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January 19, 2018

Attn: Fee-to-Trust Consultation  
Office of Regulatory Affairs & Collaborative Action  
Office of the Assistant Secretary – Indian Affairs  
United States Department of the Interior  
1849 C Street NW, Mail Stop 4660-MIB  
Washington, D.C. 20240

Re: Consultation, Proposed Revised Fee to trust acquisition regulations  
25 C.F.R. Part 151  
Comments of Confederated Tribes of Siletz Indians of Oregon

To the Office of Assistant Secretary- Indian Affairs:

I represent the Confederated Tribes of Siletz Indians of Oregon (“Siletz Tribe”). I am submitting comments on Principal Deputy Assistant Secretary-Indian Affairs John Tahsuda’s December 6, 2017 request for input on a list of questions related to the current fee-to-trust process. This letter sets out the response of the Siletz Tribe to the questions presented. In addition, the Siletz Tribe’s response will incorporate some of the material included in the Department’s original October 4, 2017 notice of proposed intended changes to the fee-to-trust process, and statements made therein about the intent of the changes and proposed language.

Before I respond to the specific questions asked, I present a brief background of the Siletz Tribe. Because of the Siletz Tribe’s unique history, it is likely to be impacted by the proposed changes more than most other tribes. The Siletz Tribe was originally settled in 1855 on a 1.1 million acre reservation along the central Oregon Coast, which was established by Executive Order. A number of tribes and bands of Indians with ratified treaties were soon settled on this reservation – known as the Siletz Coast Reservation – pursuant to ratified treaties as their permanent reservation. The reservation was taken for non-Indian settlement over time through a series of federal policy actions, until in 1954 when the Siletz Tribe was terminated under the Western Oregon Indians Termination Act the Tribe still owned only around 2600 acres.

The Siletz Tribe was restored in 1977 without any land base. Congress passed a Reservation Act for the Tribe in 1980 creating a reservation of approximately 3630 acres. The

reservation consisted of between 35 and 40 scattered parcels of BLM timberland, and the site of the original Siletz BIA Agency and later tribal headquarters, elders housing and cemetery. The Tribe has since acquired a few scattered parcels of trust land for various tribal purposes. Almost all of the Tribe's fee to trust applications were considered to be off-reservation because the BIA took the position that the Siletz Tribe's reservation did not have an exterior boundary and did not take into consideration the boundaries of the original reservation. Instead, the BIA took the position that the reservation's exterior boundary was the boundary line of each individual trust parcel. This problem was ameliorated some by passage of Pub.L.No. 114-262, 130 Stat. 1364, Dec. 14, 2016, which provided that for purposes of processing fee-to-trust applications for the Tribe, any application within the boundaries of the original 1855 Siletz Coast Reservation shall be processed by the Department of Interior as an on-reservation application.

Nevertheless, the Siletz Tribe still has a number of applications which are treated as off-reservation applications. Siletz members were scattered throughout western Oregon by federal termination. Congress recognized this when the Siletz Tribe was restored in 1977, 25 U.S.C. §711 et seq., by creating an 11 county service area for the Tribe (originally 8 counties; expanded to 11 counties shortly after). The Siletz Tribe has tribal members in all of these counties, and tribal area offices in Portland, Salem and Eugene in addition to the primary tribal office in Siletz. As a result, when the Siletz Tribe wishes to obtain land in trust in any of these areas to benefit tribal members, it must apply under the off-reservation regulatory criteria. The Siletz Tribe believes the proposed revisions will make it more difficult and expensive for the Tribe to obtain land in trust for non-gaming purposes (the Siletz Tribe already operates a gaming operation on trust land) within its Service Area.

The Siletz Tribe now responds to the Department's specific questions:

**1. What should be the objective of the land-into-trust program be? What should the Department be working to accomplish?**

The Siletz Tribe believes the objective of the land into trust program should be to assist tribes in achieving their full sovereign potential. The Siletz Tribe offers a good example of this standard. The tribes and bands that make up the Siletz Confederation ceded over 22 million acres to the United States in ratified and unratified treaties. The Tribe's original 1.1 million acre reservation was likely sufficient for tribal purposes, but that acreage was reduced over time. The Tribe was restored in 1977 with no reservation. A modest reservation was established for the Tribe in 1980, but it has been insufficient to serve tribal purposes. For example, most of the 3630 acres is former BLM timberland, around 34 separate parcels high in the Oregon Coast mountain range, and it was selected to provide sustained revenue to fund tribal government going forward. For many reasons, however, there has been reduced or even no timber harvesting and therefore no timber revenue. In addition, the vision of what a restored Siletz Tribe would do and look like turned out to be grossly inaccurate, and the revenue from timber harvesting, even if such harvesting was taking place on a brisk basis, would be inaccurate to provide most or even a

substantial portion of the revenue necessary to meet the needs of the Siletz Tribe and tribal members. So more land is needed.

The Siletz Tribe has been slowly acquiring land in trust to serve a variety of tribal needs – housing, resource protection, government operations, health and social services and for economic development. There is a federal policy in place to assist tribes to achieve economic self-sufficiency so reliance on federal funding and services is reduced. The Siletz Tribe is far from meeting this goal. Reliance on obtaining additional land in trust – a miniscule amount of land compared to the amount of land the Tribe once owned – is necessary on a long term basis for the Siletz Tribe to achieve its full sovereignty.

The Department should be working to assist the tribes to achieve these goals.

**2. How effectively does the Department address on-reservation land-into-trust applications?**

Processing of on-reservation applications is still extremely slow, primarily related to a very cumbersome process for clearing and certifying title.

**3. Under what circumstances should the Department approve or disapprove an off-reservation trust application?**

See discussion above. Off-reservation fee-to-trust applications should be approved if they advance the goal of allowing a tribe to achieve full sovereignty and provide services to tribal members that are not currently being fully provided. Applications should be approved within a Tribe's historical area or within a Tribe's service area.

**4. What criteria should the Department consider when approving or disapproving an off-reservation trust application?**

See above. The Siletz Tribe has cooperative relationships with all of its surrounding governmental jurisdictions, and believes it is important to consider concerns and interests from those governments in any fee-to-trust application. The Department should consider whether putting the land in trust will advance tribal government services or operations, and assist the tribe in achieving full tribal sovereignty. In addition to land being within a Tribe's historical area, it should also be a criterion if the land is within the Tribe's Service Area. For Tribes like Siletz that were deprived of their reservations at some point or never obtained a formal reservation, there should be no consideration of whether a proposed acquisition will consolidate the Tribe's land holdings or reduce checkerboard patterns of jurisdiction. In addition, whether the land in question is within a Tribe's service area should serve as an alternative to how far the land is from a tribe's reservation or even other trust lands.

**5. Should different criteria and/or procedures be used in processing off-reservation applications based on: a. Whether the application is for economic development as distinguished from non-economic development purposes? b. Whether the application is for gaming purposes as distinguished from other economic development? c. Whether the application involves no change in use?**

As stated above, it is a prominent federal policy to encourage tribal economic self-sufficiency in order to reduce tribal dependence on the federal government, so from the Siletz Tribe's perspective, there should be no difference between applications for non-gaming economic development and tribal governmental purposes. Economic development is as important as tribal government programs and services including cultural preservation, and protection, natural resources and habitat protection, and historically significant areas. At the most, arrangements with local jurisdictions to cover impacts for economic development proposals should be one criteria for review of the application. If an application involves no change in use, it should be subject to an expedited process for approval. Gaming fee-to-trust applications are already subject to a completely different and more rigorous process under IGRA, and that process should remain in effect.

**6. What are the advantages/disadvantages of operating on land that is in trust versus land that is owned in fee?**

Land that is in trust is subject to tribal authority and jurisdiction, and is necessary for the tribe, as with all other governments, to exercise its full sovereign authority over its members and territory. The Tribe is free to apply its own laws and policies on such land, and to provide its own services to its own members. Obviously, freedom from state and local taxation and fees is important also, but only because the Tribe needs as a sovereign to provide its own services and benefits on its lands the same as every other government, and not have people, land, houses or businesses subject to double taxation. Having land in trust qualifies the tribe for a number of federal programs and services that are not available on fee land. The Tribe can apply its own public policies, which many times are more restrictive than on non-Indian lands, on its own lands.

The main disadvantages to having land in trust is that the land cannot be used as collateral in any financing the Tribe may seek. This problem is dealt with by only putting lands into trust that are needed for tribal operations and services, and keeping land that is or might be needed for collateral in fee status.

The other disadvantage is that land in trust requires multiple layers of federal review and approval before any new use can be made of the property. In addition, there are a number of restrictions on use of the property. These reviews are often cumbersome, take a lot of time, and restrict development opportunities that the Tribe may want to pursue. The Department should work on streamlining the review and approval process for tribal use of trust lands.

**7. Should pending applications be subject to new revisions if/when they are finalized?**

The Tribe should have the choice of proceeding under the current regulations or under the new regulations. Many tribes such as Siletz have had fee-to-trust applications pending for a substantial period of time, and they should not be forced to revise and resubmit those long pending applications yet again.

**8. How should the Department recognize and balance the concerns of state and local jurisdictions? What weight should the Department give to public comments?**

The United States did not recognize and balance the concerns of Indian tribes when it originally took lands from tribes, so the Siletz Tribe is not enthusiastic about granting state and local jurisdictions too much control or authority over tribal fee-to-trust applications. It is of course reasonable to invite and respond to legitimate state and local concerns over a particular fee-to-trust application. But the federal government has an overriding trust responsibility to the tribes, and it is a fundamental tenet of federal Indian law that tribes require an adequate land base to properly exercise tribal sovereignty. The federal government did not take this responsibility into account when it decided how much land to take away from tribes, and so it is appropriate under the fee to trust process that the question of how much land a particular tribe needs to provide full services to its members and to exercise full tribal sovereignty should be the overriding concern when the Department reviews a fee to trust application. When land is put in trust, it is not being taken away from state and local jurisdictions; it is land that originally belonged to the tribes and was taken away from them that is being returned to the tribes, and should never have been under state and local jurisdiction to begin with.

Reasonable weight should be given to the concerns of state and local governments and to public comments, but those governments and those comments should not and cannot act as a veto over a fee-to-trust application if the property and intended uses meets the criteria to put land into trust.

**9. Do MOUs and other similar cooperative agreements between tribes and state/local governments help facilitate improved tribal/state/local relationships in off-reservation economic developments? If MOUs help facilitate improved government-to-government relationships, should that be reflected in the off-reservation application process?**

Of course, agreements with surrounding jurisdictions facilitate improved relationships. The more important question, rather than whether MOUs facilitate improved relationships, is the converse – whether improved relationships with surrounding jurisdictions helps facilitate MOUs? The regulations as they currently exist and the regulatory changes proposed in the Department’s October 4, 2017 draft do not facilitate improved tribal/non-Indian government

relationships. They are designed to give local and state governments veto power over a tribal fee-to-trust application, and result in an unequal bargaining position – either the Tribe caves in to local non-Indian government demands or the land does not go into trust. That is not an appropriate or just process, or result.

When the Siletz Tribe was first restored to tribal status and when it first opened its gaming operation, it was met with open hostility and resistance from surrounding governments. No one understood, accepted or trusted the Tribe or its proposals. Those governments had no interest in talking with the Tribe or in entering into negotiations or agreements. All they wanted is for the Tribe to go away or fully surrender to non-Indian government authority. It was only through long experience and persistence by the Siletz Tribe that surrounding governments have come to accept and trust the Tribe and its intentions and statements. Now there is no hesitation by surrounding governments to entering into agreements and MOUs with the Tribe on all sorts of issues, and the Tribe and local governments often partner in grant applications and government initiatives.

But you cannot use the fee-to-trust process to force tribes and local governments to enter into MOUs. Such a requirement is only designed to give local non-Indian governments a veto over tribal fee-to-trust applications. If the Department is going to retain anything on MOUs in the fee-to-trust regulations, it must include strong provisions requiring local governments to be reasonable in requests for MOUs, a presumption that the Tribe has acted in good faith in proposing an MOU or agreement and a critical review of a local government's declaration that no MOU has been reached, and strong sanctions or debarment of local governments who make unreasonable demands in an MOU from further participation in the fee-to-trust process.

**10. What recommendations would you make to streamline/improve the land-into-trust process?**

The current title review process and criteria is too restrictive and slows down or interferes with much land going into trust in the western United States. There is very little land that does not have some kind of title glitch or easement of some other problem with clean title. This is a fact of life with all property purchases, especially in the West. The Department should reduce the requirements for clean title to take land into trust, and should allow land to go into trust with title issues if they will not affect use of the property.

The Siletz Tribe has a few general comments about the fee-to-trust process that are not included within the scope of the questions posed above. First, Siletz believes the definition of “historical area” should be tightened up and defined as something like the area as defined by successful judicial or administrative decisions, land claims, treaties, statutes or Executive Orders. Second, Siletz believes that the right of tribes to comment and express concerns about fee-to-trust applications by other tribes within its historical area needs to be strengthened, and a process for challenge and determination of asserted claims needs to be included. Finally, Siletz strongly

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supports the current language of Section 151.8, that any fee-to-trust application submitted by another tribe within the current or former reservation of a tribe requires the consent of the tribe whose reservation is being intruded upon.

This concludes the Siletz Tribe's comments on the proposed fee-to-trust regulations at this time, although the Tribe will have additional comments as specific language is proposed. Siletz tribal representatives will also be attending the consultation session scheduled for January 25, 2018 in Portland, Oregon. Please let me know if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink that reads "Craig J. Dorsay". The signature is written in a cursive style with a long, sweeping tail on the "y".

Craig J. Dorsay

cc: Siletz Tribal Council  
Matt Hill