



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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November 10, 2009



TO: Kelly Skye, Legal Counsel to Governor Kulongoski
Karen Quigley, Director to Legislative Commission on Indian Services

FROM: Richard Whitman, Director
Michael Morrissey, Rural Policy Analyst

RE: **2009 Government-to-Government Report**

We are pleased to transmit this report in response to legislative direction ORS 182.162-182.168 (SB 770). The report describes activities and tribal contacts of the Department of Land Conservation and Development for 2009 as required by statute.

Major Highlights for 2009:

- ✓ The department reorganizes its Government to Government team. The director assumes the lead role by taking the key contact position, and putting the focus for this program in the director's office for the first time. Five other staff are assigned to represent the department in the Cultural Resources Cluster Group, Natural Resources Working Group, and the Economic and Community Development Cluster Group, assuring a higher profile for government to government activity throughout the agency. This new team met with Karen Quigley, Executive Director for the Legislative Commission on Indian Services in November 2009.
- ✓ The Land Conservation and Development Commission (LCDC) recommended and obtained Legislative approval establishing the Metolius River *Area of Critical State Concern Management Plan*, in order to protect natural, scenic, wildlife, cultural and recreational values in and near the Metolius Basin.
- ✓ The LCDC held roundtable discussions during regularly scheduled meetings in Brookings, Hillsboro and Springfield, to hear from local governments and Tribal representatives.
- ✓ DLCD is giving high consideration to approval of a grant contract with the City of The Dalles to work with tribal governments to fund a cultural resource study on lands adjacent to the city and within the Columbia River Gorge National Scenic Area (NSA). The results of the study will help decision makers determine how best to integrate

cultural resource protection into the evaluation process for proposed urban area boundary amendment to the NSA.

Department Relations with Indian Tribes

Oregon statutes (*ORS 182.162-182.168, SB 770*) require that state agencies which work with Tribal governments submit annual reports describing their relationship in response to six factors. Each of the factors is listed below, along with DLCD's response:

(a) *The policy the state agency adopted under ORS 182.164.*

ORS 182.164 directs DLCD to develop and implement a policy that:

- Identifies agency staff responsible for developing and implementing agency programs that affect the Tribes;
- Establishes a process to identify agency programs that affect Tribes;
- Promotes communication between DLCD and Tribes;
- Promotes positive government-to-government relations; and
- Establishes a method of notifying agency staff of the statutory provisions and agency policy.

DLCD Response to Subsection (a)

The department's policy has evolved since Executive Order EO-96-30 directing that state agency heads "shall be accountable to the Governor's office for adopting a departmental State/Tribal Government statement..." The Executive Order directed departments 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. DLCD's interest statement included an overall objective, which was eventually revised and in 2007, was formally established as the agency "Policy on Government-to-Government Relations with Oregon Tribes 07-02". The purpose section of that policy states:

"The purpose of this policy is 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 policy section of the 07-02 document reads:

It is the policy of the Oregon Department of Land Conservation and Development to:

- *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*

- *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 Economic Revitalization 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 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.*
- *Work with Tribal governments and stakeholders to find ways to continue government-to-government relations with fewer resources.*
- *In conjunction with the work plans of the Natural Resources Work Group and Cultural Resources Cluster Group, continue to work with Tribal governments to assess what implications state and local waivers issued under ORS 197.352 will have on Tribal interests, particularly with respect to natural and cultural resources and sites.*
- *Involve Tribal Governments, through a Working Group and Economic Development Cluster, in the development of a work plan to address the process by which sewer service may be extended to tribal lands located adjacent to urban growth boundaries or unincorporated communities.*

In addition to the provisions of this policy aimed specifically at relations with Oregon's Tribal governments, the Department has reflected its overall communication policy with local governments, to include the Tribes, within DLCD Policy No. 06-01, Local and Tribal Government Communication Policy.

Accomplishments made by the Department in response to this policy, and since the Executive Order (EO-96-30) was established in 1996, are found in the Annual Reports presented each year to the Governor and Legislative Commission on Indian Services.

Please refer to the agency's [Annual Reports](#), located on our website, under *Relations with Tribes*

to learn more about the establishment of the agency's policy under government-to-government relations that was formed under Executive Order 96-30 and ORS 182.164.

(b) *The name of individuals in the state agency who are responsible for development and implementing programs of the state agency that affect Tribes.*

DLCD Response to Subsection (b)

DLCD's director Richard Whitman is the primary (key) contact responsible for overall relations, and for development and implementing of agency programs that affect Tribes. Michael Morrissey, a policy analyst in the director's office, is the alternate contact for the director. The primary and alternate contacts along with five others assigned to the clusters or working group, forms the agency team on government-to-government relations.

Primary Contact on Government-to-Government Relations:

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Primary Contact to Natural Resources Working Group:

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Alternate Contact to Natural Resources Working Group:

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Primary Contact to Cultural Resources Cluster Group:

Michael Morrissey, Rural Policy Analyst

(contact information above)

Alternate Contact to Cultural Resources Cluster Group:

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The agency has had a single key contact on tribal matters dating back to the 1980's, as well as into the 1990's with the enactment of Executive Order EO-96-30, and through today under ORS 182.162-182.168 (SB 770). In 2005, an additional staff person was trained and assigned as back-up to the key contact. With the retirement of the agency's key contact, DLCD has transferred the responsibilities of the key-contact and back-up key contact to seven other persons in the agency, including the director (see agency contacts listed above).

Additional DLCD staff members are responsible for developing and implementing programs that may be of interest to the Tribes are listed below. They are available by dialing (503) 373-0050, then the extension, or the number indicated.

Bob Rindy, Sr. Policy Analyst and Legislative Liaison, extension 229
Bob Cortright, Transportation & Growth Management, extension 241
Chris Shirley, Natural Hazards & Floodplains, extension 250
Steve Lucker, Floodplain Map Modernization, extension 295
Jay Charland, Coastal Program and Federal Consistency, extension 253
Gloria Gardner, Urban Growth Management, extension 282
Lisa Howard, Executive Assistant to Director and LCDC, extension 271
Laura Mattison, Temporary, inventorying coastal dikes and levees, (971) 673-1534
Regional Representatives: See agency website for regional assignments.

The agency's primary and alternate contacts are responsible for assuring that the agency is kept apprised of activities that may be of interest to the Tribes, to provide appropriate Tribal contacts,

and ensure that the Tribes are informed of agency activities. The agency recognizes that maintaining good communication is a benefit to the Tribes and to the State of Oregon.

Oregon local governments (cities and counties) are responsible for carrying out the statewide land use planning program through locally-adopted comprehensive plans and zoning codes that are approved by the state. Tribal reservations and trust lands are not subject to state and local land use laws but these laws occasionally affect the use of Tribal lands. Under ORS 182.162-182.168 the challenge for DLCD is to continue to promote government-to-government relations between the Tribes and Oregon's local governments.

(c) *The process the state agency established to identify the programs of the state agency that affect Tribes.*

DLCD Response to Subsection (c)

DLCD informs the Tribes of agency programs that affect the Tribes primarily through agency participation in three of the cluster or working groups established in 1996 under Executive Order 96-30. The agency actively participates in the Natural Resources Working Group, Cultural Resources Cluster Group, and Economic and Community Development Cluster Group, each of which contains representatives from other state agencies, and from the several Tribes. These groups provide a forum for two-way communication and government-to-government relations. As directed by the agency's primary and alternate contacts, the contacts assigned to the clusters provide periodic updates to the Tribes on agency program activities, while the Tribes inform contacts of relevant Tribal programs, and agency programs affecting the Tribes.

DLCD may also meet with individual Tribes to address specific issues as they arise in regions around the state. These department efforts have proven very successful, given the diverse interests of the Tribes, and the complexity of land use issues that affect the Tribes' unique interests. DLCD also maintains an agency web site, which includes a section on government-to-government relations. That site is available to keep Tribal governments and other Oregonians informed of agency activities.

DLCD participation in the cluster and working group meetings is reflected in the following list of meetings:

Natural Resources Working Group: On April 14, 2009, the agency's back-up key contact attended the working group meeting in Salem (LCIS Treaty Room), and on August 13, 2009, the agency's primary contact attended the meeting in Siletz.

Cultural Resources Cluster Group: On March 23-24, 2009, the agency's key contact, back-up key contact and alternate cluster contact attended the cluster meeting at the State Medical Examiner's Office in Clackamas. On June 23, 2009, the agency's key contact attended, and the agency hosted, the cluster meeting in Bend. On September 29-30, 2009, the agency's primary contact, previous key contact (under contract with DLCD), and the alternate contact to the cluster attended the cluster meeting in Siletz.

Economic and Community Development Cluster Group: On February 4, 2009, the agency's back-up key contact attended the working group meeting in Salem. On May 27, 2009, the agency's key and back-up key contacts attended the cluster group meeting in Grand Ronde. On August 28, 2009, the agency's primary contact to the cluster and previous key contact attended the cluster group meeting in Lincoln City.

Other Government-to-Government Meetings: On May 14, 2009, several agency staff, including the back-up to key contact, attended the training sessions available at the Tribal Information Day at the Capitol. On September 2, 2009, the agency's alternate contact on overall tribal relations attended a meeting with the Confederated tribes of the Umatilla Indian Reservation at the Columbia River Inter-Tribal Fisheries Commission meeting in Portland. On September 2, 2009, the agency's alternate contact to the Cultural Resources Cluster Group attended a presentation from Dr. David Lewis on Tribal treaties at the State Library Lecture Series in Salem.

Meeting with Legislative Commission on Indian Services: On October 27, 2009, DLCD Director Richard Whitman and five additional staff involved with the department's government-to-government program hosted a three hour meeting with Karen Quigley, Executive Director for the Legislative Commission on Indian Services. This was a meeting to introduce Ms. Quigley to the department's new staffing arrangement for government-to-government activities and to hear her recommendations as to how these responsibilities can best be carried out from the Commission's perspective. This was not only an information sharing event, but a training and historical perspective for all the department staff.

(d) The effort of the state agency to promote communication between the state agency and the Tribes, and government-to-government relations between the state and Tribes.

DLCD Response to Subsection (d)

Including the Tribes in stakeholder meetings and activities, and moving towards written agreements with Tribes when possible, is a significant step for promoting two-way communication and government-to-government relations. As explained in greater detail below, the agency's designated contacts and others have participated in three of the cluster groups or working groups, as well as with the Tribes directly. Previous land use discussions with the Legislative Commission on Indian Services have also promoted good communications and government-to-government relations between DLCD and the Tribes. DLCD is committed to continue those efforts.

Roundtables: Contributing to meeting its government to government policy objectives, DLCD schedules a roundtable discussion with local and Tribal governments each time the Land Conservation and Development Commission (LCDC) conducts a meeting outside of Salem. Tribal participation is also welcomed at the Commission's regular meetings in Salem, although those meetings typically do not include a roundtable discussion. The purpose of the roundtable is to provide an opportunity for local governments and Tribes to hear and participate in discussions on issues of mutual importance. In 2009, three out-of-town LCDC meetings included roundtables

with local governments and Tribes. Although the Commission welcomes participations from all the Tribes, advance notice of a roundtable is mailed to the Tribes located in or near the region where each LCDC meeting is held.

Development challenges and opportunities, local planning issues, economic development and statewide planning for climate change were frequent topics of discussion at the following 2009 roundtables:

- June 29, 2009 in Brookings, mailed invitations included the Coquille Indian Tribe, Confederated Tribes of the Siletz, and the Cow Creek Band of Umpqua Indians.
- October 2, 2009 in Hillsboro, mailed invitations included the Confederated Tribes of Grand Ronde Community and Confederated tribes of Siletz.
- November 6, 2009 in Springfield, mailed invitations included the Confederated Tribes of Grande Ronde Community, Confederated Tribes of Siletz, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, and the Cow Creek Band of Umpqua Indians.

The agency is committed to conducting its regular meetings around the state as often as possible, and will continue to invite the Tribes to participate in the roundtables, as well as the meetings themselves.

Web-based communication: DLCD's web site (www.lcd@state.or.us), under the link "Relations with Tribes" continues to provide information on the agency government-to-government program, contacts, DLCD's interest statement, annual reports, and links with other Tribal web sites. When notified, DLCD updates its contact list to reflect changes in Tribal administration and Tribal councils. Contact lists are also improved through the state/Tribal cluster groups.

(e) A description of the training required by statute. (ORS 182.166(1) pertains to training(s) offered by the Department of Administrative Services at least once a year.)

DLCD Response to Subsection (e)

On May 14, 2009, several agency staff, including the back-up to key contact, attended the training sessions available at the Tribal Information Day at the Capitol. On September 2, 2009, the agency's alternate contact on overall tribal relations attended a meeting with the Confederated tribes of the Umatilla Indian Reservation at the Columbia River Inter-Tribal Fisheries Commission meeting in Portland. On September 2, 2009, the agency's alternate contact to the Cultural Resources Cluster Group attended a presentation from Dr. David Lewis on Tribal treaties at the State Library Lecture Series in Salem.

Throughout this report, agency participation in clusters and working groups is described. These meetings are an important source of training for department staff in a wide range of subjects of concern to the tribes. Frequently, information gained in this manner is shared with other members of the department, as appropriate.

- (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.***

DLCD Response to Subsection (f)

The agency policy under these statutes is Number 07-02, Policy on Government-to-government Relations with Oregon Tribes, and the strategic plan. The policy effective on May 14, 2007 is based largely on the existing government-to-government program and on the policy “interest statement” established on September 23, 1997 under Executive Order 96-30. Policy 07-02 is stated below under “*Department Statement.*”

When new staff that may work with a Tribe is hired, the agency’s primary and alternate contacts arrange for staff’s attendance at annual training, brief them on cluster activities, and provide an overview of the statutory requirements for working with Tribal governments on agency activities. In 2008, the agency’s Operation Services Division began to include the key contact in their staff meetings to inform the division of their responsibilities under the agency’s government-to-government policy and statutes. This effort will continue with the primary and alternate contacts.

Programmatic Issues of Ongoing Interest

The department continues to offer growth management and natural resource conservation services to all the Tribes and is working with some of the Tribes in several areas. These include the Oregon Coastal Management Program (OCMP), Oregon Ocean Policy Advisory Council (OPAC), flood plain management services, rulemaking, local government plan amendments, and periodic review. All of these activities are in addition to the work the department’s primary and alternate contacts do with three of the cluster groups formed by state agencies under ORS 182.162-182.168.

Goal 5: Another key issue identified by the Tribes is the need for the Land Conservation and Development Commission (LCDC) to better protect cultural resources during the land development process. See DLCD’s 2003 Report for further discussion of Goal 5.

In 2009, the agency’s key and back-up contact participated in and discussed Goal 5 and funding concerns with the Cultural Resources Cluster Group. Additional strategies for protecting cultural resources continue 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. In 2008, DLCD provided assistance to Tribal governments on obtaining information on the tracking of state and local Measure 49 waivers, as well as through the periodic review and plan amendment processes, to help assure that Tribal interests were addressed in the update of local comprehensive plans and land use regulations.

DLCD is giving high consideration to a grant contract with the City of The Dalles to work with tribal governments to fund a cultural resource study on lands adjacent to the city and within the

Columbia River Gorge National Scenic Area (NSA). The results of the study will help decision makers determine how best to integrate cultural resource protection into the evaluation process for proposed urban area boundary amendment to the NSA.

Fee-to-Trust: Although the actual number of fee-to-trust transfers has been smaller than in previous years, DLCD's Ocean and Coastal Service Division and agency contacts 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. In coordination with the Governor's office, DLCD strives to work cooperatively with the Tribes, BIA and affected local governments in addressing the state's interests in these transfers. DLCD 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. The department's coordination with the Tribes usually occurs through a combination of meetings, phone calls, e-mails and written correspondence.

Coastal: Our Ocean and Coastal Services 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 DLCD's last Government-to-Government annual report. The Division also reviews federal energy projects on the coast to ensure consistency with Oregon's Coastal Zone Management Program. These projects often involve the Tribes, including the Columbia River Inter-Tribal Fisheries Commission (CRITFC).

Our Ocean and Coastal Division is developing an inventory of dikes and levees in the coastal zone and has been in contact with the Coquille Indian Tribes and is making plans to work with all three coastal tribes as this inventory work commences.

The Department also serves as staff to the Oregon Ocean Policy Advisory Council (OPAC). The membership of OPAC is defined by Legislation and includes one seat for the "coastal" Indian Tribes. DLCD works to ensure that a Tribal representative is designated for that seat and that any Tribal issues raised, in the OPAC setting, are addressed.

Tribal Appointments to Department Committees: In 2004, four new advisory (rulemaking or other workgroups) committees were formed. Each committee received good tribal representation and participation. No new agency committees were formed in 2005 or 2006. In late 2007, DLCD asked for tribal participation on the Metro Urban/Rural Reserve Working Group under SB 1011 (2007), but no response to the request was received. In 2008, LCDC initiated rulemaking to address wind farm development on agricultural lands. Representation from the Confederated Tribes of the Umatilla Indian Reservation was included in the Wind Farm Working Group. In 2009 there was no tribal participation on the Urban Growth Boundary Work Group and the Housing Working Group.

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.

- 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 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; and
- Limited financial and/or other resources to support Tribal land use planning and natural resource identification and planning efforts.

As noted, some issues and concerns regarding the department's government-to-government coordination and relations remain to be fully addressed. With the formation of a new agency Team on government-to-government relations concerns are being addressed. The department will strive to address these issues and concerns, and improve service once again in the coming year.

Conclusion:

It is anticipated that DLCD's ability to meet with the Tribes and follow-up in a more timely manner should improve significantly with the establishment of a Team of seven staff members to work on government-to-government relations, including the agency director as the primary contact. Training of staff recently assigned to tribal relations is underway and will continue into 2010.