EXHIBIT 4
DATE 4/6/11
SB 512

Acquisition of Title to Land Held in Fee or Restricted Fee

Issue Date
May 20, 2008

Issued By:

Department of the Interior
Bureau of Indian Affairs
Division of Real Estate Services
1849 C Street, N.W.
Washington, DC 20240

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1.0 INTRODUCTION

Congress authorizes the Secretary of the Interior (Secretary) to acquire title to land or interests in land on behalf of individual Indians and tribes. The Secretary must process and approve an individual Indian's or tribe's conversion of its privately held title to land (fee) into federally held title to land before the conversion is complete. The United States holds in trust title to the lands or interests in lands for the individual Indian or tribe upon completion of the process and approval.

Congress enacted the Indian Reorganization Act (IRA) [48 Stat. 984, 25 U.S.C. § 461 et seq. (June 18, 1934)] to reverse the steep decline in the economic, cultural and social well-being of Indians caused by federal policies to breakup of reservations through "allotment" and eventual disposal of remaining reservation lands. The IRA authority provides the Secretary with the discretion to acquire in trust title to land or interests in land. Congress may authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

The Secretary bases his or her decision to make a trust acquisition on the evaluation of the criteria set forth in Title 25 Code of Federal Regulations (CFR) Part 151 and any applicable policy. The Secretary does not apply all of the provisions of 25 CFR Part 151 if the law mandates a particular trust acquisition. Examples are the Notice and Comment provision of 25 CFR § 151.10 and the National Environmental Policy Act, 42 U.S.C. Section 431 *et. seq.* Other provisions of the Part 151 regulations do apply to mandatory acquisitions. For example, the Regional Director must publish notice of the decision to take land into trust pursuant to 25 C.F.R. § 151.12(b). Even though NEPA compliance is not required, the Bureau must conduct a contaminant survey on the lands to be acquired, and a title examination must be completed. The Secretary must approve any acquisition "in trust" for an individual Indian or tribe to be legally binding.

This handbook describes Bureau of Indian Affairs (BIA) procedures for the transfer of land in fee to land in trust or restricted status. These procedures include: (1) eligibility for an individual or tribe to request the Secretary to take title in trust; (2) application requirements; (3) processing of an application for a trust acquisition, and (4) criteria used by BIA to evaluate trust acquisition requests.

If there is any conflict with the content of this handbook and any applicable authority, follow the applicable legal authority. For example, if Congress enacts a statute that provides the Secretary with authority to acquire land into trust and sets forth a specific procedure to accomplish the acquisition, follow the prescribed procedure in the statute.

The BIA Office of Trust Services (OTS) will update and maintain the content of this handbook on an annual basis. The annual review will receive input from tribes, individual Indians, and BIA officials; all of whom rely on the procedures described in this handbook. Organizations such as the Intertribal Trust Management Association may collaborate with the OTS to facilitate the annual review and may use existing forums for federal-tribal dialog, such as the Indian Affairs Modernization Initiative. The annual review may address incomplete portions of the handbook and the addition of best practices.

2.0 DEFINITION OF TERMS AND LISTING OF ACRONYMS

Definition of Terms: Terms used in this handbook have specific definitions. Refer to the definitions in 25 CFR Part 151 and the following section for this handbook to determine definitions within the handbook.

Adjacent parcels: See "Contiguous parcels"

Contiguous parcels: Two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way, including parcels that touch at a point. Also referred to as "adjacent parcels."

Discretionary Trust Acquisition: A trust acquisition authorized by Congress that does not require the Secretary to acquire title to any interest in land to be held in trust by the United States on behalf of an individual Indian or a tribe. The Secretary has discretion to accept or deny the request for any such acquisition.

Encumbrance: A limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind.

Fee: A form of ownership status where the person may freely alienate and encumber title without federal approval. Land in trust status or restricted status is not held in fee.

Mandatory Trust Acquisition: A trust acquisition authorized by Congress that requires the Secretary to accept title to land into trust, or hold title to certain lands in trust by the United States, for an individual Indian or tribe. The Secretary does not have the discretion to accept or deny the request to accept title of land into trust. In order for a statute to be considered mandatory, the statutory language must include some restrictions on the Secretary's discretion in addition to the word "shall."

On-reservation: A parcel located within the Indian reservation or has a common boundary with the Indian reservation and meets the definition of contiguous parcel. [See 25 CFR § 151.2(f)];

Off-reservation: A parcel located outside the exterior boundaries of an Indian reservation or does not have a common boundary with the Indian reservation and does not meet the definition of contiguous parcels. [See 25 CFR § 151.2 (f)].

Trust Acquisition: The act or process by which the Secretary acquires title to any interest in land to be held in trust by the United States on behalf of an individual Indian or a tribe.

Undivided Fractional Interest: An ownership interest in property that is held in common with other owners in a non-partitioned parcel of land. (*Example*: If you own an undivided 1/4 interest in 160 acres, you do not own 40 acres. You own 1/4 [shared] interest in the whole 160 acres because your 1/4 interest has not been divided out or partitioned on the land, or from the whole 160 acres.)

List of Acronyms

The following list of acronyms and terms are not all used in this handbook. Some commonly used acronyms used in BIA Real Estate Services are included.

AIPRA	American Indian Probate Reform Act of 2004
ALTA	American Land Title Association
BIA	Bureau of Indian Affairs
BILS	BLM Indian Land Surveyor
BLM	Bureau of Land Management
CAT EX, CAT, or CX	Categorical Exclusion
CFR	Code of Federal Regulations
CC & R	Covenants, Conditions, and Restrictions
DM	Department Manual
DOI	Department of Interior
DOJ	Department of Justice
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Executive Order
ECRM	Environmental Compliance Review Memorandum
ESA	Environmental Site Assessment
FTO	Final Title Opinion
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FTTS	Fee-to-trust Tracking System
HUD	Department of Housing and Urban Development
IAM	Indian Affairs Manual
IBIA	Indian Board of Appeals
ILCO	Indian Land Consolidation Office
IGRA	Indian Gaming Regulatory Act
ILCA	Indian Land Consolidation Act
IRA	Indian Reorganization Act
ITI	Individual/Tribal Interest Report (TAAMS)
ITO	Interim Title Opinion
LRD	Land Description Review (by BILS)
LTRO	Land Titles and Records Office
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MSA	Municipal Service Agreement
NEPA	National Environmental Policy Act
NHPA	National Historical Preservation Act
NOA	Notice of Application
NOD	Notice of Decision
PILT	Payment in Lieu of Taxes
P.L.	Public Law
PTO	Preliminary Title Opinion
ROW	Right-of-way
SOL	Solicitor's Office
SHPO	State Historical Preservation Office
STAT	Statute
THPO	Tribal Historical Preservation Office
TIN	Taxpayer Identification Number
U.S.C.	United States Code
USDA	United States Department of Agriculture
USFWS	United States Fish and Wildlife Service

3.0 GENERAL AUTHORITIES AND POLICY

3.1 Statutory Authorities

The following are the most commonly used statutory authorities for trust acquisitions and include statutory authorities for specific acquisitions for certain tribes. This section does not include an exhaustive list of authorities.

25 U.S.C. § 465, Section 5 of the Indian Reorganization Act (IRA) of 1934: The Secretary is authorized to put land into trust for the benefit of tribes and individual Indians. The Secretary has full discretion in approving trust acquisitions.

25 U.S.C. § 2202, Indian Land Consolidation Act (ILCA) of 1983 as amended: ILCA extends the provisions of Section 5 of the IRA to all tribes.

25 U.S.C. § 501, the Oklahoma Indian Welfare Act of 1936: The Secretary is authorized to make trust acquisitions of lands in the State of Oklahoma for specific purposes. Trust acquisitions under this authority are subject to gross-production tax on oil and gas production by Oklahoma. Since the passage of ILCA, most trust acquisitions in Oklahoma have been approved under the authority of Section 5 of the IRA, which eliminates the gross production tax concern of tribes. The Secretary has discretion in approving trust acquisitions.

25 U.S.C. § 1466, the Indian Revolving Loan Fund: The Secretary is authorized to make trust acquisitions for individual Indians with loans made from the revolving loan fund, unless the land is off-reservation or in an approved tribal land consolidation area. The Secretary has discretion in making such acquisitions.

Specific statutory authorities may reflect the congressional intent for individual tribes or regions. The following list is not any exhaustive list of authorities:

The Isolated Tracts Act, Pub. L. No. 88-196, 77 Stat. 349 (Dec. 11, 1963), amended by Pub. L. No. 91-115, 83 Stat. 190 (Nov. 10, 1969): The Rosebud Sioux Tribe is authorized to mortgage or sell isolated tracts in Tripp, Gregory, and Lyman Counties and acquire land in an approved consolidated area in Todd and Mellette Counties. The Secretary must acquire the land in trust for the tribe. The Secretary is required to taking such land into trust.

25 U.S.C. § 1300j-5 of Act restoring recognition to the Pokagon Band of Potawatomi Indians (Band): The Secretary is authorized to acquire land in trust for the Band. The Act states that any land acquired under this Act shall become part of the Band's reservation. There is an agreement between the Secretary and the Band identifying the terms under which the United States will acquire land for the Band.

25 U.S.C. § 1300h-5 of Act restoring recognition of the Lac Vieux Desert Band of Lake Superior Chippewa Indians: The Keweenaw Bay Indian Community is authorized to convey the lands it held in Gogebic County, Michigan to the United States in trust for the Lac Vieux Desert Band.

Also the Secretary is authorized to acquire other land for Lac Vieux Desert Band under IRA. If the Lac Vieux Desert Band acquires any other lands in trust in Gogebic County, the lands will be part of the Lac Vieux Desert Band's reservation.

25 U.S.C. § 1300k, *et seq.*, of Act restoring the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians: The Secretary is authorized and required to acquire lands for the Little Traverse Band in Emmet and Charlevoix Counties, Michigan under this Act and IRA. The Secretary must acquire the land in trust if at the time of acquisition, there are not adverse legal claims on the property including any outstanding liens, mortgages or taxes owed (25 U.S.C. § 1300k-4(a)). The Secretary is also authorized to acquire land for the Little River Band in Manistee and Mason Counties, Michigan under this Act, subject to the same conditions, and IRA. Lands acquired under this section become part of the Bands' respective reservations.

25 U.S.C. § 903d(c) of the Menominee Restoration Act: The Secretary is authorized and required to accept the transfer of property located in the County of Menominee, but only if transferred by the Menominee owner or owners. The Secretary may accept the property subject to all valid existing rights, including but not limited to liens, outstanding taxes (local, state and Federal), mortgages and any other obligations. The acquired land is made subject to foreclosure or sale according to the terms of any exiting obligations in accordance with Wisconsin law. The Act provides the land will be held in trust for the tribe and be part of the tribe's reservation.

25 U.S.C. § 983b(c) of Ponca Restoration Act: The Secretary is authorized and required to accept not more than 1,500 acres of land in trust for the Ponca Tribe of Nebraska in Knox or Boyd Counties, Nebraska. The Secretary may accept the property subject to any rights, liens, or taxes that exist prior to the date of transfer.

Pub. L. No. 97-459, 96 Stat. 2515 (Jan. 12, 1983): The Secretary is authorized and required to accept any transfer of title from the Devils Lake Sioux Tribe (now known as the Spirit Lake Tribe) or from any individual member of the Tribe, for any interest in land (or improvements on the land) located within the boundaries of the Devils Lake Sioux Reservation. The Secretary is specifically authorized to approve the sale of tribal trust land if additional trust land is acquired at the time of the sale.

The White Earth Land Settlement Act of 1985, Pub. L. 99-263, 100 Stat. 61 (Mar. 24, 1986): A fund is to be established to acquire land. The Secretary is authorized and required to hold any such land in trust.

Pub. L. No. 88-418, 62 Stat. 939 (Aug. 11, 1964). The Cheyenne River Sioux Tribe is authorized to dispose of any real property outside of the Cheyenne River Sioux reservation in Stanley, Haakon, Pennington and Meade Counties, South Dakota and any isolated tracts located within the reservation boundaries. The Secretary is authorized and required to place all funds derived from the sales of such property in a special account in the Treasury and use the funds to purchase real estate property within the boundaries of the reservation. The Secretary is authorized to acquire such real estate property and required to hold such lands in trust.

The Michigan Indian Land Claims Settlement Act, Pub. L. No. 105-143, 111 Stat. 2652 (Dec. 15, 1997): The Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians are authorized to use a portion of the judgment fund for the consolidation and enhancement of tribal landholdings through purchase or exchange. The Secretary is authorized and required to hold any such land for the Bay Mills Indian Community "as Indian lands are held." The Secretary is authorized and required to hold any such land for the Sault Ste. Marie Tribe of Chippewa Indians "as Indian lands are held" and also under Section 108(f) that any lands acquired using any interest or income from the Self-sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe.

3.2 Authority to Issue Decisions

The Secretary has the statutory authority to issue decisions to acquire land in trust for individual Indians or tribes. The Secretary has delegated this authority to the Assistant Secretary of Indian Affairs (AS-IA) through 209 DM 8, who in turn delegated non-gaming acquisitions to the Director of the Bureau of Indian Affairs through 230 DM 1, who in turn delegated the same to the Regional Directors through 3 IAM 4. In some Regions, this authority has been delegated to the Superintendent. Delegations of authority are subject to change and may vary from region to region. Check the current delegation of authority.

3.3 Fee-to-Trust Trust Acquisition

The Secretary may make discretionary trust acquisitions for a tribe when:

1. the property is located on-reservation, as defined in 25 CFR 151.2(f); or within a tribal consolidation area as defined in 25 CFR 151.2(h); or,

2. the tribe already owns an undivided fractional interest in the trust or restricted land;

3. the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing
[See 25 CFR § 151.3 (a) (1) (2) (3)]; 25 U.S.C. § 2216 (c).]

Exception: The Secretary may not make discretionary trust acquisitions in Alaska except for the Metlakatla Indian Community of the Annette Island reserve of Alaska or its members.
[See 25 CFR §151.1]

The Secretary may make discretionary trust acquisitions for an individual Indian when:

1. the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or

2. the land is already in trust or restricted status.

[See 25 CFR § 151.3 (a) (1) – (3), (b) (1) (2)]

4.0 PROCESS AND PROCEDURE

4.1 Overview: Departmental Procedure

Trust acquisitions involve one of the following types of acquisitions:

- Acquisition of fee lands
- Acquisition of an undivided fractional interest owned in fee in trust or restricted lands
- Acquisition of land owned in fee using funds from a sale of trust or restricted land and reinvesting those funds in the purchase of other trust or restricted lands

4.2 Standard Operating Procedure

There are four operating procedures as follows:

- 4.2.1 On-reservation Discretionary Trust Acquisitions (25 CFR § 151.10)
- 4.2.2 Off-reservation Discretionary Trust Acquisitions (25 CFR § 151.11)
- 4.2.3 Mandatory Trust Acquisitions (Policy memorandum April 17, 2002)
- 4.2.4 Reinvestment of Money in Other Lands Discretionary Trust Acquisitions (25 U.S.C. § 409a)

These operating procedures are set out in accordance with 25 CFR 151, policy memoranda and 25 U.S.C. § 409a.

Only the On-reservation Discretionary Trust Acquisition procedure is include in this handbook. The remaining operating procedures are intentionally not included and will be provided at a later date.

4.2.1 Summary of Standard Operating Procedures

A complete description of the standard operating procedures appears later in the Handbook. A summary of each of the four individual departmental procedures and authority for each is as follows:

4.2.1.1 On-reservation Discretionary Trust Acquisitions (25 CFR § 151.10)

This section provides instructions for discretionary trust acquisitions on-reservation.

- A discretionary trust acquisition on-reservation for an individual Indian or tribe is authorized under this part when the parcel is located within an Indian reservation or has a common boundary with the Indian reservation and meets the definition of contiguous parcels and the acquisition is not a mandatory trust acquisition. This section applies to undivided fractional interests as well as full interest in the parcel. **Note:** If there is a question whether the property is contiguous, the Office of the Solicitor (SOL) can be asked to review and concur. If property is clearly adjacent to the exterior boundaries, no SOL analysis is needed

[See 25 CFR 25 § 151.2 (b) "Tribe", CFR § 151.2 (c) "Individual Indian"; 25 CFR § 151.2(f)] "Indian reservation", "25 CFR § 151.3, 25 CFR § 151.10; Section 2 Definition of Terms and Listing of Acronyms: "Discretionary Trust Acquisition"; "Mandatory Trust Acquisition", "On-reservation", "Undivided Fractional Interest."]

4.2.1.2 Off-reservation Discretionary Trust Acquisitions (25 CFR § 151.11)

This section is intentionally not included in this handbook and will be provided at a later date. It will provide instructions for discretionary trust acquisition off-reservation.

A discretionary trust acquisition off-reservation is authorized for a tribe under this part when the parcel is located outside of the exterior boundaries of the Indian reservation or does not have a common boundary with the Indian reservation and does not meet the definition of contiguous parcels and is not a mandatory trust acquisition. Off-reservation acquisitions are not authorized for individual Indians.

[See 25 CFR 25 § 151.2 (b) "Tribe", CFR § 151.2 (c) "Individual Indian"; 25 CFR § 151.2(f)] "Indian reservation", "25 CFR § 151.3, 25 CFR § 151.11; Section 2 Definition of Terms and Listing of Acronyms: "Discretionary Trust Acquisition"; "Mandatory Trust Acquisition", "Off-reservation."]

4.2.1.3 Mandatory Trust Acquisitions (Policy memorandum April 17, 2002)

This section is not currently included in this handbook and will be provided at a later date. It will provide instructions for mandatory trust acquisitions on-reservation and off-reservation.

The Secretary is authorized and required to make a mandatory trust acquisition for the designated individual Indian or tribe in a specific statute enacted by Congress. In order for a statute to be considered mandatory, the statutory language must include some restrictions on the Secretary's discretion in addition to the word "shall." The Office of the Solicitor will review and concur on a case-by-case basis if BIA should process the trust acquisition as a mandatory trust acquisition.

[See Policy Memorandum April 17, 2002; Section 2 Definition of Terms and Listing of Acronyms: "Mandatory Trust Acquisition", "Off-reservation", "On-reservation", "Trust Acquisition"; Section 3.4 General Authorities and Policies.]

4.2.1.4 Reinvestment of Money in Other Lands Discretionary Trust Acquisitions (25 U.S.C. § 409a)

This section is not currently provided in this handbook and will be provided at a later date. It will provide instructions on discretionary trust acquisitions where the sale of trust or restricted land is reinvested in other trust or restricted lands.

An individual Indian may use the proceeds from a sale of trust or restricted land for reinvestment in other lands selected by the individual Indian. The lands may be on-reservation or off-reservation. In certain circumstances some restrictions apply. The Secretary may make a discretionary trust acquisition of such lands and such land shall be trust or restricted status and upon the same terms of the trust or restricted land from which the reinvested monies were derived.

[See 25 U.S.C. § 409a, 25 CFR § 151. 25 CFR 25 § 151.2 (b) "Tribe", CFR § 151.2 (c) "Individual Indian"; 25 CFR § 151.2(d) "Trust land or land in trust status", 25 CFR § 151.2(e), "restricted land or land in restricted status", 25 CFR § 151.2(f), "Indian reservation", 25 CFR § 151.2(g) "Land"; Section 2 Definition of Terms and Listing of Acronyms: "Discretionary Trust Acquisition"; "Mandatory Trust Acquisition", "Off- reservation", "On-reservation", "Undivided fractional interest"]

4.2.2. Selecting the Correct Standard Operating Procedure

To identify which operating procedure applies, you must review the submitted documentation and determine the following:

1. Is the applicant a tribe or individual Indian as defined in 25 CFR § 151.2?
2. Is there legal authority for the requested acquisition?
3. Is this a mandatory or discretionary trust acquisition?
4. Is the requested parcel on-reservation or off-reservation? If there is a question whether the property is contiguous, The Office of the Solicitor (SOL) can be asked to review and concur. If property is clearly adjacent to the exterior boundaries, no SOL analysis is needed
5. Are monies for the acquisition from the sale of other trust or restricted land?

Based upon the answers to these questions, select the operating procedure to follow:

Question	If...	Applicable Operating Procedure
Is the Applicant a tribe?	Yes	▪ On-reservation Discretionary Trust Acquisitions ▪ Off-reservation Discretionary Trust Acquisition ▪ Mandatory Acquisitions
	No	An organization must quality as a tribe as defined in 25 CFR § 151.2(b) before any of the operating procedures are available
Is the Applicant an individual Indian?	Yes	▪ On-reservation Discretionary Trust Acquisitions ▪ Mandatory Acquisition ▪ Reinvestment of Money in Other Land Discretionary Trust Acquisitions

Question	If...	Applicable Operating Procedure
	No	An individual must be an individual Indian as defined in 25 CFR § 151.2(c) before any of the operating procedures are available
Is there a legal authority for the request acquisition?	Yes	Congress gives authority for trust acquisitions to the Secretary. See Section 3.0 General Authorities and Policy for list of authorities in this handbook. See definitions for "Discretionary Trust Acquisition", "Mandatory Trust Acquisition", "On-reservation." "Off-reservation" and "Undivided Fractional Interest."
	No	None. The Secretary cannot acquire property in trust or restricted status unless authorized by Congress.
Is the request a mandatory trust acquisition?	Yes	Mandatory Trust Acquisitions
	No	▪ On-reservation Discretionary Trust Acquisitions ▪ Off-reservation Discretionary Trust Acquisition ▪ Reinvestment of Money in Other Land Discretionary Trust Acquisitions
Is the requested parcel on-reservation?	Yes	▪ On-reservation Discretionary Trust Acquisitions ▪ Mandatory Acquisition ▪ Reinvestment of Money in Other Land Discretionary Trust Acquisitions
	No	▪ Off-reservation Discretionary Trust Acquisitions
Is the requested parcel off-reservation?	Yes	▪ Off-reservation Discretionary Trust Acquisition ▪ Mandatory Trust Acquisitions ▪ Reinvestment of Money in Other Land Discretionary Trust Acquisitions of Fractional
	No	▪ See "on-reservation" above
Are monies for the acquisition from the sale of another trust or restricted land?	Yes	▪ Reinvestment of Money in Other Land
	No	▪ On-reservation Discretionary Trust Acquisitions ▪ Off-reservation Discretionary Trust ▪ Mandatory Trust Acquisitions

4.2.3. Step Sequence:

While steps within each operating procedures are number sequentially, you may proceed concurrently on other steps or may repeat certain steps until the operating procedure is completed. The following is a list of the steps and any prerequisite, permissible concurrent steps, discretion in use of step and ability to repeat step as needed.

4.2.3.1 On-reservation Discretionary Trust Acquisitions (25 CFR § 151.10)

Before proceeding with the steps of this process, determine if the On-reservation Discretionary Trust Acquisition operating procedure is the appropriate procedure. See Section 4.2.2, Selecting the Correct Standard Operating Procedure.

Step 1: BIA Review of Written Request or Application

There are no prerequisites to this step. There are no concurrent steps. This step is required and may be repeated.

Step 2: Encode Fee-to-trust Tracking System

You must complete this step at each and every step throughout the process. You must maintain current, complete and accurate information in the Fee-to-Trust System. This step is required.

Step 3: Responding to an Incomplete Written Request or Application

You must complete Steps 1 "BIA Review of Written Application" and 2 "Encode Fee-to-Trust Tracking System" before proceeding to this step. You may repeat this step throughout the procedure when you determine that the application is incomplete or the applicant must take action to complete the procedure.

Step 4: Conducting Site Inspection and Completing Initial Certificate of Inspection

You must complete Steps 1 "BIA Review of Written Application", 2 "Encode Fee-to-Trust System" and 3 "Responding to an Incomplete Written Request or Application" before this step. You may concurrently take Steps 6 "Environmental Compliance Review", 8 "Preparing the Preliminary Title Opinion (PTO)" and 9 "Clearance of PTO Objections before Notice of Decision". This step is required.

Step 5: Preparing Notice of Application

You must complete Steps 1 "BIA Review of Written Application", 2 "Encode Fee-to-Trust System", 3 "Responding to an Incomplete Written Request or Application", 4 "Conducting Site Inspection and Completing Initial Certificate of Inspection" and 8 "Preparing the Preliminary Title Opinion (PTO)" before proceeding with this step. You must determine also if the transfer involves an undivided fractional interest in an on-reservation parcel with exiting trust interests as of November 7, 2000. You may proceed concurrently with Steps 6 "Environmental Compliance

review" and 9 "Clearance of PTO Objections before the Notice of Decision". Step 5 is a required step.

Step 6: Environmental Compliance Review

You must complete Steps 1"BIA Review of Written Application", 2 "Encode Fee-to-Trust System", 3 "Responding to an Incomplete Written Request or Application)" and 4 "Conducting Site Inspection and Completing Initial Certificate of Inspection" before proceeding with this step. You may concurrently proceed with Steps 8 "Preparing the Preliminary Title Opinion (PTO)" and 9 "Clearance of PTO Objections before Notice of Decision". This step is required. The contaminant survey is valid for only 6 months, and must be valid at the time of conveyance.

Step 7: Comments to Notice of Application

You must complete Step 5 "Preparing Notice of Application" before proceeding with this step. You may concurrently proceed with Steps 6 "Environmental Compliance Review" and 9 "Clearance of PTO Objections before the Notice of Decision". This is a required step.

Step 8: Preparing the Preliminary Title Opinion (PTO)

You must complete Steps 1 "BIA Review of Written Request or Application", 2 "Encode Fee-to-Trust System", 3 "Responding to an Incomplete Written Request or Application" and 4 "Conducting Site Inspection and Completing Initial Certificate of Inspection" before proceeding with this step. You may concurrently proceed with Step 6 "Environmental Compliance Review". This step is required.

Step 9: Clearance of PTO Objections before Notice of Decision

You must complete Steps 8 "Preparing the Preliminary Title Opinion (PTO)" and 4 "Conducting Site Inspection and Completing Initial Certificate of Inspection" before proceeding with this step. You may concurrently proceed with Steps 6 "Environmental Compliance Review", 5 "Preparing Notice of Application", and 7 "Comments to Notice of Application". You may also use Step 3 "Responding to and Incomplete Written Request or Application" to request the applicant to correct objections. This step is required and maybe repeated.

Step 10: Preparing Analysis and Notice of Decision

You must consider any extension granted to the applicant to provide responses to the comments from the state and local governments before proceeding with this step. You must complete Steps 6 "Environmental Compliance Review", 7 "Comments on Notice of Application", 8 'Preparing the Preliminary Title Opinion", and 9 "Clearance of PTO Objections before Notice of Decision" before proceeding with this step. This step is required.

Step 11: Preparing the Publication Notice

You must complete Step 10 "Preparing Analysis and Publication Notice" before proceeding with this step. You may concurrently proceed with Step 12 "Prepare Final Certificate of Inspection and Possession". This step is required.

Step 12: Preparing Final Certificate of Inspection and Possession

You may proceed with this step concurrently with Step 11"Preparing the Publication Notice". This step is required. No more than 180 days must pass between completing this step and completion of Step 13 "Acceptance of Conveyance". This step is required.

Step 13: Acceptance of Conveyance

You must complete Steps 11 "Preparing the Publication Notice" and 12 "Preparing Final Certificate of Inspection and Possession" before proceeding with this step. No more than 180 days must pass between completing Step 12 "Preparing Final Certificate of Inspection and Possession" and this step. This step is required.

Step 14: Final Title Opinion and Recordation

You must complete Steps 9 "Clearance of PTO Objections before Notice of Decision" and 13 "Acceptance of Conveyance" before proceeding with this step. This step is required.

Step 15: Recording at Land Titles and Records Office

You must complete Step 14 "Final Title Opinion and Recordation" before proceeding with this step. This step is required.

Step 16: Completed Application Package

You must complete Step 15 "Recording at Land Titles and Records Office" before proceeding with this step. This step is required.

4.2.3.2: Off-reservation Discretionary Trust Acquisition (25 CFR § 151.11: This section is intentionally not included and will be provided at a later date.

4.2.3.3: Mandatory Trust Acquisition (Policy Memorandum April 17, 2002): This section is intentionally not included and will be provided at a later date.

4.2.3.4: Reinvestment of Money in Other Lands Discretionary Trust Acquisition (25 U.S.C. § 409a): This section is intentionally not included and will be provided at a later date.

4.2.1.1
On-Reservation Discretionary Trust Acquisitions

ON-RESERVATION DISCRETIONARY TRUST ACQUISITIONS

Purpose

While the Secretary has the discretion in making a trust acquisition, the Secretary's decision must be based upon an evaluation of criteria set forth in 25 CFR Part 151 and other policies. The individual Indian or tribe must provide a written request to commence the application process and other information requested by the Secretary under 25 CFR Part 151 or other applicable statutes and policies. The BIA is committed to working with individual Indians and tribes. "Treat Tribes as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate." (Worcester v. Georgia, 31 U.S. 515 (1932)) The purpose of this section is to provide instructions to BIA personnel on the procedures they are to follow to ensure and assist with compliance with these requirements.

A discretionary trust acquisition on-reservation for an individual Indian or tribe is authorized when the parcel is located within an Indian reservation or has a common boundary with the Indian reservation and meets the definition of contiguous parcels and the acquisition is not a mandatory trust acquisition.

[See 25 CFR 25 § 151.2 (b) "Tribe", CFR § 151.2 (c) "Individual Indian"; 25 CFR § 151.2(f)] "Indian reservation", "25 CFR § 151.3, Land Acquisition Policy, 25 CFR § 151.10, On-reservation acquisitions"; Section 2, Definition of Terms and Listing of Acronyms: "Discretionary Trust Acquisition"; "Mandatory trust Acquisition", "On-reservation."]

Scope

This section of the handbook contains procedures for discretionary trust acquisitions on-reservation for individual Indians and tribes. This section applies to undivided fractional interest and full interests. This section of the handbook does not contain procedures for trust-to-trust transfers and trust-to-fee transfers or gaming or gaming related acquisitions.

Procedure

The BIA should commit to working with potential applicants. If requested, a preliminary meeting with the applicant is recommended as soon as is practicable. This provides an opportunity to explain the acquisition process and to clarify criteria and documentation necessary to prepare a complete application.

To assist the applicant in preparing a request, Exhibit 7.1.1 "Frequently Asked Questions on Fee-to-Trust Acquisition Requests," provides guidance on what documentation is necessary for Secretarial review.

Step 1: BIA Review of Written Request or Application

- When you receive a written request from an individual Indian or tribe, check if the written request includes the following:
  - The identity of the person (individual or tribe) submitting the written request
  - The bases for qualifying as an applicant
    Examples: For an individual, a proof of Indian Status as defined in 25 CFR § 151.2(c) (membership enrollment number); and for a tribe, listed as a federally recognized tribe.
  - A description of the land and estate being acquired
    Examples: on-reservation, off-reservation, undivided fractional interest
  - The purpose of the acquisition includes both a category and specific use
    Examples of categories are tribal self-determination, economic development or Indian housing. The applicant must provide a specific use within the category such as "economic development" of a gift shop or an oil refinery.
  - Statutory authority for the acquisition
    Example: 25 U.S.C. § 465, Section 5 of the Indian Reorganization Act (IRA) of 1934
  - Tribal authority for acquisition
    Example: Article and Section of tribe's constitution; specific statute
  - Written consent of tribal government having jurisdiction if the applicant is not an enrolled member of the tribe or tribe having jurisdiction over the reservation where the fee lands are located.
  - Specific language in the written submittal requesting BIA accept title to the land in trust
  - Authorization for tribal officials to execute all relevant documents
  - Example: tribal resolution

- Review the submitted request and supporting documentation to ensure they meet the initial requirements of 25 CFR § 151.10. (See 25 CFR § 151.10.)
- Coordinate an [informal] Legal Description Review request to include a statement whether the BILS does/does not concur with the validity of legal description. The review is intended to verify that the description accurately describes the subject property, and that it is consistent throughout the application documents, such as the tribal resolution, commitment for title insurance, [survey] maps, warranty deeds, etc. (See Section 7.1.3)
- Identify any fatal errors that would result in the immediate failure of the application. Prepare a written notification to applicant of failure to qualify and send certified mail return receipt along with submitted documents. See Section 7.1.4 "Notice of Failure to Qualify for Fee-to-trust Acquisition."
  Examples of fatal errors: the applicant does not qualify as an individual Indian or tribe or the land is located in Canada or Mexico.
- Identify all missing information or documentation that is required, or materials submitted that do not have appropriate signatures, dates or other deficiencies that would prevent a complete review of the application and result in incomplete status. See Step 3 "Responding to an Incomplete Written Request or Application".
- If not already included in the written request and necessary to reach a decision, request the applicant provide the following documentation. If applicant fails to respond, give notice

under Step 3, "Responding to an Incomplete Written Request or Application":

- Any documentation describing efforts taken to resolve identified jurisdictional problems and potential conflicts of land use that may arise as a result of the fee-to-trust acquisition.
- Any signed cooperative agreements relating to the fee-to-trust acquisition. Describe agreements for infrastructure development or services.
  Examples: utilities, fire protection, solid waste disposal
- Agreements that have been negotiated with the State or local government.
  Examples: payment in lieu of taxes, PILT
  Description of those services not required of the state or local government(s) to the property because they are provided by the tribal government.
- A preliminary commitment or a binder of title evidence with a commitment to issue a final title insurance on the ALTA U.S. Policy Form 9/28/91. The proposed insured will be the, "The United States of America in trust for [insert legal name of the applicant – for tribes it is the name as found in the federal register]." The proposed policy coverage must meet the minimum policy amount of title insurance required by the DOJ Title Standards.
- Draft deed in trust to the United States, conforming to local statutory recording requirements and/or-Draft Acceptance of Conveyance.
- Documents in support of all exceptions to coverage of title as set forth in Schedule B of the title evidence, including liens encumbrances and infirmities and documents referred to in the legal description.
  Examples: rights-of-way, leases, mortgages, surveys, deeds, covenants, conditions and restrictions.
- Any additional information or justification considered necessary to reach a decision (See 25 CFR § 151.12).

- If the applicant has requested the transfer of an undivided fractional interest, confirm that parcel contains existing trust or restricted undivided fractional interests by obtaining a title status and tract history reports from the Land Titles and Records Office (LTRO).
  Example: a title status report will provide a description of trust or restricted interests in the parcel. A tract history report will provide the dates of title transaction relating to the interests in the tract. You will be able to determine if the applicant qualifies under 25 U.S.C. § 2216 (c) (November 7, 2000).
- Prepare and send a written acknowledgment of receipt of the request. Include in the transmittal Section 7.1.1 "Information on Fee-to-trust Acquisition Requests." (See: Section 7.1.2 "Sample Acknowledgement Letter" and Section 7.1.1 "Frequently Asked Questions on Fee-to-trust Requests.")

If any of the items listed in Step 1 are missing, include in the written acknowledgment a list of the missing items. See Step 3, "Responding to an Incomplete Written Request or Application"

Step 2: Encode Fee-to-trust Tracking System

- Encode information into the Fee-to-trust Tracking System (FTTS) within three (3) business days of receipt of any written request.

- Update the case information when you receive additional information through completion of the fee-to-trust acquisition process.

Step 3: Responding to an Incomplete Written Request or Application

When a written request or application is determined to be incomplete:

- Prepare a written notice to applicant and include the following information in the notice:
  - A statement that the application is incomplete;
  - Specify what information or documentation was omitted or required and explain why the requested information is necessary;
  - Request the applicant to provide the omitted or required documentation or information to BIA;
- If applicant responds with documentation, review under Step 1 "BIA Review of Written Request or Application".
- Send the written notice and original request and supporting documentation by certified mail return receipt.
- Update FTTS.

Step 4: Conducting Site Inspection and Completing Initial Certificate of Inspection

- Engage a federal employee to conduct the inspection. This step cannot be done by a contractor or an agent of the federal government.
- Confirm that the property is inspected, the initial certificate of inspection and possession is filled out properly (See: Section 7.17 "Certificate and Inspection") and photos of property are attached to exhibit.
- Compare condition and use of property as described in submitted documents and title commitment. Examples of things to check during inspection are:
  - Persons living on the property not shown as record owner(s)
  - Work being done by contractors
  - Change in use other than noted in application
  - Lack of access to property
- Prepare a written notice to applicant advising of any inconsistencies and requesting an explanation and/or correction. Advise applicant that unless the inconsistencies are addressed, applicant may be prohibited from taking land in to trust. (See Department of Justice Title Standards 2001). See Step 3 "Responding to an Incomplete Written Request or Application" for steps in sending notice.
- Update FTTS.

Step 5: Preparing Notice of Application

- Prepare the notice of application. Include the following in the notice (See: Section 7.19 "Sample Notice of Application"):
  - General description of the project
  - Solicit comments on the potential impact of the acquisition regarding regulatory

jurisdiction, real property taxes and special assessments.
  - Advise state and local governments that they have thirty days to submit comments.
  - The notice of application should also include a statement informing the state and local governments to forward the notification on to any of their local sub-districts.
- In addition, the notice of application will include the following information:
  - Maps (Surveys, site plans, Assessor's maps, etc)
  - Copy of 25 CFR Part 151
- Send the notice of application by certified mail return receipt to the State and local governments (this may include tribal governments) having regulatory jurisdiction over the proposed acquisition property and/or any person or entity submitting a written request for notice.
- The notice will inform state and local governments that they have thirty days to submit comments. One 30 day extension may be granted if a written request is received prior to the expiration of the initial comment period.
- Update FTTS

Step 6: Environmental Compliance Review

- Confirm that appropriate draft NEPA, 602 DM 2 and other required environmental documents received either from applicant or BIA contractor are transmitted to the appropriate environmental staff with a cover memorandum requesting environmental compliance review. Also note that there may be site specific environmental report requirements. Examples: 404 Permit and "Take Permit."

Appropriate NEPA and 602 DM2 Requirements for Discretionary Trust Acquisition Operational Procedure

Applicant	% Interest	On/Off Reservation	Requirement	
			NEPA	602DM2
Individual Indian or tribe	Undivided Fractional Interest in parcel containing existing trust or restricted interest	On	yes	yes
Individual Indian or tribe	Undivided Fractional Interest in parcel containing **no** existing trust or restricted interest	On	yes	yes
Individual Indian or tribe	Full (100%)	On	yes	yes

- If you believe an exemption to NEPA or 602 DM 2 applies to an undivided fractional interest in a parcel containing existing trust or restricted interests, coordinate with the Field or Regional Solicitor's office, provide supporting documentation, and request the SOL review

your determination that an exception applies.

- Coordinate compliance activities with the applicant. Examples: Activities may include; review to insure that the information contained in the environmental documents is consistent with the application; participation in public meetings; and any other necessary consultations..
- Coordinate environmental compliance review with environmental staff. Update environmental staff on any changes in application. The environmental staff is responsible for completing the Environmental Compliance Review Memorandum (ECRM). NEPA compliance for every fee-to-trust transaction must be documented by an ECRM (See: Section 7.1.8 "Sample Environmental Compliance Review Memorandum,") The ECRM will document compliance with NEPA, SHPO, USFWS consultation, 602 DM 2 and any other site specific environmental requirements.
- Summarize responses or note no response from applicant. Include the applicant's response in the case file. The applicant's response(s) will be made part of the record for consideration in preparation of the decision analysis.
- If the applicant requests the Secretary to issue a decision on the request, proceed with Step 10, Preparing Analysis and Notice of Decision.
- If a significant amount of time lapses between when the issuance of the notice of application and when BIA is ready to issue the decision on the application under Step 10, request additional updated comments from the applicant.
- Update FTTS.
- Refer to the BIA NEPA Handbook, 59 IAM 3-H (2005) for a more detailed discussion of the BIA responsibilities and requirements under NEPA. The BIA NEPA Handbook will describe information about public review and the timing of a FONSI/ROD and who will sign a FONSI/ROD.

Step 7: Comments to Notice of Application

- Provide a copy of all comments received to the applicant for their written response. Prepare and include a transmittal letter and a notice that the applicant has an opportunity to provide their formal written response to BIA within 30 days (See Section 7.1.10 "Sample Notice of Application Comments to Tribe Letter"). Send the transmittal by certified mail return receipt.
- If the applicant requests an extension in writing within the 30-day response timeframe, confirm whether or not extension should be granted or denied with the approving official.
- Prepare and send notification letter stating whether extension is granted or denied by certified mail return receipt.
- Summarize responses or note no response from applicant. Include the applicant's response in the case file. The applicant's response(s) will be made a part of the record for consideration in preparation of the decision analysis.
- If the applicant requests the Secretary to issue a decision on the request, proceed with Step 10, "Preparing Analysis and Notice of Decision."
- If a significant amount of time lapses between when the issuance of the notice of application and when BIA is ready to issue the decision on the application under Step 10 "Preparing Analysis and Notice of Decision", request additional updated comments from the applicant.
- Update FTTS

Step 8: Preparing the Preliminary Title Opinion (PTO)

- Confirm that you have a title commitment from applicant and copies of all documents referenced or identified in the exceptions to title coverage commitment.
- Submit a written request for a Preliminary Title Opinion (PTO) to the Solicitor's Office. Include the following information/documents:

  - The preliminary commitment or a binder of title evidence with a commitment to issue final title insurance on the ALTA U.S. Policy Form 9/28/91. The proposed insured should state, "The United States of America in trust for [insert legal name of the applicant – for tribes it is the name as found in the federal register]." The proposed policy coverage must meet the minimum policy amount of title insurance required by the DOJ Title Standards.
  - copies of all documents referenced or identified in the exceptions to coverage of title as set forth in Schedule B of the title evidence, including liens encumbrances and infirmities and documents referred to in the legal description.
    Examples: rights-of-way, leases, mortgages, surveys, deeds, covenants, conditions and restrictions.
  - Draft deed in trust to the United States, conforming to local statutory recording requirements and/or-Draft Acceptance of Conveyance.
  - Tribal resolution (Tribal applicants) that includes or provide a written statement signed by authorized representative of the tribe stating which existing encumbrances do not interfere with the tribe's intended land use.
  - Property boundary and location maps
  - An Initial Certificate of Inspection and Possession may be included if appropriate (issues) with the request for PTO. (See DOJ Standards-2001 Part 4 (b))
  - An [informal] Legal Description Review that includes a statement whether or not the BILS concurs as to the validity of the legal description. (See Section 7.1.3, Legal Description Review
- Upon receipt of the Preliminary Title Opinion for the Office of the Solicitor, proceed with Step 9 "Clearance of PTO Objections before Notice of Decision."
- Note: SOL review is for PTO only, not full application.
  Update FTTS

Step 9: Clearance of PTO Objections before Notice of Decision

- Review Preliminary Title Opinion to determine objections that applicant must clear before a decision on the application ("critical title issues").
- Prepare notice to the applicant which includes (See: Section 7.1.11 "Sample Letter Transmitting PTO Requirements to Applicant"):
  - the requirement and instructions on how to clear the objections of the PTO prior to a decision on the application

Examples of instructions on how to clear the objections are:

- ✓ an updated title commitment or endorsement to show that the objections of the PTO have been cleared
- ✓ Restrictive Covenant Acknowledgement: The need for a Restrictive Covenant Acknowledgment form is determined by the Office of the Solicitor on a case-by-case basis and if required, will be reflected in the PTO. This form will be signed by the individual applicant for easements or restrictions, e.g., building setbacks, wetlands, conservation easements, building restrictions, or any covenants. For additional instructions contact the appropriate Solicitor's office. (See: Section 7.1.12 "Sample Restrictive Covenant Form.")

– the exceptions that must be removed from the title commitment or applicant's application may be denied.

- Do **not** send the PTO to the applicant as it is attorney-client privileged information.
- If the applicant requests an extension in writing within the 30-day response timeframe, confirm whether or not extension should be granted or denied with the approving official. Any further extensions must be considered if justified and relevant to the review of the application.
- Prepare and send notification letter stating whether extension is granted or denied by certified mail return receipt.
- If the applicant does not send the responsive information, note failure of applicant to provide requested information in file and proceed with Step 10, "Preparing Analysis and Notice of Decision"
- Send notices to applicant by certified mail return receipt.
- Update FTTS.

Step 10: Preparing Analysis and Notice of Decision

- Prepare a memorandum in support of the Notice of Decision and consider all factors listed in 25 CFR Part 151 and evidence the consideration in the record.
- Include in your memorandum an analysis of all factors in 25 CFR Part 151 to support the Notice of Decision as follows:

– **The existence of statutory authority for the acquisition and any limitations contained in such authority.**

If the tribe has voted to accept the Indian Reorganization Act (IRA) of 1934, Section 5 of the IRA should be used as the authorizing authority for acquiring land into trust. If the tribe is Non-IRA, the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202, extends Section 5 of the IRA to these tribes. Additionally, there are other statutes that provide specific authority to acquire land for individual Indians and tribes. Specific authorities may include other requirements to which we must adhere.

– **The need of the individual Indian or the tribe for additional land.**

The decision notice should give reasonable consideration to why the additional land is needed. Taking additional land into trust may extend tribal jurisdiction so that the

tribe and tribal members may be eligible for certain federal programs. For example, purposes of consolidation, reducing fractionation, Housing Improvement Program (HIP) and Housing and Urban Development funding that may be dependent on the land being in trust status. (Note: Non-taxable status of lands should not be the only justification for need.)

Indians need not be literally landless for the Secretary to acquire land for them under authority of 25 U.S.C. § 465, nor is the Secretary's authority to acquire land limited to agricultural purposes. A tribe need not be suffering financial difficulties to "need" more land. "A financially secure tribe might well need additional land in order to maintain or improve its economic condition if its existing land is already fully developed." Avoyelles Parish, Louisiana, Police Jury v. Eastern Area Director, BIA, 34 IBIA 149, 153 (1999).

- **The purposes for which the land will be used.**

BIA should include in its decision a discussion of the facts that are, or should be, within BIA's knowledge and which have some bearing on the present or future use of the property. The purpose stated in the application should be consistent with the environmental documents and all other documents submitted with the application.

The BIA is not required to consider every speculative use which a property might be used for. The Board has held that mere speculation by a third party that a tribe might, at some future time, attempt to use trust land for gaming purposes does not require BIA to consider gaming as a use of the property in deciding whether to acquire the property in trust. Town of Charlestown, Rhode Island Governor, State of Rhode Island and Providence Plantation v. Eastern Area Director, 35 IBIA 93, 103 (2000).

- **If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by that individual and the degree to which he/she needs assistance in handling their affairs.**

An individual Indian need not be *non compos mentis* to acquire land in trust; however, all the factors of 25 CFR § 151.10 must be properly considered and documented. To document the amount of trust or restricted land owned by the applicant, a TAAMS Individual/Tribal Interest Report (ITI) must be included in the record. The acquisition of trust land for an individual should be considered on a case by case basis.

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

The BIA must consider the loss of taxes actually assessed for the property. Any comments received from the notice of application on taxes from the State and local government should be analyzed and discussed in the decision.

Where the State or local government has collected gross receipts or similar taxes

from current business activities on property proposed for trust acquisition, this information must be considered. The BIA does not have to consider comments that are speculative on future tax loss. City of Eagle Butte, South Dakota v. Aberdeen Area Director, BIA, 33 IBIA 246 (1999).

- **Jurisdictional problems and potential conflicts of land use which may arise.**

BIA is required to consider jurisdictional issues identified in response to the Notice of Application and other relevant comments received. The decision analysis should reference any negotiations and agreements between the applicant and the State or local governments (e.g., fire and other emergency services agreements, utility agreements, etc.). BIA must give reasonable and prudent review of all credible information received or obtained independently; however, the BIA need not consider every speculative use in the decision analysis.

The BIA may also consider in the decision analysis any jurisdictional benefits.

For individual acquisition requests, BIA should consider the conflicts of use with existing tribal and county land use ordinances.

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

BIA will determine if there are any additional responsibilities resulting from the acquisition of the land in trust status. The applicant must explain the anticipated services that they will need from BIA. The decision analysis should evaluate how the proposed acquisition will impact BIA workload. Consideration will be given for the functions performed by the applicant through self-governance compact or 638 contract agreements.

- **The application must include information that will allow for compliance with 516 DM 6, appendix 4, National Environmental Policy Act (NEPA) Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.**

The decision analysis must state that BIA has complied with the National Environmental Policy Act and 602 DM 2, Hazardous Substance Determination. Consideration must include compliance with all other Federal applicable laws, e.g., the Endangered Species Act and the National Historic Preservation Act.

BIA should rely upon the Environmental Compliance Review Memorandum (ECRM) to show compliance with all applicable environmental laws.

- Include a notice that the applicant and all interested parties have the right to appeal the decision within 30 days pursuant to 25 CFR Part 2 or 43 CFR 4.310 - 4.340.
- Send copy to the applicant, all interested parties and person requesting a copy.

- If the applicant or person files an administrative appeal, cease work on the application until notified of the decision. Confirm that no court action has been filed based upon on administrative appeal. If a court action has been filed, cease work until the judicial review process has been exhausted and receive instructions from Office of the Solicitor based upon the court's findings and conclusions. If no court action is filed, determine if BIA may proceed with the fee-to-trust acquisition process and at what step.
- If an administrative appeal is not filed, proceed with Step 11 "Preparing the Publication Notice."
- If a significant amount of time lapses between when the notice of application issued, and, when we are ready to issue our decision on the application, request additional updated comments from the applicant.

Step 11: Preparing the Publication Notice

- Prepare a final agency determination to take land in trust pursuant to 25 CFR §151.12 (b). (See: Section 7.1.13 "Sample Final Agency Determination.") Include the following:
  - Statement that a final agency determination to take land in trust has been made and the Secretary shall acquire title in the name of the United States if no action is filed in federal court within the 30-day period following the publication
  - A description of the land
  - Known interested parties and parties receiving a copy of the Notice of Decision
- Publish the determination in a local newspaper when the approval is at the Regional or agency level. Central Office approval requires publication in the Federal Register.
- If you receive notification that an action has been filed, contact the Federal District Court to verify whether litigation was filed.
- If an action is filed, take no further action until the judicial review process has been exhausted and receive instructions from Office of the Solicitor based upon the court's findings and conclusions.
- If advised by the Office of the Solicitor, furnish the administrative record to the Department of Justice in any such action.
- If no action is filed, proceed to Step 12 "Preparing Final Certificate of Inspection and Possession".
- Update FTTS.

Step 12: Preparing Final Certificate of Inspection and Possession

❖ NOTE: No more than 180 days must pass between completing this step and completion of Step 13 "Acceptance of Conveyance".

- Complete the Final Site Inspection in the same manner as the Initial Site Inspection under Step 4 "Conducting Site Inspection and Completing Initial Certificate of Inspection".
- Compare the Final Site Inspection with the PTO and Initial Certificate of Inspection and environmental documents for any inconsistencies.

- If there are any inconsistencies, provide written notice to the applicant requesting conformance within 30 days of notice.
- If the applicant does not respond with satisfactory conformance within the 30-day period or any granted extension, you must evaluate the affects of this failure upon BIA's decision under Step 10, "Preparing Analysis and Notice of Decision" and if the decision should be reversed.

Step 13: Acceptance of Conveyance

- Confirm that the file contains all documentation required and applicant has resolved all title and environmental issues.
  Example: Signed deed transferring title to the United States in trust for applicant
- Prepare the formal acceptance of conveyance. The document must include:
  - Signatures of the appropriate BIA official
  - Statement on the Acceptance of Conveyance form or deed the acquisition and delegation authorities. (See 25 CFR 151.14.; Section 7.1.15 "Sample Deed and Acceptance of Conveyance Form.")
- Update FTTS

Step 14: Final Title Opinion and Recordation

- Provide the escrow and title company with instructions to record the conveyance document and issue the final title insurance policy with a copy of the signed deed and acceptance of conveyance. Escrow and title instructions should include that the policy of title insurance be issued on ALTA U.S. Policy Form 9/28/91, evidencing that the title is vested in the United States of America in trust for the applicant and specifically list all exceptions that should be deleted from Schedule B.

  Explanation: The approved conveyance must be recorded by title company in the respective county where the land is located. The original recorded deed may not be readily available. This may cause delay in the process, therefore, it is recommended that a copy of the recorded document be obtained from the title company immediately after recording. In some regions a title company can provide a copy certified by the title company within a matter of days.
- Send a copy of the escrow and title instructions, signed deed and acceptance of conveyance to the applicant.

- Review the final title insurance policy for compliance with requirements of Preliminary Title Opinion instructions to the escrow and title company. [See Step 8 "Preparing the Preliminary Title Opinion (PTO)" and Step 9 "Clearance of PTO Objections."] If there are any inconsistencies, confirm with the Office of Solicitor what steps are appropriate before proceeding. Request the escrow and title company to modify the title insurance to conform to escrow and title instructions.
- Upon receipt of the required documents, request a Final Title Opinion (FTO) from the Office of the Solicitor. The request should include:
  - The recorded Deed, with an approved Acceptance of Conveyance;

  - ALTA U.S. Policy Form 9/28/91 evidencing that the title is vested in the United States of America in trust for the applicant
  - Copy of the PTO and evidence of corrective actions under Step 9 "Clearance of PTO Objections",
  - The Final Certificate of Inspection and Possession
- Update FTTS

Step 15: Recording at Land Titles and Records Office

- If you have not received the FTO within 30 days of submission to the Office of the Solicitor, check with the Solicitor on any information required and estimate of time for completion.
- Upon receipt of the FTO, review the FTO for any problems. Confer with the Solicitor on the next step.
- Record the following documents at BIA, Land Titles and Records Office (LTRO): The recordation request should include:
  - The original deed Warranty Deed to the United States of America with the signed acceptance of conveyance
  - The original ALTA policy.
  - The original Final Title Opinion.
  - The original Final Certificate of Inspection and Possession.
  - The original tribal resolution requesting/authorizing the acquisition.
  - Full size copies of all referenced surveys.
- Update FTTS

Step 16: Completed Application Package

When the documents have been returned from LTRO:

- Return the original recorded documents to the appropriate office.
- Provide a copy of the recorded Warranty Deed and Acceptance of Conveyance to the applicant.
- Instruct the office of record to set up a land file in accordance with 16 BIAM to maintain all documents that permanently affect title and update any required reports.
- Update FTTS to show that the acquisition has been completed

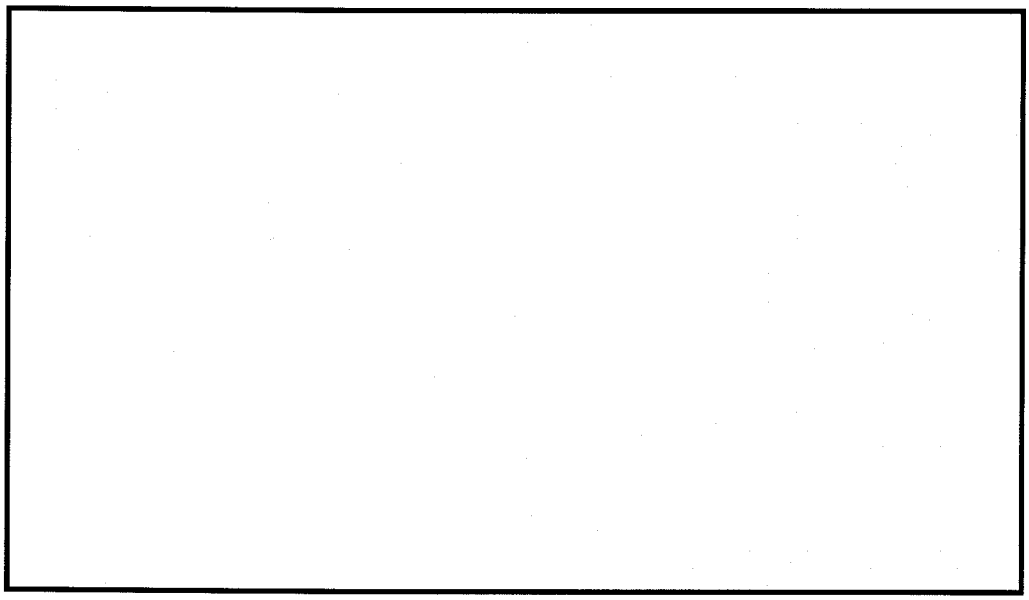
END OF PROCEDURE

4.2.1.2
Off-Reservation Discretionary Trust Acquisitions

This section is intentionally not included and will be provided at a later date.

4.2.1.3
Mandatory
Trust Acquisitions

This section is intentionally not included and will be provided at a later date.



This section is intentionally not included and will be provided at a later date.

5.0 POLICY AND DIRECTIVES

5.1 The Secretary of the Interior Implementation of Land Acquisition Regulations 25 CFR 120a

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 8 1980

Memorandum

To: All Area Directors, Bureau of Indian Affairs

From: The Secretary

Subject: Implementation of Land Acquisition Regulations, 25 CFR §120a.

Pending the drafting and approval of a BIAM Manual release for land acquisitions, the following general guidelines should be followed. If any questions arise regarding these guidelines or regulations, contact Wayne Nordwall in the Division of Real Estate Services at (202) 343-7738, Anita Vogt, Office of the Solicitor at (202) 343-8526, or Ray Jackson, Phoenix Area Office, at (602) 261-2310.

§120a.1 Self-explanatory

§120a.2 Self-explanatory

§120a.3(a)(1) Self-explanatory

(2) This clause covers instances such as those where the tribe owns a fractionated interest in an off-reservation allotment, owns the minerals located off-reservation and is attempting to purchase the surface interest, and other circumstances where the tribe owns an interest in an off-reservation trust asset and is attempting to consolidate that interest.

(3) This clause allows off-reservation fee lands to be considered for acquisition if the land is essential for tribal programs. In considering applications for off-reservation acquisitions, the factors listed in §120a.10 will be carefully balanced; in particular, the importance to the tribe of the parcel in question (including the possibility or impossibility of substitution of a closer parcel and whether or not declining to take the land in trust will materially affect the intended use of the land) will be weighed against the administrative burden on the Bureau that would result from the acquisition. §120a.10(g) In most cases, the balance can be expected to tip toward rejecting the application as distance from the reservation increases.

All applications for acquisitions that are not within or adjacent to a reservation must be forwarded, together with the complete record on the acquisition, to the Central Office for a decision by the Office of the Secretary. In addition to the information required by the other provisions of these regulations, the applicant must include in the record a justification explaining why the proposed acquisition is necessary to effectuate the purposes listed in this section. In essence, it must be shown that the proposed acquisition is essential to a tribal program and that the program will fail in the absence of the acquisition.

§120a.4 Self-explanatory

§120a.5 Self-explanatory

§120a.6 Self-explanatory

§120a.7 Self-explanatory

§120a.8 It is up to the individual or tribe seeking a consent under this section to solicit and obtain the consent. The consent should then be included in the acquisition record.

§120a.9 No specific format is required in making an acquisition request. However, in putting together the record that will be used to support an acquisition (and to defend it in case of litigation) the Agencies and Area Offices are entitled under §120a.11 to request any material necessary for inclusion in the record. Much of this additional information will be required because of §120a.10.

§120a.10(a) Under this part the specific acquisition authority(ies) being used should be identified. For IRA tribes (and individuals) the general authority is Section 5 of the IRA, 25 USC §465. Other authority(ies) can be cited if appropriate. For a non-IRA tribe, specific acquisition legislation relating to that tribe, if any, the Indian Financing Act, PL 93-638, or any other authority that is being used as a basis for the acquisition, should be noted.

The acquisition must meet the specifications of the particular statute which authorizes it in addition to the criteria of these regulations. For example, land acquired under the authority of PL 93-638 must be within reservation boundaries or adjoin trust land on at least two sides (See 25 U.S.C. §450h(3)) despite the broader provisions of 25 CFR §120a.3.

Attachment

Dear:

This agency has under consideration an application for acquisition of land by the United States to be held in trust for the benefit of:

the _____ Tribe, or

_____, a member of the _____Tribe.

The property is described as follows:

The determination whether to acquire this property in trust will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior. To assist us in the exercise of that discretion, pursuant to regulations published at 45 Fed. Reg. 62034 (September 18, 1980), 25 CFR §120a, we invite your comments on the proposed acquisition. In particular, information on the following matters is requested:

(1) The annual amount of property taxes currently levied on the property.

(2) Any special assessments, and amounts thereof, which are currently assessed against the property.

(3) Any governmental services which are currently provided to the property by your jurisdiction.

(4) If subject to zoning, how the property is currently zoned.

Information and comments should be addressed to this agency, to the attention of the undersigned. Any comments received within 30 days of the date of this letter will be considered. A copy of your comments will be made available to_____ (name of applicant). A determination of whether to acquire the land in trust will be made by the Area Director, _____ Area, Bureau of Indian Affairs, (address). If you have submitted comments within 30 days of this letter, you will be notified of the Area Director's determination.

Sincerely,

(b), (c) and (d) are all interrelated and cover information that must be supplied by the party requesting the acquisition. At this point it is difficult to specify all those things that should be considered under these sections, just as it is difficult to define precisely what should be considered when determining whether or not an applicant for a fee patent is competent. In general, information on personal income, social condition, education, and mental and physical condition can be considered. In other words, the record should answer the question -- Why should we take this particular land in trust for this person (or tribe)?

A statement of purpose (e) is necessary in order to make a determination under (f).

(e) and (f) If the land is presently in fee status, a letter (form letter attached) should be sent to the political subdivision in which the land is located asking for:

(1) the amount of taxes currently levied on the property

(2) whether there are any other special assessments (garbage, sewer etc.)

(3) what services the local community provides to the land

(4) what the current zoning of the property is, and

(5) any other comments the political subdivision may want to make.

If no response is received within 30 days, this should be noted in the record and an assumption made that there are no adverse impacts on the local government.

A copy of the local government's response, if any, should be furnished to the applicant. Should the local government raise objections which appear to the agency to present good cause for denying the application, the applicant should be given an opportunity to respond to the local government's objections. (For follow up action, see §120a.11.)

(g) Self-explanatory.

§120a.11 Except to the extent that Central Office action is required under §120a.7(a)(3) (above), the delegated authority to decide whether to accept land in trust is vested in the Area Directors. As soon as possible after the agency has transmitted the complete record to the Area Office, it should be reviewed, a decision made, and the applicant advised of the decision. A favorable decision should be based upon the record and should clearly show that the acquisition falls within the regulations and that the factors in §120a.10 have been considered. An adverse decision should show the reason for denial. If an application is denied, the applicant must be advised of the reasons for denial and of his or her right to appeal. If the local political subdivision has submitted timely comments, it should, as a courtesy, also be notified of the decision.

§120a.12 This section does not require an applicant to provide an abstract and other title evidence until after a decision on the request is made; this was done to prevent unnecessary expenses being incurred by an applicant. Implicit in this section is the assumption that no such title evidence is needed until the completion of all appeals. After the time limit for all appeals has expired, the title package (not including the acquisition record) should be transmitted to the Regional or Field Solicitor for a preliminary title opinion. After defects which render the title unmarketable are eliminated, the land may be placed in trust. Discretion to require elimination of defects which do not cause unmarketability is also provided by this section.

§120a.13 In the past there have been instances where a party has caused deeds to be written stating that the land was transferred to "the United States in Trust for . . . ". This section makes it clear that land is not in trust until there has been a formal acceptance. The form of the acceptance is dictated by the circumstances of the transaction.

As a summary, the general procedures are as follows:

1) An application is filed with the agency. (§120a.9)

2) The agency acknowledges receipt and requests (§120a.11) any additional information needed, particularly for §120a.10(b), (c) and (d). If the land is presently in fee status, the agency informs the applicant that the local political subdivision will be notified of the proposed acquisition and given an opportunity to comment.

3) If the land is presently in fee status, the agency notifies the local governmental unit of the proposed acquisition and

requests appropriate input. ($120a.10(e)(f)) If necessary, the agency obtains response of applicant to local government's objections.

4) The acquisition record is transferred to the Area Office for a decision and the applicant notified of the decision. ($120a.11)

5) Local government(s) notified of decision, if it has submitted timely comments.

6) Time limit for all appeals allowed to expire.

7) Abstracts and other title evidence secured. ($120a.12)

8) Title documents sent to Solicitor for title opinion. ($120a.12)

9) Land taken in trust. ($120a.13)

10) Final title opinion if appropriate.

Cecil D. Andrus

5.2 The Secretary of the Interior Policy for Placing Lands in Trust Status for American Indians

THE SECRETARY OF THE INTERIOR

WASHINGTON

July 19, 1990

Memorandum

To: Assistant Secretary - Indian Affairs

From: The Secretary

Subject: Policy for Placing Lands in Trust Status for American Indians

I have completed review of the report of the Department's Ad Hoc Task Force on Indian Trust Lands and your recommendation, and I am directing the following actions be taken.

It shall be the policy of the Department of the Interior in acquiring lands in trust status for American Indians, located either within or contiguous to the tribal reservation's exterior boundaries, to review such acquisition requests in light of the presently existing Bureau regulations found in 25 CFR 151.10. The Secretarial review of these acquisition requests shall be delegated to the respective Area Directors.

For off-reservation acquisition requests (other than lands contiguous to the reservation), the policy shall be to consider each request on its own merits. These requests shall meet the following criteria:

1. All existing land acquisition regulations found in 25 CFR 151.10; i.e.:

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

   b) The need of the tribe for additional land;

   c) The purpose for which the land will be used;

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

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

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

2. The property is free of all hazardous and toxic material (as required in 602 DM 2).

3. Trust land to be acquired is located within the states in which a tribe or band presently owns trust land. In general, as the distance from the trust or reservation land base increases, the tribe will be required to justify greater economic benefit from the acquisition.

4. In consultation with local, city, county, and state governments, an effort must be made by the tribe to resolve possible conflicts over taxation, zoning and jurisdiction. If the acquisition is opposed or raises unresolved concerns from the governments, the proposal will automatically be referred to the Assistant Secretary for Indian Affairs for review and approval/disapproval.

5. The tribe shall provide an economic development plan specifying the proposed uses for the trust land with a cost/benefit analysis of the proposal.

6. Applications for trust land located within an urbanized, and primarily non-Indian, community must demonstrate that trust status is essential for the planned use of the property and the economic benefits to be realized from said property.

7. Acknowledgment that, after consideration of all local ordinances including (but not limited to) fire safety, building codes, health codes, and zoning requirements, the tribe will adopt standards that provide at least comparable safeguards;

In addition to the requirements listed above, all requests to acquire land in trust for <u>gaming</u> purposes will:

1. Be in compliance with the Indian Gaming Regulatory Act (P.L. 100-497);

2. When appropriate, be reviewed by the National Indian Gaming Commission;

3. Approval/disapproval by BIA's Central Office after discussion with the Secretary of the Interior;

4. Inclusion of an analysis by the tribe or band showing that it explored all reasonable alternatives (other than gaming) which would provide equivalent economic benefits from said property;

5. Inclusion of provisions that the appropriate portion of individual winnings from gaming activities will be withheld for taxes by the IRS.

This policy shall be effective upon appropriate public notification and comment.

cc: Solicitor
Assistant Secretary - Policy, Management and Budget

6.0 ADDITIONAL GUIDANCE

6.1 False Statements, Record Keeping, Information Collection

These procedures are used for processing penalties or identifying procedures for possible prosecution in the event false statements are made during the acquisition process. These procedures also delineate regulatory requirements involving record keeping and information collection. Pursuant to the False Statements Accountability Act of 1996 (FSAA), (18 U.S.C. §1001), anyone willingly or knowingly making a false statement in connection with a trust acquisition may be subject to criminal prosecution. _Anyone who knowingly and willfully makes a false statement in connection with a trust acquisition may be subject to criminal prosecution under FSAA. State of Missouri v. Acting Director, Muskogee Area Office, Decision of Assistant Secretary – Indian Affairs (March 17, 2000).

Record keeping procedures are provided in 16 Indian Affairs Manual (IAM) and the data is managed under the Fee-to-Trust Tracking System (FTTS).

Information collection is subject to the Freedom of Information Act (FOIA) and Privacy Act.

6.2 General Administrative Responsibilities

Upon issuance of the notification for comment, the application submitted should be available for review. Ensure that all information subject to the FOIA and Privacy Act are removed from the application prior to release of any information. BIA officials should work closely with the local representative of the Office of the Solicitor to ensure that these statutes are not violated by the improper release of information or the improper withholding of information.

6.3 Files and Records Maintenance

When an application is received by BIA/tribe, a file should be set up immediately to maintain the documentation submitted. The file should be set up according to the requirements contained in 16 Indian Affairs Manual (IAM). Records maintenance includes posting to a transaction log which should be completed annually in the Annual Performance Acres and Lease (APAL) Report.

6.4 Anti-Deficiency Act

Certain Conditions, Covenants and Restrictions (CC&R's) may, in the DOJ's opinion, jeopardize the interest of the United States. Therefore, title with CC&R's acquired by a tribe may in some instances not be approved by DOJ for fee-to-trust land acquisitions. Additionally, some CC&R's may be subject to dues and fees that would hold the Bureau of Indian Affairs (BIA) subject to the Anti-Deficiency Act. The Anti-Deficiency Act provides that "An officer or employee of the United States Government ... may not -involve ... government in a contract or obligation for payment of money before an appropriation is made unless authorized by law." There exists some concern that accepting title subject to CC&R's may create a potential liability to the United States, either for payment of assessments, or for compliance with the CC&R's.

7.0 EXHIBITS

7.1 Sample Documents

- 7.1.1. Information on Fee-to-Trust Acquisition Requests
- 7.1.2. Sample Acknowledgement Letter
- 7.1.3. Legal Description Review
- 7.1.4. Notice of Failure to Qualify for Fee-to-Trust Acquisition
- 7.1.5. Sample 30 Day Notice to Complete Application Package
- 7.1.6. Sample Return of Incomplete Application Package
- 7.1.7. Certificate and Inspection
- 7.1.8. Sample Environmental Review Compliance Memorandum
- 7.1.9. Sample Notice of Application
- 7.1.10. Sample Notice of Application Comments to Applicant
- 7.1.11. Sample Letter Transmitting PTO Requirements to Applicant
- 7.1.12. Restrictive Covenants Acknowledgment
- 7.1.13. Sample Final Agency Determination
- 7.1.14. Public Notice to Take Land "In Trust"
- 7.1.15. Sample Deed and Acceptance of Conveyance

7.2 25 CFR § 151 *Land Acquisitions*

Exhibit 7.1

SAMPLE DOCUMENTS

List of Sample Documents

7.1.1. Frequently Asked Questions on Fee-to-Trust Acquisition Requests
7.1.2. Sample Acknowledgement Letter
7.1.3. Legal Description Review
7.1.4. Notice of Failure to Qualify for Fee-to-Trust Acquisition
7.1.5. Sample 30 Day Notice to Complete Application Package
7.1.6. Sample Return of Incomplete Application Package
7.1.7. Certificate and Inspection
7.1.8. Sample Environmental Review Compliance Memorandum
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7.1.13. Sample Final Agency Determination
7.1.14. Public Notice to Take Land "In Trust"
7.1.15. Sample Deed and Acceptance of Conveyance

Frequently Asked Questions on Fee-to-Trust Acquisition Requests

What are the first steps BIA takes after receiving a request for fee-to-trust acquisitions?

BIA looks at the information received to determine:

- Is the applicant a qualified individual Indian or tribe?
- Is the acquisition authorized under a specific law?
- Does the law require the Secretary to take the land into trust ("mandatory")?
- Does the land qualify for acquisition?
- Is the land either on-reservation or within a tribal consolidation area or off-reservation?
- Does the money being used to purchase the land comes from the sale of trust or restricted land

The answers to these questions determine which operational procedure BIA will follow in processing the application.

Examples:

If the law requires the Secretary to take land into trust for you (mandatory), BIA will not send out a Notice of Application. You would also not be required to comply with NEPA.

If you are an individual Indian who wishes to sell your interest in a parcel of trust or restricted land to purchase another parcel, BIA will help coordinate the sale of your parcel and purchase of the new parcel. BIA also would coordinate with Office of Special Trustee to deposit the monies in a special account until the purchase is complete.

What information or documents help BIA to determine which procedure to follow?

You can help BIA make the determination of which procedure to follow by submitting the following information with your initial request:

- Are you a qualified Indian or tribe?
  - If an individual Indian, submit proof of membership in a tribe or descendent of such a member and that you were on June 1, 1934, physically residing on a federally recognized Indian reservation; or possess a total of one-half or more degree Indian blood of a tribe. See CFR §151.3 (b).
  - If a tribe, submit proof of qualifying as a Indian tribe, band, nation , pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized for the special programs and services from the Bureau of Indian Affairs (See 25 CFR § 151.2.)
  - Even if you qualify but are not a member of the tribe or tribe having jurisdiction over the reservation where the land is located, you must submit written consent of the tribal government having jurisdiction unless the law is mandatory (See 25

CFR § 151.8 and "Does the law require the Secretary to take the land into trust (mandatory)?" below).

- Is the acquisition authorized under a specific law?
  Submit a written statement of the law which you believe authorizes the acquisition on your behalf. Most applicants use the Indian Reorganization Act (IRA) of 1934. The Secretary has discretion in accepting land into trust under IRA.
- Does the law require the Secretary to take the land into trust (mandatory)?
  If you believe the law requires the Secretary to accept the land into trust (mandatory) for you, provide a detail discussion of why you believe that the law is mandatory.
- Does the land qualify for acquisition?
  - Submit a title commitment or binder of title evidence that the land is owned by you or someone who is obligated to transfer the title to the United States in trust on your behalf if the acquisition is approved.
    - ✓ This documentation will also satisfy the physical requirement that the land be located in the United States.
    - ✓ This documentation will also satisfy the need to submit the legal description of the property to be transferred into trust.
  - If you wish to transfer a fractional interest in a parcel off-reservation and are an individual Indian, submit documents showing that there are existing trust or restricted fractional interest in the parcel.
    Example: A TSR and Tract History from the Land Titles and Records Office
- Is the land either on-reservation or within a secretarially approved tribal consolidation area or off –reservation?
  - Submit a survey or plat map of the land to support the legal description and provide the acreage amount.
  - Provide a drawing or map showing the location of the land relative to State boundaries and the Tribe's reservation boundaries or secretarially approved tribal consolidation area.
- Is the money being used to purchase the land come from the sale of trust or restricted land?
  a. Submit a description of the land to be sold and the land to be acquired

What other information may BIA request?

BIA may request additional information depending on the law authorizing the acquisition and operational procedure selected:

- Prepare a written request specifically requesting that the Secretary take land into trust for your benefit. This request may be in the form of a tribal resolution if you are a tribal applicant, or a letter from an individual Indian (See 25 CFR § 151.9).
  - An example of the language for an individual Indian is: "I wish you to take the following described land [or land described in the enclosed title commitment or deed] into trust for me under 25 USC § 465, Section 5 of the Indian Reform Act of 1934."

- If you are a tribe, provide a resolution with a request that the Secretary of the Interior take the land into trust with a specific reference to a legal description of the land and legal authority. It may be to your advantage to also include in the resolution a designation of an authorized persons or official position to complete the transfer, description of the purpose of the proposed acquisition and information addressing the factors for either 25 CFR 151.10 (on-reservation or contiguous) and 151.11 (off-reservation). You need to following the procedure under 22 USC § 2719, Section 20 and 25 CFR 151 if you plan to use the land for gaming related or gaming purposes.

- If the property is on or contiguous to the reservation, provide a written statement for the need for additional land. The statement should include a description of the current use of the property and need for additional land, such as why the present land base is not adequate.

  Example: The land has been used for agricultural purposes and is currently under lease to [give name of lessee]. This land will increase the total number of acres needed for our agricultural business.

- If the property is on or contiguous to the reservation, a written statement describing the purpose(s) for which the land will be used. Describe your planned use of the land in specific detail and include any future planned use. The purpose must also be consistent with 25 CFR § 151.3, Land Acquisition Policy. Examples of purposes for which the land will be used are:

  We plan to provide housing for our members. The housing will be single family homes built in two phases with each phase consisting of 50 homes.

  The purpose of the acquisition is for economic development. The plan is to build a motel (or retail, tourism, manufacture, hotel) over the next five years.

  We are planning to use this land for official tribal offices, community service center, road and infrastructure, utilities (Self-Determination and Tribal Public Services).

- For an individual, a written list of the amount of trust or restricted land you already own and the degree of assistance required for handling your affairs. You may request an Individual Title Inventory (ITI) from BIA local office which will order the report for you from the Land Titles and Records Office (LTRO). You must also explain in detail the degree to which you require assistance.
- Copies of documents referenced in the title commitment or binder of title evidence under exceptions to title and in the legal description.

  Examples: Under Schedule B of the title commitment, it states "Relinquishment of access to state highway not disclosed and of light, view and air by deed to the state of Washington. Recorded September 1, 2005 Recording Number: 1247800." You will

need to provide a copy of the recorded relinquishment recorded on September 1, 2005.

Under Schedule A of the title commitment, it states: "Lot 101 less that portion lying within the interstate as condemned, June 30, 2003, in Superior Court Case No. 5555." You will need to provide a copy of the order in the Superior Court Case No. 5555.

- A written statement describing the potential impact of the acquisition on the State and its political subdivisions. Example: the loss of tax revenue. Describe any actions that you might take to mitigate those impacts. For example: agreements that you have entered into for services in lieu of services that are provided by local municipalities, reports of grants made by the Tribe, impact aid, etc. Provide copies of any such agreements.

- A written statement describing any jurisdictional problems and potential conflicts of land use and actions taken to reduce those problems or potential conflicts. Include reference to and copies of any agreements or financial arrangements you may have entered with the local units of government.

- A written analysis of BIA services required by the acquisition of the property in trust and how the BIA would be able to provide the anticipated services.

- Documentation showing compliance with National Environmental Policy Act (NEPA) and 602 DM 2 Hazardous Substances Determinations.
- A draft of the proposed deed transferring the property to the United States.

- You may need to respond to BIA's request for additional information. There may be some additional information which is not listed above that BIA feels is necessary to making a decision. BIA will request such information in writing. [25 CFR 151.12 (a)].

Example: BIA conducts an on-site inspection of the property and finds a house occupied by individuals not named as owners or renters in the title evidence. They claim to own the land. BIA would contact you for an explanation and request that you remedy this problem with title.

Why Is All This Information Necessary?

Congress has authorized and under certain laws required the Secretary of the Interior under various laws to acquire title to land or interests in land on behalf of individual Indians and tribes. The Secretary must process and approve the conversion of privately held title to land (fee) into federally held title to land before the transfer is complete. The Secretary must base his decision to make a trust acquisition on the evaluation of the criteria set forth in 25 CFR Part 151 and other applicable policies. BIA needs the information to satisfy these requirements.

How long does the process take?

The length of time to complete the process varies depending on the required steps. The required steps differ for on-reservation or off-reservation trust acquisitions and mandatory or discretionary acquisitions.

> Example: if the acquisition is mandatory, BIA does not send out the Notice of Application and receive comments from the state and local governments. Also BIA does not need to monitor the completion of certain environmental requirements (NEPA) for mandatory acquisitions. Additional steps are required for off-reservation trust acquisitions and those acquisitions involving gaming and gaming related purposes.

Why does it take so long?

There are different laws that must be satisfied. Most acquisitions are authorized under 25 U.S.C. § 465, Section 5 Indian Reform Act (1934) and reviewed under 25 CFR Part 151. However, the Department of the Interior must comply with all federal laws, including compliance with National Environmental Policy Act (NEPA), 602 DM 2 Hazardous Substances Determinations, National Historical Preservation Act (NHPA) and U.S. Department of Justice Title Standards (Title Standards) [40 U.S.C § 255].

Many different groups are involved in the process of satisfying the requirements under the law. In addition to your efforts, BIA, other governmental agencies, environmental contractors, title and escrow companies, state and local governments and courts must coordinate and perform their various functions.

The process is also lengthened by delays in receipt of information on environmental and title issues. BIA has no direct control over the preparation of the environmental reports or title review by the Office of the Solicitor. Applicants are responsible for correcting critical and environmental issues in a timely manner.

BIA operational procedures include three 30-day periods for the filing of appeals or court actions following respectively 1) the determination of Mandatory Acquisition, 2) Notice of Decision and 3) Notice of Publication of Decision. When an appeal is filed, BIA ceases work on the application until the appropriate authority (i.e. Secretary, Indian Board of Appeals or federal court) decides the appeal.

Sometimes in certain areas of the United States, the BIA is delayed by the weather in getting the final site inspection completed. The Office of the Solicitor requires the final site inspection to issue the Final Title Opinion.

What can I do to speed up the process?

Provide as complete and correct information upfront. More specifically, BIA suggests that you:

- Review your title commitment or binder of title evidence.

- Confirm that it commits to issue a final title insurance on the ALTA U.S. Policy Form 9/28/91.
- Request the title company issue a long term commitment which will eliminate renewing the commitment.
- Review the exceptions to title and consider the cost and effort required to remove any exceptions.
- Work with the title company to remove the exceptions.

- Review and confirm the legal description of the property to be acquired is correct and consistent with the title commitment or binder of title evidence, the deed to the current owner and any document submitted to BIA (e.g. tribal resolution.) If the legal description is not correct or consistent, it is strongly suggested that you correct the error or inconsistency before you submit your request to BIA.
- Submit a survey or plat map of the parcel to support the legal description and provide the acreage amount.
- If your proposed use is for business purposes, provide a business plan that specifies the anticipated economic benefits associated with the acquisition.
- When BIA requests additional information, let BIA know as soon as possible if you need additional time. BIA will request such information in writing. [25 CFR 151.12 (a)].

Can I get a report on the progress of my application?

Yes. BIA has a fee-to-trust tracking system. BIA tracks the steps and progress of applications. BIA will provide you a report upon your request.

What is the process after BIA receives the information?

BIA uses four operational procedures:
- On Reservation Discretionary Trust Acquisitions
- Off Reservation Discretionary Trust Acquisitions
- Mandatory Trust Acquisitions
- Reinvestment of Money in Other Land Discretionary Trust Acquisitions

These operational procedures are based upon the law authorizing the acquisitions.

Certain steps are taken in most of the operational procedures. These steps are set out in the Flow Chart which is attached to this pamphlet. There is some variation in the operational procedures dealing with Notice of Application and environmental requirements. Some additional steps are taken for off-reservation acquisitions and those acquisitions for gaming or gaming related purposes.

The basic steps for a discretionary on-reservation, non-gaming trust acquisition that is approved are:
- review the initial submittal to determine if all the documents have been received
- review the individual documents to determine if the requirements of 25 CFR Part 151 are met

- commence title and environmental steps
  - Asking the Office of the Solicitor to review of the title and issue opinion if title satisfies the Department of Justice's standards (PTO)
  - Coordinate activities with applicant, contractors and other government agencies to determine if environmental requirements are met
- Confirm that all critical title and environmental issues have been resolved
- Provide a Notice of Application to state and local governments and persons requesting the notice
- Collect and distribute comments to the applicant from Notice of Application
- Summarize comments and applicant's response to comments
- Prepare Notice of Decision
- Publish the Notice of Decision
- Confirm that all title and environmental issues have been resolved
- Prepare documents for recording in the county recorder office and instructions to escrow and title company
- Review title policy to insure compliance with PTO
- Confirm acceptability of title through Final Title Opinion from SOL and record the deed and other documents with Land Titles and Records Office

What are the environmental requirements?

The Department of the Interior must comply with the provisions of any Federal law, including, but not limited to NEPA and National Historical Preservation Act (NHPA).

The following chart gives you a general idea of what is required if you are an individual or tribe, the percentage interest you wish in trust is an undivided fractional interest or full interest, and the property is on or off reservation.

Applicant	% Interest	On/Off Reservation	Requirement	
			NEPA	602DM2
Individual Indian or tribe	Undivided Fractional Interest in parcel containing existing trust or restricted interest	On	Yes	Yes
Individual Indian or tribe	Undivided Fractional Interest in parcel containing existing trust or restricted interest	Off	Yes	Yes
Individual Indian or tribe	Undivided Fractional Interest in parcel containing **no** existing trust or restricted interest	On	Yes	Yes
Individual Indian or	Full (100%)	On	Yes	Yes

Applicant	% Interest	On/Off Reservation	Requirement	
			NEPA	602DM2
tribe				
Tribe	Full (100%)	Off	Yes	Yes
Individual Indian	Full (100%)	Off	Not applicable as no authority for Individual Indian to acquire such interest.	

What defines the environmental requirements?

Federal law, including, but not limited to NEPA and National Historical Preservation Act (NHPA) define the requirements. In some instances there are site specific environmental requirements. BIA looks to you and other governmental agencies and departments that oversee these requirements to complete these requirements. In some instances, BIA environmental staff will assist in the preparation and collection of information.

What happens if I do not agree with BIA's decision on my application?

You have an opportunity to appeal when BIA makes a decision:

- If the law authorizing the acquisition is mandatory or discretionary and
- If your application is denied or approved

You may file an administrative appeal pursuant to 25 CFR Part 2 or 43 CFR Part 4.310-4.340.

What happens if there is an administrative appeal?

If you or an interested party appeal a BIA decision under 25 CFR Part 2 or 43 CFR Part 4.310-4.340 *et. seq.*, BIA can take no further action and must wait until the administrative appeal process has been exhausted. Once BIA is notified of the final decision on the appeal, BIA will commence with the next or designated step in the operational procedure.

> Example: If an interested person files an appeal after the Notice of Decision approving your application, BIA may prepare and publish a notice of final agency action to accept title to the land into trust once the administrative appeal process is exhausted and the decision is affirmed.

BIA must wait 30 days after publication of the Notice of Decision to allow any interested person the opportunity to file a lawsuit in federal court concerning the decision to take title to land into trust pursuant to 25 CFR Part 151.12(b). This 30 day waiting period is referred to as the "judicial review" period. If no one files a law suit during this time, BIA may proceed with the necessary actions to take title to the land into trust and finalize the acquisition application. If someone files a lawsuit, BIA must cease all work until the court decides the case.

Why does BIA need a Solicitor's Opinion on Title?

The United States cannot acquire property unless the title to the property meets the U.S. Department of Justice Title Standards (Title Standards). [40 U.S.C § 255].

How does the Solicitor Prepare the Opinion of Title?

The Solicitor's Opinion of Title is based upon information that you provide during the application process. Examples: title commitment, copies of documents described in the title commitment, agreements you enter to eliminate exceptions from title. BIA also collects information for the report. Example: inspections of the property site, information from the Lands Titles and Records Office.

The Office of Solicitor will review the title evidence to determine compliance with the required Title Standards. The first review will take place when you send in the preliminary commitment or a binder of title evidence with a commitment to issue a final title insurance on the ALTA U.S. Policy Form 9/28/91. If the Solicitor finds any problems, BIA will notify you in writing that you will need to remove any identified liens, encumbrances, or infirmities that make the title unmarketable prior to acceptance of the fee parcel into trust. The Solicitor will review title again 1) after the Secretary approves the acquisition and the deed is recorded with the county recorder and 2) before the document is finally accepted by the United States by its recording in the Land Titles and Records Office. (See 25 CFR 151.13 and 40 U.S.C § 255)

What type of title evidence must I provide?

You must provide a preliminary commitment or a binder of title evidence with a commitment to issue final title insurance on the ALTA U.S. Policy Form 9/28/91.

You should instruct your title insurance company that the proposed insured will be the, "The United States of America in trust for [insert legal name of the applicant – for tribes it is the name as found in the federal register]".

The title insurance policy liability amount must be not less than the minimum amount established in the Department of Justice Title Standards of 2001.

The term of the title commitment or binder of title evidence must be for a period of no less than 2 years. A commitment with no expiration date is preferred due to the length of the Fee to Trust process. :

What happens if BIA requests more information?

If BIA has requested information, you must respond in a timely manner.

How will BIA contact me for the information?

BIA will write you about any additional information you need to send to BIA and the date by which you must respond. If you need an extension in which to respond with the required information, please contact BIA immediately so that BIA might consider your request. BIA will accommodate to the best of its ability any such request.

What happens if I do not respond?

If you do not respond in the time stated in the letter or any extension, BIA will either return your application or take into consideration your failure to provide the information. For example: if the request is for more information to complete the written request at the beginning of the application process, BIA will return your application. If you have failed to provide information on a non-critical title issue, BIA will take into consideration that there is insufficient or negative information in forming BIA's decision on your application and may result in a denial of your application.

Can I file another application if BIA returns the file?

Yes, you may submit a new application on the same parcel in the future.

Where can I find more information on Fee-to-Trust Process?

You can look at 25 CFR Part 151. If you wish to talk with BIA, BIA will be happy to schedule a meeting to do so. Your nearest agency is [insert address and telephone number].

SAMPLE ACKNOWLEDGEMENT LETTER

Date

Applicant
P.O. Box 123
Somewhere, USA 99999

Dear (Applicant):

This is to advise you that the Bureau of Indian Affairs (BIA) is in receipt of your request for a fee-to-trust acquisition. The parcel(s) of land affected by this action are described as:

(Insert legal description & acreage)

To assist you in the processing of your request is our brochure, "Frequently Asked Questions on Fee to Trust Request". For your convenience, we are also enclosing a copy of 25 CFR § 151.

If you have any questions, please contact _____, Regional Realty Specialist, at (916) 978-6069.

Sincerely,

Regional Director

Enclosures

MEMORANDUM

To: Name, BLM Indian Land Surveyor

From: Name, Title

Subject: Legal Description Review Request for Tribe, Parcel Name

BIA Land Area Code	Allotment/Trust No:	PURPOSE:
[Insert FTTTS #]	[n/a]	Fee to Trust Acquisition

Please review the legal description(s) in the attached conveyance/activity documents(s) for the case identified above, complete the attached interoffice memo, and return them to me for filing in the official case file. The purpose for this request is:

Validity of legal description & acreage.

In addition you are requested to report upon what is known about (check box, and within the brackets circle the requested service(s) :

□ Other - _____

This review is needed by: [Insert Date]

Please contact Cristine Basina, Realty Assistant, at (612) 725-4582 if you have any questions.

I do/do not concur with the validity of the above stated legal description:

_____ Date: _____

(Pat Twohy, BLM Indian Land Surveyor)

Additional comments:

SAMPLE NOTICE OF FAILURE TO QUALIFY FOR FEE-TO-TRUST ACQUISITION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Tribe/Individual Name, Title
Address

Dear Mr./Ms._____:

On _____, the Bureau of Indian Affairs received your written request to have the following parcel(s) accepted into trust by the United States of America:

Insert Legal Description, including Assessor's Parcel Number
and all other relevant information to identify the parcel.

We have reviewed your application to ensure the initial requirements of 25 CFR 151.10, On-Reservation Acquisitions (or 151.11, Off-Reservation Acquisitions) are documented.

After our initial review of your application, we have determined that the information/documentation submitted that your application fails to qualify for consideration under CFR 151 because [state reason for failure. Examples: land is located in Canada, person does not qualify as Indian, and the organization is not a federally recognized tribe.]

We are returning your original written request, along with all the documentation submitted, to you closing out this case.

If you have any questions on this matter, you may contact .

Sincerely,
Superintendent or Regional Director

Enclosures

SAMPLE NOTICE TO COMPLETE APPLICATION PACKAGE

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Tribe/Individual Name, Title
Address

Dear Mr./Ms._____:

On _____, the Bureau of Indian Affairs received your written request to have the following parcel(s) accepted into trust by the United States of America:

Insert Legal Description, including Assessor's Parcel Number
and all other relevant information to identify the parcel.

We have reviewed your application to ensure the initial requirements of 25 CFR 151.10, On-Reservation Acquisitions (or 151.11, Off-Reservation Acquisitions) are documented.

Pursuant to 25 CFR 151.10, we are required to issue a Notice of Application (Notice) to the State and local government(s) requesting comments on the proposed trust acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. In order to proceed with issuing this Notice, we must have enough information to describe the general scope of your request.

After our initial review of your application, we have determined that the information/documentation submitted is insufficient; and, we are requesting that you submit the following:

Specify what information or documentation is missing and
explain why the requested information/documentation is necessary.

If you have any questions on this matter, you may contact .

Sincerely,
Superintendent or Regional Director

Enclosures

Exhibit 7.1.6

SAMPLE RETURN OF INCOMPLETE APPLICATION PACKAGE

Certified Mail – Return Receipt Requested

Tribe/Individual Name, Title
Address

Dear Mr./Ms._____:

By letter dated _____ (copy enclosed), our office notified you that your written request to have the below parcel(s) accepted into trust was insufficient and we requested further information/documentation:

Insert Legal Description, including Assessor's Parcel Number
and all other relevant information to identify the parcel.

Since we have not received your response, we are returning your original request and closing out this case. Should you want to submit a written request for trust acquisition on this parcel(s) at a later date, it will be considered a new case.

If you have any questions on this matter, you may contact .

Sincerely,

Superintendent or Regional Director

Enclosures

Exhibit 7.1.7

No example of Certificate and Inspection is available at this time

SAMPLE ENVIRONMENTAL REVIEW COMPLIANCE MEMORANDUM

October 8, 2008

Memorandum

To: 1. Regional Director
2. Regional Realty Officer

From: Environmental Services

Subject: XYZ Band of Indians, Fee to Trust Application for 54 acres at Bureau Avenue, Somewhereland, U.S.A.

We have reviewed the subject undertaking for compliance with the National Environmental Policy Act of 1969 (NEPA), which included appropriate consultation under the National Historic Preservation Act of 1966 (NHPA), and The Endangered Species Act of 1973. Compliance with Department Manual section 602 DM-2 has been completed, documenting that the Department would incur no environmental liability from accepting this parcel into trust.

National Environmental Policy Act (NEPA) No further compliance is required for NEPA. The Regional Director signed a Finding of No Significant Impact and a 30-day Notice of Availability on September 5th, 2004. The NOA was published in a local newspaper and in tribal administrative offices. No comments were received during that 30 comment period.

Endangered Species Act (ESA) No further compliance is required for the ESA. The BIA has made the determination of "no effect" on threatened or endangered species as per Section 7(a)(2) of the ESA as of February 14, 2005. See attached memo.

National Historic Preservation Act (NHPA). No further compliance is required for the NHPA. In a letter dated July 23rd, 2003 the State of Michigan Department of History, Arts and Libraries concurred with the BIA's determination that no historic properties are affected within the area of potential effects of the undertaking.

602 DM 2 Using ASTM E 1527 Standard Practice The attached Phase I Environmental Site Assessment dated February 14, 2005 found no Recognized Environmental Conditions. With the Regional Directors signature of the ESA no further compliance with 602 DM 2 is required.

Joe Employee
Environmental Protection Specialist

John Doe
Regional Archaeologist

cc w/attachments:

SAMPLE NOTICE OF APPLICATION

NOTICE OF (NON-GAMING) LAND ACQUISITION APPLICATION

Pursuant to the Code of Federal Regulations, Title 25, INDIANS, Part 151.10, notice is given of the application filed by the (Applicant) to have real property accepted "in trust" for said applicant by the United States of America. The determination whether to acquire this property "in trust" will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior, or his authorized representative, U.S. Department of the Interior. To assist us in the exercise of that discretion, we invite your comments on the proposed acquisition. In order for the Secretary to assess the impact of the removal of the subject property from the tax rolls, and if applicable to your organization, we also request that you provide the following information:

(1) If known, the annual amount of property taxes currently levied on the subject property allocated to your organization;
(2) Any special assessments, and amounts thereof, that are currently assessed against the property in support of your organization;
(3) Any governmental services that are currently provided to the property by your organization; and
(4) If subject to zoning, how the intended use is consistent, or inconsistent, with the zoning.

We provide the following information regarding this application:

Applicant:

(Name)

Legal Land Description/Site Location:

(Insert legal description)

Project Description/Proposed Land Use:

(Insert project/proposed land use)

The Midwest Regional Office has under consideration an application for the transfer of real property held by the (Applicant) to be transferred in trust for the benefit of the (Applicant).

As indicated above, the purpose for seeking your comments regarding the proposed trust land acquisition is to obtain sufficient data that would enable an analysis of the potential impact on local/state government, which may result from the removal of the subject property from the tax roll and local jurisdiction.

This notice does not constitute, or replace, a notice that might be issued for the purpose of compliance with the National Environmental Policy Act of 1969.

Your written comments should be addressed to the Bureau of Indian Affairs office listed at the top of this notice. Any comments received within thirty days of your receipt of this notice will be considered and made a part of our record. You may be granted one thirty day extension of time to furnish comments, provided you submit a written justification requesting such an extension within thirty days of receipt of this letter. Additionally, copies of all comments will be provided to the applicant for a response. You will be notified of the decision to approve or deny the application.

If any party receiving the enclosed notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy to said party.

A copy of the application, excluding any documentation exempted under the Freedom of Information Act, is available for review at the above address. A request to make an appointment to review the application, or questions regarding the application, may be directed to (_____), Regional Realty Officer, at (612) 725-4504.

Attachment

Exhibit 7.1.10

SAMPLE NOTICE OF APPLICATION COMMENTS TO APPLICANT

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
Bishop Henry Whipple Federal Building
One Federal Drive, Room 550
Ft. Snelling, MN 55111

IN REPLY REFER TO:
Real Estate Services

Applicant
P.O. Box 123
Somewhere, USA 99999

Dear (Applicant):

This is to advise you that the Bureau of Indian Affairs (BIA) has initiated the Fee-to-Trust process in accordance with Title 25, Code of Federal Regulations (CFR), Part 151, for (Applicant). The parcel of land affected by this proposed action is described as:

(Insert legal description)

Enclosed you will find copy of the comments to the Notice of Application issued on (date). We are required to provide the aforementioned comments to the applicant for opportunity to respond and/or request that we issue a decision.

You have 30-days from receipt of this letter to provide a written response that should be add ressed to the Bureau of Indian Affairs at the address above. You may be granted an extension of time to furnish your response to comments, provided you submit a written justification requesting such an extension within thirty days of receipt of this letter.

For further assistance on this project, please contact, (_____) Regional Realty Specialist, at (916) 978-6000.

Sincerely,

Regional Director

Enclosures

Exhibit 7.1.11

SAMPLE LETTER TRASMITTING PTO REQUIREMENTS TO APPLICANT

Applicant
Address
City, State 77777

Dear Applicant:

This letter is in reference to the title evidence submitted to our office as supporting documentation for your proposed fee-to-trust acquisition application for the _____ Tribe of _____, consisting of _____ acres, located in _____ County, State, further described as follows:

Insert Legal Description or Attach as an Exhibit to the Letter.

The title evidence submitted to our office consists of a Commitment for Title Insurance (Commitment) from the First American Title Insurance Agency for an American Land Title Association (ALTA) 9/28/91 U.S. Owner's Policy, Order Number _____, dated _____, 20____, proposed to insure the United States of America in Trust for the _____ Tribe of _____ (copy enclosed). In compliance with the DOJ Title Standards, the following instructions:

Insert Preliminary Title Opinion Requirements

Further, the deed to the United States should be in conformance with State statutory requirements and DOJ Title Standards. Subject parcel will not be accepted into trust until all identified exceptions have been removed from title.

Sincerely,

Regional Director

Enclosures

Exhibit 7.1.12

RESTRICTIVE COVENANT ACKNOWLEDGMENT

I, _____, have requested that the United States acquire and hold in trust for my benefit a parcel of land described as:

_____

_____

I understand that certain restrictive covenants have been recorded that may encumber this property and my rights to use and develop this property. Attached is a copy of the document that created this encumbrance. I have read the attached document, understand the limitations on my use of my property, and agree to be bound by those restrictions and limitations so long as they remain effective.

Dated: _____

_____
Signature of Applicant

Exhibit 7.1.13

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Midwest Regional Office
Bishop Henry Whipple Federal Building
One Federal Drive, Room 550
Ft. Snelling, MN 55111

FINAL AGENCY DETERMINATION
Fee-to-Trust Application
Oneida Tribe of Indians of Wisconsin

On May 14, 2007, the undersigned, as Regional Director, Midwest Regional Office, Bureau of Indian Affairs (BIA), an authorized representative of the Secretary of the Interior, issued a Notice of Decision concerning the fee-to-trust applications for the Oneida Tribe of Indians of Wisconsin, concerning the below-described real property.

The land referred to herein is situated in the Town of Oneida, Outagamie County, Wisconsin, Fourth Principal Meridian and is identified as:

Former Nagal property F55-433-101355: W½ of Gov. Lot 4 in part of the NW¼NW¼ Sec. 31, T24N, R19E, containing 17.40 ac. m/l T PN 170-058600

Former Brocker property F55-433-101360: Part of Gov. Lot 4 Sec. 26, T24N, R18E, containing 9 ac m/l TPN 170-106300 and 400

The known interested parties and the parties receiving copies of the Decision Notice, by certified mail with return receipt, were as follows: Robert Paltzer, Jr. Outagamie County Executive, Outagamie County; Norman Austin, Chairman, Town of Oneida; Honorable James Doyle, Governor, Wisconsin.

The Notice of Decision included a statement advising the above-named interested parties of their right to file an administrative appeal to the Notice of Decision pursuant to 43 CFR 4.310—4.340 within 30 days of their receipt thereof. The time period for filing has expired.

The undersigned did not receive any notice that any of the above-named interested parties filed a notice of appeal within the prescribed time frame or as of the below date. Based on the foregoing, it is now my determination to proceed with execution of the Acceptance of
Conveyance which is to be attached to and recorded in the official records of Outagamie County with the Warranty Deed conveying the within-described real property to the United States of America in trust for the Oneida Tribe of Indians of Wisconsin.

Said execution of the Acceptance of Conveyance is held in abeyance pending issuance of a public notice of this determination and the expiration of a 30-day waiting period pursuant to 25 CFR 151.12(b).

Dated: _____

_____
Regional Director, Midwest Region

Exhibit 7.1.14

PUBLIC NOTICE

TO

TAKE LAND "IN TRUST"

ACTION: Notice of final agency determination to take land into trust under 25 Code of Federal Regulations, Part 151.

SUMMARY: The Regional Director, Midwest Regional Office, Bureau of Indian Affairs, U.S. Department of the Interior on the below date, has made a final determination to acquire real property "in trust" for the (Tribe).

DATE: This determination was made on _____ .

FOR FURTHER INFORMATION CONTACT: (Name), Lead Realty Specialist, Midwest Regional Office, Bureau of Indian Affairs, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, MN 55111, telephone (612) 725-4586.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR, Part 151.12(b) that notice be given to the public of the decision by the authorized representative of the Secretary of the Interior to acquire land "in trust" at least 30 days prior to signatory acceptance of land "in trust." The purpose of the 30-day waiting period is to afford interested parties the opportunity to seek judicial review of administrative decisions to take land "in trust" for Tribes or individual Indians before transfer of title to the properties occurs. On _____, 20___, the Regional Director issued a Decision Notice to accept land "in trust" for the (Tribe) under the authority of Section 5, of the Indian Reorganization Act of 1934, 25 United States Code, 465.

The Regional Director, on behalf of the Secretary of the Interior, shall acquire title in the name of the United States of America in trust for Oneida Tribe of Indians of Wisconsin no sooner than 30 days after the initial date this notice is published in a newspaper.

The land referred to as former "(Name)" property, (FTI Case File #) herein and is described as:
(Insert legal description, include TPN)

H:\FEE TO TRUST\Templates-151 Documents\6 Application\Public Notice\FORM Public Notice 6-29-07

Exhibit 7.1.15

SAMPLE DEED AND ACCEPTANCE OF CONVEYANCE

GENERAL WARRANTY DEED

The _____TRIBE OF _____ RESERVATION, a Federally recognized Indian Tribe, grantor, hereby conveys and warrants to THE UNITED STATES OF AMERICA IN TRUST FOR THE _____ TRIBE OF _____RESERVATION, grantee, for valuable consideration, the following described tract of land in the State of _____, _____ County, described as follows:

Insert Legal Description

APN:

Prior to execution of this General Warranty Deed, the same parties hereto purported to convey between them the same parcel described herein by means of a Grant, Bargain and Sale Deed dated February 3, 2006, and recorded February 8, 2006 under number 378867, which Deed, by agreement of the parties hereto and the execution, delivery, and acceptance of this General Warranty Deed, is hereby revoked.

_____TRIBE OF _____
RESERVATION

BY:_____ DATE:_____
Chairman
_____Tribe of _____ Reservation
Address
City, State 77777

State of _____)
)
County of _____)

On this_ _____day of_____, 2005, there personally appeared before me a Notary Public,_ _____personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that he/she executed the instrument

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official stamp at my office in the County of _____, the day and year in this certificate first above written.

_____
Notary Public

My Commission expires on:_____

ACCEPTANCE

The foregoing conveyance from the _____ Tribe to the UNITED STATES OF AMERICA IN TRUST FOR THE _____ Tribe is hereby accepted and approved on behalf of the United States pursuant to Section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), and the authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, 230 DM 1, 3 IAM 4 (Release No. 00-03), 10 BIAM 11, as amended, and further delegations as needed to effectuate the Reorganization embodied in DM Releases dated April 21, 2003.

_____ Date:_____

Regional Director, _____ Region
Bureau of Indian Affairs
400 North 5th Street, MS-420
Two Arizona Center, 12th Floor
Phoenix, Arizona 85004

Attest: Regional Director, Western Region, Bureau of Indian Affairs

STATE OF _____)
)SS
COUNTY OF_____)

On this _____day of_____, 2007, there personally appeared before me a Notary Public ,_____personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that he/she executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official stamp at my office in the County of _____, the day and year in this certificate first above written.

_____
Notary Public

My Commission expires on:_____

Exhibit 7.2

25 CFR §151, *Land Acquisitions*

sooner than 30 days after the notice is published.

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

§ 151.13 Title examination.

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

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

§ 151.14 Formalization of acceptance.

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

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

§ 151.15 Information collection.

(a) The information collection requirements contained in §§ 151.9; 151.10; 151.11(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0100], Office of Management and Budget, Washington, DC 20502.

[60 FR 32879, June 23, 1995; 64 FR 13895, Mar. 23, 1999]

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

Sec.

152.1 Definitions.
152.2 Withholding action on application.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.
152.4 Application for patent in fee.
152.5 Issuance of patent in fee.
152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.
152.7 Application for certificate of competency.
152.8 Issuance of certificate of competency.
152.9 Certificates of competency to certain Osage adults.
152.10 Application for orders removing restrictions, except Five Civilized Tribes.
152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.
152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.
152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.
152.14 Removal of restrictions, Five Civilized Tribes, without application.
152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.
152.16 Effect of order removing restrictions, Five Civilized Tribes.

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

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

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

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains.

PART 151—LAND ACQUISITIONS

Sec.

151.1 Purpose and scope.
151.2 Definitions.
151.3 Land acquisition policy.
151.4 Acquisitions in trust of lands owned in fee by an Indian.
151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.
151.6 Exchanges.
151.7 Acquisition of fractional interests.
151.8 Tribal consent for nonmember acquisitions.
151.9 Requests for approval of acquisitions.
151.10 On-reservation acquisitions.
151.11 Off-reservation acquisitions.
151.12 Action on requests.
151.13 Title examination.
151.14 Formalization of acceptance.
151.15 Information collection.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

CROSS REFERENCE: For regulations pertaining to: The inheritance of interests in trust or restricted land, see parts 15, 16, and 17 of this title and 43 CFR part 4; the purchase of lands under the BIA Loan Guaranty, Insurance and Interest Subsidy program, see part 103 of this title; the exchange and partition of trust or restricted lands, see part 152 of this title; land acquisitions authorized by the Indian Self-Determination and Education Assistance Act, see parts 900 and 276 of this title; the acquisition of allotments on the public domain or in national forests, see 43 CFR part 2530; the acquisition of Native allotments and Native townsite lots in Alaska, see 43 CFR parts 2561 and 2564; the acquisition of lands by Indians with funds borrowed from the Farmers Home Administration, see 7 CFR part 1823, subpart N; the acquisition of land by purchase or exchange for members of the Osage Tribe not having certificates of competency, see §§ 117.8 and 158.54 of this title.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations. These regulations do not cover the acquisition of

land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or it members.

§ 151.2 Definitions.

(a) *Secretary* means the Secretary of the Interior or authorized representative.

(b) *Tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, "Tribe" also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503).

(c) *Individual Indian* means:

(1) Any person who is an enrolled member of a tribe;

(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;

(4) For purposes of acquisitions outside of the State of Alaska, *Individual Indian* also means a person who meets the qualifications of paragraph (c)(1), (2), or (3) of this section where "Tribe" includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.

(d) *Trust land* or *land in trust status* means land the title to which is held in trust by the United States for an individual Indian or a tribe.

(e) *Restricted land* or *land in restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) 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, in the State of Oklahoma or where there has been a 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.

(g) *Land* means real property or any interest therein.

(h) *Tribal consolidation area* means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

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

§ 151.3 Land acquisition policy.

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status:

(1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or

(2) When the tribe already owns an interest in the land; or

(3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding

land in trust or restricted status, land may be acquired for an individual Indian in trust status:

(1) When the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or

(2) When the land is already in trust or restricted status.

§ 151.4 Acquisitions in trust of lands owned in fee by an Indian.

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

§ 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), if such acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

§ 151.6 Exchanges.

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

§ 151.7 Acquisition of fractional interests.

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(a) The buyer already owns a fractional interest in the same parcel of land; or

(b) The interest being acquired by the buyer is in fee status; or

(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

§ 151.8 Tribal consent for nonmember acquisitions.

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

§ 151.9 Requests for approval of acquisitions.

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

§ 151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when

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

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

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

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

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

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

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

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

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

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

§ 151.11 Off-reservation acquisitions.

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

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

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

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

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

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

§ 151.12 Action on requests.

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

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