

The State Land Board met in regular session on August 18, 1998 in the Land Board Room of the State Lands Building, 775 Summer Street NE, Salem, Oregon 97310.

Present were:

John A. Kitzhaber Governor

Phil Keisling Secretary of State

Jim Hill State Treasurer

Assistants

Roy Hemmingway
Rick Hanson

Staff

Paul Cleary
John Lilly
Steve Purchase
Gary Van Horn
Jenifer Robison
Gail Lowry

Dept. of Justice

Bill Cook
Roger Alfred

Governor Kitzhaber called the meeting to order at 10:05 am. The topics discussed and the results of those discussions are listed as follows. Further details of the discussions may be obtained in the written transcript of the meeting available at the Division of State Lands, 775 Summer Street NE, Salem, Oregon 97310 (phone: (503) 378-3805).

CSF Forests Request for approval of the Department of Forestry's 1999-01 proposed Common School Fund budget and authorization to submit the proposal to the Department of Administrative Services. Presentation of *Common School Forest Lands Management* report for July 1, 1996 through June 30, 1998.

Director Cleary introduced Ray Craig, Assistant State Forester, and Mike Bordelon, State Forest Program Director, from the Department of Forestry for their presentation of these issues. Cleary noted that replacement pages were provided to the Board for some changes that were made to Appendix A of the budget materials.

Bordelon said the total budget request of \$10,960,233 represents an increase of about 8.5 percent over the 1997-99 approved budget. Three percent of this increase represents salary increases and inflation, and 5.5 percent of the increase is included in Program Option Packages (POPs).

The common school forest land share of the POP for Personal Services is \$85,286. This includes accelerating management activities, investing in a comprehensive forest inventory and watershed assessment, enhancing public involvement and participation opportunities (including a position in the Public Affairs Office dedicated to these activities), updating the timber revenue accounting system, and improving resource management decision making through acquisition of accurate topographic data layers.

The common school forest land share of Capital Improvement is \$223,770, which includes the Klamath Lake District main office expansion, building addition to the Coos District main office and the West Oregon District chemical and seeding shed.

The common school forest land share of Capital Construction is \$118,000, which includes Phase I of the construction to be done on the Salem compound.

Seven other POPs total \$133,732 including focusing on enhancing GIS capabilities and GIS hardware and software for the agency; engaging in forest resource planning; and employing a training specialist as well as a facilities manager to coordinate construction of the Salem compound and do strategic facilities planning for the department.

Forestry is projecting \$38.7 million in timber sale/harvest revenue to the Common School Fund for the upcoming biennium. This assumes that the timber market is stable and that there will be no significant factors to impede timber harvest and generation of revenue during that period, such as additional endangered species listings.

During the 1999-01 biennium, Forestry plans to accomplish about 5,000 acres of intensive management activities; complete the Northwest and Southwest Oregon Forest Management Plans and the Western Oregon Habitat Conservation Plan; and continue implementation of the Forest Management Plans on Eastern Oregon and Elliott State Forests.

They also expect to revise the Elliott State Forest Habitat Conservation Plan to address marbled murrelet management and riparian/aquatic standards included in the Oregon Plan for Salmon and Healthy Watersheds.

Bordelon relayed other planned accomplishments that would implement recommendations made in the Duck Creek Associates, Inc. report.

Secretary of State Keisling recommended the budget request be approved for submission to DAS. State Treasurer Hill seconded the motion and the approval was unanimous.

Bordelon summarized the *Status of Common School Forest Land Management* report. He said the last two years have been framed by vigorous activities of forest planning and policy development with a significant interest in the management of state forest lands and a declining timber market. He said during this timeframe Forestry continued to meet land management objectives and produce a significant volume of timber and substantial revenue.

Cresmont Request for approval to renegotiate certain lease terms with Cresmont Technical Services for the long-term lease of state land at North Tongue Point in Astoria, Oregon to reestablish the Premises Improvement Fund for a one-year period.

Director Cleary explained that the Premises Improvement Fund has been used twice since the lease was executed. The first year (1994) the Fund was capitalized with \$205,000 from Cresmont. In 1996 the Board authorized one-half of the monthly lease rental (\$10,000) to be diverted into the Fund for a one-year period for a total of \$120,000, with expenditures approved subject to new subleases being executed. Cleary reviewed the types of site improvements that had been funded.

Cleary said the recommendation is to approve the lease renegotiation to reestablish the Premises Improvement Fund on the same basis as it was done in 1996 – with \$10,000 per month from the lease rental stream being diverted into the Fund, for a total of \$120,000. Evidence of new subleases would be required prior to releasing funds for expenditures.

William Kelley, Vice-President and Operations Manager of Cresmont, distributed a copy of their monthly marketing planning document to the Board.

Kelley said Cresmont is targeting longer term, higher value uses of the North Tongue Point site and is focusing on three market sectors: (1) heavy industrial, such as ex-navy combat vessel demolition and recycle; (2) the fishing industry and bio-products from fishing; and (3) tugs, barges and marine transportation, including a rail operation. Kelley said the reopening of the rail line is critical to the success of the sublessees on the site. He said they would like to see a barge span that will put rail cars on barges at North Tongue Point for transport to Alaska, Canada and other destinations.

He explained how the prior improvement funding had been used, saying this funding would put the site in a condition that would be usable for the sublessees; then the sublessees themselves would need to make any additional needed improvements.

William Wolfe added that Cresmont is very optimistic that this year will be a turning point for the site.

State Treasurer Hill moved the Board authorize the Division to review and, if appropriate, renegotiate the rental (Article 4) lease terms of the Master Lease with Cresmont as described above, including:

1. The Division continues to negotiate with Cresmont to reestablish the Premise Improvement Fund through redirection of certain monthly base rentals as described above.
2. The Division continues to actively pursue federal, state and other sources of funding to further develop the site.

Secretary of State Keisling seconded the motion and the approval was unanimous.

PGP Request for the State Land Board to ask the U.S. Army Corps of Engineers Portland District to issue a Programmatic General Permit for specified removal-fill activities in Douglas and Linn Counties.

Director Cleary said this would allow the Division to authorize certain activities on the Corps' behalf in a two-county area for a one-year period. This is the pilot test to determine whether the Division will assume more responsibilities from the Corps to reduce regulatory duplication between the Corps' 404 program and the state's removal-fill program, while maintaining the resource protection standards for the projects permitted. These would be wetland fill sites of one acre or less or removal-fill activities of 1,000 cubic yards or less.

Cleary said stakeholder concerns involve potential increased state agency workload and a fear that less stringent conditions will be applied. These considerations will be fully evaluated during the one-year pilot test. Permit applicants, stakeholders and local, state and federal agency partners will be involved in this evaluation.

Cleary thanked the Corps and DEQ for their cooperation and assistance in developing this PGP; and recognized DEQ for issuing the 401 water quality certification.

Secretary of State Keisling moved the item be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

The Board removed item 4a regarding rulemaking for General Authorizations from the Consent Agenda to allow for public comment. An additional item (4d) was added to the Consent Agenda requesting an Emergency Board appearance on behalf of the Oregon Natural Heritage Program.

Consent Agenda

- Easement** Request by Alaska Northstar Communications LLC for a statutory easement for an oceanic fiber optic communication cable corridor over state-owned submerged and submersible lands and landing at Manhattan Beach near Tillamook.
- Minutes** Request for approval of minutes of July 9, 1998 State Land Board meeting.
- E-Board** Request for approval to appear before the Legislative Emergency Board for increased Federal Funds expenditure limitation authority for the Oregon Natural Heritage Program, to enable the Program to complete federal grants through the end of the federal 1998 fiscal year.

Director Cleary briefly explained each agenda item on the Consent Agenda. He said an oversight committee has been formed and a fund established for reimbursement of fishing equipment that may get lost or snagged due to the proposed easement for the underwater fiber optics cable near Tillamook.

Cleary said the request made by Alaska Northstar Communications is for a common corridor of about 1000 meters wide to be used for both this single cable and later would accommodate an additional five cables. He acknowledged it may be a good idea to confine these cables to a certain area of the sea floor, but said at this time approval of only the initial cable easement is being recommended. Others will be considered as they come forward. Currently a state statute grants these easements free of charge. Agency research showed that an easement such as this would, in some states, cost between \$250,000 to a million dollars. Cleary said that when public land is dedicated to commercial purposes, the Common School Fund deserves compensation. He said a request will be made to the Legislature to change the existing statute that allows easements such as this to be granted free of charge.

Cleary said the recommendation is to approve the easement for a single cable, asking the staff to negotiate the term of the easement to be determined by the physical life of the cable, which he said will probably be less than 75 years. He

would also like to add an easement consideration recovery provision, so that in the future if the statute is revised, a fee for this easement could be reconsidered.

Cleary said the request to appear before the Emergency Board is for approval of an increase for expenditure limitation for the Oregon Natural Heritage Program to allow the Program to expend federal grant funds that they were successful in obtaining. He said the recommendation is to approve the appearance at the September Emergency Board.

Mel Pittmon asked for a clarification of the term "Other Funds" in the budget discussion from the minutes of the July 9, 1998 Land Board meeting. Cleary explained that this refers to the Common School Fund, since the Division receives no General Fund money other than for the Natural Heritage Program. There were no other comments regarding those minutes.

State Treasurer Hill moved the Consent Agenda be approved. Secretary of State Keisling seconded the motion and the approval was unanimous.

Rulemaking Request for authorization to initiate rulemaking to revise the administrative rules for General Authorizations for removal-fill associated with fish habitat enhancement, erosion control, certain road construction projects and wetland restoration and enhancement.

Cleary said these revisions would establish a notice based authorization for specified activities of less than 50 cubic yards in essential salmonid habitat, with standardized authorization conditions, coupled with a 15-day turn around time. The proposed revisions will be reviewed with the technical advisory committee and will be circulated for public review and hearings. A request for final adoption would be brought to the Board in December.

Liz Frenkel, a member of the technical advisory committee, expressed concerns over the timing of this rulemaking. She also had concerns regarding the lower cubic yard threshold and a question as to whether the 15-day notice requirement is adequate, since the 1998 annual report on the Oregon Plan says that of the 253 removal-fill permits surveyed by the Division, 42 percent were not in compliance with permit conditions.

Cleary said the recommendation was for approval of the rulemaking initiation. He also explained that the notice-based approach would be considered in conjunction with other General Authorization revisions which would address several of Frenkel's concerns. Secretary of State Keisling moved the item be approved. State Treasurer Hill seconded the motion and the approval was unanimous.

Informational Agenda

Grazing Grazing lease program status report.

Director Cleary said the State Supreme Court oral argument in the *Mendieta* case is scheduled for September 9. He said there are no indications yet from the lessees' steering committee that they are withdrawing the lawsuit, which was the condition that the Land Board stipulated before approval of the Division's appearance before the Emergency Board, pursuant to Senate Bill 5523.

The Board has been asked to consent to formal mediation prior to the September 9 oral argument. Cleary said if this takes place, it should involve all the parties. He said with the date for the oral argument so close, it's doubtful that mediation would happen prior to that, but some negotiated rulemaking will need to be done after the ruling, no matter what the outcome. Assistant Attorney General Bill Cook said it could be more than a year before the ruling from the Supreme Court is received. Cleary said regular status reports will be given the Board on this issue.

Navigability Navigability status report.

Director Cleary said the Division has been working with a small group of user and landowner representatives at the request of the Joint Legislative Interim Committee on Navigability to try to develop some consensus based legislative concepts. Because there were discrepancies as to outcome/summary of the previous meetings, both groups were asked to answer the following: 1) What are the problems, as you see them? 2) What are the range of solutions? 3) What is your preferred solution? Cleary said it has been difficult for the group to assess the pros and cons of the different proposals, since the navigability group can't seem to agree on the status quo.

Legislation Update on preliminary legislative concepts for 1999.

Director Cleary said there have been meetings with stakeholders regarding the treasure trove law, as the Board had requested. A legislative concept has been drafted that would apply to upland sites, allowing contracts with finders and explorers and providing for payments pursuant to those contracts. Currently the statutes allow splitting of the actual treasure, which is of concern, since much of the treasure is considered archaeological artifacts, which should not go out of public custody.

If the abandoned shipwrecks are within the three-mile territorial sea, Cleary said they are state-owned property, probably archaeological and not subject to the treasure trove law. If outside of the three-mile territorial sea, they are under federal jurisdiction.

The group will continue to meet and a full report will be made to the Board at the October meeting.

Waterway Leasing Waterway leasing inventory and administrative rulemaking status report.

Director Cleary reviewed the written status report to the Board covering the waterway leasing inventory and administrative rulemaking public comments received to date. He said the earliest any final Board action could occur on these rules would be December. The Division hopes to complete the inventory of the developed areas by late September and hold one or more committee workshops, and further evaluate the comments and alternative lease rate formulas. If the work is not completed by December, Cleary said the issue will be on the agenda for the December meeting to extend the rate freeze, or rental redeterminations would occur as normal.

Cleary offered to meet with individuals after the Board meeting regarding some apparent confusion on two different rulemaking efforts, the first being rulemaking to close areas to certain public use activities, such as to off-road vehicle use or overnight camping; contrasted with a different rulemaking that would allow the Land Board to close or restrict certain sections of a waterway from structures, such as a floating home community being closed to log rafting or layberthing, or a certain area being closed to floating homes, due to such things as conflicts between floating homes and boat traffic. Cleary explained these are two different rulemaking issues.

William Montgomery, houseboat owner at the Portland Rowing Club, said Division management has little or no hands-on knowledge of the rivers and assumes that every waterway lease is a gold mine.

Montgomery shared his concerns over proposed rulemaking that he felt would empower the Division to deny use of the waterway to lessees. He asked the Board not empower the Division in this way, without a full hearing by the Land Board and a decision given by publicly elected officials. He also commented that he is still waiting for the "hearing system" to begin to work properly.

Mel Pittmon, from Rose City Yacht Club and Columbia River Yachting Association, voiced his concerns that Director Cleary's memo to the Board included a \$.02 per square foot flat rate proposal that had been brought to the Division by his group, then was later revoked by that group as a possible formula.

Pittmon referred to the proposed rulemaking that would allow the Director to close certain waterways to various public uses, saying that to give the Division Director this decision-making power is a travesty in the making.

He discussed the Waterway Inventory, saying that the Division is only now requesting information from other jurisdictions when data has been available for years. Pittmon said there is a dedicated group of stakeholders actively involved who want to work constructively to finish this commitment.

Governor Kitzhaber adjourned the meeting at 11:15 am.

John A. Kitzhaber, Governor

Paul R. Cleary, Director