

UNITED STATES GOVERNMENT  
memorandum

DATE: December 5, 1994

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DEC 29 1994

REPLY TO: Acting Superintendent, Siletz Agency  
ATTENTION OF: Branch of Natural Resources

SUBJECT: Fee-to-Trust Acquisition  
Siletz Tribe: Lincoln Shores Lots

USBIA Siletz Agency

TO: Area Director, Portland Area Office  
Attn: Branch of Real Estate Services

**APPLICATION INFORMATION**

Siletz Agency received Resolution No. 94-258 from the Confederated Tribes of Siletz Indians of Oregon on November 14, 1994. The resolution requested that the property described there -- Lots 58, 59, 63 and 64, Lincoln Shore Star Resort, Lincoln City, Oregon, be placed into trust status for the benefit of the Tribe. The attached Master Plan plat showed a total of 10.99 acres in the four lots.

**STATUTORY AUTHORITY**

Public Law 103-435, "An Act To make certain technical corrections, and for other purposes", was signed into law by the President on November 3, 1994. Section 3 of P.L. 103-435, titled CONFEDERATED TRIBES OF THE SILETZ INDIANS OF OREGON, amends Section 2 of Public Law 96-340 (94 Stat. 1072), which was "An Act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon".

Section 2 of P.L. 96-340 (the original reservation act) is amended to read "(b) (1) The Secretary of the Interior, acting at the request of the Confederated Tribes of the Siletz Indians of Oregon, shall accept (subject to all valid rights-of-way and easements existing on the date of such request) any appropriate warranty deed conveying to the United States in trust for the Confederated Tribes of the Siletz Indians of Oregon, contingent upon payment of all accrued and unpaid taxes, the following parcels of land located in Lincoln County, State of Oregon: ... [list of nine parcels under (A), (B) and (C)]."

The subject property is described in the amended act as "(C) In the northwest quarter of section 2 and the northeast quarter of section 3, Township 7 South, Range 11 West, Willamette

Meridian, a tract of land comprising United States Government Lots 58, 59, 63, and 64, Lincoln Shore Star Resort, Lincoln City, Oregon." Although Lots 58, 59, 63, and 64 are not "United States Government Lots" as described in the legislation, they are readily identifiable as lots which are part of the official Final Plat Of Lincoln Shore Star Resort, Aa Subdivision in the N.W. ¼ of Section 2 and the N.E. ¼, Section 3, Township 7 South, Range 11 West, W.M., Lincoln County, Oregon, dated March 1991, and filed (recorded) March 26, 1992a in Lincoln County as Plat Book 15, Pages 21 ff (5 pages).a

#### FACTORS OF TITLE 25 CFR 151.10

Since the reservation act, as amended, instructs the Secretary of the Interior to accept any appropriate warranty deed conveying the subject tract to the United States in trust for the Siletz Tribe, this action is not discretionary, and analysis of the factors in 25 CFR 151.10 is not required.

#### ENVIRONMENTAL COMPLIANCE

This fee to trust conversion is categorically excluded from National Environmental Policy Act (NEPA) compliance pursuant to 516 DM 2, Appendix 1.9, which excludes: "Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations, and minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects; and comments and reports on referrals of legislative proposals" (emphasis added). In addition, NEPA does not apply to this trust acquisition because the Area Director's duty to accept the land in trust is ministerial. Section 2 of P.L. 96-340, as amended, is not discretionary, but mandatory. The Area Director's action does not consider or endorse any use of the land itself; it merely converts title to the United States in trust for the Tribe. The Eighth Circuit Court (Goos v. I.C.C., 911 F.2d 1283, 1296) held that "...[m]inisterial acts . . . have generally been held to be outside the ambit of NEPA's EIS requirement. Reasoning that the primary purpose of the impact statement is to aid agency decisionmaking, courts have indicated that nondiscretionary acts should be exempted from the requirement."<sup>3</sup>

A Level I Contaminant Survey was conducted on November 21, 1994, and approved by the Acting Superintendent, Siletz Agency, on November 22, under authority delegated to the Superintendent on February 1, 1994, by Portland Area Office. No contaminants were located on the property.

### HISTORIC/ENDANGERED SPECIES COMPLIANCE

This acquisition is an administrative action taken by the Secretary of the Interior in compliance with a mandate from an act of Congress. The Secretary makes no proposal for use of the land by taking this action. Therefore, the Secretary's action would have no impact on historical sites or endangered species.

### REQUIREMENTS OF THE INDIAN GAMING REGULATORY ACT

The enabling legislation does not tie use of the property to accepting the property in trust for the Tribe. If the Tribe chooses to use the property for gaming, it will be subject to compliance with the Indian Gaming Regulatory Act.

### SUMMARY AND RECOMMENDATIONS

Copies of the following documents, which relate to this action, are attached:

- 1.e Tribal Resolution 94-258, dated November 5, 1994, including Master Plan plat.
- 2.e Section 3 of Public Law 103-435.e
- 3.e Siletz Reservation Act (P.L. 96-340).
- 4.e NEPA Exception Review Checklist.e
- 5.e Level I Contaminant Survey.
- 6.e Final Plat of Lincoln Shore Star Resort.e

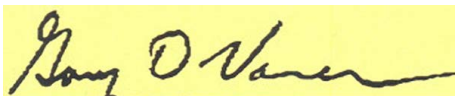
Since Lots 58, 59, 63 and 64, Lincoln Shore Star Resort, Lincoln County, Oregon, are the same lots identified in Public Law 96-340 as amended by Public Law 103-435, approval for this fee to trust conversion has already been given by law. What remains is for the Bureau of Indian Affairs, acting under the authority of the Secretary of the Interior, to "accept (subject to all valid rights-of-way and easements existing on the date of such request) any appropriate warranty deed conveying to the United States in trust for the Confederated Tribes of the Siletz Indians of Oregon, contingent upon payment of all accrued and unpaid taxes,...".

The remaining steps in this process can be accomplished through established procedure, which includes title review by the Office of the Regional Solicitor.

**ATTESTATION:**

I attest that I have reviewed this transaction and the case file is documented and in compliance with all of the above stated regulations and facts. I further state that I will not approve this transaction until I have received satisfactory title evidence in accordance with Title 25, CFR Part 151.12.

**ATTEST:**

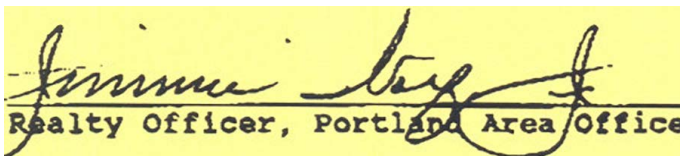


Acting Superintendent, Siletz Agency

12/15/94

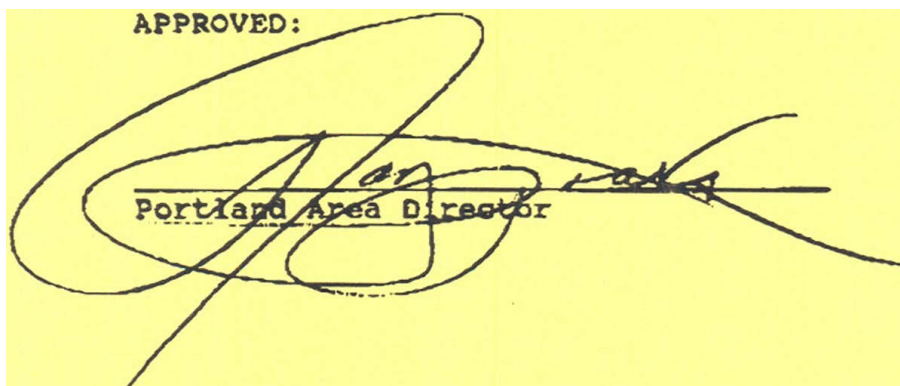
Date

**CONCURRENCE:**

  
Realty Officer, Portland Area Office

12/19/94  
Date

**APPROVED:**

  
Portland Area Director

12/15/94  
Date