

October 1, 1999

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 September 14, 1999, to report on agency activities under the Executive Order, and on contacts and issues encountered since the October 1998 conference in Eugene.

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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. This includes the Oregon Coastal Management Program (OCMP), local government plan amendments, 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 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 is expanding. This includes providing support and working with Tribal governments in their maintenance and development of cultural and natural resources management programs, land use policies and Tribal zoning for those lands held in trust on behalf of the Tribes. DLCD presents the following revised interest statement:

- *Facilitate better relations between the tribes and local government.
- * Establish 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.
- * 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.
- * 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 where possible.
- * Continue to assist local governments and the tribes in natural resource and cultural 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:

a. Goal 5: A key issue identified by the tribes is the need for the Land Conservation and Development Commission (LCDC) to extend better protection of cultural resources in the land development process.

During the 1995-1996 process of revising Statewide Land Use Planning Goal 5, *Natural Areas, Scenic and Historic Areas, and Open Spaces*, the state's tribal governments asked the LCDC to postpone Goal 5 revisions for *cultural resources*. The tribal governments were in the process of collaborating with the Governor's Office on the development of Executive Order 96-30. Now that this order has been issued, tribal governments and DLCD have asked the LCDC to address cultural resources.

On April 16, 1998, the LCDC approved the director's recommendation to include in the overall budget strategy additional resources 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 of 1998.

This budget request included a single FTE and financial resources to conduct evaluations of state and local protection programs and to develop new protection measures. The department had planned to involve tribal governments, local governments, the Legislative Commission on Indian Services and others in this evaluation. The department had also planned to study efforts in other parts of the country. Using technical and policy advisory committees, the department planned to develop recommendations for amending Goal 5 and the Goal 5 rule. Before the end of the 1999-2001 biennium, LCDC was to act upon the recommendation.

Governor's 1999-2001 Recommended Budget: The Governor's recommended budget included a revised version of LCDC's Program Option Package 104 that indicated funding would come from "other agencies and the tribes." The recommended budget was to be developed at the same time as the annual summit last November 1998, in Eugene. However, the recommended budget was not formally discussed among all the tribes until a March 11, 1999 meeting of the Cultural Resources Protection Cluster Group, created under Executive Order 96-30. An action plan is being developed by this Cluster Group and will include an objective to obtain these funds. The last meeting of this Cluster Group was held on September 23, 1999, in Bend.

Approved 1999-2001 Budget: The department's overall budget cleared the house on July 15, 1999, about \$2 million short of what the Governor had recommended. The cultural resources package was among the programs lawmakers decided not to fund. The total package cost was \$280,313, including \$107,511 in personal services. DLCD was told that they could seek the limitation from the Emergency Board if specific funding was provided.

DLCD will also be asking tribal governments to participate in the possible funding of the cultural resources position. To prepare for a potential Emergency Board appearance, DLCD needed to contact other agency heads on whether funding for the position will be possible. On August 20, 1999, DLCD circulated a survey to determine whether there are state agency funds available to assist in establishing a position at DLCD to develop a cultural resources protection program under Goal 5. The following four questions were presented to state agencies:

- *Does your agency have state regulatory responsibilities or dealings with local governments or the tribes on cultural resource matters? Explain.*
- *Does your agency currently have any dedicated FTE or budget limitation to address cultural resource responsibilities? If the answer is no, is your agency willing to participate in an inter-agency agreement with DLCD this biennium that would assist in funding the position envisioned in DLCD*

Cultural Resources Position Packet 104?

- ***If not, is your agency willing to join DLCD in seeking a multi-agency appropriation from the 2001 Assembly to fund a cultural resources position?***
- ***Are you aware of any other funding programs or grants available that DLCD or another agency could obtain to help fund a cultural resources position?***

A copy of state agency responses (submitted as of September 30, 1999) are attached.

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

The coastal-ocean division also now invites tribal government representatives from the three tribes listed above 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 report.

Training:

Natural Resources Cluster Group: On February 19 and August 25 and 26, 1999, the department's tribal contact attended meetings of the Natural Resources Cluster Group created in 1997. The meeting in February was held at the Division of State Lands' office in Salem. The meeting in August was held at the reservation of the Umatilla Tribe. State agencies were presented information on tribal sovereignty and government structure, and natural resource issues important to the tribes. The agencies and the tribes provided an update of ongoing agency activities, including identifying the need to discuss (at the next meeting) the overlapping responsibilities of state agencies on natural resources. Issues involving emergency planning, the Oregon Salmon Plan, and tribal fee-to-trust applications were also identified.

The department's tribal contact and field representative have been working with the Warm Springs Tribe and Jefferson County to address big game habitat protection issues in the county.

Cultural Resources Cluster Group: On March 10 and 11, 1999, the department's tribal contact attended a meeting of the Government-to-Government Cultural Resources Cluster Group created at the October 1998 conference in Eugene. The meeting was held at the reservations of the Umatilla Tribe. State agencies were

presented information on tribal sovereignty and government structure, and cultural resource issues important to the tribes. The agencies provided an update of ongoing agency activities including DLCD's cultural resources budget package discussed previously.

On August 4, 1999, the department's tribal contact attended a meeting of the Warm Springs Cultural & Heritage Executive Committee. Tribal perspectives were presented by Louie Dick (Umatilla) and the Warm Springs Tribe. DLCD presented an overview of cultural resource protection efforts and the Statewide Planning Goals.

On September 23, 1999, DLCD's key contact attended a meeting of the Cultural Resources Cluster Group in Bend. The purpose of the meeting was to prepare for the upcoming conference and to discuss and refine the draft Action Plan that was prepared at the March meeting. The group refined the draft action plan and identified short and long-term goals under the plan. The revised plan will be presented to the full group for concurrence on October 17, 1999.

Economic Development Cluster Group: On May 26 and 27, 1999, the department's tribal contact attended a work session with the Economic Development Cluster Group that was created in 1997. Day one of the meeting was held at Grand Ronde. Day two was held at the Capitol Mall in Salem. On day one, state agencies were presented information from three of the Tribes on their key issues and priorities. The Commission on Indian Services presented a legislative update. State agencies presented information about the Community Solutions Team. Three state agencies presented an update of key issues and priorities. A tour was conducted of tribal development in the Grand Ronde community. Day two consisted of a tour of some of the state agencies that deal with economic development issues.

Issue: Not having an FTE to work solely on tribal matters severely limits the departments ability to foster further meetings with the tribes or to follow-up in a timely manner with all the issues being raised. While increased understanding and coordination between the department and tribes (per EO 96-30) is helping to minimize some issues, such efforts are only replaced with an ever-increasing number of new tasks and challenges.

Cooperation Among Departments:

Regional Problem Solving: The department is continuing to work with state agencies, local government, citizens and the Confederated Tribes of the 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. Mailing lists are being improved upon 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 we are contemplating ways to begin addressing these issues and concerns. However, we are faced with severely limited resources to commit to these matters. Changes being considered by federal agencies on tribal fee-to-trust applications creates new opportunities and many 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 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.

RPB:DW/deb

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