

The Confederated Tribes of the Grand Ronde Community of Oregon

Tribal Council
Phone (503) 879-2301
1-800-422-0232
Fax (503) 879-5964

9615 Grand Ronde Rd
Grand Ronde, OR 97347

June 11, 2018

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

via email to consultation@bia.gov

Re: Proposed Revisions to 25 CFR §151.11 and §151.12

Dear Mr. Tahsuda:

On behalf of The Confederated Tribes of the Grand Ronde Community of Oregon (“Grand Ronde” or “Tribe”), thank you for the opportunity to comment on the potential revisions to the trust acquisition regulations at 25 C.F.R. Part 151. We write today to express Grand Ronde’s concerns with the proposed revisions.

Tribal History and Overview

From time immemorial, the tribes and bands of Grand Ronde have lived in and maintained connections to their ancestral homelands. These homelands span over 14 million acres of western Oregon, southwest Washington, and northern California. Tribal people lived off their homelands’ resources and managed them, gathering nutritious plant materials such as camas bulbs and oak acorns, hunting game such as deer and elk, fishing for salmon, lamprey and other species, and visiting sacred places regularly. Tribal people traded with other tribes and bands throughout the Pacific Northwest for items that were not readily available in their homelands; in the late 18th century, they would begin to engage in similar trade with Europeans and Euro-Americans. By the 1820s, they were considered vital partners in the expanding European fur trade.

Along with trade items, Europeans and Euro-Americans brought contagious diseases to the Tribal people, whose immune systems were not accustomed to these foreign contagions. Most of the Tribe’s antecedent tribes and bands were decimated by outbreaks of measles, smallpox, malaria and other diseases. Many ancient villages were emptied as some bands experienced mortality rates of 98% or more and found it necessary to become part of a larger, neighboring band. The native population of western Oregon and southwest Washington was reduced to a fraction of its pre-contact levels.

It was at this time, around the late 1840s and early 1850s that the largest waves of Euro-American settlers came pouring into Tribal homelands. Pressure from the incoming settlers, much of it violent, coupled with the U.S. government’s desire to settle as much land as quickly as possible, led to the signing of many treaties between the tribes and bands that now make up

Umpqua Molalla Rogue River Kalapuya Chasta

Grand Ronde and the U.S. in western Oregon between 1850 and 1855. Of these treaties, seven were ratified by Congress and became the law of the land. Unlike the treaties that were made east of the Cascades, these seven treaties did not create a reservation for the tribes and bands that signed them. One of them does make reference to a reservation at the headwaters of the Yamhill River, and it was here (the Grand Ronde Indian Reservation) that the Tribal people were forcibly removed from their homelands starting in 1856, in what is known within the community as the Trail of Tears. The Grand Ronde Indian Reservation was officially established by President Buchanan's Executive Order on June 30, 1857, and consisted of approximately 60,000 acres, a drastic reduction from the 14 million acres of Tribal homelands.

Life on the early Grand Ronde Indian Reservation was not easy for Tribal people. They had widely varying cultures, and had no common tongue except for their trade language (Chinook Jargon), which they had to rely on for communication. Out of this evolved Chinuk Wawa, a fully developed language of the Grand Ronde community. At Grand Ronde, the Tribal people elected their Tribal chiefs and tried to make a living farming, logging, working as hired seasonal laborers at settlers' farms, or as tradespeople.

In 1934, under the Indian Reorganization Act ("IRA"), the tribes and bands on the Reservation were incorporated as The Confederated Tribes of the Grand Ronde Community of Oregon. Unfortunately, events such as the passage of the Dawes Act, the subsequent sale of Reservation allotments to non-Indians, and the declaration of certain Tribally-owned parcels as "surplus" by the U.S., followed by their sale at auction, further diminished the Tribe's land ownership in the first half of the 20th century.

In 1954, with the passage of the Western Oregon Termination Act, the Tribe's federal recognition was terminated by Congress and Grand Ronde lost both its federal recognition and remaining lands. Termination severed the relationship between the U.S. and the Tribe, and Tribal members lost all federal services. This devastated the Tribal people, many of whom referred to it as their second Trail of Tears, and a large number of Tribal members moved away from the Reservation to places such as Portland, Salem, and Eugene to find work.

After termination, Tribal members and the Tribal government worked tirelessly to rebuild the Grand Ronde community. In 1983, these efforts resulted in the Grand Ronde Restoration Act, followed by the Grand Ronde Reservation Act in 1988, which restored 9,811 acres of the Tribe's original 60,000+ acre reservation to the Grand Ronde people. As the restored 9,811 acre reservation was primarily forestland, the Tribe began to purchase additional lands throughout the area in an effort to recover lands that were lost and provide the Tribe a land base to re-establish governance of an on-Reservation Tribal member population. Many Tribal members who had been displaced by the allotment and termination eras returned to the Reservation, and more return each year. In response, the Tribal government has focused on acquiring more Reservation land, developing housing communities, and expanding jobs and services on the Reservation to meet the needs of its members. The Tribe also advanced its sovereignty by acquiring additional parcels, including parcels that are key in preserving the Tribe's cultural and natural resources. The protection and conservation of these resources and the lands on which they are located are cornerstones in the Tribe's self-determination efforts to sustain and reclaim its cultural heritage.

Today, the Tribe owns a total of 15,077.72 acres of land throughout its homelands. The Tribe's restored Reservation is located within the original Grand Ronde Reservation and consists of 11,636.97 acres. Of the Reservation land, 10,722.65 acres are forested timberland and the remaining 914.32 acres accommodate the Tribe's headquarters, housing projects, cultural center, casino complex, and supporting infrastructure. The Tribe has a need to acquire more land in furtherance of its self-determination, to reclaim lost homelands and protect resources, and to continue in consolidating ownership and jurisdiction over its lands.

Because terminated and restored tribes may not have clearly defined exterior reservation boundaries, the off-reservation fee-to-trust regulations often apply to land acquisitions of original homelands. Many of the Tribe's fee-to-trust acquisitions within the exterior boundaries of its original reservation were considered "off-reservation" and processed through the slower, more expensive, off-reservation regulations. This issue impacted the Tribe so greatly that we sought a legislative solution that took many years to achieve and is only a partial fix; however, many applications to restore homelands still are processed as off-reservation, and any revisions to the regulations governing the fee-to-trust process have the potential to greatly impact Grand Ronde and its efforts to rebuild and restore its Reservation and connections to its homelands.

* * *

On December 6, 2017, the Department of the Interior ("Department") issued a "Dear Tribal Leader" letter asking for consultation on a list of questions. The Tribe provided testimony at the January 25, 2018, listening session in Portland, Oregon. At that time we stated we would also be following up with written comments that more specifically addressed the Department's questions. The following are Grand Ronde's responses to those questions.

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

The IRA shifted federal policy to encourage tribal self-government and prevent further erosion of tribal land bases. The IRA, still in effect today, promotes tribal self-governance and is a means for tribes to secure their land bases. The objective of the land-into-trust program should be to continue to fulfill the mandates and goals of the IRA by prioritizing trust land acquisitions in furtherance of Tribal sovereignty and self-determination. Strong tribal governments with secure land bases are able to improve the social and economic welfare of their members. The Department should be working expeditiously to transfer tribal fee properties into trust.

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

The Tribe's trust and Reservation parcels are dispersed throughout the local area, and this creates a checker board land base – creating challenges for the Tribe to be consistent throughout the community in providing services and asserting jurisdiction. By purchasing additional lands, consolidating its land base, and converting the parcels to trust, the Tribe is able to govern

uniformly throughout the community. Additionally, the Tribe is then able to increase its Tribal member population on the Reservation, along with the opportunities – in both jobs and services – that are available to that population.

Currently, on-reservation fee-to-trust applications are processed pursuant to 25 C.F.R. Part 151.10. These regulations include a range of considerations to be made by the Department in evaluating the application, including need and purpose for the acquisition, impacts to state and local governments, and other factors. Grand Ronde does not believe that there are additional steps or criteria needed in this process.

The effectiveness of the Department in processing applications pursuant to these regulations varies depending on which office processes the application and whether or not there are experienced staff available. Grand Ronde has had its applications processed at the Siletz Agency as well as the Northwest Regional Office in Portland, and has experienced periods of efficiency, but also periods of significant delays due to insufficient staffing and vacant positions. Delays in processing trust acquisitions for governmental and economic development purposes can negatively impact tribes in many ways, and can hinder a tribe's ability to pursue critical projects or economic development opportunities.

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

The restoration of tribal homelands is a core facet of Tribal sovereignty and cultural identity. Recently, through an off-reservation acquisition in the Tribe's homelands, and with the cooperation of the local and federal government agencies, Grand Ronde was able to celebrate the return of property with significant cultural and natural resources, as well as historic significance. Now this property will be protected for generations to come. Grand Ronde is hopeful to have that same success with an application that is currently in the off-reservation fee-to-trust process. This property, also a culturally and historically significant property within Tribal homelands, was donated to the Tribe by a county government for the explicit purpose of restoring it to Tribal ownership through a fee-to-trust conversion. Unfortunately, the application has been held up in Washington, D.C., for months now and we are uncertain when we will receive a decision.

Most fee-to-trust applications are not contentious and are in furtherance of homeland restoration efforts. The Department's evaluation of off-reservation applications should start with the perspective that tribes are restoring their homelands to advance self-determination and sovereignty, often for purposes of protecting cultural and natural resources or restoring connections to historical places of significance. The Department should not assume that an off-reservation application is disfavored or controversial just because it is outside the boundaries of a tribe's reservation. Also, the Department should recognize that terminated and restored tribes without clearly defined exterior reservation boundaries often face the requirement that fee-to-trust applications be processed under the more rigorous off-reservation standard even though the parcels may be located within the boundaries of their original reservations.

The regulations should recognize and support these restoration efforts and approve such applications within established timeframes, and not add unnecessary and burdensome steps under the assumption that the applications are automatically contentious and therefore need to be held to a more rigorous review standard.

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

The current criteria are generally sufficient for application processing. Grand Ronde does believe that along with impacts to state and local governments, the Department should consider whether there are impacted tribes. Grand Ronde also feels that applications for lands that are located outside of a tribe's established homelands should receive greater scrutiny, as should impacts to other tribes that may be affected.

5. *Should different criteria and/or procedures be used in processing off-reservation applications based on:*

a. *Whether the application is for economic development as distinguished from non-economic development purposes (for example Tribal government buildings, or Tribal health care, or Tribal housing)?*

Tribes perform many essential governmental functions and services, including providing health care, housing, education, social services, public safety, and resource protection. Economic development is one of the main ways the Tribe has been able to generate revenue to provide and expand these services. These enterprise ventures are often critical for creating job opportunities for tribal members. Because economic development activities are a tribal governmental function, such activities should not be distinguished from other governmental functions for the purpose of fee-to-trust application processing.

b. *Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?*

Section 20 of the Indian Gaming Regulatory Act ("IGRA") sets out the limited exceptions for which gaming on trust land acquired after 1988 would be allowed, and the Department has adopted regulations (25 C.F.R. Part 292) which contain the regulatory requirements applicable to gaming applications for off-reservation lands acquired in trust after 1988.

IGRA also provides that "[n]othing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust." 25 U.S.C. § 2719(c). Grand Ronde believes that the fee-to-trust regulations at 25 CFR 151.10 and 11 should remain of general applicability, and all gaming-related matters that may arise during the fee-to-trust process should continue to be governed by IGRA and its implementing regulations.

c. *Whether the application involves no change in use?*

If an application involves no change in use and that can be reasonably confirmed, the application should be subject to a less stringent review standard.

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

Grand Ronde is a self-governance tribe and provides a multitude of services such as health care, public safety, environmental services, infrastructure (e.g., roads, water, and sewer), licensing and permitting, and a judiciary on its Reservation and trust lands. The Tribe owns and operates a gaming facility on its Reservation, as well as several other economic enterprises both on- and off-reservation. Grand Ronde regulates business and commerce through its own laws. Through jurisdictional assertion over its Reservation and trust lands, the Tribe addresses its public safety, housing, environmental protection, natural resource regulation, cultural protection, employment rights, taxation and other matters by Tribal ordinances and policies. This would not be possible on lands held in fee. Activities on fee lands are generally subject to local and state jurisdiction and taxation, which interferes with and limits a tribe's ability to self-govern under its own laws and policies.

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

If and when new revisions to the regulations are finalized, an applicant with a pending application should be given the option to choose between utilizing the regulations in place at the time the application was submitted or having their application processed under the revised regulations.

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

The Department's overriding objectives in processing fee-to-trust applications should be to fulfill its trust responsibility to tribes and to carry out the policies of the IRA; therefore, its primary consideration in processing fee-to-trust applications should always be the interest of the applicant tribe in the restoration of its homelands.

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

As discussed above, most off-reservation fee-to-trust applications do not involve economic developments. That said, MOUs and cooperative agreements with local governments are often useful tools when defining roles and responsibilities for neighboring or overlapping jurisdictions, regardless of whether the land acquisition involves an economic development or whether the acquisition is off- or on-reservation. These types of agreements certainly foster government-to-government relationships. While these agreements have the potential to be used to demonstrate

local support for an application, they should not be required in this process. Certainly, many tribes (such as Grand Ronde) provide aid and assistance throughout the localities in which they are located without a formalized agreement. Further, if a requirement to formalize these agreements in writing were to exist, local and state governments would be able to withhold consent to agreements in order to oppose an application. Additionally, if a local government did choose to negotiate a written agreement, it would be able to hold power over the terms as its consent would be required to proceed. Moreover, requiring tribes to complete potentially complex negotiations with local governments would be time consuming, potentially premature, and would likely result in significant delays in the process.

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

In October of 2017, the Department distributed draft revisions to the off-reservation fee-to-trust regulations, and asked for comments on the revised regulations as well as a set of five questions. The Department scheduled three consultation sessions in the month of November. In December of 2017, the Department issued a new “Dear Tribal Leader” letter based on an unfavorable responses from tribes. It appears that the Department has retracted the previously proposed regulations from consideration and is instead only consulting on the ten questions. Grand Ronde supports the retraction of those previously proposed revisions, and encourages the Department to seek satisfactory tribal input prior to proposing any future revisions.

That said, Grand Ronde offers the following general comments with respect to suggestions the Department has raised as part of this process. First, it is well known that the fee-to-trust process is a lengthy, multi-step process that can take years to complete. The addition of any more steps or stages will only add to the time and expense associated with trust conversions. Therefore, we do not support a two stage process which will create additional delays. Second, Grand Ronde believes that the fee-to-trust regulations at 25 C.F.R. 151.10 and 11 should remain of general applicability, and all gaming-related matters that may arise during the fee-to-trust process should be governed by IGRA and its implementing regulations. Third, Grand Ronde strongly objects to the re-insertion of the thirty day appeal process. This is unnecessary, creates additional uncertainty, and is another delay in the conversion. Fourth, the language added at 25 C.F.R. 151.12(e) is unnecessary and could imply the Department may not pursue appeals or other remedies with respect to an unfavorable court decision, which could be in dereliction of its trust responsibility. Finally, the Department should strive to be consistent and clear in the development of criteria and standards, as previous drafts are rife with inconsistency and subjectivity.

Grand Ronde would also like to take this opportunity to offer the following suggestions to improve and streamline the fee-to-trust application process, which can be accomplished short of amending the regulations:

- The Department’s processing of fee-to-trust applications would be improved if there were established timeframes for review. Both the leasing and right-of-way regulations currently set forth a process for tribes to utilize when pending applications

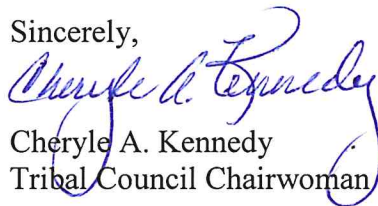
have not been acted on within the set timeframe. There should be a similar process for fee-to-trust applications so that they are not prolonged indefinitely. Additionally, the Department should strive to achieve consistency in processing amongst its various offices. Established review timelines would certainly create more consistency between offices.

- In addition to the regulations at 25 C.F.R. 151.10-12, the Department has used internal criteria and policies applied to the application decision-making process not included in those regulations. The Department should make available those criteria and policies in an easy to access format so that tribes are aware of all standards relevant to the processing of their applications. For example, memos such as the April 2017 directive to have all off-reservation applications sent to the Central Office should be compiled and made available in supplemental fee-to-trust materials. This will aid in transparency and also streamline the process when all parties are aware of the requirements and considerations.

* * *

In conclusion, Grand Ronde feels that though there are some improvements that can be made to increase efficiency and streamline the fee-to-trust application process, these can largely be accomplished without revising the regulations. Should the Department, through this consultation process, identify that there is tribal support for revising the regulations, the Department should develop the revisions in collaboration with tribes.

Sincerely,



Cheryle A. Kennedy
Tribal Council Chairwoman

cc: Jan Reibach, Lands Manager
Rob Greene, Tribal Attorney