

IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, D.C. 20240

JUL 02 2010

Dear Tribal Leader:

The purpose of this letter is to advise you that the Secretary of the Interior, the Assistant Secretary - Indian Affairs, and as the Director, Bureau of Indian Affairs, we have listened to and understand your frustration with the time delays and lack of transparency in processing tribes' and tribal members' applications to take fee land into trust.

We agree that fee-to-trust acquisitions are an important component of tribes' rights to self determination, economic development activities, and efforts to provide and improve housing for Tribal members. We strongly support those fundamental Tribal government initiatives and the right to pursue them through various endeavors, including the fee-to-trust process.

In the short amount of time I have had the opportunity to be Director, Bureau of Indian Affairs we have taken steps to address our management of the fee-to-trust process and identified several areas where we can make improvements to accomplish several things.

First and foremost we recognize that much of the frustration is related to the lack of information available regarding the fee-to-trust process. We also recognize that the quality and quantity of communication from BIA offices to tribes regarding pending applications has often times been inadequate and has resulted in delayed decisions. We are committed to improving the communication between the BIA and Tribes, and also commit to providing you with clear guidance on the application process.

There are three enclosures to this letter designed to expedite processing of pending applications and all future fee-to-trust applications.

The first enclosure, "Required Elements: Application for Fee-to-Trust", provides a clear definition of the essential elements required from all applicants that together, initiate the fee to trust application process. BIA staff has been advised that each of the elements identified in this informational sheet must be present in all future applications to initiate the fee-to-trust application process.

The second enclosure is a new BIA policy that is designed to define the timeframes for gathering the information necessary to process incomplete current applications and to expedite the process on future applications. The timeframes may seem aggressive but we believe that they are necessary on both the BIA and applicant side to establish an efficient program to process fee-to-trust applications. Much of the information required to process a fee-to-trust application is time-

sensitive, such as the commitment for title insurance and the environmental compliance documents. These timeframes are intended to ensure the integrity of those documents.

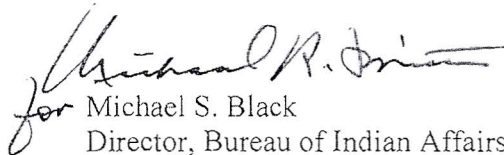
The third enclosure is an informational brochure designed to provide answers to frequently asked questions and give an overview of the fee-to-trust process for discretionary fee-to-trust applications. We believe that this brochure will assist BIA employees and future applicants in better understanding the fee-to-trust process, the information required from applicants, and to provide relevant contact information for applicants.

With the support of this administration, we are committed to establishing a structured fee-to-trust program within the BIA to provide a much more transparent process for Tribes and individual applicants.

Our goal is to process fee-to-trust applications timely and efficiently. We understand the economic and personal hardships that delayed decisions can create and we are committed to minimizing those delays.

We hope we can count on your support and patience in our endeavor to build an efficient fee-to-trust program and improve the communication between the BIA and all fee land into trust applicants. We are positive that our efforts will result in improved communication and establish a fee-to-trust process that we can rely upon for many years to come.

Sincerely,


for Michael S. Black
Director, Bureau of Indian Affairs

Enclosures

INDIAN AFFAIRS MANUAL

- 1.1 Purpose.** This chapter establishes Indian Affairs (IA) policy and procedures to acknowledge receipt of applications for fee-to-trust land acquisitions; define timeframes with regard to gathering of information to complete fee-to-trust applications on a timely basis; define timeframes associated with administrative and legal challenges to decisions to accept land into trust; implement reporting requirements for pending fee-to-trust cases; and to identify how IA employees will record time spent working any and all aspects of fee-to-trust. All references to “days” within this policy are **calendar days**, not business days. All references to “written correspondence to applicants” within this policy are to be made via **certified-return receipt mail**.
- 1.2 Scope.** This policy applies to all Bureau of Indian Affairs (BIA) employees and to all discretionary fee-to-trust applications currently in the possession of the Department of the Interior (DOI) and to all future applications to convert fee land into trust land received by DOI.
- 1.3 Policy.**

A. Acknowledging Receipt of Applications for Fee-to-Trust Acquisitions.

After receipt of an application to acquire land into trust, as identified in 25 CFR §151.9, the authorized official (Superintendent, Regional Director, or Central Office) receiving the application will formally acknowledge receipt of the application **in writing**, to the applicant within 10 calendar days. This formal acknowledgement by the authorized official **must include** a copy of the brochure titled “Understanding the Fee-to-Trust Process for Discretionary Acquisitions.”

B. Gathering information for Incomplete Fee-to-Trust Applications.

The “Acquisition of Title to Land held in Fee or Restricted Fee Status Handbook” (hereafter Fee-to-Trust Handbook) addresses incomplete applications at “Step 3: Responding to an Incomplete Written Request or Application.” Pursuant to this policy, BIA staff is required to review all pending fee-to-trust applications currently in their possession and take one or more of the following actions, as appropriate, for each pending application:

1) Applications that are pending as of the date of this policy:

If there are expired or missing documents in pending applications that are required from the applicant, BIA staff will contact the applicant **in writing**, according to the steps identified in the Handbook under “Step 3: Responding to an Incomplete Written Request or Application.” This written correspondence is the “original notice,” and will advise the applicant that the requested, responsive information must be received from the applicant within 30 days, or the application will be considered inactive.

If the requested information is not received within 30 calendar days after the original notice, BIA staff will send the applicant a “final notice” that BIA did not receive the requested information and the application will be returned to them. The application must

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be returned after 60 days of the date of the original notice and removed from the active caseload unless the responsive information is received by BIA. The authorized official (Superintendent, Regional Director, or Central Office) is responsible for ensuring return of the application to the applicant and updating the system of record, (presently the Fee to Trust Tracking System (FTTS)) to reflect that the application has been returned within five days of that action.

2) Applications received after the date of this policy:

If there are expired or missing documents in applications received after the date of this policy that are required from the applicant, BIA staff will contact the applicant **in writing** according to the steps in the Handbook under "Step 3: Responding to an Incomplete Written Request or Application." This written correspondence is the "original notice," and will also advise the applicant that if the requested, responsive information is not received within **30 days**, the application will be considered inactive.

If the requested information is not received within 30 calendar days after the original notice, BIA staff will send the applicant a "final notice" that their application will be returned to them after 45 days of the date of the original notice and removed from the active caseload unless the responsive information is received from them. The authorized official (Superintendent, Regional Director, or Central Office) is responsible for returning the application to the applicant and for updating the system of record to reflect that the application has been returned within five days of that action.

C. Administrative and Legal Timeframes

1) If there are expired or missing documents that are required from DOI staff, BIA will contact the responsible office **in writing** within seven calendar days to request that the responsive information be provided within 21 days.

The BIA staff will also assure that all pending (incomplete) cases are in the system of record and that the data is current and accurate so reports can be generated to produce work lists for the responsible agencies and provide a quarterly status report to the respective Tribe having jurisdiction over the lands subject to the application(s). The work lists will be reviewed and the responsible agencies contacted on a regular basis to assure that the cases keep moving forward.

2) If the application is complete and there are no expired or missing documents, BIA staff will take the necessary actions to assure that a Notice of Decision is issued as soon as possible, but **no later than 15 days** from the date of receipt of final document(s) required to issue the Notice of Decision.

3) If the decision to take land into trust is appealed to a Regional Director, the official whose decision is being appealed will provide the complete administrative record to the respective regional office **within 10 days** of notice of the appeal. The administrative

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Chapter 12

Processing Discretionary Fee-to-Trust Applications

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record will be compiled as required in the Fee to Trust Handbook. The Regional Director has 60 days to issue a decision.

4) If a case is appealed to the Interior Board of Indian Appeals (IBIA), the Regional Director will immediately put the Director, BIA on notice. Applications under administrative appeal or judicial review will be encoded in system of record within five days to reflect the appropriate status.

D. Quarterly Reports to Tribe(s) for Pending Applications. Each location authorized to accept land into trust (Agency Office, Regional Office, or Central Office) is responsible for providing the Tribe(s) who have jurisdiction over the lands in pending fee-to-trust applications, with quarterly reports of all pending applications (including individual Indian applications) within each Tribe's respective jurisdiction. Quarterly reports will be sent to the Tribe(s) the first week in the months of October, January, April and July.

E. Fee to Trust Activity Codes for Employee Time Accounting. All time spent and actions performed by BIA employees to process, manage, report, provide training and receive training regarding fee-to-trust will be coded in the Quick Time System (or its successor) as follows:

- To process fee-to-trust applications: WCV2
- To manage the process or report on the progress: WCVC
- To provide training, or perform outreach: WCVA
- To receive training: WCVB

1.4 Authority. 25 CFR §151.9

1.5 Roles and Responsibilities

- A. **Director, Bureau of Indian Affairs (BIA).** The BIA Director is responsible for the development of National Policy affecting Indian lands.
- B. **Deputy Bureau Director, Field Operations, BIA.** The BIA Deputy Bureau Director of Field Operations is responsible for overseeing the Regional Directors and dissemination of policy to them.
- C. **Deputy Bureau Director, Trust Services, BIA.** The BIA Deputy Bureau Director of Trust Services is responsible for assisting in the dissemination of trust resource policy and information to the Regional Directors.
- D. **Regional Directors, BIA.** The BIA Regional Directors are responsible for carrying out policy as directed, and for overseeing the implementation of policy either directly or via Agency Superintendents.

Required elements: Application for fee-to-trust.

All fee-to-trust applications must contain the following:

1. A written request
 - a. The request must state the applicant is requesting approval of a trust acquisition by the United States of America for their benefit
 - b. Identification of applicant(s)
 - c. Legal Land Description
 - i. A description of real property in legally acceptable terms that is definite, legally defensible and susceptible to only one interpretation.
 - ii. This can be accomplished by government survey of the Public Land Survey System (PLSS), metes and bounds, or lot numbers of a recorded plat, so as to show exactly where the real property is located and how many acres it contains.
 1. All land descriptions shall contain the following information
 - State
 - County
 - Approximate Acreage
 2. All land descriptions described by Public Land Survey System (PLSS) shall contain the following applicable information
 - Township
 - Range
 - Principal Meridian
 - Section(s)
 - Government Lots
 - Aliquot Parts
 3. All land descriptions described by metes and bounds within the Public Land Survey System (PLSS) shall contain the following applicable information.
 - Township
 - Range
 - Principal Meridian
 - Section(s), Aliquot part, or Government Lot parcel lies in
 - Commencement tie from a Government corner of PLSS to point of beginning of metes and bounds parcel.
 - A metes and bounds description which closes mathematically on itself.
 4. All land descriptions described by metes and bounds not within the Public Land Survey System (PLSS) shall contain the following applicable information.
 - A point of beginning easily located of the ground.
 - A metes and bounds description which closes mathematically on itself.
 - d. Need for acquisition of the property (one of the following)
 - i. Economic Development
 - ii. Tribal Self-Determination
 - iii. Indian housing (non-commercial)

- e. Purpose for which the property is to be used (See Exhibit "Create list of examples")
 - f. A legal instrument such as a deed, to verify applicant's fee ownership
 - g. Written Tribal consent for nonmember application, or Tribal acquisitions in land under jurisdiction of another Tribe
2. In addition to the requirements of 1. above, the Tribal applicant will also submit the following:
 - a. The application must state the Tribal name as it appears in the Federal Register for Federally recognized Tribes
 - b. Statutory Authority
 - c. If the property subject to the application is located off-reservation the applicant will also include the following:
 - i. A business plan, if the application is for business purposes [See 151.11 (c)]
 - ii. The location of the subject property relative to state and reservation boundaries [See 151.11 (b)]
 3. In addition to the requirements of 1. above, the following information is also required for an individual application:
 - a. Evidence of eligible Indian status of the applicant
 - b. Amount of trust or restricted Indian land already owned by the applicant
 - c. Information or a statement from the applicant addressing the degree to which the applicant needs assistance in handling their affairs

**Fee-to-Trust
Step-by-Step Process for
On-Reservation (Discretionary)**

STEP 1 Review of Written Request or Application
STEP 2 Encode into the Fee-to-Trust Tracking System
STEP 3 Respond to an incomplete application
STEP 4 Site Visit and Certificate of Inspection
STEP 5 Notice of Application to Interested Parties
STEP 6 Environmental Compliance Review NEPA & 602 DM2 Hazardous Substances
STEP 7 Comments to Notice of Application
STEP 8 Preliminary Title Opinion
STEP 9 Satisfy Preliminary Title Opinion objections
STEP 10 Prepare Analysis & Notice of Decision
STEP 11 Prepare Publication Notice

STEP 12 Prepare Final Certificate of Inspection
STEP 13 Acceptance of Conveyance
STEP 14 Final Title Opinion and Recordation
STEP 15 Recording at Land Titles and Records
STEP 16 Completed Application Packet

For more information about this
process contact:

Steps Continued ➡

**UNDERSTANDING
THE**

**Fee-to-Trust
Process
For Discretionary
Acquisitions**



**U.S DEPARTMENT
OF THE INTERIOR**



**BUREAU OF INDIAN
AFFAIRS**

Frequently Asked Questions

1. What is a fee-to-trust land acquisition? A fee-to-trust land acquisition is a transfer of land title from an eligible Indian tribe or eligible Indian individual(s) to the United States of America, in trust, for the benefit of the eligible Indian Tribe or eligible Indian individual(s).

2. Who is eligible to apply for a fee-to-trust land acquisition? Indian tribes and individual Indian persons who meet the requirements established by federal statutes and further defined in federal regulations are eligible to apply for a fee-to-trust land acquisition. See 25 Code of Federal Regulations (CFR) § 151.2; 25 United States Code (USC) § 479 and § 2201.

3. If you are eligible, how do you submit an application? All applications for a fee-to-trust acquisition must be in writing and specifically request that the Secretary of the Interior take land into trust for the benefit of the applicant. If you are an eligible Indian tribe, the request may be in the form of a tribal resolution. See 25 CFR § 151.9.

4. Where should an eligible applicant submit an application? Applications shall be submitted to the Bureau of Indian Affairs (BIA) office that has jurisdiction over the lands contained in the application. If the applicant does not know which BIA office has jurisdiction the applicant should contact the BIA Division of Real Estate Services at (202) 208-7737 or at <http://www.bia.gov/WhoWeAre/RegionalOffices/index.htm>

5. What information is the applicant required to provide to accompany the application for a fee-to-trust acquisition? The applicant must provide a legal description of the land to be acquired, the legal name of the eligible Indian tribe or individual, proof of an eligible Indian tribe or eligible person, the specific reason the applicant is requesting that the United States of America acquire the land for the applicant's benefit, a title insurance commitment addressing the lands to be

acquired and information that allows the Secretary of the Interior to comply with the National Environmental Policy Act (NEPA) and 602 Departmental Manual 2 (602 DM 2) – Hazardous Substances.

6. What laws, regulations and standards apply to a fee-to-trust acquisition? There are different laws that must be satisfied. Most acquisitions are authorized under 25 USC § 465, Section 5 Indian Reorganization Act (1934) and reviewed under 25 CFR § 151. However, the Interior Department must comply with all federal laws, including compliance with NEPA, 602 DM 2 Hazardous Substances Determinations, National Historical Preservation Act (NHPA) and U.S. Department of Justice Title Standards. See 25 CFR § 151.13.

7. What are the applicant's responsibilities if they receive a written request from the Bureau of Indian Affairs requesting additional information to process an application? The applicant must reply back to the BIA within the time frames identified in the written correspondence requesting additional information. All correspondence from the BIA requesting additional information will include each specific document needed to proceed with processing the application and will include the specific time the applicant has to provide the requested information. It is very important that the applicant maintain written communication with the BIA throughout the process when the applicant is contacted by the BIA. If the applicant needs additional time to respond to a request for additional information, they must contact the BIA as soon as possible and make the request for an extension of time in writing. The BIA will reasonably accommodate requests from applicants for additional time to provide information, and will notify applicants in writing of the decision regarding the request.

8. What happens if I do not respond? If the applicant does not respond in the time stated in the letter or any extension, the BIA will either return the application or take into consideration failure to provide the information. If the applicant has failed to provide information on a non-critical title issue, the BIA will

take into consideration that there is insufficient or negative information in forming BIA's decision on the application and may result in a denial.

9. Are there entities that will be provided notice of an application for a fee-to-trust acquisition? Yes. State and local governments, including tribal governments having regulatory jurisdiction over the land contained in the application, will be notified upon written receipt of an application for a fee-to-trust acquisition. The notice will inform the entities 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.

10. Will all applications from eligible Indian tribes and eligible Indian individuals result in a fee-to-trust acquisition? No. Each application will be evaluated to determine if the applicable criteria defined in the CFR has been addressed (25 CFR § 151.10). The official authorized to accept the fee-to-trust acquisition will decide whether or not to accept the fee-to-trust acquisition. All decisions to accept or deny a fee-to-trust acquisition shall be in writing. If the acquisition is denied, the applicant will be advised of the reasons for the denial and will be notified of the right to appeal the decision and where the applicant's appeal must be filed.

11. 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.

12. Can I get a report on the progress of my application? Yes. The BIA tracks the steps and progress of applications and they will provide you a report upon your request.