



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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December 15, 2017

TO: Karen Quigley, Executive Director
Legislative Commission on Indian Services

FROM: Jim Rue, Director and Key Contact
Tim Murphy, Farm and Forest Lands Specialist and Alternate Key Contact

RE: **2017 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 (DLCD or the department) for 2017, as required by statute.

Major Highlights for 2017

- ✓ The department's Government-to-Government team and other agency staff are actively participating in cluster and work group meetings and other Tribal related activities.
- ✓ The Land Conservation and Development Commission (LCDC) held regularly scheduled meetings in Florence, La Grande, Salem, and St. Helens during 2017. LCDC meetings, particularly those held out of Salem, have traditionally provided an opportunity to hear from local jurisdictions and Tribal governments on issues of interest and concern. A Tribal Council member from the Confederated Tribes of Coos, Lower Umpqua and Siuslaw provided a welcome for the meeting in Florence.
- ✓ Gary Fish retired in 2017. Mr. Fish was the department's Transportation Planner and represented the department at the Cultural Resources Cluster, Economic and Community Development Cluster Group, and Natural Resources Workgroup for many years. Tim Murphy, Farm and Forest Lands Specialist, is continuing to represent the department at the Natural Resources Workgroup and has taken on Mr. Fish's duties at the Cultural Resources Cluster. Alwin Turiel, Land Use & Transportation Planner, is representing the department at the Economic and Community Development Cluster Group.
- ✓ During 2017, several Tribal governments continued work on Transportation Growth Management (TGM) planning grants awarded in prior years. TGM is a partnership program between DLCD and the Oregon Department of Transportation, which supports community efforts to expand transportation choices. The 2016 TGM grant award to the Klamath Tribes joins prior awards in 2014 and 2015 to the Coquille Indian Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of

the Coos, Lower Umpqua, and Siuslaw.

TRIBE	PROJECT	\$ AUTHORIZED	\$ EXPENDED*	TGM #
Coos, Lower Umpqua and Siuslaw	Coos Head Area Master Plan	\$182,080	\$132,439	3B-14
Coquille	Comprehensive Plan Transportation Element	\$192,895	\$86,958	3B-15
Umatilla	Mission Community Master Plan	\$195,100	\$166,682	5A-15
Klamath	Chiloquin Walkability Study	\$18,240	\$18,240	C2F4-15
Klamath	Bike-Pedestrian Master Plan	\$114,530	\$19,604	4A-16
<i>Total Authorized Funds</i>		<i>\$702,845</i>		

*Expended project funds as of Dec. 2017

- ✓ The 2016 TGM grant award to the Klamath Tribes builds on a TGM Education and Outreach project focused on bicycle and pedestrian safety for the Klamath Tribes and the City of Chiloquin. The prior Education and Outreach project was managed by DLCD Community Assistance planner Evan Manvel.

Department Relations with Indian Tribes

Oregon statutes (ORS 182.162-182.168, SB 770) require that state agencies that work with tribal governments submit annual reports describing their relationship in response to six factors provided in ORS 182.166. 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 the Tribes;
- Promotes communication between DLCD and the 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 originally directed 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. The department developed and presented the interest statement as directed in the Executive Order. Executive Order EO-96-30 was enacted into law by SB 770 in 2001. Following enactment of ORS 182.162-182.168 into

law, the department formalized and adopted a “Policy on Government-to-Government Relations with Oregon Tribes 07-02” (2007).

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 long-term economic and community land use objectives. Determine what projects and land use policy issues are of interest to the Tribes and keep them informed.*
- *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 adopted an overall communication policy with local governments that includes the Tribes: DLCDC 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 Report presented each year to the Governor and Legislative Commission on Indian Services.

Please refer to the agency's Annual Reports, located on our website at <http://www.oregon.gov/LCD/Pages/govtogov.aspx> to learn more about the establishment of the agency's policy for government-to-government relations that was formed under Executive Order 96-30 and ORS 182.164.¹

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

DLCDC Response to Subsection (b)

The primary and alternate key contacts, along with others assigned to the clusters or work groups, form the agency's core team on government-to-government relations.

Primary Key Contact on Government-to-Government Relations

Jim Rue, Director
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 934-0002
FAX: (503) 378-5518
E-mail: jim.rue@state.or.us

¹ Policies 07-02 and 06-01 are attached at the conclusion of this 2017 annual report. These two policies together have served the department well in the Government-to-Government process and have functioned as intended in our relationships with the nine Oregon Tribes since their adoption and implementation by the department.

*Alternate Key Contact on Government-to-Government Relations
Primary Contact to Natural Resources Work Group
Primary Contact to Cultural Resources Cluster Group*

Tim Murphy, Farm and Forest Lands Specialist
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 934-0048
FAX: (503) 378-5518
E-mail: timothy.murphy@state.or.us

Primary Contact to Economic and Community Development Cluster Group:

Alwin Turiel, Land Use & Transportation Planner
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 934-0064
FAX: (503) 378-5518
E-mail: ali.turiel@state.or.us

Additional DLCD staff members are responsible for developing and implementing programs, and providing services that may be of interest to the Tribes. Key staff are listed below and are available by dialing direct to the phone number indicated.

Amie Abbott, Executive Assistant to Director and LCDC, Phone: (503) 934-0045
Sadie Carney, Rural Policy Analyst/Communications Manager, Phone: (503) 934-0036
Matt Crall, Planning Services Division Manager, Phone: (503) 934-0046
Bill Holmstrom, Land Use & Transportation Planning Coordinator, Phone: (503) 934-0040
Gordon Howard, Community Services Division Manager, Phone: (971) 673-0964
Jon Jinings, Community Services Specialist, Phone: (541) 318-2890
Amanda Punton, Natural Resource Specialist, Phone: (971) 673-0961
Christine Shirley, Natural Hazards & Floodplains, Phone: (503) 934-0027
Patty Snow, Ocean/Coastal Services Division Manager, Phone: (503) 934-0052

Regional Representatives: See agency website for regional representative assignments.
<http://www.oregon.gov/LCD/Pages/repstlist.aspx>

The department's primary and alternate key contacts are responsible for assuring that the department is kept apprised of activities that may be of interest to the Tribes, to provide appropriate tribal contacts, and to ensure that the Tribes are informed of department activities. The department 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, DLCD promotes 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 following the 1996 Executive Order 96-30 that formalized the government to government relationship. The agency actively participates in the Natural Resources Workgroup, Cultural Resources Cluster, and Economic Development and Community Services Cluster, each of which is made up of representatives from other state agencies, and from the nine 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 also meets 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 a 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 work group meetings is reflected in the following list of meetings:

Natural Resources Workgroup: Tim Murphy attended meetings on April 24 and September 20, 2017 in Salem and provided updates on department activities including pertinent legislation, rulemaking, and grant opportunities.

Cultural Resources Cluster: Tim Murphy attended meetings on May 18 – 19 and September 12 – 13, 2017 in Salem and provided updates on department activities including pertinent legislation, rulemaking, and grant opportunities.

Economic Development and Community Services Cluster: Alwin Turiel attended the October 13, 2017 meeting at Chinook Winds Casino and Convention Center (hosted by the Confederated Tribes of Siletz Indians).

Other Meetings:

Department attendees at the 2017 Annual Summit hosted by the Confederated Tribes of Siletz Indians on December 2, 2017 at the Chinook Winds Casino in Lincoln City included:

- Jim Rue, Director
- Patty Snow, Ocean/Coastal Services Division Manager
- Tim Murphy, Farm and Forest Lands Specialist
- Alwin Turiel, Land Use & Transportation Planner

Tim Murphy and Alwin Turiel also attended the LCIS Fall Gathering and Learning Session on November 1, 2017 at the Chinook Winds Casino in Lincoln City.

On May 8, 2017, Tim Murphy attended the ad hoc meeting of natural resources state agencies arranged by the Governor's Office and presented the department's "Policy on Government-to-Government Relations with Oregon Tribes 07-02."

On August 16, 2017, Jon Jinings (Community Services Specialist) and Scott Edelman (Central Oregon Regional Representative) attended a Regional Solutions Team meeting with the Confederated Tribes of the Warm Springs regarding housing and economic development.

(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 department's designated contacts and others have participated in three of the cluster groups or work 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 tribal governments. DLCD is committed to continue those efforts.

Rulemaking stakeholder involvement: It is the department's practice to actively solicit rulemaking advisory committee membership from Tribal governments to participate during rulemaking, particularly when it involves issues, areas, or specific administrative rules of special interest and concern to the Tribes. The department did solicit Tribal participation on the Goal 5 Historic Resources rulemaking which was adopted in early 2017. A Tribal member from the Confederated Tribes of Grand Ronde did participate in a portion of one rulemaking advisory committee meeting in 2016.

Public Comment: Contributing to meeting its government to government policy objectives, DLCD schedules specific public comments discussion each time the Land Conservation and Development Commission (LCDC) conducts a regularly scheduled meeting. In addition, regional tours are also scheduled at selected commission meetings. Tribal participation is welcomed at the Commission's regular scheduled meetings around the state. In 2017, LCDC held three meetings in Salem and three meetings at other locations (Florence, La Grande, and St. Helens).

LCDC welcomes participation from all of the Tribes at its meetings, particularly Tribes located in or near the region where the LCDC meeting is held. LCDC is committed to conducting its regular meetings at locations around the state and will continue to welcome Tribal governments to participate in the meetings. Due to budget reductions for travel, only two meetings in 2018 will occur outside of Salem, specifically in Hood River and Seaside.

Web-based communication: DLCD's web site (<http://www.oregon.gov/LCD/Pages/govtogov.aspx>) provides information on the agency Government-to-Government program and relationship, 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 clusters and work 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)

Gary Fish attended the Tribal Government Legislative Day at the Capitol Building in February 2017 to interact with the Tribes and learn about legislative issues of concern.

Department attendees at the 2017 Annual Summit hosted by the Confederated Tribes of Siletz Indians on December 2, 2017 at the Chinook Winds Casino in Lincoln City included:

- Jim Rue, Director
- Patty Snow, Ocean/Coastal Services Division Manager
- Tim Murphy, Farm and Forest Lands Specialist
- Alwin Turiel, Land Use & Transportation Planner

Tim Murphy and Alwin Turiel also attended the LCIS Fall Gathering and Learning Session on November 1, 2017 at the Chinook Winds Casino in Lincoln City.

In addition, Gary Fish (longtime Alternate Key Contact) provided training to Tim Murphy and Alwin Turiel on Government-to-Government relations.

Throughout this report, department participation in Tribal clusters and workgroups is described. These meetings are an important source of training for department staff in a wide range of subjects of concern to the Tribes. 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 department policy under these statutes is Policy 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 Number 07-02 concerning Tribal Relations directly links to a second specific local government and Tribal Communication policy. Policy Number 06-01 "Local and Tribal Government Communication Policy" recognizes the role that local governments play in carrying out the

statewide planning program under administration by the department, and recognizes the department's role and communication obligations in the Government-to-Government process with the nine federally recognized Tribes in Oregon.

When new department staff that may work with a Tribe are hired, department arranges for staff's attendance at an annual training, brief them on cluster and work group activities, and provide an overview of the statutory requirements for working with Tribal governments on agency activities.

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), natural hazards and 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.

Rulemaking Advisory Committees: When undertaking administrative rulemaking, it is the department's practice to actively solicit rulemaking advisory committee (RAC) membership from Tribal governments to participate during rulemaking, particularly when the rulemaking involves issues or specific administrative rule areas of special interest and concern to the Tribes.

Goal 5: An ongoing issue identified by the Tribes is the need for the Land Conservation and Development Commission (LCDC) to better protect natural and cultural resources during the land use and development process. Please continue to refer to DLCD's 2003 Report for further discussion of Statewide Planning Goal 5 and its relationship to protection of cultural and natural resources.

Fee-to-Trust: The department's Alternate Key Contact, Tim Murphy, and Ocean and Coastal Services Division (OCSD) staff are responsible for managing the department's involvement in the Bureau of Indian Affairs (BIA) fee-to-trust process. BIA routinely sends the Governor notification of pending fee-to-trust transfers, and the Governor's office coordinates responses and concerns from departments back to the BIA. When coastal sites are being considered, 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 works cooperatively with Tribal governments, 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 the Grande Ronde, 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: The Ocean and Coastal Services Division (OCSA) invites tribal government representatives from the coastal Tribes to participate in periodic meetings held on the Oregon Coast with local jurisdictions and other coastal program partners. Several of these meetings occurred in 2017.

As mentioned above, OCSA reviews federal projects on the coast to ensure consistency with Oregon's Coastal Zone Management Program (OCZMP). These projects often involve the Tribes, including the Columbia River Inter-Tribal Fisheries Commission (CRITFC).

OCSA continues to work with the Oregon tribes on ocean issues. OCSA has worked with the tribes over the past year on the West Coast Ocean Partnership and the West Coast Regional Planning Body. The two groups had a person-to-person meeting this December in Long Beach, CA and hold monthly teleconference calls open to all interested tribes on the west coast.

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 membership seat for the "coastal" Indian Tribes. OCSA is pleased that there is a new tribal representative on the OPAC. OPAC held its second meeting of the year on November 1, 2017 in Astoria. As part of the Oregon Territorial Sea planning process for rocky shores, the department is working with the Governor's Office to send a letter of invitation to Oregon tribes to notify and engage them in the process. Currently there is a tribal representative on the Rocky Shores Working Group and there may be additional tribal representation depending on interest.

Issues and Concerns

DLCD's involvement to date in tribal affairs has resulted in many questions and discussions about ways to address various ongoing issues and concerns.

- Limited financial and other resources, including grant funding, are available to support Tribal transportation and land use planning, and cultural and natural resource identification, protection, and planning efforts; and
- Despite continued efforts, it is not entirely clear whether all Oregon local governments and jurisdictions continue to fully understand and, more importantly, respect the nature and scope of Tribal sovereignty for Oregon's nine federally recognized Tribes, and the department's Government-to-Government relationship with them. Turnover at the local government staff level, new hires, and the continuous presence of newly elected local government officials make this an ongoing issue of concern to be addressed, if by no more than providing them with a reminder of Tribal sovereignty. The department will continue to make it a priority to seek opportunities to discuss its Government-to-Government relationship with local jurisdictions and the Tribes as the need arises in general and on a case by case basis.

Over the coming year, the department will do its best to continue to address and find solutions to these identified ongoing issues and concerns, and to any new issues and concerns that arise in 2018. We understand that finding practicable solutions to identified issues and concerns is of as great importance to the nine Oregon Tribes as it is to the department.

Conclusion

DLCD's ability to interact with the Tribes and follow-up in a timely manner increased in the recent past with the establishment of a formal team of staff members to work on Government-to-Government relations. At that time, the department also named the agency director as the primary key contact and designated a staff member as the alternate key contact for the director. The small formal Government-to-Government team has continued to evolve and update its membership to better address coverage with the Tribes and the Government-to-Government process. To that end and to provide better service, the department has also made a concerted effort to involve more agency staff in the Government-to-Government process, both formally and informally. Department staff will continue to strive to consult and meet with the Tribes and seek resolution of issues in a timely and respectful manner. The training and education of new and existing department staff remains an important priority within the department.

In addition, Tribal governments have now been selected for five substantial Transportation Growth Management (TGM) grants in the past four years. The department is pleased about the progress being made on Tribal participation in and successful grant awards through the TGM program.

The department looks forward to continued cooperation with Tribal governments in 2018, and to an ongoing positive working relationship with the Tribes and with the Legislative Commission on Indian Services and its staff.