



Oregon

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TO: MardiLyn Saathoff, Legal Counsel to Governor Kitzhaber
Karen Quigley, Director to Legislative Commission on Indian Services

FROM: Doug White, Rural Development Specialist 

RE: **Government-to-Government Report**

I am pleased to transmit the department's (DLCD) response to the legislative directive under ORS 182.162-182.168 (SB 770) to issue report on agency activities under the government-to-government relations, and on other contacts and issues encountered since the department issued last years report on December 13, 2002. The department is pleased to report a fairly successful and productive year.

Relationship of DLCD with Indian Tribes (ORS 182.162-182.168, SB 770): The statutes require state agencies that work with tribal governments to submit reports that address the factors under a) through f). Each of these factors are listed below, along with DLCD's response:

a) *The policy the state agency adopted under ORS 182.164.*

DLCD Response to Subsection a)

ORS 182.164 directs DLCD to develop and implement a policy that:

- Identifies agency staff responsible for developing and implementing agency programs that affect the tribes;
- Establishes a process to identify agency programs that affect tribes;
- Promotes communication between DLCD and tribes;
- Promotes positive government-to-government relations; and
- Establishes a method of notifying agency staff of the statutory provisions and agency policy.

The department's report issued last year lays out the agency's policy to carryout SB 770. DLCD's strategic plan includes the very elements that SB 770 envisioned for an agency policy. Please refer to last years report.

- b) *The name of individuals in the state agency who is responsible for development and implementing programs of the state agency that affect tribes.***

DLCD Response to Subsection b)

DLCD has had a specific contact for tribal matters since the mid-eighties.

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There are also several at DLCD responsible for developing and implementing programs that may affect or be of interest to the tribes. Principal contacts by agency programs are:

Nan Evans, Agency Interim Director, extension 223
Bob Rindy, Policy and Coordination, extension 229
Christine Valentine, Natural Resources and Natural Hazards, extension 250
Dale Blanton, Coastal Program and Federal Consistency, extension 260
Doug White, Economic Revitalization, extension 240
Steven Santos, Industrial/Commercial Lands Specialist, extension 284
Jim Hinman, Urban Growth Management, extension 245
Doug White, Intergovernmental Agreements and Rural Development, extension 240
Shelia Preston, Assistant to Director and Commission, extension 222

The agency's tribal contact is responsible for assuring that the agency is kept apprised of activities that may be of interests to the tribes, to provide appropriate tribal contacts and assure that the tribes are informed of agency activities. Good two-way communications have resulted from these efforts.

Through comprehensive plans and zoning (approved by the state) local governments (cities and counties) are responsible for carrying out the land use planning program. Tribal lands are not subject to state and local land use laws. However, these laws sometimes affect the use of tribal lands. The challenge under SB 770 for DLCD will be to promote even a minimal level of service to foster government-to-government relations between the tribes and local governments.

- c) *The process the state agency established to identify the programs of the state agency that affect tribes.*

DLCD Response to Subsection c)

The process DLCD has used to inform the tribes of agency programs that affect the tribes is to participate in three of the cluster groups established in 1996 under the Executive Order. DLCD has also been available to meet with the tribes one-on-one, although resources are limited making this continued outreach a challenge. In any case, this has proved quite successful given the diverse interests of the tribes and the complexity of land use and how it may affect each of the tribes' unique interests. DLCD also maintain an agency web site, which includes a specific section on government-to-government relations that is available to keep the tribal governments informed of agency activities.

- d) *The efforts of the state agency to promote communication between the state agency and the tribes and government-to-government relations between the state and tribes.*

DLCD Response to Subsection d)

Including the tribes in stakeholder meetings and activities and working to develop intergovernmental agreements with each of the tribes is a significant step for promoting two-way communication and government-to-government relations. As explained in greater detail below, the agency contact and others have participated in three of the cluster groups as well as with the tribes directly. Additional discussion on land use with the Legislative Commission on Indian Services has also promoted good communications and government-to-government relations between DLCD and the tribes.

On January 23, 2003, the Land Conservation and Development Commission (LCDC) held a roundtable discussion in Newport with local governments from the Oregon coast, the Confederated Tribes of Siletz Indians, and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

On September 19, 2003, the LCDC held a roundtable discussion in Ontairo with local governments, the Burns Paiute Tribe, and the Confederated Tribes of the Umatilla Indian Reservation.

The roundtables provided the Tribes with the opportunity to discuss with the Commission their interest and issues that are of importance to the Tribes.

e) A description of the training required by [ORS 182.166(1)].

DLCD Response to Subsection e)

See *Training* below.

f) The method the state agency established for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under ORS 182.164.

Like most new legislation, the provision of ORS 182.162 through 182.168 were shared with the agency director, managers and policy staff. This included preparation of the bill brief and fiscal impact statement. As described above, the agency policy under these statutes is the strategic plan and the existing program established under the Executive Order. Extensive review and participation by the LCDC, all agency staff and interest groups occurred during the preparation of the strategic plan. Tribal governments were kept apprised of these efforts through cluster meetings.

Executive Order 96-30

NOTE: For purposes of comparison and continuity the rest of this report follows the format of previous reports.

Major Areas: The department is continuing to offer growth management and natural resource conservation services to all the tribes and is working with the some of the tribes in several areas. These include the Oregon Coastal Management Program (OCMP), Oregon Ocean Policy Advisory Council, flood plain management services, local government plan amendments, and periodic review. All of these activities are in addition to the work the department's key contact does with three of the cluster groups under the Executive Order.

Departmental Statement: The Executive Order directed the department to develop an "interest statement," and present it to tribal governments and state agencies at the September 23, 1997 conference on Government-to-Government relations. The department presented its interest statement at the conference, which included an overall objective to:

"Establish, improve and maintain partnerships with Oregon's Indian tribal governments, while seeking to better understand each other, and work cooperatively to identify and address mutual goals and concerns arising from state land use policy that affects tribal interests. To the extent

possible, work to have the growth management and resource conservation objectives of both the State and the Tribes compatible with one another. Improve upon or design solutions and programs to help reach these objectives.”

The interest statement also includes several points that are of specific interest to the department. As a result of working with tribal governments under the executive order, the department's interests have been refined and clarified. In our 1999 report, the department's statement expresses our support for and commitment to work with Tribal governments in the maintenance and development of cultural and natural resources management programs, land use policies and tribal zoning. In our 2000 report, the department's statement was modified to encourage the tribes to establish policies aimed at preserving Oregon's best agricultural lands when considering land acquisitions and development. Our interest in government-to-government relations at the regional level encourages the participation by tribal governments in regional partnerships. In our 2001 report, the department's statement included recognition of Regional Partnerships and Regional Community Solution Teams as a way to continue and foster improved government-to-government relations. In our 2002 report and based on anticipated budget cuts it was necessary to review the department's interest statement to find ways to achieve these objectives with fewer resources. As a result, DLCDC revised its interest statement to include a statement to work with tribal governments and stakeholders to find ways to continue government-to-government relations with fewer resources. DLCDC interest statement read as follows:

- Facilitate better relations between the tribes and state and local government.
- Establish a notification process to better coordinate and inform tribes, and state and local governments about development projects under consideration, and about long-term economic and community land use objectives. Determine what projects and land use policy issues are of interest to the tribes and keep them informed.
- Continue "Government-to-Government" relations on land use matters at the regional level between state agency contacts in the field (or region), local government planning department staff and tribal administrators within the region, including Regional Partnerships and Regional Community Solutions Teams.
- Work with Tribal governments to share information that supports development and maintenance of resource management plans, development policies and tribal zoning ordinances applicable to lands held in trust. In the interests of state, local and tribal governments, encourage tribal land use policies and zoning to be similar and compatible with Oregon's land use planning system, including policies for preserving Oregon's best agricultural lands.

- Continue to assist local governments and the tribes in natural and cultural resource site protection programs under the statewide planning goals.
- Be accountable for a land use program that is coordinated and consistent with the efforts under the Governor's Coastal Salmon Restoration Initiative, and keep the tribes informed of such actions that may affect tribal interests.
- Work with tribal governments and stakeholders to find ways to continue government-to-government relations with fewer resources.

Solutions and Programs:

Goal 5: A key issue identified by the tribes is the need for the Land Conservation and Development Commission (LCDC) to better protect cultural resources during the land development process. See DLCD's 2003 Report for further discussion of Goal 5.

The agency's tribal contact continues to participate in, and discuss Goal 5 and funding concerns with the Cultural Resources Cluster Group. Additional strategies for protecting cultural resources continue to be explored with the cluster, such as education, early consultation with tribes and coordination with state and local government regarding actions involving development and ground disturbing activities. DLCD has provided assistance to tribal governments on obtaining information through the periodic review and plan amendment processes to help assure that tribal interests will be addressed in the update of local comprehensive plans and land use regulations.

Discussed at the last Cultural Resources Cluster Group meeting is to consider the adoption of administrative rules to implement state statutes relating to the protection of archeological sites under ORS 358.905 through 358.955 and 390.235 through 240. These rules would be housed with the State Historic Preservation Office. Although no formal decision has been made, this rulemaking effort has been identified as a future cluster activity for 03-04.

Fee-to-Trust: DLCD's Coastal-Ocean and Rural Divisions remain involved in the Bureau of Indian Affairs (BIA) fee-to-trust process. BIA routinely sends the governor notification of pending fee-to-trust transfers. BIA's notice of the consistency of these transfers with the Oregon Coastal Zone Management Program is sent directly to the department. DLCD strives to work cooperatively with the tribes, BIA and affected local governments in addressing the state's interests in these transfers. DLCD also works with "coastal" tribes (Confederated Tribes of Siletz Indians, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and the Coquille Indian Tribe) to assure coastal program consistency, including the proper coordination of land use issues. The

department's coordination with the tribes usually occurs through a combination of meetings, phone calls, emails and written correspondence.

Coastal: Our Coastal-Ocean Division invites tribal government representatives from the three coastal tribes to participate in periodic meetings held at the coast with local jurisdictions and other coastal program partners. Several of these meetings have occurred since the submittal of DLCD's last Government-to-Government report.

The Department also serves as staff to the Oregon Ocean Policy Advisory Council (OPAC). The membership of OPAC is defined by Legislation and includes one seat for the "coastal" Indian tribes. DLCD works to ensure that a tribal representative is designated for that seat and that any tribal issues raised in the OPAC setting are addressed.

Training:

Natural Resources Cluster Group: On September 19, 2003, the agency's southern Oregon regional representative attended a Natural Resources Cluster Group meeting in Canyonville. Topics discussed included the Governor's natural resource policy development, DEQ's fish consumption standards, and legislative update. Professor Stephen Beckham and the Tribe presented a discussion on "Cow Creek Band of Umpqua Indians: Past and Present."

On October 27, 2003, the agency's southern Oregon regional representative attended a pre-summit Natural Resources Cluster Group meeting at the Human Resources Department in Salem. Topics discussed included creating an official roster of key contacts, setting future meeting dates and locations, deciding cluster leadership, setting agendas for 03-04, deciding how records will be kept, and creating a list of cluster activities for 03-04.

Cultural Resources Cluster Group: On February 19, 2003, the agency's tribal contact attended a Cultural Resources Cluster meeting at the Transportation Building in Salem. Topics discussed included update from the Legislative Commission on Indian Services, Cultural Trust, Cultural Awareness Program, issuing legislative alert, and tribal speakers bureau. Senator Kate Brown also presented some legislative insight to the group.

On July 30, 2003, the agency's tribal contact attended a Cultural Resources Cluster Group meeting at the Transportation Building in Salem. Topics discussed included an update on geographic names, revised Statewide Indian Education Plan, the Governor's Industrial Lands Initiative: what is it and how are cultural resources being protected, legislative update, and statewide bridge replacement strategy.

On October 27, 2003, the agency's tribal contact attended a pre-summit Cultural Resources Cluster Group meeting at the Human Resources Building in Salem. Topics discussed included creating an official roster of key contacts, setting future meeting dates and locations, deciding cluster leadership, setting agendas for 03-04, deciding how records will be kept, and creating a list of cluster activities for 03-04.

On November 10, 2003, the agency's tribal contact attended a tribal cultural presentation brown bag lunch with Robert Kentta, Cultural Specialist with the Confederated Tribes of Siletz Indians.

Economic Development Cluster Group: On February 26, 2003, the agency's tribal contact attended the Economic Development Cluster Group meeting at the State Lands Building in Salem. Topics discussed included a discussion of economic impact analysis study, annual accomplishments, projected federal and state budgets or shifts in policy direction, tourism and projected trends, and legislative issues.

On October 9, 2002, the agency's tribal contact attended the Economic Development Cluster Group meeting at the Labor and Industries Building in Salem. Topics discussed included, legislative update, OECDD's reorganization, shovel ready/project ready industrial lands initiative, guidelines for Oregon personal income tax on Native Americans, regulatory streamlining, status of cooperative Tribal marketing plan, update on tourism investment proposal, federal legislation on bonding authority for Tribes, regional Tribal transportation symposium, statewide bridge repair/replacement, and training.

On October 27, 2003, the agency's central Willamette valley regional representative attended a pre-summit Economic Development Cluster Group meeting at the Human Resources Building in Salem. Topics discussed included creating an official roster of key contacts, setting future meeting dates and locations, deciding cluster leadership, setting agendas for 03-04, deciding how records will be kept, and creating a list of cluster activities for 03-04.

Other Government-to-Government Meetings: On October 28, 2003, the agency's tribal contact and interim director attended the Annual Conference at Oregon State University in Corvallis.

Issue: With all the issues raised not having a full-time position to work solely on tribal matters severely limits DLCD's ability to meet with the tribes and/or to follow-up in a timely manner. While increased understanding and coordination between the department and tribes (per SB 770 and EO 96-30) is helping to resolve some issues, the growing number of new tasks, with little or no resources and challenges means we are falling behind in achieving ideal coordination under government-to-government relations.

Cooperation among Departments:

Agency/Tribal Coordination: DLCD's web site (www.lcd@state.or.us) on the Government-to-Government program continues to provide information on contacts, DLCD's interest statement, annual reports, and links with other tribal web sites. When notified, DLCD updates its mailing list with changes in tribal administration and tribal councils. Mailing lists are being improved through the use of the state/tribal cluster groups.

Issues and Concerns:

DLCD's involvement to date in tribal affairs has resulted in many questions, and discussions about ways to address various issues and concerns. However, we are faced with possible losing all resources or severely limited resources to work on these matters.

Key issues/concerns include:

- Limited understanding of the legal complexities associated with fee-to-trust transfers and tribal sovereignty;
- Difficulties with trying to fit tribal projects and planning into the state-local planning framework which does not include a clearly defined role for tribal governments;
- Limited ability to address local-tribal coordination problems in general and certain issues important to local interests such as loss of property taxes, payments for local services, fear of loss of control over trust properties, and impacts on local land use planning;
- Lack of finances or other resources to encourage or support tribal planning efforts; and
- A need to establish a standing department role in fee-to-trust proposals occurring outside the coastal zone.