



DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES POLICY AND PROCEDURE

TITLE:	TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONS
NUMBER:	ADM 2019-01 v1.0
APPROVED BY:	Brad Avy, Director/State Geologist Sarah Lewis, MLRR Program Manager
DATE:	Approved 05/09/19

SECTION I – Policy Statement:

The Department of Geology and Mineral Industries (DOGAMI) is committed to building and maintaining strong government-to-government relations with Oregon's nine federally recognized Tribes. DOGAMI's statutory responsibilities have a nexus with Tribal interests, specifically in the area of potential impacts to natural and cultural resources.

SECTION II – Relevant Law, Policy and Implementation Tool:

ORS 172.100 et seq.: Legislative Commission on Indian Services (LCIS) a body established in 1975 currently consisting of four Legislators and a Tribal Leader from each of the 9 Tribes. Among other duties, LCIS is responsible for promoting positive government-to-government relations and for monitoring state agency action regarding Tribes and Indian issues and making recommendations for improvement. LCIS has maintained oversight of cluster meetings and reviews state agency activity with Tribes as described in agency annual reports. In addition, LCIS provides annual training to state agencies, develops the Annual State-Tribal Summit and holds meetings 3x/year at which state agencies such as DOGAMI may be asked to brief LCIS on their work with Tribes. The nine federally recognized Tribes in Oregon are listed in the LCIS statute:

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
- Confederated Tribes of the Grande Ronde Community of Oregon
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation of Oregon
- Coquille Indian Tribe
- Cow Creek Band of Umpqua Tribe of Indians
- Klamath Tribes

Executive Order (EO) 96-30: signed May 22, 1996. The EO directed state agencies to develop government-to-government relationships with each of the nine federally recognized Tribes in Oregon, promote positive communication and explore partnerships wherever feasible for the benefit of Tribes and all Oregonians. See Attachment A.

ORS 182.162-168 (SB 770): Codification of EO 96-30 at the request of LCIS in the 2001 Legislative Session (Attachment B) requires:

- 1) Each agency to develop a policy with the following components:
 - Naming a key contact
 - Identifying programs/policies of agency that may affect Tribal interests
 - Identifying ways agency communicates with Tribes
 - Insuring agency employees are aware of the policy (promoting communication and partnerships, where feasible).
- 2) The Governor to convene an Annual Summit where state agencies and Tribes can work on issues of mutual interest.
- 3) Each agency to conduct Annual training for managers and other agency personnel who work with Tribes.
- 4) Each agency submit an Annual Report to the Governor's Office and LCIS by December 15 of each year detailing the agency's interactions with each Tribe during the previous year.

State-Tribal Clusters: Established at the first Annual Summit to improve communication between State agencies and Oregon's nine federally-recognized Tribes. The State-Tribal Clusters provide for on-going meetings between designated state agencies and designated Tribal representatives, according to the following subject areas:

- Cultural Resources
- Economic Development and Community Services
- Education and Workforce Training
- Health and Human Services
- Natural Resources
- Public Safety

DOGAMI participates in the Cultural Resources Cluster. This Cluster was established to address cultural resources issues including developing education efforts focusing on the importance of cultural resource protection, improving cultural resource protection through law enforcement, incorporating cultural resources into planning processes, improving the State's inventory of cultural resources, and improving communications between State agencies and the Tribes regarding what are cultural resources and how to protect them.

DOGAMI participates in the Natural Resource Workgroup. This workgroup was established to improve communication between state agencies and the Tribes regarding natural resources

protection and management. The workgroup consists of key state agency contacts, a Tribal representative from each Tribe and a representative from the Governor's office.

SECTION III – General Standards Applicable to DOGAMI Staff:

- DOGAMI recognizes and works directly with federally recognized Tribes as sovereign entities with primary authority and responsibility for each Tribe's lands, rights, resources, and membership, and not as political subdivisions of the state or other governmental units.
- DOGAMI recognizes that the Tribes have interests in resources in their ceded lands, usual and accustomed areas, and other off-reservation ancestral lands.
- DOGAMI considers Tribal interests and concerns during the initial development of policy and planning, including agency strategic planning, budgets, rulemaking, and development of proposed legislation.
- DOGAMI supports and participates in cooperative efforts between Tribal governments, federal, state, and local governments on geologic and mineral resource issues that cross jurisdictional boundaries.
- DOGAMI seeks advice and guidance from Tribes and, as applicable, from LCIS and SHPO to improve understanding of Tribal Government relations.
- DOGAMI provides timely notice of proposed ground disturbing projects to designated Tribal government representatives and consults with the Tribes as necessary to address Tribal rights, interests, and concerns.
- DOGAMI coordinates field visits with Tribal government representatives at proposed energy or mineral development or exploration project sites where the potential for unacceptable adverse impacts to cultural resources is present.
- DOGAMI ensures that all employees are familiar with this policy and have appropriate training in Tribal Government relations and protection of cultural resources.
- DOGAMI maintains an agency Liaison to Tribal Nations.
- DOGAMI's agency Liaison to Tribal Nations actively participates as a member of the Tribal-State Natural Resources Workgroup and the Cultural Resources Cluster.
- DOGAMI's agency Liaison to Tribal Nations initiates meetings between the Director and Tribal Chair on matters not resolved by staff.
- DOGAMI submits an annual report no later than December 15 of every year to the Governor and the Legislative Commission on Indian Services on the government-to-government activities of the agency.

SECTION IV - Key Contacts and Responsibilities:

Key Contact	Responsibilities
Director/State Geologist (alternate: MLRR Program Manager)	<ul style="list-style-type: none"> • Supports and participates in cooperative efforts between Tribal governments, federal, state, and local governments on geologic and mineral resource issues that cross jurisdictional boundaries. • Ensures Tribal interests and concerns are considered at the initial stages of policy and planning development, including agency strategic planning, budgets, rulemaking, and development of proposed legislation. • Ensures policy implementation at the operational level includes early and ongoing communication with Tribal Government leaders. • Ensures that all employees are familiar with Executive Order Number EO 96-30 (Attachment A) and this policy and have appropriate training in Tribal Government Relations and protection of cultural resources. • Seeks guidance from Tribes, LCIS, SHPO and other agency Liaisons to Tribal Nations when appropriate, to improve Tribal Government relations. • Submits an annual report no later than December 15 of every year to the Governor and LCIS on government-to-government activities of the agency.
Director/State Geologist	<ul style="list-style-type: none"> • Appoints an agency Liaison to Tribal Nations.
Liaison to Tribal Nations	<ul style="list-style-type: none"> • Participates as a member of the Tribal-State Natural Resources Workgroup and the Cultural Resources Cluster. • Supports the exchange and sharing of information and data collected by DOGAMI staff. • Coordinates field visits with Tribal government representatives at proposed mineral development sites where the potential for unacceptable adverse impacts to cultural resources is present. • Initiates meetings between the agency Director/State Geologist and the Tribal Chair on matters involving conflict resolution.
DOGAMI Staff Member	<ul style="list-style-type: none"> • Provides timely notice of proposed ground disturbing projects to designated Tribal government representatives and

	<ul style="list-style-type: none"> • Consults with Tribes as necessary to address Tribal interests and concerns, recognizing their unique expertise and knowledge about their homelands. • Includes as a permit condition for surface mining, oil & gas, geothermal and exploration operations, the acknowledgement and adherence to SHPO's protocol for coordination of inadvertent discoveries (IDP, Attachment C).
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SECTION V – Procedures Related to Inadvertent Discoveries of Suspected Cultural Resources:

Responsible Person	Action
DOGAMI Staff Member	<ul style="list-style-type: none"> • Discovers or becomes aware of actual or potential cultural resource disturbance. • Notifies supervisor and agency Liaison to Tribal Nations of the actual or potential cultural resource disturbance. • Refers to and follows SHPO's protocol for coordination of inadvertent discoveries (IDP, Attachment C). • Provides the landowner and/or operator a copy of the IDP. • Recommends that the landowner and/or operator avoid further disturbance to the suspected site and a surrounding buffered area of about 100 feet in accordance with the IDP.
Liaison to Tribal Nations	<ul style="list-style-type: none"> • Notifies Director/State Geologist of the actual or potential cultural resource disturbance. • Consults with SHPO regarding the coordination of inadvertent discoveries. • Coordinates communication with the Tribes, SHPO, LCIS, and Oregon State Police, if appropriate, regarding the IDP.

Additional resources and background information:

- <https://www.oregonlegislature.gov/cis>
- <https://www.oregon.gov/oprd/HCD/ARCH/Pages/index.aspx>
- **Attachment A:** Executive Order 96-30
- **Attachment B:** Relationship of State Agencies with Indian Tribes
- **Attachment C:** Inadvertent Discovery Plan for Cultural Resources
- **Attachment D:** Background Information

EXECUTIVE ORDER NO. EO - 96 - 30

STATE/TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONS

There are nine federally recognized Indian tribal governments located in the State of Oregon. These Indian tribes were in existence prior to the formation of the United States of America, and thus retain a unique legal status. The importance of recognizing the relationship that exists between the tribes and state government can not be underestimated.

As sovereigns the tribes and the State of Oregon must work together to develop mutual respect for the sovereign interests of both parties. The relationships between our governmental structures can only be built through trust and mutual respect .

The purpose of formalizing the government-to-government relationship that exists between Oregon's Indian tribes and the State is to establish a process which can assist in resolving potential conflicts, maximize key inter-governmental relations and enhance an exchange of ideas and resources for the greater good of all of Oregon's citizens, whether tribal members or not.

IT IS ORDERED AND DIRECTED:

1. That the Governor's Legal Counsel, or such other person as the Governor may from time to time designate, shall be accountable to the Governor for the implementation of this Executive Order and be responsible for convening an annual meeting where representatives of the State and the nine federally recognized Oregon tribal governments will work together to achieve mutual goals.

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2. That the head of each Cabinet level department who is either appointed by the Governor or who reports to gubernatorial appointees and is made subject to this Order by the Governor (hereinafter "department") shall be accountable to the Governor's office for adopting a departmental State/Tribal Government statement that:
 - a. Recognizes that Oregon Indian tribal governments are interested in the development of state policy that affects tribal interests (hereinafter "state policy") and recognizes the desirability of dialogue between tribal governments and the state, with regard to those state policies;
 - b. Identifies key personnel of the department as a "key contact[s]" responsible for coordination with tribal governments;
 - c. Establishes a process for the identification of those state policies by designated tribal representatives and key contacts ;
 - d. promotes dialogue between Oregon departments and tribal governments on those state policies ; and
 - e. That advances the government-to-government relationship by notifying staff and employees of this Executive Order.
3. Through the process established under this Executive Order the key contacts and designated tribal representatives shall identify issues of mutual concern arising from state policy. The departments and each tribal government shall make reasonable efforts to design solutions and develop programs to achieve mutual goals in relation to state policy.

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4. That each department shall recognize the opportunity to use a number of tools to achieve mutual cooperation including but not limited to use of cooperative agreements with Indian tribal governments as provided for in ORS 190.110 when it is appropriate to do so.
5. That each department shall provide key managers with periodic training which enables them to better recognize Indian issues and to understand and respect the legal status of tribal governments and of American Indians as citizens of Oregon who also have their own unique and distinct culture. It is important as well for the tribes to develop tribal training so its members will better understand the workings and process of state government. It is the hope of the state that these training's will enable the tribes and the state to learn about each other's cultures and improve our mutual ability to communicate our interests more clearly. The key contact and designated tribal representatives shall consult on the scope and content of training as well as the coverage of its cost.
6. That the departments shall work cooperatively to accomplish the goals of this order.

It is the hope of the state and the tribes that this executive order will result in improving the quality of communication between our sovereign governments. The tribes and the state recognize that this order cannot and is not intended to create a forum for resolution of all issues between the tribes and the state. Nor is it meant to replace presently existing lines of communications. Both the tribes and the state recognize that issues that are the subject of litigation or that are likely to become the subject of litigation are inappropriate for discussion in this process.

Nothing in this order shall require the state or any of its agencies to violate or ignore any laws, rules, directives or other legal requirements or obligations imposed by state or federal law including but not limited to state Public Records laws, Public Meetings laws and provisions of the state Administrative Procedures Act.

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This document has been adopted for the sole purpose of enhancing communication and mutual cooperation between the State of Oregon and the tribal governments and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or responsibility, substantive or procedural, enforceable by a party against the State of Oregon, its agencies or instrumentality's, its officers or employees, its subdivisions or any other persons.

Done at Salem, Oregon this 22nd day of May 1996.

GOVERNOR

Attest:

SECRETARY OF STATE

RELATIONSHIP OF STATE AGENCIES WITH INDIAN TRIBES

182.162 Definitions for ORS 182.162 to 182.168. As used in ORS 182.162 to 182.168:

- (1) "State agency" has the meaning given that term in ORS 358.635.
- (2) "Tribe" means a federally recognized Indian tribe in Oregon. [2001 c.177 §1]

Note: 182.162 to 182.168 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.164 State agencies to develop and implement policy on relationship with tribes; cooperation with tribes. (1) A state agency shall develop and implement a policy that:

- (a) Identifies individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.
- (b) Establishes a process to identify the programs of the state agency that affect tribes.
- (c) Promotes communication between the state agency and tribes.
- (d) Promotes positive government-to-government relations between the state and tribes.
- (e) Establishes a method 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 this section.

(2) In the process of identifying and developing the programs of the state agency that affect tribes, a state agency shall include representatives designated by the tribes.

(3) A state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110. [2001 c.177 §2]

Note: See note under 182.162.

182.166 Training of state agency managers and employees who communicate with tribes; annual meetings of representatives of agencies and tribes; annual reports by state agencies. (1) At least once a year, the Oregon Department of Administrative Services, in consultation with the Commission on Indian Services, shall provide training to state agency managers and employees who have regular communication with tribes on the legal status of tribes, the legal rights of members of tribes and issues of concern to tribes.

(2) Once a year, the Governor shall convene a meeting at which representatives of state agencies and tribes may work together to achieve mutual goals.

(3) No later than December 15 of every year, a state agency shall submit a report to the Governor and to the Commission on Indian Services on the activities of the state agency under ORS 182.162 to 182.168. The report shall include:

- (a) The policy the state agency adopted under ORS 182.164.
- (b) The names of the individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.
- (c) The process the state agency established to identify the programs of the state agency that affect tribes.
- (d) The efforts of the state agency to promote communication between the state agency and tribes and government-to-government relations between the state and tribes.
- (e) A description of the training required by subsection (1) of this section.

(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. [2001 c.177 §3]

Note: See note under 182.162.

182.168 No right of action created by ORS 182.162 to 182.168. Nothing in ORS 182.162 to 182.168 creates a right of action against a state agency or a right of review of an action of a state agency. [2001 c.177 §4]

Note: See note under 182.162.

182.170 [1959 c.501 §7; repealed by 1959 c.501 §10]

182.180 [1959 c.501 §8; repealed by 1959 c.501 §10]

182.190 [1959 c.501 §9; repealed by 1959 c.501 §10]

182.200 [1959 c.501 §10; repealed by 1959 c.501 §10]

Inadvertent Discovery Plan for Cultural Resources

Insert Project Name

Insert Project Proponent proposes to *Insert brief project undertaking description*.

The Inadvertent Discovery Plan (IDP) should be followed if cultural materials including human remains are encountered during construction.

Protocol for coordination in the event of inadvertent discovery:

- ☐ In the event of an inadvertent discovery of possible cultural materials, including human remains, all work will stop immediately in the vicinity of the find. A 30 meter buffer should be placed around the discovery with work being able to proceed outside of this buffered area unless additional cultural materials are encountered.
- ☐ The area will be secured and protected.
- ☐ The project manager/land manager will be notified. The project/land manager will notify the State Historic Preservation Office (SHPO). If possible human remains are encountered, the Oregon State Police, Commission on Indian Services (CIS), SHPO, and appropriate Tribes will also be notified.

Oregon State Police: Chris Allori 503-731-4717
CIS: Karen Quigley 503- 986-1067
Appropriate Tribes: As designated by CIS
SHPO: Dennis Griffin 503-986-0674, John Pouley 503-986-0675, or Matt Diederich 503-986-0577.
- ☐ No work may resume until consultation with the SHPO has occurred and a professional archaeologist is able to assess the discovery.
- ☐ If human remains are encountered, do not disturb them in any way. *Do not call 911*. Do not speak with the media. Secure the location. Do not take Photos. The location should be secured and work will not resume in the area of discovery until all parties involved agree upon a course of action.
- ☐ A professional archaeologist may be needed to assess the discovery and they will consult with SHPO and appropriate Tribal Governments to determine an appropriate course of action.
- ☐ Archaeological excavations may be required. This is handled on a case by case basis by the professional archaeologist and project manager, in consultation with SHPO and appropriate Tribes.

When to stop work:

Construction work may uncover previously unidentified Native American or Euro-American artifacts. This may occur for a variety of reasons, but may be associated with deeply buried cultural material, access restrictions during project development, or if the area contains impervious surfaces throughout most of the project area which would have prevented standard archaeological site discovery methods.

Work must stop when the following types of artifacts and/or features are encountered:

Native American artifacts may include (but are not limited to):

- ☐ Flaked stone tools (arrowheads, knives scrapers etc.);
- ☐ Waste flakes that resulted from the construction of flaked stone tools;
- ☐ Ground stone tools like mortars and pestles;
- ☐ Layers (strata) of discolored earth resulting from fire hearths. May be black, red or mottled brown and often contain discolored cracked rocks or dark soil with broken shell;
- ☐ Human remains;
- ☐ Structural remains- wooden beams, post holes, fish weirs.

Euro-American artifacts may include (but are not limited to):

- ☐ Glass (from bottles, vessels, windows etc.);
- ☐ Ceramic (from dinnerware, vessels etc.);
- ☐ Metal (nails, drink/food cans, tobacco tins, industrial parts etc.);
- ☐ Building materials (bricks, shingles etc.);
- ☐ Building remains (foundations, architectural components etc.);
- ☐ Old Wooden Posts, pilings, or planks (these may be encountered above or below water);
- ☐ Remains of ships or sea-going vessels, marine hardware etc.;
- ☐ Old farm equipment may indicate historic resources in the area.
- ☐ Even what looks to be old garbage could very well be an important archaeological resource;

When in doubt, call it in!

Proceeding with Construction

- ☐ Construction can proceed only after the proper archaeological inspections have occurred and environmental clearances are obtained. This requires close coordination with SHPO and the Tribes.
- ☐ After an inadvertent discovery, some areas may be specified for close monitoring or 'no work zones.' Any such areas will be identified by the professional archaeologist to the Project Manager, and appropriate Contractor personnel.
- ☐ In coordination with the SHPO, the Project Manager will verify these identified areas and be sure that the areas are clearly demarcated in the field, as needed.

Attachment D – Background Information:

Archaeological Object

An archaeological object is “an object that: (A) Is at least 75 years old; (B) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and (C) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.”

Reference Oregon Revised Statutes (ORS) 358.905(a).

Archaeological Site

An archaeological site is “a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the State’s jurisdiction, that contains archeological objects and the contextual associations of the archaeological objects with: (i) Each other; or (ii) Biotic or geological remains or deposits. (B) Example of archeological sites described in subparagraph (A) of this paragraph include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.

Reference ORS 358.905 (c).

Cultural Materials

Native American artifacts may include but are not limited to flaked stone tools, waste flakes that resulted from the construction of flaked stone tools, ground stone tools like mortars and pestles, layers (strata) of discolored earth resulting from fire hearths, human remains, structural remains-wooden beams, post holes, fish weirs.

Reference State Historic Preservation Office Inadvertent Discovery Plan for Cultural Resources.

Cultural Resources Cluster

The Tribal-State group established to address cultural resources issues, including historic buildings, archaeological sites, and elements of natural landscape that have cultural significance. The workgroup consists of key state agency contacts and a tribal representative from each tribe.

Reference State-Tribal Clusters definition below.

Inadvertent Discovery

The discovery of cultural materials during the course of normal construction operations, which was unknown to the operator or landowner.

Reference State Historic Preservation Office Inadvertent Discovery Plan for Cultural Resources.

Legislative Commission on Indian Services (LCIS)

Established by statute for the purpose of improving services with American Indians in the State of Oregon.

Reference ORS 172.100(1)

Natural Resources Workgroup

Established to improve communication between state agencies and the Tribes regarding natural resources protection and management. The work group consists of key state agency contacts, a tribal representative from each tribe and a representative from the Governor's office.

Reference general language at ORS 182.162-.168 and ORS 172.100.

Oregon's Federally-Recognized Tribes

The following tribes are federally-recognized in Oregon:

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
- Confederated Tribes of the Grande Ronde Community of Oregon
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation of Oregon
- Coquille Indian Tribe
- Cow Creek Band of Umpqua Tribe of Indians
- Klamath Tribes

Reference <https://www.oregonlegislature.gov/cis/Pages/TribalWebsites.aspx>

State Historic Preservation Office (SHPO)

Established to manage and administer programs for the protection of the state's historic and cultural resources.

Reference OAR 736-050-0105 (4).

State-Tribal Clusters

Established the first Annual LCIS Summit to improve communication between State agencies and Oregon's nine federally-recognized tribes:

- Cultural Resources
- Economic Development and Community Services
- Education and Workforce Training
- Health and Human Services
- Natural Resources
- Public Safety and Regulations

Reference general language at ORS 182.162-.168 and ORS 172.100.