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This article won the NWAC 2020 student paper competition for Cultural Anthropology.

The State of Oregon and Nine Federally-Recognized Tribes Forge a Path Forward

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Abstract *Today, state agencies in Oregon meet regularly and attempt to work closely with Oregon's nine federally-recognized Tribes to discuss shared issues and concerns in a variety of disciplines. While the authors of the articles in this volume focus their discussions on consultation and collaboration in regard to cultural resources, the State recognizes that tribal issues affecting many other fields exist and are meeting regularly to improve communication on a range of other topics. However, promoting communication and consultation between the State of Oregon and the nine federally-recognized tribes in Oregon has not always been in practice, and it is only in the last 35 years that state agencies have been seeking to actively contact and consult with tribes in general.*

Keywords

Tribal consultation, tribal partnerships, tribal relations, Oregon tribes, state consultation, repatriation, collaboration, LCIS

Recognizing the Value of Partnerships: A History of Dialogue in Developing and Improving Relations between the State of Oregon and Nine Federally-Recognized Tribes—An Introduction

Dennis G. Griffin

Abstract *This article is designed to serve as an introduction to the collection in which tribal and state agency authors highlight the history and success of recent efforts in Oregon to communicate, consult, and collaborate in topics of shared interest to cultural resources.*

Originally designed as a symposium for the 2020 Northwest Anthropological Conference, when the meetings were cancelled due to the coronavirus pandemic, the authors felt that the efforts that were currently underway between Oregon's nine federally-recognized Indian tribes

and the State of Oregon deserved a wider forum in order to talk about shared state initiatives, cooperative groups, and collaborative projects that are bringing the State and Tribes closer together. These consultation efforts are improving the relationship between the groups, as well

as creating a stronger understanding of tribal culture among state agencies. It is hoped that knowledge of these efforts might encourage further collaboration between other Oregon state agencies, other states and tribes, as well as with members among our discipline (archaeologists/anthropologists) in addressing the future recognition and treatment of cultural resources from a wide range of direct and indirect agency/project effects. The articles that follow this introduction are designed to highlight the changing relationship between the State of Oregon and the nine federally-recognized Indian Tribes within its boundaries, in recognition of a variety of issues that are of concern to each group including our natural resources and historic properties.

Historic Background

In order to set the stage for discussing the collaborative efforts that are now occurring between state agencies and tribal nations in Oregon, I provide some important historic background on how such groups have interacted over time so that the current state of consultation can be seen through a more accurate light. Prior to the arrival of the Lewis and Clark Expedition to the mouth of the Columbia River in 1805, contact between Native peoples in the region and Euro-Americans was largely confined to short-term interactions with fur traders from the British North West Company and an occasional trading or whaling ship that stopped along the coast for fresh water, supplies and furs. Interactions were usually limited in time and degree of contact with Europeans remaining more dependent on the Native traders for successful trade (Cole and Darling 1990). Such limited trading opportunities had little long term effect on local lifeways; however, the introduction of infectious diseases (e.g., small pox in 1775 and 1801) resulted in decimating regional Native populations by at least one third (Boyd 1990).

Federal Consultation with Tribes

Following the arrival of the Lewis and Clark Expedition, traders began to work their way out west to seek greater opportunities for fur and acquire land for new settlement. With the discovery and increased use of the Oregon Trail, by the early 1840s settlers from the eastern United States began to head west in large wagon trains (Coan 1921; Scott 1928). With the signing of a treaty (i.e., *Treaty between Her Majesty and the United States of America, for the Settlement of the Oregon Boundary*) in June of 1846 between Great Britain and the United States, which established a political border between the two nations along the 49th parallel (Commager 1927; Scott 1928), the westward migration of new settlers greatly increased. This was followed by the formal incorporation of the Oregon Territory in August 1848. The Oregon Territory declared that nothing in it “shall be construed to impair the rights of persons or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians” (Library of Congress 1875a:323).

Treaty Negotiations

While informal trading agreements undoubtedly existed between both British and American fur trappers and local tribes (Fisher 1994), until the incorporation of the Oregon Territory, no formal consideration had occurred between the newly arriving settlers and the Indigenous native peoples who had occupied these lands for many millennia. In 1850, Anson Dart was appointed as the first full-time Superintendent of Indian Affairs for the Oregon Territory, and he was assigned the mission to negotiate treaties between the federal government and the tribal nations within the territory. In June of 1851, the U.S. Government signed an *Act Authorizing the Negotiations of Treaties with the Indian Tribes in the Territory of Oregon for the Extinguishment of their Claims to Lands Lying West of the Cascade Mountains* (Library of Congress 1875b). This Act

authorized the establishment of the Willamette Valley Treaty Commission, which convinced the Indians of western Oregon to sign the first of six treaties between the U.S. Government and native peoples (Boxberger n.d.; Coan 1921). Later, other government spokesmen assisted in convincing area tribes to sign numerous other treaties in good faith, many of which were never recognized by the federal government in Washington D.C. A minimum of 27 unratified treaties and agreements and 19 ratified treaties and agreements (Table 1) were signed between the United States and tribal peoples living in Oregon between the years 1851–1901 (Kappler 1904; Clemmer and Stewart 1986:526–537; Beckham 1990:182, 1998:152–155; Deloria and DeMallie 1999). The U.S. Government’s negotiating and signing of so many early treaties with tribes removed tribal access to and use of much of their traditional lands, and opened these lands for Euro-American settlement. Access restrictions and settlement occurred following the signing of each agreement, even with over half of the signed documents never being officially ratified, which did little to foster a spirit of trust, cooperation and consultation between the parties.

The earliest treaty negotiations (Figure 1) concentrated in western Oregon and were largely designed to convince western tribes and bands to give up their traditional territories in exchange for small reserved areas of land or reservations located east of the Cascade Mountains, thereby opening up western Oregon (i.e., lands east of the Cascade Mountains) to Euro-American settlement. Western Oregon tribes uniformly rejected such a move (Boxberger n.d.; Coan 1921) and argued to remain living on a portion of their traditional territory. Therefore, almost from the beginning, Dart and the Treaty Commission’s efforts concentrated on the creation of numerous small reservations within lands familiar to the tribes with whom they were negotiating. Dart also recognized the continued importance of fishing and other activities to Indian survival, and he reserved such rights within six of the nine 1851 Tansy Point treaties. However, since

such early treaties failed to fully clear western Oregon for Euro-American settlement, they were opposed by the Secretary of Interior and were never ratified by Congress. Later treaty making was conducted in an effort to establish peace among the western tribes and early settlers, which led to the creation of a few larger reservations to be used by a confederation of tribes, largely unfamiliar with the lands they were being moved on to. As such, concessions regarding the continued use of ceded lands were not considered, and the use of off-reservation natural resources was omitted from all ratified western Oregon tribal treaties.

Treaty negotiations with tribes from eastern Oregon and Washington took a different direction and culminated in the Walla Walla Treaty Council of 1855, led by Isaac Stevens, Washington’s Territorial Governor, and Joel Palmer, Oregon’s Superintendent of Indian Affairs (Coan 1922). Over several days in June, tribal members from the Walla Walla, Cayuse, Umatilla, Nez Perce, and Yakama met and negotiated the signing of three separate treaties. Aside from the creation of reservations, each of these later ratified treaties included the retention of tribal rights to lands ceded to the U.S. government, including the exclusive right of taking fish in the streams running through and bordering the reservations, as well as at all Usual and Accustomed (U&A) stations, and the rights to hunt, gather roots and berries, and pasture their stock on all unclaimed lands in common with citizens. Stevens and Palmer regarded the treaties as tools of assimilation, which would provide tribes the time to adjust to an agricultural lifestyle; however, in recognition that the tribes would need time to adjust to this change in lifestyle, allowing tribes to fish, hunt, and gather at their traditional sites would lessen the shock of the land cessions, while saving the government from having to provide provisions during this period of transition (Fischer 2010:49). Later that summer Joel Palmer negotiated a similar treaty with the Tribes of Middle Oregon and included the same reserved rights (Coan 1922). These are the only treaties in Oregon to

Table 1. Unratified Treaties and Agreements

Year	Treaty	Location	Signer	Date	Result
1851	Santiam Band of Kalapuya	Champoeg	J.P. Gaines, A.A. Skinner & B.S. Allen	16-Apr	Cession of lands, reservation creation
1851	Twalaty Band of Kalapuya	Champoeg	J.P. Gaines, A.A. Skinner & B.S. Allen	19-Apr	Cession of lands, reservation creation
1851	Luck-a-mi-ute Band of Kalapuya	Champoeg	J.P. Gaines, A.A. Skinner & B.S. Allen	2-May	Cession of lands, reservation creation
1851	Yamhill Band of Kalapuya	Champoeg	J.P. Gaines, A.A. Skinner & B.S. Allen	2-May	Cession of lands, reservation creation
1851	Principle Band of Molale	Champoeg	J.P. Gaines, A.A. Skinner & B.S. Allen	6-May	Cession of lands, reservation creation
1851	Santiam Band of Molale	Champoeg	J.P. Gaines, A.A. Skinner & B.S. Allen	7-May	Cession of lands, reservation creation
1851	Rogue River Indians	-	J.P. Gaines	14-Jul	Peace
1851	Clatsop	Tansy Point	A. Dart, H. Spaulding & J. Parrish	5-Aug	Cession of lands, use of fishing grounds, reserved rights*
1851	Naalem Band of Tillamook	Tansy Point	A. Dart, H. Spaulding & J. Parrish	6-Aug	Cession of lands, use of fishing grounds, reserved rights
1851	Lower Band of Tillamook	Tansy Point	A. Dart, H. Spaulding & J. Parrish	7-Aug	Cession of lands, use of fishing grounds, reserved rights
1851	Nuc-quee-clah-we-muck	Tansy Point	A. Dart, H. Spaulding & J. Parrish	7-Aug	Cession of lands, live on land during life of chief
1851	Waukikum Band of Chinook	Tansy Point	A. Dart, H. Spaulding & J. Parrish	8-Aug	Cession of lands, reservation creation, reserved rights*
1851	Kathlamet Band of Chinook	Tansy Point	A. Dart, H. Spaulding & J. Parrish	9-Aug	Cession of lands, reservation creation
1851	Wheelappa Band of Chinook	Tansy Point	A. Dart, H. Spaulding & J. Parrish	9-Aug	Cession of lands, reservation creation
1851	Lower Band of Chinook	Tansy Point	A. Dart, H. Spaulding & J. Parrish	9-Aug	Cession of lands, reservation creation, reserved rights*
1851	Klatskania Band of Chinook	Tansy Point	A. Dart, H. Spaulding & J. Parrish	9-Aug	Cession of lands, reservation creation, reserved rights*
1851	Rogue River Treaty [To-to-on, You-quee-chae & Qua-ton-wah Bands]	Port Orford	A. Dart, H. Spaulding & J. Parrish	20-Sep	Cession of lands, live on land 10+ years, continue fishing
1851	Ya-su-chah	Port Orford	A. Dart, H. Spaulding & J. Parrish	20-Sep	Cession of lands, live on land 10+ years, continue fishing
1851	Clackamas	Oregon City	A. Dart	6-Nov	Cession of lands, peace, live on lands during lifetime, reserved rights*
1853	Rogue River Indians	Table Rock	J. Lane	8-Sep	Peace, reservation creation
1854	Tualatin band of Kalapuya	Wapato Lake, Oreg Territory	J. Palmer	25-Mar	Cession of lands, reservation creation
1855	Oregon Coast Tribes Treaty	-	J. Palmer	11, 17, 23 & 30 Aug, 8 Sep	Cession of lands, reservation creation
1864	Modoc	-	E. Potter, D. Keam, E. Steele	14-Feb	Peace, move to reservation
1867	Bannock	Long Tom Creek, Idaho Terr.	Gov. D.W. Ballard	26-Aug	Cession of lands, move to Fort Hall Reservation
1868	Shoshone	Fort Harney	J.W.P. Huntington	10-Dec	Peace, move to reservation
1879	Chief Joseph Band of Nez Percés (Agreement)	-	-	31-Jan	Cession of lands, reservation creation
1898	Indians of the Klamath Reservation (Agreement)	Klamath Agency	W.J. McConnell	27-Dec	Reduction of reservation lands

* Reserved rights in unratified treaties restricted to use of Usual and Accustomed (U&A) fishing locales, pasturing stock, use of timber, and use of beached whales. Ratified treaties in Eastern Oregon noted exclusive right of taking fish in streams running through and bordering reservations, along with all other U&A stations, hunting, gathering roots and berries and pasturing of stock on unclaimed lands. Klamath treaty restricted reserved rights to lands within reservation.

Table 1 (cont). Ratified Treaties and Agreements

Year	Treaty	Location	Signer	Date	Result
1853	Rogue River Tribe	Table Rock	J. Palmer	10-Sep	Cession of lands, reservation creation
1853	Umpqua - Cow Creek Band	Cow Creek, Umpqua Valley	J. Palmer	19-Sep	Cession of lands, reservation creation
1854	Rogue River Tribe	Table Rock	J. Palmer	15-Nov	Adding tribes to Table Rock Reserve
1854	Chasta, etc.	Rogue River	J. Palmer	18-Nov	Cession of lands, move to Table Rock Reserve
1854	Umpqua and Kalapuya	Calapooia Cr., Douglas County	J. Palmer	29-Nov	Cession of lands, move to temporary reservation
1855	Kalapuya, etc. [Calapooia, Molalla, Tumwater, Clackamas]	Dayton	J. Palmer	22-Jan	Cession of lands, move to temporary reservation
1855	Walla Walla Cayuse	Camp Stevens, Walla Walla	I. Stevens & J. Palmer	9-Jun	Cession of lands, reservation creation, reserved rights*
1855	Nez Percés	Camp Stevens, Walla Walla	I. Stevens & J. Palmer	11-Jun	Cession of lands, reservation creation, reserved rights*
1855	Tribes of Middle Oregon	Wasco, near The Dalles	J. Palmer	25-Jun	Cession of lands, reservation creation, reserved rights*
1855	Molala	Dayton, Umpqua Valley	J. Palmer	21-Dec	Cession of lands, reservation creation
1864	Klamath [Klamath, Modoc, Yahooskin Band of Snake Indians]	Klamath Lake	J.W.P. Huntington & W.Logan	14-Oct	Cession of lands, reservation creation, reserved rights*
1865	Tribes of Middle Oregon	Warm Springs Reservation	J.W.P. Huntington	15-Nov	Restriction to reservation; Allotment of land
1865	Woll-pah-pe tribe of Snake Indians	Sprague River Valley	J.W.P. Huntington	12-Aug	Peace, cession of lands, move to Klamath Reservation
1875	Alesea and Siletz (Agreement)	-	18 Statute 466	3-Mar	New reservation boundary
1882	Umatilla Indians (Agreement)	-	22 Statute 297	5-Aug	Sale of land adjacent to Pendelton
1885	Cayuse, Walla Walla, and Cayuse (Agreement)	-	23 Statute 340	3 Mar	Allotment of lands and sale of surplus lands
1892	Indians of Siletz Reservation (Agreement)	Siletz Agency	R.P. Boise, W.H. Odell & H.H. Harding	31-Oct	Sell unallotted land on reservation
1901	Klamath, Modoc & Yahooskin Band of Snake (Agreement)	Klamath Agency, Oregon	J. McLaughlin	17-Jun	Reduce size of reservation
1901	Indians of Grand Ronde Reservation (Agreement)	Grand Ronde Agency	J. McLaughlin	27-Jun	Sell unallotted land on reservation

* Reserved rights in unratified treaties restricted to use of Usual and Accustomed (U&A) fishing locales, pasturing stock, use of timber, and use of beached whales. Ratified treaties in Eastern Oregon noted exclusive right of taking fish in streams running through and bordering reservations, along with all other U&A stations, hunting, gathering roots and berries and pasturing of stock on unclaimed lands. Klamath treaty restricted reserved rights to lands within reservation.



Figure 1. 1851 Sketch map of the Willamette Valley showing purchases and reservations by Board of Commissioners appointed to treat with the Indians of Oregon (Hayes 2011:58)

reserve such rights for tribal peoples, except for the Klamath Tribes' treaty (1864), which retained for them the rights to hunt, fish, and gather on lands within their reservation. All other Oregon treaties did not note the retention of such traditional rights within lands that were ceded or incorporated within their original reservation boundaries. Figure 2 highlights the major land cessions ceded to the U.S. government by past Indian treaties in addition to the reservations that were established.

State Consultation with Tribes

While the State of Oregon was officially recognized in 1859, the recognition for the need of consultation between the State of Oregon and local Tribes was not always apparent. At the time of statehood, until at least the mid-twentieth century, Oregon lacked any real recognition of the need to consult with tribes since tribal consultation was largely left to the federal

government, which managed tribal issues from the reservations where tribal people had been relocated following the nineteenth-century wars and treaties. While federal treaties outlined provisions for the welfare of tribes and their rights to resources both on and off reservation lands, interaction between tribal members and the State was a confusing one. With the signing of subsequent treaties and agreements between the federal government and tribes, Indian reservations in Oregon were continually reduced in size with tribal lands being ceded to the federal government, which in turn made such lands largely available to the State for settlement. State laws took over the management of these lands and its resources where federal laws had earlier control. The recognition of where Indians retained off-reservation treaty resource rights, as compared with where the State managed such resources, was often unclear leading to major legal battles throughout the late nineteenth

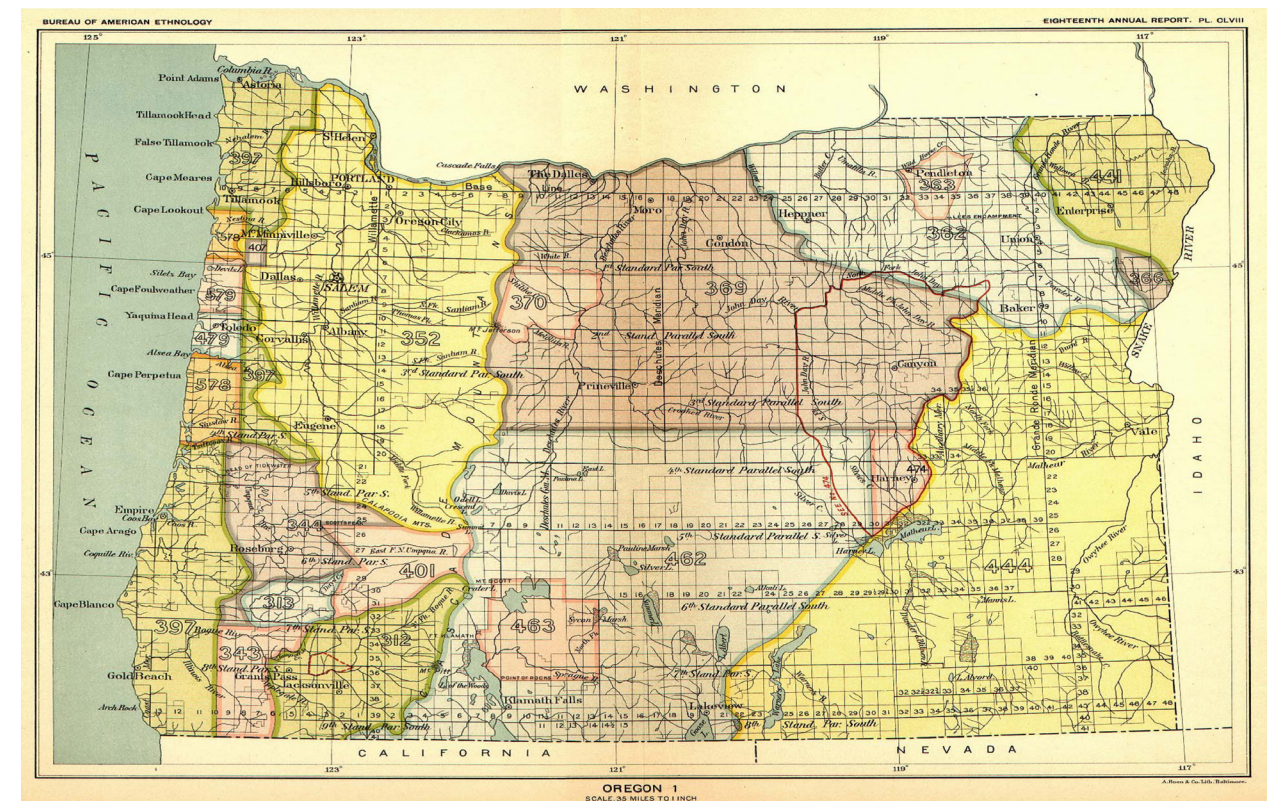


Figure 2. Indian Land Sessions and Reservations in Oregon (Royce 1899, Plate CLVIII). [Numbers on the map refer to specific land cession agreements between the federal government and Oregon Tribes (Royce 1899:645–949).]

and entire twentieth century, predominantly along the Columbia River. Such battles greatly increased following the construction of several dams along the Columbia River which severely impacted the size of fish runs along the river and Indian's access to them.

In the 1950s, the relationship between the federal government and Oregon's tribes was to change drastically. Since the establishment of the reservation system, the federal government promoted a path of acculturation and assimilation when it considered issues that affected tribal nations. Tribal lands were consistently reduced through the passage of such laws as the Oregon Donation Land Act (1850), which offered Euro-American settlers up to 320 acres of land, and to settle on lands that often had not been negotiated from the original native peoples, to the passage of the Dawes Act or General Allotment Act (1887), which allotted each Indian up to 160 acres of land and required the selling of all remaining unallotted reservation lands. Reservations continued to be reduced in size through the sale of allotments and land grabs with sales of reservation lands not stopping until the passage of the Indian Reorganization Act (IRA or Wheeler-Howard Act) in 1934. Lands removed from tribal reservations, which by 1934 two-thirds of all Indian land had passed into private ownership, became part of the state either through subsequent private ownership or their management by non-federal public entities (i.e., state, counties, and cities). Such lands and their resources became subject to state laws without consideration of tribal use and importance. With the passage of the IRA, the federal government was able to purchase some earlier tribal lands back and restore them to the tribes while encouraging self-government. This federal policy changed in the early 1950s under the Eisenhower administration with the federal government attempting to terminate the special relationship that had been established between tribes and the federal government.

Termination

"Termination. Missing only the prefix. The ex." (Eldrich 2020:90)

In 1953, the federal government signed into law House Concurrent Resolution 108, known as the Termination Bill. This policy directive was aimed at ending the Indian's status as wards of the United States and assimilate the tribes into mainstream American society, subject to individual state laws. At the same time; Public Law 83-280 was passed, which placed Indian people in six states, including Oregon, under state government for criminal and civil jurisdiction. This law was viewed by both the federal and state governments as the initial in-road to terminating all tribal reservations. The federal government's termination policy was to have the strongest effect in the nation the following year with the termination of 62 tribes in Oregon. Sixty of these were terminated under a single act the *Western Indian Termination Act of 1954* (Public Law 588). Two tribes from eastern Oregon, the Klamath and Modoc peoples, were terminated under the *Klamath Termination Act* (Public Law 587) leaving only two recognized Tribes in Oregon, these being the Confederated Tribes of the Umatilla Reservation, and the Confederated Tribes of the Warm Springs Reservation. The effect of these acts on Oregon's tribes was said to have been so severe due to Eisenhower's head of the Department of the Interior Douglas J. McKay, the past Governor of Oregon, who used his state as a model of how the federal Indian termination policy should be enacted. Harvey Wright, McKay's earlier Indian Education Director stated

"Our national policy in Indian affairs has been a zig-zag affair. Our first policy was extermination; we then tried the idea of segregation; and the latest experiment was an attempt to get the Indian to return to the tribal autonomy that his fathers were presumed to enjoy, and to preserve his culture. To me the logic of present

events is all in opposition to segregation. I believe that our final policy must be assimilation" (McKay 1950 in Lewis 2009:224–225).

Termination did not affect the Burns Paiute Tribe in eastern Oregon since they had lost their reservation and formal recognition following the Bannock War in the 1870s. The Burns Paiute Tribe of the Burns Paiute Colony of Oregon were not formally recognized as a tribe by the federal government until 1968, and their reservation established by Public Law 92-488 on October 13, 1972, thus they were not a recognized tribal government at the time termination legislation was being considered.

Recognition of Tribal Rights by the State of Oregon

In 1970, President Nixon (1970) sent a message to Congress that the federal government needed to change their policy toward American Indians and assist in their efforts to become more self-sufficient. In 1971, state legislators in Oregon took up this message and attempted to establish a Joint Committee on Indian Affairs. This bill (HB 1460) died in committee primarily because the Indian community was not yet ready to support a formal relationship with the State of Oregon (Griffin 2009). Legal disputes over access to natural resources between the State and Oregon's tribes had been a major concern for many years, and a lack of trust between parties had developed.

Prior to 1971, the degree of interaction between the State of Oregon and tribal people residing within the state was negligible and what did occur was often very divisive, usually stemming from the State's attempts to restrict or control tribal hunting and fishing on off-reservation lands. The federal government primarily handled the limited tribal consultation that did occur and tribal concerns regarding non-federal public and private lands were generally ignored. Following the passage of federal termination legislation, Oregon's terminated

tribes lacked both Federal and State recognition and were unable to regain tribal recognition for many years with the Confederated Tribes of the Siletz Indians being the first to be restored in 1977, followed by five other tribes by 1989 (i.e., Cow Creek Band of Umpqua Tribe of Indians, Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, Confederated Tribes of the Grand Ronde Community of Oregon, the Coquille Tribe, and the Klamath Tribes).

State Consultation

As summarized above, the state's concept of tribal consultation in Oregon began with a general lack of recognition for the need of it; instead generally relying on the federal government's promotion of a path of acculturation and assimilation. On lands that were ceded to the state, continued resource use, including that of fishing and hunting, was generally seen as in common with all other citizens of the state, managed and protected under state laws and regulations, without recognition of earlier rights to tribes that were retained from their original treaties. Such differing management views sparked multiple legal disputes throughout the twentieth century, which personified the State-Tribal relationship in Oregon. Disagreements over fishing, hunting, and water rights were often in the courts with the first major fishing case reaching the U.S. Supreme Court in 1905 (*U.S. v. Winans*) affirming Indian off-reservation treaty rights. Many major subsequent court decisions (Table 2) were fought in the Federal and U.S. Supreme Court (e.g., *Winter v. U.S.* [1908]; *Tulee v. Washington* [1942]; *U.S. v. Oregon* [1968]; *Puyallup Tribe v. Department of Game* 391 U.S. 392 [1968]; *Sohappy v. Smith* [1969]; *U.S. v. Washington* [1974]) where rulings served to better define tribal rights, but resulted in increased tension between the State of Oregon and tribal peoples.

Following the federal government's recognition of the need for a closer relationship with Tribes (e.g., Nixon (1970); Reagan (1983);

Table 2. Major Policies and Decisions affecting Tribal Rights in Oregon

Year	Court Case	Focus
1855	Treaties w/Columbia River Tribes	Three Indian treaties signed ceding lands and formation of Indian reservations while retaining tribal rights to fish, hunt, pasture horses and collect plants on open & unclaimed lands within ceded lands.
1880–1920	Unallotted tribal lands sold	Diminishment of treaty rights by selling unallotted lands to non-Indian settlement (e.g., 1887 Dawes Act).
1905	US v. Winans (198 U.S. 371)	1st major fishing rights case to reach Supreme Court - affirmed right to cross non-Indian land to get to fishing sites. State ownership of beds and banks of navigable waters can not deprive Indians right of access to exploit fishing. Fishing not a grant of right to tribe but grant of right from them (not ceded to federal gov't in treaties.)
1908	Winter v. U.S. (207 U.S. 564)	Reservations created with purpose of converting Indians to agrarian societies; however, on arid/semi-arid lands, irrigation necessary. Indian reserved water rights defined.
1937	Bonneville Project Act (Ch. 720, 50 Stat. 731)	Act led to the creation of 11 dams along the Columbia River within the US, starting with the Bonneville Dam and the destruction of the Cascade Locks.
1942	Tulee v. Washington (315 U.S. 681)	Treaty fishing rights over state licensing restrictions upheld; however, conservation issues need to be considered.
1948	Mitchell Act (Public Law 75-502)	1st passed in 1938, Act authorized federal agencies to use state agencies for fish and wildlife conservation work. In 1948, the Corps authorized funds to construct 25 new fish hatcheries, only two of which were located above the Bonneville Dam; lands that were accessed by tribes.
1954	House Concurrent Resolution 108	All western Oregon Tribes (Public Law 588) and the Klamath Tribe (Public Law 587) had tribal status terminated. Reservations were dissolved and Indians now subject to state laws and regulations.
1954	Public Law 280	Allowed state governments to assume criminal and civil authority over Indian reservations where earlier treaties were no longer recognized.
1957	Celilo Falls flooded	Destruction of Celilo Falls, a major fishery on the Columbia River, with the construction of The Dalles Dam.
1961	The Columbia Treaty	Treaty between Canada and the U.S. relating to cooperative development of the water resources of the Columbia River Basin (primary focus on flood control and hydro power). Indian fishing rights not considered.
1962	Organized Village of Kake, et al. v. Egan, 369 U.S. 60, 75 (1962).	The United States Supreme Court has noted that “[i]t has never been doubted that States may punish crimes committed by Indians, even reservation Indians, outside of Indian country,” including on lands where tribes have reserved hunting and fishing rights.
1968	U.S. v. Oregon (302 F. Supp. 899)	State conservation regulations can't discriminate against tribes. Addresses hunting & fishing as well as water rights.
1968	Puyallup v. Dept. of Game (391 U.S. 392; 414 U.S. 44, 48)	State may regulate fishing off reservation lands if necessary to conserve fish. Reaffirmation of 1942 Tule v. Washington.
1969	Sohappy v. Smith (302 F. Supp.899, 907)	Four river tribes entitled to fair share of fish. Fourteen Yakama tribal members filed suit against Oregon's regulation regarding off-reservation fishing
1974	U.S. v. Washington (384 F. Sup. 312)	Reaffirmed reserved right of tribes to act along side of state as co-managers of salmon and other fish. Indians retain rights to fair and equitable share (50%).

Table 2 (cont). Major Policies and Decisions affecting Tribal Rights in Oregon

Year	Court Case	Focus
1974	Settler v. Lameer (507 F. 2d 231)	Treaty fishing rights recognized as a tribal right not individual right. Tribes can regulate Indian fishing on and off reservation
1985	ODF&W v. Klamath Tribes (473 U.S. 753)	Off reservation activities by Indians subject to state laws in the absence of federal or treaty law to contrary. Activities within ceded lands regulated by state unless treaty reserves rights.
1986	State v. Jim (725 P. 2d 365)	As a general rule, states have jurisdiction to enforce non-discriminatory laws against Indians off the reservation. State hunting and fishing laws do not apply to an Indian exercising his tribal right unless there is a conservation necessity. Ruling follows many previous cases that addressed similar restrictions (Mescalero Apache Tribe v. Jones, 411 US 145, 148-49 (1973) citing Puyallup Tribe v. Department of Game, 391 US 392, 398 (1968); Organized Village of Kake v. Egan, 369 US 60, 75-76 (1962); Tulee v. Washington, 315 US 681, 683 (1942); Shaw v. Gibson Zahniser Oil Corp., 276 US 575 (1928); Ward v. Race Horse, 163 US 504 (1896)).-
1988	18 U.S.C. Section 1151	If non-member fee lands remain part of reservation, lands are considered part of Indian country thus subject to authority of Congress to regulate tribal & reservation affairs. If fee lands are no longer part of reservation, they are not Indian country and state courts prosecute crimes.
2002	U.S. v. Adair (187 F. Supp 2d 1273)	Klamath tribal water rights necessary to maintain in-stream flows and lake levels to protect treaty rights to fish, wildlife, and plants, has precedence over all others. Rights granted immemorial.
2007	State v. Watters, 211 Or. App. 628	Reinforced lack of reserved treaty right to hunt on private property located outside of a current reservation, but within the boundaries of the earlier ceded lands under treaty

Clinton (1994)) and encouragement to states to also reach out, changes in state legislation began to be made in the 1980s and 1990s in this direction. The recognition of tribes as key players that need to be consulted when dealing with all policies affecting life in Oregon (Griffin 2019), including both natural and cultural resources, were initially highlighted by Governors Vic Atiyeh and John Kitzhaber (Griffin 2009) and continue to be recognized today under Governor Kate Brown (Rippee, this issue). Today consultation with tribes is strongly encouraged although every agency and archaeologist continue to have their own definition of what consultation really means. Today we find ourselves with nine

strong federally-recognized tribes in Oregon, seven of which have their own archaeologists and operate their own federally-recognized Tribal Historic Preservation Offices (THPOs) (i.e., the Confederated Tribes of the Umatilla Reservation and the Confederated Tribes of the Warm Springs Indian Reservation established their THPO offices in 1996, the Coquille Tribe, the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, and the Confederated Tribes of the Grand Ronde Community of Oregon in 2011, the Cow Creek Band of the Lower Umpqua Indians in 2013, and the Burns Paiute Tribe in 2017), while the remaining two Tribes (the Confederated Tribes of the Siletz Indians

and Klamath Tribes) both maintain historic preservation offices and are active in trying to protect cultural resources important to their tribes.

Tribal Role in CRM

Since the late 1990s, the role of Tribes in state cultural resource legislation increased from zero to being a central player (Griffin 2009). The recognition of who a tribe is and what interests they have in Oregon history greatly expanded as Tribes became more economically self-sufficient and learned how the legislative process could work for them. The Legislative Commission on Indian Services (LCIS), created in 1975, served a central role in this awareness (Quigley, this issue). Galvanized by controversies that involved damage or desecration to human burials, Northwest tribes were able to form a united front to confront what they saw as a growing problem of the lack of understanding and consultation. Together they sponsored legislative changes to cultural resource statutes from 1979 to today.

In order for consultation with tribes to be effective, first and foremost, both state and federal agencies need to both recognize and respect the state's Indigenous people and their territory, both traditional and current (Fuller 1997). Once such a recognition is made, trust must be developed so that parties are able to enter into agreements addressing site preservation, proper mitigation measures, procedures for the disposition of human remains, and the recognition and treatment of cultural items, which reflects an understanding of cultural continuity. It is important that government agencies recognize the dignity and respect for tribal cultural and traditional heritage, even though such agencies may not fully comprehend their significance (Fuller 1997 in Swindler et al. 1997; Rice 1997; Burney 1991 in Burney and Van Pelt 2002). "The ability and desire of any tribe to collaborate with outside CRM professionals depend in no small part on the attitudes of the individual agencies involved" (Stapp 2002:xii).

To assist with the establishment of such a consultation process, in the 1990s the Confederated Tribes of the Umatilla Reservation began to develop a tribal workshop for agency personnel to provide agencies an opportunity to work with Indian people. The tribe also provided recommendations regarding how consultations with tribes could be developed by creating a forum for tribal consultation to help participating agencies working in an area in order to try to understand their people, culture and reservation (Burney 1991 in Burney and Van Pelt 2002:28–30). The concept of a forum where tribes and agency personnel could sit down at the table and begin to understand each other in order to establish trust, in the short term, and a long-standing working relationship in the long term, has been embraced in Oregon and is reflected in the range of articles included within this issue.

Organization of this Collection

Karen Quigley, the recently retired, long-term Director of Oregon's Legislative Commission on Indian Services (LCIS), discusses the state's recognition in the 1970s to glaring gaps in the provision of state services to Indians in Oregon which led to the creation of the LCIS. Created in 1975, this commission provided Tribes a seat at the table in trying to address this inequality, while educating state agencies regarding Tribal sovereignty, and the development of a better understanding and communication between the State and Tribes. Quigley's article summarizes the importance of the LCIS in its 45 years of existence.

Stemming from the work of this commission and the increased interaction between state agencies and Tribes, Cassandra Rippee and Dennis Griffin each discuss different state/tribal working groups that have been established by the State of Oregon to help develop an understanding among agency personnel of Tribal history, culture, and current interests so that future areas of conflict can be recognized

before they become a problem, and by working together staff from the respective agencies and Tribes can identify solutions. Articles by Carolyn Holtoff and Nancy Nelson provide individual state agency perspectives on how their two agencies, the Oregon Department of Transportation and Oregon Parks and Recreation Department, respectively, have reached out in their own way to consult and work closely with each of Oregon's nine federally-recognized Tribes. To complete

the issue, Dennis Griffin provides insight on other ongoing State/Tribal programs that are seeking new ways to improve communication and understanding between the people of Oregon and the nine federally-recognized Tribes within its borders. Recognition of existing problems and potential future directions that State agencies and Tribes can take to improve cultural resource consultation in Oregon is also highlighted.

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45 Years at the Table: The Creation and Role of the Oregon Legislative Commission on Indian Services

Karen Quigley

Abstract *Since its creation in 1975, the Legislative Commission on Indian Services (LCIS) has been Oregon's key 'table' for discussion of state-tribal issues. The goal of the 'seat at the table' approach is to promote discussion designed to minimize detrimental state action and help coordinate positive and effective interaction between state and tribal governments, whenever and wherever possible. This paper will focus on the history and statutory responsibilities of LCIS. It will touch on areas in which LCIS plays an active role in areas related to tribal cultural issues.*

When the Oregon Legislative Commission on Indian Services (LCIS) was created 45 years ago the situation for Tribes and tribal communities in Oregon was bleak. Only three Tribes far removed from the main population areas retained their lands, management of their resources, and federal support. The ill-conceived and harmful Federal Termination policy of the mid-1950s decimated the Klamath and Tribes in Western Oregon. The US government unilaterally asserted that specific groups of Indians were fully assimilated in majority society, and the federal government was free to disregard its treaty and other obligations as far as these Tribes and tribal people were concerned.

From the mid-1950s to the mid-1970s there was no structure in Oregon to get the attention of the State to address the devastation the Termination policy left in its wake. Targeted Tribes and tribal people lost federal dollars for tribal government services like healthcare, public safety, and natural resources management and were essentially ignored by the State.

At the same time, the population on the Warm Springs and Umatilla reservations as well as at Burns Paiute—even though these Tribes had not been subjected to Termination—continued to be poorly served by the State and experienced disproportionately high unemployment and negative health outcomes compared to other Oregonians.

By the 1970s glaring gaps in the provision of state services for Indians throughout Oregon

existed. It was as if the State was unaware of these citizens.

In response, Tribal Leaders and others advocated for a permanent mechanism for the State to learn about its Tribes, tribal people, and tribal priorities. Tribes wanted 'a seat at the table' especially during this period in which the relationship with the federal government was in flux, and it was obvious state action (or inaction) could jeopardize or negatively impact Tribes and tribal communities.

The original roster of LCIS members included a representative from each of three named Tribes (Warm Springs, Umatilla and Burns Paiute) and designated reps from "Regional Areas" (e.g., Northwest, Willamette Valley, and Portland Urban Area) to represent Indian populations which had moved away from tribal areas, Indians not associated with Oregon Tribes as well as Tribes that were in a suspended state due to Termination. In addition, two legislators were appointed including Vic Atiyeh (then State Senator and later Governor) who was perhaps the individual who had the deepest and most heartfelt relationship with Tribes and tribal people in Oregon history. As a legislator he championed the effort with Tribal Leaders and others to get the Oregon Legislature to adopt a bill in the 1975 Session that created LCIS. Later, as Governor, he continued stressing the importance of listening to and working with Tribes.

That's a little history about the context in which LCIS was created. From the outset the

goal was to develop better understanding and communication in Oregon between the State and Tribes. Importantly, Tribal Leaders would have direct representation. They were guaranteed a seat at the table by explicit statutory language in the bill creating LCIS.

The need for a larger table and increased communication accelerated as the Termination policy was repudiated and as six Tribes regained federal recognition and started to rebuild their nations starting with the Siletz in 1977.

Over the following decades, the need for the State and Tribes to sit at the same table, consistently and face-to-face in order to learn about each other and to learn how to work together where possible, became equally crucial with shifts in the federal government's relation with and funding for States as well as the federal government's approach to Tribes (devolution/block grants to States and supporting self-determination and self-sufficiency for Tribes). The underlying hope in this era of evolving relationships with the federal government was for both Tribes and the State to figure out how to talk and work with each other, where appropriate, rather than squander scarce State and Tribal resources in court battles.

This was especially true given the dramatic changes in terms of the restoration of federal recognition for several Tribes in Western Oregon from 1977–1989 and the interests of all tribal sovereigns to serve their people and exercise their legal and political authority.

LCIS served as the vehicle to accommodate some of the conversations this changing landscape required. LCIS remains valuable because it is a forum that acknowledges the State and its neighbor-Tribal sovereigns and their need to keep in touch.

The list of nine federally-recognized Tribal governments in Oregon today was set in state statute 30 years ago after the restoration of the Coquille Indian Tribe in 1989. In addition to the legislators (currently four), LCIS is composed of one representative from the:

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw
- Cow Creek Band of Umpqua Tribe of Indians
- Coquille Indian Tribe
- Confederated Tribes of the Grand Ronde
- Confederated Tribes of Siletz Indians
- Klamath Tribes
- Confederated Tribes of the Warm Springs Reservation
- Confederated Tribes of the Umatilla Indian Reservation

Growth in capacity and organizational structure of all nine tribal governments in Oregon is remarkable (especially in the past two decades in terms of tribal government departments, number of employees, and programs and services), but by no means have all Tribes developed at the same pace. Critically, LCIS meetings highlight the areas in which Tribes have similar concerns, but the meetings also serve as a reminder of their unique and distinct differences—just as states may come together for discussions as equals even though they maintain their differences in history, size, resources, structure, goals and priorities.

Certain things were set out in the original statute creating LCIS that serve to make it such an effective mechanism for building positive State-Tribal relations today. LCIS remains the key advisory body dealing with Indian issues for the Executive and Legislative Branch of Oregon government. Its main charge is to monitor state agency action and make recommendations for improvement. The legislators on LCIS often serve as the chief sponsors of bills introduced after discussion at LCIS meetings of issues that require a 'legislative fix.' Other times, LCIS as a body specifically requests a bill be introduced, as it did in 2001 to have Oregon Legislature become the first in the nation to direct its state agencies to work with the nine Tribes in Oregon on a government-to-government basis (Oregon Revised Statute 182.162–182.168).

As governed by its own statute, LCIS gathers information and provides general advice but does

not supplant the individual decision-making authority of each of the nine distinct sovereigns and their Tribal Councils or Board of Trustees. LCIS does not interfere with the relationship each Tribe has with the State or specific state agencies nor does it interfere with relations between Tribes.

Many topics are brought up at LCIS meetings for each Tribal LCIS member to bring back to their Council or Board of Trustees for further deliberation. The goal is always to get as much useful information to Tribal and State decision-makers.

Here are a few examples of how it works. LCIS holds three or four formal meetings a year, usually in a hearing room at the State Capitol as well as special meetings, as needed.

Along with Commission member reports, the agenda focuses on a couple of areas like healthcare, natural resources, cultural resources, economic development, public safety, veterans, education, etc. Agency Directors or lead managers come to report to LCIS and discuss with LCIS members how they are working with Tribes, provide details on any new initiatives, agency reorganization, new legislation, proposed rulemaking, funding, or any other issues that may be of interest to Tribes (now or in the future).

For example, at one meeting several years ago, the Oregon Parks and Recreation Department (OPRD) came to discuss a draft department policy, which would give access to Tribes and their members to perform ceremonies and gather cultural materials without a permit. OPRD asked for tribal input and guidance on how to proceed. Some Tribal Leaders said they wanted OPRD to make a presentation to their Tribal Council, others suggested OPRD talk to their cultural department staff, some said to go and listen to their elders, and some directed OPRD to run the draft policy by their legal department.

Sometimes LCIS meetings are a way to formalize the next steps on a topic that has been discussed for months or even years at previous LCIS meetings and/or in other settings, such as one of the government-to-government clusters or issue-oriented workgroups.

For example, a few years ago, LCIS members directed the LCIS Executive Director request the Governor sign an Executive Order to create a Task Force on Tribal Cultural Items. Because of its solid reputation as a body with representation and participation by leadership from all nine Tribal governments, requests such as this one, as well as direction or guidance from LCIS, are met positively and taken seriously by the Governor, Legislative Leadership and State Agencies.

LCIS made one such request that had huge ramifications for the State-Tribal relations we have today. In 1995 LCIS asked that an Executive Order be signed by then Governor John Kitzhaber that would direct state agencies to work with the Tribes in Oregon on a government-to-government basis and directed state agencies to explore partnerships in areas of mutual concern.

Significantly each state agency would be required to communicate with Tribes about their state agency policies and programs that may affect tribal interests (i.e., EO-96-30).

Monitoring state agency attitudes and behaviors regarding this State-Tribal government-to-government relationship is something LCIS continues to take as a very important part of its responsibility.

LCIS meetings and between-meetings communication include discussion about topics for the Annual State-Tribal Summit and annual state agency training required in the government-to-government Executive Order and statute. Because cultural issues are such a high priority for Tribes, LCIS has assured that the focus of Summits and trainings regularly include awareness of tribal cultural sites, items, tools, languages and traditions, and focus on ways to provide the tribal perspective, i.e., to relate the meaning and importance of all these things to Tribes so that State officials and employees have a better comprehension of why State-Tribal work matters for all Oregonians.

LCIS regularly discusses State responsibility in understanding the paramount importance of Tribal Sovereignty and Culture as the foundation for State-Tribal relationships. LCIS regularly

considers ways to educate and train state officials, public employees, the public, the media, and organizations about the importance of working effectively with Tribes by pursuing interactions built on respect for sovereignty and developing mutual trust, by pursuing interactions built on full communication and effective engagement with the Tribes who have lived on these lands and waters since time began.

As part of on-going education about Tribes and the significance of sovereignty, LCIS annually hosts Tribal Governments Day at the State Capitol for legislators, legislative staff, state agencies, Governor's staff, and the public (during the Legislative Session) and requests the Governor sign a Proclamation (in May) declaring American Indian Week in Oregon.

It is important to note that the establishment of LCIS in the Legislative Branch, as opposed to an Indian Affairs Advisor who works for the Governor (which is the model in many states), has been a unique asset. One reason why this is an advantage is there are times when the Governor's policy is in conflict with the position of one or more Tribes. For example, in Oregon, the Governor has the authority to sign gaming compacts. This has the potential to put Tribes and the Governor's Office in an adversarial position, as do some other situations involving natural resources co-management and other areas in which both the State and Tribes have governing and policy making authority.

LCIS—because it is focused on information gathering, discussion, and advising—remains a more or less neutral setting. As such, it has some advantage to allow for working on issues without a spotlight or potential negative political pressure.

The Oregon model with LCIS in the role of a State-Tribal advisory body in the Legislative Branch acknowledges the importance of the Legislature's impact and potential impact on Tribes.

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The author wishes to acknowledge the inspired vision of former Gov Victor Atiyeh and Tribal Leaders in creating LCIS nearly 50 years ago and to thank all those who have been a part of trying to make effective communication & cooperation among Tribes and the State a reality.

It is the Legislature that sets policy through adoption of laws that can affect tribal interests. It is the Legislature that has authority to fund agency budgets whose work can either support or negatively affect tribal priorities.

The State Legislature uses LCIS as the vehicle to carry out various state laws. LCIS is charged with identifying appropriate Indian Tribes to be notified and consulted for archaeological permits and in the event of inadvertent discoveries suspected of being Native American.

Numerous state statutes (as well as agency regulations relating to various statutes) require consultation with and/or reporting to LCIS when state agencies are developing plans or implementing programs.

LCIS maintains an office at the State Capitol with a staff of two. The Executive Officer and Commission Assistant maintain a website www.oregonlegislature.gov/cis which contains some background information, a key contact directory, past agendas and minutes of LCIS meetings, as well as links to the websites of Oregon's nine Tribes. The LCIS Office is the place to start when there is a question about "who to call." LCIS staff may also provide basic guidance on ways to make contact, make suggestions about how to improve the likelihood of getting feedback, and point to ways in which a caller (or emailer) can get the information they seek. As an important first step, LCIS staff might suggest what Tribes should be contacted. If you need help, please contact lcis@oregonlegislature.gov, 503-986-1067.

Both LCIS and its staff are committed to assuring effective communication and meaningful engagement between the State of Oregon and the Tribal Governments in Oregon today and going forward. They invite you to join them in this on-going effort.

Culture Cluster: An Oregon Approach to Good Faith Relationships

Kassandra Rippee

Abstract *Successful intergovernmental relationships rely on good communication that is adaptable, depending on the desired results and the participating governments. For decades, the State of Oregon has worked to promote positive relationships between the State and the nine federally-recognized Tribes of Oregon. Oregon's government-to-government "clusters," nine workgroups made up of representatives from each of the nine Tribes and state agencies, each focusing on key areas of concern including cultural resources, natural resources, and education. The Culture Cluster meets four times a year and has regular participation from the nine Tribes and 19 State agencies. The efforts of this group have increased agency and public awareness of cultural resource issues and tribal history, and reinforced relationships between each of the Tribes and the State.*

Introduction

In Oregon, State and Tribal governments have worked for several decades to develop relationships built on trust through effective, collaborative communication to support our shared goals. Good faith efforts towards consultation and cultural resources management are based on an expectation of timeliness, honesty, and respect. These efforts also must acknowledge the special expertise held by tribes in identifying and addressing effects on resources significant to them.

"The relationship between Tribal and non-tribal people is challenged from the start by a difference in cultural perspectives. These challenges are not insurmountable, but change must come from a place of understanding the historical trauma endured by tribal nations and with a respect for their traditional cultural values and identities" (Rippee and Scott 2019:1).

Oregon's history long predates its colonization by Euro-Americans and the establishment of its statehood. Native people trace their ties to the land since time immemorial passing down the historic record through oral tradition. Euro-American arrival in the area and their introduction to tribes throughout the region spanned from the 1790s to the 1820s when soldiers, miners, and fur trappers began documenting their experiences and observations in journals and correspondence (Beck 2009).

Later, others recorded Native histories and oral testimonies in journals and on wax recordings.

The mid-1800s saw Euro-American immigration and resource exploitation expand throughout the Oregon Territory resulting in conflict and massacre (Tveskov 2000; Cain and Rosman 2017). Superintendents of Indian Affairs for the Oregon Territory Anson Dart (1850–1852) and Joel Palmer (1853–1856) negotiated at least 24 of 38 treaties signed in the Oregon Territory, the majority of which went unratified. Despite this, the federal government granted unceded tribal lands to Euro-American settlers through the Oregon Donation Land Act forcibly removing and marching many Native communities to reservations far from their homes (Bensell 1959; Cain and Rosman 2017; Lang 2020; Lewis 2020).

Federal Indian policy continued to adjust, disrupting life amongst the Native communities. Through the end of the nineteenth century, Native children were separated from their families and sent to boarding schools and vocational programs to speed assimilation into Euro-American society (Beck 2009). Reservations were diminished and/or disestablished in favor of allotments. The allotment system, established by the 1887 General Allotment Act, was set up for failure from the start by separating tribal families and imposing on allottees a taxation scheme with which they had no prior experience. Many subsequently lost their allotments.

In the 1950s, Tribal nations experienced a renewed era of federal infringement on their sovereignty. The goal of federal Indian policy in the mid-twentieth century was to eliminate federal oversight of Tribes through several acts of Congress. Enacted in 1953, Public Law 83-280 ("PL280") obligated six states, including Oregon, to assume jurisdiction over criminal and civil jurisdiction on tribal reservations effectively removing federal authority to prosecute crimes in Indian Country (Prucha 1986). PL280 jurisdiction would go on to be extended to several more states between 1953 and 1968. In 1954, Congress passed two Oregon Termination Acts, terminating the federal recognition and oversight of the Klamath and over 60 tribes and bands in western Oregon (Fixico 2020). Holdings were sold off or lost, enrollment of new members was prohibited, and the federal government-to-government relationship (including services and the right to consultation) was abolished. Each of these acts, at their most base intent, was tactic for forced assimilation into Western society. Please note that this brief summary cannot adequately articulate the harm caused by federal Indian policy and only seeks to contextualize the history of government-to-government relationships with Tribes in Oregon.

Recognizing Relationships

The relationship between the federal government and tribes is one between sovereigns, and so it is important to understand that only federally-recognized tribes share a government-to-government relationship with the United States. Federal laws like the National Historic Preservation Act (1996) establish a requirement for meaningful consultation with federally-recognized tribes, but those without ratified treaties and terminated tribes are not eligible to consult at a government-to-government level on issues which affect them. After having endured termination, many tribes had to fight for the restoration of their federal recognition. Between 1977 and 1989, six tribes in Oregon

successfully regained federal recognition of their status as sovereign nations (Fixico 2020).

The federal obligation to consult is not extended to the states. Acknowledging this gap, the State of Oregon became the first state in the nation to pass laws establishing government-to-government relationships between the State and Tribes. The Legislative Commission on Indian Services (LCIS) was created in 1975 to improve coordination and communication between the State of Oregon and the federally-recognized Tribes in Oregon (Oregon State Legislature 2020). LCIS set the stage for a cooperative government-to-government relationship between the State of Oregon and the (now) nine federally-recognized Tribes. Governor Kitzhaber (1996) formally acknowledged the unique relationship that exists between the State and the Tribes with Executive Order 96-30. Kitzhaber emphasized the need to build relationships with respect. A few years later, Senate Bill 770 (2001) established the framework of what would become the State of Oregon's robust government-to-government relationship with the Tribes. Under this framework, state agencies were directed to develop and implement a policy to promote communication between agencies and the Tribes, to identify programs that affect tribes, and to coordinate with Tribes in the implementation of agency programs which affect them.

"Cluster" groups were developed out of these efforts to improve the relationships between the nine Tribes and the State of Oregon. As of 2020, there are nine Cluster groups made up of representatives from Oregon's state agencies and each of the nine Tribes, each Cluster with a focus on key subjects of concern including cultural resources, natural resources, and education.

Culture as a Focus

Cultural resources were initially encompassed as part of the Natural Resources Cluster. It quickly became clear that culture and cultural resources, though intrinsically connected to Natural Resources and other key

subjects, is too important a topic to be limited as a subheading to another. Culture needed its own space to cover all necessary topics so that all voices could be heard (Don Ivy 2020, pers. comm.). Six agencies immediately recognized their participation as critical in this newly formed group: Department of Transportation (ODOT), Parks and Recreation (OPRD/SHPO), State Police (OSP), Department of Forestry (ODF), Department of Fish and Wildlife (ODFW), and Department of Land Conservation and Development (DLCD) (Culture Cluster 1999). From there, the work began to bring other agencies to the table. The principle that culture pervades all subjects is embodied in the way the Culture Cluster functions today, covering a wide range of topics including archaeological resource management, natural resources of cultural significance, infrastructure planning, and more. The Cluster meets four times a year with regular participation from the nine federally-recognized Tribes in Oregon, 19 state agencies, and one university. Occasionally, joint meetings are also held with other Cluster groups.

Early efforts focused on aligning common interests to improve how culture and cultural resources are addressed throughout the state. The Culture Cluster held its second meeting in 1999 hosted by the Confederated Tribes of Umatilla Indian Reservation at Tamastlikt Cultural Institute and developed an action plan identifying four goals which are still common themes for discussion.

Education and Training

The State of Oregon has 35 agencies and over 40,000 full time employees. A few own or manage public land, others provide support and services, and several issue permits or authorizations. One of the primary objectives of the Culture Cluster is to improve agency representatives' understanding of the Tribal perspective to improve programs and policies and to support cultural resources protection. Through this work, agencies and Tribes have

collaborated on educational videos and training opportunities including workshops, summits, and other educational aids such as the Preservation of Cultural and Historic Resources of Oregon brochure (available on the SHPO website). Some of these materials become available as educational material for the public. Presently, there is no one place where someone can go to view all this information, it is instead spread out on each agency's respective websites and databases.

The role of the public in cultural resources protection cannot be understated. Oregon has a long history of significant Tribal places (commonly referred to as archaeological sites) being looted and irreparably damaged, resulting in Tribal belongings and ancestors separated from the resting places and unceremoniously stored in museums, offices, and individual's homes (Rippe and Scott 2019). The problem persists in many ways; one only has to spend a few minutes on social media to see photographs of arrowhead collections or requests for identification of the object someone found while hiking to know that the public is interested in what came before. Therein lies a part of the challenge. Public attention is often directed at material culture, which leads to loss of belongings (a.k.a., artifacts) and destruction of place. The Culture Cluster seeks avenues for improved education and awareness at museums, universities, and schools to engage the public in learning about Native heritage, history, and how to be good stewards of cultural resources by integrating Tribal perspectives and respectful language. Awareness, understanding, and respect will always be our most effective way to protect cultural resources.

Site Protection and Planning

Cultural resources encompass a variety of resource types typically including physical places (commonly referred to as archaeological and historic sites or properties, designations which problematically emphasize a Western/Eurocentric

ethos), tangible materials such as objects, and natural materials of cultural significance. It is difficult to develop a comprehensive definition that encompasses all things considered to be cultural resources by all communities so the definition varies depending on the source and the purpose. Furthermore, many of these places and objects are understood by the Tribes to be sacred. The language used by scientists and governments to define them rarely account for their significance to the Tribes. Recently, the Tribal Cultural Items Taskforce (2020) developed a working definition which serves as a guide to help agencies evaluate what types of items/resources they manage or possess and which can serve as a starting point for others.

The Culture Cluster has served as a forum for Tribes and agencies to coordinate on how existing rules, regulations, and policies affect all cultural resources, evaluate how they are working, and identify how they can be improved. By looking at the issues from the experience and understanding of both agency and Tribal representatives, new processes are developed to establish accountability for the protection of those resources identified as significant by Tribal governments.

In a recent example, Tribal representatives recognized a gap in a state agency's construction activities where staging and disposal areas were not addressed as part of project development within the agency, but rather by contractors after the fact. Agency representatives did not specifically review these locations nor were they identified early enough in the process to be evaluated through Tribal consultation. To resolve the issue, the agency developed a pilot program to test a new process by which staging and disposal areas would be reviewed. While the pilot remains in progress, the agency reports out at Cluster meetings where Tribal representatives can provide feedback. The Cluster affords agency and Tribal representatives the opportunity to learn from one another by hearing how each addresses various issues and by lending the voices of additional perspectives and expertise.

Funding and Other Resource Needs

Protection and preservation of cultural resources is a long-term effort which must be incorporated into day-to-day operations and planning. Unfortunately, not all agencies have the staff to conduct cultural resources review. These agencies must have a plan for addressing cultural resources issues, regardless, though some of these plans are more effective than others. With this in mind, the Culture Cluster continues to work towards the original Action Plan objective which called for consistency across agencies (Culture Cluster 1999). Funding is, of course, necessary to conduct all of this work and cultural resources are often one of the last areas to receive it. Lack of funding, however, is never a reason not to do the right thing. From the beginning, representatives have highlighted the need for additional cultural resources staff to support cultural resources protection. Partnerships across agencies and collaboration between agencies and Tribes have been developed to fill a small part of this need, but are far from fulfilling what is needed. Recent events have resulted in a significant reduction to budget and staffing across the agencies. We have yet to see what the full effects will be or how they will be addressed.

Funding and staff are not the only barriers to cultural resource protection. Not all sites are known and not all known sites are recorded in the SHPO database. Data sharing remains limited across agencies and between agencies and Tribes, largely due to concerns about confidentiality. Some have expressed frustration that it is difficult to protect resources without knowing where they are located. Certainly agencies with cultural resources staff have higher levels of access to sensitive data than others, owing both to the credentials of the individuals with that access and to the trust built between Tribes and those agencies who have acknowledged the need for and dedicated staff to the protection of Tribally significant places and resources. Advances in technology

may provide solutions to some of these issues; however, agencies and Tribes alike still need staff and funding to successfully work through any solutions. These challenges and concerns remain as relevant today as they were in 1999.

Communication

Communication is a critical element in relationships. Government-to-government relationships are no different. Agencies and Tribes are not merely other jurisdictions we must deal with, they are partners with whom we get to work. That does not mean it is always simple. With 35 agencies and nine Tribes, how and when to begin notification, coordination, and consultation can be confusing. So much so that the State of Oregon has dedicated staff under LCIS to support agencies and local governments in conducting effective communications with the nine Tribes. It is important to keep in mind that each Tribe

is its own sovereign government. As such, each has its own processes for communication and consultation. To that point, not all communication is consultation. Culture Cluster is one of the ways in which staff coordinate on significant issues which may be elevated to formal consultation with Tribal leadership. It is an opportunity for Tribes and agencies alike to gather information and to share experience and values. In doing so, we improve our understanding, develop positive relationships, and increase our opportunities for success.

Success is measured through positive actions acknowledging the significance of cultural resources. Clear and consistent communication is the most basic element to that success. Culture Cluster has served for over two decades as a bridge for collaborative work through understanding and trust. Our work is only beginning.

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Intergovernmental Cultural Resource Council (ICRC)—The Creation of a State/Federal/Tribal Working Group on Cultural Resources

Dennis G. Griffin

Abstract *Beginning in 2005, state and federal agencies' cultural resource staff began to get together three times a year in an informal group known as the Interagency Cultural Resource Council or ICRC. The brainchild of Roger Roper, Oregon State Historic Preservation Office's (ORSHPO) Deputy Director, this group was formed to promote informal but effective cultural resource management discussions in Oregon. ORSHPO recognized that state and federal agencies deal with cultural resources on a regular basis and share many of the same issues and concerns. Having regular contact with one another would provide a mechanism for generating workable solutions. In 2014 Oregon's nine federally-recognized Tribes were invited to join the ICRC with the name being changed to the Intergovernmental Cultural Resource Council. This article summarizes the results of the past 15 years of meetings, both in tracking the changes that have occurred in our discipline since the group's inception and those problems that were early recognized and remain with us today.*

Introduction

Roger Roper joined the Oregon State Historic Preservation Office (ORSHPO) as the Associate Deputy Historic Preservation Officer in 2003. Upon his arrival he noted that there was a general absence of dialogue between state and federal agencies outside of the normal Section 106 review process under the National Historic Preservation Act (NHPA). Since 1998, State agencies had regularly met and consulted with the state's nine federally-recognized Tribes regarding issues relating to cultural resources through the auspices of the Culture Cluster, a state/tribal working group that was formed following an Executive Order by Governor Kitzhaber in 1996 (EO-96-30), and later codified into statute in 2001 (ORS 182.162-168). Kitzhaber's Executive Order was inspired by President Clinton's earlier 1994 Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994), which instructed federal agencies to build a more effective day-to-day working relationship with tribes reflecting respect for their rights of

self-government due to their sovereign status. EO-96-30 represented recognition for the need to improve relations between the State and Oregon's tribes in a similar respectful fashion.

This Executive Order and statute formalized a government-to-government policy with its nine federally-recognized tribes, whereby the state sought to try and improve mutual relations and conditions for both tribal and state citizens. Federal agencies routinely consult with tribes on the effects of undertakings on federal lands, projects that require a federal permit, or use federal funding under Section 106 of the NHPA, in addition to regular government-to-government consultation regarding all other issues affecting both peoples. However, there was no organized informal consultation forum regarding cultural resources occurring between state and federal agency staff. In an attempt to open up an avenue of communication between state and federal agencies, Roper suggested the formation of the Interagency Cultural Resource Council or ICRC.

In the fall of 2005, the ICRC was formed "to promote more effective cultural resource management practices in Oregon. The state and

federal agencies that deal with cultural resources on a regular basis share many of the same issues and concerns" (Roper 2005:1). Roper thought that having regular contact with one another would provide a mechanism for generating workable solutions. The ICRC was envisioned not as a forum to address project-specific issues and concerns that would normally be handled under Section 106. The ORSHPO and several federal agencies were already working under agency-wide and project-specific programmatic agreements (PAs), which offered a streamlined approach to the review of a range of specific activities; however, such PAs further reduced interaction between agencies, and participation in the ICRC was seen as an opportunity to provide staff with a chance to brainstorm about the broader issues affecting our discipline.

While new to Oregon, the concept of such a state-federal working group was already in practice elsewhere. Before joining the ORSHPO, Roper had served as the Deputy Historic Preservation Officer at the Utah SHPO where a similar state-federal forum had been established under an interagency cooperative agreement (Cooperative Agreement 1443-CA-1200-93-006—developed between the Utah Division of State History, the United State of America, and the State of Utah). They called themselves the Interagency Heritage Education, Heritage Tourism and Resource Enhancement Program, or more popularly known as the Interagency Task Force (ITF), and had been in effect since 1990, meeting for two hours four times a year, and they continue to meet regularly today. The formation of the ITF was the brainchild of Utah's long term Deputy SHPO Wilson Martin, with its primary goal seen as a way to try to reduce the cost, time, and all-around bureaucracy of the 106 process. Agencies there thought that there was too much money and too many resources being poured into the 106 process, without generating very meaningful results. Martin drafted up an MOU-type agreement that would be signed by the highest ranking person he could get from the state and federal agencies that agreed to participate. The Utah

SHPO felt that it was important to get buy-in from the directors of each agency in order for the whole effort to be taken seriously (Roper 2020, pers. comm.).

In Oregon, Roger Roper took a more laid back approach of extending invitations to different agencies without any formal buy-in process and for the most part, setting up periodic meetings (three times a year) where agency staff were invited to meet, formal meeting notes were not taken, and people simply shared ideas about the issues affecting their agency. Meetings generally lasted all day, with participants responsible for their own travel and lunch. The full day meetings, as opposed to the much shorter ITF meetings in Utah, lent itself to a much different level of discussion than would have otherwise been possible. Roper considered one of the primary benefits of the ICRC was in just providing a forum where agency staff could get better acquainted with each other. This made it easier to get through some of the tough times when a project went south or an agency took a stance that was problematic. By knowing each other, he found we could call each other up and just chat about an issue informally, outside of the formal consultation process that sometimes forces unnatural and unhelpful communication (Roger Roper 2020, pers. comm.).

Agencies that were initially invited to join the ICRC included ten federal agencies (Bureau of Land Management [BLM], U.S. Forest Service [USFS], Army Corps of Engineers [USACE], Bureau of Reclamation [BOR], Bonneville Power Administration [BPA], Bureau of Indian Affairs [BIA], U.S. Fish and Wildlife Service [USF&WS], Natural Resource Conservation Service [NRCS], National Park Service [NPS], and Federal Highways Administration [FHWA]) and five state agencies (ORSHPO, Department of Transportation [ODOT], Department of Forestry [ODF], Department of State Lands [DSL], and the Military Department [OMD]). The first meeting was attended by seven of the ten federal agencies and four of the five invited state agencies, so the idea of forming such a

council was both understood and supported by most agencies involved with cultural resource management issues in Oregon.

Participation in the ICRC was not contingent on an agency having an archaeologist on staff, but was directed toward agencies whose mission had the potential to affect cultural resources through regular activities (e.g., timber harvest, livestock grazing, wetland restoration, off-road recreation). Additional federal and state agencies were added to the group as time passed, some of whom later hired their own archaeologist. For example, in 2005 when the ICRC was formed, the only archaeologists working for state agencies were at ORSHPO and ODOT. With the ORSHPO being part of the Oregon Parks and Recreation Department (OPRD), all OPRD archaeological issues were handled by ORSHPO staff. Once OPRD hired their own archaeologist in 2006, they were also invited to participate in the ICRC. In time, Oregon's DSL, OMD, and Department of Fish and Wildlife (ODF&W) followed suit by hiring their own archaeologists.

The need for many of these later state agency archaeological positions was recognized through the ongoing Culture Cluster discussions between state and tribal entities (Rippe, this issue). Aware of the existence of the state-tribal Culture Cluster, the ICRC sought not to interfere with its purpose, but rather to provide an alternative-like forum between state and federal agency staff, which did not regularly have an opportunity to talk together informally. However, in 2013, Oregon Tribes contacted members of the ICRC asking why they had not been invited to join the ICRC when it was formed. While Tribal-Federal consultation usually was confined to a more formal consultation process between agency leaders (i.e., Big "C" Consultation), tribal staff thought that their joining more informal discussions might benefit all participants. The inclusion of the Tribes was discussed in 2014 with Tribes formally joining ICRC later that year. With their arrival, the group's name was changed to recognize the different participant groups from Interagency to Intergovernmental Cultural

Resource Council, which was able to use the same acronym. Today, invitees include 12 federal and nine state agencies, and all of Oregon's nine federally-recognized Tribes.

Following the inclusion of Tribes to the ICRC, the focus of meetings shifted from being a loose discussion forum of general topics of interest to a more specific theme approach to each meeting. Such focused discussions since 2015 have included: 1) Public Education—such as the Archaeology Roadshow and working with para-professionals; 2) Law Enforcement—at both the federal and state level; 3) Innovation and Mitigation—focusing on creative mitigation, programmatic mitigation, and innovative approaches to interpreting the past; 4) Planning—whether that be in the creation of site predictive models, preservation plans, or Historic Property management Plans (HPMP); 5) The recognition, identification and management of Traditional Cultural Properties (TCPs), Cultural Landscapes, and Sacred Sites; 6) Assessing adverse effects (both direct and indirect); 7) Internships and Fellowships; 8) Emergency and Disaster Management; and 9) Natural resources as cultural resources—tribally sensitive plant recognition, protection, stabilization and reestablishment, to name but a few.

Participants in ICRC, both in its initial configuration and later following the addition of Oregon's Tribes, have consistently recognized seven general topics that have served as the primary drivers behind group discussions. These included: the recognition of existing heritage programs; improvement in the cultural resource consultation process; data management; training; public education; cultural resource laws and regulations; and site stewardship. While taken together these topics are quite broad, ICRC members have attempted to address each of these issues over the past 15 years with interesting results. This article highlights some of the products or directions our conversations in the ICRC have taken agencies since its inception, and how informal interagency/government forums can greatly assist cultural resource management

discussions when they are separated from project-specific agendas and timelines.

Joint recognition of National Programs

As participating agencies have joined the ICRC, recognition of national, state, and tribal preservation programs, anniversaries, and training opportunities have been shared (e.g., the Preserve America Program; centennial of the Antiquities Act; USFS's volunteer cultural heritage program Passport in Time; the Oregon Preservation Conference; Pacific Northwest Field School; Oregon's 150 celebration; Oregon Archaeology Celebration; SHPOlooza; tribal awareness training workshops and celebrations). New opportunities for participation and education have been actively encouraged (e.g., PSU's annual Archaeology Roadshow). All agencies and tribes continue to seek an increase in public recognition of the strength of such programs and to encourage broader public participation.

Improvements in the Cultural Resource Consultation Process

Improvements in how federal, state, and tribal agencies address cultural resource management and review activities has been a primary focus among ICRC participants with discussion areas being quite varied. Topics have ranged from how project reviews can be streamlined, to the development of more effective PAs; from the range of data needed to make effective site eligibility determinations, to the use of technicians to conduct cultural resource surveys. Some discussions have yielded much progress while other topics continue to be discussed. Some of the highlights worth mentioning include:

Streamlining project reviews

While ORSHPO has assisted in the drafting and signing of many agency-specific and project-specific PAs over the last 15 years, such agreement

documents largely take place outside of the ICRC forum. Some may have been initially discussed here, or their need recognized through discussions at our meetings that occurred three times a year; however, the ICRC has tried hard to remain an informal arena where discussions among members seek to involve topics of interest to all participating agencies, rather than focusing on one or a few. However, discussions regarding improvements in cultural resource standards (e.g., linear resource guidance, monitoring, site forms, recordation and evaluation of historic archaeological resource types) have been helpful in the design of several documents that have later been incorporated in broader agency agreement documents.

Site Eligibility Determinations

By 2007, the need to broaden discussions regarding the National Register of Historic Places' (NRHP) eligibility of archaeological sites beyond a singular Criterion D focus, to include an analysis of the four primary NRHP criteria (A-D), was recognized by both tribes and federal and state agencies. However, efforts to achieve such broader evaluation efforts continue with mixed results. Discussions surrounding the amount of information needed to formally evaluate sites, versus seeking a more general agency consensus approach to simply treat sites as eligible, and avoiding them from project impacts was discussed at length. Due to shrinking staff, reduced budgets, and increased duties, the consensus approach was largely adopted by many federal and state agencies in Oregon and formal site eligibility decisions became rare. This approach has more recently been questioned by some federal agencies who now find themselves with thousands of unevaluated sites that they are forced to manage, while knowing that many may not prove to be significant if funding was available for formal testing, or encouragement given to attempt evaluations when such sites were initially recorded. On the state side, the adoption of a general consensus approach to eligibility over formal determinations has more

recently drawn attention with Oregon's passage of HB 2329 during the 2019 legislative session. Effecting future energy projects in the state, this bill informs project applicants that only sites listed on the National Register, or formally recognized by SHPO as eligible or important, need to be considered in future project sitings. This House Bill's finding is in direct opposition with several state cultural resource statutes (ORS 358.920; 390,235; 97.740). Earlier efforts by state and federal agency staff to streamline the eligibility review process may now endanger those sites we once sought to protect. A discussion of this topic will undoubtedly continue into the foreseeable future.

Use of Technicians to do Archaeology in Oregon

In the early 2000s, the USFS and BLM were actively involved in offering yearly training opportunities (Rec-7 Training) to educate agency non-archaeological staff (e.g., foresters, range-conservationists, botanists) in how they could assist in archaeological compliance activities on agency lands, due to the small number of professional archaeologists employed by such agencies and the increasing project workload. Other agencies, such as NRCS, largely relied on non-professionals throughout the United States to conduct all of their archaeological reviews, although in Oregon, a single professional archaeologist was on staff to provide guidance and lead agency efforts. Discussions at ICRC meetings, and at other venues in the state, highlighted the many problems ORSHPO and other professional cultural resource personnel had in accepting investigation reports for projects that were solely conducted in the field and reports drafted by untrained, and often unsupervised, non-archaeologists in meeting agencies' federal obligations to conduct their archaeological surveys and complete Section 106 compliance activities. Within a few years of discussion, all agencies accepted that this policy needed to change and at a regional level, and by 2007 the yearly training course was discontinued, and districts and forests were discouraged from relying

on such staff. The reliance on nonprofessionals to conduct professional investigations in Oregon has now largely disappeared, aside from NRCS' continued reliance of offering such participation as part of yearly, directly-supervised training opportunities to nonprofessional agency staff as a means to both educate their staff to the sensitivity of archaeological resources as well as handle their ever increasing workload, largely dealing with private lands.

Data Management

Data Management discussions have focused on a couple of main areas, these being the standardization of archaeological site forms and the management of site data into a single, protected, accessible database. The ICRC has often served as a primary forum to discuss approaches to such standardization and solicit financial support for such efforts.

Site Forms

The standardization of a single state site form used by all agencies was an initial focus of all ICRC participant agencies with efforts made to coordinate all site form fields. However, acceptance of One Form for All faded within a few years of discussion with the national office of the USFS choosing to adopt a nationwide standardized form, the BLM preferring their Oregon Heritage Information Management System (OHIMS) that later morphed into the Oregon Cultural Resource Inventory System (OCRIS) form, and the State of Oregon developing their own state site form which became available online by 2008 and remains the primary form accepted by ORSHPO. Efforts between the State, USFS, and BLM, however, continue to develop a process in the future that will ideally allow a seamless data sharing of site data over a secure system to facilitate the assimilation of site information in Oregon in spite of preferred agency form variations. We are not there yet, but stay tuned!

Database Management

Federal (BLM, USFS) and state agencies (ORSHPO, ODOT) invested money in helping to create and clean-up the state's master GIS archaeological site and survey database and to make this data available to researchers. Their assistance contributed to the ORSHPO's ability to place our GIS archaeological database online in 2014 (Oregon Archaeological Records Remote Access or OARRA), along with access to scanned copies of over 31,000 reports and 43,000 archaeological site forms. Granted, there are still many errors in both the spatial data and linked documents within this system; however, the ORSHPO has come a long way since 2005 and conversations at ICRC and investment by some of its agency members have greatly assisted in this process.

Training

Cultural resource (CR) training opportunities has always been recognized as an important component in assisting agency staff in recognizing the presence of and need to protect these fragile, nonrenewable resources. Impressed by CR awareness training opportunities offered by Washington's Department of Archaeology and Historic Preservation (DAHP), Washington State Parks, and their state's Department of Natural Resources, OPRD and the ORSHPO established a similar CR awareness training, in partnership with the Oregon Department of Forestry (ODF) in 2004. All nine federally-recognized tribes in Oregon participated in the training. While initially only offered to OPRD and ODF staff, and begun before the formation of the ICRC, this forum, as well as that of the state's Culture Cluster, has served to attract greater interest in participation in such awareness training (Nelson, this issue), and the once exclusive OPRD/ODF annual training has now been expanded to include personnel from many other state and federal agencies.

SHPOlooza

The ICRC has provided a good forum for representatives from federal and state agencies and tribal governments to discuss cultural resource management activities in Oregon; however, the need to involve contract archaeologists into such discussions was also seen as important. In 2016, ORSHPO established an opportunity, known as SHPOlooza, for all state, federal, tribal, and private CR staff to come together to talk about important cultural resource issues in Oregon. ICRC discussions helped to highlight this need, and it was used to broaden participation from all groups. Topics at past SHPOlooza events included state archaeology field and reporting guidelines, how to address archaeological site eligibility requirements using all four NRHP criteria, Oregon's state archaeological permit process, the recognition and recordation of TCPs, and mitigation. While sponsored by ORSHPO, participation by other ICRC member agencies enrich the dialogue and increase the effectiveness among archaeologists working in Oregon. These meetings provide a rare opportunity for all cultural resource professionals to sit in one room and discuss some of the most pressing issues to all.

Professional Archaeologists

Since the conception of the ICRC there has been a general increase in the hiring of archaeologists by state agencies over time. At the state level, while it is not possible to directly link this increase to the ICRC, when it started two state agencies employed archaeologists (ORSHPO (2) and ODOT (2)). There are now 16 professional archaeologists working for state agencies (OPRD-3; ORSHPO-4; ODOT-6; DSL-1; ODF&W-1; OMD-1). The need for other state agencies to have professionally trained staff in both archaeology and built-environment resources continues to be a topic at both ICRC and Culture Cluster meetings, with ODOT actively seeking to assist other state agencies in creating shared cultural resource positions, which will hopefully gain traction in the future. A similar

increase in archaeologists employed by federal agencies in Oregon, and within tribal cultural resource protection programs has taken place over this same period highlighting the growing recognition of the importance of and threat to such nonrenewable resources.

Public Education

Following the formation of the ICRC, it was suggested that a forum be established to provide a way to communicate between archaeologists in the state. Such a forum was seen as useful in providing a place to advertise employment opportunities among agencies, training courses being offered, state and regional conferences, and as a forum to discuss topics relevant to cultural resources. Within four months of the initial idea (February 2006), the Archaeology Listserve was formed and administered by ORSHPO, with over 100 members signing up by the end of the first month, and now serving over 479 members. Aside from the Listserve, ICRC members continue to seek to identify other ways that participating agencies could assist in educating the public.

Guidance Documents

The ICRC has proven to be a good forum for the discussion, review, and roll-out of numerous cultural resource guidance documents

including revised standards for historic structure surveys, state archaeological field and reporting guidelines, linear guidance documentation, Archaeology Bulletins regarding sites on public and private lands and the state's permit process, and the creation of a historic sites database and architectural style guide. The state's online archaeological database (OARRA) went live in 2014, following some testing by participating ICRC agencies.

Playing cards

Originally conceived as a means to help increase public awareness of the importance of Oregon's cultural resources, and to celebrate our state's Sesquicentennial Celebration in 2009, ORSHPO created a deck of playing cards that celebrated our state's heritage resources, both archaeological and historic. The cards were designed so that each suit in the deck highlighted a different area of cultural resources (Figure 1); with Spades drawing attention to the range of archaeological site types in the state, Hearts highlighting unique historic structures, Clubs focusing on artifacts and features remaining in the landscape that provide evidence of past human use and occupation, and Diamonds emphasizing the need for education and preservation (Griffin 2011a, 2011b). While ORSHPO conceived the playing cards as a great way to educate the general public regarding the

state's rich cultural heritage, funding to print the proposed decks was not in the state budget, and the member agencies of the ICRC stepped forward to assist in the printing of 20,000 decks which were distributed to the public in 2010. In 2016, ICRC participating agencies again stepped up to print an additional 20,000 decks that were again distributed for free to the public through many forums.

Laws and Regulations

Discussions regarding changes to state and federal laws and regulations were never seen as a primary focus of the ICRC member agencies, with attention focused more on awareness of current laws. As federal agencies began assisting their neighbors in joint project developments, and began working off federal lands, the ICRC served as a forum to increase awareness of state laws and the state's archaeological permit process. To such agencies, differences in state and federal cultural resource laws were also highlighted with a recognition of where changes may be needed to existing state laws if the state later needed to attempt to mirror federal protection standards (e.g., DSL's proposed partial assumption of the issuance of federal 404 wetland permits which could require state laws to more accurately mirror federal law provisions, and the recognition that Oregon state laws do not currently recognize Traditional Cultural Properties (TCP)). Other law-related issues that have been discussed at ICRC meetings have included: 1) the definition of and current allowance for the collection of an arrowhead from sites on non-federal public and private lands in Oregon; 2) the need for a State Physical Anthropologist to deal with the many cases where human remains are encountered in the state; 3) the difference in age of site recognition (50 years on federal lands vs. 75 years on non-federal public and private lands); and 4) the number of artifacts that constitute an isolate vs. a site (i.e., isolate = one artifact vs. from one to nine artifacts; a site = two or more artifacts vs. ten artifacts).

Site Stewardship

In an effort to work more closely with the public and get extra attention in trying to help monitor and protect archaeological resources in public places, the development of a statewide stewardship program was first introduced at the ICRC by the BLM and later attempted by OPRD along the state's south coast. Both efforts were short-lived and have largely disappeared due to lack of funding and limited staff to coordinate such a program.

Summary

While I am not saying that the members of the ICRC have solved all of the issues highlighted above, this forum has provided an opportunity for staff from many different agencies and tribes to brainstorm around some of the more pressing issues affecting cultural resources today, offering many different perspectives. None of the conversations were necessarily tied to a specific project, funding source, timeline, or directed toward any one group. The opportunities offered through participation in this informal group have indeed met the goals initially set out by Roger Roper, to allow cultural resource practitioners the chance to get better acquainted with each other and chat about issues informally, outside of the formal 106 consultation process. The influence these discussions have had on subsequent agency participation and buy-in on project-specific and resource-wide decisions cannot really be known but they were undoubtedly more helpful than if such a group never existed.

The ICRC is just one opportunity for agencies and tribes to sit down together and discuss topics of mutual concern, but the broad representativeness of these meetings is rare and insightful. The authors of the other articles within this issue highlight other forums or paths agencies are taking to increase a dialogue between state agencies and tribes. What is currently missing from this type of forum is an opportunity to bring in private contract archaeologists who deal with the same problems. Contract

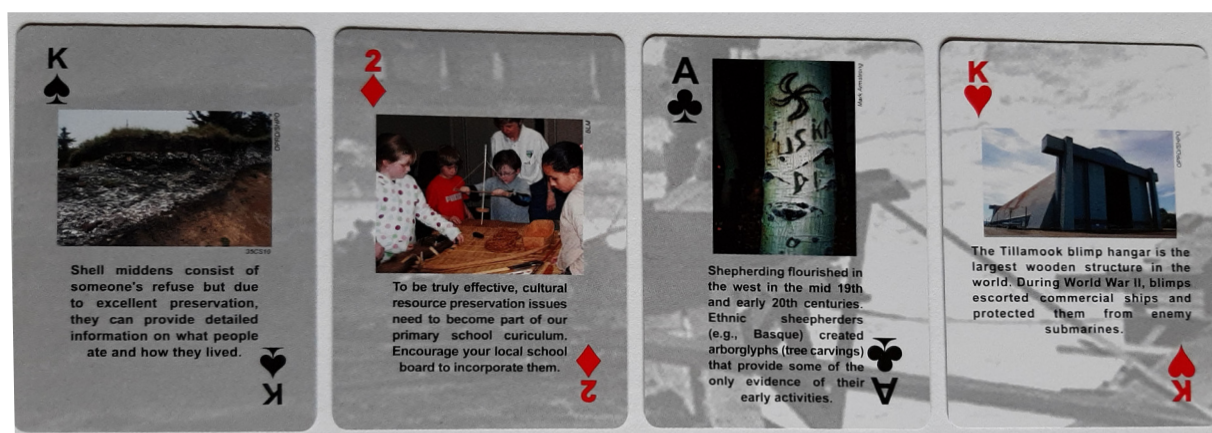


Figure 1. Four-themed suits in Oregon's Heritage Playing Cards

firms are by their very nature tied to project-specific demands, budgets, and timelines, while members of forums such as the ICRC are not always so restricted. The next step to increase the usefulness of such discussions is to provide discussion topics that are more broadly seen as useful to public, tribal and private archaeologists so that all cultural resource practitioners are able to learn more from each other regarding the primary issues of the day. One such topic currently being discussed is how to recognize, record, and evaluate lithic landscapes, which are found throughout much of eastern Oregon. The USFS, BLM, and ORSHPO are currently planning such resource discussions along with area tribal staff. The participation of private contractors, who spend much time in dealing with such landscapes, is considered essential. This and other such shared resource topics are beyond the scope of discussion groups like the ICRC, but it is here that the awareness and need for such discussions are often first recognized. The later successes from such meetings, whether they be in providing guidance to state and agency guidelines or assisting in project-specific management documents, will likely not be linked to early forum discussions but the existence of such groups remain invaluable.

ACKNOWLEDGMENTS

The author wishes to thank Roger Roper for introducing the concept of the ICRC and encouraging state and federal agencies to participate following its inception. Thanks also to all tribal staff who subsequently joined the ICRC and contribute greatly to our discussions.

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Encouraging Partnerships: Oregon Department of Transportation & Tribal Relations

Carolyn Holthoff

Abstract *The Oregon Department of Transportation (ODOT) has a long history of partnering with Tribes, and we continue to seek opportunities to honor and nurture those relationships. Starting in the early 1990s, ODOT organized regular face-to-face coordination meetings with Tribes. These efforts resulted in tangible outcomes which benefit both agency and Tribe, including intergovernmental agreements (IGAs) with Tribes to conduct cultural resources work for transportation projects and Tribal staff representation on agency hiring panels for new cultural resource staff. Building upon this tradition, ODOT is collaborating with our Tribal partners to develop our first Tribal Summit focused entirely on Transportation and Natural and Cultural Resources to strengthen current practices around Tribal consultation and project delivery, to expand relationships with Tribal leadership and staff, and to identify areas where we can improve and work more collaboratively. While this effort is on hold due to the COVID 19 pandemic, we believe that our program's history and development is worth exploring and sharing so that others might use it as a model. .*

While ODOT conducts Tribal consultation as outlined in regulation and statute, we view Tribal Governments as partners in our statewide mission—to provide a safe and reliable multimodal transportation system that connects people and helps communities thrive. Our relationships have been built on trust demonstrated through years of outreach and transparency, and we believe this is a successful model for any government agency cultural resource program. This article will explore the history and development of our program, shining a light on the benefits of building strong relationships with Tribes based on partnership.

ODOT conducts government-to-government consultation as mandated under state statute ORS 182.164. This 2001 law, the first of its kind in the nation, requires state agencies to develop and implement a Tribal coordination policy outlining how each state agency works with federally-recognized Tribes in the State of Oregon. Importantly, each agency consults with Tribes on programs of interest and works with them on development and implementation of programs that might affect Tribes. While this law focused specifically on in-state Tribes, ODOT's

mission and programs are deeply connected to federal processes and regulations, which require expanded consultations with any Tribe that “attaches religious and cultural significance to historic properties that may be affected by an undertaking” (36CFR800.2(c)(2)(B)).

The majority of ODOT projects are delivered on behalf of the Federal Highway Administration (FHWA). The FHWA provides funds to ODOT which in turn obligates ODOT to comply with Section 106 of the National Historic Preservation Act (NHPA) as well as a suite of other federal regulations. Importantly, the NHPA requires consultation with Tribal Historic Preservation Offices (THPOs) and federally-recognized Tribes that attach religious and cultural significance to historic properties that may be affected by a federal undertaking. Our Programmatic Agreement with FHWA and the Oregon State Historic Preservation Office (OSHPO) provides that ODOT conducts Tribal consultation on behalf of the FHWA. FHWA retains its status as the lead federal agency, but ODOT handles the day-to-day consultation. ODOT archaeologists consult with all nine of the federally-recognized Tribes in the State of Oregon as well as with

seven federally-recognized out-of-state Tribes that have an interest within Oregon. ODOT's government-to-government policy, based on ORS 182.164, promotes and enhances these relationships through programs that include Tribal involvement in the development and implementation of transportation projects and other activities which may affect Tribal lands, resources, and interests. For example, we are currently running a pilot program on construction contractor identified staging and disposal sites based on feedback from Tribes. The goal has been to better address possible cultural resources' concerns for these locations.

ODOT believes Tribal consultation must begin early in the project development process and continues throughout the lifecycle of the project, allowing tribes an opportunity to provide meaningful input, as well as avoiding unnecessary project delays and setbacks. Ideally, this would happen even during the planning stages, well before project development. As a way to keep open lines of communication, ODOT archaeologists meet with all nine of the federally-recognized Oregon Tribes, with a schedule and format unique to each Tribe. We also meet face-to-face with out-of-state Tribes when opportunities arise. Such meetings provide ODOT and FHWA the ability to present project information in a more personal setting on the Tribes' terms and needs. As soon as projects are identified for development, Tribal coordination begins. ODOT Archaeologists are responsible for kicking off Tribal coordination. This may happen in the form of a letter, email, or phone call, depending on how each Tribe wishes to consult, but it does not end there. Regardless of the method of communication, tribes are provided the pertinent project information and supporting documentation like maps and GIS shapefiles, if available at that time. Tribal coordination continues for the duration of all projects via phone calls, emails, letters, meetings, etc., and is not complete until the project is constructed. We have also extended this coordination to some of our maintenance actions as well.

Importantly, ODOT uses regular face-to-face meetings to stay connected to Tribal partners and to keep communication lines open regarding projects. Meetings are typically held at the Tribal Offices, but occasionally take place at ODOT facilities, in the field at various project locations, and now online as we navigate COVID-19. ODOT archaeologists, region environmental staff, construction managers, maintenance managers, project staff, ODOT's official tribal liaison (Director's Office), and FHWA staff are invited to attend Tribal meetings, as needed. Each Tribal meeting is unique, as each Tribe sets the tone for how it wishes to be consulted.

In an effort to stay organized and as a requirement of our 2011 Programmatic Agreement with OSHPO and the FHWA, ODOT archaeologists maintain project tracking spreadsheets for each Tribe. Project details are noted on the spreadsheets along with information on the status of cultural resources' surveys and excavations, past Tribal consultation efforts and concerns, if any, brought forward from the Tribes. Spreadsheets are sent to Tribes and FHWA before each meeting, allowing for an advanced review of the material. After the meetings, the spreadsheet is updated and provided to FHWA and Tribes.

One of the successful outcomes of these partnerships has been the development of IGAs between ODOT and a number of Agency Tribal partners to support cultural resources services. In the late 1990s, ODOT executed its first IGA with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). This IGA allowed ODOT to partner with the CTUIR on a traditional use study for proposed enhancement projects along a specific highway corridor, and increased awareness to the value that such a study could bring to the project. It also allowed ODOT to rely on the Tribes' history, knowledge, expertise and the relationship with the land and resources and bring that into the project delivery process.

By the early 2000s, ODOT had negotiated an agreement with the Confederated Tribes of Grand Ronde (CTGR) to provide monitoring services for various projects. This IGA functioned as a

price agreement, whereby ODOT issued work order authorizations for specific monitoring on specific projects—a different type of agreement compared to the one executed with the CTUIR, but still one that relied on the Tribe's expertise and knowledge.

Fast forward to 2020 and ODOT now maintains seven IGAs with various Tribes, all with a variety of services that only those Tribes can provide. With one exception, all of the ODOT agreements maintain a line item that would allow the agency to partner with the Tribes on ethnographic work and identification of Traditional Cultural Properties (TCP) and Historic Properties of Religious and Cultural Significance to Indian Tribes (HPRCSIT). This provision gives us the flexibility to benefit from Tribal knowledge and expertise where such resources are concerned. Ideally we would have IGAs of this manner in place with all in-state and out-of-state Tribes with whom we work.

The IGAs have been utilized on projects where Tribal representatives have assisted with monitoring construction work, collected and documented information regarding TCPs, conducted survey work in culturally sensitive areas on and off reservations, and provided support for archaeological damage assessments. Recently, we utilized the ethnographic research provisions for a bridge replacement project by engaging three tribes with overlapping areas of interest to better assess cultural sites and potential impacts.

In addition, ODOT maintains project delivery contract provisions for ethnobotanical work to incorporate culturally sensitive plant surveys in early project delivery efforts. This new tool allows us to take a landscape approach to cultural resources reviews, beyond artifacts and features.

We have also worked on several efforts to engage with tribes on plant harvesting in advance of construction activities, something that has helped both the agency and the Tribe. This has included harvesting camas, celery root, whole trees, and sometimes just cedar bark.

ODOT has encouraged and organized plant relocation efforts for dogbane along ODOT highways, and also partnered with Tribes on cultural sensitive plant propagation at one of our wetland mitigation sites.

To help us build a strong and diverse cultural resources team, we have included Tribal Cultural Resources Staff on our hiring panels. Tribes play an important role in our work and daily activities and incorporating this perspective during the hiring process has been very meaningful.

Partnership agreements, frequent meetings and consistent communications allow ODOT staff to build lasting and open relationships with Tribes. As such, and in an effort to build on those relationships, we recently applied for a federal grant to host a Tribal Summit on natural and cultural resources. Other State DOTs have held similar events focused specifically on cultural resources or on all DOT programs including engineering, Tribal transportation programs, etc. Our request to host a summit based on natural and cultural resources coordination with the Tribes stemmed purely from the desire to build stronger relationships and improve consultation efforts.

While ODOT was awarded federal grant money in the fall of 2019, we had been planning the summit for some time. We leaned heavily on sister DOTs for support and knowledge, and formed a planning committee composed of ODOT, OSHPO, and FHWA staff, and representatives from several Tribes. We conducted surveys to narrow topics and planned a dynamic agenda allowing participants to create a dialogue on Tribal coordination and open the door for program improvements. Agency funding sources provided enough funds for travel expenses for up to two Tribal members from all sixteen Tribes that we work with, both in-state and out-of-state. This step was critical to ensure attendance and participation. We also invited a variety of managers and staff representing ODOT's Delivery and Operations Division, with our guest list reaching 130 participants. Our

Summit was set for May of 2020. As we gathered momentum into the New Year, COVID 19 hit. The well-being of our Tribal partners and ODOT staff required we postpone this important Summit for a future date.

ODOT's Cultural Resources Program works hard to maintain our Tribal relationships on behalf of the agency. We are committed to listening to recommendations, remaining open to change, and striving for a better program, but none of that would happen without the Tribes. While the Tribal Summit is currently postponed,

we are hopeful that it will soon be back on track. It is critical for the ODOT management structure to maintain their awareness of Tribal concerns for cultural and natural resources while strengthening their understanding regarding the mutually beneficial outcomes of a healthy Government-to-Government relationship. As a state agency, we have responsibilities to work on behalf of all Oregonians and working with Agency Tribal partners can help us be more effective at our jobs and holistic in our approach.

ACKNOWLEDGMENTS

A special thank you to ODOT, FHWA, LCIS, and all of the federally-recognized Tribes that have worked with us in partnership over the years.

Tribes and the Oregon Parks and Recreation Department— Partnerships in Training, Repatriation, and Traditional Plant Gathering

Nancy J. Nelson

Abstract *This article examines the results of over a decade of meaningful consultation between the Tribes in Oregon and the Oregon Parks and Recreation Department (OPRD). The article traces the origins and evolution of the agency's present-day tribal consultation approach. With a thorough look at the archaeology awareness training for state employees, as well as repatriation and use of traditional ecological knowledge, the positive evolution of the culture of one State of Oregon agency is recognized. By examining the agency's interactions with the Tribes, and through conducting recent interviews with tribal leaders and staff, and OPRD management, successful relationships are discovered. This article presents several examples to provide ideas and avenues to improve future tribal consultations, and ways that other agencies in the United States can embrace a better understanding of meaningful consultation with tribal partners by creating collaborative opportunities for the management of natural and cultural resources, which can help heal historical wrongs.*

Oregon Parks and Recreation Department (OPRD), commonly known as Oregon State Parks, has been the stewards of Indigenous people's special places for nearly 100 years. The agency has gone through a long evolution of understanding its responsibilities to the descendants of the people who once lived on the lands now referred to as state parks. Given that most of the more than 250 state park properties have at least one precontact archaeological site, and that the parks are home to numerous natural resources that continue to be used by tribal members, it is imperative that the State of Oregon interacts and consults with the first peoples of Oregon in a meaningful way.

When a state agency creates an archaeologist position, it can be viewed as an authentic commitment to tribal consultation. Upon arriving in 2006 as the first land managing archaeologist for OPRD, it was apparent that the agency was just beginning to understand what tribal consultation meant and how to go about consultation. The new archaeologist position marked a change for the agency in three areas. First, park staff had never consulted with their own archaeologist. Second, most park managers had never consulted with a Tribe, and third, the agency's interactions

with Tribes was limited to periodic letters and involvement after an inadvertent discovery of an archaeological site. As a result of having an archaeologist who served as a resource to help with the operations of the parks, the evolution of tribal consultation at the agency grew rapidly through training, repatriations, and access to traditional plant materials on park properties.

Training

Defining Meaningful Consultation for State of Oregon Employees

In 2005, OPRD held its first "Archaeology Training Conference," adapted from a very similar training facilitated by the State of Washington, which was supported and funded by OPRD and Oregon Department of Forestry (ODF). The training brought together the Native American and scientific communities to share each of their perspectives to understanding the archaeological record and history. There was also a tribal consultation aspect to the training, which proved to be incredibly valuable to improving communication between the agency and the Tribes.

In the first three years of the training, the agency had funded an out-of-state archaeologist to facilitate the training as well as provide flintknapping demonstrations. Beginning in year four, OPRD decided to shift that funding to help facilitate more tribal staff involvement. In turn, the OPRD archaeologist took responsibility facilitating the training, a tribal member taught traditional flintknapping and OPRD invited each of the nine federally-recognized Tribes in Oregon to attend with lodging, lunch, and a dinner, and participate in the 3 ½-day training. Speakers have included tribal members Esther Stutzman (Confederated Tribes of the Siletz Indians of Oregon; traditional storyteller and recipient of the Governor's Lifetime Achievement Award), Roberta Kirk (Confederated Tribes of the Warm Springs Reservation of Oregon; Simnasho Longhouse traditional food gatherer, former Native American Graves Protection and Repatriation Act Coordinator, Oregon Folklife Network-Traditional Arts Apprenticeship Master Artist and recipient of the First Peoples Fund Community Spirit Award), Don Ivy (Coquille Indian Tribe; current Chief and former Cultural Resources Program Coordinator) and Armand Minthorn (Confederated Tribes of the Umatilla Indian Reservation; chairman and member of the Native American Graves Protection and Repatriation Act Review Committee). Each provided the Native American perspectives and stories on the precontact and historic periods in Oregon. It has been important to include tribal members' perspectives throughout history, from before contact through treaty times and right up to present day perspectives, which connects our shared history in Oregon.

Every year since the training's conception, OPRD has invited tribal Elders to the training. The Elders' presence grounded and humbled the participants with their prayers, songs and conversations. For several years, the late Viola Kalama and Fred and Olivia Wallulatum, enrolled with the Confederated Tribes of Warm Springs of Oregon, were amongst the Elders who provided their invaluable insight into working with Tribes

(Figures 1 and 2). Dennis Comfort (2020), OPRD Coast Region Manager, who has been with the agency since 1989, attended one of the first trainings. It was there that he experienced his first tribal invocation with an Elder and Comfort (2020:5) recalled: "There we were honoring tribal spirituality and the American flag was there, too. It was a moving experience."



Figure 1. Adwai (late) Viola Kalama, Wasco Elder, at the 2008 Archaeology Awareness Training (Courtesy of Oregon Parks and Recreation Department, Salem.)



Figure 2. Fred and Olivia Wallulatum, Confederated Tribes of the Warm Springs Reservation of Oregon Elders, at Tsagaglala (She-Who-Watches); 2017 Archaeology Awareness Training field visit (Courtesy of Oregon Parks and Recreation Department, Salem.)

The sovereign Oregon Tribes have participated in a tribal consultation session over the last fourteen years at what is now called the "Archaeology Awareness Training." In turn, there have been over 500 state employees from 11 state agencies who have learned about tribal consultation. In order of the total number of attendees, the following state agencies have attended the training:

- Oregon Parks and Recreation Department (OPRD)
- Oregon Department of Forestry (ODF)
- Oregon State Police (OSP)
- Oregon Department of Water Resources (OWR)
- Oregon Department of Transportation (ODOT)
- Oregon Department of Fish and Wildlife (ODF&W)

- Oregon Department of Environmental Quality (ODEQ)
- Oregon Department of Geology and Mineral Industries (DOGAMI)
- Oregon Military Department (OMD)
- Oregon Department of State Lands (ODSL)
- Oregon Watershed Enhancement Board (OWEB)

In some cases, the training marked the first time a state employee had ever met a tribal member. Typically, the tribal consultation session included a panel discussion with each Tribe represented. Tribal representatives provided background on their tribe's homelands, their expectation of meaningful consultation, and the key contact person for their Tribe. The session provided the attendees with guidelines for when consultation could be handled by phone or email, and which types of projects

required an on-site visit. In the more recent years, the training included, break-out sessions by region so that state employees who worked at the Oregon coast, in the Willamette Valley, and on the east side of the Cascades, could have more specific discussions with those Tribes. The break-out sessions helped to answer questions about consultation as well as archaeological questions related to site types, and cultural resource methodology and protection laws. A state agency archaeologist and tribal cultural resources staff members were also a part of these discussions. To facilitate more tribal involvement, each year OPRD provides a scholarship to two different tribal staff members to attend the training. For example, the scholarship went to tribal member staff from the Burn Paiute Tribe and the Cow Creek Band of Umpqua Tribe of Indians, who were new to their respective cultural resource programs. Their participation proved to be valuable, as they were trainers who provided a fresh perspective in the consultation breakout sessions as well as being students and learning about current scientific archaeological thought in Oregon.

Bridging Consultation with Archaeological Site Protection

In 2009 and 2018, OPRD organized a training for law enforcement, including OSP. The "Archaeology Training for Law Enforcement" is an accredited training with the Oregon Department of Public Safety Standards and Training (DPSST) where officers receive formal credit for attending the awareness training. The training's presenters include professionals from Oregon Tribes, OPRD, Oregon State Historic Preservation Office (OSHP), Oregon Department of Justice (ODOJ), United States Department of Justice (USDOJ), and university professors. Topics included an overview of the importance of archaeological sites to the Tribes; examples of archaeological sites with field visits; site protection scenarios and exercises; the process when Native American human remains are inadvertently discovered; and a thorough examination of cultural resource protection laws.

The 2009 Archaeology Training for Law Enforcement was provided in partnership with

OPRD and the Coquille Indian Tribe. Three years later, the training was put to the test when one of the attendees, an OSP Fish and Wildlife Division sergeant (Figure 3), witnessed a looter collecting artifacts at a state park on the Oregon coast. The sergeant subsequently cited the looter with violating Oregon's archaeological protection law. The OPRD archaeologist consulted with Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Culture Committee members, and tribal archaeologist about the seized artifacts and the looting case. The Tribe and OPRD worked cooperatively together to analyze the artifacts and collect data for evidence. This collaboration also included the Oregon DOJ who presented the case to the court using the evidence and successfully prosecuted the looter with the help of the sergeant who attended the training. It was strikingly apparent that the law enforcement training, and state and tribal collaboration was key to the success of the case.



Figure 3. (left) Robert Kentta, Confederated Tribes of Siletz Indians of Oregon Tribal Council Member and Cultural Resources Department Director; (right) Levi Harris, Oregon State Police, Fish and Wildlife Division Sergeant at the 2018 Archaeology Training for Law Enforcement Training field exercise (Courtesy of Oregon Parks and Recreation Department, Salem.)

Throughout the years of the archaeology trainings, it became evident that one of the most important outcomes was building relationships between the Tribes and state employees (Figure 4). While OPRD has increased the number of archaeologists from one position to three, and it is those archaeologists who have typically conducted most of the agency's tribal consultation efforts, the Archaeology Awareness Training encourages and opens the door for park staff to get to know the Tribe or Tribes near the parks in order to cultivate successful consultation relationships. The Archaeology Awareness Training arguably helped shift agency culture; park staff who attend the training come away with a better understanding of why the agency protects archaeological sites and how those sites are connected to the Tribes.

Repatriations

Returning Ancestral Belongings

In 2008, during a State/Tribal Cultural Cluster meeting at the University of Oregon Museum of Natural and Cultural History Longhouse, an important discovery was revealed. The Klamath Tribes' Director of Culture and Heritage, Perry Chocktoot, shared an anonymous disclosure that Collier Memorial State Park was in possession of a large number of artifacts. After making a call to the park manager and later visiting the park with Mr. Chocktoot, the OPRD archaeologist confirmed several ground stone tools were housed at the park. This was the beginning of the agency's dedication to comply with Native American Graves and Repatriation Act (NAGPRA).

After seeking support from all of the Tribes in Oregon, OPRD applied for a NAGPRA grant to create a summary of all of the Native American items housed at the parks and to provide funding to Tribes that wanted to travel to the parks to consult on possible NAGPRA items. The summary documented 5640 ground stone tools at Collier Memorial State Park. Most of the tools

did not have specific provenience. However, notes made by early amateur archaeologists and looters documented the county where the items were collected. While the tools did not reach the threshold of a NAGPRA claim, they were clearly associated with the Klamath Tribes. In consultation with the agency, Mr. Chocktoot requested the "return of our ancestors' belongings" (Perry Chocktoot 2017, pers. comm.). After meeting with the University of Oregon Museum of Natural and Cultural History (OMNCH) Director, Dr. Jon Erlandson, and reviewing Oregon's Administrative Rule, which provides an avenue to deaccession items from the State of Oregon's control, it was decided that the 5640 ancestral belongings be repatriated back to the Klamath Tribes. In the spring of 2017, Klamath tribal cultural resources staff, UOMNCH Director of Anthropological Collections, Dr. Pam Endzweig, and OPRD staff, conducted yet another double check of every item (Figure 5). On June 23, 2017, Klamath tribal members assisted OPRD in moving their ancestors' items back home to the Klamath Tribes.

Since its origins, the Native American Graves and Repatriation Act (NAGPRA) has been based in human rights law. At the *NAGPRA at 20 Symposium*, Walter Echo-Hawk (2010:1) stated that "the right to a proper burial is a human right," and it is this sentiment that has guided OPRD. The agency goes beyond the requirements of NAGPRA and takes additional steps to honor the wishes of the Tribes in Oregon. For instance, some federal agencies have repatriated NAGPRA items back to Tribes, including Native American human remains, but will not allow for their reburial on the federal lands where they were discovered. The Tribes have subsequently requested reburial in different state parks that are near the original discovery sites. In turn, OPRD now has a policy that allows for reburial practices on OPRD-managed land in locations that the agency has designated for no future development. The OPRD archaeologist then creates an archaeological site form to document the reburial locations for future



Figure 4. Perry Chocktoot, Klamath Tribes Director of the Culture and Heritage Department, 2013 Archaeology Awareness Training flintknapping session (Courtesy of Oregon Parks and Recreation Department, Salem.)



Figure 5. Klamath Tribes, University of Oregon and Oregon Parks and Recreation Department staff wrapping up the inventory process, May 18, 2017 (Courtesy of Oregon Parks and Recreation Department, Salem.)

agency archaeologists. In turn, Oregon's state parks are the stewards of these significant and sensitive reburial locations, and are committed to their protection.

Traditional Plant Gathering

Traditional Ecological Knowledge Celebrated

OPRD has engaged with the Tribes in Oregon in a more meaningful way for more than a decade, which has resulted in an increased understanding about tribal connections to natural resources. In 2003, OPRD created a tribal use policy for the collection of natural resources for personal use and to use the parks for ceremonial purposes without paying a fee. Most of the nine federally-recognized Tribes in Oregon have continued their traditional use of natural resources and traditional ceremonies within the parks. While the policy formalized

OPRD's process for collecting natural resources and use for ceremonial purposes, it was never intended as a permission for access to the parks. Coquille Indian Tribe Chief Don Ivy (2020:7) was an early proponent of the policy. "Whether it is accessing barnacles at the coast or pulling spruce root or collecting three-sided sedge at Sunset Bay State Park for basketmaking, the policy created that avenue for collection; it wasn't about the Tribes, it was about the resources and about understanding the past in the present."

In addition to tribal use of natural resources within Oregon state parks, the agency has collaborated with Tribes on natural resource restoration projects. One of those collaborations has been to restore the prairie at Champoeg State Heritage Area in the Willamette Valley in cooperation with the Confederated Tribes of the Grand Ronde Community of Oregon (CTGR) and the Institute for Applied Ecology. Champoeg is a culturally significant location to the CTGR,

and tribal Elders selected it as a location for restoration (Moore and Neill 2017; Celis et al. 2020). Early French settlers understood the Tualatin Kalapuya to have a word "Chempoeg" that is interpreted as "where the yampah [wild carrot] grows," which became the namesake of the state heritage area (Gibbs and Starling 1851; Ojua 2020:1; Figure 6). OPRD park manager, John Mullen (2020:3) noted, "It is important for the descendants to come back and use this place. The prairie restoration project is just one way the first peoples can come back to their home ground at Champoeg and celebrate their traditions."

In 2013, the grant-funded Plants for People program aimed to restore the Champoeg prairie (Moore and Neill 2017). Also, the CTGR native plant nursery was funded by the OWEB grant. It is there that Jeremy Ojua (2020), Native Plant Nursery Supervisor, cultivates not only yampah (*Perideridia gairdneri*), but also grows camas (*Camassia leichtlinii*) and other

culturally significant plants for restoration projects (Figure 7). When asked what the most important and ultimate goal of the project is for him, he said, "I would like to see a healthy, successful grow out for the Tribe, a reduction of herbicide use over time from less to none, so there are herbicide-free plants in the prairie, and use of fire and pulling to maintain the area (Ojua 2020:2)."

OPRD and the project partners worked with CTGR tribal members to gain traditional ecological knowledge (TEK) about the Champoeg area. Lewis (2016) describes TEK as information regarding herbal and medicinal plants for healing or recipes; knowledge about when specific plants are ready to be harvested; predictions on when smelt, lamprey, salmon and steelhead runs have begun; as well as people's ability to "read" the land. This valuable information is a way for Native peoples to return to many of these cultural practices (Lewis 2016). One of these cultural practices was managing the landscape



Figure 6. 1851 Gibbs and Starling map noting names of Kalapuya groups with "Chempoeg" (Courtesy of Oregon State University, Corvallis.)



Figure 7. (right) Jeremy Ojua, Confederated Tribes of the Grand Ronde Community of Oregon Native Plant Nursery Supervisor); (left) Malee Ojua planting native plants at Champoeg restoration area (Courtesy of Oregon Parks and Recreation Department, Salem.)

by applying fire, noted David Harrelson (2020), an 8-year fire crew veteran and the CTGR's Cultural Resources Department Manager and Tribal Historic Preservation Officer. By utilizing valuable traditional ecological knowledge, particular plants were selected for planting and it was decided to use fire to assist in the restoration of the Champoeg prairie.

Conducting a prescribed burn in a state park proved to be technically challenging and cost prohibitive at \$2000–\$6000 per acre. However, the CTGR offered to do the prescribed burn at no cost to OPRD (Neill 2020). Coordination between all the parties was challenging. However, Neill (2020:3) recalls that they just needed “to pick a date and aim for that date and go for it.” The day arrived in September 2017, and the weather was key to the success of the prescribed burn with no precipitation in the forecast. Subsequently, the CTGR fire crew arrived with three fire engines for protection and fire crew with drip torches (Mullen 2020; Neill 2020). With the first drip

torch lit, it took 2 ½ hours to completely burn the 35-acre prairie and traditional prescribed fire proved to be a success (Neill 2020). The Champoeg prairie saw its biggest bloom yet in the following spring (Navarrete 2019).

In 2018, CTGR gathered at Champoeg for a community planting day. The event included cooking a traditional meal, creating an earthen oven to show how camas is cooked, and tribal members and staff planted plants from the Tribe's native plant materials nursery. Colby Drake, tribal member and the CTGR's Silviculture Fire Program Manager had never tasted the foods important to his ancestors until his crew became involved with the project at Champoeg and noted: “I was surprised. Camas, if prepared right, has this almost caramelized taste. You might mistake yampah for a carrot” (Navarrete 2019:2). Harrelson (2020:4) reflected on the event and said it “connected community to place and the prairie helped bridge the gap between different communities; what was lasting was connecting people to the land.”

Champoeg park manager, John Mullen (2020:4) echoed these sentiments by noting that “they [tribal members] were back in their homeland.”

Oregon Parks and Recreation Department's commitment to providing tribal access to traditional use areas continues. As the agency evolves towards more meaningful consultation, the traditional use policy is transitioning to “collaborative notification,” which is hoped to engage more traditional ecological knowledge in the management of OPRD lands.

Oregon State Parks & Tribal Consultation

Working Towards Healing

OPRD has experienced several cultural shifts within the agency in regards to tribal consultation. One of those shifts occurred when the agency started the archaeology awareness training for park staff. Dennis Comfort (2020), Coast Region Manager, attended one of the early trainings and several years later when the agency needed to replace a bridge along the Amanda Trail near Yachats, Oregon, he reached out to

the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians to be a part of the planning, fund raising, construction process, and celebration. The Tribe wanted to honor Amanda, a Coos woman who had been forced to march up the Oregon coast by the United States government along with thirty-one other Indigenous people against their will (United States 1860; Beckham 1977; Schwartz 1991; Kentta 1995, 1996; Whereat 1995, 1996; Scott et al. 2007; Beck 2009; Kittel and Curtis 2010; Phillips 2017). In the spring of 1864, they traveled by foot from Coos Bay to the Alsea sub-agency in Yachats, where they were incarcerated until the never-to-be-honored Coast Reservation Treaty was ratified. Amanda was blind, and her ordeal and physical injuries during the journey were so egregious that Corporal Royal Bensell noted it in his diary (Phillips 2017). Over 140 years later, Amanda's story brought the Tribe, the local community, and OPRD together to make the Amanda Bridge project happen (Figure 8). “Chief Warren Brainard [former Chief] was there, Doc Slyter [current Chief] was playing his flute and the tribal youth were



Figure 8. Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians current Chief Doc Slyter at the Amanda Bridge 2011 commemoration (Photo by Greg Scott.)

there helping out, too. It was a metaphorical bridge between cultures. It was a healing time” (Comfort 2020:5).

It is the healing that underscores the term “meaningful” when defining “meaningful consultation” with Tribes. Echo-Hawk (2013) looks to the United Nation Declaration on the Rights of Indigenous Peoples and highlights the need to heal the wounds of the past by summoning the accumulated wisdom traditions. It is this healing that OPRD seeks to embrace through Tribes’ teaching state employees about meaningful consultation, the repatriation of ancestral belongings, or applying traditional ecological knowledge to help restore lands. Authentic collaboration is key to the positive and meaningful relations with Tribes. Oregon’s state parks are located in some of the most special places in the state, which have always

been the homes and traditional use areas of the Tribes. Coquille Indian Tribe Chief, Don Ivy (2020:7) notes, “A good place to live is a good place to live. The places that attract people will always be an attraction to people. We need to find practical and meaningful ways to continue to be there in those important places and how to take care of that place.”

As stewards of many of these special places, OPRD hopes to heal the historical wounds of the past. In turn, it is the Tribes that know the land the best and for the longest, and who can provide the agency with best practices to manage the natural and cultural resources. By engaging in meaningful consultation for more than a decade, the culture within OPRD has seen a positive change, which is based in trusting relationships with each of the nine sovereign Tribes in Oregon.

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It is with sincere gratitude to the nine federally-recognized Tribes in Oregon that I am able to write this article and do my best work for the state of Oregon. Many thanks to the Oregon Parks and Recreation Department Director’s Group and managers for supporting efforts for meaningful consultation with the Tribes. My appreciation goes out to my co-workers who assisted me with edits to the article.

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Future Directions in State-Tribal Cultural Resource Consultation in Oregon

Dennis G. Griffin

The articles included in this issue have highlighted several of the key ways that State agencies and Tribes in Oregon are currently working together to improve both an understanding of Tribal culture in our state as well as foster a stronger working relationship between each group in the future. While working groups have been established and some State agencies and Tribes are consulting regularly, there is always more that can be strived for. Existing cultural resource working groups are only as effective as the agencies that participate in them and the support and understanding that their representatives get in sharing the results of the discussions that take place between the two groups. That is why LCIS sponsors a yearly State-Tribal summit between the Governor, State agency directors, and Tribal leaders to increase awareness among state leaders and their staff about tribal culture, concerns, and ways that consultation can be improved. It is here that success stories of collaborative efforts are highlighted and new directions for future collaboration recognized.

One such on-going and future collaborative effort can be seen in the creation of the Governor's Task Force on Oregon Tribal Cultural Items. Created by Executive Order in 2017 (No. 17-12), Governor Kate Brown established a Task Force in 2018 of State and Tribal representatives to recommend a process for soliciting information from State agencies and other public institutions about cultural items (i.e., human remains and funerary objects, archaeological artifacts, and historic objects and archival materials) within their possession that are associated with Oregon's nine federally-recognized Indian Tribes. The Task Force was charged with assisting State agencies to develop a policy on tribal cultural items that would specify how each agency planned to communicate with Tribes

regarding cultural items within its possession, how it planned to educate agency employees regarding their policy, and to designate and train a Tribal cultural items liaison who would serve as the key contact for establishing channels for ongoing communication with Oregon's Tribes during a survey process and beyond. An initial agency look-around survey in 2019 produced 35 agency reports of approximately 1500 pages of data regarding each agency's organization and possessions. Having completed the initial survey with most state agencies, the Task Force is now expanding their efforts to reach out to universities, community colleges, and public schools to encourage their participation in a similar "look around" for cultural items that may be in their possession. The efforts of this Task Force will continue to encourage increased cooperation among State agencies and Tribes, and assist Tribes in knowing of the existence of Tribal cultural items currently in the State's possession.

Participation in State working groups such as the Culture Cluster, as discussed by Rippee, has highlighted the limitations in some state agency directives that currently lack adequate language that recognize the importance of cultural resources so that agency permit review and staff funding to address potential project impacts to such resources is not currently available (e.g., ODF, DSL). The need for updating such agency directives has been highlighted by Tribes for future amendment and is currently being considered by DSL.

Current state agency (i.e., DSL) consideration for assuming the U.S. Army Corps' responsibilities under Section 404 of the Clean Water Act (i.e., permitting discharges of dredge or fill materials) has highlighted many differences in federal and state cultural resource laws that need to be addressed before such an assumption can

take place. Differences in federal and state laws exist not only in regards to the recognition and protection of archaeological sites, historic buildings and structures, and the state's lack of recognition of Tribal traditional cultural properties, but also the effects such an assumption would have on Tribal treaty rights to land access and resource protection which would not carry over to the state if the federal government removes their responsibility. Future discussions on equating differences in cultural resource laws and addressing the loss of treaty rights will determine the future of such proposals.

Efforts by a few state agencies to work closely with Tribes in reviewing future project proposals and develop agency Tribal protocols continue to bear much fruit, as noted in the articles by Holtoff and Nelson. Other state agencies are currently working on developing their own policies that will greatly increase a spirit of cooperation with Oregon's tribes. Federal land managing agencies working in Oregon (e.g., USFS, BLM, USF&WS) have their own existing tribal protocols and policies and regularly consult with Oregon's nine Tribes. By participating in state/federal/tribal working groups such as the ICRC, problems that arise between agency perspectives can be quickly discussed among participants and remedies sought. However, one problem that has been recognized, and will likely continue to result in potential conflict, deals with private, non-state agency projects that affect both State agencies and Tribal land and resources. Such projects (e.g., installation of natural gas pipelines, fiber optic cables) often have a federal nexus with non-land managing federal agencies (e.g., Federal Energy Regulatory Commission [FERC], USDA Rural Utilities Service), and while coordinated through state regulatory processes, are not controlled by state laws and regulations, and often fail to adequately consult with Tribes regarding potential impacts from proposed projects. This problem is especially apparent when Programmatic Agreements are signed by state and federal agencies; however, in some cases

the lead federal agency has failed to adequately consult with all of the appropriate tribes before finalizing project approval. Such agreements affect the relationship between the State and Tribes even though the primary responsibility lies with the lead federal agency. More work is needed in the future to insure that federal responsibility to consult on project-related agreement documents is assured before the signing of such large project agreements, and that all parties are aware of their respective responsibilities and can work together toward a positive result.

One way to highlight the differences in perception of local history and issues dealing with the environment in Oregon, whether natural or cultural, has long been recognized as stemming from the need for better education about Native peoples in Oregon. In 2017, Oregon followed the lead of other states (e.g., Montana 1999; Washington 2015) in passing state legislation that mandated a new statewide curriculum on the history and culture of Native Americans in the state. With the passage of Senate Bill 13, all public schools are to receive locally-based curriculum of the Native American experience in Oregon, written by the Tribes themselves and incorporated in all grades, in order to unravel stereotypes and misconceptions about Native Americans and to provide professional development that would reinforce educators why the teaching of a full range of history is important. To date, curriculum is available for fourth, eighth and 10th graders but curriculum for all levels is expected in the coming school year (Brown 2020). It is initiatives such as this that may have the greatest long-term impact on State-Tribal relations in Oregon.

Taken together, improved education within the State's primary and secondary education system about the rich Native history in Oregon, education of state agency staff regarding potential impacts to natural and cultural resources from proposed projects, and finding ways to continue to develop a close working relationship between state agencies and Tribes in Oregon, provide a

blueprint for increased success in consultation and collaboration among each group. It is hoped that the sharing of such successes in Oregon will encourage other States and Tribal nations to seek ways to improve communication in their State so that potential problems can be identified before future project approval will occur that could negatively affect important resources.

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While building on the cooperative work exemplified by the authors of these articles, I want to acknowledge that consultation and collaboration between state agencies and tribal nations in Oregon continues, thanks in part to the strong support of Oregon's Governor Kate Brown and the work of leaders such as Coquille Tribal Council Chairperson Brenda Meade and Danny Santos, Willamette University College of Law (retired), co-chairs of the Governor's Task Force on Oregon Tribal Cultural Items, who continue to seek new directions that will increase awareness and cooperation between state agencies and tribal peoples.

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ABOUT THE AUTHORS

Dennis Griffin served as the State Archaeologist with the Oregon State Historic Preservation Office (SHPO) for the past 18 years. Dennis retired from the Oregon SHPO in September 2020 and is now the owner of the private consulting firm Cultural Horizons. Having over 40 years of archaeological experience in the Pacific Northwest, Dennis obtained a Ph.D. in Anthropology from the University of Oregon in 1999 and a Masters of Arts in Interdisciplinary Studies (Archaeology, Cultural Anthropology, Historic Preservation) from Oregon State University in 1985. His areas of interest focus in the Pacific Northwest and Alaska with a specialization in oral history, tribal collaborative research, and Oregon's early military history.

Karen Quigley was Executive Director of LCIS for 23 years. She has an undergraduate degree in sociology (with numerous anthropology credits) and advanced degrees in education and law. Karen travels extensively and has lived in East Africa as a teacher and Japan as a Foreign Legal Advisor. She served as counsel for a number of state senate committees including a session with Judiciary when it dealt with revising Oregon's cultural resources laws. Legal training combined with a variety of opportunities to observe other cultures on their terms has been an asset throughout Karen's work at LCIS.

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Nancy Nelson has worked as an archaeologist for Oregon Parks and Recreation Department (OPRD) for over 14 years. For the first ten years, Nancy was responsible for managing the entire park system's archaeological sites and tribal consultation. Over the last four years, Nancy has served the state of Oregon in archaeological compliance and tribal consultation for the OPRD Valley Region, which encompasses the state parks in the Willamette Valley, the coast and Cascade foothills, and the Columbia River Gorge.

Whistlin' Dixie? Comments on the Association for Washington Archaeology's Statement on Racism, Anti-Racism, Diversity, and Inclusion

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Abstract *I comment on the Association for Washington Archaeology's 2020 Statement on Racism, Anti-Racism, Diversity, and Inclusion. While its authors and many readers will hold up the AWA statement as a transformational document and evidence of change, I position it as virtue signaling and co-optation. I conclude that the biggest impediment to change—and what makes the AWA statement status quo—is the inability of archaeologists to be critical of archaeology.*

Keywords

Association for Washington Archaeology; Black Lives Matter; Racism

Introduction

In July 2020, the Board of Directors for the Association for Washington Archaeology (AWA) drafted, approved and published a “statement in response to the recent Black Lives Matter [BLM] protests over police brutality and racism” (AWA 2020a). According to its authors, the AWA Statement on Racism, Anti-Racism, Diversity, and Inclusion is intended to serve as a guide for the AWA's future “work to address racism and colonialism in Washington State archaeology.”

I deconstruct the AWA statement and pose some uncomfortable questions. My perspective is unique because I have spent the greater part of the last decade writing about social inequality and institutional racism in North American and Pacific Northwest archaeology (Hutchings 2017, 2018, in press; Hutchings and La Salle 2014, 2015, 2017, 2018, 2019a, 2019b; La Salle and Hutchings 2012, 2016, 2018). While I support some of the ideas in the AWA statement, I find the overall proposal tenuous and misguided.

The AWA is an almost exclusively White non-profit organization “committed to the protection of archaeological and historical resources in the State of Washington” (AWA

2020c). Its membership consists of professional, university-trained archaeologists, and it funds travel and research for students and professionals working toward “the study of Washington State's cultural heritage.” Founded in 1981, the Mission of the AWA is to:

- Encourage the appreciation, protection, and preservation of the archaeological resources of Washington State;
- Promote public education, research, and interpretation of the archaeological resources of Washington State; and
- Promote, publish, and disseminate scientific research on the archaeological resources of Washington State.

Black Lives Matter, on the other hand, was founded in 2013 in response to the acquittal of Trayvon Martin's murderer, George Zimmerman. Black Lives Matter is a decentralized movement that works against police brutality and racially motivated violence against African-American people. Black Lives Matter Foundation, Inc. is a global organization within the larger BLM movement whose mission is to “eradicate White supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes. By combating and