



Oregon

Kate Brown, Governor

Department of State Lands

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2020 Annual Government-to-Government Report

For the Department of State Lands

December 15, 2020

State Land Board

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Governor

Bev Clarno
Secretary of State

Tobias Read
State Treasurer

This annual report is submitted in response to ORS 182.166 (3), which requires agencies to submit a report on agency activities under ORS 182.162 to 182.168.

Department of State Lands Policy on Relationships with Tribes

In 2006, the Department of State Lands (DSL) adopted the agency's [State Agency Coordination Program](#) (SAC). Section 5 of the program outlines DSL's efforts and procedures guiding coordination with Tribal governments. The SAC program commits DSL to do the following:

- Include affected Tribal interests in the review of, and comment on, agency actions likely to affect Tribal members or resources of Tribal interest.
- Carefully and thoughtfully consider Tribal comments concerning pending decisions and actions.
- Provide materials to natural resource agencies within each Tribal government that explain DSL's roles and responsibilities in natural resource management.

DSL adopted an agency policy that works to establish, promote, and improve government-to-government relations between DSL and Oregon's federally recognized tribes.

Agency Contacts

Our primary agency contact is:

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To participate more fully in activities of the Cultural Resources and Natural Resources Workgroups, the agency will also be represented by:

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Process to Identify Programs of DSL that Affect Tribes

DSL uses the process described in the Department's SAC Program to identify agency programs and activities that may affect tribes. DSL regularly includes tribes in notification of possible actions on state lands managed by DSL. This gives the respective tribe(s) an opportunity to provide feedback on the proposed action.

Through trainings and presentations, DSL also raises staff awareness of the need to consult with tribes on a government-to-government basis.

Efforts to Promote Communication between DSL and Tribes/ Government-to-Government Relations between DSL and the Tribes

During 2020, DSL's efforts to promote communication between the agency and tribes included several areas. By program area, these efforts include:

Agency-wide

DSL continues to participate in the Cultural Resources Cluster and the Natural Resources Workgroup. DSL is represented by Meliah Masiba on the Cultural Resources Cluster and Andrea Celentano on the Natural Resources Workgroup. These representatives provide updates on agency-wide rulemaking, policy issues, and specific issues raised by Tribal representatives who attend the meetings.

DSL's Multicultural Awareness Committee provides information on National American Indian Heritage Month for all staff and posts the Governor's proclamation every November. This year, the Committee also launched monthly reading and discussion forums to engage staff working remotely during the COVID-19 pandemic. Reading and discussion options include indigenous authors and histories.

Communications Manager Ali Ryan Hansen serves as the agency's Citizen Advocate on the Environmental Justice Task Force (EJTF). One of her roles is to provide feedback on how environmental justice may be incorporated into

agency actions and decisions. Tribal communities are identified as communities who potentially have been affected by environmental justice issues. DSL is committed to building staff understanding of environmental justice, thereby creating a common foundation of knowledge as we explore further innovation in engaging environmental justice communities. The goal is more effective and inclusive engagement with these communities, including the tribes.

In response to Executive Order 17-12, DSL's Statewide Archaeologist Gary Curtis originally submitted the Department's Tribal Cultural Items Inventory to the Task Force on Oregon Tribal Cultural Items in November of 2019. In February of 2020, DSL received a letter with comments from the Task Force and the Tribes with recommendations for report revisions and clarifications. The Department submitted an addendum to the original report on September 30, 2020 responding to the comments received.

In 2020, the State faced unprecedented challenges as the COVID-19 pandemic disrupted regular engagement and communication processes. The Department recognizes the pandemic limited engagement between DSL and the tribes, including communications, training, and participation in regular government processes that are normally in person. Nonetheless, the Department strove to maintain engagement with Tribal communities. DSL staff were able to attend the Annual State-Tribal Summit on December 1 and 2, 2020, which was held virtually.

Due to changes in the way we are now thinking about communications and engagement in an online format, DSL has also identified the need to develop best practices to ensure consistent and timely notification to Tribal governments of the Department's rulemaking efforts. These best practices will outline timelines and various opportunities for input and engagement to promote Tribal communication and participation. This work will continue into 2021, when we hope to have the new policy fully developed and implemented.

Operations Division: Real Property Unit & Aquatic Resource Management Program

The Operations Division continues its policy of notifying potentially affected tribes regarding applications received for removal-fill permits and activities proposed on DSL owned and managed lands. The Tribes are invited to comment on the proposed activities set forth in the applications, and DSL staff work closely with Tribal staff to address the concerns they identify. The agency director is available for formal consultation on any agency action.

The Real Property Unit oversees management of all Common School Fund trust lands, as well as all land transactions, such as sales, exchanges, and release of mineral rights. It also grants use authorizations, such as leases and easements.

The Aquatic Resource Management Program implements Oregon's removal fill-law and oversees management of the submerged and submersible land ("beds and banks") underlying all navigable and tidally influenced waterways. As the land manager, the Department grants authorizations including leases, licenses, easements, registrations, and short-term access agreements for the private use of state managed submerged and submersible lands.

The Department's archaeologist continues to review all authorizations for activities on submerged and submersible lands statewide. For agency-initiated ground disturbing projects, field surveys and testing are completed as needed.

Operations Topics of Interest

Elliott State Forest

In 2020, as directed by the State Land Board, DSL continued to work collaboratively with Oregon State University's (OSU) College of Forestry to explore the concept of the Elliott as a public research forest.

1. DSL continued to work with the Advisory Committee to provide input and insight to OSU throughout the exploratory process. The Advisory Committee is made up of representatives from a variety of diverse interests in the Elliott, including tribes. The Cow Creek Band of Umpqua Tribe of Indians; the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians; the Confederated Tribes of the Grand Ronde; the Confederated Tribes of Siletz Indians; and the Coquille Indian Tribe were all invited directly to participate in the Advisory Committee. The Advisory Committee saw regular committee participation from the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians; the Confederated Tribes of the Grand Ronde Community; and the Confederated Tribes of Siletz Indians.

In August of 2020, DSL had planned to meet in-person for formal consultation with the Coquille Indian Tribe and the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians on the matter of the Elliott State Research Forest. However, due to the COVID-19 pandemic, the in-person meetings have been postponed. The Department looks forward to continuing the consultation process in 2021.

2. Habitat Conservation Plan (HCP) development continues: Contracting with a third party to complete the development of the federal HCP will continue, with final action by federal listing agencies anticipated in 2022.

3. Common School Fund (CSF) decoupling: Contracting with an additional and separate third party to facilitate the Advisory Committee work, in addition to discussions towards potential decoupling of the Elliott State Forest from Common School Fund ownership, will continue. DSL anticipates that

funding necessary to support decoupling of the forest from the CSF will come from a variety of sources.

Tenmile Lakes

Since 2009, DSL has been a Designated Management Agency for the Tenmile Lakes Water Quality Implementation Plan. In support of improving water quality, the Department and many other management agencies have worked to implement items within the plan; however, water quality issues at Tenmile Lakes persist.

In 2020, the Department became aware that the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians had acquired a property at Tenmile Lakes. On October 27, 2020, the Department attended a Leader's Circle meeting to discuss where opportunities existed for the Department and the Tribes to work together to improve water quality outcomes.

As a follow-up to our October meeting, DSL hosted a virtual coordination meeting on December 10, 2020. This meeting was an opportunity for stakeholders from the city, county, watershed council, state agencies, and local homeowners' associations to meet with the Tribes to discuss current efforts and work to develop new strategies to improve water quality.

Rulemaking for State Designated Essential Salmon Habitat

On August 11, 2020, the Department sent letters to all nine federally recognized tribes in Oregon inviting participation in the Department's upcoming rulemaking to revise state designated Essential Salmon Habitat (ESH) (OAR 141-102). ESH designations protect critical habitat by determining if a removal-fill permit is needed under ORS 196. The ESH designations were last updated in 2015.

Representatives of five tribal nations joined the Rules Advisory Committee (RAC) to provide input and give guidance for how future annual ESH updates should involve and seek engagement from tribal nations. RAC members included members from the Coquille Indian Tribe, the Confederated Tribes of Grand Ronde, the Confederated Tribes of the Umatilla Indian Reservation, the Cow Creek Band of the Umpqua Tribe of Indians, and the Burns Paiute Tribe. Rule language was developed to formally state the Department's policy on notification of the nine federally recognized tribes in Oregon in advance of annual revisions to ESH designations and to provide for opportunities outside of the public comment period for input and engagement.

The RAC process is expected to conclude with final adopted rules early in 2021.

Partial Assumption of Section 404 of the Clean Water Act

HB 2436 (2019) directed DSL to develop a proposal for partial assumption of federal authority under Section 404 of the Federal Clean Water Act. The assumption of federal authority by the Department would allow DSL to be the sole administrator of permits for the discharge of dredge or fill materials for certain areas and activities within waters of the state.

In 2020, DSL has continued to meet with the working group established in 2019 to discuss potential implementation and barriers to partial assumption of section 404 authority. The Cow Creek Band of Umpqua Tribe of Indians, the Confederated Tribes of Warm Springs, the Confederated Tribes of the Umatilla Reservation, the Burns Paiute Tribe, the Confederated Tribes of Grand Ronde, the Coquille Indian Tribe, and the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians have participated in the working group process and provided input to DSL about concerns regarding state assumption of this federal authority.

On April 2, 2020, DSL met virtually with the Confederated Tribes of the Umatilla Reservation to discuss their concerns about the state's partial 404 assumption initiative.

The Department will be submitting a report to the Legislature summarizing HB 2436 (2019) efforts, including issues that have been identified by the tribes, by December 18, 2020.

Willamette Falls Fishing Platforms

In 2018, the Confederated Tribes of the Grande Ronde's application for an authorization to construct ceremonial fishing platforms at Willamette Falls drew comments from the Confederated Tribes of Warm Springs and the Confederated Tribes of the Umatilla Indian Reservation. Director Walker engaged in formal consultation with the Confederated Tribes of the Grande Ronde, the Confederated Tribes of Warm Springs, and the Confederated Tribes of the Umatilla Indian Reservation on the proposed project and application process. DSL issued a waterway structure registration for the proposed use. This authorization was contested through the administrative law process.

DSL is currently working with Portland General Electric, the Confederated Tribes of the Grand Ronde, the Confederated Tribes of Warm Springs, the Confederated Tribes of the Umatilla Reservation, and the Confederated Tribes of Siletz Indians to resolve these issues through a mediation process.

Jordan Cove/ Pacific Connector Project

On January 16, 2020, DSL met with the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians regarding the Jordan Cove/ Pacific Connector Project.

Jordan Cove LNG formally withdrew the application for a removal-fill permit on January 23, 2020. DSL was notified of the withdrawal in a letter from Jordan Cove LNG. Oregon's removal-fill permit rules allow applicants to withdraw an application at any time prior to the permit decision.

When a removal-fill permit application is withdrawn, the application file is closed. A new application must be submitted for a project to receive any further consideration. Jordan Cove LNG's letter did not indicate whether submission of a new removal-fill permit application is planned.

South Slough National Estuarine Research Reserve (Reserve)

The Reserve Management Commission reserves one commission seat for Tribal representation to include consideration of Tribal issues in management of the Reserve. The seat is currently being held by the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians until September 7, 2021, and will next be held by the Confederated Tribes of the Siletz Indians.

The Reserve maintains formal Memorandums of Understanding with both the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and the Coquille Indian Tribe. These cooperative agreements facilitate the exchange of information and data, shared use of equipment and facilities, and joint proposal development and project management.

As part of the agency's 2017-2021 Strategic Plan, DSL completed a two-year evaluation to determine the best state partner for management of the Reserve, which led to the University of Oregon being identified as a potential state partner. DSL discussed the potential transfer of management with the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and the Coquille Indian Tribe and received letters from both tribes in support of the Reserve staying within DSL. Outreach was also conducted to the Confederated Tribes of the Siletz Indians. Director Walker made a recommendation to the State Land Board at its October 13, 2020 meeting that DSL continue to serve as the Reserve's state partner. There were no objections.

Reserve science staff continue to collaborate with the Coquille Indian Tribe and Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians to manage real-time water quality stations and to discuss data related to water quality in Coos Bay. Reserve staff have also been providing technical support to the Coquille Indian Tribe staff for new water quality monitoring efforts in Coos Bay and to help link Tribal station data to the Northwest Association of Networked Ocean Observation Systems. The Reserve's Margaret A. Davidson Graduate Research Fellow, funded through the National Oceanic and Atmospheric Administration, is working with the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians to survey harmful algal blooms in the Coos estuary.

Both the Coquille Indian Tribe and Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians are active participants in the Partnership for Coastal Watersheds, a stakeholder group coordinated by the Reserve, that is currently sourcing and providing information for an update to Coos County's Coos Bay Estuary Management Plan. The group is also working on projects throughout the Coos Bay estuary to assess vulnerability to hazards, inventory restoration wetland sites, and identify sites for future restoration projects. Tribal staff continue to participate in these ongoing efforts.

Reserve staff continue to work with Tribal staff to deliver education programs and trainings. Staff from the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians presented on ethnobotany and resource stewardship for the virtual public program, *South Slough Second Saturday Stewards: Why Plant Natives?* Additionally, Tribal staff provided ethnobotanical information that is being used in educational and outreach materials. The Tribal Historic Preservation Officers from the Coquille Indian Tribe and Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians also provided trainings related to the protection of cultural resources for kayak guides operating in the Reserve and DSL field staff. Unfortunately, due to COVID-19 workshops related to lamprey research and identification that were scheduled for 2020 had to be postponed, but we look forward to continuing that partnership in 2021.

The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians have donated approximately 200 camas bulbs, an important traditional food, to the Reserve. Some of these bulbs were planted in the raingarden at the Reserve Visitor Center, where their cultural connection is included in the interpretive signage. The remainder of the bulbs have been planted in a meadow on Indian Point. Reserve and Tribal staff worked together to assess the potential for establishing a camas meadow in this location and decided on a two-stage approach. Firstly, an experimental trial will be used to determine population success given high levels of deer browsing. If successful, Reserve staff will work with Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and the Coquille Indian Tribe to establish a camas meadow to promote cultural uses of Reserve land and to facilitate communication of these practices to a general audience.

Reserve staff communicate regularly with the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and the Coquille Indian Tribe staff to coordinate cultural reviews for restoration and research projects, maintenance work requiring soil disturbance, and newly acquired lands in the Reserve. Both Tribes serve as partners on the current Wasson Creek Watershed Restoration project and on the Indian Point Restoration project. The Tribes have been integral in providing staff support and information to meet National Historic Preservation Act Section 106 compliance for restoration planning.

The Reserve also regularly works with Tribal staff and Tribal members to provide opportunities for cultural plant gathering and Tribal program requests, as needed.

Anticipated Activities for 2021

During 2021, DSL will:

- Continue participation in government-to-government activities, such as the Cultural Resources and Natural Resources Workgroup meetings and provide tribes with opportunities to provide input on DSL activities.
- Consult with tribes on the Elliott State Forest, partial assumption of Clean Water Act 404 authority, activities at the South Slough National Estuary Research Reserve, Tenmile Lakes, and other projects, as requested.
- Continue tribal partnerships at the South Slough National Estuary Research Reserve to support education, research, and training opportunities.
- Continue to review policies and develop best practices to improve communication between the Department and the Oregon tribes.
- Continue to highlight tribes through the Multicultural Awareness Committee.
- Continue participation on the Environmental Justice Task Force.
- Continue outreach efforts with Oregon tribes on searching for and claiming unclaimed property (lost funds) that the agency may be holding for Tribal members.
- Continue to participate in and/or coordinate educational and cultural experiences with local tribes.