

From: [FORESTRY Boardof * ODF](#)
To: [OLIVOS-ROOD Hilary * ODF](#)
Subject: Fw: submitted testimony for March 8 BOF meeting
Date: Monday, March 20, 2023 11:39:01 AM

From: Marlene Acker <[REDACTED]>
Sent: Thursday, March 2, 2023 4:06 PM
To: ODF_DL_Board of Forestry <BoardofForestry@odf.oregon.gov>
Subject: submitted testimony for March 8 BOF meeting

Dear Members of the Board of Forestry:

As a resident of Tillamook County, and within the Neah-Kah-Nie School District, please reconsider the Habitat Conservation Plan as is now exists.

The reduction in harvest not only reduces the impact of the school budget, but also the economy of the coastal counties in general.

Also not harvesting the available timber makes the possibility of fire risk even more inevitable; as the undergrowth is not being removed. As the saying goes, harvest or watch it burn.

The wildlife habitat is a mother nature issue that takes care of itself; as you painfully found out with the spotted owl. This will never be forgotten and will always be thorn in the sides of government regulation by those who were severely impacted.

The future of timber harvesting should be managed by those who know their own business; they will regulate themselves when needed to survive.

Marlene Acker



Associated Oregon Loggers, Inc.

PO Box 12339 • Salem, Oregon 97309-0339 • (503) 364-1330
Fax: (503) 364-0836 • aol@oregonloggers.org

Date: March 8, 2023
To: Board of Forestry
From: Amanda Sullivan-Astor, Forest Policy Manager
Associated Oregon Loggers

Topic: Agenda Item #1 – Public Comment

Good morning, Chair Kelly, State Forester Mukumoto and members of the Board,

Associated Oregon Loggers (AOL) serves nearly 1000 individual small businesses and 23,000 hardworking Oregonians. AOL represents the workforce that is ready to steward our forests every day with passion in their heart and a smile on their face. These humble Oregonians rely on a non-declining even flow of timber to keep their employees working and food on their tables.

The Issue

Our primary concerns today, have to do with the over emphasis of extended rotation ages as the only climate smart forestry practice and its failure to recognize the entire carbon life cycle which should include the durable storage of carbon in forest products, the concept of carbon permanence in forests, the ability for sustained yield forest management to maximize net carbon benefits from working lands, issues with leakage and the negative externalities resulting from the failure to incorporate these concepts resulting in perceivable decreases to short and mid-term fiber supplies and the jobs they would otherwise support.

Any decrease in short and mid-term work for AOL's small business members can lead to layoffs with no guarantee of employee return or worse, the need to sell their equipment or businesses altogether. We rely on stability for our production-based businesses dealing with the global wood fiber commodity market. We want to be a part of solving societies greatest challenges and we believe we can play a critical role in climate mitigation, but our small businesses must be thoughtfully considered to ensure irreparable harm and unintended consequences aren't caused in the wake of ideas that simply "sound good".

Benefits of Oregon Forests for Climate Mitigation

Oregon's forests are among the best in the nation at sequestering carbon. The production of our natural and working lands combined with the best-in-the-nation forestry professionals, means Oregon is a leader in natural climate solutions.

Managed forests scrub our air of pollution and purify our drinking water. One recent study found that actively-managed forests store more carbon than unmanaged forests, in trees and soil, even when those forests have been harvested multiple times.

In fact, the world's best natural climate solutions are found in young, renewable forests where they can absorb 13 lbs. of CO₂ per tree each year and the wood products that come off of these actively managed forests provide durable storage for that carbon. Around 50% of Oregon's carbon emissions are captured in Oregon forests and associated wood products, while over 14% of U.S. carbon emissions are captured in U.S. forests and associated wood products.

Local Fiber Supply

Thankfully, Oregonians have the option to consume locally. Producing regional fiber to meet the demands of today and the future limits the carbon footprint from overseas transportation and creates domestic jobs in a growing sector.

"Growing service & voice for loggers and forest operators since 1969"

www.oregonloggers.org



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Wood is beautiful, strong, natural, renewable, recyclable, energy efficient and easy-to-use. Wood is also a great carbon-smart solution to capture and store carbon for its climate benefits. No other resource on earth can match its environmental advantages.

Clearly, the world should be using more wood, not less, to address our societal needs around economic vitality and wildfire risk—but also for its carbon benefits, homeless sheltering and green aesthetics. We have a win-win on our hands through forestry and wood products, by using more consumer wood fiber, building with structural wood and mass timber, developing affordable housing with wood, and supplementing energy with renewable fuels.

In 2022, Oregon State University (OSU) researcher, Rajat Panwar, contributed to a United Nations (U.N.) report that looks into how forest carbon can be a part of natural climate change solutions. One of the key components he engaged on in the report is the use of more wood in our daily lives to substitute for more carbon intensive materials. He notes, however, the importance that the wood is derived through sustainable practices to keep forests healthy and thriving. When combined, sustainable active management and increased use of wood can help to maximize carbon benefits from forests.

With innovations in tall wood buildings and new markets for biomass such as renewable energy, renewable natural gas, renewable diesel and biochar, America is vying to be at the forefront of climate solutions in the world and we need to retain our workforce to make that happen.

Wildfire Emissions

Unfortunately, greenhouse gas emissions from wildfires are threatening to reverse realized and potential climate change mitigation gains.

In California, the state's 2020 wildfires put twice as much greenhouse gas emissions into the atmosphere as the total emissions reduction efforts by the state between 2003 and 2019. In just one year, 16 years of emission reduction efforts were wiped out by wildfire smoke according to a 2022 study led by the University of California Los Angeles. In July 2022 alone, wildfire in California, Idaho, Oregon and Washington produced 41 million tons of CO₂.

Focusing singularly on stored carbon in the wooded landscape is risky.

Perils of Longer Rotation Ages

Furthermore, proposals of longer rotation ages in already-healthy and thriving stands would create adverse impacts and only minor carbon benefits. Any carbon gain from longer rotations would be marginal because they would be used in well managed vigorous stands compared to the far superior carbon gains that could be achieved from focused efforts in reforestation of converted forest, management seeking to create healthier and more productive stands for increased carbon uptake and reducing wildfire risk through increased spacing and other mechanisms.

By delaying harvest, as proposed, the disadvantages would be many, including higher wildfire emissions, less carbon stored in wood products, lost jobs and lost rural community infrastructure.

In addition, leakage is a very real negative impact of proposed longer rotation ages. When less harvest occurs locally, it shifts elsewhere. Reduced growth and harvest in one area means increased harvesting in another place to meet global demand.

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Conclusion

When domestic wood supplies are fully appreciated for their opportunity in our local and global market, Oregon and the nation will have healthier forests, less smoke in the air and new solutions leading to carbon neutrality.

The research supporting managed forests as a carbon solution is sound.

Actively managing forests on a sustained-yield, and storing harvest carbon in durable wood products, does maximize carbon benefits and contributes positively to other co-benefits. The abundant outcomes from actively-managed Oregon forests are many: rural Oregon economic stability, forest resilience, workforce development, global wood fiber supply, safe-green forests, stored-wood carbon, and high rates of carbon capture.

Sincerely,

Amanda Sullivan-Astor
Associated Oregon Loggers
Forest Policy Manager
aastor@oregonloggers.org

March 12, 2023



Dear Oregon Board of Forestry,

Please accept the following written comments in addition to the provided in-person testimony that was read into the record during the March 08, 2023, Board of Forestry meeting at Oregon State University in Corvallis.

I am providing these comments on behalf of the Association of Western Pulp and Paper Workers Union (AWPPW) which represents the thousands of timber, pulp and paper workers jobs that are directly impacted by the decisions made by this board, including some of our concerns with the board's consideration of final adoption of the Habitat Conservation Plan (HCP).

The AWPPW represents thousands of members in Oregon, Washington, Idaho, and California. The Habitat Conservation Plan (HCP) for State Forests, in its current form will place our members and their families' livelihoods at risk. We appreciate the hard work that has gone into the proposal, but we respectfully request that the board make the necessary changes to the draft now, before going any further into the process.

As has been shared by other stakeholders, pulp and paper mills provide a 3:1 job multiplier and are often the single largest taxpayer in the community. Our facilities utilize wood fiber in two significant production applications. The first is the use of wood chips as a key raw material in the manufacturing of pulp and paper. The second is the use of hog fuel in the generation of green power.

Every time wood fiber is recycled and repulped at a mill, it becomes shorter and weaker, requiring a certain amount of virgin fiber to be integrated with recycled pulp to create new recyclable products at production facilities across the Pacific Northwest. Without this reliable supply of fiber, our jobs will be threatened as will our ability to create highly recyclable paper packaging at a price that competes with less sustainable alternatives.

This plan is also very concerning as we attempt to achieve sustainability objectives established by the State of Oregon in recent years. In 2021, The Oregon State Legislature passed the Plastic Pollution and Recycling Modernization Act, aimed at improving Oregon's recycling system and replacing less sustainable product materials like plastic, with more sustainable product alternatives, like paper. However, if we are unable to meet the growing demand for sustainable packaging materials, due to a lack of fiber supply, cheaper less sustainable packaging alternatives or increasing emissions by importing these products from outside the region, will be Oregon's only option.

Our members and our employers are proud to be partners in finding meaningful and sustainable environmental solutions that protect our communities, our planet, and our jobs. The HCP in the current form will hurt our planet, harm our communities, and eliminate our jobs.

Please reconsider this draft and take the time to get this right. Our jobs and the future of our families are on the line!

Respectfully Submitted via Email,

Joshua Estes, SHRM-CP
Oregon/Washington Lobbyist

Chair Kelly, Members of the Board, State Forester Mukumoto

Thank you for this opportunity to provide public comment. My name is Joseph Youren and I represent Audubon Society of Lincoln City and Salem Audubon Society. In previous testimony and comments we have made our position on the proposed HCP clear. We support a strong HCP as a critical compromise necessary to preserve wildlife and timber revenue.

But today I speak for myself. I wish to say, "Thank you, all for your dedication and commitment in the service of our public lands." Last month's difficult 4-3 vote was hard to watch. I'm sure it was agonizing for all of you. Thank you for providing such a meaningful example of how it is possible to disagree without being disagreeable

I also want to thank and commend the State Forest Division of ODF.

I was a public-school principal for 20 years at every level, from primary to middle to high school. Over those years I dealt with more controversy than I care to remember.

When I say I know how difficult it is to work through hard decisions, I mean I really know.

I know how hard it is to maintain a professional attitude and demeanor when opponents feel no obligation to do the same. Our ODF staff have seen this in spades.

I know how frustrating it is to confine your position to science and facts in an atmosphere thick with omissions, false claims, misrepresentations, and speculative hyperbole. Again, ODF continues to work under extremely difficult circumstances.

I know how hard it is to communicate that you have listened, considered alternatives, weighed options, and then landed on a decision that opponents disagree with.

Again, I want to thank you for this opportunity. I hope you and ODF staff can all continue find the strength and peace of mind needed to continue serving all Oregonians.

Thank you.

Respectfully,

Joseph Youren

March 6, 2023

From: [Van Decker](#)
To: [OLIVOS-ROOD Hilary * ODF](#)
Subject: Introduction To B&G Logging
Date: Wednesday, March 08, 2023 6:44:30 AM
Attachments: [INTRODUCTION TO B & G LOGGING.docx](#)

Hilary,

I have attached our testimony from B&G Logging. Please let me know if you have any questions.

Van Decker

Introduction to B & G Logging & Construction LLC

B & G Logging, is a small business enterprise based out of Philomath, Oregon started in 2005 by Levi Beelart. B & G has continued its growth by adding both men and equipment over the years. With the companies continued growth and success it has become one of the prominent logging operations in the Philomath to the coast area.

Our service area is generally within the area of the Siuslaw NF. Our customers (Sawmills that we deliver logs to) depend on B & G to maintain our equipment in top notch working order in condition to meet their ever changing business demands for logs. We pride ourselves on excellent customer service, an ability to remain flexible, and a commitment to have the logging equipment and workers needed for any logging job. B & G is recognized by Seneca Sawmill and Hampton Resources as a top quality producer of logs, delivered to their mills.

The business structure of Levi Beelart's logging business is as follows: Levi Beelart, Member, is 100 % owner of both LLC's. Both LLC's are merged together and taxes filled on Levi's personal Sch. C. Most of the equipment is owned by Levi Beelart and B & G Logging & Construction LLC.

B & G Logging & Construction LLC purchases timber sales from Forest Service, BLM, Oregon Dept. of Forestry, and private landowners. The timber is harvested by B & G Logging & Construction LLC and sold to sawmills by B & G Timber LLC. A harvest expense is paid by B & G Timber LLC to B & G Logging & Construction LLC and most operating expenses are then paid by B & G Logging & Construction LLC.

B & G Logging & Construction has a line of credit loan at the Philomath branch of Citizens Bank. With both borrowed and personal funds B & G Logging is able to have the working capital required to purchase and pay for the timber sales and own the equipment necessary to harvest the timber.

B & G Logging & Construction LLC has a working relationship with Elliott Powell Baden & Baker in Portland to purchase performance bonds and Payment bonds for sales we purchase from Forest Service or other private land owners.

Levi has attended professional logging classes offered by AOL & received his Professional Loggers Certification. He has been operating his own logging company for the past 17 years.

Key Personnel:

Owner: Levi Beelart,
Side Rod: Bob Demarris
Side Rod: Chad Cleveland
Office Manager: Van Decker
Accountant Nick Mitchell

B & G Logging understands the importance of continued education and safety. The company has paid the cost of all classes for employees, which are taught by qualified local First Aid trainers. Employees have all attended First Aid and CPR classes in Philomath. They have also attended many classes on Forest Practices regulations, and safe logging procedures. Employees have extensive experience working with cable systems on steep ground and have become quite efficient at doing this system of logging and protecting the leave trees and terrain.

B & G Logging & Construction LLC is presently logging the High Tide Thin timber sale which we purchased. This sale is for 8,000 MBF of timber. On this sale, operating two of our sides, we have averaged 350 loads per month for the past 6 months. It is mostly a cable thinning operation in the Alsea River drainage area. Our 2nd. Side is harvesting on Ona Thin Sale.

We have placed rock on most of the spur roads so we could harvest as much as possible of High Tide Thin sale in the winter time, when log prices are usually at the high price for the year.

We have a complete line of logging and road building equipment which is operated by our 35 employee staff of well-trained employees. We have enough equipment to operate three complete logging sides continually as well as the road building side.

At B & G our equipment is maintained regularly and is ready to harvest timber. Each piece of equipment is on a rotating maintenance schedule, and operators are trained to watch for signs of damage, potential problems and equipment failure and report it immediately. Mechanics ensure the equipment is ready to harvest timber every day.

We have purchased 16 sales on the NF, and are presently logging on 2 of those sales. All sales are purchased by B & G Logging & Construction LLC, and are logged and sold to local mills.

These companies are built around a staff of local employees who have been trained to be a well-rounded and stable work force.

B & G Logging operates full time 12 months of the year. By having adequate timber sales purchased we are able to move around from sale to sale and be able to continue logging all the time. We have the flexibility to move so we can work in an area where bird restrictions, sap flow, dirt roads, and salmon stream do not affect our operation. By operating this way we are able to provide full time employment for our cutters, loggers, and truckers. And we are able to deliver logs to mills on a consistent schedule.

We have 16 timber sales purchased amounting to 40 MBF of standing timber. On these sales we have prepaid stumpage of \$1,300,000. Most of the sales have 3 years' time to harvest the timber, but some of the stewardship sales have 5 to 7 years for maturity. B & G will cut 25 M of timber per year, so we have enough under contract to operate at least 2 full years. The prepaid stumpage that has been paid and road improvement costs invested in these sales has been expensed in early years, so does not show any asset value on the cash basis Balance Sheet.

Mostly we just cut our own timber sales, but sometimes we do a custom job of harvesting for Hampton Associates, or Freres Lumber Co, or Weyerhaeuser.

We have \$15,000,000 worth of logging equipment which we use all the time. A large portion of this equipment has been depreciated so has a very low Book Value which shows on our Balance Sheet.

We continually buy additional timber sales as these become available. We do this to maintain a large inventory of sales to work on. Most sales require varying amounts of road work which we do a year or two ahead of the time we harvest the sale. The \$1,000,000.00 We have invested in logging roads during 2016 has been expensed so does not show any asset value on our Balance sheet.

Over the past 17 years we have been growing the logging company from running 1 yarder side to now running 4 yarder sides. We have been building our inventory of sales and privately owned timber lands.

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9. 2015 Tax Return by email to Jim Ewald

Van G. Decker



LETTER TO BOARD OF FORESTRY 3 – 4 – 23

SEE BELOW

Hilary Olivos-Rood
ODF Board of Forestry
Corvallis, Oregon
March 8, 2023

B & G Logging has been a regular purchaser of ODF sales, both salvage burned sales, and green sales.

B & G Logging & Construction LLC purchases timber sales from Forest Service, BLM, Oregon Dept. of Forestry, and private landowners. The timber is harvested by B & G Logging & Construction LLC and sold to local sawmills.

B & G Logging is building a new small log mill to process the small wood from first entry thinning's of plantations in the coast range.

This mill will provide jobs for 25 plus full time employees.

These companies are built around a staff of local employees who have been trained to be a well-rounded and stable work force.

B & G Logging operates full time 12 months of the year. By having adequate timber sales purchased we are able to move around from sale to sale and be able to continue logging all the time. We have the flexibility to move so we can work in an area where bird restrictions, sap flow, dirt roads, and salmon streams do not affect our operation. By operating this way we are able to provide full time employment for our cutters, loggers, and truckers. And we are able to deliver logs to mills on a consistent schedule.

B & G has given assistance to the Philomath High School Forestry program by financial assistance as well as hosting the students at our logging sites and shop.

B & G Logging is actively involved with Stewardship groups working in our area of operations.

We purchase timber sales on the West Oregon, Tillamook, Clatskanie, and Lane ODF Districts and the Siuslaw National Forest.

My company log sales for 2022 was \$70,000,000.00 of logs from ODF and Forest Service lands in our area. This is providing family wage employment for nearly 100 local families. In addition to our employees, we contract log truckers, lumber truckers, and chip truckers and rock truckers.

The annual tree growth of the ODF in the coast range is over 500,000,000 MM and the annual harvest cut is approximately 250 MM equal to a very small percentage of the growth.

With the demand for construction lumber to fill the needs of the growing housing market '(Gov. Kotek's 30,000 houses per year program)' in Oregon

It is essential ODF continue and increase the timber cut on ODF lands.

It is important to do the first entry thinning's to maintain a better rate of growth on the leave trees.

Thank you,

Levi Beelart

B & G Logging & Construction LLC

From: [FORESTRY Boardof * ODF](#)
To: [OLIVOS-ROOD Hilary * ODF](#)
Subject: Fw: Agenda item #1 - Public Comments
Date: Friday, March 24, 2023 3:38:03 PM

From: J Browning [REDACTED]
Sent: Wednesday, March 22, 2023 11:17 PM
To: Liz.Agpaoa@odf.oregon.gov <Liz.Agpaoa@odf.oregon.gov>; DEUMLING Ben * ODF <Ben.DEUMLING@odf.oregon.gov>; FERRARI Chandra * ODF <Chandra.FERRARI@odf.oregon.gov>; JUSTICE Joe * ODF <Joe.JUSTICE@odf.oregon.gov>; MCCOMB Brenda * ODF <Brenda.MCCOMB@odf.oregon.gov>; MUKUMOTO Cal T * ODF <Cal.T.MUKUMOTO@odf.oregon.gov>; CHAMBERS Karla S * ODF <Karla.S.CHAMBERS@odf.oregon.gov>; FORESTRY Boardof * ODF <BoardofForestry@odf.oregon.gov>; WILSON Michael * ODF <Michael.WILSON@odf.oregon.gov>; ABRAHAM Kyle * ODF <Kyle.ABRAHAM@odf.oregon.gov>
Subject: Agenda item #1 - Public Comments

March 22, 2023 Agenda item #1 – Public comments

I oppose the HCP. I have many concerns, not just about the damage it will do to my Logging Company, but our rural communities. Job losses, schools, municipalities we cannot afford to lose funding our ODF Timber Sales provide. Law enforcement, firefighters, first responders are under staffed as it is. Shutting schools down, losing our educators, Oregon is behind in education now. School breakfast and lunch programs for some kids are their only meals a day. I believe the dropout rate will increase as kids are being bussed miles from home to attend school in bigger communities. Parents losing their jobs, homes, vehicles. This very thing happened in the 90's to many rural areas affected by the decision to put spotted owls in the endangered species list, to towns like Lyons, Mill City & Detroit Lake, when forest service sales dried up only to watch in burn down thirty years later. Did the owl population increase? NO, homelessness, poverty and suicides went up. An experiment that devastated these communities. I knew some of the loggers from those areas, they paid top wages, health benefits and people could afford to send their kids to college. My company has logged ODF sales for 40 years. Today they are 90 percent of what we do. My average hourly wage is \$35.00 an hour with most people getting 40 hours of overtime a month. Many of my employees make over \$80,000 a year with health benefits I have provided for the last 40 years. My company has injected hundreds of millions of dollars into Oregon's economy with most of it staying in Clatsop County. We donate to many causes, I am very generous to help the less fortunate. All these benefits will be gone with this substantial reduction in the cut. Any reduction will have an effect and the possibility of ending Browning Loggings 42 years in business.

I have invested millions of dollars in building my company around these specific timber sales. Have taken on millions of dollars of debt to running low carbon emission trucks and equipment. We work for mills that create their own energy from steam generated co gen plants. I have been told from some of the timber companies we work for that the HCP could lead to closing some of their mills

down.

I don't see the HCP benefiting the forest or the owl. Clatsop forest at one time had 12 nesting pairs of owls, today they cannot find any. After 30 years of leaving more and more timber for the wildlife areas, dotting the landscape with wildlife trees, wider stream buffers, it does not seem to be working. Did god intend owls and murrelets to live forever? We should be upping the cut to at least sustainable yield. I'm not opposed to wildlife areas stream buffers, I like what stream buffers do for the water of the state, but now they keep getting wider and I am seeing more failures. Wind and heavy rain events blowing trees down and leaching dirt and mud into the creeks.

Oregon has many no cut areas, over 360 Parks, 11 national forests, 21 wildlife refuge, Clatsop County alone has many state parks off limits to logging, many of these with stands of old growth.

Sadly we have lost habitat and industrial forests to natural disasters, eruption of St. Helens, Columbus Day storm and the Tillamook burn. Millions of acres effected which led to the planting of billions of trees, these three events effected some 45 billion board feet of old growth timber. We aren't losing owls, murrelets and coho due to today's logging practices.

I'm in the woods almost every day including weekends, the health of much of our Clatsop forest is deteriorating. I'm seeing over ripe trees, dead tops, phylinas (Phylinas is a disease that is like cancer, it kills trees from the inside out). With today's harvesting practices, we are able to utilize these trees by cutting out any waste and rot while still providing lumber to help build us out of the housing crisis, bring affordable housing and shelter for the homeless. Shutting the forest down will only make that goal much harder to achieve, maybe even impossible.

Thank you

Jay M. Browning
JM Browning Logging



March 07, 2023

Oregon Board of Forestry
2600 State Street
Salem, OR 97310

Dear Board of Forestry,

The Clatsop County Fair is vital resource that brings together communities and helps residents and guests celebrate life's milestones.

Surrounded by forest lands, we understand the value of a Western Oregon State Forest Habitat Conservation Plan (HCP). We are very concerned, however, with the direct and indirect impact the current version will have on our ability to serve the public. The Clatsop County Fair mission is to be a community meeting place and the HCP financial impacts will harm our ability to effectively do so.

As currently approved, the HCP will cause a reduction in timber revenue resulting in an estimated \$30,000 Clatsop County Fair budget decrease—a 7% reduction in our annual budget each year. This loss of revenue does not take into account the additional ripple effects that would come from reductions in Clatsop County and other county taxing jurisdiction budgets.

With the proposed reduction in revenue, our ability to make improvements or repairs to our facilities will be hampered. It will negatively impact our ability to provide the best fair possible, our ability recruit, book and promote activities related to the production of the county fair, and reduce our ability to support other community organizations and groups such as 4H, leadership clubs, city parks and recreation departments, law enforcement organizations, master gardeners, schools and faith-based groups. These groups rely on our facility to conduct fundraising for their programs yet that could be hampered since they are also facing reduction of timber resources to their budget as well.

Good public policy comes from considering the many interrelated and interdependent factors. We

call on the Board of Forestry to weigh these many factors and create an HCP that protects and safeguards Clatsop State Forest and our broader community.

Sincerely,



Kallie Linder, Chair
Clatsop County Fair Board

	Taxing Jurisdiction	Annual fund reduction	As a % of Total Annual Revenues	County Fair Impacts
Clatsop County	County Fair	\$30,000	7%	
Clatsop County	Rural Law Enforcement	\$ 434,000	15%	The Clatsop County Sheriff Office provides services during county fair events and also maintains a presence in the area to reduce vandalism
Clatsop County	Road District #1	\$ 614,000	15%	The Clatsop County Fair is served by a county road. These funds cover paving and repairing roads.
Clatsop County	State Land Enforcement – Sheriff	\$ 76,000	38%	The Clatsop County Fairgrounds are surrounded by state lands and there have been wildfire concerns due to unhoused individuals.
Clatsop County	Extension/4-H	\$ 32,000	7%	4-H and Extension work closely with the County Fair, hosting events that showcase advancements in animal husbandry and farming.
Rural Fire		\$33,000		Clatsop County fairgrounds are protected by Rural Fire districts and this reduction could result in slower response times for fire and medical calls.

Note: Clatsop County Financial Impacts Based on Recent ODF Projections Clatsop County Annual Impacts are based on 5-year average receipts (2016/17 to 2020/21)



RIPPLE EFFECT OF HCP ON THE CLATSOP COUNTY FAIR

The Clatsop County Fair is vital resource that brings together communities and helps residents and guests celebrate life's milestones.

This loss of revenue does not take into account the additional ripple effects that would come from reductions in Clatsop County and other county taxing jurisdiction budgets.

We call on the Board of Forestry to weigh these many factors and create an HCP that protects and safeguards Clatsop State Forest and our broader community.

↓\$30K=7%

Reduction in annual budget

CLATSOP COUNTY FAIR

Rural Law Enforcement
Extension/4-H
Supporting Community Organizations
Faith-based Groups
Master Gardeners
Road District #1
School Groups
Rural Fire
Leadership Clubs
State Land Enforcement - Sheriff
Parks and Recreation
Fundraising



From: [FORESTRY Boardof * ODF](#)
To: [OLIVOS-ROOD Hilary * ODF](#)
Subject: Fw: Agenda item #1
Date: Friday, March 17, 2023 11:11:22 AM

From: Mark Cosby <[REDACTED]>
Sent: Monday, March 13, 2023 8:28 PM
To: FORESTRY Boardof * ODF <BoardofForestry@odf.oregon.gov>
Subject: Agenda item #1

Hello ODF Board Members.

While I attended the March 8th meeting in Corvallis... I chose to not speak.

I have lived in Marcola Oregon since 1962 and have watched logging feed families and fund schools. I can remember the Weyco Log train going past my Elementary school

often with 3 logs per car from the Reload Station up the Mohawk river. These Logs came from

North of the River and North of the North fork... some came from upper Gate ck and Calapooya river

starting in 1946 (best I know).

Since 1946 1 section has been harvested 3 times. 2nd cutting yielded twice the 1st cut and the 3rd yielded

More than the 2 previous cuts. PRIVATE SECTOR HAS IMPROVED YEILD.

As a hunter I played in these lands and others.

In High School I got my 1st paycheck for fighting fire with Loggers about 1 mile from my house (I never considered I would get a check, and today the check stub is still on my wall :)

All wealth is derived from Natural Resources... ODF and NFS lands management was commissioned to over see

Our land was managed in a sustainable way. Today NFS lands burn at a 7 yr average of 633.000 acres a year...

ODFW has a better average, I just don't know the current numbers.

As timber revenues decrease so we find our Schools, Law Enforcement, Jails, DA's and Judges can't handle current

case loads due to a lack of funding. This year the Legislature is hard at reducing prosecutions of misdemeanors and felony assaults to reduce case loads. Lane co DA is currently not prosecuting misdemeanors or felony assaults.

Homeless and ill behaved people have no consequences for their actions (I know this well as I am very involved politically and I support law enforcement).

To see Forest Burn is to see wasted resources. Cost of firefighting is inflationary and as we seen in Estacada, Detroit, Blue River, Oakridge, east of Roseburg the health and costs of communities is most concerning.

Timber lands should be as the farm land on the valley floors. It only makes sense we

maximize production in a sustainable way.

I am rural Oregon... and the Holly Farm Fire 3 yr ago put me in ICU for 13 days due to smoke inhalation.

While this fire was the perfect storm... others have not been.

I hope you will not reduce logging by 34% on our lands to appease the political voices of some who believe animals can't adapt to their environment.

I have heard the nonsense for 50 yrs now... I have seen predators increase, till deer decrease and vice versa.

Nature will adapt... nature runs in weather cycles... we are currently over 130 % of annual snow pack... 1 day i will see

39 inches of snow again in my yard, as I did in 1969 :)

Mark

Introduction to B & G Logging & Construction LLC

B & G Logging, is a small business enterprise based out of Philomath, Oregon started in 2005 by Levi Beelart. B & G has continued its growth by adding both men and equipment over the years. With the companies continued growth and success it has become one of the prominate logging operations in the Philomath to the coast area.

Our service area is generally within the area of the Siuslaw NF. Our customers (Sawmills that we deliver logs to) depend on B & G to maintain our equipment in top notch working order in condition to meet their ever changing business demands for logs. We pride ourselves on excellent customer service, an ability to remain flexible, and a commitment to have the logging equipment and workers needed for any logging job. B & G is recognized by Seneca Sawmill and Hampton Resources as a top quality producer of logs, delivered to their mills.

The business structure of Levi Beelart's logging business is as follows: Levi Beelart, Member, is 100 % owner of both LLC's. Both LLC's are merged together and taxes filled on Levi's personal Sch. C. Most of the equipment is owned by Levi Beelart and B & G Logging & Construction LLC.

B & G Logging & Construction LLC purchases timber sales from Forest Service, BLM, Oregon Dept. of Forestry, and private landowners. The timber is harvested by B & G Logging & Construction LLC and sold to sawmills by B & G Timber LLC. A harvest expense is paid by B & G Timber LLC to B & G Logging & Construction LLC and most operating expenses are then paid by B & G Logging & Construction LLC.

B & G Logging & Construction has a line of credit loan at the Philomath branch of Citizens Bank. With both borrowed and personal funds B & G Logging is able to have the working capital required to purchase and pay for the timber sales and own the equipment necessary to harvest the timber.

B & G Logging & Construction LLC has a working relationship witht Elliott Powell Baden & Baker in Portland to purchase performance bonds and Payment bonds for sales we purchase from Forest Service or other private land owners.

Levi has attended professional logging classes offered by AOL & received his Professional Loggers Certification. He has been operating his own logging company for the past 17 years.

Key Personnel:

Owner: Levi Beelart,
Side Rod: Bob Demarris
Side Rod: Chad Cleveland
Office Manager: Van Decker
Accountant Nick Mitchell

B & G Logging understands the importance of continued education and safety. The company has paid the cost of all classes for employees, which are taught by qualified local First Aid trainers. Employees have all attended First Aid and CPR classes in Philomath. They have also attended many classes on Forest Practices regulations, and safe logging procedures. Employees have extensive experience working with cable systems on steep ground and have become quite efficient at doing this system of logging and protecting the leave trees and terrain.

B & G Logging & Construction LLC is presently logging the High Tide Thin timber sale which we purchased. This sale is for 8,000 MBF of timber. On this sale, operating two of our sides, we have averaged 350 loads per month for the past 6 months. It is mostly a cable thinning operation in the Alesa River drainage area. Our 2nd. Side is harvesting on Ona Thin Sale.

We have placed rock on most of the spur roads so we could harvest as much as possible of High Tide Thin sale in the winter time, when log prices are usually at the high price for the year.

We have a complete line of logging and road building equipment which is operated by our 35 employee staff of well-trained employees. We have enough equipment to operate three complete logging sides continually as well as the road building side.

At B & G our equipment is maintained regularly and is ready to harvest timber. Each piece of equipment is on a rotating maintenance schedule, and operators are trained to watch for signs of damage, potential problems and equipment failure and report it immediately. Mechanics ensure the equipment is ready to harvest timber every day.

We have purchased 16 sales on the NF, and are presently logging on 2 of those sales. All sales are purchased by B & G Logging & Construction LLC, and are logged and sold to local mills.

These companies are built around a staff of local employees who have been trained to be a well-rounded and stable work force.

B & G Logging operates full time 12 months of the year. By having adequate timber sales purchased we are able to move around from sale to sale and be able to continue logging all the time. We have the flexibility to move so we can work in an area where bird restrictions, sap flow, dirt roads, and salmon stream do not affect our operation. By operating this way we are able to provide full time employment for our cutters, loggers, and truckers. And we are able to deliver logs to mills on a consistent schedule.

We have 16 timber sales purchased amounting to 40 MBF of standing timber. On these sales we have prepaid stumpage of \$1,300,000. Most of the sales have 3 years' time to harvest the timber, but some of the stewardship sales have 5 to 7 years for maturity. B & G will cut 25 M of timber per year, so we have enough under contract to operate at least 2 full years. The prepaid stumpage that has been paid and road improvement costs invested in these sales has been expensed in early years, so does not show any asset value on the cash basis Balance Sheet.

Mostly we just cut our own timber sales, but sometimes we do a custom job of harvesting for Hampton Associates, or Freres Lumber Co, or Weyerhaeuser.

We have \$15,000,000 worth of logging equipment which we use all the time. A large portion of this equipment has been depreciated so has a very low Book Value which shows on our Balance Sheet.

We continually buy additional timber sales as these become available. We do this to maintain a large inventory of sales to work on. Most sales require varying amounts of road work which we do a year or two ahead of the time we harvest the sale. The \$1,000,000.00 We have invested in logging roads during 2016 has been expensed so does not show any asset value on our Balance sheet.

Over the past 17 years we have been growing the logging company from running 1 yarder side to now running 4 yarder sides. We have been building our inventory of sales and privately owned timber lands.

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8. Combined Profit & Loss Jan. thru June 2016

9. 2015 Tax Return by email to Jim Ewald

Van G. Decker

LETTER TO BOARD OF FORESTRY 3 – 4 – 23

SEE BELOW

Hilary Olivos-Rood
ODF Board of Forestry
Corvallis, Oregon
March 8, 2023

B & G Logging has been a regular purchaser of ODF sales, both salvage burned sales, and green sales.

B & G Logging & Construction LLC purchases timber sales from Forest Service, BLM, Oregon Dept. of Forestry, and private landowners. The timber is harvested by B & G Logging & Construction LLC and sold to local sawmills.

B & G Logging is building a new small log mill to process the small wood from first entry thinning's of plantations in the coast range.

This mill will provide jobs for 25 plus full time employees.

These companies are built around a staff of local employees who have been trained to be a well-rounded and stable work force.

B & G Logging operates full time 12 months of the year. By having adequate timber sales purchased we are able to move around from sale to sale and be able to continue logging all the time. We have the flexibility to move so we can work in an area where bird restrictions, sap flow, dirt roads, and salmon streams do not affect our operation. By operating this way we are able to provide full time employment for our cutters, loggers, and truckers. And we are able to deliver logs to mills on a consistent schedule.

B & G has given assistance to the Philomath High School Forestry program by financial assistance as well as hosting the students at our logging sites and shop.

B & G Logging is actively involved with Stewardship groups working in our area of operations.

We purchase timber sales on the West Oregon, Tillamook, Clatskanie, and Lane ODF Districts and the Siuslaw National Forest.

My company log sales for 2022 was \$70,000,000.00 of logs from ODF and Forest Service lands in our area. This is providing family wage employment for nearly 100 local families. In addition to our employees, we contract log truckers, lumber truckers, and chip truckers and rock truckers.

The annual tree growth of the ODF in the coast range is over 500,000,000 MM and the annual harvest cut is approximately 250 MM equal to a very small percentage of the growth.

With the demand for construction lumber to fill the needs of the growing housing market '(Gov. Kotek's 30,000 houses per year program)' in Oregon

It is essential ODF continue and increase the timber cut on ODF lands.

It is important to do the first entry thinning's to maintain a better rate of growth on the leave trees.

Thank you,

Levi Beelart

B & G Logging & Construction LLC

From: [Jennifer Hamaker](#)
To: [OLIVOS-ROOD Hilary * ODF](#)
Subject: Testimony for March 8 BOF Meeting
Date: Monday, March 06, 2023 1:45:45 PM

Oregon Board of Forestry
2600 State Street
Salem, Oregon 97310

Re: Comment for March 8th Board of Forestry meeting:

Dear Chair Kelly and Members of the Board of Forestry, and State Forester Cal Mukumoto,

Harvest levels are now 34% lower than originally projected. These varying numbers show me that we have no clear grasp on the full impacts of the HCP, a 70-year plan. We could potentially be destroying a large part of the timber industry completely, which does not meet Greatest Permanent Value.

Since the new projections were released, there is mounting concerns for our special districts, communities, family wage jobs in the forest-sector, and ensuring that Oregon continues to have a timber industry, we are also concerned for ODF itself. The proposed IP would significantly cut the budget for the department, and that seems self-sabotaging, and fiscal negligence.

Realizing we are not alone in our concerns, we truly hope that the Board of Forestry and ODF revisits the HCP, and this time in partnership with the trust land counties. There is no reason to rush a 70-year plan that has the potential to be this devastating to our state.

Furthermore, the US is experiencing a housing shortage and Oregon is experiencing a housing shortage crisis. Reducing timber supply will increase the cost of building much needed housing. President Biden just announced new standards that require all construction materials used in federal infrastructure projects be made in the USA, which include, all lumber, glass, drywall, and fiber optic cables. The Board of Forestry has an obligation to direct management of our state forests, a lot is riding on your decision.

Is the Board of Forestry willing to devastate communities, part of an industry dependent on timber harvest, jobs and families, schools, funds that maintain roads and bridges, and add to the expense of building houses in Oregon FOR 70 YEARS? If this HCP is approved as-is, that's the potential of what will happen.

PLEASE CONSIDER A MORE BALANCED APPROACH to managing our state forests!

Sincerely and with grave concern!

Jen Hamaker
Oregon Natural Resource Industries


Sent from my treehouse made of renewable and sustainable wood.

From: [marty_pm](#)
To: [ODF DL Board of Forestry](#)
Subject: submitted testimony for March 8 BOF meeting
Date: Friday, March 03, 2023 6:17:27 PM

To whom it may concern,

Any plan that extends beyond the normal span of a legislative persons term limits violates the whole idea of representation for the people of Oregon. If this were a four to ten year plan I might accept it, but seventy years is a mockery of the Democratic process.

Therefore, I soundly reject this plan.

Regards,
Marty Kuhrt
Bandon

Sent with [Proton Mail](#) secure email.

From: [FORESTRY Boardof * ODF](#)
To: [OLIVOS-ROOD Hilary * ODF](#)
Subject: Fw: Testimony letter from Oregon Advocates for School Trust Lands
Date: Thursday, May 11, 2023 12:17:38 PM
Attachments: [Appeal of Final Agency Decision -- Accepted.pdf](#)

From: Dave and Barb Sullivan <[REDACTED]>
Sent: Wednesday, March 22, 2023 10:46 PM
To: FORESTRY Boardof * ODF <BoardofForestry@odf.oregon.gov>
Cc: KELLY Jim * ODF <Jim.KELLY@odf.oregon.gov>; AGPAOA Liz * ODF <Liz.AGPAOA@odf.oregon.gov>; DEUMLING Ben * ODF <Ben.DEUMLING@odf.oregon.gov>; FERRARI Chandra * ODF <Chandra.FERRARI@odf.oregon.gov>; JUSTICE Joe * ODF <Joe.JUSTICE@odf.oregon.gov>; MCCOMB Brenda * ODF <Brenda.MCCOMB@odf.oregon.gov>; MUKUMOTO Cal T * ODF <Cal.T.MUKUMOTO@odf.oregon.gov>; CHAMBERS Karla S * ODF <Karla.S.CHAMBERS@odf.oregon.gov>; WILSON Michael * ODF <Michael.WILSON@odf.oregon.gov>; ABRAHAM Kyle * ODF <Kyle.ABRAHAM@odf.oregon.gov>
Subject: Re: Testimony letter from Oregon Advocates for School Trust Lands

The ODF Board of Forestry Support Office asks:

Would you like to enter your letter into the meeting record under item #1 for the March 8, 2023 Board meeting, or are you submitting this information as general comment to the Board?

Please accept my two-page letter and its associated 17-page booklet as **both:** part of the formal record and as a general comment to the Board of Forestry. Here is why it should be used in both ways.

First, my letter tries in a friendly way to explain why the Board should manage School Trust Lands for schools. After all, schools are just as important in today's complex society as they were back in 1859 when Oregon created a bilateral compact with the United States government to make these Trust Lands "irreducible" and use them "exclusively" for schools.

But second, my letter serves as the necessary precursor to filing a Breach of Trust lawsuit against the Board of Forestry. Breach of Trust lawsuits about School Trust Lands have been fairly common in other states, and nationwide, they have established that the School Trust Lands bilateral compacts between states and the United States government are real and enforceable. But since 1859 that understanding has been forgotten by Oregon's political leaders: no Oregon lawsuit has been used to enforce the promises Oregon made when it was admitted as a state. So while Oregon Advocates for School Trust Lands (OASTL) wants to informally encourage the Board of Forestry to honor Oregon's bilateral compact with the United States government, I understand it will require a shift in thinking among Oregon's politicians and their appointees before they begin honoring those promises. Creating that shift in thinking among the Board of Forestry's members may require a lawsuit, and if so, the lawsuit will need to be preceded by a demand to stop managing School Trust Lands for non-school purposes. So that is the second purpose of my letter, and that explains why I want my letter entered into the Board's formal record.

It may help everyone on the Board to understand OASTL sent a similar letter to the State Land Board last December. The State Land Board ignored our letter and decided on December 13, 2022 to sell the Elliott State Forest from Oregon's School Trust Lands in a self-dealing transaction without obtaining a market-based appraisal. This has resulted in a Petition for Review lawsuit filed in the Marion County Circuit Court. I have attached the initial complaint in that lawsuit as "Appeal of Final Agency Decisions -- Accepted.PDF" to this message. More information about this lawsuit can be found on the Legal page of the www.OASTL.org website.

One of the best ways to avoid lawsuits is to informally listen and discuss things so everyone can understand concerns and agree about the various rights and responsibilities without the expense and delay of waiting for a formal legal decision. So, in closing, I want to offer again to meet with the Board of Forestry to discuss School Trust Lands and whether it makes sense to burden them with more restrictive regulations than are applied to private timberland.

Sincerely,
-- Dave Sullivan
[REDACTED]

P.S. -- My father, J. Wesley Sullivan, served on the Board of Forestry in the 1970s, so I have a real affinity with the Board's overall goals and purpose.
-- Dave

On Wed, Mar 22, 2023, 2:21 PM FORESTRY Boardof * ODF
<BoardofForestry@odf.oregon.gov> wrote:

Dave,

Thank you for sending this information to the Board of Forestry.

Would you like to enter your letter into the meeting record under item #1 for the March 8, 2023 Board meeting, or are you submitting this information as general comment to the Board?

Confirm at your earliest convenience.

Regards,
ODF Board of Forestry Support Office

From: Dave and Barb Sullivan <[REDACTED]>

Sent: Wednesday, March 22, 2023 6:53 PM

To: KELLY Jim * ODF <Jim.KELLY@odf.oregon.gov>; AGPAOA Liz * ODF <Liz.AGPAOA@odf.oregon.gov>; DEUMLING Ben * ODF <Ben.DEUMLING@odf.oregon.gov>; FERRARI Chandra * ODF <Chandra.FERRARI@odf.oregon.gov>; JUSTICE Joe * ODF <Joe.JUSTICE@odf.oregon.gov>; MCCOMB Brenda * ODF <Brenda.MCCOMB@odf.oregon.gov>; MUKUMOTO Cal T * ODF <Cal.T.MUKUMOTO@odf.oregon.gov>; CHAMBERS Karla S * ODF <Karla.S.CHAMBERS@odf.oregon.gov>; FORESTRY Boardof * ODF <BoardofForestry@odf.oregon.gov>; WILSON Michael * ODF <Michael.WILSON@odf.oregon.gov>; ABRAHAM Kyle * ODF <Kyle.ABRAHAM@odf.oregon.gov>

Subject: Testimony letter from Oregon Advocates for School Trust Lands

I have attached two files:

- "OASTL's BOF Testimony Letter.pdf" is a two-page letter on behalf of Oregon Advocates for School Trust Lands.
- "MagnificentEndowmentBooklet.pdf" is a 17-page booklet that describes School Trust Lands nationwide and explains why they legally must be managed to benefit schools.

Sincerely,
-- Dave Sullivan



David Sullivan
Oregon Advocates for School Trust Lands

[REDACTED]
Monmouth, OR 97361

[REDACTED]
March 22, 2023

Board of Forestry
care of boardofforestry@odf.oregon.gov

Dear Board of Forestry:

I am writing today because the Board of Forestry is considering whether to sign an Habitat Conservation Plan (HCP) that will cover all Oregon state forests, and some of these forests are held in trust as Oregon's School Trust Lands. As a condition of statehood, Oregon accepted millions of acres granted by Congress in trust to schools with the state acting as trustee. When the Board of Forestry acts on issues involving School Trust Lands, it acts as an agent of the state and is bound by the same fiduciary duties that bind the state. Thus, you have a responsibility as a de facto Trustee to manage School Trust Lands to benefit schools.

Oregon Advocates for School Trust Lands (OASTL) is a non-profit educational organization whose goal is to "ensure Oregon fulfills its fiduciary duty to the common school trust beneficiaries." You can learn more about OASTL at its website, www.OASTL.org. OASTL is the Oregon affiliate of the national organization, Advocates for School Trust Lands (ASTL), that was founded in Utah in the late 1990s. You can learn more about ASTL at its website, www.AdvocatesForSchoolTrustLands.org. ASTL also prepared the booklet, "A Magnificent Endowment: America's School Trust Lands" that I have attached along with this letter. It explains what "School Trust Lands" are and why they are legally required to be managed to benefit schools.

The restrictive HCP that you are considering would convert a substantial part of the state's productive working forestland into a what effectively would be a wildlife preserve. This conversion should not happen for School Trust Lands. Oregon has the right to set aside forest lands for parks, wildlife habitat, or other public purposes, ***but it cannot manage School Trust Lands for non-school uses without paying compensation to the beneficiaries.***

I am a member of the Boards of Directors for ASTL and OASTL. These organizations prefer to work with state governments in a cooperative manner, and for over 20 years, they have been very successful with this approach. Feel free to reach out to us. Occasionally, informal

methods have failed, and in those cases, these organizations have asked courts to enforce Trust Law.

The OASTL Board of Directors has voted to sue the Oregon Board of Forestry for Breach of Trust if you sign a restrictive HCP that affects School Trust Lands. OASTL has Oregon school districts, schoolchildren, and parents as members, and under the Doctrine of Associational Standing, courts have consistently allowed organizations like OASTL to file lawsuits on behalf of our members.

Please consider Oregon's schoolchildren as you decide how to manage Oregon's state forests.

The school is the last expenditure upon which America should be willing to economize.
-- Franklin D. Roosevelt

Sincerely,

A handwritten signature in black ink that reads "Dave Sullivan". The letters are cursive and somewhat slanted to the right.

Dave Sullivan



Project • LEARN



A MAGNIFICENT ENDOWMENT:
America's School Trust Lands
Your Guide to Making a Difference



Acknowledgments



The Land-grant Education And Research Network (Project LEARN) is funded through Grant Number P116Z100173 from the United States Department of Education Fund for the Improvement of Post-Secondary Education (FIPSE) awarded to the Center for the School of the Future at Utah State University. We thank Senator Robert F. Bennett for his unwavering support of this project and acknowledge the support of our federal program officers, Frank Frankfort & Bette Dow.



This publication was produced by Project LEARN at the Center for the School of the Future at Utah State University. Project LEARN is a collaborative effort with the Children's Land Alliance Supporting Schools (CLASS). It seeks to educate and support decision-makers regarding the effective management and use of School Trust Lands, funds, and distributions.



In many states the permanent funds and the proceeds which should have been added to them have been so carelessly diverted, squandered, wasted, and embezzled so shamefully, that what ought to be a magnificent endowment...has dwindled to an almost negligible sum.

- Dr. Fletcher Harper Swift, Columbia University 1911



Thank You:

Senator Robert F. Bennett for his commitment to this project and to public education in America.

Margaret Bird, Paula Plant, and the Board of Governors of the Children's Land Alliance Supporting Schools (CLASS). These individuals have worked tirelessly to preserve the legacy and protect the future of School Trust Lands for America's schoolchildren.

The Western States' Land Commissioners Association (WSLCA) for their assistance in assembling the data used to create this handbook.

Richard West, Matthew Taylor, Kimilee Campbell, Cade Charlton, John Maynes and all the staff at the Center for the School of the Future for support of Project LEARN and production of this handbook.

Michael Pons, Pons Consulting, for helping spread the message of School Trust Lands.

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Foreword

-Margaret Bird

There are many important issues related to School Trust Lands. I could tell you about history, the law, distribution of funds and on and on. The problem is getting you to hold still long enough to tell you and then motivate you to take action. It is my hope this handbook will simplify the issues and motivate you to act on behalf of the beneficiaries – the children in America’s public schools.

School Trust Lands is a particularly obscure, complex, and difficult aspect of school finance. Evidence shows that even many of the people directly responsible for administering School Trust Lands don’t always fully understand many of the issues related to them.

It is difficult to make generalizations about School Trust Lands and Permanent School Funds. For example, only some states with School Trust Lands use the term Permanent School Funds. Others use terms such as Permanent Common School Fund, Common School Trust Fund, and Permanent Trust Fund (see page 17). States also have their various terms for School Trust Lands.

Of 20 states, seven have Commissioners appointed by the Governor, six have Commissioners who are elected. Virtually all of the key people responsible for School Trust Lands and Permanent School Funds have other competing

responsibilities. States have a variety of Boards, Committees, and Trustees who make judgments about investments, disbursements, and policies.

This means the best way to find out what is happening in your state is to talk to advocates for children and public education in your state. Not only will you get a better handle on the facts and figures, but it’s also the best way to find out how to make a difference.

It’s not easy to generalize about how states go about administering School Trust Land funds, but it is possible to describe some principles we should all be working toward:

- Because land has intrinsic, irreplaceable value School Trust Lands should be managed wisely to benefit current and future generations of schoolchildren.
- School Trust Lands and Permanent School Funds trustees should be held to the highest standards for competence in investments, fairness in distribution, undivided loyalty to the beneficiaries, and duty to grow the value of the trust.
- School Trust Lands and Permanent School Funds need to be open in all transactions to ensure that leases, sales, and investments are consistent with market values and best practices.
- Trustees must be competent to evaluate the quality of investments. That’s why everyone involved in the Trusts – bankers, lawyers,

and managers – share in the obligation to provide accurate and timely information.

These principles are simply a restatement of the legal obligation of every Trustee involved. The courts have affirmed these principles time and again, regardless of varying particulars from state to state. In addition your own state and partner organizations may have other statements of principles or goals to achieve.

The granting and management of School Trust Lands are part of a well-crafted plan that has served education in the United States for over 200 years. This plan to support and sustain public schools is embodied in many state constitutions and the provisions that enabled statehood.

This plan is a promise that School Trust Lands will always be used for the benefit of public school children, and a promise to generations to come that the legacy will continue.

Unfortunately this legacy has been threatened repeatedly. A century ago, Dr. Fletcher Harper Swift conducted an exhaustive study of the Permanent School Funds and found that two-thirds of the lands and funds granted for the support of schools were lost or squandered. He attributed those losses to:

- redefining school children's interests and diverting the funds for other purposes,
- carelessness and incompetence in management,
- lack of responsibility or lack of a clear line of authority, and
- inadequate oversight by public officials, overwhelmed with other responsibilities.

We can agree that the systems in place today are better equipped to prevent the kind of malfeasance and collusion that have occurred in the past. But history shows such things are possible. Current pressures to cut taxes and cut spending for public schools create as great a threat as past corruption. Similarly, diversion of resources from the Permanent School Funds is significantly cutting revenue for future schoolchildren. The 45 million acres of School Trust Lands and \$40 billion in Permanent School Funds will continue to be a target for politicians and profiteers.

Only an army of informed citizens can protect this legacy. It's time to get informed.

Margaret Bird, CLASS co-Director



Introduction

Every generation has a solemn responsibility to make the world a better place for those who come after. In the United States, our nation’s founders set aside School Trust Lands to ensure quality public schools were a part of every American community in perpetuity.

Paula’s Story

As a young girl in Utah, summers at the farm were among my happiest memories. I would tread on the back of my grandfather's heels as he followed his daily routine.

On the farm, the work might be done for now, but it was never done. Tomorrow the cattle would need to be moved to another pasture. Next week the garden would need to be tilled and weeded. The farm, the land, was part of a continuous, never-ending cycle. You keep working the land so it will be better; you take care of it so it will produce and be fruitful for another generation.

I loved being part of this cycle, this sense of stewardship.

One of my favorite trips with Grandpa was to feed and water the cattle. One morning over our traditional bacon and eggs he talked of going out to the “school” section.

All the way out over the dusty, bumpy road, I sat with my nose pressed to the glass looking for the school. When we stopped to open the last wire gate, I looked around and asked, “Where is the school?”

He chuckled, “There isn’t a school out here, just school lands.”

“Grandpa,” I asked, “Then why do you call these lands the ‘School Lands’?”

“Darling, that isn't my land. It's land I'm taking care of for the school children. I get the benefit of the crop and they get the benefit of the income. It all works to support good

schools like the one you're going to now. I'm just taking care of it, adding my little bit to making sure those schools are good and the land is well kept until the next person takes it over."

"It's there for you, and your grand-children and your great-great-great grandchildren."

I remember puzzling over how far into the future you could imagine your descendants, how far into the past could you imagine your family tree? Since biblical times good people have been making something ready for the people yet to come, and there are always generations yet to come.

Call it a legacy. Call it a vow. Call it a solemn obligation to do for those what has been done for you.

School Trust Lands are no more or less than what my grandfather described. And they are no less important today than they have ever been. And it has never been more important for good people to step up and make sure this legacy continues.

- Paula Plant, CLASS co-Director



Today, 20 states have retained large endowments of School Trust Lands. Other states have converted all or part of their original land grants into Permanent School Funds. Many of the states that have made this conversion have used the funds for short-term needs, thereby losing the trust's potential to benefit future generations.

This handbook is designed to guide you in preserving the legacy of School Trust Lands in your state. It is meant to assist you in defending the rights of your state's schoolchildren in whatever role you play. It is for teachers, school principals, parents of schoolchildren and anyone who cares about public education. It addresses:

- What do you need to know to make a difference in your state and community?
- Who makes decisions concerning School Trust Lands and what is the best way to influence them?
- Who are your partners in this essential effort to preserve a legacy and promote education quality?

You'll find the answers here.

The Law Is On Your Side

In every state, the courts have reiterated that School Trust Lands and Permanent School Funds are intended to benefit public schools and students – and no one else. Even so, lax enforcement, competing priorities, and even malfeasance have reduced School Trust Lands by two-thirds nationwide. Although much of the original grants have been lost, some states have preserved and strengthened the legacy of School Trust Lands through careful management.

Protecting this legacy takes work. Every state needs dedicated people to keep an eye on policies, protocols, audits, and annual reports to make sure that *every person who has a role in managing School Trust Lands is held responsible according to the legal obligations of a Trustee.*

We, the people who care about our state's schoolchildren, have a right to

observe and analyze what is happening, inform others, and encourage advocates for children and public education to take action. We have a responsibility to prevent acts of commission or omission that threaten School Trust Lands and Permanent School Funds.

What's more, we have friends. Thousands of other people in our states care about public education. And we have tools, including media contacts, organizational outreach, awareness, and extensive capacity for activism.

Every person who has a role in managing School Trust Lands should be held responsible according to the legal obligation of a Trustee.

This handbook will help you to emphasize the bright line between the School Trust Lands and the beneficiaries – public schools and students.

You don't need to know everything about the law or current practices to get involved. All it takes is a strong desire to be a part of a vital effort to preserve and enhance quality public education in every state.





History of School Trust Lands

To penetrate and dissipate these clouds of darkness, the general mind must be strengthened by education.

-Thomas Jefferson

School Trust Lands are based on the ideas that every community should have public schools, that education benefits the student and the community, and that prudence dictates there should be sustained support for quality public schools and students.

School Trust Lands are any lands provided by the state or federal government intended to generate revenue to support public school children.

The first large scale School Trust Lands granted in America were established by Congress in the Ordinance of 1785. The first grants set aside Section 16 in every township for the benefit of schoolchildren (for an explanation of townships and sections, see page 12). Two years later the Northwest Ordinance set forth the conditions for territories and statehood, but the Ordinance of 1785 first set the standard that each state designate lands that would be exempt from federal taxation and maintained and improved for the benefit of public schools

and students.

Later, the federal grant set aside two sections as School Trust Lands. When dealing with the arid states of Arizona, New Mexico, and Utah, four sections were set aside.

From the 1820's through 1959, the federal government outlined the conditions for a territory to become a state. The framework for these conditions is called an enabling act. Passage of enabling acts preceded statehood and drafting of the state constitution. One of these conditions was that new states were to set aside lands for the support of public schools. In the enabling acts, lands for the support of public schools were provided to every state except the original 13 colonies, Kentucky, Maine, Texas, and West Virginia. Kentucky and West Virginia were originally part of Virginia; Maine was part of Massachusetts. These states granted themselves School Trust Lands.

State Supplemental Grants

Some states granted lands for the support of public schools above and beyond those required by the federal government. By 1788, Massachusetts had set aside School Trust Lands in the west to encourage settlement. Various other states

As states were settled, they were divided into townships. A township is 6 miles x 6 miles and divided into 36 square sections. Originally states set aside Section 16 for the benefit of schoolchildren. Later, additional sections in each township were granted for schoolchildren.

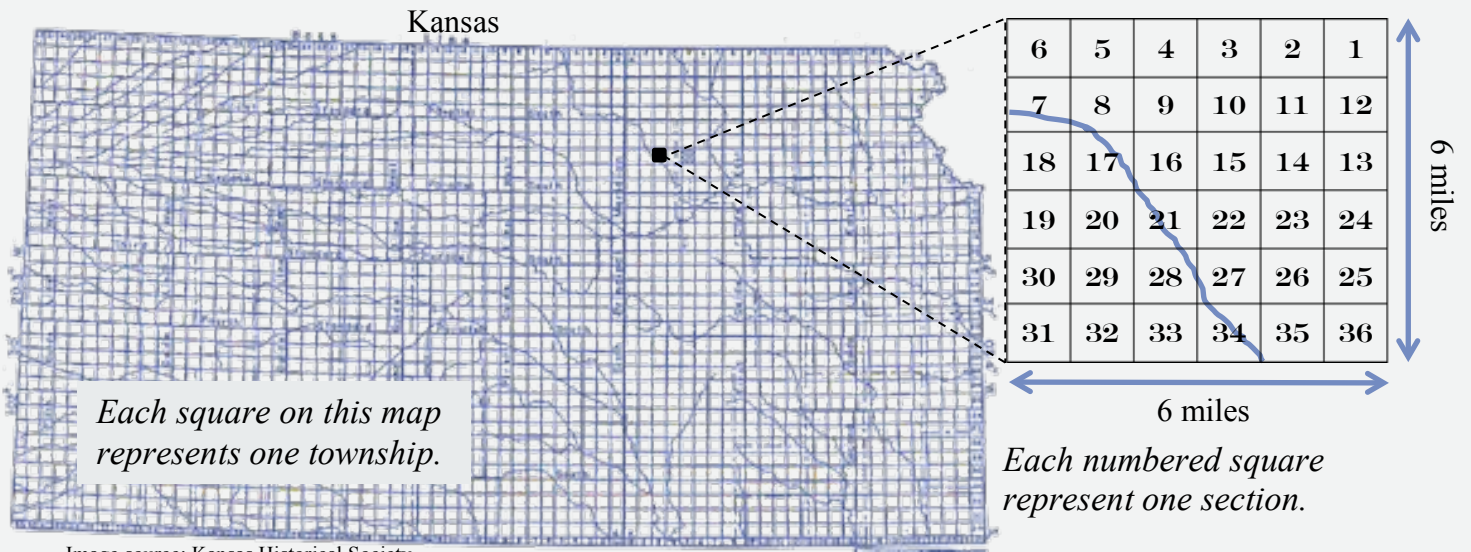


Image source: Kansas Historical Society

States that received one section in each township for the benefit of schoolchildren:

- | | |
|----------|-------------|
| Alabama | Ohio |
| Arkansas | Louisiana |
| Florida | Michigan |
| Illinois | Mississippi |
| Missouri | |

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

States that received two sections in each township for the benefit of schoolchildren:

- | | | |
|------------|-----------|--------------|
| Alaska | Kansas | North Dakota |
| California | Minnesota | Oklahoma |
| Colorado | Montana | Oregon |
| Idaho | Nebraska | South Dakota |
| Iowa | Nevada | Washington |
| | | Wisconsin |
| | | Wyoming |

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

States that received four sections in each township for the benefit of schoolchildren:

- Arizona
New Mexico
Utah

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

expanded School Trust Land holdings to varying degrees. North Carolina, for example, set aside swampland as part of the School Trust Lands. Other states set aside lands seized for non-payment or other causes.

Texas entered the union as an independent republic and therefore was not required to grant lands for the support of public schools. By that time, Texas had set aside almost 42 million acres for the support of public schools.

Ultimately 134 million acres of federal and state lands were granted to support public schools and students by the year 1959.

A Legacy Nearly Lost

In the beginning, a state’s School Trust Lands represented a significant share of its total surface acreage – at least 3 percent of states that were granted one section, 6 percent of states that were granted two sections, and 11 percent of states with four sections.

Today, 20 states still hold and administer 45 million acres of School Trust Lands. Over the years, about two-thirds of the School Trust Lands have been sold or traded with proceeds placed in Permanent School Funds. School Trust Lands generate revenues in many different ways, from timber and mining to recreation and agriculture (see pages 28-29).

States Listed By Total Trust Acreage 2011 (Surface Rights)	
State	Acres
1. Arizona	8,100,000
2. New Mexico	6,800,000
3. Montana	4,600,000
4. Utah	3,400,000
5. Wyoming	3,000,000
6. Colorado	2,880,000
7. Minnesota	2,500,000
8. Idaho	2,100,000
9. Washington	1,800,000
10. Nebraska	1,300,000
11. Mississippi	838,000
12. Oregon	768,000
13. South Dakota	761,000
14. Oklahoma	743,000
15. Texas	719,000
16. North Dakota	632,000
17. California	469,000
18. Alaska	103,000
19. Nevada	3,000
20. Wisconsin	5

As a Republic, Texas set aside almost 42 million acres for support of schools. By 1906, Texas had the largest Permanent School Fund. It has maintained that place through strict adherence to the principles of the Trust, growing the fund and preserving the legacy.

The lands granted at statehood by the federal government were granted in trust for the support of public schools. Funds used from the sale and investment of School Trust Lands are to be used for the benefit of schoolchildren without exception, without question, in perpetuity.

One could argue that the beneficiaries are still entitled to the *value* of the original grants. In no instance have Permanent School Funds outperformed the growth in the value of the original land grants. However, turning back the clock would be difficult. *But protecting the current*

holdings and looking to build for the future – is something we can and must do.

School Trust Lands were intended – and continue to have the potential – to enhance education quality: establishing quality facilities, providing for high quality teachers, and designing and modeling successful practices. Although education advocates and policymakers in each state have their own vision of what it means to improve education quality and meet the needs of students, every state is required to use these resources to support and enhance public schools.

What Do I Need to Know About the History of School Trust Lands?

- From the nation's earliest beginnings, School Trust Lands and public schools were created to establish and maintain universal quality education.
- Where School Trust Lands have been poorly managed – whether through neglect or wrong-doing – public schools and students have lost an irreplaceable resource to support quality education.
- Where School Trust Lands have been managed well, they have provided resources to states to support on-going and future educational opportunity.
- Citizen advocates working to keep a focus on the legacy of School Trust Lands are the best defense against future neglect or abuse. The Children's Land Alliance Supporting Schools (CLASS) is an excellent resource for connecting with other advocates in your state. To learn more about CLASS, visit www.childrenslandalliance.com.

This section is a brief introduction into the 225-year history of school lands. For more background and context, read A History of Federal Land Grants to Support Public Schools, by Margaret Bird, available at:
http://www.childrenslandalliance.com/pdf/history_fed_land_2003.pdf

Permanent School Funds

“A well-instructed people alone can be permanently a free people.”
-James Madison

Connecticut, New York, and Massachusetts were among the first states to establish Permanent School Funds. These trusts were partly funded by the sale of state-owned lands. Over the next 100 years, various states converted some or all of their School Trust Lands to Permanent School Funds.

Permanent School Funds are trusts established by states, often funded in part through the sale of school lands, intended to generate revenue to support public school children through investment.

Today, 30 states have no School Trust Lands, but many of them still have a Permanent School Fund. Most states have mechanisms for ongoing contributions to the Permanent School Funds capital gains, land sales, and other revenues.

States use a wide range of investment strategies for Permanent School Funds.

Some states are bound by specific constitutional or legislative provisions that prescribe investment policies.

Investments

Permanent School Fund trustees are risk averse, and rightly so. They are bound by law to protect and grow the Permanent School Fund, and they are held to a higher standard of prudence and care than normal business practice. In some states Trustees are also elected or appointed officials. These Trustees face unique political consequences for any dramatic decrease in the Fund or its annual revenues.

Still, all trustees are expected to stimulate and manage the Permanent School Fund. States have different strategies for increasing their Permanent School Funds. Many states dedicate fees (such as hunting access fees) to grow the Permanent School Fund or designate other sources (e.g. foreclosures and abandoned property) to add to the fund.

In recent years, New Mexico and Utah have given the Trustees more flexibility in determining investments by expanding the list of acceptable investments. However, in both states the Prudent Investor Rule was determined to be the standard of care.

Several states, including California, Colorado, Idaho, Montana, and Oklahoma, have unsuccessfully sought similar flexibility.

Returns

Investment returns are an important part of growing the Permanent School Funds and supporting local schools.

States use a variety of benchmarks available in the private sector to measure performance. Trustees in the various states generally use different indexes for different types of investments – such as fixed income (money markets), domestic equity (stocks), and international equity.

Capital gains and losses are treated quite differently from state to state. The Permanent School Funds in Alaska, Oklahoma, Utah, and Washington retain all realized capital gains as principal to be reinvested. In Idaho and Wyoming, capital gains and losses affect the allocation for schools in the current years, which can lead to wide shifts in school resources from year to year. North Dakota amortizes capital gains income over a period of several years, eliminating large spikes and valleys in the funding stream.

The prudent investor rule carries specific legal meaning, Trustees must “observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.”

Today no investor can claim to fully understand all of the investment accounts available. *However, trustees must be able to demonstrate they did due diligence before making their investment decisions.*

What We Can Watch For

No one investment plan can be said to be the ideal for every state. But

advocates for children and public education can monitor activities with an eye toward certain principles:

- School Trust Lands have always outperformed Permanent School Funds because land has intrinsic, irreplaceable value. Therefore Trustees should be cautious in selling School Trust Lands.
- School Trust Lands and Permanent School Fund trustees should be held to the highest standards for competence, fairness, undivided loyalty, and their ability to grow the value of the trust.
- School Trust Lands and Permanent School Funds must be open in all transactions to ensure that leases, sales, and investments are all consistent with market values and best market practices.
- Professional management is best served when the boards and trustees are competent to judge, and that requires accurate and timely reporting from all bankers, lawyers, and investment managers involved in the trusts.

What Do I Need to Find Out About Permanent School Funds?

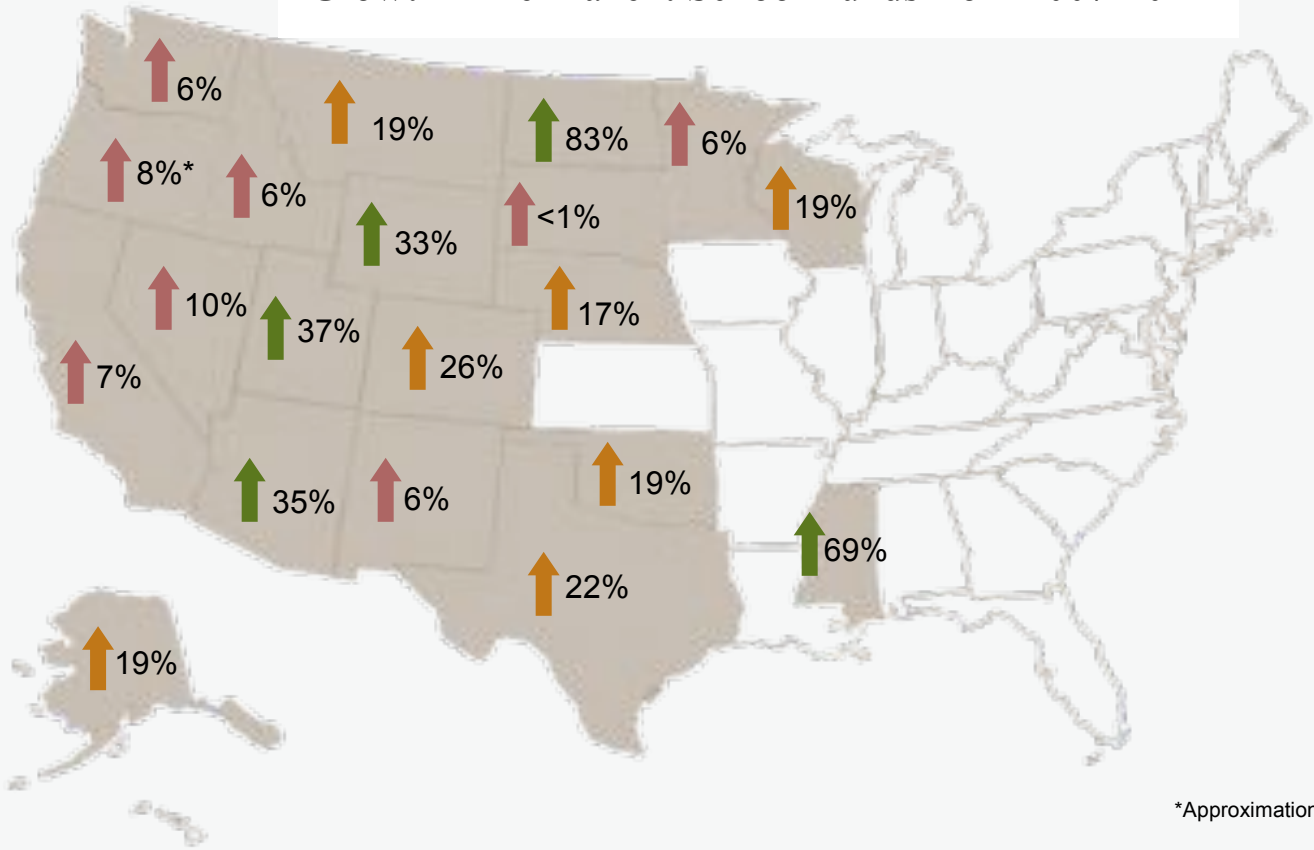
- Many states have Permanent School Funds in addition to School Trust Lands. What is the history of the Permanent School Fund in my state and its relationship to School Trust Lands?
- Many states set specific investment requirements for Permanent School Funds. What are the limits and opportunities in my state?
- Does the state's mix of investments, money markets, equities, etc., advance the dual goals of ongoing support and growth?
- How are states that are heavily invested in equities doing over the past five, 10, and 20 years?



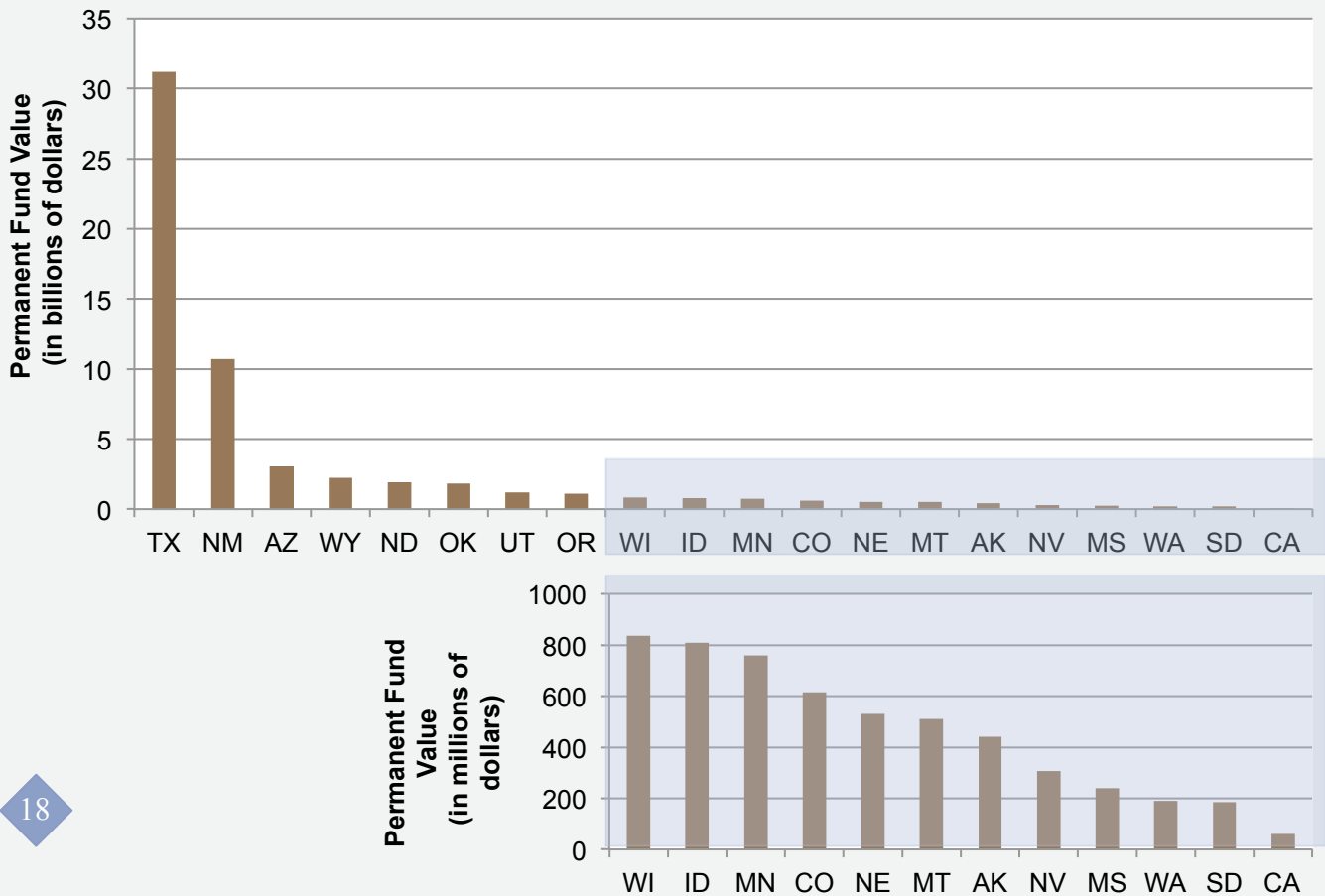
Permanent School Fund Names

Alaska	Public School Trust Fund
Arizona	Permanent Common School Fund
California	School Land Bank Fund
Colorado	Public School Permanent Fund
Idaho	Public School Endowment Fund
Minnesota	Permanent School Fund
Mississippi	Education Improvement Trust Fund
Montana	Trust and Legacy Fund
North Dakota	Common School Trust Fund
Nebraska	Permanent School Trust Fund
New Mexico	Land Grant Permanent Fund
Nevada	Permanent School Fund
Oklahoma	Common School Permanent Fund
Oregon	Common School Fund
South Dakota	Permanent Trust Fund
Texas	Permanent School Fund
Utah	State School Fund
Washington	Permanent Common School Fund
Wisconsin	Permanent School Fund
Wyoming	Common School Permanent Land fund

Growth in Permanent School Funds from 2007-2011



Permanent Fund Market Values (2011)



School Trust Lands Timeline





School Trust Land Law

Constitutional Law

The foundations for all School Trust Lands are the enabling acts under which territories were admitted as part of the United States and each state's constitution. A state's constitution sets out its principles of government, and state after state enshrined public education as a right of the people and a duty of the state. Each state expresses its individuality in how it conveys that core value:

It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state [Montana].

In addition to language concerning free public schools, all state constitutions also include language specifically pertaining to School Trust Lands and Permanent School Funds:

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.

No lands now owned or hereafter acquired by the state [Nebraska] for educational purposes shall be sold except at public auction... The general management of all lands set apart for educational purposes shall be vested...in a board of five members to be known as the Board of Educational Lands and Funds.

The [Mississippi] Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.

The permanent school fund of the state [New Mexico] shall consist of the proceeds of sales of Sections two, sixteen, Thirty-Two and Thirty-Six in each township of the state, or the lands selected in lieu thereof...such portion of the proceeds of sales of land...granted by congress; all earnings, including interest, dividends and capital gains from investment...

All the public lands granted to the state [Washington] are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest is disposed of...

All state constitutions reflect an enduring commitment to quality public education. Additionally some state constitutions are very specific about what kinds of trust investments can be made, and how and when they can be made.

Laws Made to Last

States have various mechanisms for changing their constitutions, but constitutional changes were intended to be difficult. The state constitutions all include language that acknowledges the paramount interest of public schools and students. In a number of legal cases, advocates for children and public education have forced policymakers to honor their duties as trustees.

The enabling act cannot be changed without an act of Congress and a vote of the people of the state – final firewalls to protect the beneficiaries. Part of the agreement that enabled statehood was a trade off: the state agreed that federal lands would not be taxed, and, in return, the state received lands to be set aside in perpetuity for the benefit of public schools and students.

These lands were not simply a gift. They were part of a compact between each new state and the United States. By enacting the state constitution, the state accepted the responsibilities of a trustee, requiring the state to act in the best interests of the beneficiaries – public schools and students, as well as any other named beneficiaries, such as specialized state schools.

In 1978, the 10th Circuit U.S. Court of Appeals reaffirmed this, ruling “The specific purpose [of the school trust land grants] was to create a binding permanent trust which would generate financial aid to support the public school systems...The nature of the Congressional land grant program was 'bilateral' in effect. It constituted a solemn immunity from taxation of federal lands...in return for the acceptance by states of the lands to be granted...for the perpetual benefit of the public school systems.”

What Do I Need to Know About Constitutional Law?

- Each state's constitution includes language regarding the establishment and administration of School Land Trusts and Permanent School Funds.
- State constitutional language ensures the protection of School Land Trusts and their uses. Enabling acts – federal agreements with each new state – affirm that the land is meant for the benefit of public schools and the schoolchildren who attend them.
- Together constitutional and enabling act law provide the framework to support and enhance free, universal, quality public schools in perpetuity.

Trust Law

Being a trustee carries specific obligations. The U.S. Supreme Court has held that “A trustee is held to something stricter than the morals of the marketplace...Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty...”

The words pertaining to School Land Trusts have their dictionary definitions, but they also have legal definitions that are even more nuanced.

The governors, legislators, land board members, trust administrators, and all the people involved in decisions about School Trust Lands and Permanent Funds are trustees, and trustees have a number of specific legal duties.

The trustees' duties include:

- Duty of undivided loyalty to the beneficiary.
- Duty to preserve trust property.
- Duty to exercise reasonable care and skill.
- Duty to make a trust property productive.
- Duty to furnish information that is timely and accurate.
- Duty to pay income to the beneficiaries.
- Duty to keep trust property separate from other accounts.

Trustees have other obligations, including the responsibility not to relinquish control and to keep and render accounts.

In every instance where landowners, speculators, or politicians have tried to argue that the purpose of School Trust Lands is more general, state and federal courts

have ruled time and again that *public schools and students are the sole beneficiaries* – not the general population, taxpayers, business interests, champions of economic development, or anyone else (for example, see *State of Utah v. Kleppe [1978]* or *Lassen v. Arizona [1967]*).

Trustee (*n.*) *a natural or legal person to whom property is legally committed to be administered for the benefit of a beneficiary (as a person or a charitable organization).*

Fiduciary (*adj.*) *founded on faith or trust.*

Beneficiary (*n.*) *the person designated to receive the income of a trust estate.*

School Trust Lands were not designated as green spaces, nor were they intended as a refuge for energy exploration when private options have been exhausted. School Trust Lands can be used as green spaces; they can be used for energy extraction or other purposes – but such activities must be consistent with the duties to optimize revenue from the lands. All transactions involving School Trust Lands must be conducted with an eye toward real market value.

Fiduciary Trusts

Fiduciary isn't a word we normally use in casual conversation because there's nothing casual about fiduciary responsibility.

The law is clear. The purpose is clear. *A trustee's paramount responsibility is to manage School Trust Lands and Permanent Funds to provide financial support for public schools.*

Undivided loyalty means every action on those lands should be for the benefit of schools. Any argument, regardless of its merit, that sounds like – “It’s good for everybody,” “It would promote economic development that we need,” or “Things have changed” – is irrelevant. The only question that matters is *“Does this action or policy benefit the public school students of our community now and in the future?”*

Some states specify other institutions, facilities, and programs that may be supported with additional lands granted for those specific purposes. These trusts must be accounted for and managed independently from the School Trust Lands.

By participating and observing the practices in your state, you can help enforce standards that benefit schools. If anyone involved is not acting as if his or her *paramount responsibility is to manage School Trust Lands and Permanent School Funds to provide maximum financial support for public schools* then we have a right and obligation to speak up.

What We're Guarding Against

History has proven that some of these “permanent funds” do not stay permanent. Some states have squandered their lands and their trust funds to meet short-term political goals, some have lost their permanent funds due to incompetence and malfeasance. Many states have borrowed the funds and never repaid them. At various times, advocates for children and education have had to fight to make sure that public schools and students were being treated as the true beneficiaries. For more information, please read the case law summary.

Writing in 1911, Dr. Fletcher Harper Swift, who has written the most exhaustive study of School Trust Lands yet, stated,

“In many states the permanent funds and the proceeds which should have been added to them have been cared for so carelessly, diverted, squandered, wasted, and embezzled so shamefully, that what ought to be a magnificent endowment, whose income would today be yielding an appreciable relief from taxation, has dwindled to an almost negligible sum, or exists as a permanent state debt on which interest is paid out of the taxes levied upon the present generation.”

In the current political and economic environment, where tax cuts and economic development are considered the top priorities, School Trust Lands and Permanent School Funds are at serious risk. Only an informed and vigilant citizenry is equipped to protect against diversion, squander, waste, and embezzlement. When School Trust Lands are traded for property that is not as valuable, the trust is violated and the beneficiaries suffer. When School Trust Lands are not getting fair market value for surface uses or mineral rights, the trust is violated and the beneficiaries suffer. When trust lands are rendered useless because they are inaccessible, the trust is violated and the beneficiaries suffer.

The trustees are the watchdogs, most of the time they do a great job. But sometimes even the watchdogs need watchdogs. That is where you come in.

Who Has Legal Standing?

School Trust Lands are charitable trusts, therefore the Attorney General’s office has responsibility to enforce any breach in the trusts and to represent the

beneficiaries. The Attorney General is specifically empowered to institute action against any party to protect the interests of the trust beneficiaries.

In some states, the Attorney General is a part of the board that oversees public lands. Where the Attorney General cannot carry out this duty with undivided loyalty, he or she can appoint an independent counsel to protect the beneficiaries' interests.

Education organizations and coalitions of parents and education organizations have sued and been determined to have standing representing the interests of public school students. This means they too can take legal action on behalf of the beneficiaries.

What Do I Need to Know About Trust Law?

- State and federal courts have consistently held that the trustees of School Trust Lands and Permanent School Funds have the obligations of trustees as defined by law.
- Trustees have a *paramount* responsibility to protect the interests of the beneficiaries – public schools and students.
- Because these are public trusts, the public has the right to review, analyze, and comment on policies and practices of the Trusts.
- Trust law places exacting responsibilities on trustees, and it is important that they pay close attention to those responsibilities.

Why These Laws Matter

Despite all the differences in governance structures and state and Trust Board policies, one principle remains. The funds are to be used to support public schools. Every court ruling has come to the same conclusion:

- *The Trustees must meet high standards with undivided loyalty.*
- *The Trustee is held to something stricter than the morals of the market place.*
- *Trustees have specific legal obligations to:*
 - *Have undivided loyalty to the schools.*
 - *Make the trust property productive.*
 - *Be prudent.*
 - *Provide regular, honest information.*



School Trust Lands Administration

*Knowledge will forever govern ignorance;
and a people who mean to be their own
governors must arm themselves with the
power which knowledge gives.*

-James Madison

States have a variety of systems for administering School Trust Lands and Permanent School Funds. It is virtually impossible to make generalizations about what structures states have in place to fulfill the obligations of trustees. It is possible, however, to make some generalizations about what the goals in governance and administration should be.

Governance

Various types of governance structures are represented in the different ways states establish their trustees and commissioners.

In some cases, trustees are identified in the state constitution. In some cases, the designated person has that responsibility by virtue of holding another office, such as Secretary of State. In addition, states have a host of arrangements with individuals and corporations to tend, manage, maintain, improve, extract minerals from, harvest timber, or fish on School Trust Lands.

Of the 20 states that hold School Trust Lands, seven have an elected Commissioner, six have a Commissioner appointed by the Governor, and one has a Commissioner selected by a Board of Trustees. Additionally, in some states people are Commissioners by virtue of holding another state office, such as Secretary of State. In some states, the person responsible for School Trust Lands is also responsible for natural resources in the state.

The best thing you can do as an advocate is to look at your own state structure. Understanding the system and how it works is best learned from long-time observers of School Trust Lands.

Your state's information concerning administrative structures can be found at www.childrenslandalliance.com/states.php.

Because of the trustees' "responsibility to keep control," everyone who acts on behalf of the state or interacts with School Trust Lands is acting as an agent of the Trustee and holds the same obligation to keep the beneficiaries' interests as their paramount concern. Trustees must fulfill their fiduciary obligation by monitoring all activity that takes place on School Trust Lands – from the farmer who leases fields to grow corn to the mining company that extracts coal.

Each state's governance structure reflects its vision of accountability for School Trust Lands. And yet, given the wide range of economic activities on School Trust Lands and the competing demands for attention of the elected and appointed officials responsible, there is always a need for a high level of scrutiny. No one person can know everything that is going on, and oversight of existing standards may be tighter or more lax depending on the state or locale.

As an advocate, you can play a key role in making sure everyone plays by the rules.

It helps to evaluate your state's governance system by how well it helps fulfill the trustees' legal obligations:

- Does the structure promote the Duty to Inform by encouraging transparency, accuracy, and timeliness in reporting policies, practices, and performance?
- Does the structure lend itself to the Duty of Undivided Loyalty?
- Are trustees informed enough to carry out their Duty to Exercise Reasonable Care?
- Is the structure nimble enough to carry out its Duty to Preserve and Grow the Trust?

What Do I Need to Find Out About Governance Structures?

- Find out more about the mechanics of School Trust Lands governance by talking with CLASS (Children's Land Alliance Supporting Schools) members or other advocates in your state.
- Find out what major contractors are active on School Trust Lands. Do agreements between the state and contractors represent the trustees' Duty of Undivided Loyalty?

Management Expenses

States have many different arrangements with individuals, companies, contractors, management companies, resource developers, and a host of others. Some states have the capacity to administer some revenue-generating activities, such as recreation or even agriculture and ranching. Other states contract with others to manage funds and investments, monitor and enforce standards, measure production, collect and count revenue, and the full range of activities that generate revenues for School Land Trusts and Permanent School Funds.

In most states, revenue from School Trust Lands and Permanent School Funds is used to pay management fees. A few states, such as Arizona, pay management fees from the state's general fund.

A key part of our watchdog responsibility is making sure expenditures to contractors and consultants, including fees for managing investment, property, land, water, or mineral rights, are in keeping with market values and best management practices.

As everyone knows, fees – hidden or otherwise – can consume large portions of investments and other economic activities. Constant vigilance is essential to preventing acts of omission or commission that could hurt the Trusts and their beneficiaries.

What Do I Need to Find Out About Management Expenses?

What arrangements does the state have with companies to handle its investments or other economic development activities? Are these fees in line with the “going rate” in that field?

Dedicated Revenues

In some states, a portion of land and fund resources are dedicated to specific purposes:

- Arizona - alternative teacher compensation, classroom resources
- Colorado - school construction and repair
- Montana - timber resources dedicated to classroom technology
- Utah - funds provided to a parent-teacher council to improve student academic performance
- Washington – funds are used for school buildings, mostly in rural areas
- Wisconsin - funds are dedicated to school libraries

Other Educational Institutions

Most states have additional grants of land for specific needs within states; for universities, schools for deaf and blind, miners' hospitals, veterans, and others.

What Do I Need to Find Out About the Financial Impact of School Land Trusts On the Beneficiaries?

- How much money is distributed from School Land Trusts and Permanent School Funds for ongoing support and for future support?
- How are these revenues distributed – as part of the general fund, as dedicated revenues, or as funds allocated for specific institutions or purposes?
- Is the state getting the biggest “bang for the buck” in the allocation of Permanent School Fund distributions? Should these funds be focused on specific purposes or targeted outcomes or should they simply maintain operations?

Preparing For the Future

Part of our role is to consider if there are better ways to serve the beneficiaries. When the revenue stream from School Trust Lands is small, many believe it makes more sense to focus those resources on things that can make a difference.

There should be a bright line connecting the School Trust Lands with the beneficiaries. Focusing School Trust Land resources on programs such as foreign languages, math and science, or effective use of educational technology would be another way to leverage these funds and help meet future needs.

The framers were visionaries who saw a sustainable future for quality public schools. We, too, can help realize that vision by making sure the next generation has all the advantages quality public education can provide.

How To Measure Impact

You should be able to:

- *Identify educational programs funded from School Trust Funds*
- *Determine whether School Trust Land revenues merely offset other budget demands or affect education quality*
- *Connect School Trust Land revenues with state and local priorities*

Revenue Sources

How do we make money from School Trust Lands? Revenues from School Trust Lands come from a variety of sources, including selling mining rights, oil and gas royalties, grazing rights, and harvesting forest products. Below are listed the total major surface and mineral revenues from the twenty states which still have School Trust Lands. The revenue sources are listed in order by amount of revenues generated nation-wide in FY 2010.

1. Oil and Gas

Oil and gas make up the largest sources of revenue from School Trust Lands. New deep-well technologies are increasing revenues for a number of western states.



\$1.4 billion

2. Forest Products

Timber generates millions of dollars each year for schools and is a renewable resource. In addition to harvesting timber, other forest products which generate significant revenues include mushrooms and salal, which is an evergreen used in sweeteners and by florists.



\$242 million

3. Other Minerals

Royalties are received for the extraction of minerals such as coal, potash, phosphate, and taconite. Taconite is an iron-bearing rock used to make iron and steel. Since most high-grade iron ore has been mined out, taconite, with lower iron content, is in increasing demand.



\$220 million

4. Agriculture and Grazing

Once the primary sources of income on school lands, grazing and agriculture still generates income in every state. It is the primary revenue source in some states.



\$100 million

5. Commercial and Residential Leasing

For years, School Trust Lands were sold off. Today, when possible, the lands are leased for development and use. This ensures that School Trust Lands provide sustainable funding, not just deposits in the permanent funds from sales when lands are sold.



\$94 million

All Other Surface Revenues

There are many other minor sources of income that combine to form a large portion of revenue to contribute to Permanent School Funds. These sources include: aquatic revenues from dredging water ways, unclaimed properties, and hunting and recreation.



\$184 million



A Vision of Quality

“Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

-Northwest Ordinance, 1787

The founders of our nation had a vision of continued growth and prosperity. They established the towns and governments and businesses and schools in the image of a United States that was capable of anything. Over the years, public schools have played a central role in defining and uniting communities and providing opportunity for every school child. America's public school graduates have imagined the impossible and made it part of our everyday reality.

When America faces daunting challenges, it turns to the public schools because they have been so successful economically and socially. There is growing evidence to support the link between American-style public education and worker productivity, creativity, and innovation.

Many advocates for children and public education believe that School Trust Lands should be used to supplement, rather than supplant, educational opportunities. In states where the revenues from School Trust Lands are small, supplemental spending

could restore some of the local control that has been lost by state and federal requirements on when and how to spend money.

In Arizona and Utah, School Trust Land revenues aren't just thrown into the general fund. In these states School Trust Land revenues supplement local and state funding to implement local priorities. In Arizona, the emphasis is to determine if alternative teacher compensation models can affect student outcomes. In Utah, assessments are used to gauge student and school progress. Participating schools get feedback on what is working, and parent-teacher committees are better able to make data-driven decisions about reform.

Each state has defined quality in its own way and determined how School Trust Lands and Permanent School Funds fit in. In Colorado, all of the net revenue is dedicated to capital improvements. In Wisconsin the Permanent School Fund provides books, computers, and software for libraries.

School Trust Lands should promote education quality, not just maintain the status quo. The framers had a vision of quality. We must realize that vision today and ensure it is a reality forever.

What Do I Need to Know About School Quality?

- States have various ways of using School Trust Lands, but in every case the founding generation intended those resources to be used for quality educational opportunities.
- Education and parent advocates in your state have positions on key education issues in your state that are frequently used by CLASS members and advocates to provide direction to school reform and improvement.
- Providing School Trust Land resources directly to school districts or schools can enhance local control and parental involvement – two key ingredients in the success of America's public schools.



School Trust Land Issues

Laws for the liberal education of the youth, especially of the lower class of the people, are so extremely wise and useful, that, to a humane and generous mind, no expense for this purpose would be thought extravagant.

-John Adams

Each state is a product of its particular legalities, traditions, and interpretations. It is clear that the intent of School Trust Lands and Permanent School Funds was to provide an on-going, substantial share of school costs. Today, that is true in only a few states. In most states, School Trust Lands and Permanent School Funds represent less than five percent of the total education budget.

In each state, advocates for children and public education are struggling with a range of issues that affect School Trust Lands. The following sections will briefly review these issues and provide some context as you learn about the issues specific to your state.

Growth

Some states have taken steps to grow the Funds in new ways. Montana dedicated new fees from recreation to the Fund. Arizona and Oregon have branched into real estate acquisition. North Dakota has benefited from an expansion in oil shale

development, and other states in the region are also likely to realize increased revenues as a result of energy development.

Many states have increased returns on their Permanent Funds by investing a larger share of the Fund in equities

CLASS members support a balanced approach to managing lands and investments; a balance between risk and stability, and a balance between current and future needs.

Stability

There are pressures in every state to err on the side of stability in the administration of these Trusts. A number of states, including Idaho, North Dakota, and Oregon have made changes in their distribution formulas to average annual distributions to schools. Obviously the need to stabilize distribution of School Trust Land revenues is more significant as they become a larger share of total education expenditures.

Advocates for schoolchildren recognize the importance of maintaining stable revenue sources to support consistent, quality public education. However, assets shouldn't be sold at a loss to meet distribution quotas.

Investment Policies

All states have standards and requirements for investments embodied in their state constitutions, statutes, and Trustee Board policies. Financially astute states have implemented the Prudent Investor Rule in statute to govern investments.

Advocates for schoolchildren support a balance that recognizes the need for stability and growth, and transparency in investment, returns, and fees so the public can judge performance.

All Trustee actions should be aimed to protect the principle and growth of the Permanent School Fund.

Governance Structures

The way School Trust Lands and Permanent School Funds are overseen has an impact on their productivity. Almost every kind of governance structure is represented in the different ways states have established its trustees and guardians. No one can say which structure is best – whether Commissioners should be elected or appointed, for example.

However, CLASS members believe governance structures should enhance the Trustees' ability to carry out their obligations, including undivided loyalty, accountability to the beneficiaries, and transparency.

Supplement vs. Supplant

The vast majority of states put some of the School Trust Land revenue and returns on investment of the Permanent School Fund into the fund for education.

In most states, the share of overall education

funding contributed by School Trust Funds is ten percent or less. There are some notable exceptions to this rule, namely Texas and New Mexico.

Some states dedicate School Trust Land revenues to specific educational tools or activities. For example, Texas and Wisconsin set aside School Trust Land revenues for textbooks and school library books. All of Wisconsin's School Trust Land and investment revenue is set aside for school libraries. Montana has dedicated specific revenues from School Trust Lands to instructional technology.

Colorado devotes most of its School Trust Lands revenues to construction. Washington state dedicates interest on the Permanent Common School Fund to the Common School Construction Fund. Wisconsin Trusts have loaned more than \$100 million to municipalities and school districts for building, equipment, or to shore up retirement systems.

By contrast, in many cases the total resources from School Trust Lands and Permanent School Funds are combined with state General Funds for education. State funding formulas vary widely so that some uses are prescribed by the legislature and in other instances local districts have greater autonomy. Most states use some form of weighted per pupil expenditure that takes into account local costs and student needs. In most states, the education budget is the largest single line item, and it is frequently the last issue settled in a legislative session.

Commingling School Trust Land and Permanent School Fund revenues with the total education budget means that the only practical effect of those resources is to offset the overall state tax rates. Only

in Arizona and Utah are funds set aside and provided to the school districts for local priority. In Arizona, the emphasis for such funds is alternative teacher compensation. In Utah, local parents and teachers have the right to decide for themselves how to best use the money to improve student academic performance.

Unfortunately, in some states School Trust Lands do not directly benefit public schoolchildren. The enabling act granted schools in Alaska over 20 million acres which should have significantly funded schools, but they received only a few hundred thousand acres. No disbursements are being made from the Alaska School Trust Lands, but advocates are pursuing legal action to make these resources available once again.

California sold most of its land and currently holds less than half a million acres. Proceeds from the Lands and Trusts are dedicated to the Teacher Retirement Fund or are reinvested in the trust – neither directly benefits schoolchildren.

These issues are only examples. Advocates for children and public education in your state are working on specific actions to strengthen the legacy of School Trust Lands. Find out more about how you can make a difference by visiting the website of the Children’s Land Alliance Supporting Schools at childrenslandalliance.com.





What Can You Do?

How Can I Get Started?

Admittedly, some of the issues related to School Trust Lands are complicated. Don't worry. Before long, you will be comparing returns on investment with the best of them.

Read up, ask questions, go to meetings, hearings, and news conferences, and it will all become much clearer.

Where Can I Get Information?

Little information is available in books and libraries. Some of it is in government and committee reports. Most of it is not available in any easily accessible form.

The most essential information you will need will come from mentors and allies who are also involved in these issues. With the perspective of people who have been watching out for this legacy for many years, you can get a more complete picture of what's going on.

Government reports are loaded with facts, but they don't always tell the whole story. Currently, no government reports on education funding include a description of the contribution from School Trust Lands to public education.

Your research will include conversations

with knowledgeable people, as well as reading reports to find out historical trends, current practices, issues, and opportunities. Depending on your state, some information may be housed at state agencies, other information at the legislature. Once again, knowledgeable friends and allies can steer you in the right direction.

Who Else Is Involved?

CLASS (the Children's Land Alliance Supporting Schools) was organized to bring together advocates for public schools and school children from the 20 states that have School Trust Lands. Members include teachers, legislators, commissioners, representatives of education organizations, and citizen activists who care about the legacy and who care about the future.

How Can I Help?

In the immortal words of Yogi Berra, "You can see a lot just by observing." Your first step to being an effective advocate is being an attentive observer and listener.

Information is power, and the most significant role you can play is helping in the enormous task of speaking up for children. As you observe and collect information, you will be a more effective advocate for schoolchildren.

Advocates are interested in finding out:

- Is the state doing everything in its power to protect School Trust Lands and maximize their return?
- Are current practices and fees in line with standard compensation practices and rates?
- Are there issues in administration that need attention?
- Are there opportunities for investment the state has overlooked?

Gathering and analyzing the information to answer these questions is beyond the capacity of any individual. The trustees, as defined in the state, are ultimately responsible, but hundreds of people are involved in decisions that affect School Trust Lands, including state agency employees, legislative staff, and private contractors.

CLASS and its allies rely on volunteers and others who make time to advocate on behalf of children. Attending hearings, reading reports, and interviewing people at agencies and elsewhere are time-consuming, yet invaluable activities. To preserve this legacy requires constant vigilance.

As part of the Duty to inform, trustees must provide timely and accurate information about their activities and policies. These reports – issued by land management staff, state and private auditors, state regulatory agencies – can be pretty dry reading, *but a good advocate will look beyond the reports and ask questions:*

- What were the Permanent School Funds' earnings compared to a good money market last year, over the past five, and over the past 10 years?

- Are the grazing fees and leasing rights for agriculture, timber, oil and gas, minerals, etc. consistent with current market fees in those areas?

It's important to pull back from the minutiae and look at real world comparisons. If a state isn't being a savvy manager of School Trust Lands or a savvy investor of Permanent School Funds, it has failed in carrying out its Duty to Make Trust Property Productive and its Duty to Pay Income to the Beneficiaries.

Understandably, various states will have their practices and traditions for keeping track of trustees' responsibilities. But the legal underpinnings represent principles – and enforceable standards – that should be followed now and forever.

Will What I Do Make Any Difference?

Every advocate amplifies the voice of the schoolchildren. Every individual makes a difference. While it's not your job to become an instant expert on every topic in the use of School Trust Lands and Permanent School Funds, your efforts will have an impact.

What is important is to be part of the group of people who are asking the right questions, questions about prudence and growth, about current expenditures and future support, and about fair and timely distribution of resources.

The support and oversight surrounding School Trust Lands should ensure good practices and transparency. The courts have reaffirmed the fiduciary responsibilities of the trustees and the state and provide the impetus for refining these systems. The founders of our nation also envisioned that the citizens themselves would play a role in preserving this legacy. They expected that

citizens would tend, preserve, and improve the School Trust Lands and Permanent School Funds, and they expected citizens would stay informed and engaged so that the legacy is available for future generations.

As 18th century Irish political philosopher Edmund Burke said, “All that is required for evil to triumph is for good men to do nothing.”

The sad history of neglect and abuse that has squandered some two-thirds of the original legacy is a warning to us. Preserving and enhancing the legacy for the future requires good people to do something, and that something is keep their eyes and ears open.

It all boils down to these key responsibilities:

- *Protect the lands and trusts.*
- *Make sure the lands and funds are used for the benefit of schoolchildren.*
- *Help others to understand the legacy and the importance of School Trust Lands.*



How You Can Make a Difference

Upon the subject of education ... I can only say that I view it as the most important subject which we as a people may be engaged in.

-Abraham Lincoln

You are now part of the Pro-School Trust Lands Army. You have the right – and now many of the tools – to learn more, ask questions, and speak out. Above all, attend hearings, read reports and audits, and talk to elected and appointed officials.

Attend Hearings

As part of the Duty to Inform, Trustees are required to provide accurate and timely data. As part of this requirement, Trustees generally hold meetings that are open to the public to discuss their assets and audits, vote on future investment policies, and listen to reports and presentations. Most of these meetings provide information and opportunities to talk to others about what's happening in your state.

Read Reports and Audits

Reports and audits are essential reading for any citizen advocate, and if something doesn't make sense, ask about it. Your critical reading skills will serve you well as you investigate the data.

Talk to Elected and Appointed Officials

As a parent or education advocate, share your insight with policymakers. They generally do not know about or understand the complex issues surrounding School Trust Lands. As you research, you will quickly become an expert with valuable insight.



How to Talk About School Trust Land Issues

As advocates for children and public education, it falls to us to help others understand School Trust Land issues. Our primary focus should be on communicating with those who are with us, as well as those who are undecided. Trying to persuade those against us is not the best use of our time. Sharing information with our friends and allies makes it more likely they will focus on the same issues, and help expand the pool of people who can be encouraged to understand and care.

For the most part, the people who will listen are elected and appointed policymakers, boards, agencies, legislative and administrative committees, legislative and administrative staff, and the media. Our primary audience is small, and it is also interconnected. How we communicate in each state affects how we are perceived in every state. It helps to have a common vocabulary – even when some of the details are drastically different.

Making the Connections

The term “School Trust Lands” evokes the history, the legacy, and the long-term commitment to children and public education. Whatever the official name, the more we can emphasize the concepts of “school” and “trusts” and “lands” the better.

Another way to evoke that connection is to continually emphasize the core principles:

1. The law is clear that public school students are the *sole beneficiaries* of School Land Trusts. National and state history, Enabling Acts, Constitutional language, statute, and the courts are all on our side. There is neither partisan angle nor marginal differences. School Trust Lands were set aside to benefit public school students. Period.
2. The School Land Trustees have a dual obligation to *sustain quality educational opportunities in the present and enhance the legacy for the future.*

Historically, problems have arisen when the goals of growing the School Lands Trust and improving public schools are out of balance. The Trustees must be aggressive and market-savvy in growing the value of the School Trust Lands and Permanent School Funds. At the same time, the distribution of School Land Trust funds must be focused on public schools and public school children.

There is no magic formula for this balance, except that the Trustees' obligation is to consider the needs of the present and future. Trustees are duty-bound not to rob future students by spending too much on current students and vice versa. At all times,

any benefits of the Trusts should accrue to public school children.

3. The School Land Trusts were established to support *quality* public schools.

Different states use School Trust Land funds differently. In some states, a portion is dedicated to specific uses, such as technology or libraries. In other states, School Trust Land funds represent a significant share of expenses.

Even if one doesn't accept the idea these funds were intended for school improvement, there is no question about whether the funds were intended to support *quality public schools*.

We have a responsibility to make sure School Trust Lands have the greatest impact on school quality.

Many advocates believe that when such funds are limited, it makes sense to concentrate on specific goals and uses. Utah and Arizona are two states that have dedicated School Trust Lands revenues to education innovation and reform. Montana has dedicated a portion of School Trust Lands resources to education technology.

Whatever the law and traditions in your state, we can agree that *support for school quality* should be the focus, and all discussions about these issues must include the impact on schoolchildren. Talking about the students is not only the most engaging part of the message; it is also the most solid legal argument we have to stand on.

As we help others understand the issues, it is helpful to draw contrasts.

Drawing Contrasts

CLASS and its member advocates are for a proposal, if it:

- Benefits students,
- Balances the need of current and future students, and
- Improves student achievement.

We are against a proposal, if it:

- Jeopardizes the long-term future,
- Fails to make an adequate investment in the present, or
- Isn't used to sustain and enhance school quality.



Final Review

What You Need to Know

School Trust Lands and Permanent School Funds were established by our founders with wisdom and foresight. They valued public education and believed it should be maintained and improved in perpetuity. They established land grants because land has enduring value.

Our founders depended for protection – as with every aspect of our democracy – on informed and active citizens to watch closely what elected and appointed officials do. And they were aware of the dangers that unscrupulous individuals would try to use the land and the law to their advantage. Our efforts to protect School Trust Lands link us to the tradition of our founders and the promise of future generations.

Get Involved

The present time presents its own unique dangers to the legacy of the School Trust Lands.

Pressures on tax rates, volatile markets, and changes in resource development opportunities all create their own threats. This is no time to make radical decisions that jeopardize those beneficiaries' interests now and in the future, nor is it time to squander that legacy through neglect or shortsighted decisions.

In every generation, there must be those who speak up for the legacy. We are those people.

What You Can Do

The states were provided millions of acres for sustained support of public schools. For many people the biggest mistake made in this area over the years is confusing the cost of school lands when they were sold with the value of those lands in the present time. The theory has been, and continues, that investments in a Permanent School Fund will fare as well, but as Mark Twain said, “Buy land. They're not making it anymore.”

We have an obligation to

- *Protect the lands and trusts.*
- *Make sure the lands and funds are used for the benefit of schoolchildren.*
- *Help others to understand the legacy and the importance of School Trust Lands.*

Open Book Quiz

1. What is the name of the Permanent School Fund in my state?
2. Who is the Commissioner/Commissioners of the School Trust Lands and Permanent School Funds and how are they selected?
3. What is the total value of School Trust Lands in my state?
4. What is the total value of Permanent School Funds in my state?
5. What are the annual revenues School Trust Lands and Permanent School Funds in my state?
6. What percentage of total elementary and secondary education spending do School Trust Lands and Permanent School Funds represent in my state?
7. Does my state dedicate any of its School Trust Lands and Permanent School Funds to specific purposes?
No ____ If yes, list _____
8. What kind of requirements does my state have for Trustee investments?
9. What is the percentage of investments in my state among:
Fixed Income ____ (bonds and interest-bearing instruments)
Domestic Equities ____ (United States stocks)
International Stocks ____
Other ____
10. What is the five-year average annual revenue from:
The School Trust Lands?
The Permanent School Fund?
11. What are the top three revenue producers in my state?
Oil and Gas
Mining
Ranching and Agriculture
Timber
Commercial/Residential Leasing
12. Who can I contact in my state who would know more about:
The economics?
The education impact?
The responsibility of citizen advocates?

The school is the last expenditure upon which America should be willing to economize.

Franklin D. Roosevelt

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

David Sullivan, Petitioner) CIVIL ACTION – PETITION FOR REVIEW
Versus) OF FINAL AGENCY DECISIONS
State Land Board, Respondent) CASE NUMBER: 23CV_____
23CV06471

Abstract

This Petition uses ORS 183.480, “Judicial review of agency orders” to review two final agency decisions made by the State Land Board on December 13, 2022, that sell the Elliott State Forest from the School Trust Lands in a self-dealing transaction based on an “investment value” appraisal rather than a market value appraisal. These two decisions violate the contractual requirement in Oregon’s original 1857 constitution that school lands “shall be set apart as a separate, and irreducible fund to be called the common school fund.”

The requested relief is in two parts. First, the Petitioner asks the Court to use ORS 183.486(2) to issue an interlocutory order that “sets aside” the two State Land Board decisions. This will rescind the sale of the Elliott State Forest. Second, the Petitioner asks the Court to use ORS 183.486(1)(a) to issue a declaration to “decide the rights, privileges, obligations, requirements or procedures at issue between the parties.”

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1 **Part 1: Venue**

2 Jurisdiction is set by ORS 183.484, “Jurisdiction for review of orders other than contested cases.”
3 This law says jurisdiction “is conferred upon the Circuit Court for Marion County and upon the
4 circuit court for the county in which the petitioner resides or has a principal business office.” So,
5 the Marion County Circuit Court has jurisdiction.

6 **Part 2: Parties**

7 **Petitioner:** David Sullivan is a pro se litigant, and he lives at 12875 Kings Valley Highway,
8 Monmouth, OR 97361. His home phone is 541-791-6470, and his email address is:
9 drdavesullivan@gmail.com.

10 **Respondents:** The State Land Board is represented by Ellen Rosenblum, the state’s attorney
11 general. Her address is: Oregon Department of Justice, 1162 Court Street NE, Salem, OR
12 97301-4096.

13 **Part 3: Standing**

14 The requirements for standing are determined by looking to “the statute that confers standing in the
15 particular proceeding that the party has initiated.” *Kellas*, 341 Or at 477. This petition was filed
16 under ORS 183.480, “Judicial review of agency orders” which describes the standing requirement
17 as:

18 Except as provided in ORS 183.417 (Procedure in contested case hearing) (3)(b), any
19 person adversely affected or aggrieved by an order or any party to an agency proceeding is
20 entitled to judicial review of a final order, whether such order is affirmative or negative in
21 form.

22 David Sullivan is aggrieved by the two final agency orders because he is a member of the board of
23 directors of Advocates for School Trust Lands (ASLT), a national nonprofit educational association

1 based in Utah, whose goal is to “Promote profitable management of school trust lands and prudent
2 investment of permanent state school funds for the financial support of common schools.” Dr.
3 Sullivan is also a member of the board of directors of Oregon Advocates for School Trust Lands
4 (OASTL), the Oregon affiliate of ASTL. OASTL’s bylaws say it will: “promote the effective and
5 prudent management of Oregon’s School Trust Lands and Common School Fund for the financial
6 support of common schools.” If the State Land Board’s December 13th decisions are not set aside,
7 then the Elliott State Forest will have been sold for less than one-quarter of its market value – which
8 will be at least a \$500 million dollar loss of value to Oregon’s Common School Fund and reduced
9 revenue to Oregon schools today and for future generations. This is of particular concern to ASTL
10 and OASTL because of their mission statements, and therefore, Dr. Sullivan will be personally
11 aggrieved because of his fiduciary duties as a director of ASTL and OASTL. More broadly, Dr.
12 Sullivan and every citizen who depends on a well-educated populace in the commonwealth will
13 have been diminished both by the reduced sale price and the amount by which it would have grown
14 through wise investment.

15 Another argument for standing involves the Doctrine of Associational Standing. The
16 Supreme Court explained this Doctrine in *Hunt v. Washington State Apple Advertising Commission*,
17 432 U.S. 333 (1977), by saying an association has standing to sue to redress its members’ injuries,
18 even when the association has not itself suffered injury, when:

- 19 (a) its members would otherwise have standing to sue in their own right;
20 (b) the interests it seeks to protect are germane to the organization’s purpose; and
21 (c) neither the claim asserted nor the relief requested requires the participation of individual
22 members in the lawsuit.

1 OASTL has members who are students who attend public schools in Oregon. OASTL also has
2 Oregon school districts as members. Both the students and school districts would “have standing to
3 sue in their own right.”

4 For over twenty years. ASTL has had experience with the doctrine of associational standing
5 in lawsuits outside Oregon about school trust lands. ASTL has found defendants routinely protest
6 that ASTL should not be granted standing in school trust lawsuits, but this defense has never been
7 successful in the courts. As a recent example from Montana, the District Court judge wrote:¹

8 K.B. and K.B. are minor children who attend Montana public school beneficiaries. Any
9 reduction of trust land funding caused by HB 286 could potentially injure the quality of their
10 Montana public education. In addition, ASTL, as the *Hefferman* Court requires, has
11 standing to prosecute this matter on behalf of its members without an injury showing to
12 itself ...

13 For both school districts and their students, the quality of education is dependent on adequate
14 funding, and an important and independent source of funds comes from “school lands.” Here is how
15 the Department of State Lands describes this source of funding²:

16 **Putting Millions Into Classrooms Every Year**

17 The act of Congress admitting Oregon to the Union in 1859 granted nearly 3.4 million acres
18 of the new state’s land “for the use of schools.” The State Land Board was established to
19 oversee the “school lands” and has been the trustee of the Common School Fund for more
20 than 150 years.

¹ *Advocates for School Trust Lands v Montana* (US.DC. No. BDV-2019-1272), 184 Order on Pending Motions, filed April 12, 2021, pages 17 and 18.

² Department of State Lands website page: “About Oregon’s Common School Fund” available at: <https://www.oregon.gov/dsl/About/Pages/AboutCSF.aspx> as of January 10, 2023.

1 School lands and their mineral resources, submerged and submersible lands
2 underlying the state’s tidal and navigable waterways, and unclaimed property held in trust
3 all contribute to the corpus of the fund.

4 The State Treasurer and the Oregon Investment Council invest the Common School
5 Fund. In recent years, fund values have ranged from \$600 million to more than \$2 billion,
6 depending on market conditions.

7 The Department of State Lands website explains exactly how money is transferred from the
8 Common School Fund to individual school districts³:

9 The total amount distributed is 3.5 percent of the Fund, which is currently valued at \$2.2
10 billion. ... The Department of State Lands sends each total distribution to the Oregon
11 Department of Education, which calculates the amount of money each school district
12 receives based on the number of students per district. The calculation methodology is
13 defined in ORS 327.410.

14 As a specific example, according to the Department of State Lands, the Salem-Keizer School
15 District received \$4,614,782 from the Common School Fund in 2022, and this amount was based on
16 how many students attended the district’s schools. Because ORS 327.013 specifies exactly how to
17 calculate each student’s individual part of the distributions from the Common School Fund, each
18 student has “a legally recognized interest” in these distributions that goes “beyond an abstract
19 interest in the correct application or the validity of law.”

20 Because OASTL has both students and school districts as members, the Doctrine of
21 Associational Standing gives OASTL standing to sue. Finally, because Dr. Sullivan is on OASTL’s

³ Department of State Lands page: “2022 Common School Fund Distributions to School Districts” named
2022CommonSchoolFund_District_Distributions.pdf.

1 board of directors, he inherits OASTL’s standing because of his fiduciary duty to promote
2 OASTL’s organizational goals.

3 **Part 4: Timely objections were made.**

4 In *Stanbery v. Smith*, 233 Or. 24, 377 P.2d 8 (1962), the Oregon Supreme Court wrote:

5 “The majority of state and federal courts hold in order to raise issues reviewable by the
6 courts, objections to the proceedings of an administrative agency must be made while the
7 agency has an opportunity for correction.”

8 Before the State Land Board held its December 13th meeting at which it decided to sell the Elliott
9 State Forest, it asked people to submit written testimony:⁴

10 Testimony received by 10 a.m. on the Monday before the meeting will be provided to the
11 Land Board in advance and posted on the meeting website. Submit your input in writing
12 to: landboard.testimony@dsl.oregon.gov.

13 A complete listing of the 84-pages of written testimony submitted before the meeting can be found
14 on the Department of State Lands website available at:

15 [https://www.oregon.gov/dsl/Board/Documents/WrittenPublicTestimony_SLB_December13_2022w](https://www.oregon.gov/dsl/Board/Documents/WrittenPublicTestimony_SLB_December13_2022web.pdf)
16 [eb.pdf](https://www.oregon.gov/dsl/Board/Documents/WrittenPublicTestimony_SLB_December13_2022web.pdf).

17 Two letters form the basis for this Petition:

- 18 • John A. Charles of the Cascade Policy Institute wrote a 5-page letter that can be found in
19 pages 13 through 17 of the written testimony. For the reader’s convenience, this letter is
20 attached at the back of this Petition as Exhibit 2.

⁴ This quote comes from the “State Land Board Meetings” page in the Oregon.gov website,
available at: <https://www.oregon.gov/dsl/Board/Pages/SLBmeetings.aspx>.

1 ● Margaret Bird of ASTL wrote a two-page letter that can be found in pages 24 and 25 of the
2 written testimony. For the reader’s convenience, this letter is attached at the back of this
3 Petition as Exhibit 3.

4 John A. Charles is President and CEO of the Cascade Policy Institute, and this quote captures the
5 essence of his 5-page testimony letter:

6 I am writing to oppose the staff recommendation for decoupling the Elliott State Forest from
7 the Common School Fund. My opposition is based on two concerns.

8 First, the appraised value of the Elliott is artificially low.

9 Second, the Board’s method for compensating the Common School Fund for the loss
10 of timber revenue associated with the ESF harms CSF beneficiaries.

11 Each of the two factors represent a breach of your fiduciary duty to CSF beneficiaries.

12 Margaret Bird wrote on behalf of Advocates for School Trust Lands. A relevant part of her letter is:

13 If the State Land Board wants to sell the Elliott State Forest, the sale should be for market
14 value; that is, for its highest-and-best use in an arm’s-length market-based transaction. In a
15 recent public meeting about the Elliott State Forest’s potential sale, Geoff Huntington, the
16 DSL’s Elliott State Forest Project Advisor, said DSL has not asked for or received a market-
17 based appraisal for the Forest. The best evidence ASTL has seen suggests the Elliott State
18 Forest’s market value is in the general range of 1 to 1.3 billion dollars (for example, see
19 <http://www.keepthechildrensforest.org/market-value>). In contrast, the “investment value”
20 calculated by Mason, Bruce & Girard was only \$99,600,000, or less than one-tenth the
21 Forest’s market value.

22 ASTL prefers to work with state governments in a cooperative manner, and for over 20
23 years, we have been very successful with this approach. Please feel free to reach out to us.

1 Occasionally, informal methods have failed, and in those cases, we ask courts to enforce
2 Trust Law.

3 These letters warned the State Land Board of specific breaches in their fiduciary duties, and
4 Margaret Bird’s letter also warned that if the letter was ignored, this lawsuit would follow.
5 Nonetheless, as is described in Part 5 in more detail, the State Land Board made a final agency
6 decision to “decouple” – that is, to sell the Elliott State Forest in a self-dealing transaction for \$221
7 million dollars, less than one-quarter of its market value.

8 **Part 5: The grounds on which the order should be reversed.**

9 As required by ORS 183.484 (2), this part of the Petition explains the grounds on which the order
10 should be reversed. These grounds are in Parts 5.2 through 5.4, and they link back to the two
11 testimony letters discussed in Part 4. But first, Part 5.1 describes facts about the two State Land
12 Board final agency decisions to be reviewed.

13 **Part 5.1: Facts about the two December 13th decisions to be reviewed.**

14 The two final agency decisions this Petition asks the Court to review are found on pages 2 and 3 of
15 “Draft Meeting Minutes,” for the December 13th State Land Board meeting⁵. During the December
16 13th meeting, the State Land Board did not discuss any of the issues raised in the John A. Charles or
17 Margaret Bird testimony letters discussed in Part 4.

⁵ “Draft Meeting Minutes,” for the December 13, 2022 State Land Board meeting (4 pages),

Department of State Lands website available at:

https://www.oregon.gov/dsl/Board/Lists/SLBAccordion2/Attachments/47/December2022SLBMinutes_DRAFT.pdf

1 The first decision was: “Action Item #3: Decoupling the Elliott State Forest from the Common
2 School Fund.” The State Land Board voted to approve Action Item #3 at 11:25 a.m. The second
3 decision was: “Action Item #4: Designating the lands that will comprise the new Elliott State
4 Research Forest and become the management responsibility of the newly created state agency
5 established by Senate Bill 1546.” The State Land Board voted to approve Action Item #4 at 11:28
6 a.m.

7 To understand these two decisions, it will help to know a bit about the Elliott State Forest’s
8 history. When Oregon joined the Union in 1859, two sections in every township were granted by
9 Congress in trust to support public schools. Much of the initial land grant was sold in the late 1800s,
10 and the proceeds were placed in the Common School Fund. In 1930, both Oregon and United States
11 governments approved the exchange of School Trust Lands in the eastern part of the state for the
12 Elliott State Forest. This historical background is described in some detail in *Cascadia Wildlands v.*
13 *Dept. of State Lands*, 365 Or 750 (2019).

14 Next, the Court needs to know the general content of three lengthy documents provided to
15 the State Land Board before the December 13, 2022 meeting:

- 16 ● **Staff Report:** “Full Meetings Packet” for the December 13, 2022, State Land Board
17 meeting. (81 pages), Department of State Lands’ website available at:
18 [https://www.oregon.gov/dsl/Board/Documents/SLBDecember2022Meeting%20Materialswe](https://www.oregon.gov/dsl/Board/Documents/SLBDecember2022Meeting%20Materialsweb.pdf)
19 [b.pdf](https://www.oregon.gov/dsl/Board/Documents/SLBDecember2022Meeting%20Materialsweb.pdf).
- 20 ● **Appraisal Report:** “Appraisal Report: The Common School Trust Lands of the Elliott State
21 Forest as of March 31, 2022,” Mason, Bruce & Girard (405-page report) available at the
22 Department of State Lands “Elliott Project Document Archive”:

1 [https://m.box.com/shared_item/https%3A%2F%2Foregonstatelands.app.box.com%2Fv%2F](https://m.box.com/shared_item/https%3A%2F%2Foregonstatelands.app.box.com%2Fv%2Fwebsite-download/view/1009020989713)
2 [website-download/view/1009020989713.](https://m.box.com/shared_item/https%3A%2F%2Foregonstatelands.app.box.com%2Fv%2Fwebsite-download/view/1009020989713)

- 3 ● **Forest Management Plan:** “Elliott State Research Forest: Forest Management Plan,
4 November 2022 Working Draft” (272 pages) written by Oregon State University, College of
5 Forestry, and available at:
6 [https://oregonstate.app.box.com/s/6q863q04yvnaurxcofa0bi2j2tq4fz07/file/1079704471889.](https://oregonstate.app.box.com/s/6q863q04yvnaurxcofa0bi2j2tq4fz07/file/1079704471889)

7 Because these government documents are lengthy and wordy, it will help to summarize their
8 content. The basic goal of the Action Item #3 and #4 decisions is to:

- 9 ● “Decouple” the Elliott State Forest so it no longer is owned and managed by the Department
10 of State Lands and therefore is no longer bound by fiduciary duties of a trustee for “the use
11 of common schools.”
- 12 ● Meet Senate Bill 1546’s requirements so the Elliott State Forest can be owned by a new
13 state agency, the Elliott State Research Forest Authority.
- 14 ● Manage the new research forest as described in the OSU College of Forestry’s “Forest
15 Management Plan.”
- 16 ● Pay the \$221 million sales price chosen by the State Land Board by depositing the proceeds
17 of bonds in the Common School Fund. (See page 11 in the Full Meetings Packet.)
- 18 ● Justify the sales price with an “investment value” appraisal. (See the page 11 in the Full
19 Meetings Packet and the Appraisal Report by Mason, Bruce & Girard.)

20 Because Senate Bill 1546 is such an important part of these two decisions, it is worth looking at
21 closely.

1 **Senate Bill 1546’s requirements**

2 Senate Bill 1546, “An act relating to the Elliott State Research Forest” was signed by Governor,
3 Kate Brown, on March 24, 2022. Section 5. (1) says:

4 **Section 5. (1)** For the purpose of providing for the administration of the Elliott State
5 Research Forest in a manner consistent with the mission and management policies
6 describing in section 2 of this 2022 act, there is created the Elliott State Research Forest
7 Authority, as a state agency independent from the Department of State Lands.

8 **(2)** The authority shall be governed by a board of directors consisting of seven or
9 nine voting members and the Dean of the College of Forestry at Oregon State University,
10 who shall be a nonvoting member.

11 Thus, a key provision is the Elliott State Forest will be owned by new state agency that is
12 “independent from the Department of State Lands.” Senate Bill 1546 explains how this sale will
13 work:

14 **Section 31. (2)** Notwithstanding subsection (1) of this section, sections 1 to 21 and 24 of
15 this 2022 Act and the amendments to ORS 30.949, 283.085, 530.450, 530.480, 530.490,
16 530.510 and 530.520 by sections 23 and 25 to 30 of this 2022 Act do not become operative
17 unless, on or before July 1, 2023:

18 (a) The State Land Board ensures that financial obligations to the Common School
19 Fund related to the Elliott State Forest are satisfied ...

20 The next part considers whether Senate Bill 1546 describes an actual “sale” or just a “decoupling.”

21 **Definitions for “decoupling” and “sale”**

22 Words matter, so it is important to decide what “decoupling” and “sale” mean. Their definitions
23 have implications about what value to use when selling School Lands. “Decoupling” is not a
24 commonly used term in the business or legal worlds and has not been defined in the Enabling Act,

1 state constitution, or state statute. In contrast, Oregon law has an explicit definition for “sale” in
2 ORS 72.1060: “A ‘sale’ consists in the passing of title from the seller to the buyer for a price.”

3 Senate Bill 1546 fits cleanly within ORS 72.1060’s definition of a “sale.” The buyer is
4 described in Senate Bill 1546 Section 5(1) as a new state agency, “the Elliott State Research Forest
5 Authority.” This new agency is to be “independent from the Department of State Lands.” Before
6 the sale, the title of the Elliott State Forest is held in trust by the Department of State Lands. OAR
7 141-067-0150 “Oregon Department of State Lands Definitions” shows the Elliott State Forest is
8 part of DSL’s Trust Lands:

9 141-067-0150 (45) “Trust Lands” or “Constitutional Lands” is all land granted to the state for
10 the use of schools upon its admission into the Union, or obtained by the state as the result
11 of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or
12 purchased with trust funds, or obtained through foreclosure of loans using trust funds.

13 After the sale, the Elliott State Forest will no longer be part of DSL’s Trust Lands. Instead, it will
14 be owned by the Elliott State Research Forest Authority, and it will be managed by Oregon State
15 University under the direction of a Board of Directors created by Senate Bill 1546 Section 5(2).

16 Senate Bill 1546 Section 31(2)(a) requires this property transfer to have a price “sufficient
17 to meet financial obligations to the Common School Fund.” The price selected by the State Land
18 Board on December 13th was \$221 million. Thus, every part of ORS 72.1060’s definition for a
19 “sale” was met by the State Land Board’s decision to “decouple” the Elliott State Forest: the buyer
20 will be the state through the Elliott State Research Forest Authority, the seller was the Department
21 of State Lands as Trustee, and the price was \$221 million.

22 Thus, the state was both seller and buyer, and the sale of trust assets was not an arm’s-length
23 transaction. The state has been guilty of self-dealing by devaluing School Trust Lands, and then
24 with no market value appraisal or public auction, selling School Trust Lands to itself.

1 Deciding this transaction is a “sale” is important because the legislature passed ORS
2 530.450 in 1957, and it prohibits the State Land Board from selling the Elliott State Forest to
3 anyone, public or private. The complete text of ORS 530.450 says:

4 ORS 530.450 “Withdrawal from sale of Elliott State Forest”

5 Any lands in the national forests on February 25, 1913, selected by, and patented to, the
6 State of Oregon, for the purpose of establishing a state forest, hereby are withdrawn from
7 sale except as provided in ORS 530.510 (Exchanges of land). The state forest shall be
8 known as the Elliott State Forest. [1957 c.240 §1]

9 The 1957 legislature passed this law because it wanted to protect the Elliott State Forest as a
10 permanent heritage to produce income for Oregon’s schools and schoolchildren. The meaning and
11 validity of ORS 530.450 was the subject of *Cascadia Wildlands v. Oregon Department of State*
12 *Lands* 365 Or 750 (2019). The *Cascadia* lawsuit was primarily about whether ORS 530.450 is
13 constitutional. The Supreme Court reasoned that:

14 The primary authorities and this court’s case law thus confirm that, under the original text of
15 Article VIII, section 5, the State Land Board is the body that conducts the sale of common
16 school lands and that manages the proceeds therefrom, but its particular powers and duties
17 are only those that the legislature prescribes. That is, the State Land Board exists to serve
18 the state in carrying out its duties as trustee of common school lands held in trust for the
19 people of Oregon in accordance with the Admission Act.

20 And the final ruling was:

21 “As a result, we conclude that ORS 530.450 is not unconstitutional and is not void”

22 Because ORS 530.450 prohibits the Elliott State Forest from being sold to anyone, public or
23 private, Section 25 of Senate Bill 1546 revises ORS 530.450 to allow the sale to move forward.

1 If the legislature has the authority in Senate Bill 1546, Section 25 to revise ORS 530.450 so
2 the Elliott State Forest can be sold to a new public agency, then it also has the authority to authorize
3 selling the Elliott State Forest to private entities. For historical context, it is worth remembering that
4 most of Oregon’s School Trust Lands were sold to homesteaders in the late 1800s and early 1900s,
5 and that provided the largest initial source of funds in the Common School Fund, as well as an on-
6 going tax base for the school districts in which the sold school lands lay. So, School Trust Lands
7 have been sold to private parties before, and there is no constitutional reason that would prevent the
8 legislature from deciding to sell the Elliott State Forest to a private party in the future.

9 This line of reasoning shows the State Land Board’s December 13th decision to “decouple”
10 was really a self-dealing decision to sell the Elliot State Forest to another public agency, and the
11 legislature and State Land Board could just as easily have sold the Forest in an arm’s length
12 transaction to a private entity, for example, by using an auction or sealed bid process. This
13 conclusion will be important to know in Part 5.2 because the Department of State Lands justifies
14 using an “investment value” appraisal by claiming the Elliott State Forest cannot be sold to a
15 private entity.

16 Margaret Bird explained these ideas to the State Land Board in her Exhibit 3 letter that was
17 submitted as testimony:

18 “Decoupling” is a euphemism for “selling.” If Oregon transfers the Elliott State Forest from
19 the Common School Fund to the Elliott State Research Forest Authority, then from the
20 perspective of Oregon's schools, the Forest will have been sold in a self-dealing
21 transaction. Investopedia says, "Self-dealing is when a fiduciary acts in their own best
22 interest in a transaction, rather than in the best interest of their clients. It represents a
23 conflict of interest and an illegal act that can lead to litigation, penalties, and termination of
24 employment for those who commit it."

1 **Part 5.2: An investment value appraisal is not market value.**

2 This part explains why Elliott State Forest cannot be sold based on an “investment value” appraisal.

3 The Department of State Lands has its own chapter of OARs, Chapter 141, that govern how it

4 should operate. Division 67 contains “Rules governing the sale, exchange and purchase of land.”

5 Finally, 141-067-0150 defines “appraisal” and “appraisal report”:

6 “Appraisal” or “Appraisal Report” means a written statement setting forth an opinion as to

7 the **market value** [emphasis added] of the lands or interests in lands as of a specific

8 date(s) prepared by a qualified appraiser in accordance with the Uniform Standards of

9 Professional Appraisal Practices (USPAP) standards.

10 Instead of following its own rule, the Department of State Lands paid for an “investment value”

11 appraisal. However, the DSL Staff Report for the December 13th meeting (see pages 12-13 of the

12 Full Meetings Packet referenced earlier) does not say they purchased an “investment value”

13 appraisal. It says:

14 A valid, current appraisal substantiates the value owed to the Common School Fund

15 To determine whether the appraisal was “valid” for this sale, here is the Staff Report’s more

16 detailed description of the appraisal (see page 11 of the Full Meetings Packet):

17 The Department in 2022 contracted with Mason Bruce & Girard to update the 2016

18 appraisal to account for multiple changed circumstances having potential to impact the

19 \$220.8 million valuation. These new factors included increased timber volume on the forest,

20 potential harvest constraints related to the Habitat Conservation Plan (HCP), **the 2019**

21 **Oregon Supreme Court decision precluding sale to private entities**, and a changed

22 economic climate driving up log prices and the discount rates applied to valuing future

23 timber harvests on the forest. [Emphasis added for clarity]

1 Digging deeper, Mason, Bruce & Girard also rely on the *Cascadia* Supreme Court decision to
2 justify using an “investment value” appraisal (see pages 3-4 of the Appraisal Report referenced
3 earlier):

4 In this appraisal, the type of value to be determined is “Investment Value” rather than
5 “Market Value.” This is due to the 2019 ruling by the Supreme Court of the State of Oregon
6 in *Cascadia Wildlands v. Oregon Dept. of State Lands and Seneca Jones Timber*
7 *Company, LLC* (a.k.a., the “*Cascadia Decision*”). In the decision, the court upheld the
8 constitutionality of ORS 530.450, which has the effect of eliminating the potential for a sale
9 of the ESF, in part or whole, to the private market. The definition of Market Value is
10 premised on the basis that such a sale is possible. Market Value, therefore, cannot be
11 ascertained since the subject property cannot be sold to the private market.

12 ORS 530.450 and the *Cascadia* decision do not require an “investment value” appraisal. Both
13 Mason, Bruce & Girard and the Department of State Lands have justified their use of an
14 “investment value” on “the 2019 Oregon Supreme Court decision precluding sale to private
15 entities”, but the truth is the legislature and State Land Board decided not to sell the forest to the
16 private market even though that sort of sale would have been just as easy to do and would resulted
17 in a much higher price and more money for the Common School Fund.

18 Margaret Bird explained these ideas to the State Land Board in her testimony letter in
19 Exhibit 3:

20 The Mason, Bruce & Girard appraisal commissioned by the Department of State Lands (DSL)
21 says their investment value: “represents the value of the property to the State of Oregon as
22 measured by a set of investment criteria that are specific to the State’s continued ownership
23 of the asset.” To put this definition in an everyday context, suppose you agree to sell a Ford
24 pickup truck on consignment with a used car dealership, and the truck’s Kelly Blue Book
25 value is \$70,000. Now assume the dealership sells your truck to the dealership owner's sister

1 for an investment value of \$10,000. When you ask how the investment value was calculated,
2 you are told, "The sister said she would only drive the truck on Sundays, so based on a set of
3 investment criteria that are specific to her ownership, your truck's investment value was only
4 one-seventh of its market value." In both this everyday example and the Elliott State Forest
5 "decoupling" sale being considered by the State Land Board, the sale would be a self-dealing
6 transaction based on a low investment value, so neither transaction would withstand a legal
7 challenge.

8 **Part 5.3: \$221 million dollars is a shockingly low sales price.**

9 The Mason, Bruce & Girard appraisal report was released on the DSL website in August 2022. The
10 report lists the Elliott State Forest's value as:

11 In our opinion, the Investment Value of the subject property, as of March 31, 2022, is:

12 BASE CASE APPRAISAL SCENARIO

13 *** NINETY-NINE MILLION SIX HUNDRED THOUSAND DOLLARS ***

14 \$99,600,000

15 ALTERNATIVE CASE APPRAISAL SCENARIO

16 *** ONE HUNDRED AND EIGHTY MILLION DOLLARS ***

17 \$180,000,000

18
19 These values were shockingly low: OASTL has members who are experienced Oregon forest
20 scientists, managers, and appraisers, and the consensus opinion is the Elliott State Forest is worth
21 between \$1 and \$1.3 billion dollars (see page 2, Exhibit 3). This value is substantiated by economist
22 John A. Charles in Cascade Policy Institute's argument for why the Elliott State Forest is worth at
23 least \$1 billion dollars (see Exhibit 2):

24 We know that the appraisal submitted in August of this year – ranging from \$99.6 million to
25 \$180 million - is artificially low, because all previous valuations have been much higher. In
26 the DSL Proposed Asset Management Plan published in August 1995, the Department

1 estimated that under the preferred alternative for the ESF developed by the Oregon
2 Department of Forestry, the annual income from timber harvesting would be “\$16 million for
3 the foreseeable future.” According to DSL, these cash flows implied a forest asset value of
4 \$300-\$400 million. However, the Department noted that this was not the same as market
5 value. The Department stated (p. V-8):

6 The open-market value is likely to be at least twice that amount, however, assuming
7 no conditions or qualifications beyond those applicable to private forest lands in
8 western Oregon (emphasis added). The \$850 million value shown in Table V-1
9 should be considered a minimum expectation (a starting point) for the Forest would
10 likely sell for on the open market.

11 What has changed since 1995? Certainly not the available supply of timber. Annual growth
12 of timber has likely exceeded harvest in every year since then, with harvest levels at near-
13 zero since 2017. If the CSF was worth an estimated \$850 in 1995, it should be worth more
14 than \$1 billion today.

15 To understand how Mason, Bruce & Girard arrived at such low values, it is necessary to understand
16 their definition of “investment value”:

17 [In this report, investment value is defined as:] the value of the property to the State of
18 Oregon as measured by a set of investment criteria that are specific to the State’s
19 continued ownership of the asset.

20 Clearly, the appraisal was written for solely one buyer, the State. The appraisal “measured by a set
21 of investment criteria specific to the State’s continued ownership of the asset” meant the State was
22 ensuring that they could be the only buyer of land held by the State in trust for public schools and
23 was ensuring that the sale price was based on the land value to only the State. All presumptions are
24 against the trustee; obscurities and doubts must be resolved adversely to a self-dealing trustee.

1 Their report explains these criteria can be found at the back of their appraisal report as
2 “Administrative Draft Elliott State Research Forest Habitat Conservation Plan, dated September
3 2021 that is Appendix D”.

4 Appendix D is a 264-page draft Habitat Conservation Plan (HCP) written by ICF, a
5 management consulting firm based in Seattle. The harvest rules within the HCP are based on
6 assumptions about how the Elliott State Research Forest will be managed, and the process of how
7 the State Land Board created those rules goes beyond the scope of this Petition, but the resulting
8 rules are contained in the Forest Management Plan written by the OSU College of Forestry.

9 These passages from the Mason, Bruce & Girard appraisal report explain why the
10 “investment value” was so low:

11 Most of the merchantable inventory is on Reserve acres and will not be harvested so its
12 contributory value is significantly reduced. Only a limited amount of commercial thinning is
13 scheduled for these acres over the next 20 years. Thereafter, these acres will not produce
14 any cash flows. Similarly, the Extensive inventory can only be harvested through
15 commercial thinning, which significantly reduces its contributory value. (Exhibit 2, page 40.)
16 Then, on page 70, the report explains it assumes an “average of 18.8 million board feet (MMbf) of
17 harvest volume per year is produced.” This is almost the same as the 17 million board feet harvest
18 limit in the OSU College of Forestry’s Forest Management Plan and is less than one-quarter of the
19 annual volume growth on the Forest.

20 So, in summary. Mason, Bruce & Girard used a draft HCP plan to determine the Forest’s
21 “investment value.” Because the draft HCP prohibits nearly all clearcutting, requires most trees to
22 be put into various permanent reserves, and allows less than one-quarter of the Forest’s growth to
23 be harvested, the resulting “investment value” for the “Base Case” is less than a tenth of the forest’s
24 market value to industrial forestry firms (\$99.6 million / \$1 billion).

1 John A. Charles explained similar ideas to the State Land Board in his Exhibit 2 letter that
2 was submitted as testimony:

3 **Why markets matter to school finance**

4 The foregoing is somewhat complicated, but there is a much simpler way to
5 demonstrate why the Board’s management of the ESF has harmed beneficiaries.

6 Last June, the annual charitable auction of a lunch with Warren Buffett resulted in a
7 record bid on eBay of \$19 million. This was four times the winning bid from the previous
8 year. Although most people would probably not value a lunch with Mr. Buffett at \$19 million,
9 that’s exactly what it was worth to one buyer. And Mr. Buffett only needed one buyer.

10 That’s why a market process matters. No one needs to guess the value of the
11 asset; it is revealed by competitive bidding. The State Land Board has gone to
12 extraordinary lengths over the past decade to prevent such bidding from occurring with
13 regard to the ESF.

14 **Part 5.4: Conclusion and claim.**

15 Part 5’s goal has been to explain “The grounds on which the order should be reversed” as is
16 required by ORS 183.484 (2).

17 **Claim 1:** The State Land Board’s two December 13th decisions should be set aside because
18 they would have sold the Elliott State Forest in a self-dealing manner for less than its market
19 value based on an “investment value” appraisal designed for one buyer only, the state, and
20 assigning value for criteria for that one buyer only.

21 In most Petitions for Review of Final Agency Order, setting aside the order would be sufficient. But
22 in this case, simply setting aside the two December 13th decisions would almost certainly make
23 matters worse. To understand why, it is worth looking at the “Elliott State Forest Expenses” eight-
24 page report prepared by the Department of State Lands covering revenues and expenses from

1 FY2010 through FY2022.⁶ This report shows no harvesting has been done on the Elliott State
2 Forest since 2017, but maintenance expenses have continued to be paid from the Common School
3 Fund, so instead of being beneficiaries, schools have been converted into payors. This process
4 started many years ago and is unprecedented. For example, on October 28, 2016, the Oregon
5 School Board Association issued a press release quoting Margaret Bird:⁷

6 In the 235-year history of school trust lands that I have been studying for the last 23 years,
7 no state has spent more than they earned like Oregon has,” she said. “It never has
8 happened.

9 Since Dr. Bird made this statement in 2016, the losses have continued year after year. Losses for
10 FY2022 were \$1,670,000, FY2021 were \$1,505,000, and FY2020 were \$1,710,000.

11 So, if the Court just uses Claim #1 to set aside the two December 13th decisions and does
12 nothing else, that will return the public schools to being payors: they will have to pay maintenance
13 expenses on a forest that the State Land Board has refused to manage productively. To find an
14 equitable solution, the Court cannot just use ORS 183 (5)(a)(A) to “set aside” the decisions, it
15 should also use ORS 183.486 (1)(a) to “decide the rights, privileges, obligations, requirements or
16 procedures at issue between the parties.” So, Part 6 looks at Oregon’s constitution to determine

⁶“Elliott State Forest Expenses, updated July 2022”, an eight-page report prepared by the
Department of State Lands covering revenues and expenses from FY2010 through FY2022
available at:

<https://www.oregon.gov/dsl/Land/Elliott%20Forest%20Library/ElliottExpensesOverview.pdf>

⁷“State nears historic sale of the Elliott State Forest” a news release published by the Oregon
School Board Association on October 28, 2016 and available at:

http://www.osba.org/News-Center/Announcements/2016-10-28_SLN_ElliottForestSale.aspx

1 what it says about managing School Trust Lands, and Part 7 uses ORS 183.486 (1)(a) to craft a
2 declaration that decides “the rights, privileges, obligations, requirements or procedures at issue
3 between the parties.”

4 **Part 6: Overview of Oregon’s Constitution and School Trust Lands**

5 **Part 6.1: The Oregon Territory’s promises about School Lands to the U.S. government.**

6 Oregon’s School Lands were established by a bilateral compact between the people of Oregon
7 Territory and the United States government. The federal government’s Oregon Admissions Act of
8 February 14, 1859, was one-half of the bilateral compact.⁸ Its Section 4 begins:

⁸ Of the five sections of the Oregon Admissions Act, by far the longest section dealt with school and other institutional grants of land. At the Oregon Constitutional Convention, the grant was of such importance that one of the committees established to draft a portion of the state constitution was the Education and School Lands committee. For a systematic and exhaustive examination of the Oregon Constitutional Convention, see: Claudia Burton and Andrew Grade, "A Legislative History of the Oregon Constitution of 1857—Part I," *Willamette Law Review* 37 (2001); Claudia Burton, "A Legislative History of the Oregon Constitution of 1857—Part II," *Willamette Law Review* 39 (2003); and Claudia Burton, "A Legislative History of the Oregon Constitution of 1857—Part III," *Willamette Law Review* 40 (2004). These articles proceed step by step through the articles of the constitution. They include extensive analysis of contemporary accounts of the convention and opinions of various newspaper writers. Most significantly, they tap into previously unresearched resources such as initial committee reports, amendments, and engrossed articles. These documents provide a fuller legislative history of the convention and in many cases new insight into the intent of the framers. Also see [The Oregon Constitution and Proceedings and](#)

1 4. Propositions Submitted to People of State

2 The following propositions be and the same are hereby offered to the said people of
3 Oregon for their free acceptance or rejection, which, if accepted, **shall be obligatory on**
4 **the United States and upon the said State of Oregon**, [emphasis added] to wit:

5 School Lands

6 First, that sections numbered sixteen and thirty-six in every township of public lands
7 in said state, and where either of said sections, or any part thereof, has been sold or
8 otherwise disposed of, other lands equivalent thereto, and as contiguous as may
9 be, shall be **created a contract**, [emphasis added] with a bargained-for
10 consideration exchanged between the two governments.⁹

11 The Oregon Territory’s promises in the original Constitution formed the other half of the bilateral
12 compact. The original version of the Constitution was adopted by the 1857 Oregon Constitution
13 convention and was approved by the vote of the people of the Oregon Territory on November 9,
14 1857. A quote from Article VIII, “Education and School Lands,” Section 2 says:

15 The proceeds of all the lands which have been, or hereafter may be granted to this state,
16 for educational purposes ... [a lengthy and detailed list of other assets has been deleted for
17 clarity] to which this state shall become entitled on her admission into the union (if
18 congress shall consent to such appropriation of the two grants last mentioned) shall be set
19 apart as a separate, and irreducible fund to be called the common school fund, the interest
20 of which together with all other revenues derived from the school lands mentioned in this

Debates of the Constitutional Convention of 1857 by Charles H. Carey that has the newspaper reports of the debates, as no recorder was hired for the convention.

⁹ Oregon Admissions Act of February 14, 1859 Section 4 (11 Stat. 383).

1 section shall be exclusively applied to the support, and maintenance of common schools in
2 each school district, and the purchase of suitable libraries, and apparatus therefore.

3 The School Lands became vested when the United States surveyed the lands and provided legal title
4 to the lands specifically granted in Sections 16 and 36. This grant of school lands was not a
5 unilateral gift. For example, in the case of Utah:¹⁰

6 "Rather, they were in the nature of a bilateral compact entered into between two
7 sovereigns. In return for receiving the federal lands Utah disclaimed all interest in the
8 remainder of the public domain, agreed to forever hold federal lands immune from taxation,
9 and agreed to hold the granted lands, or the proceeds therefrom, in trust as a common
10 school fund "for the use of schools."

11 The Supreme Court of South Dakota held:

12 Such a procedure has been said to create an irrevocable compact, Oklahoma Educ. Ass'n,
13 Inc. v. Nigh, 642 P.2d 230, 235 (Okla. 1982); a solemn agreement, Andrus v. Utah, 446
14 U.S. 500, 507, 100 S.Ct. 1803, 1807, 64 L.Ed2d 458, 464 (1980) reh'g denied, 448 U.S.
15 907, 100 S.Ct. 3051, 65 L.Ed.2d 1137 (1980); and a contract between the accepting state
16 and the United States, State v. Platte Valley Pub. Power & Irrigation Dist., 147 Neb. 289,
17 296, 23 N.W.2d 300, 306, 166 A.L.R. 1196 (1946). (pg 823)

18 The land grants created a contract, with a bargained-for consideration exchanged between the two
19 governments. The acceptance of school lands to be held in trust by the state for the use of schools
20 was a condition of statehood, and neither the lands themselves, nor the money they produce, should
21 be diverted to the general "public interest" or other non-school purposes without full compensation
22 to schools.

¹⁰ Utah v. Kleppe, 586 F.2d 756, 758 (10th Cir. 1978). Cert. Granted 442 U.S. 1001 S.Ct. 2857, 61 L.Ed.2d 296 (1979).

1 All states beginning with Ohio were granted land to be held in trust through similar bilateral
2 compacts, and 20 states currently have School Trust Lands. Politicians have often found these lands
3 an attractive target, a potential source of funds to divert and gain favor with supporters. Sometimes
4 these raids on School Trust Lands have been successful, generally because no one took the time to
5 collect facts and file a lawsuit on behalf of the state's schoolchildren. But when courts have been
6 asked to consider the issue, every court has come to the same conclusion: These School Trusts are
7 real, and they require the State to manage School Trust Lands for schools.

8 Perhaps the most entertaining description of School Land malfeasance was written by Judge
9 Cannon in *Oklahoma Education Assn. v. Nigh*, 642 P.2d 230 (Okl. 1982). He wrote, "Boys, the
10 party is over." In this decision, the Supreme Court of Oklahoma ruled:

11 The School Lands Trust, administered by the Commissioners of the Land for the State as
12 Trustee, consists of certain lands and funds granted to the State of Oklahoma upon its
13 admission into the Union by the Enabling Act. The gift of these lands and funds under the
14 Enabling Act was accepted irrevocably by the people of Oklahoma, and such acceptance
15 was set out in the Oklahoma Constitution under Article XI, Section 1. These acceptance
16 provisions of the Oklahoma Constitution and the Enabling Act constitute an irrevocable
17 compact between the United States and Oklahoma, for the benefit of the common schools,
18 which cannot be altered or abrogated. No disposition of such lands or funds can be made
19 that conflict either with the terms and purposes of the grant in the Enabling Act or the
20 provisions of the Constitution relating to such land and funds. The State has an irrevocable
21 duty, as Trustee, to manage the trust estate for the exclusive benefit of the beneficiaries,
22 and return full value from the use and disposition of the trust property. The express
23 designation of the school lands and funds as a "sacred trust" has the effect of irrevocably
24 incorporating into the Enabling Act, Oklahoma Constitution, and conditions of the grant, all
25 of the rules of law and duties governing the administration of trusts.

1 No Act of the Legislature can validly alter, modify or diminish the State's duty as
2 Trustee of the school land trust to administer it in a manner most beneficial to the trust
3 estate and in a manner which obtains the maximum benefit in return from the use of trust
4 property or loan of trust funds.

5 For a decision with lots of appropriate citations, the Petitioner recommends *County of Skamania v.*
6 *State*, 102 Wash. 2d 127 (1984). It does an excellent job of summarizing School Trust decisions
7 nationwide:

8 The federal land grant trusts were created specifically to benefit certain named
9 beneficiaries. See Washington Enabling Act § 11, [25 Stat. 676](#) (1889), *amended by* Act of
10 August 11, 1921, [42 Stat. 158](#), and Act of May 7, 1932, [47 Stat. 150](#); *see also* Const. art.
11 16, § 1. Every court that has considered the issue has concluded that these are real,
12 enforceable trusts that impose upon the State the same fiduciary duties applicable to
13 private trustees. For example, in *Lassen v. Arizona ex rel. Ariz. Hwy. Dep't*, [385 U.S.](#)
14 [458](#), [17 L. Ed. 2d 515](#), [87 S. Ct. 584](#) (1967), the Supreme Court, interpreting the Arizona
15 Enabling Act, held that Arizona could not transfer easements across trust lands without
16 compensation to the trust. The Court stated that the Arizona Enabling Act “contains ‘a
17 specific enumeration of the purposes for which the lands were granted and the
18 enumeration is necessarily exclusive of any other purpose.” *Lassen*, at 467 (quoting *Ervien*
19 *v. United States*, [251 U.S. 41](#), 47, [64 L. Ed. 128](#), [40 S. Ct. 75](#) (1919)).

20 Although *Lassen* involved a different enabling act, the principle of *Lassen* applies to
21 Washington’s enabling act. *See United States v. 111.2 Acres of Land*, [293 F. Supp.](#)
22 [1042](#) (E.D. Wash. 1968), *aff'd*, [435 F.2d 561](#) (9th Cir. 1970). There the court stated:

23 There have been intimations that school land trusts are merely honorary, that there
24 is a “sacred obligation imposed on (the state’s) public faith,” but no legal obligation.

1 These intimations have been dispelled by *Lassen v. Arizona* . . . This trust is real,
2 not illusory.

3 (Citations omitted.) [293 F. Supp. At 1049](#). For cases in which courts have applied private
4 trust principles to federal land grant trusts, see, e.g., *State ex rel. Hellar v. Young*, [21](#)
5 [Wash. 391](#), [58 P. 220](#) (1899); *Oklahoma Educ. Ass'n v. Nigh*, [642 P.2d 230](#), 236 (Okla.
6 1982); *State v. University of Alaska*, [624 P.2d 807](#), 813 (Alaska 1981); *State ex rel. Ebke v.*
7 *Board of Educ. Lands & Funds*, [154 Neb. 244](#), 248-49, [47 N.W.2d 520](#) (1951).

8 Oregon has little case law history about its duty to manage School Trust Lands to exclusively
9 benefit schools. However, in *State Land Board v. Lee*, 84 Or. 431, 165 Pac. 372 (1917), a case
10 dealing with a mortgage on School Lands, Supreme Court Justice Harris wrote in footnote 5:

11 The state is expressly commanded by the Constitution to provide for the establishment of a
12 uniform and general system of common schools; and, furthermore, the Constitution
13 commands that the school funds derived from specified sources shall be irreducible and
14 that the interest shall be applied exclusively to the support of the common schools. The
15 state does not loan the money for a private purpose, but the moneys are loaned in order
16 that revenue may be obtained to educate the children, upon whom in after years will largely
17 depend the welfare and stability of the commonwealth. This is a public purpose of the
18 highest type. The title to the funds is vested in the state in its sovereign capacity; the state
19 is not a mere dry trustee, but it holds the funds in trust for the common schools of the state,
20 and hence in trust for a public purpose...

21 Judge Harris is correct: the revenue from School Trust Lands is to be used for “a public purpose
22 of the highest type.” It helps “educate the children, upon whom in after years will largely depend
23 the welfare and stability of the commonwealth.”

1 **Part 6.2: Article VIII, Section 5(2), an ambiguous amendment**

2 Part 6.1 describes constitutional protections for School Trust Lands. This part provides a possible
3 counterexample: Article VIII, Section 5(2) suggests School Trust Lands might not need to benefit
4 schools at all. Instead, its plain language suggests School Trust Lands may be managed for “the
5 greatest benefit for the people of this state” and it doesn’t mention schools.

6 On May 28, 1968, voters approved a legislatively referred constitutional amendment known
7 as Ballot Measure #1, “Oregon Common School Fund.” It modified Article VIII, Section 5(2) of the
8 Constitution to read:

9 The [State Land] board shall manage lands under its jurisdiction with the object of obtaining
10 the greatest benefit for the people of this state, consistent with the conservation of this
11 resource under sound techniques of land management.

12 The comparable passage in Article VIII of the original 1857 constitution said:

13 the school lands mentioned in this section shall be exclusively applied to the support, and
14 maintenance of common schools in each school district, and the purchase of suitable
15 libraries, and apparatus therefore.

16 Thus, the 1968 Ballot Measure #1 changed the School Land Trust’s beneficiaries from “common
17 schools in each district” to become “the people of this state.”

18 The 1968 amendment has created confusion about how School Trust Lands should be
19 managed because “the greatest benefit for the people of this state” is ambiguous. This ambiguity
20 has been used by the State Land Board to justify diverting more and more of the Elliott State
21 Forest’s value to the general “public interest,” such as sequestering carbon in 120-year-old trees or
22 creating the world’s largest research forest. These may be worthwhile activities, but they certainly
23 do not support “common schools.”

1 Exhibit 1 shows the Voters Pamphlet from the May 28, 1968, election. The second
2 paragraph of the measure's explanation in the Voters Pamphlet says:

3 The Land Board manages about 600,000 acres of scattered grazing lands in Eastern
4 Oregon; approximately 130,000 acres of timberland in Western Oregon, and the beds of
5 most navigable waters in the state. In managing these lands, the Board is now restricted to
6 a single objective-to maximize its cash income. It cannot spend for fencing, seeding of
7 rangeland or improvement of its lands generally, even though such improvements could
8 enhance its income in the long run.

9 The official Voters' Pamphlet Explanation concludes with this paragraph:

10 Under the amendment proposed, all sources of revenue will go into one fund. From this
11 fund, land improvements can be made and the cost of operating the Land Board staff can
12 be paid. The fund itself will be invested and the interest earnings distributed to schools
13 annually. Because land income is now distributed rather than invested, the short range
14 effect will be to reduce the amount distributed, but as lands are improved, the long range
15 effect will be to increase both the principal fund and interest distributed each year.

16 A central theme in the Voters' Pamphlet was the State Land Board needs the authority to
17 make short-term investments that will in the long run make School Lands more profitable for
18 schools. This explains why voters approved the ballot measure, and it explains why no one
19 challenged this amendment's constitutionality at the time: until the 1990s, it was used as expected
20 to give the State Land Board a bit more flexibility about how to operate. No one anticipated this
21 amendment would be used to divert so much value away from schools that they would be converted
22 from beneficiaries into payors, every year since 2016 paying millions on the Elliott with no
23 compensating income from the Elliott.

1 Information about the legislative intent of this amendment can be found in *Johnson v.*
2 *Department of Revenue*, 292 Or. 373, 639 P.2d 128 (1982).

3 Another perspective on this amendment's ambiguity comes from Oregon Attorney
4 General's Opinion 8223, issued on July 24, 1992. In 1992 the State Land Board asked Charles
5 Crookham, Oregon's Attorney General, various questions about the Elliott State Forest. The key
6 part of this opinion is:

7 FIRST QUESTION PRESENTED:

8 Does the Oregon Admission Act limit the board in applying the standard in Article VIII,
9 section 5(2), of the Oregon Constitution, for management of Admission Act lands?

10 ANSWER GIVEN:

11 The Oregon Admission Act does impose an obligation upon the board to manage
12 Admission Act lands "for the use of schools." This objective is consistent with the duty
13 imposed by Article VIII of the Oregon Constitution for management of those lands. The
14 management standard in Article VIII, section 5(2), to obtain the "greatest benefit" for the
15 people, presumes an objective that is found elsewhere in Article VIII. In that sense,
16 therefore, the Admission Act does not limit the board in applying the management standard
17 in Article VIII, section 5(2).

18 SECOND QUESTION PRESENTED:

19 Does the Oregon Admission Act or the Oregon Constitution require the board to maximize
20 revenue, consistent with the prudent investor rule, from management of Admission Act
21 lands?

22 ANSWER GIVEN:

23 Yes, to the extent the Admission Act lands are retained and not directly used for schools,
24 e.g., for siting school facilities. However, the board is not required to maximize present
25 income from the Admission Act lands without regard to other considerations. Rather, the

1 board's duty is to manage the lands for the long-term benefit of the schools. Thus, the
2 board may sacrifice present income to preserve the property, if it determines this will
3 enhance income for the future. Noneconomic factors may be considered only if they do not
4 adversely affect the potential financial contribution to the Common School Fund over the
5 long-term.

6 **Part 7: ORS 183.486(1)(a), deciding the rights and obligations at issue between the parties.**

7 The constitutional law in Parts 6.1 and 6.2 appear contradictory and ambiguous. Part 6.1 suggests a
8 contract protects School Trust Lands by making them “irreducible” and requiring their revenue to
9 be “exclusively” used for schools. But Part 6.2 shows “the greatest benefit for the people of this
10 state” has been used in ways voters never expected and that directly conflict with the law in Part
11 6.1. These contradictions and ambiguity explain why the State Land Board asked the attorney
12 general for guidance in 1992, resulting in AG Opinion 8223, but the Petitioner believes the time has
13 come for Oregon’s Courts to clarify how these conflicting and ambiguous constitutional laws
14 should be interpreted. Whatever Oregon’s Courts decide is likely to be frequently cited later.

15 The Petitioner is a retired OSU business professor who believes passionately in the value of
16 education. He sees the State Land Board’s December 13th decisions as an insidious form of
17 malfeasance that allows politicians to divert value from School Trust Lands to reward constituents.
18 It should never be OK to divert funds that are constitutionally and specifically designated for public
19 education to other purposes. After all, what public purpose is higher than educating Oregon’s
20 schoolchildren? And who is more defenseless than our children? The Petitioner believes Courts
21 need to be vigilant to stop this theft. But when it comes to educating children, the law requires more
22 than avoiding malfeasance. It requires an active effort. For example:

- 1 ● Parents have an affirmative duty to educate their children so they can grow into healthy
- 2 members of our complex society.
- 3 ● Trust Law creates a similar affirmative duty for Oregon to manage school trust land
- 4 productively and prudently.
- 5 ● Article VIII, Section 8(1) creates a similar affirmative duty for Oregon to provide enough
- 6 funds to offer every Oregon child a quality public school education.

7 This raises the question of what should be done with the 1968 amendment to Article VIII, Section 5
8 (2) that attempts to change the beneficiaries of a preexisting, vested School Trust agreement
9 without full market compensation. Both the Oregon and U.S. Constitutions have “contracts clauses”
10 that prohibit making retroactive changes to existing contracts. Oregon’s Constitution, Article I,
11 Section 21 says, “No ex-post facto law, or law impairing the obligation of contracts shall ever be
12 passed.” The U.S. Constitution’s Article I, Section 10, Clause 1 says, “No State shall ... pass any ...
13 law impairing the obligation of contracts.”

14 The Petitioner believes the best way to resolve the ambiguity in Article VIII, Section 5 (2) is
15 to issue a declaration saying the current Oregon Constitution which directs the management of
16 school lands “with the object of obtaining the greatest benefit for the people of this state” is in
17 contradiction with the Oregon Admissions Act of February 14, 1859, granting lands “to said state
18 for the use of schools.”¹¹ As the granted beneficiary is schools, as schools still exist¹², and as the
19 grant of land was a condition of statehood in a bilateral compact between two sovereigns¹³, and as

¹¹ Oregon Admissions Act of February 14, 1859 Section 4 (11 Stat. 383)

¹² The Petitioner maintains that cy pres applies only where the original trust becomes illegal,
impossible or impractical, none of which apply to the beneficiary schools of Oregon.

¹³ Utah v. Kleppe, 586 F.2d 756, 758 (10th Cir. 1978). Cert. Granted 442 U.S. 1001 S.Ct. 2857, 61
L.Ed.2d 296 (1979).

1 the school lands have been vested in the school trust, the lands granted at statehood must be
2 managed solely in the best interest of schools. When the “use of schools” and “the greatest benefit
3 for the people of this state” are in conflict, as they are on the Elliott State Forest, the trust for
4 schools and the foundational document of the Oregon Admissions Act must prevail.

5 Declaring the 1968 Ballot Measure #1 unconstitutional would match what the Supreme
6 Court did in a similar breach-of-contract case, *Oregon State Police Officer's Assn. v. State of*
7 *Oregon*, 323 Or. 356, 918 P.2d 765 (Or. 1996), where the Oregon Supreme Court voided Ballot
8 Measure 8 after it had been passed by the people because it impaired a preexisting Public Employee
9 Retirement System contract.

10 A softer, less aggressive approach could also remove this constitutional ambiguity by
11 declaring “the greatest benefit for the people of this state” shall henceforth be interpreted to mean
12 School Trust Lands shall be used exclusively to benefit schools.

13 Merging all the preceding ideas together, the Petitioner asks the Court to issue the following
14 declaration:

15 **Declaration: Oregon’s School Lands are protected by a contract with the United**
16 **States and by a charitable trust to be used solely for “common schools”:**

- 17 ● Whereas Oregon’s original 1857 constitution and the Oregon Admission Act of 1859
18 created a bilateral contract between Oregon and the United States,
- 19 ● Whereas the 1859 Oregon Admission Act said that when Oregon agreed to accept
20 the School Lands, there “shall be created a contract, with a bargained-for
21 consideration exchanged between the two governments.”
- 22 ● Whereas the original constitution said School Lands “shall be set apart as a
23 separate, and irreducible fund to be called the common school fund” and “shall be

1 exclusively applied to the support, and maintenance of common schools in each
2 school district, and the purchase of suitable libraries, and apparatus therefore.”

3 ● Whereas Oregon’s Constitution, Article I, Section 21 says, “No ex-post facto law, or
4 law impairing the obligation of contracts shall ever be passed.”

5 ● Whereas Oregon’s original 1857 constitution and the Oregon Admission Act of 1859
6 created a charitable Trust for “educational purposes.” The United States became
7 the Grantor when it granted legal title to the initial School Lands scattered
8 throughout each of the state’s townships. Oregon became the Trustee when it
9 agreed to accept the School Lands on behalf of the designated beneficiary, the
10 “common schools in each district.”

11 ● Whereas payments from the Common School Fund and revenue from School Trust
12 Lands have been an important and independent source of funds for Oregon’s public
13 schools.

14 ● Whereas schools still exist, and the need for quality public education is as important
15 today as it was when Oregon became a state.

16 Therefore: Oregon has an affirmative duty to manage School Trust Lands for common
17 schools, and when interpreting Article VIII, Section 5(2), “the greatest benefit for the people
18 of this state” shall henceforth be interpreted to mean School Trust Lands shall be used to
19 exclusively benefit schools.

20 **Part 8: Relief**

21 Petitioner prays for judgment as follows:

- 22 ● First, using the arguments and documents in Part 5 above, Petitioner prays the Court to use
23 ORS 183.486(2) to issue an interlocutory order to set aside the State Land Board’s two
24 December 13th decisions.

- 1 ● Second, using Parts 5 through 7 above, Petitioner prays the Court will use ORS
2 183.486(1)(a) to issue the declaration in Part 7.
- 3 ● Third, Petitioner has filed this lawsuit as a public service. As a result, Petitioner prays for an
4 award of Petitioner’s reasonable attorney fees, costs, and disbursements.
- 5 ● Fourth, Petitioner prays for any other relief that the Court deems just and equitable.
6

7 **List of Exhibits**

8 **Exhibit 1:** “State of Oregon, Voters’ Pamphlet”, May 28, 1968, (5 pages)

9 **Note:** This Exhibit contains the 5 relevant pages about Ballot Measure #1, “Common
10 School Fund Constitutional Amendment” from the May 28, 1968 primary election.

11 **Exhibit 2:** “State Land Board testimony letter,” John Charles, for the Cascade Policy
12 Institute, December 13, 2022 (5 pages)

13 **Exhibit 3:** “State Land Board testimony letter,” Margaret Bird for ASTL, December 13,
14 2022 (2 pages)
15

16

17 **Combined Certificate of Service and Declaration**

18 I phoned the Oregon Department of Justice’s referral line (503-378-4400) and asked how
19 they would prefer to be served with papers in this Petition, and the receptionist said I should
20 mail a copy to: Ellen Rosenblum, Attorney General, 1162 Court Street NE, Salem, OR
21 97301-4096. I also want to send a copy to the State Land Board, so I decided to use this

1 address for that Board: State Land Board, care of: Vicki Walker, Director, Department of
2 State Lands, 775 Summer St. NE, Suite 100, Salem, OR 97301-1279

3 So, on February 9, 2023, I personally deposited two true copies addressed to each of
4 the preceding addresses: One copy was sent by first class mail, and the other by certified or
5 registered mail, return receipt requested.

6 I hereby declare that the above statements are true and complete to the best of my
7 knowledge and belief. I understand they are made for use as evidence in court and I am
8 subject to penalty for perjury. Signed electronically by Dave Sullivan on February 9, 2023.

9

10 

11 s/ Dave Sullivan, Petitioner

STATE OF OREGON
Voters' Pamphlet

Republican Party
Primary Nominating Election
May 28, 1968



Compiled and Distributed by
CLAY MYERS
Secretary of State

Measure No. 1**Common School Fund Constitutional Amendment**

Proposed by the Fifty-fourth Legislative Assembly by House Joint Resolution No. 7, filed in the office of the Secretary of State June 28, 1967, and referred to the people as provided by Section 1, Article XVII of the Constitution.

Explanation**By Committee Designated Pursuant to ORS 254.210**

Measure No. 1 is a proposal that will authorize the State Land Board, with Legislative approval, to expend money from the Common School Fund for improvement of lands under its jurisdiction, and to manage its lands to obtain the greatest benefit for the people of this state consistent with the conservation of the resource. Under the present Constitution, the Common School Fund, which is derived from state land sales over the past century, is "irreducible." This language narrowly restricts what can be done with land income, interest income, and the principal of the fund itself.

The Land Board manages about 600,000 acres of scattered grazing lands in Eastern Oregon; approximately 130,000 acres of timberland in Western Oregon, and the beds of most navigable waters in the state. In managing these lands, the Board is now restricted to a single objective—to maximize its cash income. It cannot spend for fencing, seeding of rangeland or improvement of its lands generally, even though such improvements could enhance its income in the long run. The Board normally cannot set aside land for public recreation, parks or scenic purposes.

The proposed amendment will remove this strict cash income objective, permitting land uses varying with the location, type of land and needs of the citizens of the state. In addition, it will permit the Board to spend moneys from the Common School Fund on worthwhile land improvements. All expenditures, however, must be reviewed and approved by the Legislature under usual budget procedure.

As of January 1, 1968, the permanent Common School Fund was \$14,896,261, and is increasing at an average of \$319,812 per year for the past ten years. In addition to the permanent fund, the Land Board has various annual revenues that are distributed to the school districts of the state. These revenues have averaged \$1,543,181 per year for the past 10 years and have been increasing regularly. Last year's distribution was \$3,189,162. The fund that is distributed to schools annually consists of earnings from the land (58.3%) and interest earned (41.7%).

Depending upon how these funds have been budgeted in each district, the immediate effect may be to increase property taxes by a small amount, probably not in excess of one half of one percent. As land improvements are made and as land earnings are increased, it is predicted that the eventual return will more than offset this temporary effect on local property taxes by increasing the interest distributed.

Under the amendment proposed, all sources of revenue will go into one fund. From this fund, land improvements can be made and the cost of operating the Land Board staff can be paid. The fund itself will be invested and the interest earnings distributed to schools annually. Because land income is now distributed rather than invested, the short range effect will be to reduce the amount distributed, but as lands are improved, the long range effect will be to increase both the principal fund and interest distributed each year.

Submitted by:
 REP. PHILIP LANG, Portland, Oregon
 DALE MALLICOAT, Salem, Oregon
 JAMES WELCH, Salem, Oregon

Primary Election, May 28, 1968

5

Measure No. 1

Argument in Favor

**Submitted by Legislative Committee Provided by Subsection (3) of
ORS 255.421**

The land area owned by the State of Oregon and administered by the State Land Board is small when compared to Federal land holdings in Oregon. Nevertheless, state owned lands should be prudently managed to furnish as much revenue as possible to the Irreducible Common School Fund provided for by the Constitution. If you adopt this measure, prudent management will be authorized and required.

Under the present provisions of Sections 2. and 5. of Article VIII. of the Constitution, all revenues from leases and interest on earnings from the sale of land are distributed each year. None of these revenues can be used for good management practices to increase productivity of the lands. In its natural state, much of the land has a low level of productivity and income.

Studies authorized by the Legislature and conducted by Oregon State University, concluded that productivity could be quadrupled by such simple procedures as sagebrush spraying, reseeding, draining and filling. However, under present Constitutional provisions, the State Land Board is a mere caretaker. Your adoption of these amendments will enable the state to gain a much greater return from these public lands.

Furthermore, the new language will allow state lands best suited to scenic and recreational use to be set aside for such purposes.

This Constitutional Amendment is referred to you by the affirmative vote of 86 of your 90 legislators. We urge your support of Measure No. 1. so the Common School Fund and each and every one of you can benefit from the use of sound techniques of land management and conservation on Oregon's publicly owned lands.

SENATOR ANTHONY YTURRI

REPRESENTATIVE ROBERT F. SMITH

REPRESENTATIVE DALE M. HARLAN

Measure No. 1

CONSTITUTIONAL AMENDMENT

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) Sections 2 and 5, Article VIII of the Constitution of the State of Oregon, are amended to read:

Sec. 2. (1) *The sources of the Common School Fund are:*

(a) The proceeds of all ~~the~~ lands ~~which have been, or hereafter may be~~ granted to this state ~~for~~ educational purposes ~~excepting~~, except the lands ~~heretofore~~ granted to ~~and~~ aid in the establishment of ~~a university~~ institutions of higher education under the acts of February 14, 1859 (11 Stat. 383) and July 2, 1862 (12 Stat. 503).

(b) All the moneys ~~and~~ clear proceeds of all property which may accrue to the state by escheat ~~or~~ forfeiture ~~all moneys which may be paid as exemption from Military duty.~~

(c) The proceeds of all gifts, devises and bequests, made by any person to the state for common school purposes ~~and~~.

(d) The proceeds of all property granted to the state, when the purposes of such grant shall not be stated ~~and~~.

(e) The proceeds of the five hundred thousand acres of land to which this state is entitled ~~by the provisions of an act of Congress, entitled "An act to appropriate the proceeds of the Sales of the public lands, and to grant preemption rights, approved the fourth of September 1841." and also the five per centum under the Act of September 4, 1841 (5 Stat. 455).~~

(f) ~~The five percent of the net proceeds of the sales of the public lands to which this state shall become became entitled on her admission into the union (if Congress shall consent to such appropriation of the two grants last mentioned) shall be set apart as a separate, and irreducible fund to be called the common school fund.~~

(2) ~~The interest of which together with~~ All ~~other~~ revenues derived from the ~~school lands~~ sources mentioned in subsection (1) of this section shall ~~be exclusively applied to the support, and maintenance of common schools in each school district, and the purchase of suitable libraries, and apparatus therefor.~~ become a part of the Common School Fund. The State Land Board may expend moneys in the Common School Fund to carry out its powers and duties under subsection (2) of section 5 of this Article. Unexpended moneys in the Common School Fund shall be invested as the Legislative Assembly shall provide by law. Interest derived from the investment of the Common School Fund shall be applied to the support of primary and secondary education as provided under section 4 of this Article.

Sec. 5. (1) The Governor, Secretary of State ~~and~~ State Treasurer shall constitute a State Land Board ~~of Commissioners~~ for the ~~sale~~ disposition and management of ~~school, and University~~ lands ~~and~~ described in section 2 of this Article, and other lands owned by this state that are placed under their jurisdiction by law ~~and for the investment of the funds arising therefrom, and~~. Their powers ~~and~~ duties ~~shall be such as as may be~~ prescribed by law. ~~Provided that no part of the University~~

Primary Election, May 28, 1968

7

~~funds, or of the interest arising therefrom shall be expended until the period of ten years from the adoption of this Constitution, unless the same shall be otherwise disposed of by the consent of Congress for common school purposes.]~~

(2) The board shall 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.

Note: Matter in italics in an amended section is new; matter ~~lined out and bracketed~~ is existing law to be omitted; complete new sections begin with Section.

BALLOT TITLE

COMMON SCHOOL FUND CONSTITUTIONAL AMENDMENT—

1 Purpose: Amends Constitution authorizing State Land Board to expend moneys in the Common School Fund in carrying out its powers and duties to the end that the greatest benefit shall be obtained from the conservation and management of the land resource. The board to invest unexpended moneys in the fund as the Legislative Assembly shall provide by law. Interest from the investments applied in support of primary and secondary education as provided in the Constitution.

YES

NO

*Cascade Policy Institute
4850 SW Scholls Ferry Road, #103
Portland, OR 97225*

December 12, 2022

State Land Board
775 Summer Street NE
Salem, OR 97301

Dear Land Board members:

Cascade Policy Institute is a nonprofit policy research organization, supported by people in all 36 Oregon counties. Most of those individuals pay Oregon income taxes, and some are parents of public school students. Thus, they are affected by the Land Board's management decisions regarding Common School Trust Lands.

I am writing to oppose the staff recommendation for decoupling the Elliott State Forest from the Common School Fund. My opposition is based on two concerns.

First, the appraised value of the Elliott is artificially low.

Second, the Board's method for compensating the Common School Fund for the loss of timber revenue associated with the ESF harms CSF beneficiaries.

Each of the two factors represent a breach of your fiduciary duty to CSF beneficiaries.

I. The appraisal of the ESF is artificially low.

The DSL staff report states on page 3:

A valid, current appraisal substantiates the value owed to the Common School Fund in place of these forestland assets, and payments exceeding that valuation have been deposited in the Fund.

The most recent appraisal from Mason, Bruce & Girard (MBG) does not substantiate the true value owed to the CSF. That is made clear in the cover letter from MBG dated August 22, 2022, in which Messrs. Lord and Dewees state:

In this appraisal, the type of value to be determined is "Investment Value" rather than "Market Value." This is due to the 2019 ruling by the Supreme Court of the State of Oregon in *Cascadia Wildlands v. Oregon Dept. of State Lands and Seneca*

Jones Timber Company, LLC. In the decision, the court upheld the constitutionality of ORS 530.450, which has the effect of eliminating the potential for a sale of the ESF, in part or in whole, to the private market. The definition of Market Value is premised on the basis that such a sale is possible. Market value, therefore, cannot be ascertained since the subject property cannot be sold to the private market.

The Land Board relies on the Supreme Court ruling as the reason why the value of the ESF is so low, but long before that court decision, the Land Board was suppressing the market value of the ESF by imposing unnecessary management restrictions.

For instance, the 2016 appraisal conducted by MGB stated that the ESF would be worth \$220.8 million on December 31st of that year. But the Board had place four major sideboards on any bid, which it referred to as required "public benefits." The minimum level of benefits were:

- (1) At least 50 percent of the purchased timberland needed to remain open for public recreational use;
- (2) No-cut buffers of 120 feet on each side of fish-bearing streams had to be left permanently untouched;
- (3) At least 25% of the older stands of trees had to be left intact; and
- (4) At least 40 full-time jobs annually had to be provided over the first 10 years of new ownership.

The Board also stated that the \$220.8 valuation was the *maximum* amount it would accept. If a prospective buyer offered even \$1 over the stated valuation, the offer would be rejected as "non-responsive."

Clearly this was not a "Market Value" protocol as described in the MBG letter of August 22, 2022. It was an attempt to create the illusion of competitive bidding, without allowing it.

We know that the appraisal submitted in August of this year – ranging from \$99.6 million to \$180 million - is artificially low, because all previous valuations have been much higher. In the DSL Proposed Asset Management Plan published in August 1995, the Department estimated that under the preferred alternative for the ESF developed by the Oregon Department of Forestry, the annual income from timber harvesting would be "\$16 million for the foreseeable future." According to DSL, these cash flows implied a forest asset value of \$300-\$400 million.

However, the Department noted that this was not the same as market value. The Department stated (p. V-8):

The open-market value is likely to be at least twice that amount, however, *assuming no conditions or qualifications beyond those applicable to private forest lands in western Oregon* (emphasis added). The \$850 million value shown in Table V-1 should be considered a minimum expectation (a starting point) for the Forest would likely sell for on the open market.

What has changed since 1995? Certainly not the available supply of timber. Annual growth of timber has likely exceeded harvest in every year since then, with harvest levels at near-zero since 2017. If the CSF was worth an estimated \$850 in 1995, it should be worth **more than \$1 billion today**.

The 2019 Supreme Court decision subsequently created a barrier to a market-based sale, but the SLB has made no effort to mitigate that problem. Mitigation was available by simply requesting the legislature to amend ORS 530.450 to allow a sale to private purchasers. Given that Oregon is effectively a one-party state, and each member of the Board is in the majority party, it would not have been difficult to introduce such legislation.

As fiduciaries of the Common School Trust Lands, this is the least you could have done for beneficiaries any time between 2019 and 2022. You didn't even try.

Instead, you **rejected** a cash offer of \$220.8 million from a private consortium in 2017 – after initially accepting it – and then conjured the fantasy that Oregon State University could be talked into accepting the ESF as a “research forest.”

Not surprisingly, after several years of due diligence, OSU declined to take ownership of the ESF, knowing that it would be a money-losing liability.

Obviously the SLB is capable of successful legislative advocacy. Over the past five years, the Board and/or the Governor's office have succeeded in persuading the legislature to take at least the following actions related to the ESF:

1. Authorize the sale of Certificates of Participation in the amount of \$100 million, as a down payment on compensating the Common School Fund for the loss of timber harvest revenue;
2. Enact SB 1546, to create the ESFRA; and
3. Appropriate \$121 million of general fund money to further compensate the CSF, up to a level of \$221 million, the assumed value of the ESF.

These legislative actions did not benefit CSTL beneficiaries; they actually **made them worse off**. Amending ORS 530.450 to allow an open-market sale would have resulted in a much larger amount of money deposited in the CSF, and all of those funds would have flowed from a source other than taxpayers.

II. The proposed methods of compensating the CSF for the loss of timber harvesting revenue force CSTL beneficiaries to buy an asset they already own.

After receiving legislative authorization to sell \$100 million of Certificates of Participation, the State Treasury sold them in May 2019 at an interest rate of 3.83 percent. Debt service of roughly \$145.9 million will have to be paid by Oregon taxpayers over a period of 20 years.

A subset of those taxpayers will be public school parents, teachers, and school board members – the people who are supposed to be benefiting from timber revenues from the ESF. Instead, they must now pay \$145 million in debt service.

The legislature also appropriated \$121 million in general fund revenues for the same purpose, which results in the same problem. CSTL beneficiaries pay taxes into the state's General Fund. The Land Board has created the illusion of holding school beneficiaries harmless by depositing \$121 million of General Fund revenues into the CSF, but the money comes from beneficiaries themselves.

Even if investing \$221 million in new CSF deposits somehow exceeds the liability of debt service and annual income tax payments over the long term, the gains will be much smaller than if the SLB had simply sold the ESF at auction prior to 2019. This fact is an obvious breach of fiduciary duty by Board members.

Why markets matter to school finance

The foregoing is somewhat complicated, but there is a much simpler way to demonstrate why the Board's management of the ESF has harmed beneficiaries.

Last June, the annual charitable auction of a lunch with Warren Buffett resulted in a record bid on eBay of \$19 million. This was four times the winning bid from the previous year. Although most people would probably not value a lunch with Mr. Buffett at \$19 million, that's exactly what it was worth to one buyer. And Mr. Buffett only needed one buyer.

That's why a market process matters. No one needs to guess the value of the asset; it is revealed by competitive bidding. The State Land Board has gone to extraordinary lengths over the past decade to prevent such bidding from occurring with regard to the ESF.

Fiduciary Duty to Beneficiaries

As soon as the Elliott began to lose money in 2013, the SLB stated in public that the Board was at risk of being sued by CSF beneficiary groups for breach of fiduciary duty. All three members agreed with this assessment, including our current Governor. That was the reasoning behind the 2015 decision to sell the entire forest. The Board subsequently received a valid offer for \$220.8 million from the Lone Rock Timber consortium.

As recently as February 2017, two out of three SLB members continued to argue that the ESF needed to be sold as a matter of fiduciary duty. It was only when the State Treasurer reversed his position in May 2017 that fiduciary duty ceased to be a concern for the Board.

As it stands now, the Board is breaching its fiduciary duty in at least three ways:

- The Board is not seeking a legislative fix for the 2019 Supreme Court decision;
- The Board is backfilling the CSF with \$221 million that imposes ongoing tax liabilities for CSF beneficiaries; and
- The SLB is supporting the creation of a new research entity that will require at least \$25 million in start-up funds from taxpayers, plus ongoing taxpayer subsidies for operating losses that will likely continue to infinity.

This is your last chance to properly embrace your role as fiduciaries for the Common School Trust Lands. I encourage you to take it.

Sincerely,

John A. Charles, Jr.
President & CEO



Margaret Bird
Advocates for School Trust Lands
1251 Walden Lane, Draper, Utah 84020
margaretraybird@gmail.com
801-597-6701

December 11, 2022

Oregon State Land Board
care of landboard.testimony@dsl.oregon.gov

Dear Oregon State Land Board Trustees:

I am on the Board of Directors for Advocates for School Trust Lands (ASLT), a national non-profit educational organization founded in 1999 whose mission is "to ensure that States fulfill their fiduciary duty to the common school trust beneficiaries."

I am writing today because an action item on your December 13th Agenda says the State Land Board will consider "**decoupling**" the Elliott State Forest from the Common School Fund based on an "**investment value**." These two terms deserve further consideration:

1. "**Decoupling**" is a euphemism for "selling." If Oregon transfers the Elliott State Forest from the Common School Fund to the Elliott State Research Forest Authority, then from the perspective of Oregon's schools, the Forest will have been sold in a **self-dealing transaction**. Investopedia says, "Self-dealing is when a fiduciary acts in their own best interest in a transaction, rather than in the best interest of their clients. It represents a conflict of interest and an illegal act that can lead to litigation, penalties, and termination of employment for those who commit it."
2. "**Investment value**" does not have a common definition in ordinary business affairs. The Mason, Bruce & Girard appraisal commissioned by the Department of State Lands (DSL) says their **investment value**: "represents the value of the property to the State of Oregon as measured by a set of investment criteria that are specific to the State's continued ownership of the asset." To put this definition in an everyday context, suppose you agree to sell a Ford pickup truck on consignment with a used car dealership, and the truck's Kelly Blue Book value is \$70,000. Now assume the dealership sells your truck to the dealership owner's sister for an investment value of \$10,000. When you ask how the investment value was calculated, you are told, "The sister said she would only drive the truck on Sundays, so based on a set of investment

criteria that are specific to her ownership, your truck's investment value was only one-seventh of its market value." In both this everyday example and the Elliott State Forest "decoupling" sale being considered by the State Land Board, the sale would be a **self-dealing transaction** based on a **low investment value**, so neither transaction would withstand a legal challenge.

If the State Land Board wants to sell the Elliott State Forest, the sale should be for **market value**; that is, for its highest-and-best use in an arm's-length market-based transaction. In a recent public meeting about the Elliott State Forest's potential sale, Geoff Huntington, the DSL's Elliott State Forest Project Advisor, said DSL has not asked for or received a market-based appraisal for the Forest. The best evidence ASTL has seen suggests the Elliott State Forest's market value is in the general range of 1 to 1.3 billion dollars (for example, see <http://www.keepthechildrensforest.org/market-value>). In contrast, the "investment value" calculated by Mason, Bruce & Girard was only \$99,600,000, or less than one-tenth the Forest's market value.

ASTL prefers to work with state governments in a cooperative manner, and for over 20 years, we have been very successful with this approach. Please feel free to reach out to us. Occasionally, informal methods have failed, and in those cases, we ask courts to enforce Trust Law.

The ASTL Board of Directors has voted to sue the State Land Board for Breach of Trust if you continue to move forward in a self-dealing manner. As a practical matter, the lawsuit would likely be filed by our Oregon-based affiliate, Oregon Advocates for School Trust Lands (OASTL, available at <https://www.oregonadvocatesforschooltrustlands.org/>). ASTL and OASTL have Oregon school districts, schoolchildren, and parents as members, and under the Doctrine of Associational Standing, courts have consistently allowed us to file lawsuits on behalf of our members.

Sincerely,

Margaret Bird, co founder of ASTL
(signed electronically)



Oregon State University Society of American Foresters Student Chapter

Corvallis, Oregon 97333

Date: March 8th, 2023
To: Board of Forestry
From: Sydney Andersen and Quinn Teece, OSU - SAF Student Chapter

Topic: Agenda Item #1 - General Comments

Good morning Chair Kelly, State Forester Mukumoto and members of the Board,

Thank you for the opportunity to discuss the OSU-SAF Student Chapter's perspective on the state of Forestry in Oregon. We are Sydney Andersen and Quinn Teece and we are officers for the Society of American Foresters Student Chapter at Oregon State University. We are here to represent our growing student chapter of SAF.

Overview of OSU-SAF Student Chapter

OSU-SAF is a proud and active student chapter of SAF. We are focused on growing our members' academic and professional careers through networking and involvement with the Forestry community. While the COVID-19 pandemic greatly reduced the chapter's ability to operate, the chapter has been seeing a resurgence in member participation since classes at OSU returned to in-person instruction in the fall of 2021. We currently have 30 active members with more joining every outreach activity. We have been having regular in-person meetings, participating in Oregon SAF meetings and field tours, and have been networking with local Forestry professionals through local SAF chapters. We maintain and manage a Christmas tree farm in Corvallis, the funds from which support chapter activities. In September of 2022 we sent four officers to the National SAF convention in Baltimore, Maryland. In February of this year we attended the Oregon Logging Conference. Moving forward, we plan to attend the 2023 Oregon SAF Annual Meeting in May. We are planning to host an open-to-the-public lecture series from professionals and academics in the Forestry field starting in April of this year.

Why Forestry?

The members of our chapter come from a diverse background. This includes students from around the country and world, from different economic backgrounds, and from different educational paths. Each student has a unique reason as to why they chose forestry. The values our members place in Forestry range from managing resources for future generations, supporting our families and communities, improving forest health, climate crisis mitigation, and being a part of one of the biggest industries in the State of Oregon.



Oregon State University Society of American Foresters Student Chapter

Corvallis, Oregon 97333

Personally, I did not grow up in a “Forestry family.” I did not truly realize my passion for forestry until I participated in the Oregon Outdoor School Program, where I helped teach our youth about the natural sciences and the outdoors. From there, I dove into the world of Forestry and discovered the Forest Engineering program at OSU. I now work for the OSU Research Forests where I gain hands-on experience that will support me in my future career. The OSU-SAF student chapter has helped me build connections with fellow students as well as professionals in the Forestry field.

Challenges Faced by OSU-SAF Members

One challenge that we perceive for the state of Forestry is how the COVID-19 pandemic has affected the education of our future Foresters. Some of our members expressed concern about their lack of field experience as well as the general quality of classes delivered online. We believe that this will create a steeper learning curve for graduates in entry-level jobs.

Another concern our members voiced was the lack of coordination between public university and community college curriculum in Forestry programs. There is a disconnect between the OSU College of Forestry and the community colleges in the State— many of which have forestry programs that struggle to maintain enrollment and are not as celebrated as they could and should be. There are very few Forestry transfer students at OSU, those of which who are members of the OSU-SAF student chapter stated that they faced challenges transferring from community college to university. The programs between the two lack communication and integration.

Finally, members shared concerns about the upcoming January 2024 policy changes to the Oregon Forest Practices Act (OFPA) proposed by the Private Forest Accord and what they would mean for future employment. While more jobs may be borne out of the proposed changes, there is a limit to how many positions a company can support; and our members worry about the increased workload the changes will pose to entry-level positions. With the complex proposed alterations to the OFPA, and the potentially decreased capacity of graduates affected by the COVID-19 pandemic, there is additional concern for the future of Forestry in Oregon.

Thank you and we are available for any questions.

Sincerely,

Sydney Andersen
anderssy@oregonstate.edu

Quinn Teece
teeceq@oregonstate.edu

I'm David Reid, representing the 600-member Astoria-Warrenton Area Chamber of Commerce and I'll be testifying in opposition to the currently proposed Habitat Conservation Plan.

Commissioners, you have a lot of responsibility and a lot of power in your hands. Today, you have the power to protect habitats and to destroy livelihoods. The good news is that it is entirely possible to do the former without doing the latter, just not with the current HCP. There are other HCP's that will protect fish and wildlife without doing the extraordinary damage to jobs, communities, and families that we all know the current one will do.

You have heard from me and many others about the very real and inevitable economic and financial damage that will result from implementing this HCP. Today, I want to know the human damage. I want you to know the volunteer firefighter who just wants to serve her neighbors and help accident victims. She's already using outdated equipment bought with the shoestring budget her fire district gets under the current timber revenues.

I want you to know the CNA at the nursing home who cares for her own community members in their senior years but whose job partially relies on timber revenue.

I want you to know the family who have leveraged and invested everything in a log truck to run a family microbusiness, only to have the opportunity vanish overnight. And their kids who once had the security of a livable family income but now have to watch mom and dad struggle to make the next mortgage payment, let alone the truck payment.

I want you to know the assault victim who calls 911 only to be told that police help is more than an hour away because of cuts to rural law enforcement.

I want you to know the student who attends a rural school that miraculously had abundant resources thanks to timber revenue but suddenly finds himself in yet another underfunded, understaffed school, or, worse yet, being bussed an hour each way to attend a school far from home. A school that itself is facing cuts due to diminished timber revenue.

I want you to know the transit system employee who has been striving to reduce carbon emissions by growing the rural bus routes but now sees funding for their work cut, ironically in the name of the environment.

Or the kid who just wants to play soccer in an after-school league offered by the parks and rec district.

None of these people you just met are imaginary. None of these stories are hypothetical. Each of these bad outcomes and more will come true unless we can agree on an HCP that takes their lives into account. We don't have to trade environmental protection for human needs – there is a way for us to get both, but it will require involving the stakeholders in the plan and not *dismissing rural voices as somehow biased or uninformed*.

I don't believe that anyone set out to create a rural disaster scenario, nor do I believe that the current plan would have gone forward had the harvest numbers we saw revised in January been estimated earlier in the process. But we know them now. We know what this will mean for workers, small business, our County, service districts and kids. We know. So, let's fix this while there is still time. Let's fix this while we can still protect the natural environment without crushing the human one.

Stop this HCP and either choose a better option from ones already formulated or, better yet, let's start over with all parties at the table.



from the

OFFICE OF STATE REPRESENTATIVE COURT BOICE

March 19th, 2023

RE: Oregon State Board of Forestry – Proposed Habitat Conservation Plan

Dear Distinguished ODF Board –

My name is Court Boice, former 6-year Curry County Commissioner and now Oregon State Representative, District 1 – Curry and portions of Coos and Douglas Counties. Proudly, we are recognized as the Timber Capitol of the world.

I send sincere gratitude to everyone on the Board of Forestry. I truly believe and challenge that you are arguably serving on the most important Board in our entire State. Thank You!

To disclaim, this letter is long, however, the HCP is so very important to every Oregonian, so I can't apologize and will kindly ask for your thorough review. I humbly offer my lifetime of Oregon Experience. My included remarks are in opposition to the Oregon Department of Forestry Habitat Conservation Plan as currently proposed.

Oregon's great renewable timber history heritage has no equal in America. It is a solid Western United States economic advantage and I respectfully emphasize renewable. What an incalculable gift it is when it's managed like the wonderful and sacred garden that nature intended and science demands. This great fortune will continue if we fiercely protect our watersheds, air, birds, wildlife, fish, and river qualities. An extensive and yet reasonable timber harvest accomplishes this as history proves repeatedly without debate! I've proudly witnessed this enthusiastically for almost seven decades.

It is with respect that I request each of you please responsibly listen to our many seasoned and well experienced Forest professionals. Those with a meager lunch in their backpack, a chain saw in one hand, and a clipboard in the other, who trek daily deep into our great Oregon Forests. Those unsung heroes who've done the work now understandably bristle with the modern notion that everything they've experienced and learned through generational knowledge - are now done through computer driven models - and knowing sometimes those procedures are void of the vital 'boots on the ground' approaches.

Our mature and traditional foresters can boast because they've learned it through a hundred years of experience and knowledge passed down through generations. They've learned what works and what doesn't and how to continue to take great care of our forests. This includes our Native Oregonians who have understood and respected our forests for over 3,000 years. Please recognize their proven empirical science. History is our great teacher and even better ally!

Most of us tend to forget that with our eternal Oregon climate and rich soil is perfect to grow beautiful, majestic timber, especially in Western Oregon. Moderate temperatures, mild wet winters, and dry summers, coupled with well-drained soil made from deeply weathered fine shale and sandstone make the Pacific Northwest ideal for growing trees. Even during a drought, well managed forests are more resilient to forest fire.

Fire season is less than 3 months away. May I note; some of our 1,200° fires are part of nature and normally good, although that's not what I am wishing to highlight for you in this letter.

It grieves our Forest Experts to witness the continual wanton waste from the catastrophic 2000° fires that cost us millions and millions of dollars and are extremely challenging to contain. Containment is usually only limited by the amount of available burnable vegetation. Frankly, most July fires cannot be contained at all, and leave the soil sterile. These mega fires simply incinerate everything in their path including vegetation, waterways, and wildlife, and that's just the beginning of the initial devastation. Certainly, we all need to be reminded our wildlife, some of which is protected under the HCP, are seldom able to escape these wind driven monster infernos. The waterways our fish and wildlife depend on is destroyed for long periods of time after one of these fires, and some forever. With a bare landscape erosion takes over and fills waterways with debris, ash, and mud.

You can make the difference for our priceless Oregon backcountries.

When it finally sinks in, the Oregon Taxpaying Citizens who depend on and trust us to properly manage our forests, will understand that their incredibly valuable assets stand rotting due to Catastrophic Fires and Poor Forest Management, and they will respond. They will understandably go after that portion of our radical culture that promotes these horrifically bad practices. Just in the last five years in Southern Oregon we endured the Archie Creek, Chetco Bar and Klondike Fires. A combined, 465,000 acres were scorched and a total of \$240 million was spent to battle these mega fires. This was essentially due to the terrible Environmental Extremist policies – Fact: Then to make matters even worse for our citizens, the U.S. Forest Service was only able to permit 3% harvest of the marketable Public Timber Fire Salvage – Yes, only 3% of all three fires for post fire “recovery”. Additionally heartbreaking, as each of those, thousands of \$1,500 trees each will remain wasted on the stump, squandered, then ultimately are now sticks of dynamite for the next Nuclear Fire.

The E.I.S. - The *Economic Impact Statement* simply has to be just as important to our futures as the Environmental Impact Statement. Governor Kotek has challenged us to build 36,000 homes per year. To accomplish that vital goal, it is borderline delusional to import out-of-state lumber for our Oregon Housing Projects.

Following the 2019 Post California Fires – we saw flatbed after flatbed of Canadian Plywood going down Oregon’s I-5 headed to the Golden State for rebuilding and recovery. We should never, never be indifferent to how that negatively impacts our Citizens, our quality of life, our counties, our services, our schools and Oregon Public Safety. Counties have reached their limits – they cannot continually do more with less!

One similar example is our Bureau of Land Management, and the 18 A O&C Counties, whose timberlands grow by over a billion board feet per year, and we’re only allowed to annually harvest 1/4th of that green timber growth! I’m sure I don’t need to remind you that 86% of forest fires in Oregon are on public land. Please don’t make the same mistake on our precious State Lands. You have in your power to make policy to either **let our Forests earn or let them burn**. That is the choice before us. We are all empowered to do our part to close that portion of the Urban/Rural Divide.

I challenge and submit that currently the ODF Habitat Conservation Plan is not a good plan – it is in my view a terrible recipe for results that will be brutally unbeneficial and without question detrimental to our generations to follow. Those before us looked out for our future. To borrow a phrase – Healthy Forests = Healthy Communities. Cultural prosperity for all Oregon Citizens is so doable!!

It is my sincere wish to communicate my belief and ask you again; Is this board on which you serve not the most important for Oregon? It is not melodramatic to say “You can save lives” – more than you know. We’ve got the horrifying data, particularly in California, where people lost their lives due to poor Public Lands and landscape Management.

Please guide the Oregon Department of Forestry to re-calibrate and significantly increase the amount of annual State Timber Board Feet Harvest. Again, it is RENEWABLE RESOURCE. You can bring back robust management and renew our Oregon source of pride. Please alter the HCP course – Help every Oregonian be more a part of those best and proven Stewardship Principles. Teach this to our youth and I promise that someday our kids and grandkids will stand up and call you blessed!

Finally – This too is a Public Safety issue which in my view further places added responsibility on your decision. What you decide on this HCP Plan is truly a very positive legacy opportunity. Please help Keep Oregon Green!

COURT BOICE, State Representative – Oregon District 1

Rep.CourtBoice@OregonLegislature.gov

Phone (503) 986-1401

Coos, Curry, and Douglas Counties – The beautiful Southwest Corner of Oregon - The Timber Capitol of the World, Greatest Ocean, Most Pristine Rivers, Best Fishing, Finest Golfing and Healthiest Cranberries – We invite you to visit soon.



HOUSE OF REPRESENTATIVES

Good morning, members of the Oregon Department of Forestry. My name is [Your Name], and I am a legislator representing rural and coastal districts. I am here to express my concerns about the Habitat Conservation Plan (HCP) being pursued by the Oregon Department of Forestry (ODF) and its potential impact on the communities I represent.

Our districts are known for their natural beauty and their economic production, with forest harvests generating revenue for state and county operations and services, supporting thousands of workers, hundreds of family-owned businesses, and critical wood manufacturing infrastructure. We understand the need to implement an HCP, but it must strike a balance between conservation and economic viability.

However, the recently released State Forest Implementation Plans (IPs) are a source of disappointment and alarm for me and my constituents. The projected harvest levels of 165-182.5 million board feet (MMBF) reflect a 27% reduction from the 225 MMBF average ODF suggested the HCP would deliver as recently as November 2022 and a 34% reduction from what the agency projected at the start of the HCP process in 2018.

A reduction in harvestable timber of this size would devastate local taxing districts' budgets that provide essential public services like public safety, education, and infrastructure maintenance. This would make our communities more reliant on the State School Fund and other state funds, straining already limited resources.

I urge the ODF to explain and address the shortcomings of the recently released State Forest IPs and suggest removing the HCP constraints from the IPs until an HCP is adopted by the Board of Forestry (BOF). As representatives of the impacted communities, we believe that an alternative plan that achieves the harvest levels ODF claimed their HCP would produce would more appropriately consider the economic impacts of the HCP while also addressing conservation issues that must be rectified.

We recognize your goal "that every part of the state can be successful." We believe that ODF has the ability to draft a better plan that will sustain higher timber harvest volumes, meet both the conservation goals of the ODF and the economic needs of the coastal and forest regions. Our constituents deserve to have their interests represented and safeguarded in this process.

In conclusion, I urge you to direct ODF to improve the HCP to increase timber harvest volumes before it is too late. We believe that by working together, we can develop a plan that better serves our communities while providing adequate protection for sensitive wildlife.

Thank you for your attention to this important matter.

To: Oregon Board of Forestry
From: Rand Schenck, Forestry Lead, Metro Climate Action Team
Date: March 14, 2023
Subject: IP and HCP

Chair Kelly and Members of the Board of Forestry,

I am so pleased that you listened to the presentation by Kate Anderson and only wish that the many folks who testified against the HCP that morning of March 8 could have heard her presentation before they testified. I believe many would have been influenced by the solid research Kate presented and perhaps even would have acknowledged that win/win outcomes were possible: that jobs and mills could prosper while also growing trees longer, that climate smart forestry that optimizes carbon sequestration and storage and forest resilience, that grows trees longer, that protects mature and old growth trees, and that maintains a diversity of species, ages, and structures can be pursued as a core principle behind providing the greatest permanent value.

Over the past year, ODF acknowledged that our state forests are not now serving as a carbon sink. The HCP will change that. I ask that you stay firm in continuing with the HCP process. I also recognize that the counties most dependent on revenues from our state forests, Tillamook and Clatsop, need ongoing support for the many public services they provide their citizens from public safety to libraries. I believe that several options need to be pursued to help with that need. One is for Governor Kotek to follow a similar process that Governor Brown used to achieve the Private Forest Accord. Another is to reinstitute a timber value tax. Both present their own challenges and difficulties and both have much promise.

Again, thank you for this opportunity to present our thoughts to you.



Sincerely,

Rand Schenck

From: [Rob Vance](#)
To: [ODF DL Board of Forestry](#)
Subject: submitted testimony for March 8 BOF meeting
Date: Thursday, March 02, 2023 3:41:06 PM

Board Members- Please reconsider the plan to convert 55% of ODF timber producing lands to a wildlife set aside. A 34% reduction in annual timber harvest will cost both jobs and revenue to local government agencies. ODF lands were originally set up to provide economic benefits to Oregon and not become a set aside to appease environmental organizations. We have seen US Forest Service and BLM harvest levels drop by 80%+ over the past 30 years, please do not copy the federal government and mismanage our state lands by locking them up from sustainable logging .

Sincerely
Robert Vance


Portland OR


Sent from my iPhone



Submitted via email

March 6, 2023

To: Oregon Department of Forestry
From: State Forest Coalition Groups
Re: Comments on the Draft Implementation Plans for State Forests

Thank you for the opportunity to provide comments on the Oregon State Forests Implementation Plans (IPs). These comments are submitted on the behalf of 350PDX, Audubon Society of Lincoln City, Cascadia Wildlands, Coast Range Association, Metro Climate Action Team, Oregon Wild, Portland Audubon, Salem Audubon Society, Tualatin Riverkeeper and the Wild Salmon Center.

Our groups support a strong Western Oregon State Forest Habitat Conservation Plan (HCP). We also support including the requirements of the draft HCP and provisions of the Incidental Take Permits (ITPs) in the proposed IPs to provide an on-ramp to the HCP's implementation. The draft IPs are a first step in restoring balanced management and durable conservation measures in Oregon's state forests to achieve the greatest permanent value over time for all Oregonians.

General Comments

The Oregon Legislature directed the Board of Forestry (Board) to manage state forests for the "greatest permanent value" for the state. (ORS 530.050) The Oregon Supreme Court affirmed the authority of the Board to manage state forests for the greatest permanent value for Oregonians when it let the court of appeals decision in the Linn County v. Oregon lawsuit stand.

In OAR 629-035-0010 (3), the Board may direct the state forester to achieve the greatest permanent value for multiple uses, including but not limited to protecting state forests from fire and disease, forest products, fish and wildlife habitat, recreation, landscape effects, water supplies and flood and erosion protection.

Importantly, OAR 629-035-0010 (4) states that the Board and the State Forester **are not required to maximize revenues**, exclude all non-revenue producing uses on these forest lands, or produce revenue from every acre of forest land. (Emphasis added).

Instead, OAR 629-035-0010 (6) and (7) determine that active management for economic value over the long term and promotion of healthy sustainable ecosystems that produce timber; maintain and restore fish and wildlife habitat; protect soil, air and water; *and* provide recreation opportunities is in the best interest of the state.

These values and multiple uses were tested in a recent survey commissioned by the Oregon Values and Beliefs Center, in consultation with the Board. Oregonians overwhelmingly value clean water, fish and wildlife, and recreation as priorities over timber harvest on state forest lands.

The draft IPs appear to be generally consistent with the Board's mandate to manage state forest for the greatest permanent value. However, we ask that the IPs be modified to address the following issues:

Partial Cut Harvests

Partial cuts should avoid the proposed Riparian Conservation Areas (RCAs) and stands with complex forest conditions. Partial cuts in the Habitat Conservation Areas (HCAs) must be limited and only applied where there are clear conservation objectives for developing complex forest conditions.

Regeneration Harvests

Clearcuts should be avoided in areas to be designated as HCAs or RCAs. We are very concerned by the extensive regeneration harvests to remove alder stands that are proposed in the HCP. These stands have value in fixing nitrogen and providing foraging habitat. Please forestall such cuts until this issue has been resolved in the final HCP.

Forest Road Management

New road building should be prohibited within RCAs and HCAs. During the past ten years, road building expanded dramatically on state forest lands. For example, in the Tillamook State Forests, road miles expanded by nearly 50% over a 12 year period. In some cases these roads caused landslides that adversely affected salmon habitat. Road-building and clearcut timber harvest on steep slopes above salmon-bearing streams must be avoided or risk violating the Endangered Species Act (ESA).

Climate Change and Carbon Plan

The IPs are silent about how they are integrating the Oregon Department of Forestry's (ODF) Climate Change and Carbon Plan (Climate Plan) adopted by the Board in 2021. The goal of the Climate Plan is to establish ODF as a national leader in promoting climate-smart forest policies and actions. The Climate Plan includes direction to incorporate climate change into the Forest Management Plan (FMP) and the IPs. Page 32 of the Climate Plan states that the FMP and IPs should be consistent with Executive Order 20-04 and incorporate climate mitigation and adaptation practices. These practices include harvest rotations that increase carbon storage.

While implementation of the HCP should improve carbon storage and sequestration, ESA compliance falls short of the goal of establishing the ODF as a national leader. Implementing HCP Alternative 3, with longer rotations on lands outside of the HCAs are important first steps toward establishing the ODF as a national leader in climate-smart forest practices. The path to this outcome can begin by integrating the Climate Plan into these IPs.

Thank you for considering these comments.

Sincerely,

Brenna Bell
Forest Climate Manager
350PDX

Joseph Youren
Director
Audubon Society of Lincoln City and
Salem Audubon Society

Grace Brahler
Wildlands Director
Cascadia Wildlands

Chuck Willer
Executive Director
Coast Range Association

Rand Schenck
Forestry Lead
Metro Climate Action Team

Casey Kulla
State Forest Policy Coordinator
Oregon Wild

Joe Liebezeit
Interim Statewide Conservation Director
Portland Audubon

Victoria Frankeny
Riverkeeper & Staff Attorney
Tualatin Riverkeepers

Michael Lang
Oregon Policy Senior Program Manager
Wild Salmon Center