

November 1, 2000

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 25, 2000, which is to report on agency activities under the Executive Order, and on contacts and issues encountered since the October 18, 1999 conference at the Siletz reservation.

*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 the tribes and is working with the some of the tribes in several areas. This includes the Oregon Coastal Management Program (OCMP), and local government plan amendments, and Regional Problem Solving. All of these activities are external to the work the department's key contact is doing 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 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 being further refined and clarified. In the last report, the department's interest statement was clarified to mention our support and interest in working with Tribal governments in their maintenance and development of cultural and natural resource management programs, land use policies and tribal zoning. This report identifies the department's interest in having the Tribes establish policies aimed at preserving Oregon's best agricultural lands when considering land acquisitions and development. DLCD presents the following revised interest statement:

- \* Facilitate better relations between the tribes and state and local government.
- \* Establish a notification process to better coordinate and inform tribes, state and local government about development projects under consideration, and of 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, including policies for the preservation of Oregon's best agricultural lands.
- \* 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:*

**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. In the last report, DLCD explained its efforts to address this issues including: (1) LCDC's approved budget strategy to improve protection of cultural resources; (2) the Governor's recommended budget to seek funding from other agencies and the tribes; (3) the final budget approved by

the legislature, which did not include the cultural resources funding packet; and (4) DLCD's survey to state agencies regarding potential funding sources.

The Cultural Resources Cluster Group continues to meet to improve cultural resource protection under Goal 5.

**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 (see attached list of Tribal projects). 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 August 9, 2000, the department's tribal contact attended a meeting of the Natural Resources Cluster Group created in 1997. The meeting was held in Bend. DLCD did not attend the April 14, 2000 cluster group meeting held in Warm Springs. The agencies and the tribes provided an update of ongoing agency activities including water rights, water quality, legislative concepts, institutionalizing the executive order, and establishing operator procedures for the cluster group.

Cultural Resources Cluster Group: On December 9, 1999, March 9-10, 2000, and August 24-25, 2000, the department's tribal contact attended the meetings of the Government-to-Government Cultural Resources Cluster Group created at the October 1998 conference in Eugene. The December 1999 meeting was held at the DLCD office in Salem and focused on Goal 5 issues identified in the action plan. The March 2000 meeting was held at the Coquille reservation with emphasis towards site protection, cultural issues unique to the coast and the cluster group's action plan. The August 2000 meeting was held in The Dalles. The focus of this meeting was on completion of action plan items, including a cultural resource management plan and preparation for the annual conference.

On February 20, 2000, DLCD sent a flyer to all city, county and regional planning departments reminding them about state laws on the protection of Indian Grave sites and archeological sites and on required permits (see attached). At the request of

DLCD, a similar flyer was placed in Oregon Building Code's September/October 2000 "Code Link" web site publication which is circulated to all building, electrical and plumbing inspectors around the state (see attached).

Economic Development Cluster Group: On January 20 and May 10, 2000, the department's tribal contact attended work sessions with the Economic Development Cluster Group that was created in 1997. The meeting in January was held at the Division of State Lands in Salem and focused on ways to bring economic development to Indian Country. The meeting in May was held in Bend and focused on transportation issues related to Salmon recovery efforts.

**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. While increased understanding and coordination between the department and tribes (per EO 96-30) is helping to resolve some issues, such efforts are only replaced with an ever increasing number of new tasks and challenges.

*Cooperation Among Departments:*

**Agency/Tribal Coordination:** DLCD revised its web site ([www.lcd.state.or.us](http://www.lcd.state.or.us)) to include a new page on the Government to Government program. This new site includes contacts, DLCD's interest statement, annual reports, and links with other tribal web sites.

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 through the use of the state/tribal cluster groups.

At the August 9, 2000 meeting of the Natural Resources Cluster Group, DLCD presented information on how to subscribe to the agency's notice of post acknowledgement comprehensive plan and land use regulation amendments that are submitted to DLCD by local governments.

*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 that are being considered by federal agencies on tribal fee-to-trust applications create 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