

W. 9.a.

Memorandum Date: 3/31/11

Order Date: 4/6/11

TO: Board of County Commissioners
DEPARTMENT: County Administration
PRESENTED BY: Alex Cuyler, Intergovernmental Relations Manager

AGENDA ITEM TITLE: REPORT/ Action on a request by the Confederated Tribes of Siletz Indians of Oregon to endorse proposed federal legislation.

- I. **MOTION:** Move to adopt the resolution embodied in attachment A, in support of the Siletz Tribe's efforts to secure federal recognition of the original 1855 reservation, such that the Tribe has future options with regards to placing additional land into trust arrangements with the federal government.

II. **AGENDA ITEM SUMMARY**

Existing federal law (25 USC, 461-479) provides that the Secretary of the Interior may take land into trust for the benefit of Indian tribes. The Siletz Reservation was established in 1855 and stretched for over 100 miles along the central Oregon Coast. Between 1865 and 1961, the reservation was gradually taken away by the federal government, and ultimately the Tribe was terminated in 1954. The Siletz Restoration Act of 1977 restored federal recognition to the Tribe, and the Tribe has since obtained a modest reservation land base located in Lincoln County. While the Siletz now have the authority to apply to add land into trust, they are seeking federal legislation in order gain additional certainty in how its trust applications will be treated and processed by the federal government. Congressman Kurt Schrader has requested that the Tribe seek endorsements from the affected counties prior to introducing the Tribes proposed legislation. This document, and the attachments, fully explains the issue, and provides the Board of Commissioners with a proposed resolution such that Congressman Schrader will be assured that Lane County is in support of this proposal.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Board of County Commissioners regularly evaluates proposed federal legislation and makes a decision regarding their degree of support or opposition.

B. Policy Issues

This proposal is valuable for one of Lane County's intergovernmental partners. It additionally contains a clause that serves to protect Lane County through a future action the Board may or may not choose to take, that is, the County gets to review any application the Siletz Tribe makes with regards to land within Lane County and within the boundary of the historic reservation. It must make a formal finding of support for the procedure proposed through the legislation to kick in.

C. Board Goals

The Board is typically interested in collaborations with its intergovernmental partners.

D. Financial and/or Resource Considerations

None identified. Any lands ultimately going into trust would provide revenue to the county in a very similar manner to the current property tax, through the Tribe's "in lieu of property tax" payment

E. Analysis

The Tribe has submitted additional information that is consolidated as Attachment A.

F. Alternatives/Options

The Board may or may not choose to endorse this proposed legislation. It won't affect the ability of the Tribe to apply to have land held in trust, but does have implications for the Tribe in terms of the expediency (or lack thereof) of the federal government with regards to processing these applications.

IV. RECOMMENDATION

The Intergovernmental Relations Manager has reviewed these documents and recommends supporting the Tribe in their federal efforts.

V. TIMING/IMPLEMENTATION

The Tribe has specifically asked that the Board review their proposal now in light of the difficulty they expect to encounter with the processes encumbering the 112th Congress.

VI. FOLLOW-UP

It would be expected that the Tribe check in with the County from time to time to share their hoped for success in Washington DC around this effort.

VII. ATTACHMENTS

Attachment A contains the information provided by the Tribes legal representation.

Attachment B is the draft resolution for the Board's consideration.

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Licensed in:
Oregon (*)
Washington (**)
New Mexico (±)

Craig J. Dorsay *, **, ±
Lea Ann Easton *, **

Susan K. Driver *, ±
Of Counsel

MEMORANDUM

TO: Lane County Commission

FROM: Craig J. Dorsay & Lea Ann Easton, Siletz Tribal Attorneys

SUBJECT: Proposed Siletz Legislation

DATE: March 26, 2011

The Confederated Tribes of Siletz Indians of Oregon ("Siletz Tribe") is seeking federal legislation to define the boundaries of the Tribe's original 1855 reservation, established by Executive Order of Franklin Pierce on November 9, 1855, to clarify the Secretary of Interior's authority to take land into trust for the Siletz Tribe. The legislation itself will not affect the jurisdiction or authority of Lane County. The legislation, when passed by Congress, will not even apply to Lane County until such time as the Lane County Commissioners formally approve having the law's provisions apply to Lane County.

The purpose of this memo is to provide the Lane County Commissioners with some background on the Siletz Tribe's legislative proposal. A copy of the Siletz Tribe's proposed legislation is attached to this memo as Exhibit 1. A copy of a letter dated March 7, 2011, from the Lincoln County Commission, supporting the Siletz Tribe's legislative proposal, is attached for your information as Exhibit 2. The Lincoln County Commissioners have told the Siletz Tribe that they would be willing to discuss the legislation and their support with any interested County.

The Siletz Reservation was established by the United States in 1855 as a permanent homeland for all the Tribes and Bands of Indians in western Oregon, who were to confederate upon it and make the remaining ceded land available for settlement. The description of the Siletz Reservation that appears in our proposed legislation is the exact description used in President Pierce's Executive Order. We attach an original rendering of the Reservation as kept in the Bureau of Indian Affairs archives, made sometime between 1865 and 1875, as Exhibit 3. The original Siletz Reservation stretched for over 100 miles along the central Oregon Coast, from the ocean to the western boundary of the 8th Range, Willamette Meridian, around 1.1 million acres. As Exhibit 4,

we attach a modern overlay of this original reservation, showing cities and counties. You will see that the southern portion of the original Siletz Reservation extends into what is now Lane County. All told, the reservation included parts of six counties, although Lincoln County comprises the heart of that reservation.

The reservation was gradually taken away from the Siletz Tribe between 1865 and 1961 by the federal government. The Siletz Tribe was terminated as a federally-recognized Indian tribe by federal law in 1954, and was restored as a federally-recognized tribe in 1977 by the Siletz Restoration Act. The Tribe has since obtained a modest tribal reservation land base, located in Lincoln County.

Federal law enacted in 1934 allows the Secretary of Interior to take land into trust for the benefit of Indian tribes. This law, known as the Indian Reorganization Act (codified at 25 U.S.C. §§ 461-479) was designed to halt and partially reverse the massive loss of tribal lands during the previous 47 years – over 91 million acres nationally. The specific provision giving the Secretary broad discretionary authority to take land into trust appears at 25 U.S.C. § 465. Federal regulations implementing this statutory authority appear at 25 C.F.R. Part 151. Attached as Exhibit 5. It is these regulations that are the subject of the federal legislation that the Siletz Tribe is introducing into Congress, and for which it seeks Lane County's support.

The Siletz Tribe has the authority right now, under this statute and these regulations, to apply to have land taken into trust anywhere, including Lane County. The proposed legislation will only make a small change in the existing process, and will actually give Lane County more say in that process should Lane County ever be involved with such an application. What the Siletz Tribe will gain under the proposed legislation is certainty in how its fee-to-trust applications will be treated and processed by the federal government.

The Bureau of Indian Affairs' fee-to-trust regulations at 25 C.F.R. Part 151 distinguish between "on-reservation" (25 C.F.R. § 151.10) and "off-reservation" (25 C.F.R. § 151.11) fee-to-trust applications. There is not a great deal of difference between the two, except for the level of justification required. We have provided a comparison graph showing the difference between the two procedures, attached as Exhibit 6.

The fee-to-trust regulations contain a less than clear definition of what is considered an Indian "reservation" for purposes of distinguishing between on and off reservation fee-to-trust applications. This definition appears at 25 C.F.R. § 151.2(f). The latter part of this definition, referring to the "former" reservation of a tribe that has a judicial decision concluding that the original reservation of the Tribe was diminished or disestablished by the federal government, appears to refer to the original 1855 Siletz Reservation. The Siletz Tribe has two cases from the federal Court of Claims concluding that the original 1855 Siletz Reservation was diminished by the federal government. However, the BIA believes the definition at 25 C.F.R. § 151.2(f) is ambiguous, and points to old correspondence that it says indicates the Siletz Tribe's reservation for

purposes of the fee-to-trust process refers only to the Tribe's modern day reservation. This ambiguity by the BIA is contrary to several federal case decisions from around the country concluding that the definition of reservation under § 151.2(f) includes a tribe's original reservation, but the matter remains unresolved for the Siletz Tribe. The Siletz Tribe could pursue litigation to resolve and clarify this issue, but litigation is an inefficient means to resolve problems such as this one. The Tribe is instead seeking legislation to clarify and resolve this matter – the proposed legislation attached to this memo as Exhibit 1.

The Siletz Tribe has been slowly restoring a modest land base primarily in Lincoln County. The Tribe recently acquired timber lands in Douglas County just south of the Lane County border. The Tribe also owns an office complex in Eugene which houses its Area Office and the program services offered by the Tribe to its members in the Eugene/Springfield area. This property, which is owned in fee, is not affected by the legislation because it is located outside the boundaries of the original Siletz Reservation. The Tribe does not have any plans at this time to reacquire additional lands elsewhere within the boundaries of the original Siletz Reservation. The Siletz Tribe does, however, have an official policy declaring its interest in reacquiring lands within its original reservation should they become available and meet the Tribe's planning objectives. As you can see in the map attached as Exhibit 4 to this memo, the Tribe's original 1855 Reservation reaches into six Oregon counties. The western portion of Lane County is within the original Siletz Reservation. Therefore, the Siletz Tribe is approaching your county and all of the other counties affected by this legislation to explain the Tribe's intent and the legislation itself.

You will see that the proposed legislation gives Lane County complete control as to whether the legislation will apply to Lane County once enacted. The legislation will not apply to any affected county until that county takes formal action approving the application of the on-reservation designation to that part of the County that falls within the original Siletz Reservation. If the County takes no action, the law and procedure remains as it is now – the Siletz Tribe could file a fee-to-trust application for land within Lane County, but that application under current BIA policy would be treated by that federal agency as off-reservation. If Lane County does approve application of the legislative provisions within Lane County and later changes its mind, the County can opt out of the legislation going forward, either generally or for a specific fee-to-trust application. There is no risk to Lane County in supporting this legislation.

It has been the policy of the Siletz Tribe to seek agreement with surrounding governments before applying to have land taken into trust. For example, the Siletz Tribe currently has such agreements with Lincoln County and Lincoln City. A copy of the Tribe's agreement with Lincoln County is attached as Exhibit 7, as one example of what these agreements could look like. In negotiating such agreements, the Tribe and local government address areas of mutual interest and concern such as services, law enforcement coverage, loss of property taxes, and jurisdictional issues. Should the Siletz Tribe ever seek to have land taken into trust within Lane County, the Tribe would

Siletz Proposed Legislation - Explanation

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approach the County to negotiate such an agreement, at which time the Tribe would also ask the County to "opt-in" to the legislation, so that the Tribe's fee-to-trust application would be treated under the on-reservation process. An agreement could be part of asking for such County approval. The Siletz Tribe has had good relations with all of its surrounding government neighbors, and is confident that such relationship would extend to new neighbors such as Lane County.

The Siletz Tribe therefore asks for the formal support of Lane County for its proposed legislation. As stated at the beginning of this memo, the legislation by itself does not change the legal relationship between the Siletz Tribe and Lane County. It does not alter or diminish the jurisdiction or authority of Lane County. As a federal court recently noted with regard to defining an original reservation boundary for purposes of fee-to-trust applications: "While it is true that the original 1858 boundaries [of the Sioux Reservation] are no longer markers dividing jurisdiction between the Tribe and the state, that does not mean to say they have lost their historical relevance for the Secretary [of Interior's] discretionary acts." *Yankton Sioux Tribe v. Podhradsky*, 606 F.3d 994, 1013 (8th Cir. 2010).

The Siletz Tribe would be glad to answer any questions or concerns you might have about the proposed legislation. The Tribe seeks a formal letter of support from Lane County for this legislation.

A BILL – draft February 1, 2011

To amend the Siletz Indian Tribe Restoration Act to provide for the treatment of certain property acquired by the tribe.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CERTAIN PROPERTY OF SILETZ TRIBE OF OREGON.

Section 7 of the Siletz Indian Tribe Restoration Act (25 U.S.C. 711e) is amended by adding at the end the following:

“(f) TREATMENT OF CERTAIN PROPERTY.-

“(1) IN GENERAL.- Any portion of the real property described in paragraph (2) that is acquired by the tribe before, on, or after the date of enactment of this subsection, and for which the tribe submits to the Secretary an application to have taken into trust for the benefit of the tribe pursuant to this subsection, shall, subject to the provisions of paragraph (3) below –

“(A) be treated as on-reservation land for the tribe for purposes of processing acquisitions of real property into trust; and

“(B) become part of the reservation of the tribe.

“(2) DESCRIPTION OF PROPERTY.- The real property referred to in paragraph (1) is the property comprising the original Siletz Coast Reservation established by the Executive Order dated November 9, 1855, more particularly described as follows: Beginning on the shore of the Pacific Ocean at the mouth of a small stream approximately midway between Umpqua and Siuslaw Rivers (also known as the Siltcoos River); thence easterly to the ridge dividing those rivers and along that ridge or highland to the western boundary of 8 R. T. W., Willamette meridian; thence north along that boundary to a point due east of Cape Look Out; thence west to the Pacific Ocean; thence along the coast of the Pacific Ocean to the point of origin.

“(3) CONDITIONS.- The original Siletz Coast Treaty Reservation as described in paragraph (2) is located within the following named Oregon counties: Lincoln, Lane, Tillamook, Yamhill, Benton, and Douglas. For each such named Oregon county, the provisions of this subsection shall not become effective for such county’s land within the property described in paragraph (2) until thirty (30) days after receipt in writing by the Secretary of a resolution or other appropriate documentation of acceptance or approval by the Board of County Commissioners of such Oregon county of the terms of this subsection, *provided*, that the Board of County Commissioners of such Oregon county may, by similar written documentation, notify the Secretary of that County’s withdrawal from approval or acceptance of the terms of this subsection, after which the terms of this subsection shall not apply within such county, and *provided further*, that the Board of Commissioners of such Oregon county may, for an individual fee-to-trust application, notify the Tribe and Secretary in writing that it chooses to opt out of the terms of this subsection for such fee-to-trust application, in which event this subsection shall not apply to such fee-to-trust application.

“(4) PROHIBITION ON GAMING UNDER IGRA.- The property taken into trust for the benefit of the tribe pursuant to this subsection shall not be used for any gaming activity conducted under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).”

EXHIBIT 1



Board of Commissioners

Courthouse, Room 110
225 W. Olive Street
Newport, Oregon 97365
(541) 265-4100
FAX (541) 265-4176

March 8, 2011

Delores Pigsley
Chairman
Confederated Tribes of Siletz Indians
PO Box 549
Siletz OR 97380

Dear Chairman Pigsley:

The Lincoln County Board of Commissioners is pleased to offer its support for the latest revised draft of your February 1, 2011 proposed Federal legislation governing fee-to-trust applications on Tribal lands. We believe the latest version strikes a fair and reasonable compromise between the interests of the Tribe and the interests of the County and other local governments.

Our dialogue on this issue was open, direct and productive because of the positive working relationship we have built between our Board and the Tribal Council. Our mutual constituents will continue to reap the benefits of this partnership. We stand ready to assist you in working for positive Congressional action on this measure.

Sincerely,

Terry N. Thompson
Chair

Don Lindly
Commissioner

Bill Hall
Commissioner

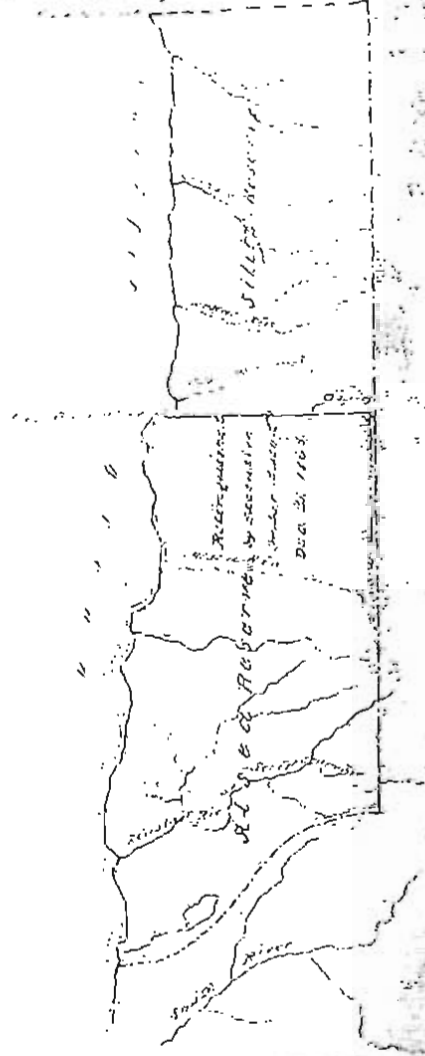
Enclosure: Latest Revision – Proposed Legislation



EXHIBIT 2

Oregon

Coast Range Indian
also
sett. and - used - ROBERT



COPIES OF THIS MAP ARE ON FILE IN THE BUREAU OF LAND MANAGEMENT

November 9, 1855

The reservation of the land within [above], denoted by blue shaded lines, is hereby made for the Cayton
indicated in letter of the Commissioner of the General Land Office of the 10th Sept. 1855, and letter
of the Secretary of the Interior of the 8th of November 1855. "Franklin Pierce"

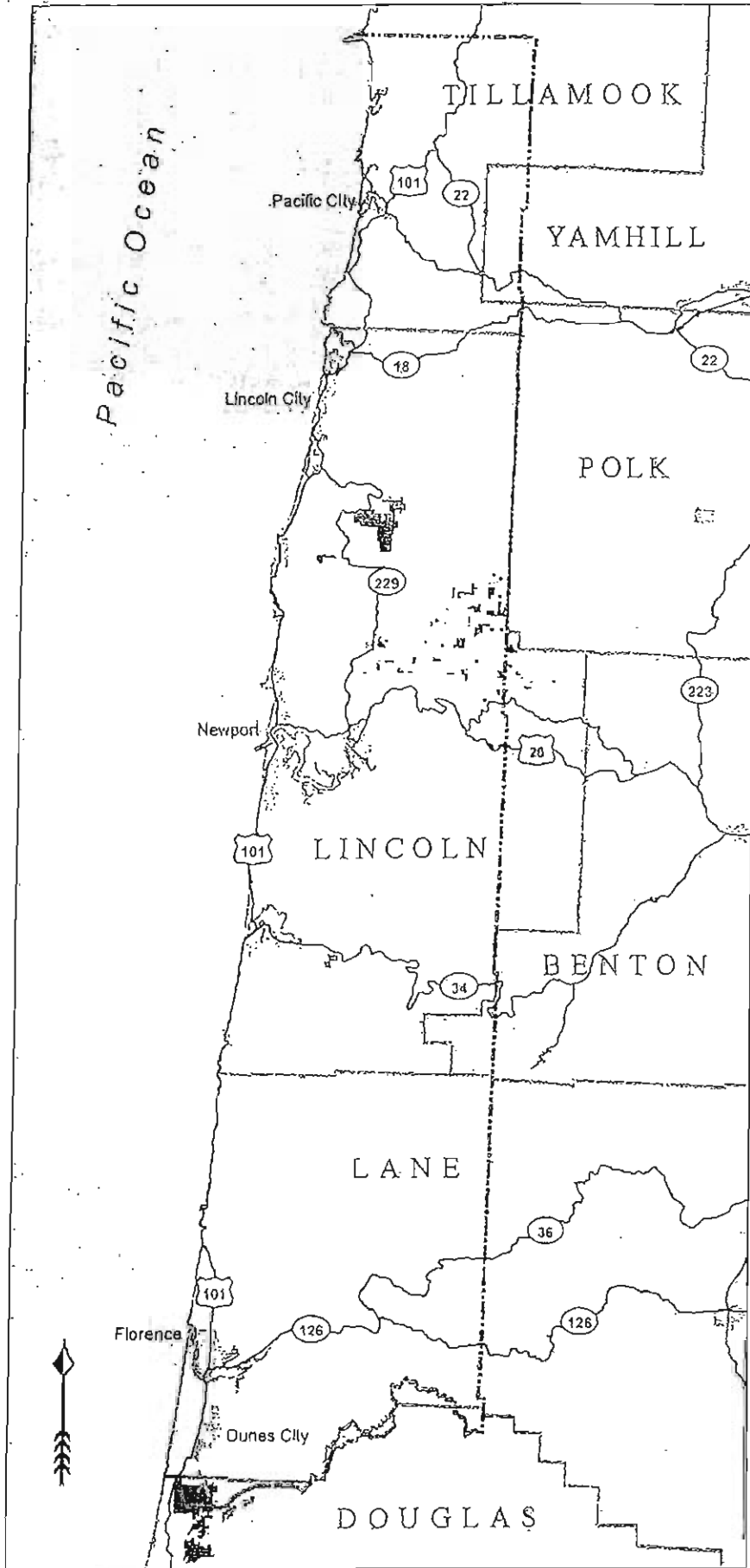
Dec 21, 1855

[See also from 11th Nov. 1855]

The following portion of same was released from reservation and thrown open to occupancy save by the claim
as other public lands, viz. to commence with a point two miles south of the Seely Agency, then west to the
Cayton River, then south along said ocean to the mouth of Alsea River, then west to the
boundary of the reservation to the north, along said eastern boundary to about due east of the place of begin-
ning, thence west to the place of beginning. [See letter from Genl. Dutton Dec 26, 1855]

COPIES OF THIS MAP ARE ON FILE IN THE BUREAU OF LAND MANAGEMENT

Confederated Tribes of Siletz Indians Original Reservation & Current Ownership



Legend

Original Siletz Reservation

Current Siletz Ownership

Trust Status

Fee Simple

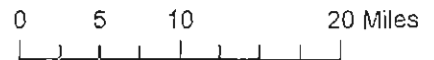
Reservation

Trust

Highways

County Boundary

Cities



Cartography by Brady Smith, CTSI GIS
Planner on January 25, 2011.



Titles and Records Office will rethose title documents that are re-1 to be returned to the origi-3 office with appropriate record-formation.

Probate records. In accordance 13 CFR part 4, subpart D, Admin-ive Law Judges shall forward the al record of Indian probate deci-and copies of petitions for rehear-Opening, and other appeals to and Titles and Records Office provides service to the origi-; Agency. If trust land or Indian involved in the probate are lo-within the jurisdictional area of er Land Titles and Records Of-the Administrative Law Judge also send a duplicate copy to that . Probate records submitted by an istrate Law Judge for record-ll be retained by the Land Titles eords Office.

Curative action to correct title facts.

i Titles and Records Office shall e such action as described below e defects in the record discovered r the recording of title documents mination of titles.

f an error is traced to a defective document other than probate s, the Land Titles and Records shall notify the originating of-the defect.

f errors are discovered in probate s, the Land Titles and Records may initiate corrective action as s:

An administrative modification be issued to modify probate s to include any Indian land id from the inventory if such ty is located in the same state kes the same line of descent as own in the original probate e. Authority is delegated to the issioner by 43 CFR 4.272 to make odifications except on those In-ervations covered by special In-ace Acts (48 CFR 4.300). Copies of istrative modifications shall be uted to the appropriate Adminis-; Law Judge, Agencies with juris-1 over the Indian land, and to all s who share in the estate.

and Titles and Records Offices notify the Superintendent when

modifications are required by Adminis-trative Law Judges for other types of probate errors. Corrective action is then initiated in accordance with 43 CFR part 4, subpart D.

(3) Land Titles and Records Offices shall issue administrative corrections to correct probate errors which are clerical in nature and which do not af-fect vested property rights or involve questions of due process. Copies of ad-ministrative corrections are distrib-uted to the appropriate Administrative Law Judge and Agency.

§150.8 Title status reports.

Land Titles and Records Offices may conduct a title examination of a tract of Indian land provide a title status report upon request to those persons au-thorized by law to receive such infor-mation. Requests for title status re-ports shall be submitted by or through the Bureau office that has administra-tive jurisdiction over the Indian land. All requests must clearly identify the tract of Indian land.

§150.9 Land status maps.

The Land Titles and Records Offices shall prepare and maintain maps of all reservations and similar entities with-in their jurisdictions to assist Bureau personnel in the execution of their title service responsibilities. Base maps shall be prepared from plats of official survey made by the General Land Of-fice and the Bureau of Land Manage-ment. These base maps, showing promi-nent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current sta-tus of the tract. Other special maps, such as plats and townsite maps, may also be prepared and maintained to meet the needs of individual Land Ti-tles and Records Offices, Agencies, and Indian tribes.

§150.10 Certification of land records and title documents.

Under the provisions of the Act of July 26, 1892 (27 Stat. 273; 25 U.S.C. 6), an official seal was created for the use of the Commissioner of Indian Affairs in authenticating and certifying copies of Bureau records. Managers of Land

Titles and Records Offices are des-ignated as Certifying Officers for this purpose. When a copy or reproduction of a title document is authenticated by the official seal and certified by a Man-ager, Land Titles and Records Office, the copy or reproduction shall be ad-mitted into evidence the same as the original from which it was made. The fees for furnishing such certified copies are established by a uniform fee sched-ule applicable to all constituent units of the Department of the Interior and published in 43 CFR part 2, appendix A.

§150.11 Disclosure of land records, title documents, and title reports.

(a) The usefulness of a Land Titles and Records Office depends in large measure on the ability of the public to consult the records contained therein. It is therefore, the policy of the Bureau of Indian Affairs to allow access to land records and title documents un-less such access would violate the Pri-vacy Act, 5 U.S.C. 552a or other law re-stricting access to such records, or there are strong policy grounds for de-nying access where such access is not required by the Freedom of Informa-tion Act, 5 U.S.C. 552. It shall be the policy of the Bureau of Indian Affairs that, unless specifically authorized, monetary considerations will not be disclosed insofar as leases of tribal land are concerned.

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Of-fice, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in ef-fect to determine whether the informa-tion may be released without the writ-ten consent of the person to whom it pertains.

PART 151—LAND ACQUISITIONS

- Sec.
- 151.1 Purpose and scope.
 - 151.2 Definitions.
 - 151.3 Land acquisition policy.
 - 151.4 Acquisitions in trust of lands owned in fee by an Indian.
 - 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.
 - 151.6 Exchanges.
 - 151.7 Acquisition of fractional interests.
 - 151.8 Tribal consent for nonmember acqui-sitions.

- 151.9 Requests for approval of acquisitions.
- 151.10 On-reservation acquisitions.
- 151.11 Off-reservation acquisitions.
- 151.12 Action on requests.
- 151.13 Title examination.
- 151.14 Formalization of acceptance.
- 151.15 Information collection.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended. 63 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 76 Stat. 695; 77 Stat. 249; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended. 82 Stat. 884; 84 Stat. 120; 84 Stat. 1374; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 84 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h 451, 464, 465, 497, 488, 489, 501, 502, 673, 574, 375 608, 608a, 510, 610a, 622, 624, 640d-10, 1466, 1495 and other authorizing acts.

CROSS REFERENCE: For regulations per-taining to: The inheritance of interests in trust or restricted land, see parts 16, 16, and 17 of this title and 43 CFR part 4; the pur-chase of lands under the BIA Loan Guaranty Insurance and Interest Subsidy program, see part 103 of this title; the exchange and parti-tion of trust or restricted lands, see part 15 of this title; land acquisitions authorized by the Indian Self-Determination and Edu-cation Assistance Act, see parts 900 and 27 of this title; the acquisition of allotments on the public domain or in national forests, see 43 CFR part 2530; the acquisition of Native allotments and Native townsite lots in Alas-ka, see 43 CFR parts 2561 and 2564; the acqui-sition of lands by Indians with funds bor-rowed from the Farmers Home Administra-tion, see 7 CFR part 1823, subpart N; the ac-quisition of land by purchase or exchange for members of the Osage Tribe not having cer-tificates of competency, see §§117.8 and 158.5 of this title.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 1332 Mar. 30, 1982.

§151.1 Purpose and scope.

These regulations set forth the au-thorities, policy, and procedures gov-erning the acquisition of land by the United States in trust status for ind-ividual Indians and tribes. Acquisition of land by individual Indians and tribe in fee simple status is not covered by these regulations even though suc-land may, by operation of law, be hel-d in restricted status following acqui-sition. Acquisition of land in trust statu by inheritance or escheat is not cov-ered by these regulations. These regi-lations do not cover the acquisition of

the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(h) The extent to which the applicant is provided information that allows the Secretary to comply with 516 DM 8, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 502 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 IB, Washington, DC 20240.)

45 FR 62036, Sept. 18, 1980, as amended at 60 FR 32879, June 23, 1995

51.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to a tribe's reservation, and the acquisition is not mandated:

a) The criteria listed in §151.10 (a) through (c) and (e), through (h);

b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's res-

ervation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to §151.10 (e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

60 FR 32879, June 23, 1995, as amended at 60 FR 48894, Sept. 21, 1995

§151.12 Action on requests.

(a) The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to part 2 of this title.

(b) Following completion of the Title Examination provided in §151.13 of this part and the exhaustion of any administrative remedies, the Secretary shall publish in the FEDERAL REGISTER, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no

sooner than 30 days after the notice is published.

45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995, as amended at 61 FR 18083, Apr. 24, 1996

§151.13 Title examination.

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards For The Preparation of Title Evidence In Land Acquisitions by the United States*, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995

§151.14 Formalization of acceptance.

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995

§151.15 Information collection.

(a) The information collection requirements contained in §§151.9; 151.10; 151.11(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1078-0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information

collection. Direct comments re the burden estimate or any other aspect of this information collection, the Bureau of Indian Affairs, Information Collection Clearance Room 337-SIB, 18th and C Street Washington, DC 20240; and the Office of Information and Regulatory Affairs, [Project 1078-0100], Office of Management and Budget, Washington 20502.

60 FR 32879, June 23, 1995; 64 FR 1323, 1999

PART 152—ISSUANCE OF PATENT IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

- Sec.
- 152.1 Definitions.
 - 152.2 Withholding action on application.
- ### ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS
- 152.3 Information regarding status of applications for removal of Federal restrictions over Indian lands.
 - 152.4 Application for patent in fee.
 - 152.5 Issuance of patent in fee to Indians and Indians with whom a special relationship does not exist.
 - 152.7 Application for certificate of competency.
 - 152.8 Issuance of certificate of competency.
 - 152.9 Certificates of competency to Osage adults.
 - 152.10 Application for orders removing restrictions, except Five Civilized Tribes.
 - 152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.
 - 152.12 Removal of restrictions, Five Civilized Tribes, after application to authority other than section 2(a) of August 11, 1956.
 - 152.13 Removal of restrictions, Five Civilized Tribes, after application to section 2(a) of the Act of August 11, 1956.
 - 152.14 Removal of restrictions, Five Civilized Tribes, without application.
 - 152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.
 - 152.16 Effect of order removing restrictions, Five Civilized Tribes.

Comparison of On-Reservation vs. Off-Reservation Provisions of

Federal Regulations, 25 C.F.R. Part 151

Statutory Authority for the Siletz Tribe to acquire land in trust: 25 U.S.C. § 465; 25 U.S.C. § 711a(a). Section 711a(a) expressly makes the provisions of Section 465 applicable to the Siletz Tribe.

<p>What Land may be acquired in trust for an Indian tribe:</p>	<p>On-Reservation: § 151.3(a): Land may be acquired for a tribe in trust status: (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self determination, economic development, or Indian housing.</p>	<p>Off-Reservation: § 151.3(a): Land may be acquired for a tribe in trust status: (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self determination, economic development, or Indian housing.</p>
<p>How a Tribe Requests that Land be taken into trust:</p>	<p>On-Reservation: § 151.9: A tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information that would show that the acquisition comes within the terms of this Part.</p>	<p>Off-Reservation: § 151.9: A tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information that would show that the acquisition comes within the terms of this Part.</p>
<p>Notice of Fee-to-Trust Applications:</p>	<p>On-Reservation: § 151.10. Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision.</p>	<p>Off-Reservation: § 151.11(d). Contact with state and local governments pursuant to § 151.10 (e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.</p>

Criteria to be considered by the Secretary in evaluating requests for the acquisition of land in trust status:		
1. Authority to take land into trust for the tribe.	On-Reservation: § 151.10(a): The existence of the statutory authority for the acquisition and any limitations contained in such authority.	Off-reservation: § 151.10(a): The existence of the statutory authority for the acquisition and any limitations contained in such authority.
2. Need of the Tribe for additional land.	On-reservation: § 151.10(b): The need of the tribe for additional land.	Off-reservation: § 151.10(b): The need of the tribe for additional land.
3. What the land will be used for in trust.	On-reservation: § 151.10(c): The purposes for which the land will be used.	Off-reservation: § 151.10(c): The purposes for which the land will be used.
4. Impact on non-Indian governments of removal of land from the tax rolls.	On-reservation: § 151.10(e): If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.	Off-reservation: § 151.10(e): If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.
5. Jurisdictional and Land use issues.	On-reservation: § 151.10(f): Jurisdictional problems and potential conflicts of land use which may arise.	Off-reservation: § 151.10(f): Jurisdictional problems and potential conflicts of land use which may arise.
6. BIA Capability to Administer.	On-reservation: § 151.10(g): If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.	Off-reservation: § 151.10(g): If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.
7. Environmental Review.	On-reservation: § 151.10(h): The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.	Off-reservation: § 151.10(h): The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

<p>8. Distance from the Tribe's Reservation.</p>	<p>On-Reservation: No criteria or requirement.</p>	<p>Off-reservation: §151.11(b): The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to subsection (d) of § 151.11 (state and local written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments).</p>
<p>9. Business plan.</p>	<p>On-reservation: No criteria or requirement.</p>	<p>Off-reservation: § 151.11(c): Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.</p>
<p>BIA Action on Tribal fee-to-trust requests:</p>	<p>On-reservation: § 151.12: The Secretary shall review a tribal fee-to-trust application and shall promptly notify the applicant in writing of his or her decision. The Secretary may request any additional information or justification he or she considers necessary to enable him or her to reach a decision. If the Secretary determines that the request should be denied, he or she shall advise the applicant of that fact and the reasons therefor in writing and notify him or her of the right to appeal pursuant to Part 2 of Title 25 C.F.R.</p>	<p>Off-reservation: § 151.12: The Secretary shall review a tribal fee-to-trust application and shall promptly notify the applicant in writing of his or her decision. The Secretary may request any additional information or justification he or she considers necessary to enable him or her to reach a decision. If the Secretary determines that the request should be denied, he or she shall advise the applicant of that fact and the reasons therefor in writing and notify him or her of the right to appeal pursuant to Part 2 of Title 25 C.F.R.</p>

<p>Publication of Decision to Take Land into Trust:</p>	<p>On-reservation: § 151.12(b): Following completion of the Title Examination provided in § 151.13 and the exhaustion of any administrative remedies, the Secretary shall publish in the Federal Register or in a newspaper of general circulation serving the affected area a notice of his or her decision to take land into trust under this Part for a tribe. The notice will state that a final agency determination to take land into trust has been made and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.</p>	<p>Off-reservation: § 151.12(b): Following completion of the Title Examination provided in § 151.13 and the exhaustion of any administrative remedies, the Secretary shall publish in the Federal Register or in a newspaper of general circulation serving the affected area a notice of his or her decision to take land into trust under this Part for a tribe. The notice will state that a final agency determination to take land into trust has been made and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.</p>
<p>Title Examination:</p>	<p>On-reservation: § 151.13: If the Secretary determines that he or she will approve a request for the acquisition of land from unrestricted fee status to trust status, he or she acquire, or shall require the applicant to furnish, title evidence meeting the <i>Standards for the Preparation of Title Evidence In Land Acquisitions by the United States</i>, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant that any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he or she shall require elimination prior to such approval if the liens, encumbrances or infirmities make title to the land unmarketable.</p>	<p>Off-reservation: § 151.13: If the Secretary determines that he or she will approve a request for the acquisition of land from unrestricted fee status to trust status, he or she acquire, or shall require the applicant to furnish, title evidence meeting the <i>Standards for the Preparation of Title Evidence In Land Acquisitions by the United States</i>, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant that any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he or she shall require elimination prior to such approval if the liens, encumbrances or infirmities make title to the land unmarketable.</p>
<p>BIA Formalization of Acceptance:</p>	<p>On-reservation: § 151.14: Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.</p>	<p>Off-reservation: § 151.14: Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.</p>

MEMORANDUM OF AGREEMENT
BETWEEN
THE CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON
AND
LINCOLN COUNTY, STATE OF OREGON

This Memorandum of Agreement ("MOA") is entered into this 16th day of September, 2005, between the Confederated Tribes of Siletz Indians of Oregon ("Siletz Tribe") and Lincoln County, State of Oregon ("Lincoln County"). The Siletz Tribal Council has authority to enter into this MOA by Tribal Council Resolution pursuant to Article IV, Section 1 of the Siletz Constitution, and Lincoln County enters into this MOA pursuant to ORS 190.110 and the Lincoln County Charter.

FINDINGS:

1. Lincoln County is a local government within the State of Oregon.
2. The Siletz Tribe is a federally recognized Indian Tribe.
3. The Siletz Tribe exercises governmental authority over all tribal properties, and exercises jurisdiction and sovereign authority over Tribal properties taken into trust or placed in reservation status.
4. The Siletz Tribe and Lincoln County are co-equal governments providing services to their respective communities. Both sovereigns realize, however, that their community interests and service obligations often overlap, and that the most efficient delivery of governmental services and the interests of all the citizens of Lincoln County and all the members of the Siletz Tribe are best served by coordination, cooperation and mutual respect between the governing bodies of Lincoln County (the Lincoln County Commission) and the Siletz Tribe (Siletz Tribal Council).
5. Likewise, Lincoln County acknowledges that the Siletz Tribe provides services and provides benefits to Tribal members and others within the County, and provides substantial contributions to departments of the County, schools, community services, municipal services and private organizations that serve and support the needs of Lincoln County residents and visitors, and that in some cases relieves the County of having to provide such services and benefits itself.
6. The Siletz Tribe and Lincoln County desire to enter into a cooperative agreement that will assist Lincoln County in providing additional services to residents of the County. The Siletz Tribe desires to make an Annual Contribution to Lincoln County in acknowledgment of the fact that Lincoln County provides services that benefits Tribal members, tribal visitors, the Tribal Community, and customers and

clients of Tribal businesses in Lincoln County. In return, Lincoln County acknowledges that it is no longer necessary to protest applications by the Siletz Tribe to take parcels of land into federal trust status because of the loss of tax revenue to the County or for other economic reasons.

AGREEMENT:

1. The Siletz Tribe agrees to make an annual contribution to Lincoln County in the amount of \$85,000 per year, beginning on July 1, 2005, and continuing for subsequent twelve month periods thereafter. The amount of the annual contribution set out in this Section shall be adjusted July 1 of each year based on the Portland Consumer Price Index, or 2.5%, whichever is less.
2. Every four years under this MOA, the Siletz Tribe and Lincoln County will meet to re-examine and adjust the annual contribution amount made by the Siletz Tribe to Lincoln County, to reflect any additional parcels of land the Tribe has taken into trust or reservation status during the previous four years, and also to reflect any significant contributions the Tribe has made to Lincoln County. Any adjustment based on land taken into trust will be based on Lincoln County's assessment of the land parcels at the time of initial acquisition by the Tribe.
3. Lincoln County agrees that during the term of this MOA it will not oppose any fee-to-trust applications submitted by the Siletz Tribe to the federal government for land located within Lincoln County. The agreement made by the County under this Section does not extend to any comments submitted by Lincoln County with regard to non-economic impacts of any fee-to-trust application. In the event Lincoln County intends to submit such comments, it will first, before submitting its comments to the federal government, provide a written list of its concerns and issues to the Siletz Tribal Council and will meet with the Tribal Council or a tribally designated person to discuss, and where possible, resolve the concerns and issues that have been raised.
4. This MOA is entered into voluntarily by Lincoln County and by the Siletz Tribe, and neither government waives its sovereign immunity for purposes of enforcement of the MOA. In the event of any dispute that arises under this MOA, the Siletz Tribe and Lincoln County agree to work cooperatively to resolve the dispute.
5. Notice shall be given in writing at the official current address of either the Siletz Tribe or Lincoln County, directed to the attention of either the Chair of the Lincoln County Commission or the Chairman of the Siletz Tribal Council.

EXECUTION:

Confederated Tribes of Siletz Indians Of Oregon

Lincoln County, State of Oregon

By: Michael Lyndley

Title: Chairman

Date: 9/16/05

By: Tommy N. Fry

Title: Chairman

Date: 9/16/05

By: Don Lindley

Title: Commissioner

Date: 9/16/05

By: Bill Hill

Title: Commissioner

Date: 9/16/05

BEFORE THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

PROCLAMATION NO. 11-4-6-

IN THE MATTER OF ENDORSING FEDERAL
LEGISLATION PROPOSED BY THE
CONFEDERATED TRIBES OF SILETZ INDIANS OF
OREGON

WHEREAS, the Siletz Reservation was established by the United States in 1855 as permanent homeland for all the Tribes and Bands of Indians of western Oregon; and,

WHEREAS, the original Siletz Reservation stretched for over 100 miles along the central Oregon Coast, from the ocean to the crest of the Coast Range; and,

WHEREAS, the Siletz Tribe was terminated as a federally recognized Indian tribe by federal law in 1954 and restored as a federally recognized Indian tribe in 1977; and,

WHEREAS, the Confederated Tribes of Siletz Indians of Oregon seeks to reacquire lands in its original reservation; and,

WHEREAS, existing federal procedures are achingly slow at bringing off reservation land into trust, but somewhat better for bringing on reservation land into trust; and,

WHEREAS, the Tribe believes that new federal legislation will clarify what is considered an Indian reservation for purposes of distinguishing between on and off reservation fee to trust applications.

NOW THEREFORE BE IT RESOLVED, that Lane County recognizes that the lands ceded to it by President Pierce's Executive Order, dated November 9, 1855, included portions of the former reservation of the Siletz Tribe; and,

BE IT FURTHER RESOLVED, that the Lane County Board of Commissioners is in support of legislation proposed by the Confederated Tribes of Siletz Indians of Oregon to amend Section 7 of the Siletz Indian Tribe Restoration Act at 25 U.S.C. 711e, such that the tribe is able to expedite procedures relating to having its land held in trust by the United States Secretary of the Interior.

ADOPTED this ____ day of April, 2011.

Faye Stewart
Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 3-31-2011 Lane County

OFFICE OF LEGAL COUNSEL