



Legislative Commission on Indian Services

State-Tribal Relations in Oregon and Why We
Engage in Consultation



Land Acknowledgement Guidance document

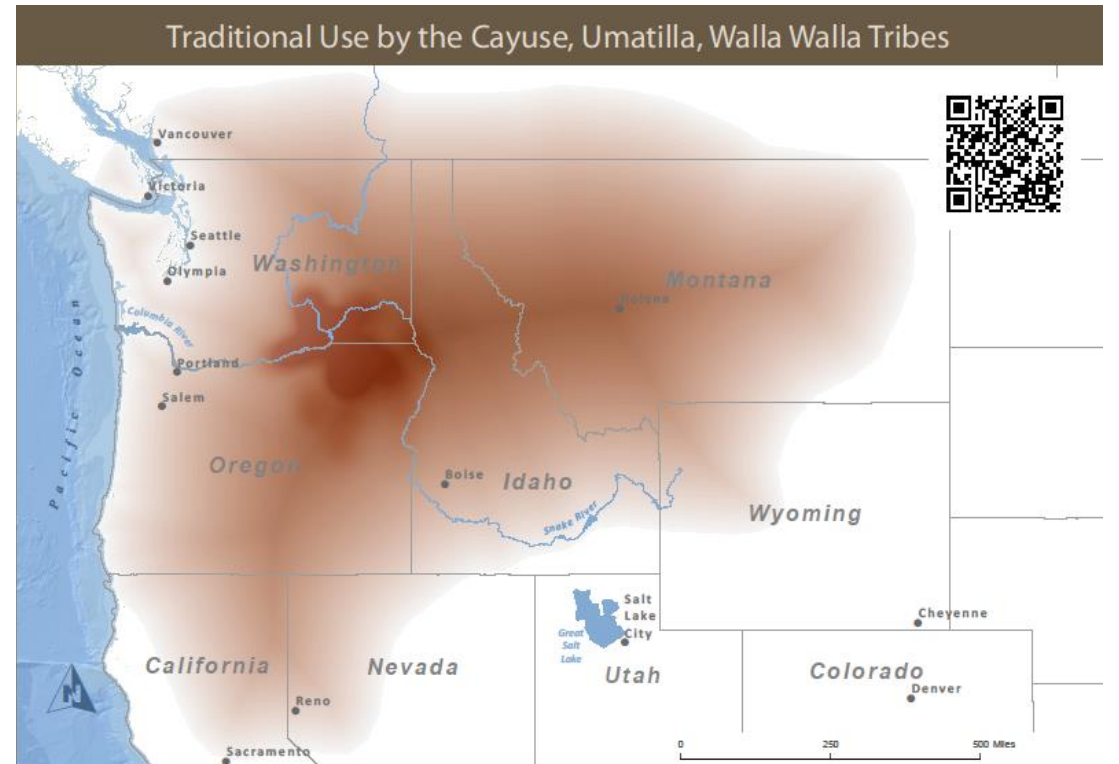
Land acknowledgments have become common practice over the past few years, frequently occurring at the commencement of meetings, conferences, or symposia, as well as preface or post-script to written documents. The reasons for offering a land acknowledgment vary, but one can assume that they are offered with the best of intentions. Well-intentioned or not, it is necessary to recognize that land acknowledgments may not have their desired effect.

The response or reaction to land acknowledgments varies among Tribes and among tribal members. Some view land acknowledgments as an “important first step.” Conversely, some have said that land acknowledgments have become so commonplace that they are merely performative. At their worst, land acknowledgments can be viewed as condescending and, in fact, simply adding to or perpetuating the trauma associated with the doctrine and implementation of Manifest Destiny.

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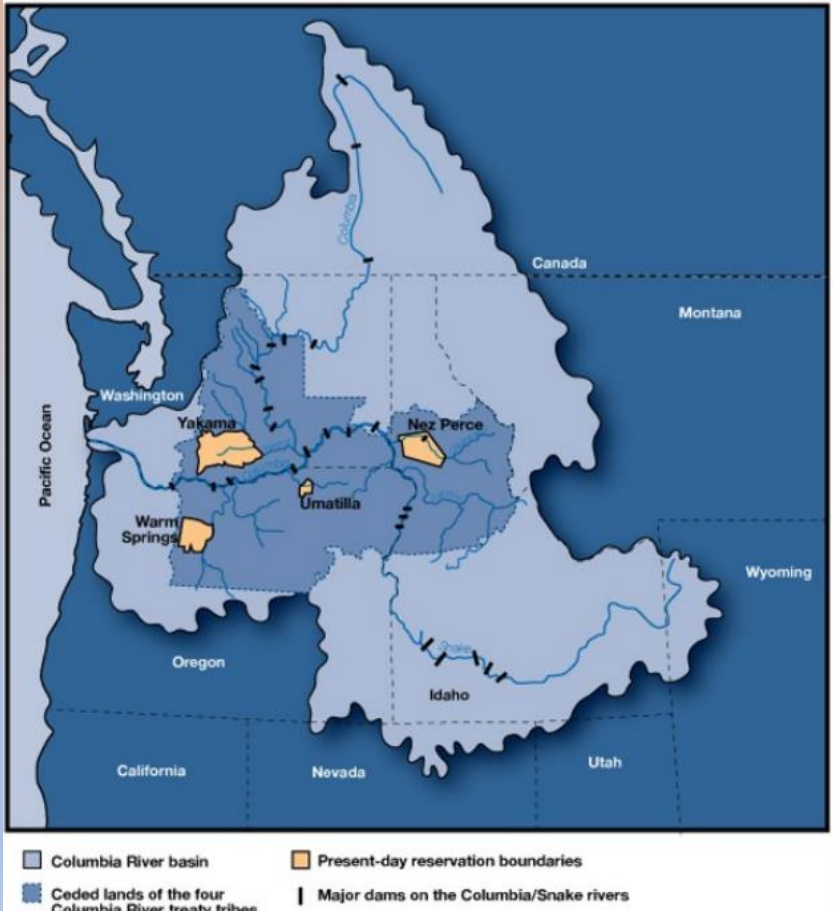
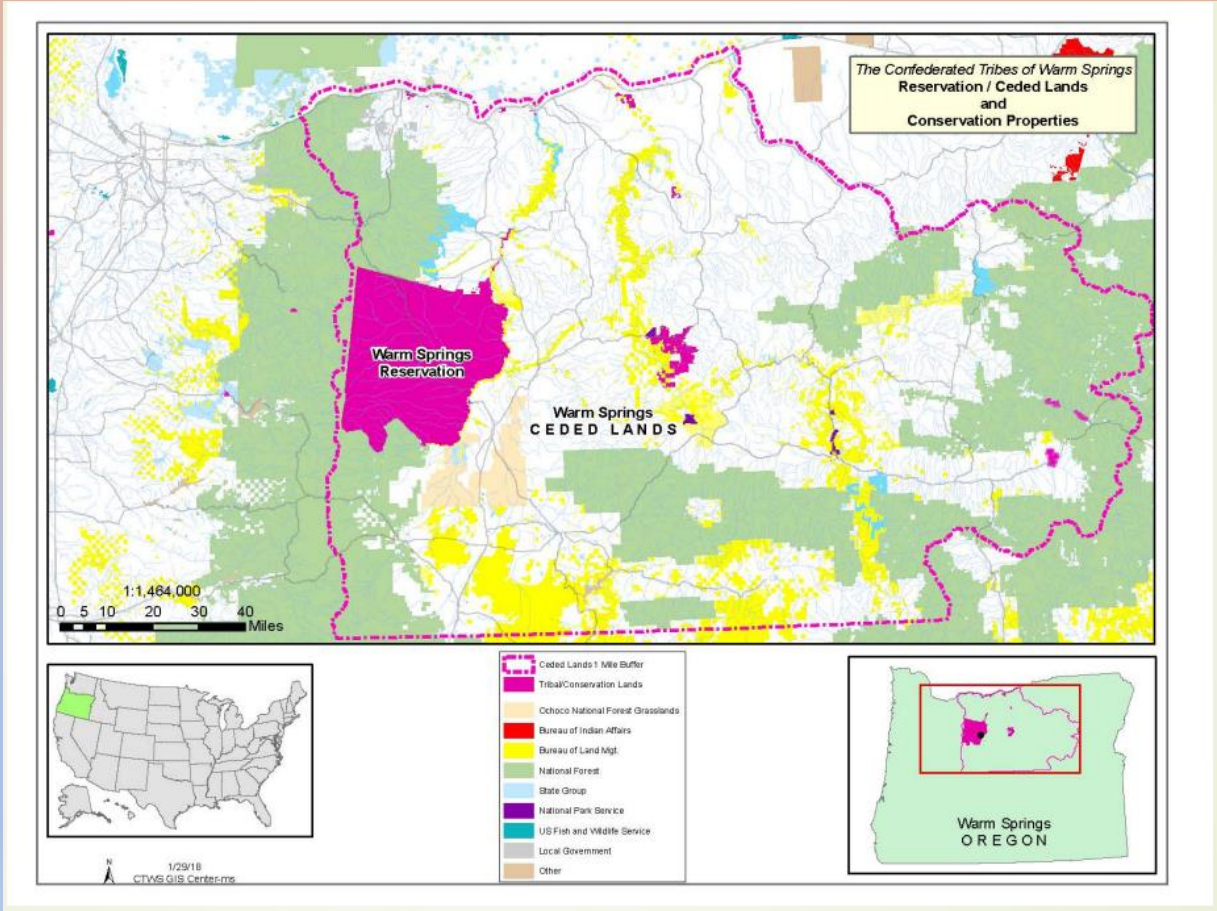
The relatively recent movement to provide a land acknowledgment may be fueled by an apparent reckoning that history, as taught in the average classroom, is incomplete or one-sided at best. On one hand, a land acknowledgment can serve to advance this reckoning by acting as a reminder to some while also introducing this notion to others. On the other hand, a land acknowledgment can seem incomplete and, consequently, insulting. For example, in offering a land acknowledgment, the proponent recognizes that modern day society exists on lands that previously belonged to the indigenous peoples of the area. The proponent may (or may not) also acknowledge that these lands were taken by force, with brutal consequences to the indigenous peoples. Yet, while these facts are acknowledged, no reparations are offered or suggested. So, what purpose did the acknowledgment serve? At best, it offered an opportunity to educate. At worst, it is nothing more than a salve for the speaker and audience. Although it can serve as a form of apology, an apology can be seen as entirely hollow when it does nothing to make amends for the prior wrong.

Two maps of the lands of the CTUIR



This map reflects traditional and customary areas used by the Cayuse, Umatilla and Walla Walla people over different seasons at or before treaty negotiations. Areas of heavier use are identified with darker color saturation. Data and information used to create this map includes the 1855 Treaty negotiation minutes, adjudicated use areas, oral histories information and documentation from literature. This map reflects non-exclusive traditional uses beyond current reservation boundaries, aboriginal lands and ceded lands defined by the Indian claims Commission findings – all of which are judicially established as inadequate to reflect the total extent of CTUIR uses, interests and rights under the Treaty. In many instances, the CTUIR Member used those areas in common with other tribes.

Confederated Tribes of Warm Springs



The Confederated Tribes of Siletz Indians

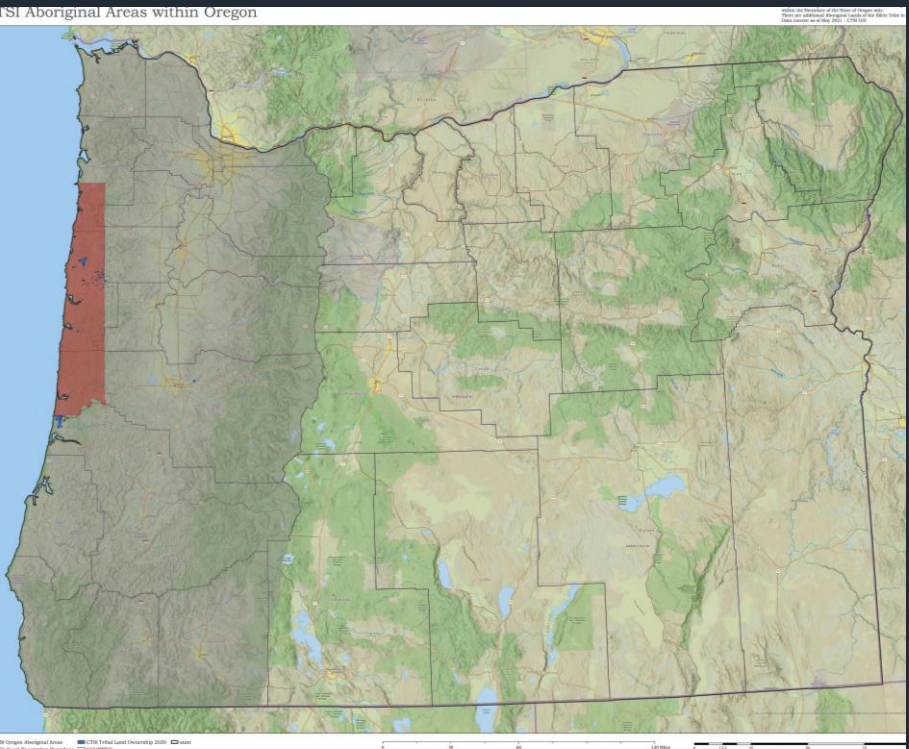
<https://www.ctsi.nsn.us/heritage/>

The Confederated Tribes of Siletz is a federally recognized confederation of over 30 bands, originating from Northern California to Southern Washington.

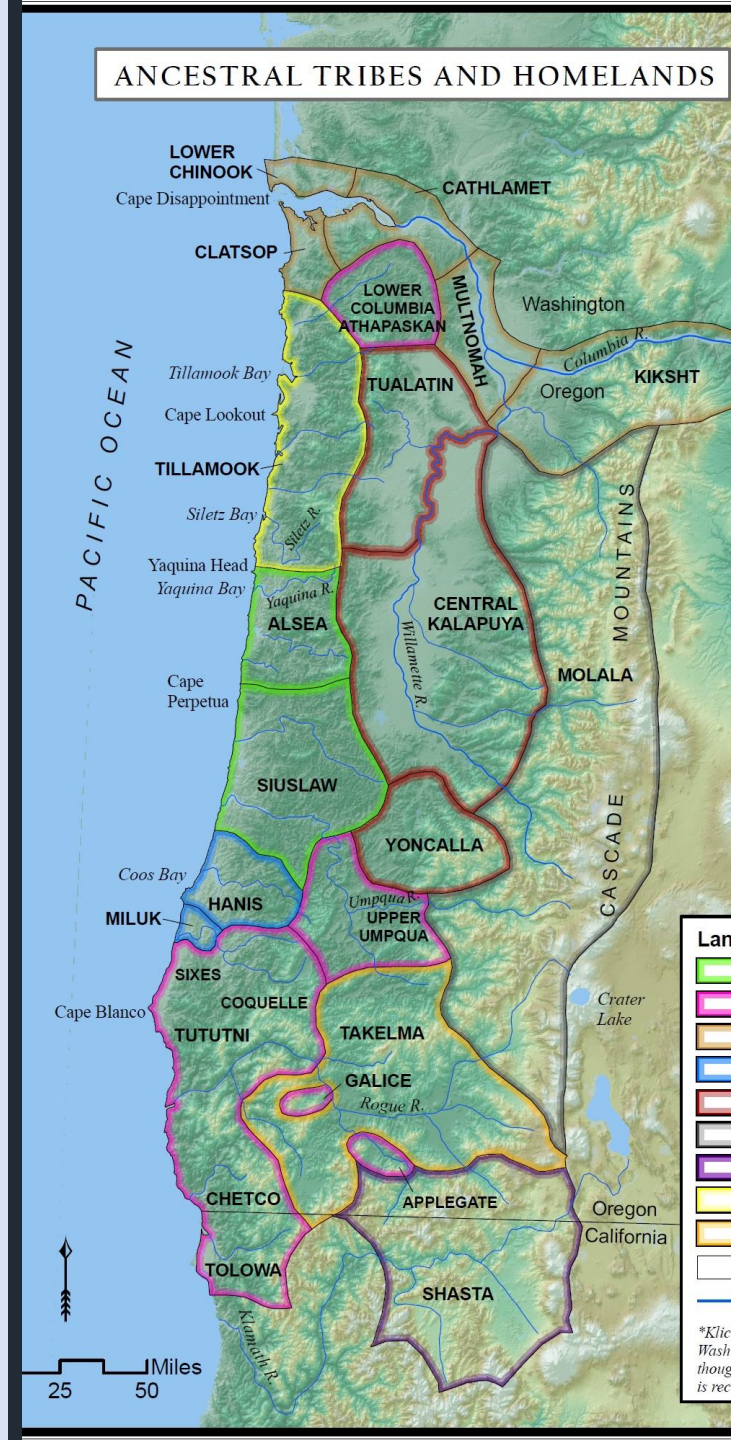
“Compiling a list of tribal groups that became incorporated into the Confederated Tribes of Siletz Indians as a tribe...is in itself a daunting task. The easiest way to accomplish it is to mention only the more general term for the **language group or larger tribal affiliation, rather than** getting down into the **specifics of village based identity**...Going by the preferred method stated above, the following is what is generally consider to be an inclusive list of “our tribes”: Clatsop, Chinook, Klickitat, Molala, Kalapuya, Tillamook, Alsea, Siuslaw/Lower Umpqua, Coos, Coquelle, Upper Umpqua, Tututni (including all the lower Rogue River Bands and those extending up the coast to Floras Creek and down to Whales Head), Chetco (including all of the villages from Whales Head to the Winchuck River), Tolowa, Takelma (including the Illinois Valley/mid-Rogue River and Cow Creek peoples), Galice/Applegate, and Shasta.”

The Confederated Tribes of Siletz Indians

[Reservation Maps | Confederated Tribes of Siletz Indians \(ctsi.nsn.us\)](#)



“The ancestors of the Confederated Tribes of Siletz spoke at least ten different base languages. Eleven if you include a few Sahaptin speaking Klickitat people who were living in the Willamette and Umpqua Valleys when the reservation was created – and so found themselves being removed to Siletz along with the original people of those valleys...Even from region to region, ways of living and different cultural practices were in use. The coastal people’s diet and economy was quite different than that of the inland valley people.”



The Confederated Tribes of Siletz Indians

Various Treaties:

- September 10, 1853 - treaty negotiations were held at the base of the cliff of Lower Table Rock. This treaty is called the “Treaty with the Rogue River” although it represented three distinct language groups, the Takelma, Shasta & Applegate River people. **RATIFIED**
- A few days later, another treaty was signed with relatives of the Rogue River Takelmas who lived in the Cow Creek drainage of the South Umpqua. **RATIFIED**
- Over the next two years, ancestors of the current-day Siletz were forced to sign a total of seven treaties – which ceded the entire area between the Columbia River & the summits of the Siskiyou and from the Summit of the Cascades to the summit of the Coast Range (approximately 15 million acres). Six of these treaties were for actual cession of lands and reserving temporary reservations and one was for the specific purpose of giving the U.S. Government permission to confederate other tribal groups with the original Rogue River Treaty Tribes. **ALL RATIFIED**
- Summer of 1855: Treaty with the Coastal Tribes of Oregon. This treaty, though signed in good faith by our ancestors, was supposedly lost in the D.C. shuffle (52 treaties were negotiated between the United States and various Indian Tribes in the period of 1853-1856). Although our Coastal Tribes were forced into abiding by the terms of the 1855 Coast Treaty, the United States did not hold up its end of the deal at all. **NOT RATIFIED**
- The **Coast Reservation was established by an Executive Order** signed by President Franklin Pierce November 9, 1855.

Coquille Indian Tribe

<https://www.coquilletribe.org/>

- The Coquille people's history and culture are inseparable from the forests, meadows and beaches of southwestern Oregon. In the millennia before Euro-American settlement, the Coquille Tribe roamed more than 1 million acres
- The Coquilles signed treaties in 1851 and again in 1855, surrendering their lands in return for promises of payments, provisions, and a new homeland. These treaties ceded more than 1 million acres to the U.S. government.
- **Congress did not ratify the treaties of the 1850s**, and the Coquilles received no reservation land base of their own.
- In 1954, when Congress terminated federal recognition of 61 Western Oregon tribes and bands, the only remaining "Indian lands" on the South Coast consisted of a six-acre patch at Empire, surrounding the Tribal Hall.

Fundamentals

- Indian Tribes represent unique legal entities in the United States.
- Tribes are distinct political communities with extensive powers of self-government.
- Tribal sovereignty predates the United States.
- The United States Constitution considers Indian Tribes as separate governments.

TREATIES (1850's - 1860's)

Between the United States and the Tribes. In Oregon, these treaties pre-dated statehood.

- Indian treaties, federal statutes, and executive agreements over the past 200 years have established a special trust relationship between Tribes and the Federal Government.
- By treaty, many Tribes ceded almost all their lands to the Federal Government.
- In exchange, Tribes retained small parcels as reservations, and they received promises of federal protection for their lands, resources and people. These promises are collectively called "trust responsibilities."

This constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.

Article VI

... ..

*This Constitution, and the laws of the United States which shall be made in pursuance thereof; and **all treaties made**, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*

Government-to-Government Framework

Assimilation and Termination (1940's and '50's)

1954 - Passage of the Western Oregon Indian Termination Act ended the federal government's trust relationship with 61 Oregon tribes located west of the Cascade Mountains. Indian lands were sold off or lost for unpaid taxes. Government health services and education benefits ceased.

- Ended federal government's recognition of the sovereignty of tribes
- Eliminated trusteeship over Indian reservations
- Attempt to just make Tribal members (who were/are, US citizens, after all) part of the "mainstream society."
- Not only took away what little lands remained after ceding the majority of their ancestral territory...also took away services and funding with no replacements

Restoration (1970's and '80's)

- 1977, the Confederated Tribes of Siletz,
- 1982, the Cow Creek Band of Umpqua Indians,
- 1983, the Confederated Tribes of Grand Ronde,
- 1984, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians,
- 1986, the Klamath Tribes, and
- 1989, the Coquille Indian Tribe.

But restoration only reestablished the government-to-government relationship between the Tribes and the Federal Government.

Under the treaties and the law, no such formal relationship existed between the State and the Tribes.

Legislative Commission on Indian Services

ORS 172.100 (1975)

It is declared to be the policy and intent of the Legislative Assembly that:

(1)The State of Oregon shall establish a Commission on Indian Services for the purposes of improving services to American Indians in this state and promoting communication and relations between the State of Oregon and the nine federally recognized Indian tribes in Oregon.

(2)The commission may not abrogate or supersede negotiations or relations that any Indian tribe, band or group might have or develop individually with any state, federal, local or tribal government.

ORS 172.110 - Members

(1)The Commission on Indian Services shall be comprised of 13 members appointed jointly by the President of the Senate and the Speaker of the House of Representatives. Membership shall include:

- (a)Two members from the Senate who are not members of the same political party.
- (b)Two members from the House of Representatives who are not members of the same political party.
- (c)One member from the Confederated Tribes of the Warm Springs Indian Reservation.
- (d)One member from the Confederated Tribes of the Umatilla Indian Reservation.
- (e)One member from the Burns-Paiute Tribe.
- (f)One member from the Confederated Tribes of Siletz Indians of Oregon.
- (g)One member from the Confederated Tribes of the Grand Ronde.
- (h)One member from the Cow Creek Band of Umpqua Indians.
- (i)One member from the Confederated Coos, Lower Umpqua and Siuslaw Tribes.
- (j)One member from the Klamath Tribe.
- (k)One member from the Coquille Tribe.

... ..

(3)Notwithstanding subsection (1) of this section, the commission may appoint one additional member from an area in which nonreservation Indians reside, who is associated with an Indian Health Care Improvement Act Title V Urban Indian Health program. The member appointed under this subsection shall be a nonvoting member of the commission.

... ..

(5)Each member appointed under subsection (1)(c) to (k) of this section shall be selected by the tribal governing body of the member in accordance with the procedures of the tribe.

Legislative Commission on Indian Services

- ❖ The Commission holds quarterly meetings to familiarize its members with current problems the Tribes are facing and to discuss possible solutions.
- ❖ The Commission invites representatives of state or federal agencies to discuss their programs as they affect the Indian population in the state.
- ❖ The Commission monitors legislation affecting our Tribal populations, both while it is being considered by the Legislature and after it becomes law, and assists in presenting information to the Legislature on issues of importance to the Nine Federally Recognized Tribes in Oregon.

Government-to-Government Relationship Formalized ORS 182.164 (AKA SB 770) (2001)

State agencies are directed to:

- develop and implement a policy to promote communication between agencies and the Tribes,
- identify programs that affect tribes, and
- coordinate with Tribes in the implementation of agency programs which affect them.

“Cluster” groups:

- ...developed out of these efforts to improve the relationships between the nine Tribes and the State of Oregon. These groups focus on key subjects of concern including cultural resources, natural resources, and education and are comprised of representatives from Oregon’s state agencies and each of the nine Tribes.



ORS 182.164 -
State agencies to
develop and
implement policy
on relationship
with tribes

- (1) A state agency shall develop and implement a policy that:
- (a) Identifies individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.
 - (b) Establishes a process to identify the programs of the state agency that affect tribes.
 - (c) Promotes communication between the state agency and tribes.
 - (d) Promotes positive government-to-government relations between the state and tribes.
 - (e) Establishes a method for notifying employees of the state agency of the provisions of ORS 182.162 (Definitions for ORS 182.162 to 182.168) to 182.168 (No right of action created by ORS 182.162 to 182.168) and the policy the state agency adopts under this section.

ORS 182.164 - Continued

(2) In the process of identifying and developing the programs of the state agency that affect tribes, a state agency shall include representatives designated by the tribes.

(3) A state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110 (Authority of units of local government and state agencies to cooperate).

Why Consultation?

Because it's required **by law** ORS
182.164(3)

- “A *state agency* shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes...”
- ORS 182.162 - “State agency” has the meaning given that term in ORS 358.635
- ORS 358.635(2) - “State agency” includes all officers, employees, agencies, boards, committees and commissions of the legislative, executive, administrative and judicial branches of state government.

Federal Register

Vol. 65, No. 218

Thursday, November 9, 2000

Presidential Documents

Title 3—

Executive Order 13175 of November 6, 2000

The President

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) “Policies that have tribal implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Federal
Guidance

<https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

Federal Guidance

THE WHITE HOUSE



[Administration](#) [Priorities](#) [The Record](#) [Briefing Room](#) [Español](#)

[MENU](#)



JANUARY 26, 2021

Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships

 [BRIEFING ROOM](#) [PRESIDENTIAL ACTIONS](#)

January 26, 2021

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Tribal Consultation and Strengthening Nation-to-Nation Relationships

American Indian and Alaska Native Tribal Nations are sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

Federal Guidance - Continued

THE WHITE HOUSE





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MENU

NOVEMBER 30, 2022

Memorandum on Uniform Standards for Tribal Consultation

 BRIEFING ROOM  PRESIDENTIAL ACTIONS

Memorandum for the Heads of Executive Departments and Agencies

SUBJECT: Uniform Standards for Tribal Consultation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Background. The United States has a unique, legally affirmed Nation-to-Nation relationship with American Indian and Alaska Native Tribal Nations, which is recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The United States recognizes the right of Tribal governments to self-govern and supports Tribal sovereignty and self-determination. The United States also has a unique trust

<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/>

Why Consultation?

Because it's **the right thing to do...**

Consultation:

- Allows for better communication
- Better collaboration
- Leading to informed decision making on both sides
- Obtains a better result
- Helps avoid future conflict or litigation

Think Of This In Terms Of Diplomacy

- Critical to develop and maintain relationships before there is a “need” or crisis.
- As with any “relationship,” a firm foundation is essential
- When mis-steps occur, there is room for forgiveness

Essentials for Success

Trust

Respect

Shared Responsibility

Knowledge of the nine Federally Recognized Tribal Governments in Oregon

- An Established Relationship (prior to a crisis or even the need to consult on a particular issue)

Awareness of Similarities and of Differences

- Distinct nature of each of Oregon's Tribal sovereigns through visits, talk, training, study, questions, access to historical and current information about each Tribal Government

What Leads to Potential Success?

Acknowledgment of two-way
nature of consultation

Awareness of possible need to
coordinate with other state
agencies or departments to be
more effective in consultation
with a particular Tribal
Government or all Tribal
Governments

“NOT Forgetting or Overlooking”
the need to consult with Tribal
Governments

Common Pitfalls and Obstacles

One Size Does NOT Fit All

- Assuming previous experience with a Tribal Government will totally predict/dictate current or future consultation interaction

Not keeping up with changes in Tribal Governmental organization, staffing, elected officials

Not knowing Priorities of Tribal Government(s)

Using same approach for all Tribal Governments

Not respecting Government-to-Government status and approaching Tribal Governments as just another stakeholder

Not allowing sufficient time.

- ✦ Legislative timeline
- ✦ “Check-the-Box” or One-and-Done”



Resources

- LCIS website
- LCIS is available for:
 - Email, phone, or in-person inquiries
 - Training
- Agency General Counsel

