

# REPORT from the TASK FORCE ON OREGON TRIBAL CULTURAL ITEMS

November 2018

## INTRODUCTION

### Background and Charge

In November 2017, Governor Kate Brown signed Executive Order 17-12, establishing the Task Force on Oregon Tribal Cultural Items. *See* Appendix 1. The purpose of the Task Force is to recommend a process for soliciting information from state agencies and other public institutions relating to cultural items within their possession that may be associated with Oregon's nine federally recognized Native American Tribes.

Executive Order 17-12 requires the Task Force to submit a report to the Governor, summarizing its findings and recommendations. That report must recommend (1) a process for surveying public institutions and agencies regarding tribal cultural items; and (2) a timeline for completion of the survey, and proposals for next steps.

The Task Force submits this report to the Governor, pursuant to its charge.

### Task Force Members

Members of the Task Force include representatives from each of Oregon's nine federally recognized Tribes, the Legislative Commission on Indian Services, state agencies, and public universities. Under Executive Order 17-12, the Governor's Legal Counsel is responsible for convening the Task Force, which has met regularly at locations throughout the state.

The following individuals currently serve as Task Force members:

**Brenda Meade, Co-Chair**

Coquille Indian Tribe

**Danny Santos, Co-Chair**

Willamette University College of Law (retired)

**Chris Allori**

Oregon State Police

**Aaron Ashley**

Confederated Tribes of the Umatilla Indian Reservation

**Jesse Beers**

Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

**Dustin Buehler**

Office of Governor Kate Brown

**Perry Chocktoot**

Klamath Tribes

**Jon Erlandson**

University of Oregon

**Patrick Flanagan**

Oregon Department of Justice

**Dennis Griffin**

State Historic Preservation Office, Oregon Parks and Recreation Department

**Robert Kentta**

Confederated Tribes of Siletz Indians

**Michael Langley**

Confederated Tribes of Grand Ronde

**Brigette McConville**

Confederated Tribes of Warm Springs

**Jessie Plueard**

Cow Creek Band of Umpqua Tribe of Indians

**Karen Quigley**

Legislative Commission on Indian Services

**Diane Teeman**

Burns Paiute Tribe

**Task Force Staff:** Shevaun Gutridge, Office of Governor Kate Brown

**What are Tribal Cultural Items?**

It is difficult to define the words “cultural items” in a way that adequately reflects the meaning of that phrase to each and every one of Oregon’s Tribes. Tribes have different definitions of “cultural items.” Practical concerns add to the difficulty of setting forth a single definition. On the one hand, a broad definition may more adequately reflect the wide scope of items that are associated with tribal culture. On the other hand, a narrower definition may be more workable for agencies implementing the Task Force’s recommendations.

In an effort to provide a basic definition to state entities, the Task Force—including its representatives from Oregon’s nine federally recognized Tribes—has approved the following definition of “cultural items” (preceded by an explanatory preamble):

*The area known today as Oregon has been lived on, tended, and engaged with since time immemorial. These lands and waters are the place of origin for the nine federally recognized sovereign Tribes of Oregon. Numerous Native American archaeological and historic artifacts, and objects of cultural significance now reside in museums, universities and colleges, archives, and other state agency repositories. To date, however, no comprehensive inventory of these “cultural items” has been compiled.*

*With Executive Order 17-12, Oregon Governor Kate Brown convened the Task Force on Oregon Tribal Cultural Items to create a process by which state agencies will be required to provide Tribal governments an inventory of Native American cultural items on display, in storage, in possession or under the stewardship of the state of Oregon. The Task Force has adopted a definition of “Native American Cultural Items.” Such items include archaeological and historic materials and artifacts, as well as, for this purpose, human remains and funerary objects. Today, Oregon is host to some of the oldest documented cultural items in North America. Its past is one shared by all who call this place home and all share in the responsibility and undertaking of identification, understanding, protection, and preservation of these resources.*

*Ancestry links the Tribes today through time to their origins. As a result **all** belongings and evidence of Tribal history (ancient through modern periods) retain significance. For this purpose, Native American Cultural Items are defined as:*

- *Human Remains and Funerary Objects – Any human remains of Native American origin (e.g., skeletal elements, tissue, hair), any object or artifact generally associated with death or a related ritual, whether directly recovered from a human burial, associated with a burial, or an object that by its nature or condition indicates a relationship to Native American burial or funerary practices.*
- *Archaeological – Any material or artifact removed from an archaeological site (scientifically or otherwise [whether or not the site has been officially recorded]), or any collection(s) of artifacts/objects that can be identified as originating from such a site or documented tribal territory resulting from Native American occupation or use.*
- *Historic – Objects or archival materials (e.g., photographs and written materials [i.e., diaries, journals, maps, field notes, newspapers, etc.]) directly associated with persons/places significant to Oregon’s Tribes’ historic experience and/or contemporary identity.*

Even with this definition and explanatory preamble, state agencies will need further training and communication with Oregon’s Tribes in order to be able to identify tribal cultural items. Each sovereign Tribe has its own unique perspective. And state entities may not recognize or

realize the cultural significance of items within their possession. (For example, an agency may possess a feather and not realize that it is of tribal funerary significance.)

The goal here is not to set forth a perfect, all-encompassing definition, but rather to give state agencies a starting point for further conversations and collaboration with the Tribes.

## **FINDINGS AND RECOMMENDATIONS**

### **Values**

The Task Force has met monthly since April 2018. Its discussions are summarized in the meeting minutes accompanying this report. *See* Appendix 2 (minutes from Task Force meetings, to date). This section of the report attempts to synthesize and set forth reoccurring values underlying the Task Force’s discussions, as well as its findings and recommendations.

- **Tribal Perspectives**: a paramount value that has driven the Task Force’s work to date—and that should continue to drive our collective efforts—is the need to listen to tribal perspectives on the importance of cultural items. The processes we adopt should ensure that tribal voices continue to be heard, respected, and valued.
- **Identification and Access**: At this point, the goal is to identify and provide access to cultural items that are in the State’s possession, rather than requiring state agencies to collect or repatriate those items. Once the Tribes know what is out there, the State and Tribes can discuss next steps.
- **Education and Training**: Education and training of state employees will be key, as the individuals on the ground may not know what types of items qualify as tribal cultural items, even after reviewing the basic definition provided by the Task Force. This has been and will continue to be a learned process.
- **Communication**: There must be channels for ongoing communication between state agencies and the Tribes, so agencies can better understand tribal perspectives. Communication with Tribes will be essential as agencies perform look-arounds for cultural items, so questions regarding scope can be clarified.
- **Ongoing Efforts**: One agency director described the process of engaging with Tribes regarding cultural items as “a race without a finish line.” Agencies will need guidance during their initial survey, and will continue to find tribal cultural items in the months and years to come. The processes we implement must take the ongoing nature of this work into account.

## **Recommendations**

The Task Force will continue to meet in the months ahead, at least until April 2019 (one year after it first convened, at which point the Task Force’s authority under the existing executive order will lapse). Although there is more work to do, the Task Force presents the following recommendations to the Governor:

### ***1. Use the Government-to-Government Framework to Facilitate a Survey of and Communication Regarding Tribal Cultural Items***

In 1996, Executive Order 96-30 formally established government-to-government relations between the State of Oregon and the nine federally recognized Tribes. In 2001, that government-to-government framework was codified in statute by Senate Bill 770. *See* ORS 182.162–182.168. Among other things, state agencies are required to develop and implement policies on tribal relations, designate key agency contacts, participate in annual meetings, and prepare annual reports.

The Task Force recommends use of the existing government-to-government framework to facilitate coordination and communication between the state and Tribes regarding tribal cultural items. Under that approach, each agency should develop a policy regarding the treatment of tribal cultural items, and should appoint a key agency contact (see separate recommendation regarding Agency Tribal Cultural Items Liaisons, below). Each agency’s policy on tribal cultural items should specify how the agency plans to communicate with Tribes regarding cultural items within its possession, and how it plans to educate agency employees regarding that policy.

### ***2. Educate Agency Leadership about Cultural Items at the Annual Government-to-Government Summit***

During two of its meetings this summer, the Task Force engaged in an extended discussion about tribal cultural items with the directors of five large state agencies—the Department of Fish and Wildlife; the Department of Forestry; the Department of State Lands; the Department of Transportation; and the State Police. That dialogue was enormously useful, both to the agencies and to the Tribes; it educated agency directors regarding the definition of “cultural items,” while also giving the Tribes a sense of what types of cultural items each agency might have in its possession.

During those discussions, agency directors realized that the scope of tribal “cultural items” encompasses items that they previously did not appreciate, and that prior efforts to look around their agencies were under-inclusive. For example, the Department of Fish and Wildlife realized for the first time that archival documents—such as photographs or monthly field reports—may have images or information with cultural significance to the Tribes. Similarly, the Department of State Lands realized that it will need to revisit its procedures for processing the property and belongings of persons who die without a will, to ensure that Oregon’s Tribes are notified of items with tribal cultural significance.

The annual government-to-government summit in late November provides an opportunity for further education of and discussions with agency directors. We recommend that the summit incorporate a panel discussion on tribal cultural items, during which the Task Force briefly outlines its work to date and tribal members share their perspective regarding cultural items. We also recommend hosting a table discussion at the summit immediately following the panel, so agency directors can directly interact with tribal members on these issues.

### ***3. Designate and Train a Tribal Cultural Items Liaison for Each State Agency, Who will Serve as the Key Contact for Surveying and Ongoing Efforts***

A few months ago we recommended that each state agency designate a person who will serve as its Tribal Cultural Items Liaison—the agency’s key contact for matters and inquiries relating to tribal cultural items. At our request, in August Governor Brown sent a letter to state agency heads, asking them to designate a Tribal Cultural Items Liaison for their respective agencies. In response, each agency has designated a Tribal Cultural Items Liaison. *See Appendix 3.*

We recommend that each liaison be responsible for ensuring that their agency performs a survey of tribal cultural items, and that they serve as an ongoing point-of-contact within the agency for issues relating to cultural items.

The Task Force and the Legislative Commission on Indian Services will coordinate and host an initial orientation training for agency liaisons, to be held in late 2018 or early 2019. Among other things, that training will discuss the definitional scope of “cultural items,” potential surveying approaches, and techniques that liaisons can use to train other staff within their agencies. LCIS will then work with the Tribes and state agencies to hold an annual “refresher” training for liaisons, perhaps held in tandem with the annual summit in future years.

### ***4. Establish Channels for Ongoing Communication with Oregon’s Tribes during the Survey Process and Beyond***

In addition to in-person trainings for Agency Tribal Cultural Items Liaisons, we recommend establishing other channels for ongoing communication between those agency contacts and Oregon’s Tribes.

For example, an e-mail listserv—perhaps consisting of agency liaisons and tribal cultural resource officers—would allow liaisons to learn and share examples and information with the Tribes in real time. As they coordinate a look-around survey of their agencies, liaisons would be able to send an e-mail to the listserv when they have a question about a particular item or category of items, and interested Tribes would then have an opportunity to respond to the group. By reading that exchange of information, liaisons in other agencies could learn by example, and the dialogue could be posted online for the benefit of all.

Similarly, some of the agency liaisons already have expressed interest in opportunities for regular interaction with each other and with tribal members, perhaps at periodic brown-bag lunches or other events.

## ***5. Require Agencies to Perform an Initial Survey of Tribal Cultural Items within Six Months of the Orientation Training of Agency Liaisons***

As the Task Force and LCIS coordinate training for agency liaisons, we recommend a directive from the Governor that establishes a deadline for an initial look-around survey within each state agency. We believe that six months from the orientation of agency liaisons is a reasonable timeline for completion of an initial survey. That is a finite period of time that nonetheless allows for communication and back-and-forth between agency officials and the Tribes.

In addition to the timeline for that initial survey, we recommend a directive requiring that annual reports filed by agencies pursuant to Senate Bill 770 include a section that discusses agency efforts to identify and communicate with Tribes regarding tribal cultural items within the agency's possession.

## ***6. Work with the Tribes and the Department of Administrative Services to Develop and Provide Online Training Materials for State Employees***

During the Task Force's discussions with state agency directors, several directors expressed interest in having online training resources available regarding tribal cultural items. Those materials—perhaps developed collaboratively by the Tribes and the Department of Administrative Services—could then be used to provide staff-level training to agency employees. The Task Force recommends that the state and the Tribes work together to explore the feasibility of developing and disseminating that type of online training.

## **NEXT STEPS**

In addition to implementing the findings and recommendations in this report, the Task Force plans to discuss other matters in the months ahead. Among other things, those topics include:

- ***Tribal cultural items in educational institutions.*** The Task Force has had initial conversations regarding tribal cultural items held by state universities, community colleges, and public schools, but more discussion is needed. For purposes of that discussion, we may ask the Governor to appoint additional Task Force members from different types of educational institutions, so all perspectives are at the table.
- ***Preparation of survey template and/or methodology.*** Given the wide range of items that have cultural significance to Oregon's Tribes, it is challenging to discern a single survey method or template that can be used by agencies and other entities. That said, the Task Force will attempt to come up with a basic template or methodology, so there is at least some consistency in the information being gathered (*i.e.*, where the item was found; who found it; etc.).
- ***Discuss issues relating to funding.*** Once the Task Force fully considers the scope of work that state agencies and other public institutions will embark on pursuant to its

recommendations, it will make further recommendations as to whether state funding may be required for the completion of that work.

- ***Institutionalization of the Task Force's charge.*** Pursuant to Executive Order 17-12, the Task Force's authority expires one year after it first convened—in this case, April 2019. We believe that there will be ongoing work within the Task Force's charge that will extend beyond that date, and the Task Force will discuss best practices for institutionalizing that work (whether as a group within LCIS, an ongoing Task Force, or something else). We will make a follow-up recommendation to the Governor on that point.