



Oregon

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Department of Land Conservation and Development

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December 17, 2010



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

FROM: Richard Whitman, Director
Michael Morrissey, Rural Policy Analyst

RE: **2010 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 2010, as required by statute.

Major Highlights for 2010

- ✓ 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 agency director met with the Legislative Commission on Indian Services in late March, 2010, and is hoping to follow up with a meeting with several tribes as soon as can be arranged.
- ✓ The Land Conservation and Development Commission (LCDC) held roundtable discussions during regularly scheduled meetings in Salem/Keizer, Lincoln City, and John Day to hear from local governments and Tribal representatives.
- ✓ DLCD approved a grant to the City of The Dalles to work with tribal governments to fund a cultural resource study on lands adjacent to the city and within the Columbia River Gorge National Scenic Area (NSA). The work is underway and expected to be completed by February 2010. The results of the study will help decision makers determine how best to integrate cultural resource protection into the evaluation process for proposed urban area boundary amendments to the NSA.

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 Richard Whitman is the primary (key) contact responsible for overall relations, and for development and implementing of agency programs that affect Tribes. Michael Morrissey, a policy analyst in the director's office, is the alternate contact for the director. The primary and alternate contacts along with five others assigned to the clusters or working groups, form the agency team on government-to-government relations.

Primary Contact on Government-to-Government Relations:

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Alternate Contact on Government-to-Government Relations:

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Primary Contact to Natural Resources Working Group:

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Alternate Contact to Natural Resources Working Group:

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Primary Contact to Cultural Resources Cluster Group:

Michael Morrissey, Rural Policy Analyst
(contact information above)

Alternate Contact to Cultural Resources Cluster Group:

Gary Fish, Land Use/Transportation Planner
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Primary Contact to Economic and Community Development Cluster Group:

Thomas Hogue, Economic Development Planning Specialist
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Alternate Contact to Economic and Community Development Cluster Group:

Jon Jinings, Community Services Specialist
888 NW Hill Street, Suite 2
Bend, Oregon 97701
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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
Gloria Gardner, Urban Growth Management, extension 282
Lisa Howard, 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 August 4, 2010 meeting in Salem.

Cultural Resources Cluster Group: The agency participated in meetings on March 3 & 4, 2010 at Tryon Creek State Park, the September 23 & 24 meeting at Smith Rocks State Park, and the December 1 & 2 meeting at Champoeg State Park.

Economic and Community Development Cluster Group: The agency participated in meetings on June 24 in Lincoln City and September 30 in Coos Bay. In addition, department staff participated in a July 28 Willamette Valley, Mid-Coast Economic Revitalization Team meeting at the Grand Ronde Tribal Governance Center.

Other Government-to-Government Meetings: On May 14, 2010, several agency staff, including the agency director, attended the training sessions available at the Tribal Government Day at the Capitol. The director also attended a meeting of the Legislative Commission on Indian Services on March 30, 2010 to brief the Commission on the mission activities of the department

and to answer questions from Commission members. Some issues discussed included: a co-management relationship with regard to land use, partnerships with local governments, rural lands issues, fee-to-trust lands, and communication of department activities.

(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 the Tribes. 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 governments and Tribes to hear and participate in discussions on issues of mutual importance. In 2010, three out-of-town LCDC meetings included roundtables that allowed for local governments and Tribes. 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:

- January 20, 2010 in Salem/Keizer; mailed invitations included the Confederated Tribes of Grand Ronde and the Confederated Tribes of the Siletz.
- April 21, 2010 in Lincoln City; mailed invitations included the Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz and the Coquille Indian Tribe.
- June 2, 2010 in John Day; mailed invitations included the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs.

An important training was provided to the department at an all-staff meeting in March 2010, when Eric Quaempts, Natural Resources Director for the Confederated Tribes of the Umatilla

Indian Reservation, delivered a presentation. The presentation described a land management strategy focused on protecting tribal “first foods” and the role the first foods play in the beliefs and rituals of the Tribes. The presentation was well received by the staff who had many questions and positive comments after the presentation.

The agency is committed to conducting its regular meetings around the state as often as possible, and will continue to invite the Tribes 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 May 14, 2010, several agency staff, including the back-up to key contact, attended the training sessions available at the Tribal Government Day at the Capitol. In addition the department attended a related training on May 13 focusing on “Tribal Governments: The Role of Tribal Values, Traditions and Relations with Other Governments.”

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's Community Services Division awarded a grant to the **City of The Dalles** to work with tribal governments to fund a cultural resource study on lands adjacent to the city and within the Columbia River Gorge National Scenic Area (NSA). Work has begun on the study and is expected to be complete by February, 2011. The results of the study will help decision makers determine how best to integrate cultural resource protection into the evaluation process for proposed urban area boundary amendments to the NSA.

Other technical assistance grants went to: the City of Siletz for a comprehensive plan update. The Confederated Tribes of the Siletz Indians also contributed to this activity and participated on the project advisory committee; the city of Toledo for an Economic Opportunity Analysis, where again, a CTSI member participated on the project advisory committee.

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: Although the actual number of fee-to-trust transfers has been smaller than in previous years, DLCD's Ocean and Coastal Service Division and agency contacts remain involved in the Bureau of Indian Affairs (BIA) fee-to-trust process. BIA routinely sends the Governor notification of pending fee-to-trust transfers. BIA's notice of the consistency of these transfers with the Oregon Coastal Zone Management Program is sent directly to the department. In coordination with the Governor's office, DLCD works cooperatively with the Tribes, BIA,

and affected local governments in addressing the state's interests in these transfers. DLCD also works with "coastal" Tribes (Confederated Tribes of Siletz Indians, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, and the Coquille Indian Tribe) to assure coastal program consistency, including the proper coordination of land use issues. The department's coordination with the Tribes usually occurs through a combination of meetings, phone calls, 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 is developing an inventory of dikes and levees in the coastal zone and has been in contact with the Coquille Indian Tribes and is making plans to work with all three coastal tribes as this inventory work commences.

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

Tribal Appointments to Department Committees: In 2008, LCDC initiated rulemaking to address wind farm development on agricultural lands. Representation from the Confederated Tribes of the Umatilla Indian Reservation was included in the Wind Farm Working Group. In 2009 there was no tribal participation on the Urban Growth Boundary Work Group and the Housing Working Group, although the Confederated Tribes of the Warm Springs Reservation were active participants in the creation of the Methodius Area of Critical State Concern. In 2010, several rulemakings have gone forward without rulemaking committees, including two Measure 49 related rulemakings, Willamette Greenway, workforce housing for energy facilities, and transfer of development rights. Three rule makings in 2010, have (or will, in the case of reservoir rulemaking) included invitations for tribal participation: RLUIPA (Religious Land Use and Institutionalized Persons Act), solar facilities on farmland, and irrigation reservoirs.

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 director's, 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 a work objective 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 the tribes in the coming year, and to a positive working relationship with the Commission on Indian Services.