Oregon
John Kitzhaber, Governor

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January 14, 2015

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

FROM: Jim Rue, Director and Key Contact
Gary Fish, Alternate Key Contact, Planning Services Division GF

RE: **2014 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 or the department) for 2014, as required by statute.

***Major Highlights for 2014***

- ✓ The department's Government-to-Government team is fully participating in cluster and working group meetings and other tribal related activities.
- ✓ The Land Conservation and Development Commission (LCDC) held roundtable discussions during regularly scheduled meetings in North Bend/Coos Bay (March 2014), Ontario (July 2014) and Eugene (November 2014). This venue has traditionally provided an opportunity to hear from local jurisdictions and tribal governments.
- ✓ A representative of the Confederated Tribes of Siletz Indians is participating on the Urban Growth Boundary (UGB) Rulemaking Advisory Committee.
- ✓ The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw were awarded a Transportation Growth Management (TGM) grant to use in developing a land use and transportation plan for Coos Head, which the Tribe acquired from the federal government after a former military installation was closed and the site deemed as surplus. TGM is a joint program of the department and the Oregon Department of Transportation. A representative from the department serves on the joint TGM grant selection committee.
- ✓ At the request of the Tribes' economic development department staff and the City's attorney, the department is working with the Confederated Tribes of the Umatilla Indian Reservation and the City of Umatilla on the land use process for the City to take an exception to Statewide Planning Goal 11 to extend sewer service to the Tribes' McNary trust property outside the City's Urban Growth Boundary and adjacent to the Two Rivers Correctional Facility, which the City also provides sewer service to.

***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 the Tribes;
- Promotes communication between DLCD and the 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. The department formally established an agency "Policy on Government-to-Government Relations with Oregon Tribes 07-02" in 2007. 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 at http://www.oregon.gov/LCD/Pages/govtogov.aspx , under *Relations with Tribes* to learn more

about the establishment of the agency's policy for 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 Government-to-Government relations, and for development and implementing of agency programs that affect Tribes. Gary Fish, a transportation/land use planner in the Planning Services Division, is the alternate key contact for the director. The primary and alternate key contacts along, with others assigned to the clusters or working groups, form the agency's team on government-to-government relations.

*Primary Key Contact on Government-to-Government Relations*:

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*Alternate Key Contact on Government-to-Government Relations*:

Gary Fish, Land Use/ Transportation Planner
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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*:
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*Alternate Contact to Economic and Community Development Cluster Group*:
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Additional DLCD staff members that are responsible for developing and implementing programs that may be of interest to the Tribes are listed below. They are available by dialing direct to the phone number indicated.

*Bob Rindy, Sr. Policy Analyst and Legislative Liaison, Phone: (503) 934-0008*
*Tom Hogue, Economic Development Specialist, Phone: (503) 934-0066*
*Amanda Punton, Natural Resource and Aggregate Specialist, Phone: (971) 673-0961*
*Bill Holmstrom, Transportation & Growth Management, Phone: (503) 934-0040*
*Chris Shirley, Natural Hazards & Floodplains, Phone: (503) 934-0027*
*Steve Lucker, Floodplain Map Modernization, Phone: (503) 934-0043*
*Patty Snow, Ocean/Coastal Services Division Manager, Phone: (503) 934-0052*
*Gordon Howard, Urban Growth Management, Phone: (503) 934-0034*
*Amie Abbott, Executive Assistant to Director and LCDC, Phone: (503) 934-0045*
*Regional Representatives: See agency website for regional representative assignments.*
*http://www.oregon.gov/LCD/Pages/repslist.aspx*

The department's primary and alternate key contacts are responsible for assuring that the department is kept apprised of activities that may be of interest to the Tribes, to provide appropriate tribal contacts, and to ensure that the Tribes are informed of department activities. The department 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 following the 1996 Executive Order 96-30 that formalized the government to government relationship. The agency actively participates in the Natural Resources Working Group, Cultural Resources Cluster Group, and Economic Development and Community Services Cluster Group, each of which is made up of representatives from other state agencies, and from the nine 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 also meets 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 a 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 department participated in the March 20, 2014 meeting in Salem and the August 6, 2014 meeting, also in Salem. Gary Fish attended the March 20 meeting and Katherine Daniels attended the August 6 meeting.

**Cultural Resources Cluster Group**: The department participated in the May 21, 2014 meeting at the Grand Ronde Reservation and the September 16, 2014 meeting in Salem. Gary Fish attended both cluster meetings.

**Economic Development and Community Services Cluster Group**: The department participated in the March 7, 2014 meeting hosted by the Confederated Tribes of the Siletz Indians in Lincoln City, the May 9, 2014 meeting held in Salem, the September 25, 2014 meeting held on the Umatilla Reservation, and the December 4, 2014 meeting held in Salem. Gary Fish attended the March 7, May 9, and December 4 cluster meetings. Grant Young, DLCD's Regional Representative in Eastern Oregon, attended the September 25 meeting held on the Umatilla Reservation.

**Other Government-to-Government Meetings**:
The department's Alternate Key Contact, Gary Fish, and the Ocean/Coastal Services Division Manager, Patty Snow, attended the Annual LCIS Spring Gathering meeting at the Grand Ronde Reservation on May 21 and May 22, 2014.

***(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 department'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 2014, three out-of-town LCDC meetings included a roundtable that allowed for local and tribal government participation. Although the Commission welcomes participation from all of the Tribes, advance notice of a roundtable is mailed to the Tribes located in or near the region where each LCDC meeting is held.

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," provides 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)**

As noted above, the agency's Alternate Key Contact, Gary Fish, and the Ocean/Coastal Services Division Manager, Patty Snow, attended the Annual LCIS Spring Gathering meeting at the Grand Ronde Reservation on May 21 and May 22, 2014. In addition, several agency staff attended Tribal Government Legislative Day at the Capitol Building on February 13, 2014.

Throughout this report, department participation in Tribal 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 department 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 department's primary and alternate contacts arrange for staff's attendance at annual training, brief them on cluster and working group activities, and provide an overview of the statutory requirements for working with tribal governments on agency activities.

***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 natural and cultural resources during the land development process. Please refer to DLCD's 2003 Report for further discussion of Statewide Planning Goal 5 related to protection of cultural resources.

**Fee-to-Trust**: The department and its Ocean and Coastal Services 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 2013 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).

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. In addition, the department, through the Ocean and Coastal Services Division, concluded rulemaking for Oregon's Territorial Sea Plan which was approved in early 2014. The rulemaking targeted wave energy production in a manner that protected coastal resources, including fisheries resources. The Coquille Indian Tribe was 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 ongoing issues and concerns.

- Continued issues and some difficulty with trying to fit tribal projects and planning into the state-local land use planning framework that does not include a clearly defined role for tribal governments nor is it applicable to Tribal trust and reservation land;

- Limited ability to address ongoing local government and Tribal coordination issues in general, and certain more specific issues important to local interests such as loss of property taxes, payments for local services, fear of a loss of local control over Tribal trust properties, and impacts on local government land use planning; and

- Limited financial and other resources are available to support Tribal transportation and land use planning, and cultural and natural resource identification, protection, and planning efforts; and

- Despite continued efforts, it remains not entirely clear whether all local Oregon jurisdictions fully understand or respect the nature and scope of tribal sovereignty for Oregon's nine federally recognized tribes or the department's Government-to-Government relationship with them. The department will continue to make it a priority to seek opportunities to discuss its Government-to-Government relationship with local jurisdictions as the need arises in general and on a case by case basis.

The department will strive to continue to address ongoing issues and concerns of importance to the Tribes, and new ones as they arise in the coming year.

***Conclusion***

DLCD's ability to meet with the Tribes and follow-up in a timely manner increased with the establishment of a team of staff members to work on government-to-government relations, including the agency director as the primary key contact. The team has evolved since the designation of a new alternate key contact in 2012, with some consolidation and reorganization of the department's Government-to-Government team to better address coverage. Staff will continue to endeavor to meet with the Tribes and seek resolution of issues in a timely and respectful manner. The training and education of new and existing staff remains an important priority within the department.

The department continued to make progress in coordination with an increase in outreach to Tribes during the past year. Progress toward addressing the limited financial assistance to the Tribes was made in 2014 through the awarding of a joint DLCD/Oregon Department of Transportation TGM grant to the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw for developing a land use and transportation plan on Tribal property at Coos Head. The

department looks forward to continued cooperation with Tribal governments in the coming year, and to an ongoing positive working relationship with the Tribes and with the Legislative Commission on Indian Services and its staff.