

**PACIFIC REGION
LAND ACQUISITION REQUIREMENTS**

The following is an outline of the filing requirements for tribal land acquisition requests and timeframes involved for various steps of the process:

- 1) All applications must be in writing and accompanied by a duly enacted Tribal resolution containing:
 - (1) A citation of the section in the tribe's formal document authorizing the action.
 - (2) Request for Secretarial approval of the land acquisition application.
 - (3) The legal description and/or assessor's parcel number of the property to be acquired.
 - (4) The statutory authority for the acquisition.
 - (5) A statement as to the current and proposed land use.
 - (6) The identity of the official (e.g. Chairperson, Spokesperson (title only) with the authority to execute conveyance document(s).

- 2) Land acquisitions must be consistent with the policy set forth in 25 CFR 151.3, which specifies that land may be acquired for a tribe in trust status when such acquisition is authorized by an Act of Congress and, (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 tribal housing. If the application is not consistent with 25 CFR 151.3, then the application must state that a waiver of the regulations is being requested. A justification for approval of the waiver should be contained within the application or supporting documents.

- 3) Consistent with 25 CFR 151.10 and 151.11, the applicant must address the following factors:
 - (a) Applications must cite the statutory authority for the land acquisition.
 - (b) The applicant must state the need for additional land.
 - (c) The applicant must state the purpose (s) for which the land will be used.
 - (d) The application must state what impacts on the State and its political subdivisions will result from removal of the property from the tax rolls.
 - (e) The application must fully describe the jurisdictional problems or conflicts, which may arise as a result of the intended land use and removal from State or local jurisdiction.
 - (f) The application must identify any potential impact upon services currently provided by the Bureau of Indian Affairs, or what Bureau of Indian Affairs services will be requested or required if the application is approved.
 - (g) The application must include information that will allow for compliance with 516 DM 6, appendix 4, *National Environmental Policy Act Revised Implementing Procedures*, and 602 DM 2, *Land Acquisitions: Hazardous Substances Determinations* (see item 10 in this section).

If the subject property is located outside of and noncontiguous to the tribe's reservation, the following factors must be addressed in addition to the factors listed above:

- (h) Provide information regarding the location of the land relative to the state boundaries, and its distance from the boundaries of the tribe's reservation.
 - (i) Where the land is being acquired for business purposes, the tribe shall provide a plan, which specifies the anticipated economic benefits, associated with the proposed use.
- 4) The application must state what actions are planned to reduce adverse impacts identified under items 3.d. and 3.e. from above.
 - 5) If the property is not owned by the Tribe, a copy of any agreement(s) for the purchase or exchange of the subject property should be submitted.
 - 6) Applications should include a description of the existing terrain, existing improvements and/or occupants, statement as to whether or not there is legal access to the subject property and maps that depict the subject property in relation to the Tribe's reservation.
 - 7) Land acquisitions for economic development must include a detailed explanation of the proposed development and how it will benefit the tribe, e.g., tribal employment, anticipated revenues to the tribe and projections for increased tribal programs or services.
 - 8) The applicant **must pay all taxes due and payable** until such time as the applicant has been advised that the property has been accepted into trust. The applicant must also make sure that all financial obligations are met in order to avoid attachment of any liens against the property proposed for trust acquisition e.g., tribes are responsible for contributions to the Internal Revenue Service for tribal employees.
- 9) TITLE REQUIREMENTS:
- (a) The Department of Justice Title Standards require a commitment or a binder of title evidence with a commitment to issue the final title insurance on the **ALTA U.S. Policy Form-9/28/91 stating the proposed insured is the "The United States of America in trust for the [insert Tribe's legal name] "**.
 - (b) After the title commitment has been reviewed, BIA staff will advise the Tribe of the title exceptions that are acceptable. BIA will require a Resolution from the Tribe acknowledging those title exceptions that will remain on title and the tribe must state whether or not such right will interfere with the intended use of the subject property.
 - (c) For any exception listed in Schedule B of the title commitment, a copy of the referenced document must be included, e.g., rights of way of record; all information relevant to any existing special assessment districts, etc. Also, copies of all documents referenced in the legal description and FULL SIZE copies of any referenced survey or plat maps.
 - (d) If monetary liens exist, the tribe must pay the obligation in full at close of escrow and/or prior to acceptance of title by the United States. Additionally, certain Conditions, Covenants and Restrictions (CC&R's) and special assessment district obligations may prohibit trust conversion if it is determined that the encumbrance will jeopardize the interest of or create a potential liability to the United States.
 - (e) The title insurance policy should have a liability in an amount equal to the value (most commonly, the purchase price) of the subject property or the assessed value.

- (f) Vesting deed (if applicant already owns land, the deed which conveyed it to the applicant).

10) ENVIRONMENTAL REQUIREMENTS:

In compliance with the National Environmental Policy Act of 1969 (NEPA) at 40 CFR, Sections 1500-1508 and BIA NEPA Handbook (59 IAM 3 (2005)), all application's should be accompanied by either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). **Three (3) bound copies are requested.**

Under certain circumstances and at the discretion of the BIA, a **Categorical Exclusion (CATEX)** can be used in place of an EA or EIS where no change in land use is anticipated. It is suggested that an Environmental Overview (EO) be prepared providing the basic information relating to the proposed acquisition i.e. purpose and need, maps and any additional information pertinent to the application. **Three (3) bound copies are requested.**

The following environmental surveys and reports are an integral part of NEPA compliance and are required for all land acquisition requests:

- (a) **Endangered Species Act** ("listed species") pursuant to Section 7 of the Federal Endangered Species Act, applicants should enter into early consultation with the U.S. Fish and Wildlife Service (FWS), "to determine whether the proposed action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat." Should the proposed action in any form, affect "listed species or their critical habitat," consultation with FWS is necessary and should be documented. If a No Effect determination is warranted on a Listed Species, a written concurrence from FWS is required. Compliance with Section 7 of the Endangered Species Act is required to satisfactorily complete the NEPA process.
- (b) **Cultural Resource Survey**, pursuant to Section 106 of the National Historic Preservation Act (NHPA), the survey should be prepared by a certified Archaeologist. The survey will assist the Regional Archeologist in the identification of cultural resources that may require special recognition, preservation and/or protection from impacts associated with the proposed action. This survey should be made available early in the fee to trust process since approval must come from the State Historical Preservation Officer, which generally requires a minimum of 30 to 90 days for review. **Four (4) bound copies** are requested from the applicant, submitted as a separate document from the EA or EIS.
- (c) **Environmental Site Assessment (ESA) or Phase I Contaminant Survey.** Requirements are set forth by the provisions of DOI 602 Departmental Manual (DM) 2, Real Property Pre-Acquisition, ESA. An environmental professional, incorporating the American Society for Testing and Materials (ASTM) Standards on ESA's for Commercial Real Estate, should prepare the ESA or Phase I. The survey should be submitted to the BIA at the early stages of the trust acquisition process in order for the BIA to perform a Contaminant Survey, verifying the absence of contaminants and the

risk of liability. A **Phase II/III** survey may be warranted if further investigation or testing is found necessary. It is essential that that all remediation issues be completed in a timely manner to avoid unnecessary delays in the processing of the application. **Three (3) copies, two bound and one unbound** are requested from the applicant.

The BIA may request additional documentation, investigations, and/or environmental reports dependent on the nature of the action. **Processing time may exceed two years.**

GENERAL TIMEFRAMES

	30 days	30-60 days	60-90 days	120 days or more
Categorical Exclusion			X	
Environmental Assessment or Environmental Impact Statement				X
Cultural Resource Survey			X	
Phase I Contaminant Survey		X		
Notice of Application	X			
Solicitor's Preliminary Title Opinion	X			
Notice of Decision	X			
Public Notice of Final Determination	X			
Certificate of Inspection & Possession	X			
Acceptance of Conveyance	X			
Record Title Documents in the county of record & obtain Final ALTA Title Policy			X	
Final Opinion of Title	X			
Record Title Documents in LTRO	X			

Upon receipt of a complete application, a **"Notice of the Application"** is filed and requests for comments are solicited from all known interested parties, including, but not limited to, appropriate county and state agencies. The notice provides the addressee with **30-days** in which to submit comments, however, extensions may be granted upon request. Comments will be forwarded to the tribe for response, and any response provided by the tribe, together with the comments will be considered in BIA's decision.

The Agency and/or Regional Environmental Protection Specialist generally review environmental documents for thoroughness and accuracy. It is not uncommon for 2 to 3 "Draft" EA's/EIS's to be generated before an acceptable document is obtained. The final EA/EIS is sent to various governmental agencies and any other known interested parties for comment. A **30-day** comment period is provided to all parties.

When the necessary comment period for the "Notice of Application" has expired and the ESA or Phase I completed, a request for a Preliminary Opinion of Title will be submitted to the Solicitor **(30-60 days)**.

Upon receipt of a satisfactory Solicitor's preliminary opinion and satisfactory environmental compliance, the delegated authority (Superintendent or Regional Director) issues a **Notice Of Decision**. The notice is issued to all known interested parties and advises all parties of the right to file an administrative appeal, pursuant to 25 CFR 2 or 43 CFR 4.310, et seq. **(30 days)**.

If no administrative appeal is filed, the delegated authority can issue a **Final Agency Determination** and publish the determination (**Public Notice**) in newspapers serving the subject area and in the Sacramento Bee. The published notice must specify that no final action will occur until expiration of a **30-day waiting period** that commences from the date of publication. If judicial action is filed, all BIA action is stayed.

If no judicial action is filed, the **Certificate of Inspection and Possession** is prepared after BIA's physical inspection of the subject property (this inspection is independent of other inspections associated with NEPA compliance and is made immediately prior to acquisition by the United States of America).

Once the above procedures have been completed, the property can be acquired by the United States in trust for the tribe. The Superintendent or Regional Director, as an authorized representative of the Secretary of the Interior, executes an acceptance of conveyance that accepts the grant of real property described in the grant deed from the tribe.

After receipt of the recorded grant deed and acceptance of conveyance and ALTA title insurance policy **(60-90 days)**, a Solicitor's Final Opinion of Title is requested.

The original of the Solicitor's Final Opinion of Title, recorded Grant Deed and Acceptance of Conveyance, Title Policy, Certificate of Inspection and Possession, Tribal Resolution and survey maps if available are forwarded to the Land Titles and Records Office (LTRO) for recordation. After recordation, a new tract number will be assigned and a recording number will be stamped on the documents. The Tribe is then sent a copy of the recorded deed and acceptance of conveyance for their records.

NOTE: Off-reservation non-gaming land acquisition applications no longer have to be submitted to the BIA's Central Office for review and consideration. However, neither the Superintendents nor the Regional Directors have the authority to approve an EIS. Obtaining Central Office approval on an EIS can extend the processing time.