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TO: Karen Quigley, Director, Legislative Commission on Indian Services

FROM: Jim Rue, Director
Michael Morrissey, Rural Policy Analyst

SUBJECT: **2012 Government-to-Government Report**

We are pleased to transmit this report in response to legislative direction ORS 182.162-182.168 (SB 770). The report describes activities and tribal contacts of the Department of Land Conservation and Development (DLCD) for 2012, as required by statute.

Major Highlights for 2012

- ✓ The department's reorganized Government-to-Government team continues to function as planned and is fully participating in cluster group meetings and other tribal related activities.

- ✓ The Land Conservation and Development Commission (LCDC) held roundtable discussions during regularly scheduled meetings in Newport, Lakeview and McMinnville (November, 2012). This venue provided an opportunity to hear from local and tribal governments.

- ✓ DLCD approved a grant in 2010 to the city of The Dalles to conduct a cultural resource study on lands adjacent to the city, and within the Columbia River Gorge National Scenic Area (NSA). The Dalles is considering expansion of its urban growth boundary (UGB), and this study follows up on a draft UGB Alternatives Analysis performed by the city. The results of the study will help decision makers determine how best to integrate cultural resource protection into the evaluation process for possible urban area boundary amendments to the NSA. Four tribes are being consulted as part of the study, The Confederated Tribes of Warm Springs, The Confederated Tribes of the Umatilla Indian Reservation, The Nez Perce, and the Confederated Tribes and Bands of the Yakima Nation.

  The initial stage of the study progressed throughout late 2010, and the survey was completed in June, 2011. Work was done in 2011 and continued into 2012, to identify mitigation strategies when cultural sites are implicated in UGB expansion. DLCD continues to support this phase, which is likely to continue into 2013.

Department Relations with Indian Tribes

Oregon statutes *(ORS 182.162-182.168, SB 770)* require that state agencies that work with tribal governments submit annual reports describing their relationship in response to six factors. Each of the factors is listed below, along with DLCD's response:

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

DLCD Response to Subsection (a)

The department's policy has evolved since Executive Order EO-96-30 directing that state agency heads "shall be accountable to the Governor's office for adopting a departmental State/Tribal Government statement..." The Executive Order directed departments 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. After several interim steps, in 2007 the department formally established agency "Policy on Government-to-Government Relations with Oregon Tribes 07-02". The purpose section of that policy states:

"The purpose of this policy is 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 policy section of the 07-02 document reads:

It is the policy of the Oregon Department of Land Conservation and Development to:

- *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 Economic Revitalization 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.*

- *In conjunction with the work plans of the Natural Resources Work Group and Cultural Resources Cluster Group, continue to work with tribal governments to assess what implications state and local waivers issued under ORS 197.352 will have on tribal interests, particularly with respect to natural and cultural resources and sites.*

- *Involve tribal governments, through a Working Group and Economic Development Cluster, in the development of a work plan to address the process by which sewer service may be extended to tribal lands located adjacent to urban growth boundaries or unincorporated communities.*

In addition to the provisions of this policy aimed specifically at relations with Oregon's Tribal governments, the Department has reflected its overall communication policy with local governments, to include the Tribes, within DLCD Policy No. 06-01, Local and Tribal Government Communication Policy.

Accomplishments made by the Department in response to this policy, and since the Executive Order (EO-96-30) was established in 1996, are found in the Annual Reports presented each year to the Governor and Legislative Commission on Indian Services.

Please refer to the agency's Annual Reports, located on our website, under *Relations with Tribes* to learn more about the establishment of the agency's policy under government-to-government

relations that was formed under Executive Order 96-30 and ORS 182.164.

(b) The name of individuals in the state agency who are responsible for development and implementing programs of the state agency that affect Tribes.

DLCD Response to Subsection (b)

DLCD's Director Jim Rue is the primary (key) contact responsible for overall relations, and for development and implementing of agency programs that affect Tribes. Gary Fish, a transportation/land use planner in the Planning Division, is the alternate contact for the director. The primary and alternate contacts along, with four others assigned to the clusters or working groups, form the agency team on government-to-government relations.

Primary Contact on Government-to-Government Relations:

Jim Rue, Director
635 Capitol Street NE, Suite 150
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Phone: (503) 373-0050, ext. 280
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Alternate Contact on Government-to-Government Relations:

Gary Fish, Land Use/ Transportation Planner
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Phone: (503) 373-0050, ext. 254
FAX: (503) 378-5518
E-mail: gary.fish@state.or.us
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Primary Contact to Natural Resources Working Group:

Katherine Daniels, Farm and Forest Specialist
635 Capitol Street NE, Suite 150
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Alternate Contact to Natural Resources Working Group:

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Primary Contact to Cultural Resources Cluster Group:

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Primary Contact to Economic and Community Development Cluster Group:

Thomas Hogue, Economic Development Planning Specialist
635 Capitol Street NE, Suite 150
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Phone: (503) 373-0050, ext. 323
FAX: (503) 378-5518
E-mail: thomas.hogue@state.or.us
Web Address: http://www.lcd.state.or.us

Alternate Contact to Economic and Community Development Cluster Group:

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FAX: (541) 318-8361
E-mail: jon.jinings@state.or.us
Web Address: http://www.lcd.state.or.us

Additional DLCD staff members responsible for developing and implementing programs that may be of interest to the Tribes are listed below. They are available by dialing (503) 373-0050, then the extension, or the number indicated.

Bob Rindy, Sr. Policy Analyst and Legislative Liaison, extension 229
Bob Cortright, Transportation & Growth Management, extension 241
Chris Shirley, Natural Hazards & Floodplains, extension 250
Steve Lucker, Floodplain Map Modernization, extension 295
Juna Hickner, Coastal Program and Federal Consistency, extension 253
Gordon Howard, Urban Growth Management, extension 259
Leslie Roth, Executive Assistant to Director and LCDC, extension 271
Regional Representatives: See agency website for regional assignments.

The agency's primary and alternate contacts are responsible for assuring that the agency is kept apprised of activities that may be of interest to the Tribes, to provide appropriate tribal contacts, and ensure that the Tribes are informed of agency activities. The agency recognizes that maintaining good communication is a benefit to the Tribes and to the State of Oregon.

Oregon local governments (cities and counties) are responsible for carrying out the statewide land use planning program through locally-adopted comprehensive plans and zoning codes that are approved by the state. Tribal reservations and trust lands are not subject to state and local land use laws, but these laws occasionally affect the use of Tribal lands. Under ORS 182.162-

182.168, DLCD promotes government-to-government relations between the Tribes and Oregon's 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)

DLCD informs the Tribes of agency programs that affect the Tribes, primarily through agency participation in three of the cluster or working groups established in 1996 under Executive Order 96-30. The agency actively participates in the Natural Resources Working Group, Cultural Resources Cluster Group, and Economic and Community Development Cluster Group, each of which contains representatives from other state agencies, and from the several Tribes. These groups provide a forum for two-way communication and government-to-government relations. As directed by the agency's primary and alternate contacts, the contacts assigned to the clusters provide periodic updates to the Tribes on agency program activities, while the Tribes inform contacts of relevant tribal programs, and agency programs affecting the Tribes.

DLCD may also meet with individual tribes to address specific issues as they arise in regions around the state. These department efforts have proven very successful, given the diverse interests of the Tribes, and the complexity of land use issues that affect the Tribes' unique interests. DLCD also maintains an agency web site, which includes a section on government-to-government relations. That site is available to keep tribal governments and other Oregonians informed of agency activities.

DLCD participation in the cluster and working group meetings is reflected in the following list of meetings:

Natural Resources Working Group: The agency participated in the February and July 2012 meetings in Salem.

Cultural Resources Cluster Group: The agency participated in the August 28, 2012 meeting in Salem.

Economic and Community Development Cluster Group: The agency participated in the September, 2012 meeting.

Other Government-to-Government Meetings:
Agency staff attended a staff training event on Monday, May 10 at the State Capitol.

Agency key contact Michael Morrissey met with Governor's staff on June 10, 2012, to clarify how Oregon processes fee-to-trust applications by the nine federally recognized tribes in the state.

On November 29, 2012, several agency staff, including the agency director, attended the Government to Government Annual Summit at the Mill Casino in North Bend.

(d) The effort 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 moving towards written agreements with Tribes when possible, is a significant step for promoting two-way communication and government-to-government relations. As explained in greater detail below, the agency's designated contacts and others have participated in three of the cluster groups or working groups, as well as with the Tribes directly. Previous land use discussions with the Legislative Commission on Indian Services have also promoted good communications and government-to-government relations between DLCD and tribal governments. DLCD is committed to continue those efforts.

Roundtables: Contributing to meeting its government to government policy objectives, DLCD schedules a roundtable discussion with local and tribal governments each time the Land Conservation and Development Commission (LCDC) conducts a meeting outside of Salem. Tribal participation is also welcomed at the Commission's regular meetings in Salem, although those meetings typically do not include a roundtable discussion. The purpose of the roundtable is to provide an opportunity for local and tribal governments to hear and participate in discussions on issues of mutual importance. In 2012, three out-of-town LCDC meetings included roundtables that allowed for local and tribal government participation. Although the Commission welcomes participation from all the Tribes, advance notice of a roundtable is mailed to the Tribes located in or near the region where each LCDC meeting is held.

Development challenges and opportunities, local planning issues, economic development, and statewide planning for climate change were frequent topics of discussion at the following 2010 roundtables:

The agency is committed to conducting its regular meetings around the state as often as possible, and will continue to invite tribal governments to participate in the roundtables, as well as the meetings themselves.

Web-based communication: DLCD's web site (http://www.oregon.gov/LCD/), under the link "Relations with Tribes," continues to provide information on the agency Government-to-Government program, contacts, DLCD's interest statement, annual reports, and links with other tribal web sites. When notified, DLCD updates its contact list to reflect changes in Tribal administration and tribal councils. Contact lists are also improved through the state/Tribal cluster groups.

(e) A description of the training required by statute. (ORS 182.166(1) pertains to

training(s) offered by the Department of Administrative Services at least once a year.)

DLCD Response to Subsection (e)

On November 15, 2011, several agency staff, including the agency acting director, attended the Government to Government Annual Summit at the Chinook Winds in Lincoln City.

Throughout this report, agency participation in clusters and working groups is described. These meetings are an important source of training for department staff in a wide range of subjects of concern to the tribes. Frequently, information gained in this manner is shared with other members of the department, as appropriate.

(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.

DLCD Response to Subsection (f)

The agency policy under these statutes is Number 07-02, Policy on Government-to-Government Relations with Oregon Tribes, and the strategic plan. The policy, effective on May 14, 2007, is based largely on the existing government-to-government program and on the policy "interest statement" established on September 23, 1997 under Executive Order 96-30. Policy 07-02 is stated below under "*Department Statement*."

When new staff that may work with a Tribe is hired, the agency's primary and alternate contacts arrange for staff's attendance at annual training, brief them on cluster activities, and provide an overview of the statutory requirements for working with tribal governments on agency activities. In 2008, the agency's Operation Services Division began to include the key contact in their staff meetings to inform the division of their responsibilities under the agency's government-to-government policy and statutes. This effort has continued with the primary and alternate contacts.

Programmatic Issues of Ongoing Interest

The department continues to offer growth management and natural resource conservation services to all the Tribes, and is working with some of the Tribes in several areas. These include the Oregon Coastal Management Program (OCMP), Oregon Ocean Policy Advisory Council (OPAC), flood plain management services, rulemaking, local government plan amendments, and periodic review. All of these activities are in addition to the work the department's primary and alternate contacts do with three of the cluster groups formed by state agencies under ORS 182.162-182.168.

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.

DLCD approved a grant to the City of The Dalles in 2010 to conduct a cultural resource study on lands adjacent to the city, and within the Columbia River Gorge National Scenic Area (NSA). The Dalles is considering expansion of its urban growth boundary (UGB), and this study follows up on a draft UGB Alternatives Analysis performed by the city. The results of the study will help decision makers determine how best to integrate cultural resource protection into the evaluation process for possible urban area boundary amendments to the NSA. Four tribes are being consulted as part of the study, The Confederated Tribes of Warm Springs, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe and the Confederated Tribes and Bands of the Yakima Nation.

The initial stage of the study progressed throughout late 2010, and the survey was completed in June of 2011. Work continued through 2011 and 2012, focused on identification of mitigation strategies when cultural sites are implicated in a UGB expansion. This second phase is expected to be complete in 2013.

Re-use of the Umatilla Army Depot: The department has participated in a multi-party study group investigating options and opportunities for re-use of the Umatilla Depot. Tribal members are also participating in this group and options being explored include those that would directly or indirectly support tribal interests.

Fee-to-Trust: The department and its Ocean and Coastal Service Division are active participants in the Bureau of Indian Affairs (BIA) fee-to-trust process. BIA routinely sends the Governor notification of pending fee-to-trust transfers, and the Governor's office coordinates responses from several departments back to the BIA. When coastal sites are being considered, BIA's notice of the consistency of these transfers with the Oregon Coastal Zone Management Program is sent directly to the department. In coordination with the Governor's office, DLCD works cooperatively with tribal governments, 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, e-mails, and written correspondence.

Coastal: Our Ocean and Coastal Services 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 Annual Report. The division also reviews federal energy projects on the coast to ensure consistency with Oregon's Coastal Zone Management Program. These projects often involve the Tribes, including the Columbia River Inter-Tribal Fisheries Commission (CRITFC). Our Ocean and Coastal Division developed an

inventory of dikes and levees in the coastal zone. The Coquille Indian Tribe assisted with this work, and other coastal tribes were contacted to help complete the inventory. A second phase, includes inventorying estuarine areas, continues into 2012.

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. For 2012, a member of the Coquille has filled that position. In addition, the department, through the Coastal Division, is conducting rulemaking related to Oregon's Territorial Sea Plan. The rulemaking targets wave energy production in a manner that protects coastal resources, including and especially fisheries resources. The Coquille Indian Tribe is also represented on the Territorial Sea Plan Advisory Committee.

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.

- 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; and

- Limited financial and/or other resources to support tribal land use planning and natural resource identification and planning efforts.

- It is not clear whether counties, especially county planning directors, have a clear understanding of the nature and scope of tribal sovereignty for Oregon's nine federally recognized tribes, or the department's Government to Government program. The department will make it a priority during the next year to seek opportunities to discuss this with counties.

As noted, some issues and concerns regarding the department's government-to-government coordination and relations remain to be fully addressed. With the formation of a new agency team on government-to-government relations, concerns are being addressed. The department will strive to address these issues and concerns, and improve service once again in the coming year.

Conclusion

DLCD's ability to meet with the Tribes and follow-up in a timely manner has increased with the establishment of a team of seven staff members to work on government-to-government relations, including the agency director as the primary contact. Training of staff remains an important activity. The department looks forward to cooperation with tribal governments in the coming year, and to a positive working relationship with the Commission on Indian Services.