

December 28, 2001

TO: Daniel P. Santos, Legal Counsel to Governor Kitzhaber

FROM: William R. Blosser, Director

RE: **Government-to-Government Report**

I am pleased to transmit the department's (DLCD) response to the Governor's December 3, 2001, directive to report on agency activities under the government-to-government Executive Order, and on contacts and issues encountered since the December 12, 2000 conference at Portland State University.

*Key Contact:* Doug White, DLCD  
635 Capitol St., N.E., Suite 150  
Salem, Oregon 97301-2540  
Phone: (503) 373-0050, ext. 240  
FAX: (503) 378-5518  
E-mail: [doug.white@state.or.us](mailto:doug.white@state.or.us)  
Web Address: <http://www.lcd.state.or.us>

*Major Areas:* The department is continuing to offer growth management and resource conservation services to all the tribes and is working with the some of the tribes in several areas. These include the Oregon Coastal Management Program (OCMP), local government plan amendments, periodic review and Regional Problem Solving. All of these activities are in addition to the work the department's key contact does with three of the cluster groups under the Executive Order.

*Departmental Statement:* The Executive Order directed the department to develop an "interest statement," and present it to tribal governments and state agencies at the September 23, 1997 conference on Government-to-Government relations. The department presented its interest statement at the conference, which included an overall objective 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 interest statement also includes several points that are of specific interest to the department. As a result of working with Tribal governments under the executive order, the department's interests has been refined and clarified. In our 1999 report, the department's statement expresses our support for and commitment to work with Tribal governments in the maintenance and development of cultural and natural resources management programs, land use policies and tribal zoning. In our 2000 report, the department's statement was modified to encourage the Tribes to establish policies aimed at preserving Oregon's best agricultural lands when considering land acquisitions and development. Our interest in government-to-government relations at the regional level encourages the participation by tribal governments in regional partnerships.

DLCD's revised interest statement now reads as follows:

- 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 the tribes are interested in and keep them notified.
- 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 Community Solutions 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 the 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.

*Solutions and Programs:*

**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 in the land development process. In the 1999 report, DLCD explained its efforts to address this issue. These efforts included: (1) LCDC's approved budget package to improve protection of cultural resources; (2) presentation of the Governor's recommended budget to seek funding from other agencies and tribes to implement LCDC's budget strategy; and (3) preparing and defending the state's budget proposal. In 1999, DLCD conducted a state agency survey regarding potential funding sources. Although funding of this budget package was not successful, several state agencies and tribes expressed interest in assisting DLCD in researching ways to obtain these additional funds.

DLCD's support for a cultural resources position at DLCD was further expressed in our 2001 fiscal impact analysis on SB 770 (2001) relating to government-to-government relations. DLCD reported that although it supported the bill and would continue to maintain the current level of participation, "the agency is faced with severely limited resources to fully commit to these matters" (see Issues and Concerns, below).

The department's tribal contact continues to participate in, and discuss Goal 5 and funding concerns with the Cultural Resources Cluster Group. Additional strategies for protecting cultural resources continues to be explored with the cluster, such as education, early consultation with tribes and coordination with state and local government regarding actions involving development and ground disturbing activities. DLCD has provided assistance to tribal governments on obtaining information through the periodic review and post acknowledgment processes to help assure that tribal interests will be addressed in the update of local comprehensive plans and land use regulations.

**Fee-to-Trust:** DLCD's Coastal-Ocean and Rural Divisions 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. DLCDC strives to work cooperatively with the tribes, BIA and affected local governments in addressing the state's interests in these transfers. DLCDC 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 (see the attached list of Tribal projects). The department's coordination with the tribes usually occurs through a combination of meetings, phone calls, emails and written correspondence.

**Coastal:** Our Coastal-Ocean 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 DLCDC's last Government-to-Government report. This includes a workshop presentation held in August with local governments and the Coquille Tribe on ways to develop an integrated geographic information system for the southern Oregon coast that would benefit state, tribal and local governments in developing and sharing of information.

**Development of Consultation Agreement with the Confederated Tribes of Grand Ronde:** The department's tribal contact has been working with the Tribes to develop a consultation agreement on economic, housing and infrastructure projects in the Grand Ronde Community. Although a written agreement has not yet been signed, a working arrangement has been established between tribal and state planners to test the model being developed. The agreement calls for two-way communication, and identifies situations where early consultation (although not required of Tribes) is appropriate and where there is already agreement on future land development actions. Such agreement is possible due to a six-year coordinated effort between state, county and tribal planners to prepare a comprehensive land use plan for the Grand Ronde area that is consistent with and advances state, community and tribal objectives.

*Training:*

Natural Resources Cluster Group: On February 7, 2001, the department's tribal contact attended a meeting of the Natural Resources Cluster Group which has been meeting regularly since 1997. The meeting was held in Salem. The agencies and the tribes provided an update on outreach efforts, draft legislation, streamlining fill and removal laws, cultural resource issues, the Oregon Plan, air quality planning, and the national fire fighting program.

On August 7 and 8, 2001, the department's tribal contact attended a joint meeting between the Natural Resources and Cultural Resources cluster groups. The meeting was held in Forest Grove. The purpose of the joint cluster meeting was to share tribal perspectives on cultural resources protection issues with the Natural Resources Cluster group.

At the joint cluster meeting, DLCD also reported on the Rural Lands Database project completed earlier this year. A complete set of the CD's (one for each of the 36 counties) will be presented to the Legislative Commission on Indian Services for use by all tribes.

Cultural Resources Cluster Group: On March 13-14, 2001, the department's tribal contact attended a meeting of the Cultural Resources Cluster Group. The meeting was held in Burns and focused on cultural resources education and site protection issues that are unique to southeastern Oregon. Participants from the Education Cluster attended and shared ideas and interests.

Economic Development Cluster Group: The department's tribal contact did not attend the March 10, 2001, cluster meeting held in Lincoln City. On August 30, 2001, the department's tribal contact attended a work session with the Economic Development Cluster Group. The meeting was held at the Tamastlikt Cultural Institute near Pendleton and focused on ways to promote tribal economic development opportunities. Tribal housing needs and recreational opportunities were also discussed at the cluster meeting.

**Issue:** With all the issues raised not having a full-time position to work solely on tribal matters severely limits DLCD's ability to meet with the tribes and/or to follow-up in a timely manner. While increased understanding and coordination between the department and tribes (per EO 96-30) is helping to resolve some issues, the growing number of new tasks and challenges means we are falling behind in achieving ideal coordination under government-to-government relations.

*Cooperation among Departments:*

**Agency/Tribal Coordination:** DLCD's web site ([www.lcd@state.or.us](http://www.lcd@state.or.us)) on the Government-to-Government program continues to provide information on contacts, DLCD's interest statement, annual reports, and links with other tribal web sites. When notified, DLCD up dates its mailing list with changes in tribal administration and tribal councils. Mailing lists are being improved through the use of the state/tribal cluster groups.

*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. However, we are faced with severely limited resources to work on these matters. Changes that are being considered by federal agencies on tribal fee-to-trust applications create new opportunities and more questions. Key issues/concerns include:

- Limited understanding of the legal complexities associated with fee-to-trust transfers and tribal sovereignty;
- Difficulties with trying to fit tribal projects and planning into the state-local planing 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;
- Lack of finances or other resources to encourage or support tribal planning efforts; and
- A need to establish a standing department role in fee-to-trust proposals occurring outside the coastal zone.

### Tribal Projects between December 2000 and December 2001, Oregon Coastal Zone Management Program

Government	Action	Jurisdiction	Description	Status
Coos, Lower Umpqua and Siuslaw Indians, Conf. Tribes of	fee-to-trust	Coos	Proposed tribal housing development, Prefontaine Drive, Coos Bay	completed
Coos, Lower Umpqua and Siuslaw Indians, Conf. Tribes of	fee-to-trust	Coos	"Fisher" property, office/storage space, 2.24 acre, Coalbank Slough Rd.	completed
Coos, Lower Umpqua and Siuslaw Indians, Conf. Tribes of	fee-to-trust	Coos	"Alishanee" property, bowling center & mall, 1.43 acres, Coos Bay	completed
Coos, Lower Umpqua and Siuslaw Indians, Conf. Tribes of	fee-to-trust	Coos	"Eason" property, 18.8 acres, future tribal housing, "Barview" area	completed
Coos, Lower Umpqua and Siuslaw Indians, Conf. Tribes of	fee-to-trust	Coos	"Munsel Lake" property, 120 acres, non-commercial cultural	pending
Coos, Lower Umpqua and Siuslaw Indians, Conf. Tribes of	fee-to-trust	Coos	"Hatch", BIA decision regarding proposed gaming on site	pending
Coquille Indian Tribe	NEPA	Coos	Proposed natural gas pipeline to Coos County, BLM lead agency	pending
Coquille Indian Tribe	per. Review	Coos	Facilitated tribal involvement, Bandon Goal 5 update, cultural resources	pending
Coquille Indian Tribe (see BIA Action below)	GIS	Coos	tribe accepted invite to participate in workshop/presentation	completed
Siletz Indians, Conf. Tribes of	HUD \$\$	Lincoln	remove and replace residence, Palmer & Bagley St., Siletz	completed
Siletz Indians, Conf. Tribes of (see also BIA action below)	HUD \$\$	Lincoln	Construction of child care center ("Dickenson" property) in Siletz	completed
Bureau of Indian Affairs	CZM	Coos	Rehabilitation 4th & Tarheel Creek dams on behalf of Coquille Tribe	<b><u>Pending</u></b>
Bureau of Indian Affairs	CZM	Lincoln	fee-to-trust, 0.53 mile road construction, "Gomes" property, Siletz	completed