



Oregon State Lottery

2022 Annual Report on Tribal Relations Activities

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Introduction

December 15, 2022

I am pleased to submit the Lottery's 2022 Annual Report on Tribal Relations to Governor Brown, the Oregon State Lottery Commission, and the Legislative Commission on Indian Services.

In the past two years, at the direction of Governor Brown and with the support of the Lottery Commission, I have approached leaders of each of the nine federally recognized Tribes in Oregon to start the process to build relationships based on trust, mutual understanding, and collaboration. This report details the activities of the Lottery in 2022. Some of the positive outcomes include:

- *Tribal Consultation Policy and Procedure Adopted*
- *State Parks Video Collaboration*
- *Dedicated Funding for Travel to Tribal Lands*
- *Tribal Meetings*
- *Lottery Leadership Participation in Government-to-Government Summit*
- *Alternative Disclosure Process for Tribally Owned Businesses That Apply for Retailer Contract*
- *Exception to Retailer Contract Application Pause for Tribally Owned Businesses*

I look forward to continuing these engagement and consultation efforts in 2023.

Sincerely,



Barry Pack
Director, Oregon State Lottery

Lottery Contacts and Policy for Tribal Consultation

The individuals at Lottery responsible for Tribal consultation are:

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On March 1, 2022, the Lottery adopted the Tribal Consultation Policy and Procedure, attached to this report as [Appendix A](#) and [Appendix B](#). The Lottery's Tribal Consultation Policy was developed and updated in response to input from Tribes requested and received in 2021 and 2022. The Lottery considers the policy to be a living document, and Lottery has continued to request, receive, and consider input from Tribes on the policy.

Process to Identify Programs That Affect Tribes

Of the nine federally recognized tribes in Oregon, eight offer tribal gaming. For those tribes, revenue from tribal gaming provides essential services for their members. Tribal gaming revenue also provides vital economic activity and job creation to the wider communities in which tribal gaming occurs. Indeed, in some Oregon counties, the local tribal casino, which may also include a hotel, restaurants, and other amenities, is one of the largest employers in the county.

While Tribes are sovereign nations, the State of Oregon has a significant impact on tribal gaming that can occur both on and off Tribal land. As such, it is not surprising that Tribes are interested in changes to the overall market for gaming in Oregon, including any expansion of state-sponsored gambling through the Oregon State Lottery.

Therefore, the primary way to determine which programs of the Lottery may affect Tribes is to ensure Tribes are able to see, prior to adoption, the Lottery's Strategic Plan, which includes any planned expansions or new games. The Lottery's Tribal Consultation Policy commits that Tribes will have an opportunity to see and comment on Lottery's Strategic Plan before it is finalized.

Additional ways Lottery identifies programs that may affect tribes include:

- **Legislation.** Tribal representatives requested to be notified whenever Lottery sponsors or is involved with legislative concepts that would change gambling laws or offerings. The Lottery considers Tribal impacts or interest as part of the Lottery's legislative planning process. (The Lottery does not plan to offer any legislative concepts for the 2023 legislative session.)
- **Gaming Initiatives.** The Lottery considers possible Tribal impacts whenever new initiatives are presented or approved.
- **Regular Discussion.** The Lottery's Tribal Consultation Procedure requires the Tribal Liaison and Director to discuss emerging Tribal engagement and consultation issues no less than annually. If Tribal impacts are identified, a request for consultation is directed to the representative of each Tribe that may be affected or otherwise interested. Additionally, for Fiscal Year 2022, the Director requested, and the Commission approved, dedicated funding for Lottery travel to Tribal lands if requested by a Tribe, allowing for in-person relationship building and information

sharing that should improve Lottery's ability to identify programs or initiatives that may affect Tribes. The director anticipates this funding will be included in base budget requests moving forward.

- **Rules.** Lottery considers possible Tribal impacts or interest as part of the Lottery's rulemaking process. (In most cases, the Lottery Commission must adopt rules to authorize new games or substantively change existing games.) If Tribal impacts are identified, those are reported to the Tribal Liaison and Director, who will request consultation.
- **Regular Updates.** Lottery provides regular updates to tribal representatives about the ongoing operations of the Lottery. The purpose of these updates is to give Tribes insight into Lottery's activities and a venue to raise concerns, ask questions, or request further consultation.
- **Lottery-Funded Projects.** Lottery revenue funds various public education and natural resources programs that may occasionally impact Tribes or be of interest. (For example, Lottery revenue funds watershed restoration and public lands maintenance activities and these activities may occur on and near Tribal lands.) Although Lottery does not appropriate Lottery revenue or fund particular programs, Lottery does highlight Lottery-funded initiatives. When those initiatives may affect or otherwise be of interest to Tribes, Lottery staff are directed to request consultation on any marketing or public information campaigns.

Activities to Promote Communication and Government-to-Government Relations

The Lottery engaged in various activities throughout 2022 to promote communication and positive relations with each Tribe in Oregon. The Lottery has provided a log of communication activities in [Appendix C](#) of this report, and this section highlights some key activities.

State Parks Video

On January 11, 2022, Director Pack requested consultation with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) regarding a campaign to spotlight a Lottery-funded project relating to lands that may be of interest to CTUIR. The result of consultation was a short but moving video about the land's historical significance to indigenous people. The video is available at <https://www.oregonlottery.org/programs/iwetemlaykin-heritage-site/>.

Alternative Disclosure for Tribally Owned Businesses

In 2021, two tribally owned businesses applied for a Lottery retailer contract. The Lottery has been eager to collaborate with Tribes in this way. (There are complex requirements that apply to selling Oregon State Lottery products on Tribal land. However, tribally owned businesses that are owned by a Tribe, but not located on Tribal land, are eligible to apply to sell Lottery products, and Lottery views this as an opportunity for partnership with Tribes.) However, the scope of required personal disclosure that is required under Oregon law and Lottery's Administrative Rules when a business is owned by a Tribe was unclear, and this was a barrier to moving forward with these retailer contract applications.

Lottery requested consultation with tribes on this issue twice in late 2021. The Lottery received comments from two Tribes expressing support for the concept but recommending rule language that would more appropriately cover the type of tribally owned business entity that may be interested in applying to be a Lottery retailer. The Lottery considered this input and changed the language in the final rule as recommended. The Lottery adopted [OAR 177-040-0001\(2\)\(a\)](#) on March 1, 2022, that includes new language to make tribally owned businesses eligible for alternative disclosure. Since this change has

been in place, Lottery has finalized one contract with a tribally owned business and others are in process.

Tribal Consultation Policy and Meetings

After multiple opportunities for review and comment in 2021, the Lottery adopted the Lottery's Tribal Consultation Policy and an accompanying procedure on March 1, 2022. (See [Appendices A](#) and [B](#).) Director Pack sent the policy to each Tribe and extended an invitation to meet in person (or virtually, at the Tribe's preference) one-on-one to discuss any issues of interest or concern.

On April 7, 2022, the Tribes sent a joint letter to Lottery in response to Director Pack's invitation to meet. They asked for joint and individual meetings with each Tribe. Since then, the Lottery has held two joint meetings (on September 22, 2022 and September 29, 2022) to discuss Lottery's Tribal Consultation Policy, the impact of the Lottery on tribal gaming, and to share Lottery's plans for the coming business year.

Regular Updates and Building Channels of Communication

On March 30, 2022, Matt Shelby, the Lottery's tribal liaison, emailed each Tribal representative to share two updates from the Lottery and inquire as to whether Tribes would like further information or consultation. The first update was that Lottery had stopped processing applications for new Video Lottery retailer locations. However, the rule authorizing the pause included an exception for tribally owned businesses. See [OAR 177-045-0035\(2\)](#). This was added because, as noted above, Lottery had just recently developed an alternative disclosure process for tribally owned businesses, and Lottery wanted to make sure those applications could continue to move forward if inventory allowed despite the general pause on applications.

The second update was regarding the transfer of Lottery's digital sports betting game from the previous platform to the new platform. (DraftKings had purchased Lottery's previous provider.) Lottery explained that (1) the game continues to be geofenced on Tribal lands (see [OAR 177-093-0020\(4\)](#)); and (2) the game does not offer college sports betting or any other digital games, such as fantasy sports or casino-style games. Lottery also advised that these issues would be discussed at an upcoming public meeting of the Oregon State Lottery Commission, which they can watch virtually and/or provide written comment directly to the Commission.

Government-to-Government Summit

Lottery leadership including Director Pack, Assistant Director for Security Mike Wells, and Matt Shelby attended the 2022 Annual Tribal-State Government-to-Government Summit in Florence, Oregon, on October 3 and 4, 2022.

Training

The Lottery's designated tribal liaison has taken Tribal consultation training through Portland State University. Lottery personnel have also received training through the Oregon Department of Justice on the legal requirements for state agencies to consult with Tribal governments. Lottery leadership attend

the annual Government-to-Government Summit as part of their continuing education on the importance of meaningful and positive government-to-government relations with Tribes.

Method of Notifying Employees

In 2022, Director Pack sent two emails to all Lottery employees to notify Lottery employees of Lottery's Tribal Consultation Policy and Procedure and to share more in-depth regarding Lottery's commitment to consultation. For the record, these emails were sent on March 2, 2022, and October 5, 2022.

This report will be shared at the public meeting of the Oregon State Lottery Commission on January 27, 2023, and will be posted on the Lottery's intranet, with a reminder to all employees of Lottery's commitment to meaningful and ongoing consultation with Tribes.

APPENDIX A – Policy 1.505, Tribal Consultation, Effective March 1, 2022

Purpose: The purpose of this policy is to promote positive government-to-government relations between the Oregon State Lottery and federally recognized tribes in Oregon. The nine federally recognized Indian Tribes in Oregon are sovereign nations, each with unique government organizations and decision-making structures. Each tribe speaks for itself. The nine federally recognized tribes in Oregon are:

- [Burns Paiute Tribe](#)
 - [Confederated Tribes of Coos, Lower Umpqua and Siuslaw](#)
 - [Confederated Tribes of Grand Ronde](#)
 - [Confederated Tribes of Siletz Indians](#)
 - [Confederated Tribes of the Umatilla Indian Reservation](#)
 - [Confederated Tribes of Warm Springs Reservation](#)
 - [Coquille Indian Tribe](#)
 - [Cow Creek Band of Umpqua Tribe of Indians](#)
 - [Klamath Tribes](#)
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Policy: The Oregon State Lottery recognizes and respects the sovereign status of each federally recognized tribe in Oregon and tribal authority to conduct gaming in Oregon on tribal lands pursuant to federal and tribal law. The Lottery believes there are untapped opportunities for partnership between the Lottery and the nine federally recognized tribes in Oregon. A true partnership is a two-way street: The Lottery herein commits to proactive outreach, communication, and consultation to tribes on issues that may affect Oregon tribes. The Lottery also commits to respond openly and positively to requests from tribes for consultation.

Definitions. For purposes of this policy, the following definitions apply:

- (1) **"Issues that may affect Oregon tribes"** means any Lottery initiative that may impact Tribal Land, activities, practices, or beliefs or otherwise be of interest to tribes, such as new Lottery games or changes to gambling in Oregon. Examples include:
 - (a) Partnership opportunities with Oregon tribes;
 - (b) New Lottery games or new platforms on which Lottery games are available;
 - (c) Proposed legislation that would impact gambling in Oregon; or
 - (d) Rule changes that authorize new Lottery games or expand platforms where Lottery games are sold.
- (2) **"Partnership opportunities with Oregon tribes"** means a potential endeavor in which the Lottery could partner with one or more Oregon tribes for a mutually beneficial purpose. Examples include:
 - (a) Lottery retail sales opportunities by tribal entities;

- (b) Shared jackpots or other shared gaming opportunities;
 - (c) Shared responsible gaming training; or
 - (d) Marketing of tribal projects supported with Lottery revenue.
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Guiding Principles:

- (1) Lottery must identify appropriate tribal governing bodies and individuals from whom to seek input; this may vary based on Tribal Law, and Lottery must be mindful that each tribe is unique and may have different governing bodies and consultation processes.
 - (2) Meaningful consultation requires requesting tribal input before decisions have been made.
 - (3) Tribal consultation should not occur only when a decision must be made; but rather on a regular basis in order to form a partnership capable of navigating issues that arise.
 - (4) Learning about the unique history of each tribe is a value in and of itself and is critical to respect and understanding.
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Lottery Commitments:

The Lottery is committed to promoting positive government-to-government relations:

- **Tribal Liaison**
 - The Lottery shall designate a tribal liaison responsible for identifying issues that may affect Oregon tribes and serving as a designated point of contact.
- **Lottery's Strategic Plan**
 - The Lottery's Strategic Plan is a roadmap for Lottery that must be approved by the Commission. It includes any new Lottery games or expansion/plans for current Lottery games.
 - The Lottery will engage with the tribes when Lottery considers any changes to the Lottery's Strategic Plan and will provide opportunities for tribes to provide input to the Lottery director and/or the Commission.
 - The Lottery will share its Strategic Plan with Oregon tribes prior to final approval and adoption of the plan by the Commission.
 - The Lottery will provide notice about public meetings where the Strategic Plan will be discussed.
- **Prior Notice**
 - The Lottery will ensure tribes receive notice about opportunities to comment on rules or at public meetings about issues that may affect Oregon tribes.
- **Channels of communication**
 - The Lottery will participate in the annual Tribal-State Government-to-Government Summit.

- The director will offer to meet with each of the nine federally recognized tribes in Oregon at least once per year. The director will prioritize personally attending such meetings, but if unable, the director may appoint a designee to represent the Lottery, such as, but not limited to, the tribal liaison.
 - Upon invitation, the director or designee will attend meetings of the Oregon Tribal Gaming Alliance or similar organizations representing Oregon tribes or Oregon tribal interests.
 - The Lottery will make every effort to engage in a manner consistent with the tribal laws and protocols unique to each tribe.
 - **Annual Report**
 - The Lottery will report annually on government-to-government activities.
 - The annual report on government-to-government activities may include highlights of initiatives funded with Lottery revenue that impacts tribal communities.
 - The Lottery shall maintain a record of each annual report.
 - **Partnerships**
 - The Lottery will consider partnership opportunities with tribes at least annually, including but not limited to, revenue-generating opportunities or responsible gaming initiatives (such as informational campaigns or sharing training resources).
 - **Training**
 - Lottery employees will be notified annually about the provisions of [ORS 182.162-182.168](#) and this policy.
 - **Recordkeeping**
 - The Lottery shall retain a permanent record of tribal consultation efforts, including communications to and from tribal representatives; communications to Lottery employees about this policy; and the Lottery's annual report on government-to-government activities.
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Roles and Responsibilities:

Oregon State Lottery Commission:

The Commission is responsible for receiving the annual report from the tribal liaison.

Director:

The director shall designate a senior manager to serve as the Lottery's tribal liaison. The director shall consult with the designated tribal liaison no less than annually on implementation of this policy and any current or emergent issues that may affect Oregon tribes or otherwise relating to government-to-government relations.

The director shall attend the annual Government-to-Government Summit or, if unable to attend, shall appoint a designee to attend and represent the Lottery. The director shall offer to meet exclusively with each tribe at least once annually. The director shall respond positively to any meeting invitations or requests to participate from tribes or from organizations representing Oregon tribes or regarding Oregon tribal interests, such as, but not limited to, the Legislative Commission on Indian Services or the Tribal Gaming Alliance. The director will prioritize personal engagement with tribes, but when unable to personally attend, the director may designate other Lottery personnel, such as, but not limited to, the

tribal liaison, to participate on behalf of the director. The director will ensure tribal representatives are notified of Commission meetings and similar opportunities to provide public input to decisionmakers at Lottery about issues that may affect Oregon tribes.

At least once annually, the director shall, with input from Executive Team members, consider partnership opportunities with Oregon tribes such as, but not limited to, revenue generating opportunities, responsible gaming initiatives, gaming security, and information campaigns about how Lottery dollars fund programs that impact tribes.

Tribal Liaison:

The tribal liaison is responsible for identifying issues that may affect Oregon tribes and serving as a point of contact at the Lottery for issues relating to this policy or other current or emergent issues relating to tribal relations. The tribal liaison shall attend the annual Government-to-Government Summit and meetings with tribal representatives whenever appropriate. (Personal attendance shall be prioritized but, when necessary, the tribal liaison may delegate someone to attend on the tribal liaison's behalf.)

The tribal liaison is responsible for the annual report described in this policy and for ensuring the report's distribution. The tribal liaison shall ensure Lottery employees are aware of the provisions of [ORS 182.162-182.168](#) and this policy. The tribal liaison may adopt procedures to carry out compliance with this policy.

Executive Team:

The Executive Team shall consider tribal partnership opportunities with Oregon tribes at least once annually.

Oversight:

No later than December 15 of every year, the tribal liaison shall submit a report on Lottery's tribal engagement activities to the Governor, the Commission on Indian Services, the Oregon State Lottery Commission, and all Lottery employees. The report shall meet the requirements of [ORS 182.166](#) and shall be included in the meeting materials for a public meeting of the Oregon State Lottery Commission and members of the public and tribal representatives shall be invited to submit comment directly to the Commission on the Lottery's compliance with this policy.

References:

ORS 182.164-182.168
[Legislative Commission on Indian Services](#)
Lottery Procedure – Tribal Consultation

APPENDIX B – Procedure – Tribal Consultation, Effective March 1, 2022

Purpose: The purpose of this procedure is to ensure effective implementation of the Lottery's commitments to promote positive government-to-government relations outlined in Lottery Policy #1.505, Tribal Consultation.

Annual Requirements:

The following activities must occur at least once per year. Completion of each activity shall be documented in the Lottery's annual report on government-to-government activities as described in [ORS 182.166](#):

- The director shall attend the annual Government-to-Government Summit. In the event the director is unable to attend, the director shall ensure the tribal liaison and/or other member of the Executive Team attends on behalf of the director.
- At least once per year, the director will send an invitation to each of the nine federally recognized tribes with a standing offer to meet to discuss issues that may affect or interest each tribe. The Lottery also welcomes and encourages requests from Oregon tribes to meet to discuss any issue that affects or interests the tribe, and the Lottery will respond positively and openly to such requests.
- At least once per year, the Executive Team shall consider partnership opportunities with Oregon tribes. This may include, but is not limited to, shared revenue generating opportunities (shared jackpots, for example) or sharing responsible gaming resources.
- At least once per year, the director and the Lottery's designated tribal liaison shall discuss any interests that affect tribes and compliance with Lottery's Policy #1.505, Tribal Consultation.
- No later than December 15 of each year, as described in ORS 182.166, the tribal liaison shall create a report that includes all of the following requirements. The report shall be shared with all Lottery employees, the Governor, the Commission on Indian Services, and the Oregon State Lottery Commission.
 - (a) The policy the Lottery has adopted under ORS 182.164.
 - (b) The names of the individuals in the Lottery who are responsible for identifying Lottery programs or initiatives that may affect or interest tribes.
 - (c) The process the state agency established to identify the programs of the Lottery that affect tribes.
 - (d) The efforts of the Lottery to promote communication between the state agency and tribes and government-to-government relations between the state and tribes.

- (e) A description of training the Lottery received regarding tribal relations such as, but not limited to, the government-to-government summit.
 - (f) The method the Lottery established for notifying employees of the provisions of ORS 182.162 to 182.168 and the policy the Lottery has adopted under ORS 182.164.
- Training Requirements: At least once per year, all Lottery employees should be notified about the Lottery's Tribal Consultation Policy, the opportunity to attend the government-to-government summit, etc.

Ongoing Requirements:

The following activities must occur on an ongoing or as-needed basis. Completion of each activity shall be documented in the Lottery's annual report on government-to-government activities as required by [ORS 182.166](#):

- When the Lottery considers changes to the Lottery's strategic plan, the tribal liaison shall notify tribes and provide time for comments and questions.
- The Lottery will make every effort to maintain an updated list of preferred tribal contacts.
- The Lottery will make every effort to learn the preferred method of engagement for each tribe based on each tribe's unique governing structure.
- The Lottery will maintain a permanent record of communications to and from tribal representatives, communications to Lottery employees about Lottery's Tribal Consultation Policy, and the annual report.

Training requirements:

Lottery employees shall be notified annually about the Tribal Consultation Policy through distribution of the annual report that includes the policy.

Inspection and review:

The public and Commission shall receive the annual report described in this procedure and shall have an opportunity to comment on Lottery's compliance activities.

References: Lottery Policy #1.505, Tribal Consultation
 ORS 182.164-182.168
[Legislative Commission on Indian Services](#)

APPENDIX C – 2022 Communications Log

DATE	SUMMARY OF COMMUNICATION
1/11/22	Director Pack requested consultation with Confederated Tribes of the Umatilla Indian Reservation regarding a campaign to spotlight a Lottery-funded project relating to lands that may be of interest to CTUIR.
1/21/22	Alisa Zavala notified Tribal representatives that the Lottery's proposed Tribal Consultation Policy would be discussed at a public meeting of the Oregon State Lottery Commission and provided the draft policy and information how to watch the meeting virtually and/or to comment directly to the Commission.
1/27/22	The Klamath Tribes submitted written comment on the Lottery's draft Tribal Consultation Policy.
1/28/22	Matt Shelby presented the draft Tribal Consultation Policy to the Oregon State Lottery Commission.
2/9/22	Kris Skaro notified Tribal representatives that the Lottery was moving forward with a rule change that Lottery had previously discussed with Tribes in 2021. The change would provide an alternative personal disclosure path for tribally owned businesses that apply to be a Lottery retailer. Skaro informed Tribal representatives that a draft of the rule would be discussed at an upcoming public meeting of the Oregon State Lottery Commission. Skaro attached the draft rule and provided information on how to watch virtually and/or comment directly to the Commission.
2/15/22	The Confederated Tribes of the Umatilla Indian Reservation submitted a written comment on the Lottery's rule change to provide an alternative disclosure process for tribally owned businesses applying to offer Video Lottery.
3/1/22	Director Pack signed the Lottery's Tribal Consultation Policy. Matt Shelby signed an accompanying procedure.
3/1/22	<p>Director Pack sent copy of final Tribal Consultation Policy to each Tribe and explained how the policy had been improved due to Tribal consultation.</p> <p>Director Pack said the policy commits the Director to extend an invitation to each Tribe to meet no less than annually, and Director Pack issued an open invitation to each Tribe to meet.</p>
3/10/22	The general counsel for the Cow Creek Tribe submitted written on Lottery's Tribal Consultation Policy.
3/30/22	Matt Shelby sent updates to Tribal representatives via email. The email included updates on the exception for tribally owned businesses to apply for Video retailer contract; a sports betting update, including that geofencing on Tribal lands will remain in place on the DraftKings platform and that, like the previous platform, the new platform will not offer daily fantasy sports, college sports betting, or casino-style games.
4/7/22	Eight Tribes sent a letter requesting a joint tribal meeting, as well as to take up Lottery's offer to meet with each Tribe individually.
7/19/22	Director Pack wrote to each Tribe (collectively) to tell them that Lottery has funds to support travel to each Tribe (if requested) for one-on-one meetings and requesting scheduling assistance for the joint Tribal meeting.
8/18/22	Alisa Zavala followed up to determine each Tribe's availability for joint meeting.
9/22/22	Director Pack/Matt Shelby Tribal Meeting (virtual)

DATE	SUMMARY OF COMMUNICATION
9/25/22	Director Pack/Matt Shelby Tribal Meeting (virtual)
10/3-4/22	Director Pack, Assistant Director for Security Mike Wells, and Tribal Liaison Matt Shelby attended Government-to-Government Summit in Florence.
10/13/22	Matt Shelby sent notes from the virtual meetings held on 9/22/22 and 9/29/22 out to Tribal representatives.