



January 28, 2016 – Protocol Framework

State Land Board

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

- Adopted by the State Land Board in August 2015 as a mechanism for identifying potential ownership transferees for the Common School Lands within the Elliott State Forest through competitive submission of proposed acquisition plans resulting in potential offer of direct sale.
- **Section 1**, the Summary of Transaction, describes the five key structural components of responsive acquisition plans that are due on November 15, 2016. These will be discussed under Section 5 below.
- A purchase and sale agreement will be negotiated under the terms set forth for a responsive acquisition plan and must provide earnest money in an amount no less than 1% of the purchase price, paid to the Common School Fund. Earnest money is non-refundable unless financing is predicated on state or federal appropriation, in which case the earnest money would become non-refundable on August 1, 2017.
- Closing would occur on or before Dec. 29, 2017 unless extended to Dec. 31, 2018 by payment of an additional 1% of the purchase price to the Common School fund as non-refundable earnest money.
- Any comprehensive ownership transfer will be offered on an AS-IS basis, without representations or warranties by the state, and without any contingencies for the benefit of the transferee.
- **Section 2** describes the Expression of Interest part of the protocol that brings you all here today. Only persons or entities who submitted an Expression of Interest by 5 pm on Dec. 15, 2015 are deemed participants in the Protocol going forward and are eligible to submit a proposed acquisition plan.
- Anyone who did not submit an Expression of Interest by the December deadline must partner with someone who did in order to submit an acquisition plan. A primary purpose of this meeting is for potential participants to meet each other. A list of those who submitted Expressions of Interest has been handed out.
- Given the size and complexity of the Elliott transaction, the Protocol hopes to provide the opportunity for generating consortia, joint ventures, or partnerships, but proposed acquisition plans must be submitted by a lead participant, and any resulting purchase and sale agreements will be with the lead participant.
- **Section 3** describes the schedule of activities in 2016 that hopefully will help bring participants together. The schedule will be discussed further at the end of the meeting.

- **Section 4** describes the process the Department is using to determine a fair market value of the Elliott property on or before July 27, 2016. A timber inventory is being conducted and data will be made available to participants on or before April 5, 2016. A tour of the forest will be offered in May.
- The Department has retained Mason, Bruce & Girard to assist in the appraisal process and to review the appraisals developed by three independent appraisers and provide the Department with a single determination of fair market value.
- **Section 5 (and Section 1)** covers proposed acquisition plans and criteria for determining responsiveness.
- First, a responsive plan must be for purchase of the Elliott property at fair market value as determined by the Department's appraisal process in an all-cash closing, with proceeds going to the Common School Fund. A detailed explanation must be included of how the payment of fair market value at closing will be financed;
- Second, the plan must be for acquisition of the entire Elliott property. The Elliott will not be offered for sale in separate transactions.
- Third, the plan must be submitted by a lead person or entity who is a Participant and has authority to accept an offer of direct sale and to act on behalf of a consortium, joint venture or partnership. Parties who submitted Expressions of Interest may participate in multiple proposed acquisition plans, and plans may include parties who did not submit Expressions of Interest in roles other than lead. Responsive plans must include a detailed description of the participant or participants.
- Fourth, a responsive plan must include a detailed explanation of commitments with enforceable mechanisms, to be recorded at closing, to protect enhanced public benefits above and beyond those already provided for under applicable federal, state, and local laws. A responsive plan will need to identify other entities or agencies willing and able to enforce the commitments, but enforceable mechanisms must not involve the Common School Fund or the Department. There will be no discounting of the sales price for these commitments.
 - The enhanced public benefits to be addressed by a responsive plan include, at a minimum: 1) public recreational access on at least 50% of the acreage; 2) ensuring for 10 years that at least 40 direct and indirect full-time jobs are generated annually from forest-related activities defined in the Protocol; 3) Protecting at least 25% of the acreage from harvest to conserve older forest stands; and 4) conserving high quality watersheds by providing the riparian management areas in accordance with criteria in the Protocol.

- Finally, to be deemed responsive, a plan must be accompanied by a deposit of \$100,000 in cash to be applied toward payment of the fair market value if the plan is selected, or refunded if the plan is not selected.
- **Section 6** describes next steps after proposed acquisition plans are submitted to the Department by November 15, 2016. All responsive acquisition plans will be presented by the Department to the Land Board at its December 13, 2016 meeting. The Department will make the determination of whether or not plans are responsive. The criteria for responsive plans will also be discussed later in the meeting.
- If no responsive acquisition plans are received, the Department will return to the Land Board for further instructions regarding ownership transfer.
- If only one responsive acquisition plan is received, the Land Board has authorized the Department to make an offer of direct sale of the Elliott property at the fair market value determined by the Department's appraisal process. If this sale is not consummated for reasons specified in the Protocol, then the Department will return to the Land Board for further instructions regarding ownership transfer.
- If several responsive acquisition plans are received, the Department will take all responsive plans to the Land Board for it to rank and select the one to which the Department should make an offer of direct sale. If that sale is not consummated for reasons specified in the Protocol, then the Department will make an offer of direct sale to the next ranked option and so on and so forth until a sale is consummated; or, if none of the options are consummated, the Department will return to the Land Board for further instructions on an ownership transfer.
- **Section 7** gives the Director of the Department some reasonable discretion to address unanticipated scenarios and describes general legal parameters for the Protocol. It also refers to a single point of contact who was John Potter and now is Jim Paul.
- The Director will be issuing a supplement to the Protocol that will address new issues. Some of these issues were discussed in the October meeting, and they were also discussed in Part II of the Q&A materials on the website. These issues will be discussed again in the "Upcoming Items for Supplemental Protocol" portion of the agenda.
- The supplement will also provide a format for proposed acquisition plans.
- **Section 8** provides the schedule which will be reviewed at the end of the meeting.



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

State Land Board

January 28, 2016—Upcoming Items for the April 5th Supplement to the Protocol

Kate Brown
Governor

Pursuant to Section 7 of the Protocol, the Director will be issuing a supplement to the Protocol on April 5, 2016 that will address new issues. Some of these issues were discussed in the October meeting, and they were also discussed in Part II of the Q&A materials on the website.

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

1. More about Responsive Acquisition Plans and Sale of the Property

- Reiterating from Section 5 of the Protocol, for a plan to be responsive it must include a detailed explanation of commitments with enforceable mechanisms, to be recorded at closing, to protect enhanced public benefits above and beyond those already provided for under applicable federal, state, and local laws.
- The enhanced public benefits to be addressed by a responsive plan include, at a minimum: 1) conserving public recreational access on at least 50% of the acreage; 2) ensuring for 10 years that at least 40 direct and indirect full-time jobs are generated annually from forest-related activities defined in the Protocol; 3) conserving older forest stands by protecting from harvest at least 25% of the acreage; and 4) conserving high quality watersheds by providing riparian management areas in accordance with criteria in the Protocol.
- What a plan proposes to achieve each enhanced public benefit will not change once submitted, so put your best plan forward.
- For a plan to be deemed responsive by the Department, it also needs to show how each enhanced public benefit will be accomplished through enforceable mechanisms. We will be providing more detail about the necessary elements of the enforceable mechanisms in the Supplement to the Protocol. To be deemed responsive as to the enforceable mechanisms, a proposed plan will need to include the following:
 1. A form of document (to be recorded at closing) that will create the enforceable mechanism for each such benefit (no particular type of document is required, but a conservation easement under Oregon law is an example of a recognized vehicle for such matters); and,
 2. An unqualified legal opinion that each such document is enforceable in accordance with its terms (the opinion will need to be from an AV-rated law firm acceptable to the State, and at closing will need to be in form and substance satisfactory to the State).

- The Department and DOJ will determine if the plan adequately addresses these necessary elements. If not adequately addressed, the plan will not be deemed responsive and will not be submitted to the State Land Board for consideration.
- The State Land Board will make its ranking and selection decision from the responsive plans submitted for its consideration.
- Once the State Land Board has selected and ranked the responsive acquisition plans, DSL will make an offer of direct sale of the Elliott Property at the fair market value (as determined by the Department's appraisal process), such price being the Department estimate of value. The parties will then negotiate a purchase and sale agreement. If agreement is not reached, DSL will proceed as described in Section 6 of the Protocol.

2. Itinerary for Site Visits

- This is still under development, and will be communicated to participants when finalized, via email invitation. It will be limited to two representatives per participant, with further details in the invitation.

3. Use of Surface Stone

- As mentioned in the Q&A #2, the Department will clarify in the supplemental protocol that the use of surface stone for stream restoration projects will be included in the conveyance of mineral rights to a new owner.

4. Cultural Resource Information

- The Department is undertaking two basic tasks: (1) locating and documenting known cultural sites for appropriate documentation in the State Historic Preservation Office database; and (2) conducting a filed inventory based on probability modeling to attempt to locate, identify, and record previously unknown sites. This work will result in a Cultural Resource Inventory report as well as supporting documentation and information, all of which is expected to be completed and made available by July 2016.

5. Format for Proposed Acquisition Plans

- The Department is developing a format to assist participants in preparing their proposals.

This Supplement to the Protocol, including all of the items mentioned above, will be provided on April 5 at the Second Participants Meeting and by email.



Elliott State Forest

