

DEPARTMENT OF FORESTRY AND TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONS

PURPOSE: There are nine federally recognized Indian tribal governments located in the State of Oregon. These Indian tribes were in existence prior to the foundation of the United States of America and thus retain a unique legal status.

The Department of Forestry (Department) and each tribal government have mutual interests in the Department's programs listed below:

- Private and Community Forests
- Protection From Fire
- State Forests
- Administration
- Forest Resource Planning

State law and executive direction requires that the Department work together with the tribes as we develop and implement these programs.

POLICY: The above programs will follow the processes described to resolve potential conflicts, maximize intergovernmental relations, and enhance exchange of ideas and resources for successful planning and implementation of our policies and programs that may effect the tribes.

AUTHORITY: ORS 182.162-168
ORS 190.110
Executive Order No. 96-30

REFERENCE: Memorandum of Agreement (MOA) Oregon Department of Forestry and State Historical Preservation Office (Attachment 1).

STANDARDS:

- A. In consultation with tribes, the Department will identify actions that may effect tribal programs. In addition, District Foresters and Area Directors will coordinate an annual meeting with tribal representatives, at the level and in the forum requested by the tribes, (i.e., meeting with the tribal council, natural resources program manager, or a tribal committee) to evaluate their input in all program planning, development, and implementation.
- B. The Department will notify tribes to ensure they are aware of and have the opportunity to be included when the Department develops or implements policies, plans, or programs that may affect them. The Department will ensure this information is communicated to the tribes at statewide 'government-to-government' meetings and at periodic or annual program/district meetings. The Department will provide the Legislative Commission on Indian Services (LCIS)

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with information concerning the Department's collaborative advisory committee approach and request suggestions regarding an individual who will serve as a tribal representative on those committees which the tribe(s) choose to have representation.

- C. Leadership Team members will have adequate training and orientation in regard to ORS 182.162-168, tribal government, cultures and protocols. In addition, at a minimum, all field employees with cultural resource responsibilities at the Natural Resource Specialist 2 level and above will have adequate training to recognize, and take appropriate steps to protect cultural resources encountered during state forest operations, fire suppression, forest practice operations, and private operations associated with federal cost share programs.
- D. The Department may enter into compacts, Memorandums of Understanding, Memorandums of Agreement, partnership agreements, or other formal or informal mechanisms with tribal entities that better define roles and expectations that address issues of mutual interest.
- E. As required by ORS 182.166(3), the Department shall submit an annual report no later than December 15 of every year, to the Governor and to the LICS on the activities of the Department under ORS 182.162 – 168. This report will include:
 - 1. The policy of the Department adopted under ORS 182.164;
 - 2. The names of the individuals in the Department who are responsible for developing and implementing Department programs that affect tribes;
 - 3. The process the Department established to identify the programs that affect tribes;
 - 4. The efforts of the Department to promote communication between Department and tribes and government-to-government relations between the state and tribes;
 - 5. A description of the training required by ORS 182.166(1); and,
 - 6. The method the Department established for notifying employees of the provisions of ORS 182.162-168 and the policy the Department adopted under ORS 182.164 (i.e., this directive).
- F. ORS 182.162-168 is meant to increase communications, build partnerships, and maintain positive relations between state agencies and Oregon tribes. Part of the process may include the use of intergovernmental agreements. When discussions between a tribe or tribes and the Department are anticipated to result

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in a contract or some other type of legally-binding agreement, the Department of Justice will be notified and consulted.

- G. The Department of Justice should also be consulted whenever issues arise which involve the jurisdiction of the Department or tribe, or which appear to raise issues which might be shared with other agencies and tribes elsewhere in the state.

RESPONSIBILITIES:

- A. An Executive Team member, appointed by the State Forester, is the Department's designated cabinet level individual and is accountable to the Governor's Office for the implementation of ORS 182.162-168. This designated Executive Team member is responsible to: identify and designate program activities that may affect tribes and that are within the scope of this directive, inform tribes at statewide government-to-government meetings of the scope and context of agency-wide policies and plan development or implementation that may impact them, seek input from tribes, and submit the annual report to the Governor and to the LCIS.
- B. Program Directors are responsible to ensure that appropriate program policies will include tribal government participation and input, while District Foresters and Area Directors are the primary operational-related contacts in the field. The LCIS is a resource for information on tribal government, training, culture, and protocol.
- C. When programs are implemented in the field, Area Directors, working with District Foresters, will ensure that tribes have the opportunity to participate and provide input. In addition, at a minimum, an annual meeting will be held with tribal representatives, at the level and in the forum requested by the tribes, (i.e., meeting with the tribal council, natural resources program manager, or a tribal committee) to evaluate their input in all program planning, development, and implementation. Area Directors will ensure that District Forester participation at the annual meeting will be sufficient to effectively evaluate tribal input to program implementation while minimizing geographic jurisdictional overlap. If necessary, the Department will explore with LCIS the most effective way to initiate and/or enhance these visits.
- D. Assistant State Foresters will provide the necessary oversight and supervision to ensure that this policy is carried out at the program level.
- E. Area Directors will assure that this policy is implemented at the operational level, including facilitating communication and working on tribal issues that cross District lines and ensuring that Program Directors are informed about any operational issues that may arise relating to tribes.

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- F. Program Directors, District Foresters, and Executive Team shall be fully aware of requirements and responsibilities of the MOA with State Historic Preservation Office (SHPO) (Attachment 1). These leaders shall ensure that employees with cultural resource responsibilities receive the appropriate training to carry out the intent of this directive and the MOA.
- G. Field employees responsible for laying out and administering state land management activities, directing fire suppression actions, administering the Oregon Forest Practices Act, and assisting private landowners with federal cost share programs will observe activity areas, and identify areas of likely cultural resource value. Operations under department control will be designed or directed to protect or minimize impacts on resource sites. Private landowners proposing operations likely to impact cultural sites will be advised of their responsibility to protect those sites. If burial sites or possible human remains are observed, department employees will notify SHPO, LCIS, and their respective program. If human remains (bones) are found, also contact the nearest Oregon State Police office.

REVIEW: This directive will be reviewed and updated within three years from the date of issue by the Executive Team member responsible for government-to-government relations.

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**MEMORANDUM OF AGREEMENT
between
OREGON DEPARTMENT OF FORESTRY
and
STATE HISTORIC PRESERVATION OFFICE**

cc: ES-E
AD
PD
DF
From: Roy Woo
August 5, 2002

The Oregon Department of Forestry (ODF) and the State Historic Preservation Office (SHPO) encourage protection of cultural resource sites during forest activities through enhanced awareness and understanding of ODF employees, forest landowners, and operators of applicable statutes and administrative rules. Cultural resource sites are acknowledged to be finite, irreplaceable, and nonrenewable and are an intrinsic part of the cultural heritage of the people of Oregon. The significance of cultural resource sites to Native Americans is recognized, and government to government relations and agreements require our joint efforts to ensure appropriate protection.

1. Purpose

This agreement defines the roles and responsibilities of each organization in meeting the objectives set forth below. It acknowledges that SHPO has the lead role for the State of Oregon in coordinating cultural resources protection and promotes communication and positive working relations between SHPO and ODF, and with individual tribes in the development and implementation of ODF programs that affect tribes.

2. Objectives

SHPO: It is the objective of SHPO to maintain a comprehensive, statewide survey to identify sites, buildings, structures, and objects that are potentially significant in Oregon history, prehistory, architecture, archaeology, and culture. It is the further objective of SHPO to assist ODF in providing information and education on the economic and social benefits of developing historical and cultural resources.

SHPO was established in 1967 within the Oregon Parks and Recreation Department and is an integral part of national preservation under terms of the National Historic Preservation Act of 1966. The program is mandated by parallel state legislation [ORS 358, ORS 390] and administrative rule [Chapter 736, Division 51, in part].

ODF: It is the objective of ODF to promote agency, landowner, and operator compliance and resource site protection through enhanced awareness and understanding of the statutes and rules under ORS 358.904 to 358.955 and applicable federal law. As a steward of public lands, ODF is directed under ORS 358.910 to preserve and protect objects and sites that are of archaeological significance. The Board of Forestry (BOF) has directed ODF to assist landowners

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and operators in complying with archaeological site and object protection laws by sharing relevant site information.

ODF and SHPO: It is the objective of both agencies to: develop and encourage interagency relationships; cooperate in inventory and protection of sites; and encourage tribal interests to work with ODF and forest landowners to develop management plans that protect Native American sites.

3. Legislative Authority

ORS 358.612 states in part: (1) "[SHPO] Shall conduct or cause to have conducted a comprehensive, statewide survey to identify districts, sites, buildings, structures and objects that are potentially significant in Oregon history, prehistory, architecture, archaeology and culture. (3) Shall maintain a statewide inventory of historic properties. (9) Shall provide or assist other appropriate state agencies in providing information and education on the economic and social benefits of developing historical and cultural resources."

ORS 358.910 (1): "Archaeological sites are acknowledged to be a finite, irreplaceable, and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Oregon. As such, archaeological sites and their contents located on public land are under the stewardship of the people of Oregon to be protected and managed in perpetuity, as a Public trust."

ORS 358.920 (1)(a): "A person may not excavate, injure, destroy or alter an archaeological site or object, or remove an archaeological object located on public or private lands in Oregon unless that activity is authorized by a permit issued under ORS 390.235. (b) Collection of an arrowhead from the surface of public or private land is permitted if collection can be accomplished without the use of any tool."

ORS 527.630 (Oregon Forest Practices Act): (2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies that deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forestlands. (3) " . . . (l) It is declared to be in the public interest to coordinate with other state agencies and local governments which are concerned with the forest environment."

ORS 527.710 (4) SHPO is included in "programs affected by forest operations" requiring consultation before adoption of rules governing forest practices by the Board of Forestry. The Board's duty under Section (5) is to " . . . consider and accommodate the rules and programs of other agencies to the extent deemed by the Board to be appropriate and consistent with the purposes of ORS 527.630."

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4. SHPO Roles and Responsibilities:

- 4.1 SHPO encourages forest operators and landowners, including the State, to survey all lands suspected or known to have cultural resource sites in order to minimize discovery or inadvertent disturbance after operations have started. For the purposes of this agreement, survey is defined as the systematic search for cultural resources across the landscape and the recording of surface characteristics of sites and artifacts.
- 4.2 SHPO maintains a comprehensive, statewide inventory of sites, buildings, structures, and objects that are potentially significant in Oregon history, prehistory, architecture, archaeology, and culture.
- 4.3 SHPO provides information and education on the economic and social benefits of developing historical and cultural resources.
- 4.4 SHPO sets standards and provides technical advice on conducting archaeological surveys to cultural resources that are potentially significant.
- 4.5 SHPO sets standards and provides technical advice on collecting and recording appropriate site information.
- 4.6 SHPO, in collaboration with ODF, will develop within two years of the date of this agreement a means for ODF field personnel to assess if known sites are located near a proposed operational area, or if there is a high probability or likelihood of sites existing in the vicinity.
- 4.7 SHPO agrees to develop a suitable short-term solution for sharing information of known sites within one year of the date of this agreement.
- 4.8 Both SHPO and ODF acknowledge that there is a long-term need to convert the present inventory information into a Geographic Information System, and agree to joint development of future biennial budget requests for funding.

5. ODF Roles and Responsibilities

- 5.1 **General:** ODF employees work in different capacities with regard to cultural resource site protection. Each role has different statutory requirements and procedures.
 - a. District Foresters are responsible for periodic review of county comprehensive plans to identify new sites that are inventoried under the Goal 5 requirement of the Statewide Land Use Program that local governments inventory and evaluate significant cultural resources, including sites, structures, objects, and cultural areas. Local governments are to adopt land use programs that will protect cultural sites following the procedures in OAR Chapter 660, Division 16.

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- b. District Foresters are responsible for periodic consultation with affected tribal governments to identify their areas of interest and the location of cultural resource sites requiring preservation, if the tribes are willing to share such information. ODF will encourage that each respective tribe share this information with SHPO.
 - c. Other interests, such as local pioneer organizations, will be encouraged to subscribe to notifications of Forest Practices operations in their area of interest and to work directly with operating landowners.
 - d. ODF personnel, as a part of their normal duties, will provide information to private landowners and operators about statutes, and rules related to archaeological sites. To the extent ODF employees are aware of potential or known archaeological objects and sites, they are responsible for informing private landowners and operators proposing activities that might impact such objects or sites.
 - e. ODF personnel shall not report or record archaeological sites on private land. Private landowners may choose to report or record sites on their property and will be encouraged to do so; however, ODF has no authority to require reporting or recording.
 - f. ODF acknowledges the sensitivity of information on inventoried archaeological sites and will limit access and use of site information to ODF employees who have been trained on cultural resources and site protection. Site information includes maps and databases in either paper or electronic formats.
 - g. ODF will refer requests for site information from landowners, landowner representatives, land managers, operators, or the public to SHPO and the respective tribes.
- 5.2 Public Land Management:** ODF as a public land manager has the responsibility to protect and manage archaeological sites located on State Forests. State Forests are managed under Forest Management Plans developed for different planning regions. The approved Forest Management Plans for these public lands identify strategies for protection of archaeological sites and objects in accordance with ORS 358.910.
- a. The cultural resource strategies recognize that historic sites, relics, and structures are a public resource and provide important clues to the historic use of state forestlands. The cultural resource management program for Oregon's State Forests, to meet both legal protection mandates and internal protection priorities, requires:

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1. Inventory and assessment of cultural resource sites and prehistoric and historic cultural resource review which will be updated on a periodic basis. This includes the general landscape level documentation of known and suspected cultural resource sites based on a review of publications, maps, photos, library collections, and information derived from interviews, local folklore, or other oral history sources.
 2. Development of a cultural resource database for tracking and planning purposes, including a system of recording, filing, and retrieving cultural resource site data from Geographic Information System (GIS) overlays and basin-level inventories.
 3. Development of procedures for integrating site protection into forest activity plans by providing practical guidelines for recognizing, assessing, recording, and protecting sites. These procedures will include the specific steps and criteria that will be used to determine when a forest activity or operation will require a survey for archaeological resources to be conducted by a professional archaeologist.
- b. State forests were acquired in different ways. Some state forest parcels were granted to the state by the federal government when Oregon became a state in 1859. These lands are owned by the State Land Board, are known as Common School Lands, and managed by ODF through an agreement with the State Land Board and Division of State Lands. Lands owned by the Board of Forestry consist primarily of lands that were in private ownership in the early 20th century, foreclosed for nonpayment of taxes, and subsequently deeded to the State by individual counties.
- 5.3 Private and Non-federal Lands:** ODF directly administers the Oregon Forest Practices Act on all non-federal forestland; provides technical assistance and administers federal cost-share programs on non-industrial forest ownership; manages wildland fire incidents or other emergency situations; and conducts fire suppression.
- a. When ODF receives a forest practices notification for a proposed operation, administers a federal cost-share, either of which may impact a suspected or known archaeological site, or when a suspected archaeological site is discovered by an ODF employee, ODF will:
 1. Inform the landowner/operator of the archaeological object and site laws (ORS 358, ORS 390) and administrative rules (OAR Chapter 736, Division 51) that protect these sites.

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2. Inform the landowner/operator that the county may also have regulations related to these sites and that they should contact the county planning department.
 3. Inform the landowner/operator of the National Historic Preservation Act regulations when federal funds are involved.
- b. When ODF is managing or conducting emergency operations which may also include action on federal lands:
1. Identified archaeological objects or sites will be protected from disturbance to the extent practicable, while providing for human safety and protection of other resources at risk.
 2. The landowner, landowner representative, or land manager will be notified and a protection strategy will be developed based on communication with the landowner or landowner representative.
 3. When archaeological objects or sites are discovered during emergency operations, site assessments and rehabilitation beyond normal fire line rehabilitation for erosion control is the choice and responsibility of the landowner. To the extent practicable, ODF will combine site protection with normal fire line rehabilitation.

6. Training

6.1 ODF Employees: Within one year of the date of this agreement, ODF and SHPO will develop an internal training program and/or participate with other interested state and federal agencies in a cooperative training program to improve the awareness and understanding of ODF personnel. The training program will, at a minimum, include:

- a. Purpose, goal, and importance of archaeological preservation.
- b. Overview, discussion, and examples of prehistoric and historic sites.
- c. National Historic Preservation Act.
- d. Applicable state statutes and administrative rules.
- e. Role of State Historic Preservation Office.
- f. Native American perspective.

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- g. Status of tribes, rights of members of tribes, and issues of concern to tribes as offered by Department of Administrative Services in consultation with the Commission on Indian Services.
- h. ODF responsibilities, policy, and procedures to follow.
- i. Field exercises in identification of archaeological sites and objects.

6.2 **Operator and Landowner Assistance:** Within one year of the date of this agreement, SHPO and ODF will develop an informational brochure that outlines the significant federal and state statutes, and provides general guidance for forest landowners and operators to comply with protection and preservation of archaeological sites and objects.

7. Other Considerations

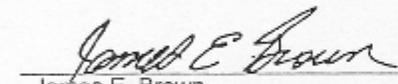
Provisions of this agreement will be jointly reviewed and updated if needed on at least a biennial basis.

Nothing contained herein shall obligate either party for expenditures in excess of funds made available by the governing boards of each agency for activities envisioned by this agreement.

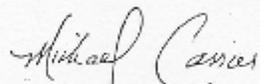
This agreement shall remain valid until modified or cancelled by one or both of the parties, such notice to be in writing.

Organizational contacts for this agreement are the Deputy State Forester, Oregon Department of Forestry, and Deputy State Historic Preservation Officer and Manager, State Historic Preservation Office.

Approved:



James E. Brown
State Forester
Oregon Department of Forestry



Michael Carrier
State Historic Preservation Officer
Oregon Parks & Recreation Department

Date: 6/12/02

Date: 7-1-02