30, and T2N, R1W, Sec. 24  
Multnomah County

- Proposed Port of Portland Deed to DSL
- Proposed DSL Deed to Port of Portland
- Tax Lots
- Townships
- Sections
- City Limits

This map depicts the approximate location of a Department of State Lands settlement agreement. 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.

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Feet



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