

# Oregon Consensus Legislative Mandate<sup>i</sup>

## Resolve Disputes

In 2005 the Oregon Legislative Assembly passed a bill directing the Mark O. Hatfield School of Government to establish and operate a program to provide mediation and other alternative dispute resolution services to public bodies and to persons who have disputes with public bodies. Oregon Consensus is this program.

## Assist State Agencies to Develop ADR Policies and Procedures

- Oregon law authorizes state agencies to use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise.
- An agency that desires to develop a policy or program for implementation of alternative means of dispute resolution must inform Oregon Consensus, the Department of Justice and the Oregon Department of Administrative Services of their intent to do so and is permitted to consult with these entities in developing said policy or program.
- The Oregon Department of Justice, in consultation with Oregon Consensus and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution.
- The State Parks and Recreation Commission is required to mediate, and if mediation is not successful, to arbitrate, the following disputes: 1. Disputes with regard to the issuance of an archaeological permit for: the excavation or alteration of archaeological sites on public lands; exploratory excavation on public lands to determine the presence of an archaeological site; or the removal from public lands of any material of an archaeological, historical, prehistorical or anthropological nature. 2. Disputes over the disposition by professional archaeologists of human skeletal remains or burial goods removed from a native Indian cairn or burial.

The State Parks and Recreation Commission in consultation with Oregon Consensus and the governing bodies of the Oregon tribes is charged with adopting rules to establish mediation and arbitration procedures to carry out this mandate.

- Oregon law directs the Oregon Department of Agriculture to consult with Oregon Consensus to establish and operate farm mediation programs.

## Encourage Use of ADR

Oregon Consensus, the Department of Justice, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the state by assisting agencies to develop or expand agency programs that provide alternative means of dispute resolution and by providing assistance in the selection of mediators or facilitators.

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<sup>i</sup> **36.179 Mediation and other alternative dispute resolution services for public bodies.** The Mark O. Hatfield School of Government shall establish and operate a program to provide mediation and other alternative dispute resolution services to public bodies, as defined by ORS 174.109, and to persons who have disputes with public bodies, as defined by ORS 174.109. [2005 c.817 §11]

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**183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs.**

(1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Mark O. Hatfield School of Government, the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Mark O. Hatfield School of Government and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

- (a) Assisting agencies to develop a policy for alternative means of dispute resolution;
- (b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution; and
- (c) Providing assistance in the efficient and effective selection of mediators or facilitators.

(6)(a) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall work cooperatively in designing the program under ORS 36.179 that is intended to provide services to, apply to or involve any state agency.

(b) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall enter into an interagency agreement that includes, but is not limited to, provisions on appropriate roles, reporting requirements and coordination of services provided to state agencies by the Mark O. Hatfield School of Government pursuant to ORS 36.179.

(c) Before providing dispute resolution services in a specific matter to a state agency under ORS 36.179, the Mark O. Hatfield School of Government shall notify the Department of Justice of any proposal to provide such services.

(7) Agencies with alternative dispute resolution programs shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(8) The purpose of the agency alternative dispute resolution programs is to:

- (a) Increase agency efficiency;

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(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes.

(9) An agency may use the services of an employee of another agency or of the federal government to serve as a mediator or facilitator, and may provide the services of an agency employee to another agency or to the federal government to serve as a mediator or facilitator. An agency may enter into an agreement with another agency or with the federal government to determine reimbursement for services of an employee acting as a mediator or facilitator under the provisions of this subsection. This subsection does not apply to mediation under ORS 243.650 to 243.782. [1993 c.647 §2; 1995 c.515 §2; 1997 c.706 §5; 1997 c.801 §42; 1997 c.837 §7; 2001 c.581 §2; 2003 c.791 §§27,27a; 2005 c.334 §§1,2; 2005 c.817 §6]

**390.240 Mediation and arbitration of disputes; rules.** (1) The following disputes shall be submitted to mediation and if mediation is not successful to arbitration as described in this section:

(a) A dispute with regard to the issuance of an archaeological permit under ORS 390.235; or

(b) A dispute over the disposition of human skeletal remains or burial goods under ORS 97.750.

(2) The State Parks and Recreation Commission in consultation with the Mark O. Hatfield School of Government and the governing bodies of the Oregon Indian tribes shall adopt rules to establish mediation and arbitration procedures. [1993 c.459 §15; 2001 c.104 §129; 2003 c.598 §42; 2003 c.791 §§32,32a; 2005 c.817 §9]

**390.235 Permits and conditions for excavation or removal of archaeological or historical material; rules; criminal penalty.** (1)(a) A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site or remove from public lands any material of an archaeological, historical, prehistorical or anthropological nature without first obtaining a permit issued by the State Parks and Recreation Department.

(b) If a person who obtains a permit under this section intends to curate or arrange for alternate curation of an archaeological object that is uncovered during an archaeological investigation, the person must submit evidence to the State Historic Preservation Officer that the Oregon State Museum of Anthropology and the appropriate Indian tribe have approved the applicant's curatorial facilities.

(c) No permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made, and without the approval of the appropriate Indian tribe.

(d) The State Parks and Recreation Director, with the advice of the Oregon Indian tribes and Executive Officer of the Commission on Indian Services, shall adopt rules governing the issuance of permits.

(e) Disputes under paragraphs (b) and (c) of this subsection shall be resolved in accordance with ORS 390.240.

(f) Before issuing a permit, the State Parks and Recreation Director shall consult with:

(A) The landowning or land managing agency; and

(B) If the archaeological site in question is associated with a prehistoric or historic native Indian culture:

(i) The Commission on Indian Services; and

(ii) The most appropriate Indian tribe.

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(2) The State Parks and Recreation Department may issue a permit under subsection (1) of this section under the following circumstances:

(a) To a person conducting an excavation, examination or gathering of such material for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;

(b) To a qualified archaeologist to salvage such material from unavoidable destruction; or

(c) To a qualified archaeologist sponsored by a recognized institution of higher learning, private firm or an Indian tribe as defined in ORS 97.740.

(3) Any archaeological materials, with the exception of Indian human remains, funerary objects, sacred objects and objects of cultural patrimony, recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology unless:

(a) The Oregon State Museum of Anthropology with the approval from the appropriate Indian tribe approves the alternate curatorial facilities selected by the permittee;

(b) The materials are made available for nondestructive research by scholars; and

(c)(A) The material is retained by a recognized scientific, educational or Indian tribal institution for whose benefit a permit was issued under subsection (2)(a) of this section;

(B) The State Board of Higher Education with the concurrence of the appropriate Indian tribe grants approval for material to be curated by an educational facility other than the institution that collected the material pursuant to a permit issued under subsection (2)(a) of this section; or

(C) The sponsoring institution or firm under subsection (2)(c) of this section furnishes the Oregon State Museum of Anthropology with a complete catalog of the material within six months after the material is collected.

(4) The Oregon State Museum of Anthropology shall have the authority to transfer permanent possessory rights in subject material to an appropriate Indian tribe.

(5) Except for sites containing human remains, funerary objects and objects of cultural patrimony as defined in ORS 358.905, or objects associated with a prehistoric Indian tribal culture, the permit required by subsection (1) of this section or by ORS 358.920 shall not be required for forestry operations on private lands for which notice has been filed with the State Forester under ORS 527.670.

(6) As used in this section:

(a) "Private firm" means any legal entity that:

(A) Has as a member of its staff a qualified archaeologist; or

(B) Contracts with a qualified archaeologist who acts as a consultant to the entity and provides the entity with archaeological expertise.

(b) "Qualified archaeologist" means a person who has the following qualifications:

(A) A post-graduate degree in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology, or a documented equivalency of such a degree;

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(B) Twelve weeks of supervised experience in basic archaeological field research, including both survey and excavation and four weeks of laboratory analysis or curating; and

(C) Has designed and executed an archaeological study, as evidenced by a Master of Arts or Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field research.

(7) Violation of the provisions of subsection (1)(a) of this section is a Class B misdemeanor. [Formerly 273.705; 1993 c.459 §12; 1995 c.543 §7; 1995 c.588 §2]

**97.750 Permitted acts; notice.** (1) Any proposed excavation by a professional archaeologist of a native Indian cairn or burial shall be initiated only after prior written notification to the State Historic Preservation Officer and the state police, as defined in ORS 358.905, and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All associated material objects, funerary objects and human remains removed during such an excavation shall be reinterred at the archaeologist's expense under the supervision of the Indian tribe.

(2) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe. [1977 c.647 §3; 1979 c.420 §2; 1981 c.442 §5; 1993 c.459 §11]

**21.480 Legal aid and mediation program fees in circuit courts.** (1) In all counties wherein legal representation is provided for the poor without fee by a nonprofit legal aid program operating under the Legal Services Program established pursuant to ORS 9.572, the clerk of the circuit court shall collect the fees provided for in subsection (2) of this section to assist in defraying the operating costs of the legal aid program and to fund mediation programs offered through the State Department of Agriculture. The fees provided for in subsection (2) of this section are in addition to all other fees collected by the clerk of the court and shall be collected by the clerk in the same manner that other fees are collected by the clerk.

(2) The clerk shall collect the following fees from the plaintiff or other moving party in each civil suit, action or proceeding in the circuit court when the plaintiff or party files the first document in the suit, action or proceeding, and from a defendant or respondent when the defendant or respondent files an appearance in the suit, action or proceeding:

(a) \$10.50, for filings in the small claims department of a circuit court.

(b) \$20, upon the filing of a complaint that is subject to the filing fee established under ORS 105.130 (2). If the defendant demands a trial, the clerk shall collect a fee of \$41 from the defendant, and an additional fee of \$23 from the plaintiff. In no event shall the plaintiff in an action subject to the filing fee established under ORS 105.130 be required to pay a total fee of more than \$43 under the provisions of this subsection.

(c) \$35, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

(d) \$32, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (2).

(e) \$41, for any other filings in a circuit court not specifically provided for in this subsection, including all probate proceedings, protective proceedings under ORS chapter 125, adoption proceedings and change of name proceedings.

(3) In addition to the fees provided for in ORS 21.010, the State Court Administrator shall collect a fee of \$58 from an appellant or petitioner whenever a filing fee is collected under ORS 21.010 and a fee of \$18 from each respondent whenever an appearance fee is collected under ORS 21.010.

(4) All fees collected by the clerk under this section shall be deposited with the State Court Administrator. All fees collected under this section shall be distributed in the manner provided by ORS 9.574.

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(5) Ten percent of the funds deposited with the State Court Administrator under this section shall be transferred by the State Court Administrator on a monthly basis to the State Department of Agriculture, until such time as the amount specified under subsection (6) of this section has been transferred to the State Department of Agriculture for the biennium. Moneys transferred to the State Department of Agriculture under this section are continuously appropriated to the department and may be used by the department only for the purpose of funding mediation programs established by the department. Moneys appropriated to the department under this subsection may not be used by the department to fund the costs of conducting individual farm credit mediations. The department shall consult with the director of the Mark O. Hatfield School of Government in establishing and operating mediation programs funded under this subsection.

(6) The amount transferred by the State Court Administrator to the State Department of Agriculture under subsection (5) of this section may not exceed \$150,000 in any biennium. [1977 c.112 §1; 1981 c.664 §1; 1983 c.114 §1; 1985 c.342 §5; 1989 c.385 §1; 1997 c.801 §§45,45a; 2003 c.737 §§92,94,96; 2003 c.791 §§8,8a; 2005 c.817 §2; 2007 c.129 §18; 2007 c.860 §24]