

August 3, 1998

TO: Henry H. Lazenby, Legal Counsel to Governor Kitzhaber

FROM: Richard P. Benner, Director

RE: **Government to Government Report**

Provided below is the department's response to the Governor's directive of April and July 20, 1998 to report on agency activities under the Executive Order, and on contacts and issues encountered since the September 1997 conference.

Key Contact:

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Major Areas: The department is continuing to offer growth management and resource conservation services to the tribes, and is working with the some of the tribes in several areas. These include DLCD's Public Policy Dispute Resolution Grant Program, Oregon Coastal Management Program (OCMP), and Regional Problem Solving. All of these activities are external to the work the department's key contact is doing 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 adopted and presented their 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 the following points that are of specific interest

to the department:

- * Facilitating better relations between the tribes and local government.
- * Establishing a notice system to coordinate and be better informed of development projects being considered by the tribes, and of the tribe's 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.
- * Continuing "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.
- * Continuing to assist local governments and the tribes in natural resource and cultural site protection programs under the statewide planning goals.
- * Being accountable for a land use program that is coordinated and consistent with the efforts under the Governor's Coastal Salmon Restoration Initiative, and keeping the tribes informed of such actions that may affect tribal interests.

Solutions and Programs:

a. Goal 5: The key issue identified by the tribes is for the Land Conservation and Development Commission (LCDC) to extend better protection in the land development process to cultural resources. On April 16, 1998, the LCDC approved the department's recommendation to include in the overall budget strategy an additional capacity to improve protection of cultural resources (Program Option Package 104). The Commission's approved budget was submitted to the Department of Administrative Services in August. If included in the Governor's budget proposal and approved by the Legislature, this package will provide the department with the necessary resources in the 1999-2000 biennium to address the Goal 5 issue.

This package will support a single FTE and operations to conduct evaluation of existing protections and develop proposed improvements. The department will undertake an evaluation of existing protections in Goal 5 (natural and Cultural Resources) and city and county comprehensive plans. The department will engage tribal governments, local governments, Legislative Commission on Indian Services and others in this evaluation. The department will study efforts in other parts of the country. Using technical and policy advisory committees, the department will develop recommendations for amendments or additions to Goal 5 or the Goal 5 rule. Before the end of the biennium, LCDC will act upon the recommendation.

b. Coastal: The coastal-ocean division remains involved in the Bureau of Indian Affairs (BIA) fee-to-trust process for coastal areas. BIA sends DLCD notifications

of pending fee-to-trust transfers in the coastal zone. DLCD strives to work cooperatively with BIA, affected local governments, and the coastal tribes (Confederated Tribes of Siletz Indians, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, and the Coquille Tribe) in addressing coastal program consistency, including land use issues. The department's coordination with coastal tribes has been occurring through a combination of meetings, phone calls, and written correspondence.

- **Confederated Tribes of Coos, Lower Umpqua, & Siuslaw:** DLCD has informed BIA and tribal representatives that it has no concern with two fee-to-trust transfers for the (for tribal offices and existing single-family residence adjacent to the "reservation") Coos Bay/Empire areas. We have also contacted tribal staff to inquire about the status of local-tribal coordination in regard to a proposed housing project in North Bend. We have continued to stress to the tribal staff our interest in a proposed coastal interpretive center or any other large developments that might be proposed.
- **Confederated Tribes of Siletz:** Department staff worked with BIA, the Confederated Tribes of Siletz Indians, and affected local jurisdictions in processing of a plan amendment to the Lincoln County comprehensive plan to accommodate a proposed tribal housing project and fee-to-trust transfer immediately adjacent to the Siletz urban growth boundary/city limits. We continue to track several other trust proposals in the Siletz/Lincoln County area (industrial, rehabilitation center, residence). The coastal-ocean division anticipates further contact in the near future with the Siletz Tribes on these projects.

DLCD wrote a letter of support for the Siletz Tribes to include in a grant request for funds that would be used for tribal land use planning.

- **Coquille Tribe:** DLCD has not received any fee-to-trust proposals for the Coquille Tribe and thus has not had much contact with the tribe. However, we anticipate contacting the Coquille Tribe soon to learn more about the Tribes Reservation Plan.

Training:

On January 8, 1998, and April 9, 1998, the department's tribal contact attended meetings of the Government-to-Government Community and Economic Development Cluster Group that was created at the September 1997 conference. The meetings were held at the reservations of the Siletz and Umatilla Tribes. State agencies were presented information on Tribal sovereignty and government structure, and issues important to the two tribes. The agencies provided an update of ongoing agency activities, including our cultural resources budget package discussed above.

On June 23, 1998, the department's tribal contact attended, at the request of Burns Paiute Tribal Council, a meeting that was held in Burns with the Council, and state and federal agencies to discuss cultural resources issues important to this tribe. Our key contact was introduced to tribal administration and the Council. However, at this time no plans have been made for any kind of follow-up.

Issue: Not having an FTE to work solely on tribal matters severely limits the department's ability to foster further meetings with the tribes or to follow-up in a timely manner with all the issues being raised. However, the department's coastal staff is in the process of contacting the three coastal tribes, and local governments, to set up a meeting (sometime in the Fall of 1998) to hear from the tribes, and to discuss growth and conservation issues on the coast. Similar efforts are also being discussed for local governments and the four tribes (Warm Springs, Umatilla, Klamath, Paiute) located in eastern and central Oregon.

Cooperation Among Departments:

Dispute Resolution: The department is working with the Community Development Office and Economic Development Office in the Celilo Conference. Through our Public Policy Dispute Resolution Program, the department is funding a grant to help fund the collaborative problem solving portion of the Celilo Conference. This event is scheduled for November 23 and 24, 1998. The overall focus of the conference is to promote collaborative problem solving and reaching consensus on the future of the Gorge. Representatives from the tribes, environmental groups, governmental agencies and business leaders from throughout the Gorge are expected to attend and participate. As many as 500 people from these groups will be invited to attend.

The department is funding a dispute resolution grant with the Water Resources Department for \$11,500 to hire a facilitator/mediator for a goal setting process and to prepare a system design for ongoing water management work in the Klamath Basin. The Water Resources Department is working with the Klamath Tribe and others in the process of adjudicating water rights in the Klamath basin.

Regional Problem Solving: The department is continuing to work with state agencies, local government, citizens and the Confederated Tribes of Grand Ronde Community in addressing transportation and growth issues in the Grand Ronde/Willamina Highway 18/22 corridor.

Agency/Tribal Coordination: When notified, DLCD revises its mailing list in order to stay up-to-date with changes in tribal administration and tribal councils.

Other Contacts: The department's key contact met with a youth from the Klamath Tribe that is interested in establishing a youth facility for young people living in and around the City of Chiloquin.

Issues and Concerns:

DLCD's involvement to date in tribal affairs has resulted in many questions, and we are contemplating ways to begin addressing these issues and concerns. However, we are faced with severely limited resources to commit to these matters. 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 planning framework which does not include a 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 impact on local land use planning;

lack of finances or other resources to encourage or support tribal planning efforts; and

a need to establish a department role in fee-to-trust proposals occurring outside the coastal zone.

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