

November 11, 2013

To: Clara Taylor
Department of State Lands
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Emailed to: clara.taylor@state.or.us

RE: Selling parts of the Elliott State Forest

Proposed action is to sell 2714 acres, including:

- East Hakki Ridge: 785 acres;
- Benson Ridge: 353 acres;
- Adams Ridge, 1,576 acres;

The State Land Board (SLB) must not sell these parcels to the timber industry or any party that intends to liquidate the timber resource. Either keep the 2,714 acres in public ownership, or sell them to a party that intends to conserve the rich and valuable public and natural resources in these parcels, such as clean water and air, carbon sequestration, recreation opportunities and fish and wildlife habitat. The SLB's Real Estate Asset Management Plan specifically requires the SLB to not sell the Elliott State Forest. The Timber Cruise found the presence of wildlife significantly lowered the price the SLB could get. It's illegal to sell the East Hakki Ridge parcel.

1. Endangered species:

These parcels contain habitat that is suitable for, and occupied by endangered species.

Owls:

- * The East Hakki Ridge parcel contains the historic owl site, East Hakki Ridge owl.
- * The Benson Ridge parcel is near the Benson Creek spotted owl site and also close to the Alder and Noble Creek owls.
- * The Adams Creek parcel includes the home range the Adams Creek historic owl site. Also, the Palouse Creek, Johnson Creek and Upper Palouse Creek owl sites are within the Adams Parcel, and it is adjacent to the Johnson Creek owl site.

Murrelets:

Adams Ridge parcel is occupied marbled murrelet habitat¹. Other parcels could be found to be occupied by marbled murrelets when they are surveyed. These are the first forests encountered by the murrelet as they fly in from the ocean to nest. The Elliott is critical to the survival of these rare seabirds.

¹ ODF and citizen murrelet surveys submitted to DSL August 2013. Timber Cruise reports.

Coastal Coho Salmon:

If these parcels are sold to a party who would clearcut them under the Oregon Forest Practices Act (OFPA), the State Land Board must acknowledge that salmon, and associated jobs based on salmon, will be harmed. OFPA riparian buffers are much smaller than state riparian buffers so clearcutting will happen much closer to streams. The ODF has even determined that the riparian buffers required by the OFPA do not comply with the Clean Water Act.²

Adams Creek has Steelhead for 2,000' into the Adams Ridge parcel and Palouse Creek has Steelhead and Coho salmon for almost a mile into the parcel. The Palouse Creek section in the Elliott "has the highest Coho production on the Oregon Coast"³! There is a coho stream, Alder Gulch, in the Benson Ridge parcel.

The SLB failed to disclose the fish status in the East Hakki Ridge parcel, though Hakki Creek is historically a fish-bearing stream. The SLB should modify the Endangered Animals report to include this missed information.

Many of the parcels contain streams that are described in the Elliott State Forest (ESF) Watershed Analysis as important coho streams. The SLB should update the 2003 ESF Watershed Analysis, as it claims the parcels are in the long-rotation basins and will not be clearcut, a concept the SLB discarded two years ago. Before selling these parcels the SLB should know the resources and risks described in a Watershed Analysis. The Watershed Analysis was originally done in response to salmon species being protected under the Endangered Species Act to comply with the Oregon Plan for Salmon and Watersheds. It needs to be updated before the parcels are sold or logged.

Concerning the parcels in the Tenmile watershed (part of Adams Ridge and all of Benson Ridge Parcels), the ESF Watershed Analysis says, "The streams [in the Tenmile watershed] are important for coho salmon because of the high-quality rearing habitat found within them and in downstream waters."⁴ The watershed analysis also notes that "The Tenmile Lake and Coos River watersheds are among the most productive areas in the Coast Range" for salmon.⁵ Palouse Creek, through the Adams Ridge parcel, is also considered by ODF to one of the most productive streams on the Elliott for coho.⁶

It makes no sense to sell these parcels to a party that would clearcut them under the OFPA because those standards have been found to harm water quality and fish.⁷

Coho restoration projects have occurred across the Elliott, including in Palouse Creek.⁸

² Riparian Function and Stream Temperature (RipStream) project research, 11-2011 found that "the FPA riparian protection measures for small and medium fish streams ... are inadequate to insure forest operations meet the state water quality standard for protecting cold water."

³ http://www.oregon.gov/dsl/LW/Pages/Proposed_land_sales_in_coos_and_douglas_counties.aspx#PublicComment Due Diligence Studies. Endangered Animals Study.

⁴ ESF Watershed Analysis 2003. 2-1.

⁵ ESF Watershed Analysis 2003. 8-12.

⁶ ESF Watershed Analysis 2003, 8-37

⁷ Riparian Function and Stream Temperature (RipStream) project research, 11-2011.

The DSL should consider what expensive restoration project occurred within the area proposed for sale, and how clearcutting under the OFPA could undermine these past restoration projects.

2. Other Fish and Wildlife

The Elliott is home to numerous rare and protected creatures of the forest, such as the Fisher (an ESA candidate species), Red Tree Vole, Oregon Spotted Frog, Northern Goshawk, red-legged frog, tailed frog, and southern torrent salamanders. Sensitive fish species that reside in the parcels include several species of salmon, trout, and lamprey.

All of these wildlife and fish species are better protected on public state lands than lands managed for logging under the Oregon Forest Practices Act. The forests in the Elliott are a rare and remarkable asset. Trees over 5' DBH are present on Benson Ridge, over 6' on East Hakki Ridge, and almost 7' across on the Adams Ridge parcel⁹. It rarely gets better than this in the Coast Range.

3. Sub-Standard Returns

The "Initial Land Disposal Evaluation" forms (or Land Evaluation Form, LEF) for these lands claim "The property is providing sub-standard returns", and that "Property management costs are high in comparison to returns". The State Land Board (SLB) should provide some documentation for these claims. What is the management costs, over time, for these parcels, vs. what they have provided. It appears that over half of the parcels have been clearcut, so please include that income in the "comparison to returns". The SLB should also disclose how much money the state of Oregon spent on the Timber Cruise, and other costs of considering this sale, and if that money could have been better spent.

The forests in these three parcels had been set aside to provide for bird species protected under the Endangered Species Act. But in 2011, the SLB dropped that Habitat Conservation Plan, and ramped up logging to 45 mmbf a year. This caused "take" of marbled murrelets, which resulted in a lawsuit. The SLB should not attribute the cost of the lawsuit to the high costs mentioned in the Land Disposal Evaluation. The term "sub-standard returns" cannot be applied to land whose returns were purposefully manipulated by the SLB so as to cause "take" of endangered species.

These forests contain many acres of managed plantations, places where the ODF has already clearcut and there are now dense tree plantations that need to be thinned, now or in the near future. Just because there are some areas of natural, never before logged forests that provide a home to endangered species, the SLB cannot call the entire block "unproductive".

⁸ ESF Watershed Analysis 2003, 8-6

⁹ Timber Cruise Part 1. Page 4.

4. The Real Estate Asset Management Plan

The State Land Board claims the 2012 Real Estate Management Plan (REAMP) requires them to sell the Elliott¹⁰. This is incorrect. The REAMP actually requires the SLB to NOT sell the Elliott.

The SLB claims: “The Real Estate Asset Management Plan directs DSL to evaluate and sell smaller or difficult-to manage lands”¹¹ and puts the Elliott into that category. The SLB June 2013 meeting identified the Elliott State Forest issue as:

“Whether the Land Board should authorize the Department to initiate the review and determination of the sale or exchange of up to three (3) scattered forested parcels, applying the principles for land disposal and the implementation strategies in the 2012 Real Estate Asset Management Plan (pp. 20-21).”

However, page 20 of the REAMP says:

“A core permanent land ownership will be maintained during the planning period and will include higher performing lands and land with the potential for higher performance. These lands may include, but are not limited to: Elliott State Forest and higher-performing forestlands”¹²

The REAMP specifically directs the SLB to not sell two things: Higher performing forestlands and the Elliott State Forest. This report was released even after the State received the intent to sue from Cascadia Wildlands in January, 2012.

Perhaps the SLB thinks things have changed since the February 2012 REAMP was written, requiring the Elliott to not be sold. The SLB June 2013 agenda item explains:

“... unanticipated issues have begun to impact the performance of a portion of the Common School Forestlands within the Common School Fund... related to a pending lawsuit regarding the marbled murrelet and the Federal Endangered Species Act. The parties filed suit on May 31, 2012. The state has policies, procedures and guidance in place that serve as the state’s mechanism for ESA compliance. Plaintiffs argue these measures are not adequate. Developments that have occurred under this lawsuit to-date have resulted in the ODF temporarily adjusting the harvest plans.... As a result of these adjustments, harvests on the Elliott State Forest for the fiscal years starting July 1 of 2013 and 2014, previously planned at about 40 million board feet, are now expected to be closer to 15 million board feet. This reduced harvest level – and corresponding reduction in revenues to the Common School Fund from these lands – is anticipated to extend at least through the 2013-15 biennium.”¹³

Thus, the State concludes, the Elliott must be considered unproductive, and sold. We believe the State is over-reacting. By the time of the next State Land Board meeting, the

¹⁰ http://www.oregon.gov/dsl/LW/Pages/Proposed_land_sales_in_coos_and_douglas_counties.aspx#Public_Comment “DSL identified three parcels that meet disposal criteria identified in the Real Estate Asset Management Plan”.

¹¹ http://www.oregon.gov/dsl/LW/Pages/land_sales.aspx

¹² Real Estate Management Plan 2012 page 20.

¹³ Agenda Item 1B. State Land Board Regular Meeting. June 11, 2013. Page 2.

lawsuit will likely have been resolved. It is unreasonable for the State to claim that 15 MMBF annually, for three years, means these lands are “unproductive” and must be sold. Just because the State cannot continue to illegally “take” marbled murrelets, is no reason to call these lands “unproductive”.

The REAMP fails to define “unproductive”. In fact, the parcels proposed for sale are some of the most productive forests in the world. Scientists have found they can store more carbon per acre than virtually any other place in the world, including tropical rainforests. These forests harbor some of the most productive salmon streams left in the world. And they produce prolific volumes of commercial timber that the SLB can harvest. Just because the state can’t harvest to the point of endangering wildlife doesn’t mean these forests are unproductive.

The REAMP recommends “disposal” of land “providing substandard returns on investment”. To assess if the Elliott meets this criteria, the SLB must determine what is available in logging revenue on the parcels that does not entail taking endangered species. For instance, over half of the Elliott is managed plantations that do not support endangered species. The State could be making millions of dollars thinning these plantations.

The Oregon Department of Forestry (ODF) has failed to produce virtually any thinning sales on the Elliott in years, even though both of the management plans the ODF has recently been working under required thinning. Instead of selling the Elliott, the State should fire ODF as their manager, so reasonable, sensible, sane, safe and environmentally friendlier timber sales can proceed on these productive lands.

In any case, the REAMP does not allow the sale of the Elliott to entities that would clearcut endangered species habitat. The State cannot take the attitude of: If we can’t kill endangered species, then maybe someone else can.

The REAMP requires the Land Board to “use appropriate measures... to conserve... riparian resources; wetlands; wildlife habitat; and sensitive and threatened plant, animal and aquatic species”. Selling some of the best salmon production streams in the Coast Range to parties that would clearcut under the OFPA violates this requirement.¹⁴

The obligation of the Land Board to conserve important natural resource takes prescient over the obligations of Trust designation. The REAMP says: “If conflicting uses are identified [like 40 mmbf vs. endangered wildlife] the Department may seek funding to remove those lands from Trust designation, exchange or transfer management of those lands to other entities equipped to maintain these features, or classify them as special stewardship lands pending future transfer.” Selling them to be clearcut is not one of the options provided to protecting the state’s unique natural resources.

The REAMP requires the State to be “Sustaining and maintaining DSL lands for current

¹⁴ See earlier discussion of RipStream study findings that the OFPA violates the Clean Water Act.

and future generations”¹⁵ Instead, the state cannot sell these public forests just because marbled murrelets conflict with an unrealistically high logging-volume goal.

All of these parcels are in the former long-rotation watershed basin that was protected under the former Habitat Conservation Plan (HCP). If the state had not wanted to increase logging from 28 MMBF a year to 45 MMBF a year, if the state had continued to log more sustainably protecting endangered species, the state would not be not claiming these lands are unproductive. Before abandoning the HCP, the Elliott had been very productive, helping to sustain wildlife in these parcels so the State could clearcut wildlife habitat elsewhere. But the SLB just wanted more, so abandoned the HCP to severely ramp up logging on land that is a refuge for endangered birds. Instead of selling off the Elliott, simply go back to a legal HCP so the full, well-rounded productivity of the Elliott can be utilized.

The REAMP says the SLB:

“... will actively pursue identification of lower-performing lands for disposal..., an overall ranking of all DSL-owned forestland (excluding the Elliott State Forest) will assist the analysis of forestland throughout Oregon. Initially only very low and low quality forest parcels will be targeted for disposal. Forestlands will be evaluated on factors such as soil productivity, size/ configuration, access, and cost of harvest.”¹⁶

Here, the Elliott State Forest is identified again as an exception in the REAMP, not to be sold, not even to be ranked. And if it was ranked on the criteria given, soil productivity and other factors would rated top notch, not rated for sale. Clearly, the Elliott is not “very low and low quality forest parcels”. It is extremely high in wildlife habitat and fairly high in commercial logging possibilities.

The SLB must find that the Elliott State Forest does not meet the Real Estate Asset Management Plan criteria for sale.

5. Timber Appraisals

The timber appraisals for the three parcels were made available to the public on November 6, 2013. In the short time we had to review them, we found the appraisals failed to consider any economic impacts from recreation, clean water and other ecosystem services. For instance, no value was given to potential recreation the parcels could provide. The East Hakki Ridge parcel is almost adjacent to the Dean Creek Elk Viewing Area and all parcels are close to the Oregon Dunes National Recreation Area and several state parks. Recreation service businesses would prosper from the hiking, hunting, and fishing this land could afford the general public, especially if the SLB would approve at least one hiking trail, or provide at least one fishing site with sanitary facilities.

Earlier in these comments we discussed the problem with the Oregon Forest Practices Act meeting requirements of the Clean Water Act, which in tern, can have economic

¹⁵ REAMP page 21.

¹⁶ REAMP page 23

impacts on the fishing industry, and even on the livability of family homes downstream from the Elliott. The appraisal failed to consider the relative real estate value of property situated next to a rare old growth rainforest vs. an industrial forest clearcut being constantly aerial sprayed with potentially harmful herbicides.

The Timber Appraisals estimated a timber value called “before” that assumed habitat for marbled murrelets has no impact on the timber value. The appraisals state that:

“According to Kevin Maurice, Wildlife Biologist with the U.S. Fish and Wildlife Service, timber harvest in a stand with suitable murrelet habitat can be considered to be a taking of an endangered or threatened species under the federal Endangered Species Act unless a survey indicates that murrelets are not occupying the site.... Interviews with potential buyers of the property indicated that these buyers would significantly discount the value of the affected stands due to the uncertainty of being able to harvest the timber... In the “after” scenario, the hypothetical condition was not invoked.”

The appraisal states it is based on 11 interviews, three of which can be considered conservation organizations and 8 from the timber industry. All three conservation groups were from Oregon. We appreciate that the state talked with three groups that could potentially purchase the properties for conservation, but we also feel that the state should have reached further, such as to California or Washington state conservation groups so that the interviews were more balanced between timber and conservation interests. Additional conservation groups from different areas could have given a different focus, for instance, reflecting their state’s different progress in selling carbon credits.

Because federal protections limit some logging, the appraisal gave a large discount for the “after” scenario, assuming habitat for murrelets did impact the timber value. For instance, in the Adams Ridge parcel, the “before” appraisal (considering no protections for endangered species) was \$13,372,000. The “after” appraisal (considering protections for endangered species) was \$1,709,000, almost a \$12 million reduction in timber revenue.

The state must make sure the Elliott is not sold at a 12 million dollar price reduction to timber interests. To sell the Elliott at a reduced price, reduced to protect endangered species, to a company that intends to clearcut it, would be a blatant violation of the public trust and resources. The state should not pretend that the reduction in sale price automatically protects endangered wildlife.

Indeed, the appraisal confirms that some of the interviewees:

“...questioned whether federal law could or would be enforced, citing instances where murrelet habitat has been harvested without a survey.... Such activity apparently occurs, and Kevin Maurice with the USFWS indicates that his agency often does not pursue violators, even when the agency is aware of a violation.”¹⁷

It is unfortunate that the USFWS does not pursue violators, even when they know timber

¹⁷ East Hakki Ridge Appraisal Part 1 page 17

operators are breaking the law. Selling the Elliott at a huge discount to the timber industry would be unconscionable, enabling the timber industry to make a huge profit at the expense of wildlife and the Oregon public. If the discount for murrelet habitat is applied, the state can only sell to a conservation purchaser with the stipulation the habitat is not logged.

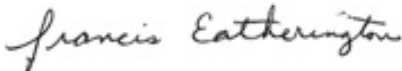
6. Sale of the Elliott Violates State Law

The Oregon Constitution creates the “State Land Board for the disposition and management of [Common School Fund] lands,” Or Const, Art VIII, § 5(1), and also dictates that the board’s “powers and duties shall be prescribed by law.” *Id.* ORS 530.450 states that “[a]ny land in the national forests on February 25, 1913, selected by, and patented to, the State of Oregon, for the purpose of establishing a state forest, hereby are withdrawn from sale except as provided in ORS 530.510. The state forest shall be known as Elliott State Forest.” The exception that this statute refers to allows lands in the Elliott State Forest to be exchanged specifically “for the consolidation of the forest.” ORS 530.510(1). These current sales are not “exchanges” and are not for purposes of consolidating the Elliott State Forest.

We have an attached a map of the relevant national forest lands as they existed in 1912. It appears to include the East Hakki Ridge parcel that is currently being offered for sale, and generally includes the vast majority of the Elliott State Forest. The SLB’s actions are violating its prescribed duties from the Oregon Legislature.

Sincerely,

Francis Eatherington



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Map Attachment

White squares are national forest lands as they existed in 1912. The dark outline includes those lands selected for a state forest, showing the East Hakki Ridge parcel, along with most of the Elliott, was included.

