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# WHERE'S THE TRUSTEE? U.S. DEPARTMENT OF THE INTERIOR BACKLOGS PREVENT TRIBES FROM USING THEIR LANDS

## HEARING

BEFORE THE

## COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

DECEMBER 9, 2009

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# WHERE'S THE TRUSTEE? U.S. DEPARTMENT OF THE INTERIOR BACKLOGS PREVENT TRIBES FROM USING THEIR LANDS

**WEDNESDAY, DECEMBER 9, 2009**

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
*Washington, DC.*

The Committee met, pursuant to notice, at 10 o'clock a.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

## OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. The Committee will now turn to another subject for today, and that is the subject of the Department of the Interior backlog that has existed that prevents tribes from being able to use their lands and take lands into trust and various things.

I want to make a comment that I have been asked to go to the White House. I believe I have to leave here about 10:25 for a meeting with the President on jobs, the jobs initiative. And I have asked whether Senator Udall would be willing to chair the remainder of the hearing when I have to leave in about 25 minutes.

This next topic will examine backlogs at the Department of the Interior in processing land transactions. These are very important issues. Land holds a very great spiritual and cultural significance to Indian tribes. The tribal land base is the necessary building block for tribal governments to provide housing, economic development, and other essential government services to its citizens.

In the last session of Congress, we held two hearings on the backlogs at the Department of the Interior. Between the first and second hearing, the Department showed the Committee some measure of progress. However, we now have a new Assistant Secretary who faces those same backlogs and it seems to me that we are close to being back to square one.

Throughout the years, we have heard from many, many tribes about the impacts that delays in decision-making at the Department have on their ability to govern. We have heard that applications for trust lands, for lease approvals, for appraisals will languish for many, many years, then years old applications are returned by the Department because the information is stale.

At the Committee's hearing in 2007, we heard from the Standing Rock Sioux Tribe who told us about their pending trust land appli-

cations. At the time, the tribe's pending applications had been pending for up to a decade or more. Today, more than two years later, the situation at the Standing Rock Reservation has not changed, according to the Standing Rock tribal officials.

Of the tribe's 11 pending applications, two have been pending for more than 10 years and the others have been pending for over five years. Some of the applications the tribe submitted are not listed as pending because they are not yet logged into the system. At the same time, these applications haven't been returned to the tribe for more information. They just remain in limbo with no action.

The same problem exists for pending environmental impact statements which can cost tribes close to $1 million to complete. If they are not reviewed in time, a tribe may have to start all over and submit an impact statement, spend another large sum to complete the impact statement, and possibly cost the tribe a lot of money that they need for economic development.

This isn't a new issue, but it is one that this Committee's been looking for the Department to make progress on. We are looking for a plan to deal with the land backlogs and come up with a way for the Bureau to better communicate with the tribes so that they can be aware of the status of their applications. It is not acceptable to have applications sit on a desk for 10 years with no action.

Last Congress, we pushed and will continue to push this Congress to monitor the status of these backlogs at the Department. And we are going to hold another hearing in six months to find out what has been done in the last six months.

So with that, I want to welcome Mr. Skibine, Acting Principal Deputy Assistant Secretary for Indian Affairs, accompanied by Vicki Forrest, the Deputy Bureau Director for Trust Services, as panel one.

We will proceed with your testimony, Mr. Skibine.

**STATEMENT OF GEORGE SKIBINE, ACTING PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY VICKI FORREST, DEPUTY BUREAU DIRECTOR FOR TRUST SERVICES**

Mr. SKIBINE. Thank you, Mr. Chairman. Good morning, Senator Udall and Senator Franken. I am pleased to be here to present the testimony of the Department on the hearing entitled Where's the Trustee? Department of the Interior Backlogs Prevent Tribes from Using Their Land.

Accompanying me today is Vicki Forrest, who is the Deputy Bureau Director for Trust Services.

My testimony will be made part of the record. What it includes is updates on all the issues that were discussed in the previous two hearings, including where we are on probate, where we are on trust land acquisitions for non-gaming purposes, where we are on environmental impact statements, where we are on appraisals, and where we are on lease approvals.

One of the things that I witnessed over the past eight years, and it is not necessarily why we are where we are today, but before Carl Artman became Assistant Secretary for Indian Affairs, before that under the Bush Administration, essentially what I witnessed

is that trust acquisitions were not a priority for the Department. In fact, even though there was nothing written, essentially what the Regional Directors were told was that acquisition of land in trust for tribes should be the least of your priorities.

So with that, those marching orders, I think that it is no wonder that to a certain degree before Carl Artman came on and essentially reversed course on that, there was a failure from our Bureau to move in that direction.

And the reason for that, I think, was at the time of *Cobell* the Administration essentially thought, well, we have the *Cobell*, the trust fund litigation. We have now almost 100 lawsuits, tribal trust lawsuits challenging the BIA on mismanagement of trust resources. Why on Earth would we acquire more land into trust if we can't even manage what we have now?

And so with that, there was essentially, certainly not a priority, in fact, to take land into trust. So to take land into trust for individuals was totally stopped at the time. And off-reservation acquisitions were sent to central office for review, where essentially they sat there. And I think before Mr. Artman came on board, maybe one in six years had been approved.

In addition, there was at the time a move, I remember, from the Administration to sort of dissuade tribes from taking land into trust because they said it would not actually help economic development, but hinder it. And the thinking there was that you cannot leverage land if it is in trust because there can be no encumbrances on the land.

What I am here today to say is that when Larry Echo Hawk came on board, essentially things changed completely in terms of the Administration's overall priority. And the taking land into trust for Indian tribes is now one of the Assistant Secretary's major priorities, in addition to education, law enforcement, and energy development.

And with that, I think that the marching orders to the Bureau of Indian Affairs will be to essentially make sure that this program becomes one of the priorities that we have.

And with that, I think I will say that this is kind of one of the few things that we have looked at. Under Ms. Forrest's direction, we have published a fee to trust handbook which is something that we are doing in consultation with tribes to help facilitate the process and make it more transparent. We have re-delegated the authority to take non-gaming off-reservation land into trust to the Regional Directors.

I recommended that move to the Assistant Secretary after I testified on the House side on some bills on Northwestern tribes, where what they were trying to do is bypass central office review of their off-reservation acquisitions because of the fact that they were not going anywhere.

And even though we are, this was no longer a backlog, we took a look at why there was central office review of non-gaming applications for off-reservation, and we felt that there was really no point in doing that. So we have sent this back to the regional offices, and in that sense it will cut off some of the time it takes to process these applications.

The other thing we are doing is, what we could do is essentially look at our regulations, 25 CFR Part 151. Now, that is a very touchy subject. I think, for instance, I remember Carl Artman wanted to look at possibly reopening 151, but the National Congress of American Indians and Indian tribes in general were very opposed to that.

But we are well aware that in the 151 regulations, there are no deadlines placed on the Department. And one of the issues that came up when Kevin Gover was trying to revise the 151 regulations in the late 1990s was that tribes complained about this lack of deadline. I think we tried to include it in those regs. Those regs were essentially finalized, but pulled by the Bush Administration when they came into power.

Another thing we are of course looking at, and which is not necessarily a big issue, is the fact that the *Carcieri* decision came down in February of last year. We, of course, as Del Laverdure, our Deputy Assistant Secretary, testified on the House side, support a *Carcieri* fix to amend the Indian Reorganization Act. And so we are all on board on that, and we think that will certainly avoid some potential backlogs and lawsuits that may be generated in some cases.

And that said, I think that one, of course, of the things we would like to say that is as we take land into trust, it is of course important to have the resources to manage those lands, especially the lands under these trust resources. So we will take a look at that.

And with that, I would like Ms. Forrest to tell us a little bit about what is it that she has been doing at the direction of the Bureau Director, Jerry Gidner, who has the responsibility for essentially improving the process and what other things we are looking at in order to make the system work better.

Vicki?

[The prepared statement of Mr. Skibine follows:]

PREPARED STATEMENT OF GEORGE SKIBINE, ACTING PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman, Vice Chairman, and members of the Committee. Thank you for the opportunity to provide the Department of the Interior's (Department) update on the current status of backlogs in Indian Affairs. As you know, the Department provided updates on "backlogs" previously on October 4, 2007, and on May 22, 2008 in oversight hearings on land into trust applications, environmental impact statements (EIS), probates, and appraisals. In those testimonies provided to this Committee, overviews of each item and the procedures that Indian Affairs' follow, as set forth in statute and regulation, were included. Therefore, my testimony today will focus on our updates on current numbers in probate, land-into-trust acquisitions for non-gaming purposes, environmental impact statements, appraisals, and commercial leases. My testimony will also address a few accomplishments since the last hearing in May 2008.

**Probate**

In prior testimony we stated there are four phases for the completion of a probate case. Using the ProTrac system, BIA monitors the performance of each case at each phase all the way through distribution of assets to the heirs. These phases are: (1) Pre-Case Preparation; (2) Case Preparation; (3) Adjudication; and (4) the Closing Process. As of November 20, 2009, the Division of Probate was monitoring 71,238 cases, of which 16,099 were currently moving through the probate process and 55,139 had been distributed and closed, determined to have no trust assets requiring a Federal probate, or otherwise required no current Federal action.

In May 2008 we stated before this Committee that as of April 28, 2008, 99 percent of the backlog cases completed the case preparation phase and were ready for adju-

dication and distribution of assets, and 88 percent of the backlog cases had been closed.

Those percentages we presented in May 2008 were used to demonstrate that the BIA was still on track to clear the probate backlog by the end of 2008. An independent audit of the probate workload, conducted in 2009, concluded that probate backlog casework is substantially complete and no longer represents a management issue for the BIA.

We also stated that by this year, 2009, BIA staff should be able to handle the probate cases without help from outside contractors. Administrative requirements to re-compete the primary probate casework contract delayed completion of the Probate Caseload Reduction project. Project completion is now anticipated mid-year 2010. Upon successful completion, the Division of Probate should be able to handle the ongoing probate caseload in a timely fashion without contract assistance.

**Trust Land Acquisitions for Non-Gaming Purposes**

Significant progress has occurred in processing land-into-trust requests. We stated in our May 2008 testimony that we implemented a fee-to-trust tracking system.

Last year we reported that we had received 1,489 requests,[1] including the 215 applications that were prioritized in October 2007. As of November 20, 2009, 99 of the priority applications had been completed or withdrawn by the applicant and determinations had been made on additional 99 applications.

In October 2008, BIA published a Fee-to-Trust handbook. This handbook standardized procedures for reviewing and making determinations on on-reservation land-into-trust applications. Six months later, after meeting with over 100 tribal leaders, Indian Affairs removed a major logjam from the process by revoking a standing policy requiring applications for off-reservation lands to go through a Central Office review. While Central Office continues to provide assistance upon request, decision authority for all land-into-trust applications has been delegated to the Regional Offices. Applications have been returned to the Regional offices with recommendations, and the final actions are now taking place at the regional level.

Currently, we have received a total of 1,935 requests. As a result of the standardization and streamlining efforts, 454 of the requests have been completed or withdrawn by the application and determinations have been made on 342. Seven hundred and sixty four of the pending requests are for land located within, or contiguous to, the tribe's reservation boundaries and are non-gaming. The remaining requests were either submitted by individuals, located off-reservation, or by tribes with no historical reservation lands, or were for gaming or gaming-related purposes.

However, since February 2009 an additional challenge presented itself in the U.S. Supreme Court's decision in *Carcieri v. Salazar*.

The Department was, and continues to be, disappointed in the Court's decision in the *Carcieri* case. The decision was not consistent with the longstanding policy and practice of the United States to assist all tribes in establishing and protecting a land base sufficient to allow them to provide for the health, welfare, and safety of tribal members, and in treating tribes alike regardless of the date of acknowledgment. The Court's decision hinders fulfillment of the United States' commitment to supporting Tribes' self-determination by clouding—and potentially narrowing—the United States' authority to protect lands for tribes by holding the lands in trust on their behalf.

Furthermore, the *Carcieri* decision has disrupted the process for acquiring land in trust for recognized tribes by imposing new and undefined requirements on applications now pending before the Secretary. The decision has called into question the Department's authority to approve pending applications, as well as the effect of such approval, by imposing criteria that have not previously been construed or applied.

**Environmental Impact Statements (EIS)**

In our October 4, 2007 and May 22, 2008, testimony, we provided extensive comments on the National Environmental Policy Act (NEPA) environmental review process with a focus on the Environmental Impact Statement (EIS) process. As stated in those testimonies, we do not have a backlog of EISs. The cases described below are pending applications that are currently under review.

When an Indian tribe submits a request to the BIA to fund, issue a permit for, or approve a proposed action requiring a BIA federal action, the BIA determines the proper level of NEPA review. For certain actions that don't have the potential for significant environmental impacts, BIA may issue a Categorical Exclusion (CE) and the NEPA process is complete. If the application does not qualify for a CE, an Envi-

[1] These applications were either opened after October 10, 2007 or were in our possession as of that date and have not yet been completed.

ronmental Assessment (EA) must be completed. The EA will lead either to a Finding of No Significant Impact (FONSI) or to a determination that the effects of the Federal decision may have a significant environmental impact and a decision to perform an EIS.

The length of time necessary to prepare an EIS depends on the complexity of the proposed project. The time frame depends on several factors. For instance, other agency needs and requirements must be taken into consideration. In addition, public comment may point out weaknesses in the EIS that require further studies or assessments before the Final EIS may be issued. Additional time may be required to coordinate and meet other agency needs and requirements on the EIS. Delays also occur when the Federal EIS is stalled because the tribe alters the project plan or scope.

The BIA currently has the following pending EIS's: Pacific: 17, Northwest: 5, Eastern: 3, Midwest: 1, Navajo: 1, Great Plains: 1, Rocky Mountain: 1, Southwest: 1 and Alaska: 0, Western: 0, Eastern Oklahoma: 0, and Southern Plains: 0.

**Appraisals**

In prior testimony, we stated that in FY 2002, pursuant to Secretarial Order, the management and operation of the real estate appraisal function was transferred from the BIA to the Office of the Special Trustee for American Indians (OST). This transfer was conducted to eliminate the appearance and potential for a conflict of interest that could arise in response due to the reporting structure that required appraisers to report to the BIA Regional Directors who were requesting the appraisal. In FY 2005, funding for the program likewise was transferred to the OST.

Appraisals are requested by the BIA when required for a trust transaction. The BIA issues the appraisal request to the OST Office of Appraisal Services (OAS) which conducts the appraisal and returns the completed valuation to the BIA for its use. OAS appraisers aim to complete appraisals to meet the due dates requested by BIA.

Currently, OST's OAS has 1,754 appraisal requests pending, of these 257 are past due. Of the total number pending, approximately 50 percent are scheduled for completion by the end of the month. OAS is implementing a new tracking system that is scheduled for deployment by March 31, 2010. OAS continually evaluates appraisal processes to streamline efficiencies while ensuring that valuations comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

**Lease Approvals**

In May 2008, we made a recommendation based on the fact that commercial development leases may involve tribal land, allotted land, or both, and those leases were typically negotiated by representatives of the parties. As a result, the appraisal needed to establish an acceptable "Minimum Rent" and the documentation needed to comply with NEPA, are often not obtained by the lessee until after the basic lease terms have been agreed upon. We continue to recommend that outside appraisals be accepted, as an alternative to appraisals performed by the Department's Office of Appraisal Services (OAS), and submitted for review and approval by the OAS.

In May 2008, we reported that we had 93 commercial leases pending approval. In our twelve Regions, we have three Regions with no backlogs: the Southern Plains Region, Eastern Region and the Eastern Oklahoma Region. The remaining regions have leases that have been pending for over 30 days, as follows: Alaska Region–1, Navajo Region–1, Midwest Region–1, Great Plains Region–8, Rocky Mountain Region–8, Pacific Region–9, Western Region–19, Northwest Region–22, and the Southwest Region–24.

Currently, we have 69 commercial leases pending approval for 12 months or longer. Seven regions reported no outstanding commercial lease applications: Alaska, Eastern, Midwest, Navajo, Rocky Mountain, Southwest and Western. The remaining regions have pending leases as follows: Eastern Oklahoma: 1, Great Plains: 1, Pacific: 13, Northwest: 52, and Southern Plains: 2.

This concludes my testimony. I will be happy to answer any questions the Committee may have. Thank you.

Ms. FORREST. Thank you.

Thank you, Mr. Chairman. Thank you, Senator Udall, Senator Franken. I am happy to talk about the great accomplishments the Bureau has made in the last two years since I have been here on the land into trust process.

As Mr. Skibine mentioned, we issued the fee to trust handbook at the direction of Mr. Artman. He placed a high priority on that

for BIA. It standardized the processes for the first time in the history of BIA. In April of this year, we held our first annual land into trust dialogue with tribes to talk about the usefulness of the handbook with tribes and BIA staff. From that, I believe came, because it was a comment from many tribes, was the central office review of off-reservation applications. So that did decrease a big logjam that was in the current process.

We are also happy to talk about increased communication with tribes with BIA staff. We have really encouraged our staff to meet regularly with tribes, and in fact, it is my understanding at Standing Rock they have a weekly meeting to talk about land into trust applications. So we encourage all of our staff to continue to do that in order that everyone is aware of the process and exactly where the applications are.

Going forward, as Mr. Skibine mentioned, Mr. Echo Hawk has also placed a high priority on land into trust for BIA staff. We want to refine that handbook based on the comments that we receive from tribal leaders, and we continue to dialogue with tribal leaders about that.

Although that was one meeting in Albuquerque, several tribes wanted regional meetings to talk about the use of the handbook and the way that we process land into trust applications within the current regulations. So I am hoping that we get out into, I believe tribes from the Northwest, Pacific and Midwest wanted to host those meetings, and I would be happy to attend those on behalf of the Bureau. We are also reviewing inconsistent policies that we may still have and practices that we may still have at the regions currently. So we are actively doing that.

We want to further increase communication with tribes and BIA staff to include a web page that is going to have a comprehensive informational site for tribes, as well as BIA staff about the land into trust process. We are going to develop and implement a web-based training for tribes and BIA staff, as well as formalize curriculum at our National Indian Programs Training Center in Albuquerque, New Mexico. So we are very excited about those steps.

As George mentioned, we also want to develop a framework of staffing, training and performance measures that facilitated the great success that we saw in our probate backlog. So those are some of the steps that we are actively involved in to ensure that we have a more effective and efficient process on behalf of tribes.

The CHAIRMAN. Thank you very much for your testimony.

Let me describe just for a moment what has piqued my interest about all of this the last few years.

I was at a tribal visit and they showed me their brand new building, a big beautiful building. I think it was two or three stories and it was empty. And I said, what is that building? Well, that is a building we built for offices, a commercial office building. And I said, why is it empty? They said, because we can't lease it until we get approval for leasing it from the BIA and the request for approval has been there for about a year. So the building sits empty for a year. So I am thinking to myself, wait a second, what is that about?

And Standing Rock Reservation applies for the opportunity to take some land into trust for a cemetery, and one would expect,

well, all right, if the tribal government has decided they want to take some land into trust for a cemetery, you know, within a reasonable period of time, they would get a judgment, at least, about that. And my understanding is that I think that has been pending between 5 and 10 years.

So as I look at all of this, we now have, my understanding is, according to Department of Interior current data, about 1,935 total requests, and I am not suggesting that when somebody submits something, you all get a big old rubber stamp to say "approved." That is not my suggestion at all. I want you to look at these things and make good judgments about them.

But appraisals, for example, according to DOI, we have 1,754 pending appraisal requests; 254 of them are past due; 50 percent are scheduled for completion by the end of this month.

What has occurred that they can now clear 50 percent by the end of this month? Is it this hearing? If so, I want the process to be a process that doesn't have to be prodded by a Senate hearing.

So all of these things have persuaded me that we need a process by which a tribe should not have to expect to wait 5 or 10 years for somebody to make a judgment. That is like passing paper and glue, or perhaps not even glue because some of it is lost, as we know. So that is the stimulant for holding this hearing.

I indicated that I have to leave for the White House for a meeting on jobs, and I am going to ask at this point Senator Udall to take the Chair and proceed. But this is an issue that doesn't get a lot of attention, but it is very, very important to all the tribes.

I know Senator Franken will be visiting a tribe in January in Minnesota, and it is not related exactly to this issue, but he will be seeing, I believe, a building that is empty on that Minnesota tribal property, and that is because two Federal agencies didn't coordinate what they were doing properly, a building that I believe was built for juvenile justice purposes and the money doesn't exist to run it.

It is just frustrating to all of us. We want you to succeed. Mr. Skibine, you have testified many times and I give you credit for wanting to do the right thing. The question is, are we making real progress? Can a tribe that submits a request today for trust status or an application, can they reasonably expect that in a decent period of time they are going to get a response? Or is this going to go into this deep abyss, this application never to be heard from again?

So that is the question, and I am going to call on my colleague to come over and take the Chair.

Senator Udall, thank you very much for being willing to do that while I leave for the White House.

**STATEMENT OF HON. TOM UDALL,**
**U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. [Presiding]. Thank you, Senator Dorgan.

Could you respond to Senator Dorgan and his, I guess, question and comments there on what is happening with those numbers and where we are headed here?

It is good to see Senator Tester here, too.

Mr. SKIBINE. Okay. I think that the overall response is that this is definitely in this Administration under Assistant Secretary Larry Echo Hawk, this is certainly not going into a black hole where we are going to have a problem with taking land into trust. So progress, I think, is directive and under his administration, this will change, as it is one of his priorities.

So I can essentially assure you that we will make progress in taking land into trust for non-gaming purposes.

There is no reason for the process to take forever. The regulations 151 are fairly simple. That process should be done fairly quickly, and really, in terms of getting a decision, it should not be an endless process.

Now, one of the things that does happen is if, even when we decide to agree to take land into trust, and we publish a notice in the Federal Register, there needs to be no encumbrances on the land before it can be taken into trust. And sometimes that takes years.

I remember when I was the Director of the Indian Gaming Office, for instance, in 1995, we agreed to take land into trust for the White Earth Band of Chippewas, and we published, and so we did an approval. And I know that 10 years later, it turned out that the land still had not been taken into trust because there were liens on the property. So that is one of the issues that occurs. But in terms of the process for that, we will definitely make progress.

And in terms of the one issue you raised with appraisals, I think that is a function of the Office of Special Trustee, which is not part of our office of Indian Affairs. So there should be, the Special Trustee should be addressing the issues for any backlogs in appraisals.

Now, if Ms. Forrest can give an update on the figures that Senator Udall asked in terms of the progress we have made in the past year.

Ms. FORREST. The way that we currently manage the land into trust applications is a system that tells us what applications are in the system, the tribe that submitted the application, and the status of that application. So we started tracking in October of 2007. Since then, we have approved 86,000 acres to be taken into trust.

So what we work with the staff on is, as we look at the status of each part of the process, whether it be environmental compliance, the public comment period, working with local and State governments on any land use issues, jurisdictional issues, tax consequences issues, then we provide technical assistance in that way.

Currently, we have, as the Chairman stated, 1,935 requests; 454 of those have been completed or withdrawn by the applicants, and determinations have been made on 342; 764 of the pending requests are for land located within or contiguous to the tribe's reservation boundaries and are non-gaming. The remaining requests were either submitted by individuals or located off-reservation by tribes with no historical lands or for gaming or non-gaming, or gaming-related purposes, excuse me, which my office does not handle. It is just non-gaming applications.

So we continue to monitor the progress of the applications and want to increase communication with tribes, encourage our staff to

do that, train our staff appropriately, have the staff available that is devoted to this process.

So as Mr. Skibine stated, that is one of my highest priorities for this year.

Senator UDALL. Ms. Forrest, do you have a time line for eliminating the backlog?

Ms. FORREST. In 2007, what we looked at was some prioritized applications, and the way that we did that, because I want to be very clear that no tribe has priority over any other, what we looked at was the status of the application in terms of how far it was to completion. So at that time, we prioritized 215 of those, and I am happy to say that 198 of those have been brought into trust; 14 of those still require some title issues, as Mr. Skibine was talking about, so we work with the tribe on those. Two still have environmental compliance issues. We continue to work with the tribe on those. And then one is at our office for review at the request of the regions.

Although the decision-making ability for non-gaming applications, whether they are off-reservation or on-reservation, are at the regions. If the region requests our assistance, then we ask that they send those to central office.

Senator UDALL. Thank you, Ms. Forrest.

Senator Franken is recognized for questioning.

**STATEMENT OF HON. AL FRANKEN,**
**U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Mr. Skibine, I just want to clarify something for myself here. Basically, what you are saying is that this was not a priority until when exactly?

Mr. SKIBINE. I think that it was not a priority until Carl Artman became Assistant Secretary for Indian Affairs in the latter part of the Bush Administration. And I think he committed to the tribes that he would begin to change that to address their concern, because there was at that point I think a lot of dissatisfaction with tribes for the lack of action on taking land into trust. And I think Carl is back here somewhere, but he became Assistant Secretary in 2006.

Ms. FORREST. In 2007.

Mr. SKIBINE. In 2007. Okay.

Senator FRANKEN. Okay, so in 2007, it sort of changed?

Mr. SKIBINE. Right.

Senator FRANKEN. Because of him, one guy?

Mr. SKIBINE. Well, he needs to get a lot of the credit for that because there certainly wasn't much support for that with the rest of the Administration.

Senator FRANKEN. Yes. You know, you have testified here before, and we hear a lot about backlogs. Was there some sort of lack of attention paid during those Bush years in terms of backlogs on things? I mean, were backlogs accumulated during those years?

Mr. SKIBINE. I think that they probably were. I don't have figures with me, but certainly with respect to acquisitions for off-reservation, non-gaming off-reservation acquisitions I know there was a backlog because for years there were none that were essentially approved, and at that time it required central office approval and

it just stayed there. Maybe one was approved, but that was about it.

Senator FRANKEN. What consideration is given to fast-tracking stuff? I mean, you were talking about certain priorities. But fast-tracking things, things that are easy to resolve—is there any consideration to saying let's do unobjectionable claims that are easy to do? Let's just do them right now?

Mr. SKIBINE. I think that, yes, that is one of the things that our Assistant Secretary has asked us to look at. So Mr. Gidner and Ms. Forrest are going to start looking at that and what we can do. We will also probably continue to consult with tribes to see what it is that they see we can do to facilitate the process.

The important thing is that the attitude of the Administration now is to make this work and to make it work better, so that we are anticipating essentially solving some of the issues that we have.

One of the things that we are bound by that is another thing that takes a long time is compliance with the National Environmental Policy Act. If the tribe intends a change in the land use, there needs to be compliance with NEPA, which requires either an environmental assessment or an environmental impact statement. And I know that, for instance, in the area that I know best in gaming, these EIS's take at least a year to compile. So that takes a while.

Senator FRANKEN. So that is an example of one that is less easy and less simple. But are there ones that just come to you and you say, "man, we can expedite this right away"?

Mr. SKIBINE. Yes. If there is no change in land use and essentially, there is no objection from the local community, there is really no reason for these applications to take long at all. And so, it is all delegated to the region. We will essentially look into, have our Regional Directors accountable to make sure that applications that are submitted are not essentially forgotten, since it is a priority of the Administration.

Senator FRANKEN. Okay. Does that seem to come from the top?

Mr. SKIBINE. Yes. I think that Secretary Salazar is essentially totally on board with this priority.

Senator FRANKEN. Okay. Thank you very much, Mr. Chairman. Thank you.

Mr. SKIBINE. Okay.

Mr. Udall. Thank you, Senator Franken.

Senator Tester?

**STATEMENT OF HON. JON TESTER,**
**U.S. SENATOR FROM MONTANA**

Senator TESTER. Well, thank you, Chairman Udall, and that sounds pretty good. You will have to see if Byron is willing to give that up.

[Laughter.]

Senator TESTER. Byron does a great job, make no mistake about it.

I need to get educated here just a little bit, and maybe it is you, Ms. Forrest, who can do it. Can you tell me, do you have the fig-

ures telling me what the average backlog was in, say, 2006 compared to what the average backlog is today?

Ms. FORREST. For land into trust applications, Mr. Skibine had just been talking about the off-reservation applications that we had at Central Office. And during that time, under Mr. Artman's direction, we cleared out every one of those. There were 42 of those that had been sitting there during the last Administration before Mr. Artman got there, and he directed us to quickly clear those out and send those back out to the region.

We started tracking fee to trust applications in general in October of 2007. So I would have to rely on my experience with what was at the office, I have been there for two years, what was at the office when I got there, and the priority placed on getting those applications, some that had been there for quite a long time, back out to the field to be processed and going forward. But we started tracking the numbers in October, 2007.

Senator TESTER. Okay. So what is the backlog right now? How many days average?

Ms. FORREST. The backlog for fee to trust for that application, we have not defined. We did for probate and we have talked about that several times. We can tell you that we have pending applications. What I don't have in front of me today is how long they have been in the system. That is not one of the things that we designed that system to do.

Senator TESTER. Okay. So what are you tracking?

Ms. FORREST. We are tracking how many applications in the system, which tribes are submitting those, what kind of applications they are, whether they are off-reservation, on-reservation.

Senator TESTER. So you are just looking at the sheer numbers and determining by that what the backlog is?

Ms. FORREST. Well, that system was designed to help us work with the staff in seeing exactly where the application is and moving along the process. That is what we have been using to manage the land into trust process with that system.

Senator TESTER. Okay.

Mr. SKIBINE. Well, can I say something? This is one of the things that we, before this hearing, talked about, and I think it is a system that does that. And to me, there is no reason why the system cannot be changed to essentially provide the date the application is filed, so that we are able to track how long they are in the system.

Ms. FORREST. Absolutely.

Mr. SKIBINE. So that is something that we are going to be looking at.

Senator TESTER. Could you tell me how many applications are we talking about that are pending right now?

Ms. FORREST. There are 1,935.

Senator TESTER. There are 1,935 that are pending right now. Oh, boy. I mean, I don't want to ask you questions you can't answer, so I will ask them anyway, I guess. Do you know how many of those have come in in the last year?

Ms. FORREST. I don't. That is one of the system enhancements that Mr. Skibine just talked about that we are currently making.

Senator TESTER. Okay. That is fine. And this could be to either one of you, whoever is best to answer it. How many of those applications are dealing with fee land to be put into trust?

Mr. SKIBINE. I mean, they are all dealing with fee land to take into trust.

Senator TESTER. Aren't some of them, are any of them dealing with leases, for example?

Mr. SKIBINE. Oh, no. That is separate. These are essentially all pieces of land that are in fee and that a tribe is seeking to place into trust.

Senator TESTER. Okay. And then they aren't the ones where they are going to change use on them, those applications?

Mr. SKIBINE. No, some of them will.

Senator TESTER. Okay. Isn't that already fee land?

Mr. SKIBINE. Excuse me?

Senator TESTER. I mean, isn't that already trust land and they are trying to change the use of it?

Mr. SKIBINE. No. If it is trust land, the tribe can change the use without us having to be involved.

Senator TESTER. Okay. So if you have a piece of Native American land that is already part of the reservation, they can build an office building on that land and you guys have nothing to say about it.

Mr. SKIBINE. That is right. Unless it requires, I mean, it may require some sort of approval, but, you know, I am not aware of, in many cases, it doesn't.

Senator TESTER. Okay. What about land that is already a part of the reservation, it is already part of the trust, and they want to lease oil underneath it to a developer to try to get some of that oil out of the ground to create some royalty? Do you have any say on that?

Mr. SKIBINE. Yes. And essentially we have to approve leases for oil under 25 CFR Part 151.

Senator TESTER. And so the same with natural gas, same with coal?

Mr. SKIBINE. Right.

Senator TESTER. Same with any kind of mining that might happen? Can you give me any idea on how long it takes to get those leases through?

Mr. SKIBINE. Vicki?

Ms. FORREST. On commercial, what we brought today, and I can get that information for you, I don't have that with me, but we do have some numbers on commercial leases. Typically, those take a little bit longer because of the complexity of the leases.

Senator TESTER. Yes. I don't want to have you spend all your time digging out figures for me, but I think the bottom line is that there has to be ways to streamline the process to make it work better, and that is really what you should be focused on. But I really don't know how you can say, and I am not doubting your word, but I don't know how you can say things are getting better if you haven't been able to track backlog, if you don't know, if you don't know how long these leases have been laying around.

Ms. FORREST. In our trust accounting and asset management system, which was fully implemented in 2007, was the first in the history of the Indian trust that we had all land and natural re-

source data in one system. So now we can look across all the leases in the system.

One of the things that it does not do, but we are enhancing, is to do exactly what you said, track it in the process. We would like to be able for a landowner to come in or use the call center and ask where their lease is at. So that is one of the enhancements that we are working on to that system.

Senator TESTER. Okay. Do you have any way, and you probably won't, but that is okay, do you have any way to tell me if there are certain applications that go in, and I know you talked about the ones where there was no change in land use. But for example, if I had an application in for drilling some oil on trust land, versus an application that comes in to build a casino, does one traditionally take longer than the other?

Ms. FORREST. The gaming applications George would have to address, but for the oil and gas leases, that was something that we have the environmental compliance that George was talking about, the appraisals that we were talking about, and then negotiation. Typically, we have third parties that negotiate those on behalf of the landowners. So it is a complex arena.

What I am working on is to try to streamline the process for our staff.

Senator TESTER. Stop. If the land is in trust, who is the landowner?

Ms. FORREST. The allotted—the tribe or the——

Mr. SKIBINE. If the land is in trust, the United States has the legal title for the benefit of the tribe.

Senator TESTER. Right. So who do you negotiate with? You say you are negotiating on behalf of the landowner. Who are you negotiating with if the Federal Government is basically the landowner?

Ms. FORREST. Well, typically, we are going to talk with the landowner and have the developer there. And so those negotiations take place in that manner.

Senator TESTER. I am still not tracking you. If it is trust land, who are you negotiating with, because the Federal Government is the landowner?

Ms. FORREST. But I think we seek to actively have the landowner or tribe be a participant in that process. So we would have whichever developer comes in, whether they want to oil and gas, whether they want to do commercial leasing. But for one of my high priorities is that the landowner is an active participant in that effort.

Senator TESTER. Okay. I am not tracking. The tribe puts an application in that says we want to drill for oil. We have Conoco out there that wants to do the drilling, just for the sake of discussion. You guys look at this application and then you negotiate with what landowner, because there is no landowner. It is the Federal Government.

Ms. FORREST. Well, typically the Bureau is present at the negotiations with the tribe and the company. It depends on the kind of lease. It depends on whether the tribe has the resources to do that on their own and whether they have that technical expertise in-house. But at the end of the day, the Bureau will review that lease and approve that lease.

Mr. SKIBINE. Let me just——

Senator TESTER. Go ahead.

Mr. SKIBINE. It seems to me that the tribe and the individual or the company that was interested in drilling negotiate a lease between themselves and then submit the lease to the Bureau of Indian Affairs and the BIA's role is just to approve that lease.

Senator TESTER. Correct.

Mr. SKIBINE. That is right.

Senator TESTER. Okay.

Mr. SKIBINE. That is how it works.

Senator TESTER. And so you get the lease in hand. The tribe and the oil company or the driller has already figured out what they want to do and they are both comfortable or they wouldn't have checked off on this. Then it seems to me that this would progress pretty quickly, these kinds of situations. I mean, sure, there are probably maybe some issues with endangered species or things like that.

Mr. SKIBINE. Right.

Senator TESTER. But it could proceed pretty quickly. And I guess what I need, the crux of this question was, do those kind of leases traditionally take longer or less time than a lease to build a casino?

Mr. SKIBINE. I think they probably take less time, from my experience with approval to take land into trust for casinos. But to take land in trust for casinos, if they are off reservation, will take traditionally at least two years, if not more. So this is going to have to be less.

Senator TESTER. The reason I ask on both accounts, but mainly on the natural resource development point is that the Chairman has brought up many times where there is a big oil field underneath one of the reservations in North Dakota, where when things were booming, there were lights all around, but none inside the reservation. There has to be a reason for that.

And if that reason is that the application process takes an excessive amount of time, and I believe in doing things right, make no mistake about it, but if it is not a priority, it gets pushed to the back and pretty soon gets to a situation where the person goes other places to do their drilling in this particular case.

Mr. SKIBINE. Right. There was a problem at Fort Berthold, and we have addressed that. Part of the problem was a lack of resources to deal with the number of, with the lease development, oil development at the time. We have beefed up the staff there. We are working on that issue.

Senator TESTER. Was that the problem before Carl Artman came on board? Was it a lack of personnel? Were there positions that were not filled?

Mr. SKIBINE. No. No, I don't think that was the issue. The Administration position, before Mr. Artman came on board was not an objection to leasing natural resources, just to taking land into trust.

Senator TESTER. Okay. I assume there are people within the BIA that are dedicated to reviewing these leases and getting them out the door.

Mr. SKIBINE. Yes, there are.

Senator TESTER. How many are there? How many folks are there?

Ms. FORREST. We have currently 253 realty specialists that would do that kind of work throughout the Country.

Senator TESTER. Are they under contract?

Ms. FORREST. No, they are Federal employees.

Senator TESTER. They are full-time?

Ms. FORREST. Yes.

Senator TESTER. What were these folks doing when the backlog was being accrued, going off of Senator Franken's question earlier?

Ms. FORREST. For land into trust?

Senator TESTER. Yes. You said the backlog got greater before Carl Artman came on board. So what were these 250 folks doing?

Ms. FORREST. I think one of the issues was what Mr. Skibine raised in terms of it was not a priority for the staff. And then currently, BIA has no staff dedicated to the land into trust process. So with one realty specialist, they are working on leases. They are working on land in trust process and a myriad of other acquisition and disposal type activities.

Mr. SKIBINE. So I guess what she is saying is that an employee is working on land into trust. Taking land into trust is only one of the functions that an employee is doing, which means is that that was not their priority, but there are certainly other issues that these employees do.

Senator TESTER. So they are working on land into trust now?

Mr. SKIBINE. Yes.

Senator TESTER. So what is being given up, because they must have been working on something else?

Mr. SKIBINE. No. Nothing is given up.

Senator TESTER. Nothing is given up?

Before 2006, before Carl Artman, I should say, you had 250 people out there that were doing something, you just said, and they had other jobs. Now, they have made this a priority and they are doing this. What were they doing before, because that job isn't being done now?

Or were they laying around not doing a heck of a lot because it wasn't a priority of the Administration? Nobody was putting any pressure on them up above to move these applications along?

Ms. FORREST. Well, Senator Tester, our realty specialists have a lot of different hats that they wear. So in terms of whether it is a commercial lease, a residential lease, home site leases, they are working on all of those things. The land into trust process was not something that they solely worked on.

So I know from my visits out to the field, and I certainly understand your question, but BIA staff was working very hard.

Senator TESTER. I am not questioning that. What I am saying is if they were busy before and this wasn't getting done, and this is a priority now, and now this is getting done, what are we going to have a hearing on next year that isn't being done that they were doing before?

Ms. FORREST. Absolutely.

Mr. SKIBINE. Well, our goal, of course is not to have a hearing.

Senator TESTER. No, no. I am with you.

[Laughter.]

Senator TESTER. Especially with Chairman Udall in charge here.

[Laughter.]

Ms. FORREST. One of the things that I will advocate for is in our probate process. In 2005, we identified this large backlog in probates, so some steps were taken to increase staff, increase training, have performance standards available for that. And finally after five years of a huge audit comment from our independent auditors, that comment was taken off this year.

Senator TESTER. Okay.

Ms. FORREST. So I will propose a similar framework for our leasing specialists.

Senator TESTER. All right. Well, thank you for your time here. I think the issue of reducing the backlog is a big issue and I think that it is being addresed. I think truthfully it is no reflection on you guys, but there are a lot of uanswered questions here.

Thank you very much. Thank you, Mr. Chairman.

Senator UDALL. Thank you, Senator Tester.

Mr. Skibine, in your testimony, you state that the *Carcieri* decision has disrupted the process for acquiring land in trust for recognized tribes by imposing new and undefined requirements on applications now pending before the Secretary. What plans does the Department have for addressing the *Carcieri* decision?

Mr. SKIBINE. First, we would support a *Carcieri* fix to essentially eliminate the issue.

Senator UDALL. And you are referring to a legislative fix?

Mr. SKIBINE. Yes.

Senator UDALL. And I believe the Chairman has a piece of legislation that is pending.

Mr. SKIBINE. Yes.

Senator UDALL. Is the Department aware of that?

Mr. SKIBINE. Yes.

Senator UDALL. And supportive of it?

Mr. SKIBINE. Yes.

Senator UDALL. Yes. Okay. But go ahead until we get that passed.

Mr. SKIBINE. Yes. Right now, we are proceeding with taking land into trust, we are continuing the process. But for tribes, you know, for most tribes, the vast majority of tribes, it is not an issue. For those tribes where essentially there is a question as to whether they were under Federal jurisdiction in 1934, then the Bureau Director, Regional Director, essentially asks the Solicitor's Office for an opinion on whether to proceed with taking the land into trust. That is what we are doing right now.

Potentially, we are looking for the legislation, and we hope that we are, so we are, at this point we don't have, except for doing it on a case by case basis, we are not looking at anything at this point.

Senator UDALL. Okay. But so you are having the Solicitor's Department give a review as to whether or not you need to do these additional things?

Mr. SKIBINE. Right.

Senator UDALL. Yes. Okay.

Senator Franken, are you interested in asking any additional questions here?

Senator FRANKEN. No. I am fine.

Senator UDALL. Okay, because I am going to move to the next panel.

Let me just before we dispense with this panel, you know, the Department's written testimony recites some data for pending land transactions, but it does not detail the Department's plan for how it will move forward to clear the backlogs. And I think you have heard from our Committee Members today, Mr. Skibine, that they want to see the data in such a way that we can compare from the past and move to the future, know how long something has been pending, get a real sense of whether you are eliminating the backlog, making progress on the backlog, those kinds of things.

And you should know that the Chairman intends to continue holding hearings on this and getting the kind of data that we need to proceed and get a sense of your plan. We are going to submit additional questions. We will also want the Department's detailed plan for how it will clear the backlog, and we will ask for that in these additional questions.

So with that, we are going to excuse you and move to the next panel. We thank you both very much for your testimony today and look forward to hearing from you in the future.

Mr. SKIBINE. Thank you, Mr. Chairman.

Ms. FORREST. Thank you.

Senator UDALL. Thank you.

And at this point, we will call Mr. Artman up, and also the Honorable Derek Bailey, Chairman of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan.

Mr. Artman, welcome. Good to see you again. Please proceed.

**STATEMENT OF CARL J. ARTMAN, PROFESSOR OF PRACTICE, SANDRA DAY O'CONNOR COLLEGE OF LAW, ARIZONA STATE UNIVERSITY**

Mr. ARTMAN. Thank you, Senator Udall. It is a pleasure to see you as well. Good morning.

And good morning, Senator Franken.

It is a pleasure to be here today to address this issue of backlogs at the Bureau of Indian Affairs on land-related matters, and the impact that this has on the ability of the tribes to govern and engage in economic development.

I ask permission to submit my full comments for the record.

Senator UDALL. They will be submitted and in the record and you can summarize at this point.

Mr. ARTMAN. Thank you.

When I served as Assistant Secretary for Indian Affairs, we identified the backlogs in the fee to trust applications, probates and leases as a foundational issue in the problems that impacted tribes on numerous levels. This backlog prohibited tribes from fully exercising their sovereignty and jurisdiction over these lands, inhibited tribal economic development, and forestalled the vesting of rights for individual tribal members.

The need to address this issue became immediately apparent at the first hearing that this Committee held on this issue during my tenure on October 4, 2007. In preparing for the hearing, we weren't able to gather consistent data to quantify the problem for ourselves, for you, or for our tribal stakeholders. I pledged to you and

this Committee at the end of that hearing that we would resolve these issues and make substantial forward progress on this issue.

We began the process to reduce the backlog of applications by looking at potential policy changes through either new or amended regulations. Compilation and analysis of the data quickly revealed that the backlog was not a policy problem, but a management choice. The 151 regulations adequately outlined the necessary processes to acquire the land into trust. The Department just did not manage those processes to incentivize and finalize the trust applications.

Therefore, we changed our approach to the fee to trust process. First, we quantified and qualified the extent of the backlog. We knew how many applications we had, where they were in the process, and in what offices they were located. Second, we made completion of the fee to trust application a priority that manifested itself in annual performance goals that impacted every person involved in the fee to trust process from top to bottom.

The Department has excellent employees that want to perform at their best. The BIA does not have employees dedicated only to fee to trust acquisitions, as Ms. Forrest just pointed out. This is a responsibility that falls onto the shoulders of a person that may do many things in a day. If these tasks aren't prioritized through a meaningful method, all of the tasks will suffer. The other option is appropriation of funds to hire and train additional personnel to efficiently manage all of the issues that are currently handled by only one.

Our third initiative was development of a fee to trust handbook. At that time, each of the BIA's 11 regions receiving fee to trust applications managed the process differently. This national inconsistency bred frustration, imposed geographical discrimination, and baited litigation. Regional domination of the process made meaningful data collection and analysis impossible. Deputy Director Forrest managed with aplomb the handbook development. It was approved and disseminated to the regions in May of 2008. It is now used by all the regions and hopefully it has brought some consistency to the fee to trust process.

Finally, we addressed unique problems with unique solutions. For example, applications seeking to take off-reservation land into trust for non-gaming purposes had a unique problem. To resolve this matter, we replaced three people that allowed these applications to linger, sometimes for over a decade, with one very motivated individual. Within four months, Kevin Bearquiver, now the Deputy Director for Indian Services, was able to review and make recommendations on each of the pending applications.

The Department of the Interior and the BIA improved the time line for taking land into trust. The real impact will occur if these improvements are made a fabric of the organization. The Department and the BIA are sometimes a necessary and sometimes a helpful partner with tribes in developing the latter's futures. Tribes, though, must carefully gauge their reliance on the Federal Government and tribes should render the strategic determination if they want or need land taken into trust for economic development.

The purpose of taking land into trust, as set out during the reorganization era, was to reestablish a land base that had been allotted in the previous decades. The IRA-based process is still a very necessary process as tribes struggle to regain control over a portion of their lands.

In this era of self-determination, tribes have developed internal expertise and experience to effectively manage their own lands. Tribal governments are once again managing their lands in accordance with their culture and their needs, be it a need for development or a mandate for environmental stewardship.

The decision to take land into trust by the tribal government has ramifications that may not have been considered. Tribes may wish to approach the issue from the perspective of, should we take this land into trust, instead of, we must take this land into trust. Real economic development flourishes in markets that exhibit both flexibility and predictability.

Economic development in Indian Country requires, among other things, government transparency and accessible and stable legal and political infrastructure, and a tribal government that acts quickly in a market rife with competition. It is this latter point that argues against taking all land into trust.

Perhaps the first question a tribe should ask is whether taking this land into trust will promote economic development. The tribal government may determine that the process takes too long, especially when compared to how fast markets move. In addition, budget constraints of the Department may make it a longer process, or perhaps the Department may eliminate tools that allow for effective and efficient applications to go through, such as the fee to trust consortiums. The tribal government may wish to consider that once it is in trust, the land cannot be collateralized to finance other projects.

Once it is under Federal control, the tribe can no longer lease or market it as it sees fit. Instead, the Federal Government must now approve those acts. The government may weigh the benefits against the fact that the mere process of taking it into trust is time consuming, expensive, fraught with litigation threats, waste local political capital, and may impel the tribe to negotiate prematurely an intergovernmental agreement with their neighbors.

If the land is taken into trust, the tribe will be able to clearly exercise its authority over the land. But in many cases, that authority has already been severely limited by the Supreme Court over the last few decades.

Once the land is in trust, though, the tribe does know with some degree of certainty what laws apply on that land. The tribe knows that State and local taxation, zoning, and environmental laws are not applicable on those lands, but it is their laws that will be applicable. And if given the choice between having the land in trust or not in trust, most tribes will go with the former.

If this is the case, then the Federal Government should ensure that it is the best partner in this process by allowing tribes to be fully competitive participants in their marketplace. This could be accomplished through passage of legislation that allows for tribal oversight of its leasing, such at the HEARTH Act, or through the Department's clarification of the parameters of 25 USC 177.

In closing, I would like to offer my best wishes to Assistant Secretary Echo Hawk, his staff and the employees of the BIA as they continue to struggle with these complex and emotional issues.

This concludes my statement.

[The prepared statement of Mr. Artman follows:]

PREPARED STATEMENT OF CARL J. ARTMAN, PROFESSOR OF PRACTICE, SANDRA DAY O'CONNOR COLLEGE OF LAW, ARIZONA STATE UNIVERSITY

Good morning Mr. Chairman and members of the Committee. It is a pleasure to be here today to address the issue of backlogs at the Bureau of Indian Affairs on land related matters, and the impact that this has on the ability of tribes to govern and engage in economic development.

When I served as Assistant Secretary–Indian Affairs, we identified the backlogs in fee-to-trust applications, probates, and leases as a foundational issue in problems that impacted tribes on numerous levels. This backlog prohibited tribes from fully exercising their sovereignty and jurisdiction over these lands, inhibited tribal economic development, and forestalled the vesting of rights for individual tribal members.

The need to address this issue became immediately apparent at the first hearing this Committee held on this issue during my tenure, on October 4, 2007. In preparing for the hearing, we were not able to gather consistent data to quantify the problem for ourselves, for you, or our tribal stakeholders. The Department could not identify, with certainty, the number of pending fee-to-trust applications in the regions; it could not determine when off-reservation trust applications first came to the Central Office; and it could not determine the status of pending leases. I pledged to you, at the end of the hearing, that we would resolve these issues and make substantial forward progress.

On May 22, 2008, this Committee revisited the issue. At that point we were able to report significant progress. In the eight months between hearings, the employees of the Department involved in leasing and trust acquisition focused their efforts to resolve these identified issues. In that time:

1) We were in the final phase or completed the process to take into trust nearly 65,000 acres of land.

2) We completed the transition to the Trust Asset and Accounting Management System, thereby improving the Department's access to current data regarding the status of land holdings and applications.

3) We identified the number and locations of pending commercial leases in the Department's system.

4) We assigned additional personnel to help reduce the lease backlog associated with recent oil and gas lease bids.

We began the process to reduce the backlog of applications by looking at potential policy changes, through either new or amended regulations. Compilation and analysis of the data quickly revealed that the backlog was not a policy problem, but a management choice. The regulations at 25 CFR 151 *et seq.* adequately outlined the necessary processes to acquire the land into trust. The Department did not manage those processes to incentivize and finalize the trust acquisition.

Therefore, we changed our approach the fee-to trust process. First, we quantified and qualified the extent of the backlog. We were able to determine that the Department had 1,489 fee-to-trust applications.

Second, we made completion of the fee-to-trust applications a priority that manifested itself in annual performance goals that impacted every person involved in the fee-to-trust process, ranging from the intake specialist at the agency level all the way to the director of the Bureau of Indian Affairs. The Department has excellent employees that want to perform at their best. However, they have too many demands on their time and, often times, little direction on what to do first. The BIA does not have employees dedicated to only fee-to-trust acquisitions. This is a responsibility that falls onto the shoulders of persons that review leases, process lease payments, answer data calls, and contend with various other issues that fall on their desk everyday. If these tasks are not prioritized through a meaningful method, all of the tasks will suffer. The other option is appropriation of funds to hire and train additional personnel to efficiently manage all the issues currently managed by one person.

Our third initiative was the development of a Fee-to-Trust Handbook. At that time, each of the BIA's eleven regions receiving fee-to-trust applications managed

the process differently. Applicants in one region were required to submit an environmental impact statement, while an applicant in another region with a similarly situated piece of land would qualify for a categorical exclusion. In some regions, applicants would submit reams of information regarding the status of the land, and merely a summary in others. This national inconsistency bred frustration, imposed geographical discrimination, and baited litigation. Regional domination of the process made meaningful data collection and analysis impossible.

Deputy Director Vicki Forrest managed with aplomb the Handbook development. It was approved and disseminated to the regions in May 2008. It is now used by all of the regions, and, hopefully, it has brought some consistency to the fee-to-trust process.

Finally, we addressed unique problems with unique solutions. Applicants seeking to take off-reservation land into trust for non-gaming purposes had a unique problem. To resolve this matter, we replaced the three people that allowed these applications to linger, sometimes over a decade, with one very motivated person. Kevin Bearquiver, now the Deputy Director for Indian Services, reviewed each of the 44 applications over a four month period, made final determinations on some of them or requested specific information from the applicant Tribes to allow for final determinations.

By May 2008, we were able to return here and tell you that of the 1,489 applications, 89 were completed, 266 were moving into the final stages of acquisition, 90 were withdrawn, and 613 pending requests lacked sufficient information required by the regulations. Of the remaining 363 land-into-trust applications:

- 178 pending applications were waiting on local government comments or tribal responses to questions;
- 45 were undergoing NEPA analyses;
- 35 were being surveyed for hazardous materials impacts; and
- 105 were being reviewed to determine if there are title-related issues that must be resolved before a land-into-trust determination can be made.

I wish I could tell you we had similar success with leasing and appraisals. The best we were able to accomplish in the eight months between hearings was an accurate quantification of the outstanding appraisals and leases. We began discussion of a solution for appraisals that involved the use of blanket appraisals of lands that could be similarly situated. With regards to leases, we moved people, funds, and equipment to concentrate on unique issues in specific areas, such as the processing of oil and gas leases on the Fort Berthold Reservation and commercial leases for the Agua Caliente tribe in the Palm Springs Office.

The Department of the Interior and its Bureau of Indian Affairs improved the timeline for taking land-into-trust. The real impact will occur if these improvements are made a part of the fabric of the organization. The Department and the BIA are sometimes a necessary and sometimes a helpful partner with the tribes in developing the latter's future. Tribes must carefully gauge their reliance on the Federal Government. And tribes should render the strategic determination if they want or need land taken into trust for economic development.

The purpose of taking land into trust, set out in the Indian Reorganization era, was to reestablish the land base that had been allotted in the previous decades. This land base would create a foundation for tribal governments to exercise their sovereignty to the exclusion of others. It would provide tribes the protection of the Federal Government in the ownership of the land, a protection that harkened back to pre-colonial times through the initial years of our government, and in the exercise of their jurisdiction. This IRA based process is still a very necessary process as tribes struggle to regain control over a portion of their lands.

In this era of Self-Determination, tribes have developed the internal expertise and experience to effectively manage their own lands. Tribal governments run their own land, title, and records offices. They regulate land use through their own laws that oversee development and conservation on the reservation. Tribal governments are once again managing their lands in accordance with their culture and needs, be it a need for development or a mandate for environmental stewardship.

The decision to take land into trust by the tribal government has ramifications that may not have been considered. Tribes may wish to approach the issue from the perspective of "should we take this land into trust," instead of "we must take this land into trust."

The Federal Government states it wants to promote economic development in Indian country. It supports this claim with programs like loan guarantees, the 477 program, training grants, and bonding authority. It also claims that taking land into trust will further economic development. This is a concept I promoted when speak-

ing about this issue. And yes, taking land into trust may help a tribe with an aspect of its economic development plan. Some of the aforementioned federal programs may be limited to use for developments on trust land. The exercise of sovereignty may benefit tribal economic development in determining the use of the land, the timing of development, and the extent of sovereign immunity for those entities that operate on those lands.

Real economic development flourishes in markets that exhibit both flexibility and predictability. Economic development in Indian country requires, among other things, government transparency, an accessible and stable legal and political infrastructure, and a tribal government that acts quickly in a market rife with competition. It is the latter point that argues against taking all land into trust.

Perhaps, the first question a tribal government should ask is whether taking this land into trust will promote economic development. The tribal government may determine that the process takes too long, especially when compared to how fast the market moves. In addition, budget constraints on the Department may make it a longer process or perhaps it will eliminate tools like the fee to trust consortium. The tribal government may wish to consider that once it is in trust, the land cannot be collateralized to finance other projects. Once it is under federal control, the Tribe can no longer lease it or market it as it sees fit, instead the Federal Government must now approve those acts. The government may weigh the benefits against the fact that the mere process of taking it into trust is time consuming, expensive, fraught with litigation threats, wastes local political capital, and may compel the tribe to negotiate prematurely intergovernmental agreements with their neighbors.

If the land is taken into trust, the tribe will be able to clearly exercise its authority over the land. But in many cases that authority has been limited over the decades by the Supreme Court. Once the land is in trust, the tribe knows, with some degree of certainty, what laws apply on that land. The tribe knows that state and local tax, zoning, and environmental laws are not applicable on those lands. And if given the choice between having the land in trust and not in trust, most tribes will go with the former.

However, this could become less of a Hobson's Choice if the Department made a clear determination on the applicability of 25 U.S.C. 177 to on-reservation lands. Especially since the Department is not sure how 25 U.S.C. 177's restraint on alienation applies to fee lands in reservations, thereby essentially foreclosing the benefits of on-reservation fee land.

In the last administration, a Solicitor's Opinion from the Department may be read to imply that Indian tribes' authority to engage in real estate transactions relating to lands they own in fee simple absolute title extends only to off-reservation land and that tribe must seek federal approval for sales, leases, and mortgages of reservation fees lands. Federal courts that have addressed this issue have rejected this implied limitation on tribal authority. Tribes routinely engage in transactions relating to reservation fee lands without federal approval. BIA has not claimed any approval authority over them nor is it likely that BIA, already overburdened, wants to assume these new duties.

This opinion has the potential to limit choices in Indian country and sow doubt among title companies regarding the authority of tribes to engage in real estate transactions relating to their lands owned in fee simple title. This could inhibit economic development, create further unacceptable delays in closing business transactions and tribal home loans, and force tribes, alone among owners of fee land, to incur costs of obtaining acts of Congress in order to engage in routine real estate transactions.

Tribal sovereignty would suffer as tribal governments' decisions become subject to second-guessing by federal bureaucrats. In view of the circumstances that the Federal Government most likely does not want to assume additional trust burdens, the potential oversight impinges on a forty-year old federal policy of encouraging tribal self-determination, and that this may limit tribal options, the Interior Department should issue an additional opinion that Section 177 does not apply to lands owned by tribes in fee simple absolute and that tribes require the approval of neither the Interior Department nor the Congress to use these lands as the tribes see fit.

I offer my best wishes Assistant Secretary Echo Hawk, his staff, and employees of the BIA as they continue to struggle with these complex and emotional issues.

This concludes my statement.

Senator UDALL. Thank you, Mr. Artman.

And please, Chairman Bailey, please go ahead.

**STATEMENT OF HON. DEREK BAILEY, CHAIRMAN, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS**

Mr. BAILEY. Good morning. First, I would like to recognize Chairman Dorgan for holding this hearing, and also Chairman Udall and Senator Franken for your attendance here, and also honorable Members of the Committee.

I very much appreciate the invitation to appear before the Committee today. My tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, is located on the shores of Grand Traverse Bay in the northwest lower peninsula of Michigan. It consists of approximately 4,000 members who descend primarily from the Odawa and Ojibwa and Anishinaabek.

The United States and the Grand Traverse Band entered into a series of treaties in the 19th century. However, as the Federal courts have found in 1872, the Secretary of Interior illegally terminated Federal recognition of our tribe. The United States washed its hands of us and we had to fight for over a century to regain Federal recognition.

During that time period, we endured great hardships, including loss of almost our entire land base. When we were restored to Federal recognition in 1980, we had only a tiny 150-acre State reservation set aside for our use. The placement of land into trust for the Grand Traverse Band has hence played a critical role in the revitalization of our governmental, social and economic institutions and, indeed, in our very ability to function as a tribe.

Since 1980, the Secretary has taken 43 parcels of land into trust for us, totaling approximately 1,000 acres. All of these trust acquisitions have fallen within the Band's historic territory surrounding Grand Traverse Bay.

We have utilized these trust acquisitions for four critical governmental purposes: First, in order to provide core governmental services such as tribal government offices, a health clinic, a tribal court, law enforcement and natural resources management; second, for critically needed housing for our members; third, for economic development and diversification; and fourth, for treaty rights-related activities.

While the restoration of a small portion of our territory through the land into trust process has been essential to the revitalization of our tribe, we cannot function in a fully effective manner as a government without additional lands.

Unfortunately, however, the land into trust process has become tortuously slow and complicated. As is the case with so many other tribes, we have been stymied by the failure of the Department to act on trust applications for years, even when those applications are not objected to by the State or local units of government, and even when they involve lands that will allow us to provide critical services to our community.

By way of example, in November of 2007, the Department returned to us as being too old four trust applications that we filed between 1992 and 1994. All four of those applications involve land parcels that fall within the heart of our historic territory and that are contiguous to our existing trust properties. One of the parcels would be used for critically needed housing for members. The second already contains tribal member housing, but because the land

is not in trust, complicated jurisdictional problems arise that thwart our ability to effectively govern the area. The third would be used to provide safe access to Lake Michigan where many of our members exercise their treaty fishing rights. And the fourth would be maintained in its current forest condition in order to allow our members to exercise their treaty gathering and hunting rights. None of the applications is gaming-related.

Even though the State and local units of government do not object to these applications, they languished at the Department for well over a decade. No amount of effort on our part was able to move the applications along. Then, in 2007, the applications were returned to us as too old, even though it was the Department that was responsible for their long pendency.

In addition to the four returned applications, we presently have eight trust acquisition requests pending with the Department. Once again, several of these applications have been pending for over 15 years. Although the proposed acquisitions fall within the Grand Traverse Band's historic territory, almost all are contiguous to existing trust lands, none are gaming-related, and none are objected to by the State of Michigan or any local unit of government. The Band intends to use the parcels for housing, the provision of governmental services, the exercise of treaty hunting and fishing rights, and economic development and diversification.

As one example, parcel 45 in Antrim County is a 78-acre parcel that is zoned for residential development by the local township and county. In order to attain the zoning, our tribe spent $1.5 million for roads and for sewer, water and electrical infrastructure to render the parcels ready for individual housing. The parcel contains two homes owned by tribal members, two Grand Traverse Band rental homes, and 22 empty lots available for tribal members to construct housing. However, until the land is placed into trust, tribal members cannot obtain the leases necessary to secure housing financing.

Our trust application for this parcel was filed in 2001 and we have applications pending that are considerably older than that. Although the Department is now apparently deferring action on any of our applications until it sorts through the implications of the *Carcieri* decision, or until corrective legislation is passed by Congress, they should have acted on these parcels years ago and certainly long prior to the time that the *Carcieri* decision introduced additional complexities into the process.

I hope that my testimony underscores the need for significant reforms to the present land into trust process. The Grand Traverse Band tribal government is working as hard as possible to improve the lives of our citizens and to further revitalize our governmental, social and economic institutions that commenced with our restoration to Federal recognition.

The terrible delays that presently plague the land into trust process are a major impediment to our efforts and to similar efforts by tribal governments around the Country. We have included several recommendations for action in the written testimony that we have filed with the Committee, and I want to say thank you, [greeting in native tongue] again for the opportunity to appear before you today.

[The prepared statement of Mr. Bailey follows:]

PREPARED STATEMENT OF HON. DEREK BAILEY, CHAIRMAN, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

I very much appreciate the invitation to appear before the Committee today.

My Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, is located on the shores of Grand Traverse Bay in the northwest Lower Peninsula of Michigan. It consists of approximately 4000 members, who descend primarily from the Odawa (Ottawa) and Ojibwa (Chippewa) peoples or Anishinaabek. As the Department of the Interior found in 1980, we have maintained "a documented continuous existence in the Grand Traverse Bay area of Michigan since at least as early as 1675." Department of the Interior, Determination for Federal Acknowledgement of [GTB] as an Indian Tribe, 45 Fed. Reg. 19321 (March 25, 1980).

The United States first recognized and established a government-to-government relationship with us through the Treaty of Greenville in 1795. *See Grand Traverse Band of Ottawa and Chippewa Indians v. Office of United States Attorney for the Western District of Michigan*, 369 F.3d 960, 967 (6th Cir. 2004) ("*Grand Traverse Band*"). The Grand Traverse Band entered into subsequent treaties with the United States in 1815, 1836 and 1855 and "maintained a government-to-government relationship with the United States from 1795 until 1872[.]" *Id.* at 961. In 1872, however, the Secretary of the Interior misread the 1855 Treaty of Detroit as calling for an end to the federal relationship with the Band and our sister tribes in that year. As the United States Court of Appeals for the Sixth Circuit recently held, based on this misreading of the treaty "the executive branch of the government *illegally* acted as if the Band's recognition had been terminated, as evidenced by its refusal to carry out any trust obligations for over one hundred years." *Id.* at 968 (emphasis in original). This period lasted until 1980, when the Department restored the Grand Traverse Band to federal recognition, making us the first tribe recognized by the Department pursuant to the formal Federal Acknowledgment Process, 25 C.F.R. Part 54 (now Part 83). *See* 45 Fed. Reg. 19321-22.

The termination of our federal recognition in 1872 had dire consequences for us. "Because the Department of Interior refused to recognize the Band as a political entity, the Band experienced increasing poverty, *loss of land base* and depletion of the resources of its community." *Grand Traverse Band,* 369 F.3d at 969 (internal quotation marks and citation omitted) (emphasis added). Indeed, while the United States had solemnly promised to set aside 100,000 acres of land for the Band as our permanent homeland in the 1855 Treaty of Detroit, and similar blocks of land for our sister Tribes (out of the millions of acres that had been ceded by the Tribes to the United States), by 1878 Special Agent Edward Brooks documented in a report to the Commissioner of Indian Affairs that "the major part of the lands in these reservations have

been disposed of to whites, who are in the majority in the reservations at large. . . . The local laws, in the towns within the former limits of the reservations are shaped entirely by whites, and the administration of public affairs is in their hands." Agent Brooks detailed the combination of federal malfeasance, corruption and acquiescence that had allowed the Band's lands to pass out of its possession.

In 1889 the Interior Department shut the doors of the Michigan Agency in the Lower Peninsula, and the United States washed its hands of us. By that point our land base had utterly vanished, and we remained essentially landless when we were restored to federal recognition in 1980. (We were the beneficiary of a state-created land trust where 147.5 acres of our original treaty trust allotments were held by the local county government in the form of a state reservation – this was all that remained of our original land base).

The placement of land into trust for the Band has accordingly played a critical role in the revitalization of our governmental, social and economic institutions, and indeed in our very ability to function as a Tribe. Since 1980, the Secretary has taken 43 parcels of land into trust for us totaling approximately 1000 acres. All of these trust acquisitions have fallen within our historic territory (and the corresponding Department of the Interior service area) surrounding Grand Traverse Bay.

We have utilized these trust acquisitions for four critical governmental purposes: (1) the provision of core governmental services (including tribal government offices, a health clinic, courts, law enforcement, social services, and natural resources management); (2) housing (including elders housing constructed with HUD grants and lot assignments to enrolled members for residences); (3) economic development and diversification (two casinos, hotels and retail businesses); and (4) treaty rights-related activities (preservation of lands utilized for the exercise of inland gathering, hunting, and fishing rights as well as marinas for access to Great Lakes fishing rights reserved by the 1836 Treaty of Washington).

While the restoration of a small portion of our territory through the land-into-trust process has been essential to the revitalization of our Tribe, we cannot function in a fully effective manner as a government or provide our citizens with adequate services without additional lands. Unfortunately, the land-into-trust process has become tortuously slow and complicated. As is the case with so many other Tribes, we have been stymied by the failure of the Department to act on trust applications for years, even when those applications are not objected to by the State or local units of government, and even when they pertain to lands that would allow us to provide critical services to our community.

By way of example, in November of 2007 the Department returned to us as being too old four trust applications that wc filed between 1992 and 1994. *See* Table A: Grand Traverse Band Returned Trust Acquisition Requests. All four of those applications involve land parcels that fall within the heart of our historic territory and that are contiguous to existing trust properties. One of the parcels would be used for critically-needed housing for our members. The second already contains tribal member housing, but because the land is not in trust, complicated jurisdictional problems thwart our ability to effectively govern the area. The third would be used to provide safe access to Lake Michigan, where many of our members exercise their treaty fishing rights.

And the fourth would be maintained in its current forest condition in order to allow our members to exercise their treaty gathering and hunting rights. All told, the parcels total about fifty acres of land, and none of the applications is gaming-related.

Even though none of the applications was objected to by the State or local units of government, they languished at the Department for well over a decade. No amount of effort on our part was able to move the applications along. In 2004 there was brief burst of activity – consultation letters were sent to the State and local governments, and some work was performed on the environmental assessments. But then all went quiet again at the Department, and in 2007 the applications were returned to us as stale, even though it was the Department that was responsible for their long pendency.

The Department's treatment of these trust applications is mind-boggling to me. In these circumstances it is difficult to say that the Department is acting in the best interests of Tribes or of their surrounding communities. Instead, it is inexplicably acting in a way that thwarts our best efforts to improve the lives of our citizens and to function as responsible, effective governments.

In addition to the four returned applications, we presently have eight trust acquisition requests (totaling approximately 260 acres) pending with the Department, several of which have likewise been pending for over 15 years. *See* Table B: Grand Traverse Band Pending Trust Acquisition Requests (FY 2009). Once again, all of these proposed trust acquisitions fall within the Band's historic territory, almost all are contiguous to existing trust lands, none are gaming-related, and none are objected to by the State of Michigan or any local unit of government. The Band intends to use the parcels for housing, the provision of governmental services, the exercise of treaty hunting and fishing rights, and economic development and diversification.

As one example, Parcel 45 in Antrim County is a 78-acre parcel that is zoned for residential development by the local township and county. In order to obtain this zoning, we spent 1.5 million dollars of tribal money for roads and for sewer, water, and electrical infrastructure to render the parcels ready for individual housing. The parcel contains two homes owned by tribal members, two Grand Traverse Band rental homes, and 22 empty lots available for Tribal members to construct housing. However, until the land is placed into trust, tribal members cannot obtain the Bureau leases necessary to secure housing financing.

We filed our trust application for this parcel in 2001, and we have applications pending that are considerably older than that. While the Department is now apparently deferring action on any of these parcels until it sorts through the implications of the *Carcieri* decision (or until corrective legislation is passed by Congress), the Department should have taken action on these parcels years ago, and certainly long prior to the time that the *Carcieri* decision introduced additional complexities into the process.

In 2008 we did succeed in having 280 acres of land, divided over a number of small parcels, placed into trust, but even there our success illustrates the problems with the current land-into-trust process. The applications in question had been pending anywhere from eight to fourteen years – indeed, we had to resubmit the majority of them several times because of constant changes in Department policies and because the environmental review requirements

expired for lack of action (by contrast, our early trust applications were typically processed within a year or two). Even after that length of time, the Minneapolis regional office, which we deal with as a self-governance tribe, showed no signs of acting on the applications. Our former Chairman made repeated visits to that office, and to the central office in Washington, urging that action be taken on the pending applications, all to no avail. Ultimately we succeeded only because the Superintendent and Realty Officer at the Michigan Agency expressed a willingness to assist us (even though they receive no funding to act on behalf of self-governance tribes) and because the Regional Director authorized them to do so. All of this required a tremendous expenditure of resources and time on our part, and our one-time success did nothing to fix the long-term problems with a regional office that has failed to satisfactorily discharge its land-into-trust responsibilities.

I hope that my testimony underscores the need for significant reforms to the present land-into-trust process. The Grand Traverse Band tribal government is working as hard as possible to improve the lives of our citizens and to further the revitalization of our governmental, social and economic institutions that commenced with our restoration to federal recognition. The terrible delays that presently plague the land-into-trust process are a major impediment to our efforts and to similar efforts by Tribal governments around the country.

We would recommend the following:

1. The Department should be required to act within a specific timeframe on trust acquisitions; if it fails to do so, the land should acquire trust status by operation of law (much as a gaming compact goes into effect under IGRA by operation of law if the Secretary does not disapprove the compact within 45 days).
2. The BIA has issued a number of guidance memoranda which canvass a panoply of federal compliance requirements including NEPA and historic preservation. These guidance documents have been inconsistent and subject to arbitrary implementation and withdrawal by the central and regional offices, thereby creating confusion and hardship for the Tribes. We believe that if Interior wishes to establish additional prerequisites for the placement of land into trust, it should have to follow the rulemaking process, and hope that in this way some of the arbitrariness and confusion that characterize the present system are mitigated.
3. Given the problems described above, the tribes need statutory or administrative authority to work with their local agency office on trust applications even where they enjoy self-governance status. The relationship between the agency office and the tribes can be one of mutual respect and proven administrative results, like the relationship between Grand Traverse Band and the Michigan Agency.
4. Non-gaming applications should not get bogged down in the delays that presently attend the processing of gaming applications.
5. Applications that are not objected to by the state or local units of government should be processed on an expedited basis.
6. The regional offices need more realty officers.

Thank you again for the opportunity to testify before you today.

**TABLE A**

**GRAND TRAVERSE BAND RETURNED TRUST ACQUISITION REQUESTS**

| PARCEL | APPLICATION DATE | COUNTY | ACRES | CONTIGUOUS TO TRUST LAND | ON – OFF RESERVATION | PURPOSE | PHASE I ESA | CONSULTATION LETTERS SENT | PTO RENDERED |
|---|---|---|---|---|---|---|---|---|---|
| 16 | 6/11/92 (Region) | Leelanau | 36.00 | Yes | On | Forest land Hunter & Gathering | 11/8/04 | 2/20/04 | 10/15/93 |
| 17 | 3/1/93 (Region) | Leelanau | 0.64 | Yes | On | Lake access | 8/6/04 | 2/20/04 | No |
| 18 | 1/9/93 (Region) | Leelanau | 10.50 | Yes | On | Member Housing | 8/26/04 | 2/20/04 | No |
| 22 | 8/9/94 (Region) | Leelanau | 1.00 | Yes | On | Member Housing | 7/28/94 | No | No |

**TABLE B**

**GRAND TRAVERSE BAND PENDING TRUST ACQUISITION REQUESTS (FY 2009)**

| PARCEL | APP. RECEIVED | COUNTY | ACRES | CONTIG. TO TRUST LANDS | ON-OFF RESERVATION | PURPOSE | DECISION LETTER (30 days) | NOTICE OF INTENT | PHASE I | ENVIRNMTL REVIEW COMPLETED | CONSULT. LTRS SENT | PTO ISSUED |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 21 | 6/7/1994 (Region) & 6/20/07 | Leelanau | 22.50 | Yes | On | Tribal utilities (water and sewer) | 01/31/08 | 03/20/08 | 09/18/07 | 09/10/07 | 11/01/07 | 12/06/07 |
| 45 | 2/28/01 (Region) | Antrim | 78.00 | No | Off | Member Housing | 04/01/08 | 07/02/08 | 11/02/07 | 01/06/06 | 05/18/01 | 05/14/02 |
| 69 | 07/03/06 | Grand Traverse | 0.20 | Yes | On | Access for Turtle Creek Development | 05/21/08 | 07/01/08 | 04/05/08 | 05/05/08 | 02/13/07 | 04/28/07 |
| 25 | 9/27/94 (Region) & 9/17/08 | Leelanau | 13.00 | Yes | On | Member Housing | | | | | | |
| 77 & 78 | 12/29/08 | Grand Traverse | 31.26 | Yes | On | Buffer for Turtle Creek Development | | | | | | |
| 79 | 12/29/08 | Leelanau | 104.00 | Yes | On | Nature Preserve; Treaty-based hunting and gathering | | | 04/25/08 | | | |
| 80 | 12/29/08 | Grand Traverse | 12.07 | Yes | On | Access for Turtle Creek Development | | | 04/15/08 | | | |

**TOTAL ACRES PENDING: 261.03**

Senator UDALL. Thank you, Chairman Bailey.

Chairman Bailey, you mention in your testimony that early trust applications were typically processed within a year or two of submission, but that now you have applications that have been pending for 15 years. And you also mentioned some intermittent activity. In your opinion, what is the reason that trust applications used to be processed in a timely manner compared to now, when you have applications pending for several years or decades?

Mr. BAILEY. To answer that question, I will give some history. In 2008, we had approximately 200 acres of land that was spread over a number of parcels taken into trust for us. But in that illustrates also the problems with the current land into trust process. Those applications in question were pending from, again, anywhere from eight to 14 years.

Still, the Minneapolis Regional Office, which we deal with as a self-governance tribe, showed no signs of acting on the applications.

It took the former Chair, and that's why I wanted a historical part to my answer, being just a year now seated as Chair, there is historical content that I am not as strong on. But it took the Chair and other leaders repeated visits to the office, to the central office here in Washington urging action be taken on the pending applications, but nothing happened.

Now, we succeeded ultimately because of the relationship, the superintendent realty officer at the Michigan agency expressed a willingness to assist us, and because the Regional Director authorized them to do so.

All this required a tremendous amount of resources, expenditure of resources and time on our part. But this one time success, did nothing to fix the long-term problems that we see with a regional office that failed to satisfactorily discharge its land into trust responsibilities.

Senator UDALL. I think you also mention in your testimony that the *Carcieri* opinion has impacted some of your applications. Do you support a fix to that? Or what are you recommending be done there?

Mr. BAILEY. Chairman Udall, I appreciate the question for our response. The Grand Traverse Band strongly, you know, we believe firmly that under Federal jurisdiction 1934. Hence we remain entitled to the benefits of the Indian Reorganization Act under the terms of the *Carcieri* decision, but it is not clear to us how the Interior Department is going to apply the decision. However it acts, we do feel significant litigation will follow. But the Grand Traverse Band does support, I think you termed it earlier, the response was a legislative fix.

Senator UDALL. Yes. Thank you, Chairman Bailey.

Mr. Artman, one of your initiatives, and I think you talked about it in your testimony, was creating a fee to trust handbook, and that brought consistency. I think you testified to that process. Do you think a similar handbook would be helpful for processing of appraisals, leases or other land transactions?

Mr. ARTMAN. I think certainly for leases it would be helpful, especially since there are many different kinds of leases out there, to the degree that they need to come back to the Department of the Interior.

One of the bills pending currently before Congress, I believe it is called the HEARTH bill, which would allow for a Navajo-type leasing process that tribes could take on themselves. That might be the best fix to it.

Short of that, a leasing handbook or policies or processes, internal guidelines that explain how best to bring leases in would be good for processing the leases as well.

But you also have a human resources issue there as well that needs to be addressed that no handbook or efficiency in the processes will be able to overcome. And again, it does become a matter of priorities and funding because people and technology can only do so much.

Senator UDALL. Listening to Chairman Bailey and the problems he has had, and then your experience there at Interior, what would you recommend be the first couple of actions taken by the new Assistant Secretary to get through this?

Mr. ARTMAN. I think the Department of the Interior has, some of its best resources are its people, the people that are on the ground in the regions at the Agency levels, they understand where the land is situated, the needs that the tribes have, and empowering those individuals to do their very best. And that can be done through prioritizing, which this Administration is certainly doing, putting those priorities into performance standards that put mandates on the individuals to pass their annual performance exams, performance standards, to meet certain goals and objectives. That seemed to work very well for us because it did shift the priority over.

Along with that, you have to manage, for better or worse, the fact that there will be something lost in that process unless there are more people brought on board or more technology installed into the process to pick up the focus that is placed elsewhere.

Senator UDALL. Thank you, Mr. Artman.

Senator Franken?

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. Artman, I was struck by the part of your testimony when you talked about Kevin Bearquiver. And basically, what you describe is that he accomplished himself in four months what three employees had failed to accomplish in a decade. Is this something to learn from, how did he do what he did? And what can we learn from it? And what can others learn from it?

Mr. ARTMAN. I think Mr. Bearquiver is a good example of some of the motivation, intelligence and capabilities that exist within the Department of the Interior. And having worked with him before in the Department on other matters and heard from others, his supervisors, on what an excellent individual he was, and he understood the issue, very importantly.

The frustration that I had with that office that was reviewing those was unbelievable. In preparing for that very first hearing in October, 2007, we were going over leases, land into trust on-reservation, land into trust off-reservation, where the applications were. One of the individuals said to me that they were looking for a particular application that allegedly came in years before, and we couldn't find it. And then she went to her desk and she found it after she dug through the bottom of the pile. It was in a FedEx envelope that was sent in years earlier.

Now, you think if someone's going to go through the trouble of sending in next-day delivery through Federal Express that they are actually going to receive it. They are going to open it up at least within a day or two, and at least begin to process it. Because someone is saying to them, this is important to us, that we have a record that it was delivered to you and delivered to you quickly.

When I heard this, I was dumbfounded and realized that we had to make a change in that area. It was an experiment to be able to put one person in there, but it worked well.

Senator FRANKEN. Don't you think someone sending a FedEx package would call the next day and say, did you get it?

Mr. ARTMAN. They did. That is the thing, because they did.

Senator FRANKEN. Okay.

Mr. ARTMAN. They did. They had lobbyists. They had lawyers. The tribal leaders called themselves, and still this was coming to a dead end.

But that office certainly doesn't represent the BIA. That is the worst example that you could probably find out there. You might be able to find a few others, but that is one of the worst examples that you could find out there.

I think what the motivation that Mr. Bearquiver showed when he was put into that position, and when he went through those applications one by one, calling up the tribes saying, where it this? What does this mean here? How can we change this? He was working with them. That shows the motivation that is probably more prevalent in the Department of the Interior at both the central office, the regional offices and the Agency level than the other way around. So it is a matter of tapping into that and pulling that out.

Senator FRANKEN. That just worries me, someone having a pile.

Mr. ARTMAN. It is not there anymore.

Senator FRANKEN. I mean, I have piles, but I have a different kind of job. I don't process these things.

Senator UDALL. You also have a staff.

[Laughter.]

Senator FRANKEN. Exactly.

Senator UDALL. Get them to tackle that pile.

Senator FRANKEN. Yes. I mean, I have piles at home.

[Laughter.]

Senator FRANKEN. Is what I was saying.

How does the BIA—this is for either of you—make the rulings? On what basis?

Mr. BAILEY. Chairman Udall, if I could just confer. I have the General Counsel from the Grand Traverse Band here.

Senator UDALL. Please, please.

Mr. BAILEY. I am sorry to defer, but I wouldn't mind a moment while he is responding.

Mr. ARTMAN. Sure. How does the BIA make the decisions? You know, as Mr. Skibine alluded to earlier, the 151 regulations are relatively simple. They take up all of two columns in the regulation. If you go off-reservation, you are looking at an additional four or five paragraphs there.

The Department of the Interior receives a lot of applications. The question was asked earlier, how many were received in the last year—and this by way of example of how many applications received. In the last hearing that I did on this in May, 2008, I believe that there were 1,400 applications pending, so that would, say, approximately 500 new applications were received. If that is the case, you have the process where it comes into the TAAMS (Trust Asset and Accounting Management System) and then it is marched through that process.

But one of the things that we did and I think one of the things that this Administration is doing as well is not just taking a look at these as objective applications, but as they get further into the process, determining which ones can actually be done more quickly, which ones need to be done more quickly, is there a commercial purpose, a housing purpose, is this something that will necessarily take a long time because of the lack of information, because of a

lien that may be on it, or if there is a NEPA problem, if there is an environmental issue.

Senator FRANKEN. So you are prioritizing them—you are kind of doing a triage.

Mr. ARTMAN. Yes. One of the things that we did, for example, was when we finally were able to quantify and qualify what kind of applications that we had, we determined that there were 215 applications that we could deal with now. We had all of the information that was necessary. It was all timely. There were not problems. And of those 215 applications, I think within seven or eight months we were able to get through about 60 percent of those, a little bit under.

So that is the kind of triage that we were doing. I think that they are still doing it now as well.

Senator FRANKEN. Mr. Chairman, did you have——

Mr. BAILEY. Yes, Senator Franken, I think it would be beneficial to have a tribal perspective responding.

Senator FRANKEN. Right.

Mr. BAILEY. I do want to make note that we believe that there are many fine people that are working on the land into trust issues at the Interior Department. The people at the Michigan Agency are excellent. Our field solicitor in Minneapolis has been very helpful. There are many highly skilled individuals acting in good faith in the central office as well, including Mr. Skibine, and we listened to the testimony earlier as far as the direction that was being handed down, as they are guided from the top down. And so there is some worry, some components to that historically, as I sit here as a current leader today, understanding the history that leads to the oversight hearing today.

But somewhere within the Department, the process and the trust applications, there is a breakdown. And looking from the outside in, I don't know why. I could say we, as a tribe, don't know why or where that happens. But I will make the statement that this is why we believe it is very important that the Department establish and adhere to fixed guidelines regarding the processing of trust applications.

Senator FRANKEN. Okay. So basically, you deal with very good people, but that said, somewhere in there, the stuff gets lost.

Mr. BAILEY. Senator, thank you. Again, highlighting the individuals that we are working with——

Senator FRANKEN. Right.

Mr. BAILEY.—I know that. And correct me if I am wrong, Mr. Artman, but since 1980, I believe there has been about 30, approximately 30 memorandums or guidelines from the Department. And it has been complicated, or they have been—the correct word is when—I am trying to search for a word. I am sorry, sir. But when they conflict and there is no adherence or sequential.

Senator FRANKEN. You are getting conflicting memos.

Mr. BAILEY. That is exactly—yes, conflicting.

Senator FRANKEN. Yes. I know what that is like.

Okay. So from the tribe's perspective, you are dealing with very good people, but somewhere in there it is just not getting done.

Mr. BAILEY. And I just have to quote my testimony, and also the written testimony. You know, 15 years, and, you know, still wait-

ing, then having them come back and saying they are too old. You know, tribes, we did our part. Our leaders took the initiative, put forth the energy, the resources, commitment to that. And then to have it fall short, and then from outside the tribal responsibility in this matter, to have it said it is too old and have them returned.

Senator FRANKEN. Now, Mr. Artman——

Mr. BAILEY. Those parcels are—I am sorry.

Senator FRANKEN. No, no. I was just going to say, Mr. Artman, Mr. Skibine talked about you glowingly and that there was sort of a change when you showed up. Okay?

Mr. BAILEY. Yes.

Senator FRANKEN. So you clearly are a proactive person. And so a proactive person who came into an organization where there was some stasis, shall we say, regarding this. And again, I talked about Mr. Bearquiver.

What is the answer here? I mean, you see Chairman Bailey talking about good people he is talking to, but then it just kind of goes into some kind of cloud or something. What is going on?

Mr. ARTMAN. Well, I hope between having consistency across the Nation through the fee to trust handbook, and I hope by starting off the concept of putting the fee to trust or leases into the performance standards, and training the individuals. Right now, each person is worked into the budget for the salary of the individual. There is training money that is set aside, essentially, in that number that you see for the personnel.

It is important that the Department and the individuals take advantage of that. Constant reeducation and keeping the mind sharp on these issues is critical. And that is what you see in people like Mr. Bearquiver and many of the people throughout the central office and the regions. They exemplify the best in what I think is probably the overwhelming majority, of the thought, the hope and the intentions of the people to do that.

I think, you know, this has to be from the top down, and certainly Mr. Skibine said it, that this is a priority for this Administration. This was a priority when I was at the Department. And if this is going to be the same kind of thought that continues on from Administration to Administration, Assistant Secretary to Assistant Secretary, then we are going to start to establish something.

And I would hope that in two or three years, once this becomes part of the fabric, part of the culture, that Chairman Bailey, or his successors or something, if the next election not work out, can come back here and say we have had improvements, that we have seen our land go into trust, and that working with the government has now become a good experience.

And I think in the work that we did, we started to see that from tribes saying, yes, this is finally working for us.

Senator FRANKEN. I hope you are right. I hope that happens. And thank you, both gentlemen, for your testimony.

Thank you, Mr. Chairman.

Senator UDALL. Thank you, Senator Franken, and thank you for your important participation today and for staying through both panels. I appreciate it very much.

We know from the hearing today, from both panels, that these are very important issues to tribes.

You know, Chairman Bailey, you really highlighted it, talking about the issues that concern your tribe in terms of the applications, and you really brought that home. So we know we want this process to move forward.

And in that respect, Mr. Skibine and Ms. Forrest, we really appreciate you staying over and listening, and hope that maybe some ideas were generated here, and something that will be helpful.

We appreciate, Mr. Artman, you and Chairman Bailey for being here today and testifying and helping us out with this very important issue.

The hearing record will remain open for two weeks from today.

This hearing is adjourned.

[Whereupon, at 11:25 a.m., the Committee was adjourned.]

# APPENDIX

PREPARED STATEMENT OF HON. DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

Honorable Chairman Dorgan and Members of the Committee:

My name is Delores Pigsley. I am the Tribal Chairman of the Confederated Tribes of Siletz Indians of Oregon, also known as the Siletz Tribe. I have been Chairman almost continuously since 1985, and I am intimately familiar with the Tribe's history and situation. Our Tribe has a special connection to the issue before the Committee in this Oversight Hearing – the Department of Interior's long backlog on fee-to-trust applications submitted by my Tribe, particularly when our fee-to-trust applications have gone back to the BIA Central Office in Washington, D.C., for further review and processing. I was contacted about being one of the tribal witnesses for this Oversight Hearing, but I had to decline the invitation for personal reasons. I am submitting the following testimony on behalf of the Siletz Tribe as a substitute for my planned appearance.

The Siletz Tribe has encountered long delays in having tribal lands put into trust. For many years, almost no tribal lands went into trust. While federal policy has loosened up some since the current administration took office, the Tribe still has a long backlog of uncompleted fee-to-trust applications that may be permanently stalled because of additional federal requirements placed on the fee-to-trust process. Also, because of the Siletz Tribe's unique history, all of our fee-to-trust applications are considered (wrongly, we believe) to be off-reservation fee-to-trust requests, which places additional burdens on qualifying for trust status and which required (until very recently) that they all go to Washington, D.C., for review and approval where they disappeared into a political black hole.

The fee-to-trust experience of the Siletz Tribe has been extremely frustrating for the Tribe and its members. As a terminated and restored tribe with an extremely limited land base, the only way we can achieve complete restoration of our tribal sovereignty is if we can acquire an adequate land base to provide for tribal all our needs – housing, government offices and programs, infrastructure needs, cultural and spiritual needs, and economic development. The Siletz Tribe's progress towards complete self-sufficiency has been slowed by obstacles placed by the Department of the Interior in the path of the fee-to-trust process.

First, let me explain a little about the Siletz Tribe's unique history, which is necessary to understand how the Tribe's fee-to-trust applications are processed by the Bureau of Indian Affairs. I have attached several maps to the back of this testimony to show our history. We love our maps because they help explain our complicated history and demonstrate beyond any question the facts of the Tribe's history and the difficulties the Tribe faces in obtaining land into trust.

The Siletz Tribe is a confederation of many different tribes and bands of Indians who occupied all of western Oregon from the Cascade Mountains to the Pacific Ocean. The Tribe has the most culturally and linguistically diverse confederation on one reservation in the United States, with a combined aboriginal territory of about 20 million acres. A map of the ancestral tribes and bands of Indians who are represented in the modern day Siletz Tribe, and the aboriginal lands they occupied, is attached as Exhibit 1. Federal policy on the removal and consolidation of Indians in the Oregon Territory developed quickly, especially once the influx of non-Indian settlers turned into a flood. It was decided that all the Indians of western Oregon should be concentrated on one reservation if possible rather than staying in their homelands. While federal Indian agents initially hoped that the Indians of western Oregon might agree to move inland into central Oregon, the unanimous refusal of coastal Indians to relocate to such a foreign environment forced the federal government to rethink its plans.

The federal Indian superintendent at the time, Joel Palmer, soon fixed on a magnificent reservation along the middle Oregon coast, in a location that was not frequented by non-Indians. A map of that reservation as it was finally established, comprising approximately 1.1 million acres and stretching for more than 100 miles along the central Oregon Coast, is attached to my testimony as Exhibit 2. This reservation was an Executive Order Reservation, a treaty reservation (established by Executive Order of the President, as called for in the ratified treaties of western Oregon), and an un-ratified treaty reservation. Oregon Superintendent of Indian Affairs Joel Palmer originally set aside the Coast (Siletz) Reservation on his own authority on April 17, 1855, for the Coast, Umpqua and Willamette Valley Tribes. His action was later confirmed by the Secretary of Interior, and then by Executive Order of President Franklin Pierce, on November 9, 1855. Three days after this Order, the federal government implemented the terms of the Rogue River Treaty of 1853 (10 Stat. 1018) and removed the Rogue River and associated Tribes from its temporary reserve in Southern Oregon to the Coast or Siletz Reservation, as the permanent reservation specified in its treaty. The supplementary treaty payments due the Tribe when they relocated to a permanent reservation were then appropriated and paid. The Coast Tribes, who were to be confederated on the Coast Reservation under the terms of the unratified August 1855 Coast Treaty, moved there and confederated pursuant to the terms of that treaty. The Coast Treaty arrived in Washington, D.C, three days after the Reservation had beeen established by Executive Order, but was never acted on by the Senate.

The federal government soon began to reduce the reservation. As shown on the map at Exhibit 2, the middle 200,000 acres of the Reservation were removed by Executive Order in 1865. Congress in 1875 then took half of the remaining northern half of the Reservation and all of the remaining southern portion of the Reservation (comprising another 700,00 acres) by Act of Congress. Of the remaining 225,000 or so acres of the Siletz Reservation, some were allotted and over 191,000 acres were declared surplus in 1892, leaving the Tribe with a small reservoir of tribal and individual trust allotment land. At the time of termination of the Siletz Tribe in

1954 in the Western Oregon Indian Termination Act, 25 U.S.C. § 691 et seq., there were only 8500 acres of land left in trust, and this land was transferred to fee status and sold as part of the termination process.

As this Committee is aware, both the allotment act and the termination policy were eventually repudiated by Congress, but the devastating effects of those policies continue to have impacts. Tribes like ours continually struggle to regain a fraction of what was taken from us.. The Siletz Tribe was the second Indian tribe nationally to be "restored" to federally recognized status, in 1977. *See* 25 U.S.C. § 711 et seq. Tthe Indian Reorganization Act, including the fee-to-trust provision, 25 U.S.C. § 465, was expressly made applicable to the Siletz Tribe. A 1977 Regional Solicitor's opinion concluded that there were no limits on the Tribe's ability to obtain land in trust.

The Siletz Tribe obtained a reservation in 1980. Pub.L.No. 96-340, 94. Stat. 1072. The Tribe obtained approximately 3630 acres as its initial reservation. The Tribe had an additional ten parcels of land taken into trust and added to the Siletz Reservation by federal legislation in 1994. Pub.L.No. 103-435, § 3., 108 Stat. 4566. A map of the Tribe's reservation, trust and fee lands in Lincoln County is attached as Exhibit 3, a map of tribal lands in the vicinity of the City of Siletz, Oregon is attached as Exhibit 4, and a map of tribal lands in north Lincoln County, in and around Lincoln City, Oregon is attached as Exhibit 5. The lands the Tribe received as its initial reservation were 37 scattered parcels of BLM timberland east of Siletz, and a tribal cemetery and the old BIA Siletz Agency grounds on Government Hill in Siletz, Oregon. These lands were primarily to generate timber revenue to fund tribal government operations. Lands were not provided initially to meet many tribal needs such as housing, health clinics or economic development.

While there were frequent references to our original reservation during the Tribe's restoration efforts in the 1970s, the Reservation Act only established the 30 plus small, scattered and mostly rural parcels as the Tribe's Reservation, with no defined exterior reservation boundary. The original reservation boundary was not reestablished. None of the Tribe's reservation lands were adjacent or contiguous. This meant that all subsequent fee-to-trust applications submitted by the Tribe are considered to be off-reservation applications under the fee-to-trust regulations at 25 C.F.R. Part 151.

When the Tribe was first restored, the BIA fee-to-trust regulations published in 1980 did not distinguish between on and off reservation fee-to-trust applications. This changed in 1988 after passage of the Indian Gaming Regulatory Act, and off-reservation fee-to-trust applications for gaming became politically controversial. To respond to IGRA, beginning in the early 1990s, the BIA started distinguishing between on and off-reservation fee-to-trust applications. *See, e.g.*, 25 C.F.R. § 151.10 (on-reservation); 151.11 (off-reservation). While this distinction was made because of gaming, the new regulations lump non-gaming fee-to-trust applications and tribes like Siletz together in the new category.

The criteria for off-reservation fee-to-trust applications makes it more difficult to obtain land in trust if it is located off-reservation. The justification to acquire land in trust is higher than on-reservation requests, and the criteria require that the Tribe have entered into mitigation

agreements with local jurisdictions before the land will be acquired in trust. This criteria essentially gives these local jurisdictions veto authority over fee-to-trust applications, or can demand unreasonable compensation in exchange for entering into an agreement or not opposing a fee-to-trust application. Tribes with reservations with exterior boundaries don't have to meet these criteria, even though tribes like Siletz have a more compelling need for additional land to re-establish a tribal homeland.

Even though the Siletz homeland is scattered, the Siletz Tribe believes its fee-to-trust applications should be treated as on-reservation under the current regulations. The BIA does not agree with the Tribe's interpretation. In the definition section of the fee-to-trust regulations at 25 C.F.R. §151.2(f), it states: "Unless another definition is required by the Act of Congress authorizing a particular trust acquisition, *Indian reservation* means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that . . . where there has been final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary." The Siletz Tribe has a Court of Claims case, *Rogue River Tribe v. United States*, 105 Ct. Cls. 495 (1946), holding that the 1855 Siletz Reservation was diminished by acts of Congress and other federal action. Thus under the definition of Indian reservation in the fee-to-trust regulations, the original Siletz Reservation should be considered on-reservation for purposes of fee-to-trust applications.

The BIA has refused to follow this interpretation, taking the position instead that since the Siletz Tribe has a reservation now, that reservation preempts any other definition of reservation. The Siletz Tribe raised this issue in a fee-to-trust lawsuit by a local town opposing a Siletz fee-to-trust application, *City of Lincoln City v. Department of Interior*, 229 F.Supp.2d 1109 (D. Or. 2002), an application that took over seven years for the Tribe to complete successfully. The court in that case concluded that the Tribe had the "better arguments" on this issue, 229 F.Supp.2d at 1129-32, but did not explicitly rule on the issue because it was not necessary to the adjudication of the case.[1] The BIA has refused to follow the dicta of the federal court on this issue, so it still needs definite legal interpretation.

The regulations adopted in 1995 that differentiate between on and off reservation fee-to-trust applications were not the last word on this subject. Starting in 2000, the BIA issued a number of internal policies and guidelines that placed further restrictions on off-reservation fee-to-trust applications. Most important, the BIA changed its policy and required that all off-reservation fee-to-trust applications be sent back to the BIA Central Office in Washington, D.C. for political vetting and decision. It has come out recently that the internal policy of the BIA in the last several years was to not approve any off-reservation fee-to-trust applications of any kind.

The Siletz Tribe submitted a number of fee-to-trust applications to the BIA during this period. The status and chronology of the Siletz Tribe's still pending fee-to-trust applications is

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[1] In particular, in finding the Siletz Tribe's arguments on this issue persuasive, the Court relied on the fact that an earlier version of the fee-to-trust regulations had said the definition of Indian reservation quoted in the text above applied only "when the tribe does not have a specific reservation because the former reservation has been disestablished or totally allotted." 229 F.Supp.2d at 1130. This language was not continued in the more recent regulations, persuasive authority that this limitation should not apply.

attached to my testimony as Exhibit 6. All of the Tribe's applications disappeared into a black hole back in Washington, D.C. The Tribe could not find out any information on the status of its applications, when a decision could be expected, what additional information might be needed, or what their status was. We asked the Area Office to find out on our behalf, but they had the same lack of success.

Finally, we went to our congressional delegation. We asked our delegation to introduce an amendment that would require off-reservation non-gaming fee-to-trust applications to be processed in the Area or Regional offices rather than in Washington, D.C. The congressional staff quite reasonably wanted to make sure there was a real problem before taking legislative action. After the Tribe was unsuccessful in obtaining information about pending Siletz fee-to-trust applications, congressional staff finally made the same inquiry of the BIA. The answer that came back from the BIA Central Office was amazing. The BIA informed the Oregon congressional staff that there were **no** Siletz fee-to-trust applications pending in the BIA Central Office, and therefore there was no problem.

This news was a surprise to the Siletz Tribe, to say the least. We had been told for years by the Regional Office that the Tribe's fee-to-trust applications had been sent back to Washington, D.C. After receiving the information that there were no pending fee-to-trust applications in Washington, D.C., we contacted the Regional Office to find out what was going on. The Regional Office insisted that they did not have the Tribe's fee-to-trust applications in Portland, and that they were still in D.C. The Siletz Tribe's fee-to-trust applications had mysteriously disappeared!

The Tribe finally found out what had happened. When the BIA Central Office received the various inquiries about the status of pending Siletz fee-to-trust applications, it resolved the issue by returning all the Tribe's applications to the Regional level for further processing. The Central Office was then able to tell the Oregon congressional delegation with a straight face that the Siletz Tribe had no pending fee-to-trust applications in Washington, D. C. The Central Office did not tell the Siletz Tribe or the Regional Office that it had returned all the Tribe's fee-to-trust applications, however, so it was some time before the applications could be located.

The reasons why the various applications were sent back is set out in the chart and narrative attached as Exhibit 6. Some of the reasons are legitimate – to clear up outstanding title issues, for example. Others, such as Otis cemetery, will be impossible to meet. New standards, such as the requirement of a cadastral survey adopted in 2006, were applied to the applications. Environmental reviews were rejected as outdated; they were outdated because the BIA Central Office held on to the applications for so long without making a decision. So the Siletz Tribe has been forced to start from scratch, after as long as ten years in some cases, on its pending fee-to-trust applications. This situation is unacceptable from the Siletz Tribe's viewpoint.

Let me turn finally to continuing issues involving fee-to-trust. If these issues are not resolved, fee-to-trust applications submitted by the Siletz Tribe will continue to languish, frustrating the Tribe's efforts to reestablish a homeland. These issues include:

1. The BIA recently changed its policy to provide that non-gaming fee-to-trust applications will be decided at the Regional level. This was sent out by George Skibine in a policy directive. This change, should it remain permanent, will prevent the Tribe's applications

from being lost or set aside for political reasons in Washington, D.C. The Siletz Tribe's fee-to-trust applications are still being processed as off-reservation applications, but they are being processed now in Portland.

2. The BIA should be required to treat the Siletz Tribe's fee-to-trust applications located within the boundaries of the original 1855 Siletz Reservation to be treated as on-reservation applications, to comply with the fee-to-trust regulations. It discriminates against the Siletz Tribe to treat its critical homeland acquisitions, acquired within historical reservation boundaries, which were established under ratified treaty stipulations under a more restrictive review standard.

3. The BIA must modify its new (2006) requirement of requiring a cadastral survey for all fee-to-trust applications. For land with border water features, the cost of such a survey can be enormous, often exceeding the purchase price of the property itself. As you can see in the narrative that is part of Exhibit 6, the estimate for a cadastral survey for the Tribe's "Coop" property, which borders the Siletz River, is more than $180,000. The Tribe cannot afford to be saddled with such an enormous expense, which essentially undermines and frustrates the purpose of the fee-to-trust statute to restore lands for poor and land poor tribes. A more reasonable alternative that will comply with industry standards must be adopted.

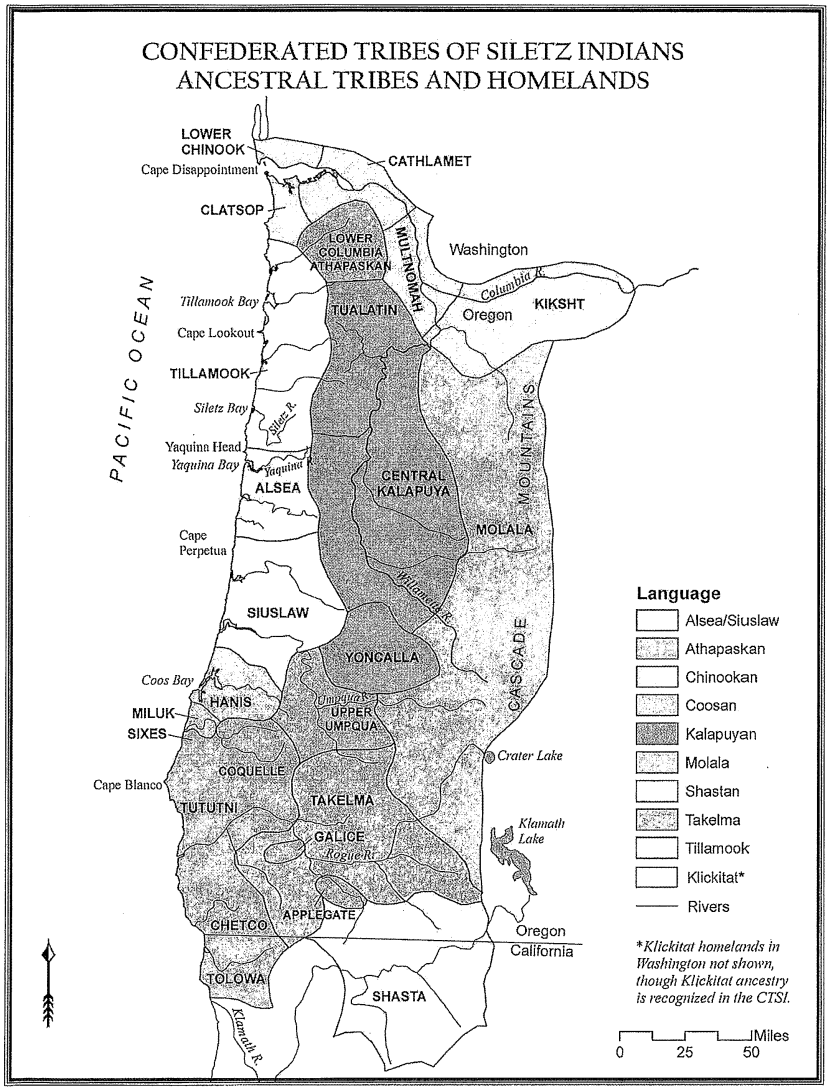
4. The BIA must standardize its fee-to-trust procedure across Indian country. The GAO did a study on the fee-to-trust process a year ago and found that fee-to-trust applications in the Pacific Region take an average of five years or more. Last year I attended a fee-to-trust consultation in Albuquerque put on by the BIA. I was shocked to hear tribal representatives from Oklahoma complaining at that meeting that their fee-to-trust applications were sometimes taking as long as six months to complete! There is no consistency. At the same Albuquerque meeting, BIA representatives talked about how fee-to-trust applications with outstanding Conditions, Covenants & Restrictions (CC&Rs) were routinely completed with a form on which the Tribe agreed to comply with the conditions set out in the CC&Rs. When I said that the Portland Area would not approve any fee-to-trust applications with CC&Rs still attached they didn't believe me. But the chart attached as Exhibit 6 shows several of the Tribe's fee-to-trust applications that have been rejected because the Tribe has been unable to eliminate minor CC&R issues from the title. There must be consistency.

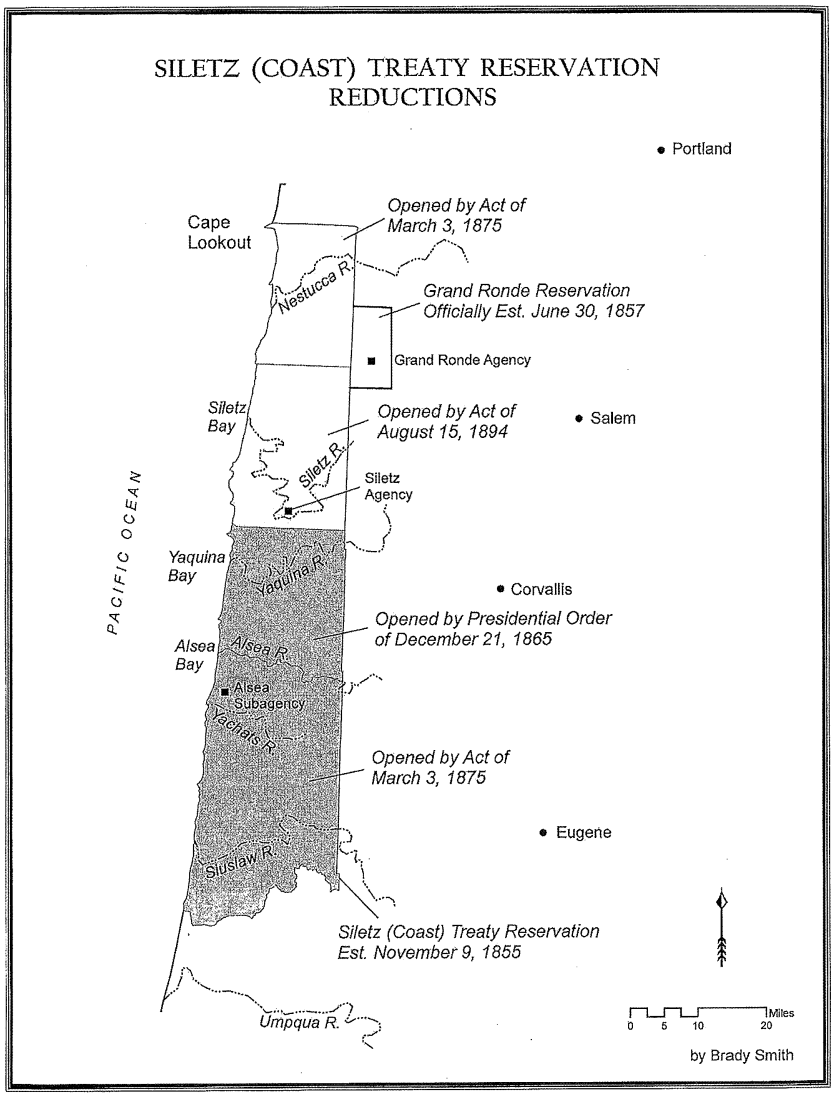
5. Reservation proclamations are another issue for the Tribe. Land can be proclaimed part of the Siletz Reservation pursuant to 25 U.S.C. § 467. There are no published regulations on how reservation proclamation requests are processed. The Siletz Tribe has made several requests to make specific trust parcels part of the Siletz Reservation. None of these requests has been processed or decided, and the Tribe is unable to find out the status of these requests.

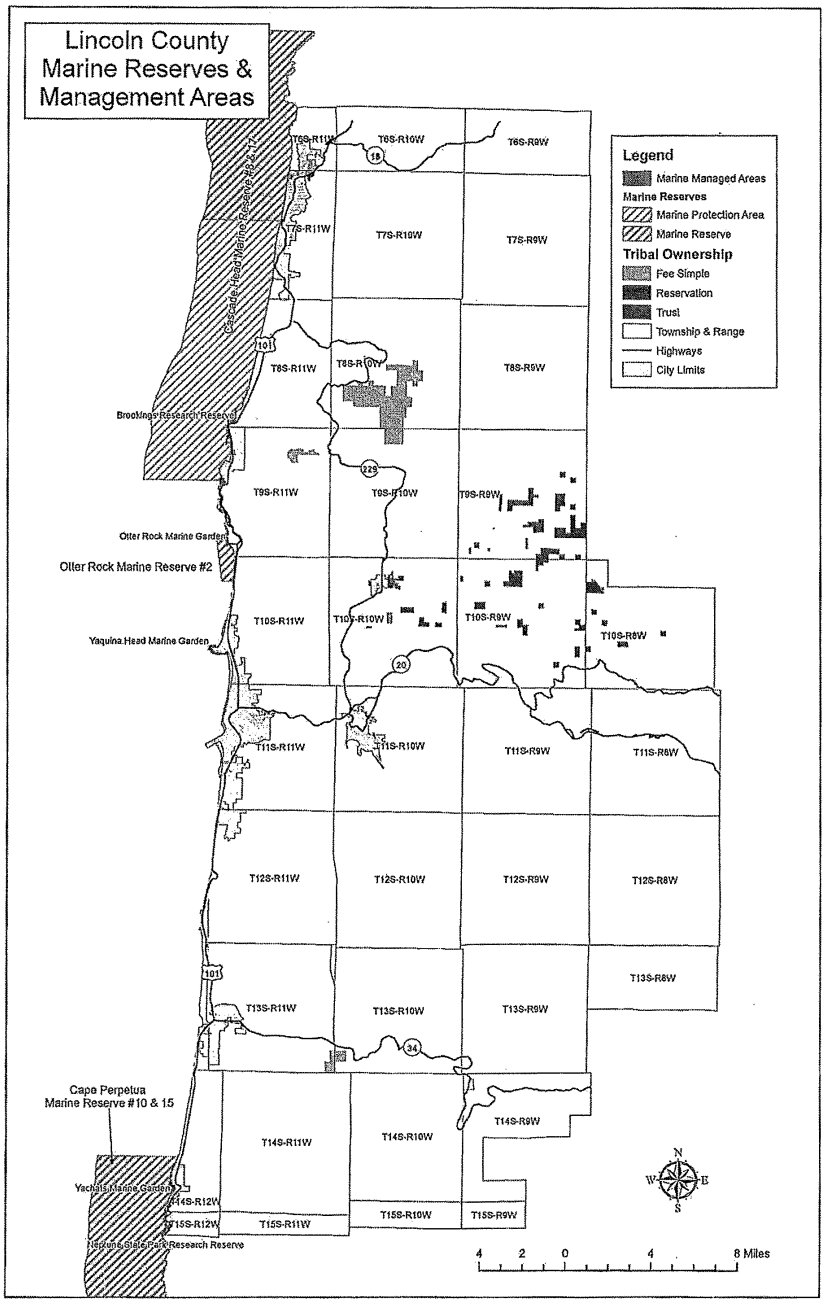
This concludes my testimony. The Siletz Tribe has been frustrated for years in its attempts to acquire a modest additional amount of land in trust. The only success the Tribe has had in the last twenty years is when the Tribe went directly to Congress to have ten parcels of land put into trust and made part of the Tribe's reservation. The fee-to-trust process has not worked for the Siletz Tribe. The Siletz Tribe recommends and requests that Congress take action to fix the process so that Tribes like Siletz can reacquire lands within their original reservations and adjacent lands, and add these lands to their current Reservations and trust inventory, under a fair and standardized process. Such action is necessary for tribes like Siletz to begin to address urgent and long-standing tribal government and tribal members needs.

Please contact me if you have any questions or require any additional information.

**Attachments**


CONFEDERATED TRIBES OF SILETZ INDIANS
ANCESTRAL TRIBES AND HOMELANDS
LOWER CHINOOK
Cape Disappointment
CATHLAMET
CLATSOP
LOWER COLUMBIA ATHAPASKAN
MULTNOMAH
Washington
Columbia R.
KIKSHT
Oregon
PACIFIC OCEAN
Tillamook Bay
Cape Lookout
TUALATIN
TILLAMOOK
Siletz Bay
Siletz R.
Yaquina Head
Yaquina Bay
Yaquina R.
ALSEA
CENTRAL KALAPUYA
MOLALA
CASCADE MOUNTAINS
Cape Perpetua
Willamette R.
SIUSLAW
YONCALLA
Coos Bay
HANIS
MILUK
SIXES
Umpqua R.
UPPER UMPQUA
Crater Lake
COQUELLE
Cape Blanco
TUTUTNI
TAKELMA
Klamath Lake
GALICE
Rogue R.
APPLEGATE
CHETCO
Oregon
California
TOLOWA
SHASTA
Klamath R.
Language
Alsea/Siuslaw
Athapaskan
Chinookan
Coosan
Kalapuyan
Molala
Shastan
Takelma
Tillamook
Klickitat*
Rivers
*Klickitat homelands in Washington not shown, though Klickitat ancestry is recognized in the CTSI.
Miles
0
25
50


SILETZ (COAST) TREATY RESERVATION REDUCTIONS
Portland
Cape Lookout
Opened by Act of March 3, 1875
Nestucca R.
Grand Ronde Reservation Officially Est. June 30, 1857
Grand Ronde Agency
Siletz Bay
Opened by Act of August 15, 1894
Salem
Siletz R.
Siletz Agency
PACIFIC OCEAN
Yaquina Bay
Yaquina R.
Corvallis
Opened by Presidential Order of December 21, 1865
Alsea Bay
Alsea R.
Alsea Subagency
Yachats R.
Opened by Act of March 3, 1875
Eugene
Siuslaw R.
Siletz (Coast) Treaty Reservation Est. November 9, 1855
Umpqua R.
Miles
0 5 10 20
by Brady Smith


Lincoln County
Marine Reserves &
Management Areas
Legend
Marine Managed Areas
Marine Reserves
Marine Protection Area
Marine Reserve
Tribal Ownership
Fee Simple
Reservation
Trust
Township & Range
Highways
City Limits
Cascade Head Marine Reserve #2 & 11
Brooings Research Reserve
Otter Rock Marine Garden
Otter Rock Marine Reserve #2
Yaquina Head Marine Garden
Cape Perpetua
Marine Reserve #10 & 15
Yachats Marine Garden
Neptune State Park Research Reserve
T6S-R11W
T6S-R10W
T6S-R9W
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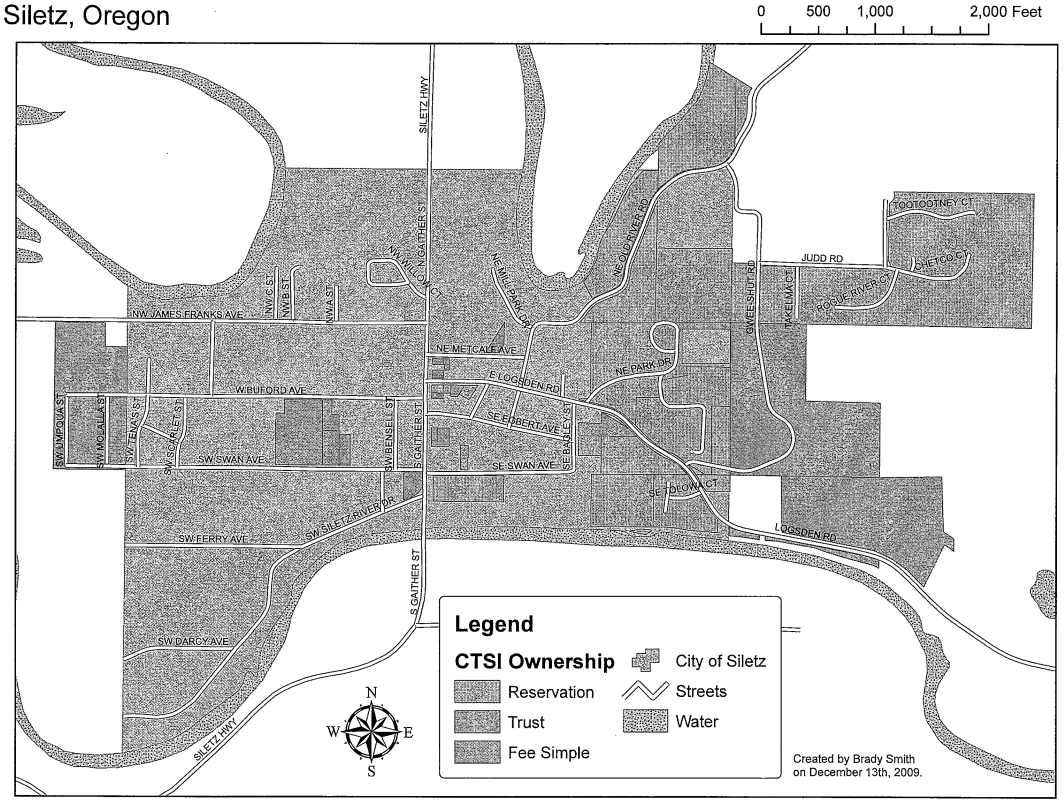
Confederated Tribes of Siletz Ownership
Siletz, Oregon



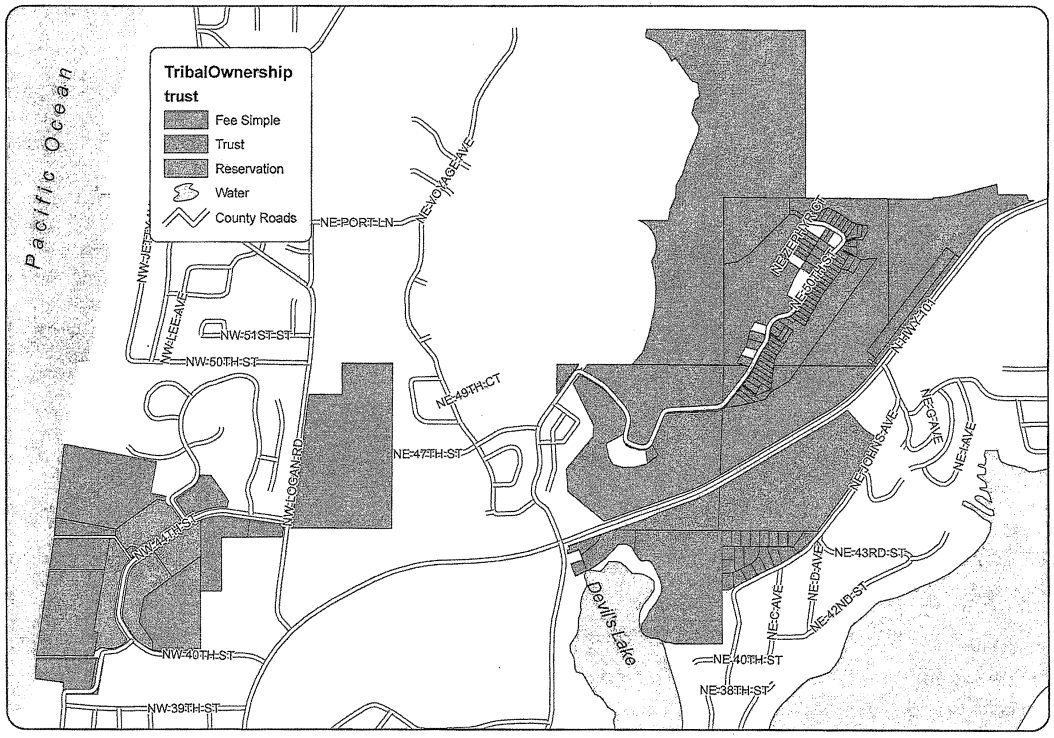
# Siletz Tribal Properties
## North Lincoln City Area

1:10,000

0 500 1,000 2,000 Feet

N W E S

Data is displayed in UTM 10 with NAD 1983 datum. Map was created by CTSI GIS Planner on December 9, 2009.



CONFEDERATED TRIBES
OF THE
SILETZ INDIANS

STATUS REPORT
FEE-TO-TRUST APPLICATIONS
October 20, 2009

| Name of Property | Size (acres) | Date Submitted to BIA | Date Returned to CTSI | Reason for Return | Issues Remaining | CTSI Response to date | BIA Central Review Needed? |
|---|---|---|---|---|---|---|---|
| Coop (Bull's Bag) | 299.33 | December 2004 | March 21, 2008 | Preliminary Acceptance into Trust | Need "federal authority" survey; need ESA* | Working with BLM for federal-authority cadastral survey | No, already reviewed |
| Otis Cemetery | 0.12 | December 2003 | February 2007 | Need to update Trust Application to new (2006) standards | Tribal Council directed staff to obtain family approval to continue with trust process. | Discussed cemetery mgt with family rep and USFS | Yes, equivalent to new off-res application |
| Muschamp | 0.11 | September, 1996 | June, 2006 | Survey found encroachment on property; however, it is ready to be taken into trust once encroachment is resolved. | Encroachment (old meat locker/trailer) needs to be removed from property. Neighbor who owns the encroachment has not been cooperative with the Tribe. | Neighbor has given tribe permission to move trailer; recent assessment: trailer NOT moveable. | No, already reviewed by Central and approved by NWRO |
| V. Ray | 0.16 | October, 1996 | June, 2006 | Survey found encroachment on property | Encroachment (concrete slab, approx 4.5'x 6.5') needs to be removed/authorized. Originally same person as with Muschamp, however, property recently sold. | Planning staff sent letter to adjacent property owner (12/07); no response. Staff is preparing letter to new property owners | Yes, equivalent to new off-res application |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Chinook Winds Casino Resort Hotel | 9.52 | December, 2004 | June, 2005 | Need for cadastral survey, 3rd party ESA, and business plan; title issues; new NWRO policy—asbestos assessment needed | Title issue resolution (unacceptable CC&Rs); asbestos assessment | Legal working with w/homeowners assn to remove CC&Rs; cadastral survey accepted by BLM; asbestos assessment completed 7/09. | No, already reviewed |
| Hemstreet (Casino parking lots) | 10.94 | June, 2003 | June, 2005 | BIA "Checklist for Gaming Acquisitions" (March 2005) requires agreements to resolve local jurisdictional or land use problems be included in trust packages. | Need for agreement between CTSI and Lincoln City. [Agreement recently signed by CTSI and Lincoln City, 7/29/08]<br><br>Title/CCR issues | Atty prepared draft agreement between CTSI and City of Lincoln City (May, 2005); awaiting City review and approval. | Yes, for "gaming" review |
| Lincoln Shores Offices (Tribal Business Corporation and Tribal Gaming Commission offices) | 0.75 | November, 2003 | June, 2005 | BIA "Checklist for Gaming Acquisitions" (March 2005) requires agreements to resolve local jurisdictional or land use problems be included in trust packages. | Need for agreement between CTSI and Lincoln City. [Agreement recently signed by CTSI and Lincoln City, 7/29/08]<br><br>Title/CCR issues | Atty prepared draft agreement between CTSI and City of Lincoln City (May, 2005); awaiting City review and approval. | Yes, for "gaming" review |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Lot 57 | 9.4 | January, 2005 | January, 2006 | BLM requires further survey work; encroachment found | Need to issue culvert easement to homeowners assn; clear up same legal issues as with CW Casino Resort Hotel. | Survey work completed by original surveyor. Legal & Planning met w/homeowners assn to work out details of culvert easement. | No, already reviewed |
| Lyford | 9.27 | December, 2004 | July, 2006 | BLM requires further cadastral survey work; ESA. | Siletz Agency sent application to NWRO ; NWRO sent to Central on 6/19/09 (to Vicky Forrest, Realty) | Completed all required work. Will likely need a new ESA once Central approval is given. | Yes, new off-res application |
| Medicine Rock | 3.5 | December, 2004 | May, 2005 | DOI Solicitor's Office advised against trust status while deed contains reversionary clause, lack of legal access | Need to determine if there is legal access to property | None to date. | Yes, new off-res application |
| Miller | 5.21 | December, 2004 | N/A | Was on hold until alleged HUD NEPA violation is resolved; issue is now resolved. | Need preliminary title report, and ESA | ESA completed. Siletz Agency determined a new EA was needed; staff prepared EA and is under review by legal staff. | No, Siletz Agency determined that it is "adjacent" to other trust land; NWRO concurred. |

*Environmental Site Assessment, a.k.a. "contaminant survey"

NARRATIVE

Coop. The application package was at BIA-Central Office for over three years. We recently received *tentative* acceptance of the land into trust, pending three items: a federal-authority cadastral survey, a "clean" title report, and an environmental site assessment (contaminant survey) showing that the property is free of hazardous materials. The latter two items are easily accomplished; the federal-authority cadastral survey is problematic. The survey is needed because there are several unlocated section corners that are needed for control of the property line survey, and because part of the boundary is the Siletz River. Staff requested and received an initial cost estimate from BLM for the survey. **Their estimate was over $180,000,** but assumes that all corners would need to be relocated. Staff met with BLM to discuss how to accomplish the survey. We recently have asked the original contractor to work with BLM to determine exact survey needs.

Otis Cemetery. Central Office returned this application package on February 9, 2007 to the Siletz Agency with instructions to re-do the application package according to new (2006) standards. No work has been done to accomplish this. Although our property file has scant information about it, evidently the Logan family was to be consulted and a "management plan" for the cemetery was to be developed before the agency staff would continue work on this. Initial contacts have been made with a family representative and with the USFS Hebo District Ranger (cemetery is surrounded by USFS). District Ranger indicated that he was primarily interested in a land exchange where the FS would receive land within the Cascade Head Scenic Research Area. The Tribe has no holdings within the Research Area, so we would need to buy property or work through a 3-way exchange. Neither option is feasible at this time.

Lyford. The Lyford FTT package was sent from the Siletz Agency to Central Office via NWRO in June, 2009. A recent decision by the Secretary of Interior changed BIA policy to now allow approval of "off-reservation" FTT applications at the regional office level. Thus, Lyford was recently returned to the Portland office. A recent CTSI contract to reestablish property corners found a couple of issues that need to be dealt with before the process can continue.

Medicine Rock. For this application to move, we will need the following: First, we will need a current cadastral survey, most likely a federal-authority survey because the property is along the Siletz River, and we will need to show that the tribe has legal access to the property. If the Tribe does NOT have legal access, BIA would be unwilling to pursue the FTT application further. Assuming the Tribe DOES have legal access, the next action is to work with Lincoln County to remove the "reversionary clause" on the title. Essentially, this clause states that if the Tribe were to develop this property for something other than a "public purpose," ownership would revert back to Lincoln County.

Miller. BIA never prepared a FONSI on this FTT action because of the NEPA objection received by HUD. In February 2009, the Siletz Agency made the determination that a new EA was needed. EA was rewritten and is under review by staff attorney. Cadastral survey and ESA are complete; still need preliminary title report. Siletz Agency made the determination that the Miller parcel was "adjacent" to other trust properties; NWRO concurred. No Central review is needed.

Muschamp. This property is in the "approval" stage, and the only things keeping it from "acceptance" are to resolve a property encroachment and to submit a current environmental site assessment. The encroachment is an old semi truck trailer that the neighboring owner used as part of a meat cutting and packing business. The neighbor recently granted the Tribe permission to move the trailer off the tribal property, and a recent CTSI contract re-established property corners. The trailer was examined by a general contractor to determine if it was moveable. In his opinion, the trailer is NOT moveable. Staff attorney is drafting a letter to the attorney of the property owner to explore options.

Verl Ray. This property, like the Muschamp property, has an encroachment from the neighboring meat locker property. The encroachment is a very small part of a concrete pad used as an entry to a parking structure (the encroachment measures approximately 4.5 feet by 6.5 feet). There are no structures on this pad, although that side of the property has likely been used as the convenient driveway for the meat locker. We have drafted a letter to the current owners of the parking structure and should soon enter into discussions with them on options to resolve the encroachment.

Lot 57, Chinook Winds Casino Resort Hotel, Hemstreet, and Lincoln Shores Offices. All of these parcels have title issues that need to get resolved before the trust process can continue. Legal staff is working with the homeowners association to resolve these. Staff is working on Lot 57 and the Resort Hotel parcels specifically—cadastral survey work is done, ESAs are done, asbestos/lead paint assessment for the hotel is done. (The asbestos/lead paint assessment is a new requirement of the NWRO.) In addition, two parcels—Hemstreet and Lincoln Shores Offices—need to have their trust packages and intergovernmental agreements reviewed by the Indian Gaming Commission.

PREPARED STATEMENT OF HON. ELAINE FINK, CHAIRPERSON, NORTH FORK RANCHERIA OF MONO INDIANS OF CALIFORNIA

On October 3, 2007, Madera County Board of Supervisor Frank Bigelow came before this Committee to urge the Department of the Interior to end months of delay and publish the draft environmental impact statement ("EIS") for the North Fork Rancheria on Mono Indians' ("North Fork" or "Tribe") fee-to-trust and casino/hotel project. As Madera City Council member Gary Svanda testified in the follow-up hearing on May 22, 2008, the draft EIS was finally published on February 15, 2008, about a year after it had been completed.

Now almost two years later, the Department is once again holding up the environmental review process for our project, this time by not publishing the final EIS that was completed approximately four months ago. While we understand that the Department is again reviewing its off-reservation gaming policy, that review should not delay publication of our final EIS. The final EIS must be published before the Secretary of the Interior can make a decision on our application; it is not the decision itself. Publication of the final EIS is not a decision on the merits and is not dependent upon any policy other than the requirements of the National Environmental Policy Act (NEPA).

Our project complies with existing law and the commutability standard established in January 2008 under the prior Administration. The proposed site, identified in cooperation with local representatives, is less than 40 miles from the North Fork Rancheria. The rancheria itself is not a viable commercial site as it is located on a steep hillside in the Sierra foothills and is held in trust for a few individual residents and not for the Tribe. Although the proposed site may be eligible for gaming as restored lands, we are proceeding through the more difficult and transparent Secretarial two-part process of Section 20 of the Indian Gaming Regulatory Act.

It is hard to understand the delay, especially in light of current economic conditions. Our project would create over 4,000 jobs in an area with among the highest unemployment rates in the Nation. It would also generate millions of dollars in revenue for state and local government under our Tribe's compact with the Governor of California and binding agreements with the County of Madera, the City of Madera, and the Madera Irrigation District. Further, the project would generate additional revenues for tribal programs and services for our 1,800 tribal citizens and, under our compact, for the more than 600 tribal members of the Wiyot Tribe in Northern California coast.

The delay makes no sense in terms of law or policy, and is very costly to our Tribe, which is the largest restored tribe in California. Interest continues to accrue on the significant development expenses we have incurred since early 2004, including purchasing the land and paying for the environmental review. The local community has been incredibly supportive of our project and vision for the region, but they and our own tribal citizens are growing increasingly frustrated by the delay. Each day of delay costs the community approximately $275,000 in economic activity and denies jobs and opportunity to our tribal citizens and local residents.

We understand that our project is not the only one being delay. The Department has not taken any action on any off-reservation project for months. Although we had high hopes that we would not face unnecessary bureaucratic delays in the new Administration, there is, in effect, a moratorium on taking lands into trust for gaming purposes. It is our hope that this Committee can help bring to light the nature and extent of the current delay as it is grossly unfair to our Tribe and contrary to existing law and policy.

Thank you for the opportunity to comment.

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PREPARED STATEMENT OF GLENDA NELSON, CHAIRPERSON, ESTOM YUMEKA MAIDU OF THE ENTERPRISE RANCHERIA OF CALIFORNIA

Since 2002, the Estom Yumeka Maidu of the Enterprise Rancheria ("Tribe") has been pursuing the long and difficult process to have 40 acres of land taken into trust for a resort casino and hotel. The proposed site is located in a rural, voter-approved Sports and Entertainment Zone in Yuba County in the Central Valley. It would replace the 40 acres we lost when Congress authorized the sale of one of our two 40-acre rancherias to the State of California to become part of Lake Oroville as part of a large water project. The site is located approximately 35 miles from our remaining rancheria, which is located in a remote area of the foothills over an ancient Maidu village.

Despite having identified a flat hayfield that the voters had already approved for development, the federal environmental review process for the site has now taken almost eight years. After preparing an environmental assessment, we agreed to pay

for the preparation of an environmental impact statement ("EIS") after the Department changed its policy. We were then delayed while the prior Administration developed its Guidance Memo of January 3, 2008. After our project was deemed to be within a commutable distance of our "reservation", the draft EIS for our project was published on March 21, 2008.

Since at least June 2009, the final EIS for our project has been ready for publication. Yet despite representations to the contrary, the final EIS remains unpublished. While we understand that the Department is again reviewing its off-reservation gaming policy, that review should not delay publication of our final EIS. Publication of the final EIS is not a decision on the merits and is not dependent upon any policy other than the requirements of National Environmental Policy Act (NEPA).

Our project would create over 4,000 jobs in an area with among the highest unemployment rates in the Nation. It would also generate millions of dollars in revenue in economic development and provide additional revenues to the County of Yuba and City of Marysville under our binding agreements with both jurisdictions. Importantly, the project would generate new revenues for tribal programs and services that would benefit our nearly 800 tribal members.

Our project complies with existing law and the commutability standard established in January 2008 under the prior administration. We are seeking to qualify the land for gaming under the difficult and transparent Secretarial two-part process of Section 20 of the Indian Gaming Regulatory Act. Ironically, neighboring tribes that were terminated, including some who oppose our project for competitive reasons, have not had to navigate this difficult process and consequently their members have for years benefitted from Indian gaming. We are glad for their success, but are anxious to advance the interests of our members through economic development and help end the generations of poverty and despair through which many have suffered.

We understand that our project is not the only one being delay. The Department has not taken any action on any off-reservation project for months. Although we had high hopes that we would not face unnecessary bureaucratic delays in the new Administration, there is, in effect, a moratorium on taking lands into trust for gaming purposes. It is our hope that this Committee can help bring to light the nature and extent of the current delay as it is grossly unfair to our Tribe and contrary to existing law and policy.

Thank you for the opportunity to comment.

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PREPARED STATEMENT OF THE INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST FUNDS (ITMA)

The Intertribal Monitoring Association on Indian Trust Funds (ITMA) is a representative organization of the following 65 federally recognized tribes: Absentee Shawnee Tribe, Alabama Quassarte Tribe, Blackfeet Tribe, Central Council of Tlingit & Haida Indian Tribes of Alaska, Chehalis Tribe, Cherokee Nation of Oklahoma, Cheyenne River Sioux Tribe, Chippewa Cree Tribe of Rocky Boy Reservation, Coeur D'Alene Tribe, Confederated Salish & Kootenai Tribes, Confederated Tribes of Colville, Confederated Tribes of Warm Springs, Confederated Tribes of Umatilla, Confederated Tribes of Yakama Nation, Crow Tribe, Eastern Shoshone Tribe, Ewiiaapaayp Band of Kumeyaay Indians, Fallon Paiute-Shoshone Tribe, Forest County Potawatomi Tribe, Fort Belknap Tribes, Fort Bidwell Indian Community, Fort Peck Tribes, Grand Portage Tribe, Hoopa Valley Tribe, Hopi Nation, Iowa Tribe, Jicarilla Apache Nation, Kaw Nation, Kiowa Tribe, Kenaitze Indian Tribe, Lac Vieux Desert Tribe, Leech Lake Band, Mescalero Apache Tribe, Metlakatla Tribe, Muscogee Creek Nation, Nez Perce Tribe, Northern Arapaho Tribe, Northern Cheyenne Tribe, Ojibwe Indian Tribe, Oneida Nation of Wisconsin, Osage Tribe, Passamaquoddy-Pleasant Point Tribe, Penobscot Nation, Pueblo of Cochiti, Pueblo of Laguna, Pueblo of Picuris, Pueblo of Sandia, Quapaw Tribe, Quinault Indian Tribe, Red Lake Band of Chippewa Indians, Sac and Fox Tribe, Salt River Pima-Maricopa Indian Tribe, San Pasqual Band of Mission Indians, Sault Ste. Marie Tribe of Chippewa Indians, Shoshone-Bannock Tribes, Sisseton-Wahpeton Oyate Tribe, Soboba Band of Luiseno Indians, Southern Ute Tribe, Thlopthlocco Tribal Town, Three Affiliated Tribes of Fort Berthold, Tohono O'odham Nation, Turtle Mountain Band of Chippewa, Walker River Paiute Tribe, Winnebago Tribe of Wisconsin, and the Yurok Tribe.

Mr. Chairman and members of the Committee, ITMA is pleased to present our views regarding backlogs at the Department of the Interior. My name is Michael Finley and I am the Chairman of the Colville Business Council, the governing body of the Confederated Tribes of Colville Reservation located in Washington state. I

also serve as Chairman of the Intertribal Monitoring Association on Indian Trust Funds, and I offer this testimony on behalf of ITMA.

Established in 1990, ITMA is a national Tribal consortium, the membership of which consists of 66 federally recognized Indian Tribes. ITMA's mission includes monitoring the United States' trust reform efforts and providing a forum for Tribal consultation on trust issues. Consistent with its mission, ITMA conducts continuous outreach activities to inform Tribes and individual beneficiaries of the status of trust reform efforts within the Department of the Interior and reform efforts undertaken in Congress.

ITMA has undertaken a number of projects over the years in furtherance of its mission. For example, pursuant to a Cooperative Agreement with the Department, ITMA participated in a joint effort with the Office of Historical Trust Accounting to develop a methodology that could be used, among other things, to assist the United States and participating Indian tribes to reach agreement on the balances of the tribes' trust accounts. This project, called the "Tribal Trust Fund Settlement Project," resulted in the development of a methodology available to Indian tribes for use in pending trust fund related lawsuits. That methodology was completed in July 2008 and is currently being used by Indian tribes and the United States as a tool to resolve tribal trust claims.

During the past six years, ITMA has conducted 18 Listening Sessions throughout Indian Country to obtain input from Indian tribes and individual Indians regarding the Department's administration of Indian trust funds and trust land. At these Listening Sessions, tribal leaders and Indian beneficiaries often mention delays that they experience in getting land taken into trust and other transactions involving Indian trust land.

One of the areas that has received significant attention at ITMA's Listening Sessions of late has been appraisals. The Department of the Interior requires a formal appraisal for nearly all transactions involving Indian trust land. Indian tribes and individuals have noted delays in obtaining appraisals of trust lands, an inability to determine why appraisals are delayed, and the fact that the costs of appraisals are borne by Indian landowners. With the continued focus on economic development on Indian lands, when and under what circumstances appraisals are required and the ability of Indian beneficiaries to obtain them in a timely manner has become a subject of increasing interest. Although the BIA and the Office of the Special Trustee have significantly reduced the backlog of appraisal requests in calendar year 2009, Indian beneficiaries have expressed a desire to have the appraisal process streamlined on a going-forward basis.

With this in mind, ITMA has submitted a proposal to the Department to facilitate a small work group to develop policy, regulatory and legislative options to promote Indian trust land consolidation and reduce fractionated land ownership. Part of this proposal will examine the current process for obtaining appraisals. The work group will meet over a six-month period and will identify and review existing policies and regulations that may inhibit trust land consolidation and, where appropriate, suggest revisions of these policies, including appraisal policies. The workgroup will also develop additional regulatory and legislative proposals to streamline and facilitate land consolidation, with the intent of presenting a package of suggestions to the Department for consultation with Indian Country.

This proposal has been well-received by the Department and ITMA expects to begin this project in early 2010. ITMA is hopeful and optimistic that such an in-depth review of these regulatory policies will result in recommendations that can be implemented quickly and that will alleviate many of the delays that Indian beneficiaries experience when trying to complete transactions involving Indian trust land. ITMA stands ready to serve as a resource for the Committee as it explores these and other issues in connection with today's hearing, and we appreciate the opportunity to provide this statement for the record.

PREPARED STATEMENT OF HON. MATTHEW J. BOX, CHAIRMAN, SOUTHERN UTE INDIAN TRIBAL COUNCIL

I am submitting this statement on behalf of the Southern Ute Indian Tribal Council for the Committee's record of its oversight hearing of December 9, 2009, entitled "Where's the Trustee? Department of Interior Backlogs Prevent Tribes from Using their Lands". Like many others in Indian Country, the Southern Ute Indian Tribe has been prevented from using its lands to their fullest potential because of the backlogs caused by delays and the inefficient operations of the Department of the Interior. The following outlines the Tribe's primary areas of concern, which include the procedures required of our federal trustee for everyday land transactions (such as lease approvals) and the processing of fee to trust applications.

The Tribe has previously explained the significant impact on tribal operations caused by delays in processing leases and other "routine" land transactions. I have included with this statement a letter I sent earlier this year to the BIA's Southwest Regional Director that details some of these delays and explains the impact they are having on the Tribe. As I explained at that time, we estimate that the delays described in the letter had cost the Tribe over $90,000,000 in lost severance and other revenue from its oil and gas developments. On top of the lost revenue from these types of transactions, our tribal members are also impacted by delays in approving leases or other documents for their use of tribal land. These delays often result in tribal members being unable to utilize tribal land in a timely fashion and, while not as economically significant as the other delays, still cause frustration on nearly a daily basis.

I am also enclosing, for the Committee's consideration, a letter previously sent by the Tribe regarding the significant delays in processing the Tribe's applications for converting purchased lands from fee to trust. As that letter shows, the Tribe has nearly 20 pending fee to trust applications, over three quarters of which were submitted nearly 10 years ago. Importantly, all of these parcels are on-Reservation and are not gaming-related. Since that letter was sent in early 2007, few of these parcels has been considered for placement in trust status. These delays have important consequences for the Tribe from both jurisdictional and economic standpoints. Furthermore, the Tribe's Land Consolidation Program seeks to restore the significant amount of trust lands lost by the Tribe through allotment. If the lands repurchased by the Tribe to be consolidated with other trust lands are not subsequently transferred to trust status in a timely fashion, the purpose of the Land Consolidation Program is completely defeated. Back in 2006, Congress appeared to show interest in implementing a strict 120-day timeline for the agency to complete the fee-to-trust process; however, those efforts did not result in any improvement for the Tribe's situation.

It appears to the Tribe that both of these problems result from insufficient agency resources and inefficient agency procedures. The Committee and, ultimately, Congress can address both of these issues. Obviously, ensuring that the BIA and other Interior agencies have adequate budgetary resources, which would likely require close Congressional scrutiny of proposed agency budgets, could help as a remedy. Another potential solution would be to consider enabling those tribes with demonstrated ability for effectively managing resources, like the Southern Ute Indian Tribe, to assume a much greater role in exercising the responsibility for completing these transactions. A similar

model was enacted through the Energy Policy Act of 2005, which envisioned that certain energy producing tribes who demonstrate sufficient capability can develop and utilize a more streamlined and self-determinative process through a Tribal Energy Resource Agreement with the federal government. The result of such procedures is not to eliminate the trust responsibilities of the federal government but, rather, to allow those tribes who are able to make decisions about how best to protect and develop their own lands. The Southern Ute Indian Tribe would support the incorporation of this concept into both the processing of everyday land transactions and fee to trust applications.

Thank you for the opportunity to provide these comments for the Committee's record regarding the above-referenced hearing. Like all of Indian Country, the Southern Ute Indian Tribe looks forward to a day when we can work with our federal trustee to benefit the Tribe and our members without having to face the substantial delays and inefficient process of today's Department of the Interior.

## Attachments

SOUTHERN UTE INDIAN TRIBAL COUNCIL

POST OFFICE BOX 737
IGNACIO, COLORADO 81137

February 24, 2009

Bill Walker, Acting Regional Director
Southwest Regional Office, Bureau of Indian Affairs
1001 Indian School Road, N.W.
Albuquerque, NM 87104

Re: Unacceptable Delays in Processing Energy Related Projects

Dear Mr. Walker:

For at least two years, the Southern Ute Indian Tribal Council and other representatives of the Tribe have repeatedly raised concerns about the decline in BIA services at the Southern Ute Agency. One of the areas of greatest frustration has been the absence of timely processing of realty transactions. The problem is particularly acute with respect to energy related realty transactions, which underpin the economic stability of the Tribe.

The Tribe's Energy Department recently completed a review of delays in processing pipeline rights-of-way (ROWs) and BIA concurrences for the BLM to issue permits to drill wells on tribal oil and gas leases. The results of that review are staggering. Currently, approximately 24 Applications for Permit to Drill (APDs) await BIA concurrence. Additionally, approximately 81 pipeline ROWs await issuance by the BIA. Of the 81 pending ROWs, 11 were approved in Tribal Council resolutions adopted in 2006, 44 were approved in Tribal Council resolutions adopted in 2007, 22 were approved in Tribal Council resolutions adopted in 2008, and 4 were approved in Tribal Council resolutions adopted in 2009. Attached please find a table identifying those pending projects. It should be emphasized that in each instance these pending transactions have already undergone environmental reviews by the Tribe's Natural Resource Department pursuant to the Tribe's 638 contract with the BIA as well as review by the Tribe's Energy Department.

Had these APDs and ROWs been approved, the Tribe would have received revenue in a number of different ways, including: (i) surface damage compensation; (ii) grant-of-permission fees; (iii) severance taxes; (iv) royalties; (v) Red Willow Production Company working interest income; and (vi) Red Cedar Gathering Company gathering and treating fees. We estimate that lost revenue attributable to severance taxes and royalties alone exceeds $94,813,739. Significantly, during the period of delay, prices for

natural gas rose to an historic high, but have now declined to approximately one-third of that market value. Thus, much of this money will never be recovered by the Tribe.

One example of these delays involves the Samson South Ignacio Pipeline Project, which was introduced to the Tribe and the BIA in June of 2006. It is our understanding that Samson has complied with all BIA requirements, yet BIA continues to resist issuance of the ROWs. We estimate that the Tribe is losing royalties on this project at the rate of approximately $300,000 per month.

We find this situation to be both shocking and unacceptable. We recognize that the BIA is confronted with difficult budgetary challenges, but the members of the Southern Ute Indian Tribe should not have to bear multi-million dollar losses attributable to BIA inaction. We urge you to take immediate steps to rectify the current situation.

Respectfully submitted,

Matthew J. Box, Chairman
Southern Ute Indian Tribe

xc: Secretary Ken Salazar
Senator Mark Udall
Senator Michael Bennet
Congressman John Salazar

# SOUTHERN UTE INDIAN TRIBE

February 8, 2007

Ross Denny, Superintendent
Bureau of Indian Affairs
Southern Ute Agency
P.O. Box 315
Ignacio, CO 81137

Larry Morrin, Regional Director
Bureau of Indian Affairs
Southwest Regional Office
P.O. Box 26567
Albuquerque, NM 87125-6567

Lynn A. Johnson, Regional Solicitor
U.S. Department of the Interior
Office of the Solicitor, Southwest Region
505 Marquette Ave., NW Suite 1800
Albuquerque, NM 87102

W. Patrick Ragsdale, Director
Bureau of Indian Affairs
1849 C Street, NW, Mail Stop 4141
Washington, D.C. 20240

Re: Southern Ute Indian Tribe trust land applications

Dear Messrs. Denny, Ragsdale, and Morrin, and Ms. Johnson:

I am writing on behalf of the Southern Ute Indian Tribe to express concern regarding several of the Tribe's applications to transfer fee land into trust currently pending before the BIA at the Agency or Regional level. Fifteen of the twenty pending applications were submitted more than eight years ago and the remaining five were all submitted at least three years ago. A list of the pending applications providing the property names, Southern Ute Indian Tribal Council resolution numbers, the status of the applications as we understand them, and the number of years since the applications were submitted is attached to this letter.

Nine of the twenty properties are blocked at the preliminary title opinion phase of the process. The Tribe does not understand the excessive delay in performing the first steps of the review process. You may be aware that, in July 2006, the Government Accountability Office (GAO) issued a report on its study of delays in BIA processing of land into trust applications across the country. Of the regions it measured, the longest median processing time it found was 6.1 years. Yet, the Tribe's applications alone show a median processing time of well over 10 years with the result that 0 out of 20 have been completed.

The 2006 GAO report shows increasing congressional interest in the delay problem, and the Department of the Interior and the BIA have begun a rulemaking to impose a 120-day timeline on trust application processing. The Tribe intends to participate in legislative and administrative meetings and requests for comments to express its desire to have its applications completed in a timely fashion. The Tribe understands and appreciates the difficulties attendant on inadequate

budgets and chronically short resources, as well as the bureaucratic complexities of multi-step reviews such as this one. Neither Congress nor the BIA has provided adequate guidance for review of applications. Nonetheless, the delays the Tribe has experienced are unacceptable and appear to be disproportionate to the activities in other BIA regions.

Additionally, pursuant to a Taxation Compact among the Tribe, State of Colorado, and La Plata County, Colorado, the Tribe makes a payment in lieu of taxes (PILT), to the County for land the Tribe owns in fee status. Once the Tribe's fee property is transferred into trust, no PILT payment is owed. Delay in BIA processing of the Tribe's transfer applications, therefore, is causing the Tribe to incur continuing PILT payment obligations.

The Tribe places a priority on transfer of its fee lands into trust in order to realize the advantages that the trust status affords. The Tribe is unable to realize these benefits if its completed application packets are not processed in a timely manner. We request that the Agency and the Southwest Region take the necessary steps to complete review of the pending trust applications by the Tribe as soon as possible. Please let me know if my office or the Tribe's Lands Division can be of assistance in any way.

Sincerely,

Clement J. Frost

Clement J. Frost, Chairman
Southern Ute Indian Tribe

Attachment

cc: Senator Ken Salazar
Senator Wayne Allard
Representative John Salazar
James Formea, Director, Southern Ute Department of Natural Resources
~~Byron Frost, Southern Ute Lands Division Head~~
Sam W. Maynes, Esq.
Monte Mills, Director, Southern Ute Legal Department
Christine Arbogast, Kogovsek & Associates

**The Southern Ute Indian Tribe's Pending Transfer Requests**

| | Popular name | Resolution | Status | Years since request |
|---|---|---|---|---|
| 1. | B. Espinosa | No. 95-76 | Preliminary title opinion requirements are being addressed. | 11 |
| 2. | Cox | No. 96-236 | Preliminary title opinion requirements are being addressed. | 10 |
| 3. | Herrera | No. 96-236 | Preliminary title opinion requirements are being addressed. | 10 |
| 4. | Hutchinson #1 | No. 96-236 | Final title opinion has been requested. | 10 |
| 5. | Hutchinson #2 | No. 96-236 | Final title opinion has been requested. | 10 |
| 6. | Four Corners Industries | No. 96-236 | Final title opinion has been requested. | 10 |
| 7. | Wilcox | No. 96-236 | Final title opinion has been requested. | 10 |
| 8. | Red | No. 96-236 | Final title opinion has been requested. | 10 |
| 9. | Samford/Atencio #1 | No. 97-15 | Preliminary title opinion requirements are being addressed. | 9 |
| 10. | Samford/Atencio #2 | No. 97-15 | Preliminary title opinion requirements are being addressed. | 9 |
| 11. | Samford/Atencio #3 | No. 97-15 | Preliminary title opinion requirements are being addressed. | 9 |
| 12. | Bondad Compressor Station | No. 97-124 | Final title opinion has been requested. | 9 |

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|---|---|---|---|---|
| 13. | Espinosa Brothers | No. 98-160 | Preliminary title opinion not yet requested. | 8 |
| 14. | Young | No. 98-162 | Final title opinion has been requested. | 8 |
| 15. | Hubbard | No. 98-161 | Final title opinion has been requested. | 8 |
| 16. | Sheehan | No. 02-08 | Preliminary title opinion not yet requested. | 4 |
| 17. | Burnell #1 | No. 03-26 | Preliminary title opinion not yet requested. | 3 |
| 18. | Burnell #2 | No. 03-26 | Preliminary title opinion not yet requested. | 3 |
| 19. | Lee Campbell | No. 03-26 | Preliminary title opinion not yet requested. | 3 |
| 20. | Serafin | No. 03-27 | Preliminary title opinion not yet requested. | 3 |

PREPARED STATEMENT OF HON. MICHAEL FINLEY, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Good afternoon Chairman Dorgan, Vice Chairman Barrasso, and members of the Committee. My name is Michael Finley and I am the Chairman of the Colville Business Council, the governing body of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or "Tribe"). I appreciate this opportunity to provide written testimony on Department of the Interior backlogs.

My written statement will focus on three issues that have contributed to backlogs and have greatly hindered the ability of the Colville Tribes and other tribes, both in the Northwest Region and nationally, to have land taken into trust: (1) the overly restrictive requirements associated with preparation of environmental site assessments; (2) unnecessary and burdensome BIA region-specific policies that make the fee-to-trust process more expensive; and (3) funding. We also provide some recommendations on how these problems can be alleviated. Collectively, these issues have contributed to a backlog at the Colville Agency of nearly 100 parcels of tribally owned land that have yet to be taken into trust.

The Colville Indian Reservation encompasses approximately 2,275 square miles and is in north-central Washington State. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of 12 aboriginal tribes and bands from all across eastern Washington. The Colville Tribe has nearly 9,300 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the Tribe's members live on or near the Colville Reservation. Like many land-based Indian tribes, the Colville Tribe is continually seeking to restore its land base by purchasing fee properties within the boundaries of its reservation and having these properties acquired in trust.

**Environmental Site Assessments in the Fee-to-Trust Process**

One of the requirements for fee-to-trust applications is the preparation of a Phase I Environmental Site Assessment (ESA). The federal Superfund law, the Comprehensive Environmental Response, Compensation and Liability Act (CERLCA), establishes a liability scheme for determining who can be held accountable for releases of hazardous substances on real property. CERCLA provides for an "innocent landowner" defense to liability if a landowner conducts due diligence prior to obtaining real property. Preparation of an ESA allows a landowner to take advantage of this defense by assessing the prior uses, ownership, and conditions on a given parcel of land.

In 2005, the Environmental Protection Agency (EPA) promulgated new regulations for how ESAs are prepared. *See* 40 C.F.R. Part 312. Among other things, the 2005 regulations created a new requirement that specific elements of ESAs must be prepared, or updated, within 180 days of the date of acquisition. Prior to the 2005 rule, ESAs were valid for up to 12 months with the possibility of exceptions for longer periods for property located in adverse climatic or geographical areas. *See* 602 DM 2. The 2005 regulations also created new, more stringent educational and professional qualifications for individuals who can prepare ESAs. Prior to 2005, the BIA determined whether an individual was qualified. It is unclear whether or to what extent the BIA was involved in the promulgation of this rule.

The 2005 EPA rule has brought nearly all of the fee-to-trust activity at the Colville Agency to a standstill. Not only are the Colville Tribes and other tribes expected to pay for the preparation of ESAs, this expense is often multiplied because the ESAs expire and must be updated (at additional expense) for reasons wholly outside the tribes' control. To make matters worse, and as discussed below, the Colville Tribes and all other tribes within the NW Region are prohibited from using their own employees to prepare ESAs because of a conflict of interest policy specific to the Northwest Regional office that prohibits tribal members from preparing ESAs for their own tribes.

In short, the current regime for preparing ESAs for Indian trust land acquisitions is unduly burdensome and accommodations must be made to allow the fee trust process to proceed as quickly as possible and with the least expense on tribes. Because of the expense involved and the prospect for expiration of the ESAs, the Colville Agency has not—apart from fractionated interests for which ESAs are not required—had a single fee-to-trust application approved since the EPA rule became effective in 2005.

**Obstacles Imposed by BIA Regional Offices Contribute to Backlogs**

Another aspect of the fee-to-trust process that contributes to backlogs are fee-to-trust requirements that are unilaterally imposed by individual BIA Regional offices. These policies, which affect those tribes located within the respective region, are often longstanding practices that may or may not have been reduced to writing or subjected to review by the BIA's central office. Often, these policies are "just they way they have always done things" but are, for practical purposes, very difficult to rescind once institutionalized at the regional office level.

The Colville Tribe is served by the BIA's Northwest Regional Office in Portland, Oregon. The Northwest Region covers all tribes in Washington, Oregon, Idaho, and some tribes in Alaska and Montana. By way of example, the Northwest Region has in effect two policies that impose additional burdens on the fee-to-trust process:

A. *Conflict of Interest Policy for ESAs:* Separate and apart from the 2005 EPA Rule, the BIA's Northwest Regional Office adheres to a longstanding policy that it will not accept ESAs prepared by Indian tribes and their employees on tribally owned properties in fee-to-trust applications because tribes "have organizational conflicts of interest" with respect to these actions. The Colville Tribe understands that this policy exists out of the Northwest Regional Office's concern that tribal members have a motivation to conceal potential contaminants in ESAs so as to transfer any burden for cleanup to the United States. Given the large number of tribal members who work for the BIA at their own tribes' agencies, how and why such an outdated policy continues to exist remains a mystery.

B. *Chain of Surveys and Land Description Review Policy:* A December 5, 2007, memorandum from the Northwest Regional Office directed that for *all* fee to trust applications, the tribal or individual applicant must have either the Bureau of Land Management (BLM) or a Certified Federal Land Surveyor prepare (1) a chain of surveys; and then (2) pay to have BLM perform a land description review. The memorandum explicitly states that "[a]ll costs associated with these reviews are the applicant's responsibility." This memorandum was apparently issued because of an isolated instance in which a parcel was taken into trust and it was belatedly discovered that the parcel's legal description contained a discrepancy. The Colville Tribe understands that while the December 5 memorandum by its terms applies to all fee-to-trust applications it is, for practical purposes, intended for fee-to-trust applications that involve parcels located in urban areas or that otherwise have unique or complex circumstances. Against this backdrop, to impose these requirements on all tribal and individual fee-to-trust applications is overly broad and unfair. For the Colville Tribes and other tribes in the Northwest Region that only seek to consolidate their tribal land

bases, compliance with this policy is nothing more than an added and unnecessary expense.

These are but two examples of outdated or burdensome policies that one BIA region has in place that affect tribes in that region. There are likely countless other such policies scattered throughout the other BIA regional offices.

**Funding**

Finally, the Colville Tribe notes that in previous years funding was available for Indian tribes, at least in the Northwest Region, to conduct ESAs, cadastral surveys, and other required elements of the fee-to-trust process. This funding has largely disappeared as budgets for trust programs were cut in the last Administration. The Tribe is hopeful that the Administration will ensure that future budget requests include increases for trust programs. That Indian tribes such as the Colville Tribes are now being forced to use tribal funds for functions that were either formerly performed by the BIA or for which funding was previously made available is not, in our view, consistent with the United States' trust responsibility.

**Recommendations**

The Colville Tribe has asked the BIA to immediately rescind both of the Northwest Region policies described above and understands that the BIA is currently reviewing them. For the conflict of interest policy and the preparation of ESAs generally, the Tribe has suggested to the BIA that a more reasonable approach would be to allow tribal members, after undergoing a certification or training program provided by the BIA, to conduct ESAs for parcels that have not been used for commercial purposes. The Affiliated Tribes of Northwest Indians and the National Congress of American Indians have both enacted resolutions at their respective 2009 annual conferences that support these recommendations. The Colville Tribe is hopeful that such a program can be implemented.

The Colville Tribe believes it is imperative that the Department conduct a thorough review of all policies enacted by BIA regional offices to identify those policies that are outdated, unnecessary, or not required by the fee-to-trust regulations. After the policies are identified, the BIA's political leadership must be willing to rescind those policies, even if it means doing so over the objections of the respective regional directors.

The Colville Tribe appreciates the opportunity the submit this statement for the record. If you or your staff have any questions or would like additional information, please feel free to contact me.

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