

# **Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)**



## **Issued By:**

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## 1.0 INTRODUCTION

The Indian Reorganization Act (IRA) [48 Stat. 984, 25 U.S.C. § 461 *et seq.* (June 18, 1934)] provides the Secretary with the discretion to acquire trust title to land or interests in land. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

The Secretary bases the 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. With the exception of certain mandatory acquisitions, the decision to acquire title requires Secretarial approval.

This handbook describes standard procedures used by the Bureau of Indian Affairs (BIA) for the transfer of fee land into 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. This handbook also incorporates guidelines and requirements used by the BIA for Reservation Proclamation requests received from Tribes.

The BIA will review the content of this handbook periodically to determine the need for revisions. This review may include input from Tribes, Tribal organizations, and DOI; all of whom rely on the procedures described in this handbook.

## 2.0 DEFINITION OF TERMS AND LISTING OF ACRONYMS

**Terms used in this handbook have specific definitions. For the definition of terms used in this handbook, refer to the definitions in 25 CFR Part 151 and those provided in this section.**

*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.

*Gaming Acquisition:* The lands where the actual gaming operations will occur. This does not include lands that are acquired to supplement the actual lands the gaming establishment will or does reside upon. This does not include parcels acquired for parking lots, hotels, golf courses, gift shops, etc.

\*The term “*Gaming Related*” is no longer used by the Department of the Interior and any acquisitions that are not specifically for gaming will be processed pursuant to the regulations at 25 CFR Part 151 and the applicable section of this Handbook. This includes parking lots, hotels, golf courses and any lands other than those where a gaming facility is located.

*Mandatory Trust Acquisition:* A trust acquisition directed by Congress or a judicial order 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.

*Reservation Proclamation:* A formal declaration issued by the Secretary of the Interior or her designee proclaiming that certain lands are a new reservation or an addition to an existing reservation. A reservation proclamation can encompass multiple trust parcels or a portion of a parcel taken into trust.

*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 as co-tenants in a parcel of land.

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

|                    |  |
|--------------------|--|
| 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              |
| CIP                | Certificate of Inspection and Possession |
| CC & R             | Covenants, Conditions, and Restrictions  |
| DM                 | Department Manual                        |
| DOI                | Department of the Interior               |
| DOJ                | Department of Justice                    |
| EA                 | Environmental Assessment                 |

|        |  |
|--------|--|
| EIS    | Environmental Impact Statement             |
| ECRM   | Environmental Compliance Review Memorandum |
| ESA    | Environmental Site Assessment              |
| FTO    | Final Title Opinion                        |
| FOIA   | Freedom of Information Act                 |
| FONSI  | Finding of No Significant Impact           |
| IAM    | Indian Affairs Manual                      |
| IBIA   | Interior Board of Indian Appeals           |
| IGRA   | Indian Gaming Regulatory Act               |
| ILCA   | Indian Land Consolidation Act              |
| IRA    | Indian Reorganization Act                  |
| ITO    | Interim Title Opinion                      |
| LDR    | Legal Land Description Review              |
| LTRO   | Land Titles and Records Office             |
| MSA    | Municipal Service Agreement                |
| NEPA   | National Environmental Policy Act          |
| NHPA   | National Historical Preservation Act       |
| NOA    | Notice of Application                      |
| NOD    | Notice of Decision                         |
| PLSS   | Public Land Survey System                  |
| PILT   | Payment in Lieu of Taxes                   |
| PTO    | Preliminary Title Opinion                  |
| ROW    | Right-of-way                               |
| SHPO   | State Historical Preservation Office       |
| THPO   | Tribal Historical Preservation Office      |
| TIN    | Taxpayer Identification Number             |
| TSR    | Title Status Report                        |
| U.S.C. | United States Code                         |

### **3.0 PROCESS AND PROCEDURE**

#### **3.1 Standard Operating Procedures**

Fee-to-trust applications involve the acquisition in trust of whole or undivided interests in land held in fee. There are separate operating procedures for each type of acquisition and each section is titled as follows:

- 3.1.1 On-reservation Discretionary Trust Acquisitions (25 CFR § 151.10)
- 3.1.2 Off-reservation Discretionary Trust Acquisitions (25 CFR § 151.11)
- 3.1.3 Mandatory Trust Acquisitions (Applicable policy)

#### **3.2 Selecting the Correct Standard Operating Procedure**

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

- Is the applicant a Tribe or eligible individual Indian as defined in 25 CFR § 151.2?
- Is there legal authority for the requested acquisition?
- Is this a mandatory or discretionary trust acquisition?
- Is the requested parcel on-reservation or off-reservation?
  - On reservation means land that is within or contiguous to a reservation.
  - If there is a question whether the property is contiguous, consult the Office of the Solicitor (SOL) to review and concur. If the property is clearly contiguous to the exterior boundaries, no SOL analysis is needed.

If the stated purpose of the proposed acquisition is for gaming, follow the Office of Indian Gaming (OIG) Handbook for Gaming Acquisitions (Gaming Handbook) (under development by OIG):

- Notify OIG and provide that office the required documents and information; and
- Continue to process the fee-to-trust application pursuant to the regulations at 25 CFR Part 151 and the applicable section of the Fee-to-Trust Handbook concurrently with any gaming determinations being processed by OIG.

### **3.3 Step Sequence:**

While steps within each of the standard operating procedures are numbered sequentially, you may proceed concurrently on other steps, when appropriate, or may repeat certain steps until the operating procedure is completed. *[See Exhibit 5.2: Fee-to-Trust Quick Reference Guide]*

### **3.4 Reservation Proclamations:**

On July 22, 2014, the BIA Director issued revised internal guidelines for submitting reservation proclamation requests. These guidelines have now been replaced by a new section on processing reservation proclamations, incorporated herein. *[See Section 3.4.1 Guidelines and Requirements for Requesting a Reservation Proclamation]* The Secretary is authorized by the IRA to proclaim reservations under 25 U.S.C. § 467 as follows:

The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: Provided, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by Tribal membership to residence at such reservations.

Reservation proclamations can only be issued for completed trust acquisitions made pursuant to an authority conferred by the IRA. However, Tribes may choose to submit a reservation proclamation application with their FTT application, or alternatively, may submit a reservation proclamation for lands already accepted in trust. When Tribes submit a reservation proclamation with their FTT application, BIA will endeavor to process the reservation proclamation as soon as

possible following acceptance of the land into trust. These updated guidelines establish the standard operating procedures for reviewing reservation proclamation requests from Tribes, the requirements for Regional Offices, and the required documentation for approval by the Assistant Secretary – Indian Affairs (AS-IA).



### 3.1.1

## On-Reservation Discretionary Trust Acquisitions

## **ON-RESERVATION DISCRETIONARY TRUST ACQUISITIONS**

### **Scope**

This section of the handbook contains procedures for discretionary trust acquisitions on-reservation and/or contiguous to a reservation for individual Indians and Tribes. This section applies to undivided fractional and full interests owned in fee by an eligible Tribe or individual.

### **Procedure**

To assist the applicant in preparing a request, the applicant should be provided a copy of “Required Elements: Application for Fee-to-trust” [*See Exhibit: 5.3*], the brochure-“Understanding the Fee-to-Trust Process for Discretionary Acquisitions,” and any other relevant information.

#### **Step 1: Encoding the Fee-to-Trust System of Record**

1. Within three (3) business days of receipt of a written request to initiate the application process, encode information into the fee-to-trust system of record.
2. The system of record must be updated within three (3) business days upon receipt of any additional information from the applicant or others (e.g., comments on the notice of application).

#### **Step 2: Review of Written Request to Initiate Application Process**

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

1. Written request.  
A written request need not be in any special form but must contain each of the following items.
  - a. A statement that 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.
    - 1) A description of real property in legally acceptable terms that is definite, legally defensible and susceptible to only one interpretation. Perform a preliminary informal review of the legal land description to assure the obvious elements

identified below are present. A Legal Land Description Review (LDR) is required later in the process.

- 2) Lands can be legally described a number of ways, most commonly by referencing the Public Land Survey System (PLSS), however, lands in the 13 original states and Texas are subject to other survey systems.
  - 1) All legal land descriptions utilizing PLSS or any other survey system shall contain the following elements:
    - State
    - County
    - Acreage
  - 2) If the lands contained in the application are described using the PLSS, the description will contain the following elements that must be included to be a legitimate legal land description.
    - Township
    - Range
    - Principal Meridian
    - Section(s)
    - Government Lots or Aliquot Parts
  - 3) All legal land descriptions described by metes and bounds within the PLSS, in addition to the elements contained in b) shall include:
    - Commencement tie from a Government corner of PLSS to point of beginning of metes and bounds parcel.
    - A metes and bound description which closes mathematically on itself.
  - 4) All legal land descriptions described by metes and bounds not within the PLSS shall contain the following applicable information:
    - A point of beginning easily located on the ground.
    - A metes and bound description which closes mathematically on itself.
- d. Need for acquisition of the property
  - 1) Economic Development
  - 2) Tribal Self-Determination
  - 3) Indian housing (non-commercial)
- e. Purpose for which the property is to be used. (If the purpose of the acquisition is identified by the Tribal applicant as “gaming,” follow the procedures outlined in the Gaming Handbook and continue to process the application pursuant to the regulations at 25 CFR Part 151 and this section of the Fee-to-Trust Handbook. “Gaming Related” is no longer a term utilized by the Department of Interior.)

- f. When the applicant is an individual who is not a member of the Tribe with jurisdiction and does not already own an undivided trust or restricted interest in the parcel of land to be acquired, written Tribal consent for nonmember applications must be provided.
    - g. When the applicant is a Tribe who is not the Tribe with jurisdiction and does not already own an undivided trust or restricted interest in the parcel of land to be acquired, written Tribal consent for the Tribal acquisition of land must be provided.
2. In addition to the requirements of Step 2.1., above, the Tribal applicant must also submit the following:
  - a. The application must state the Tribal name as it appears in the list of *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs* published in the Federal Register, or as it appears in a federally approved Constitution.
  - b. Statutory Authority.
3. In addition to the requirements of Step 2.1. above, the following information is also required for an individual Indian's 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.
4. When the required elements as noted above (1-3) have been fulfilled, notify the applicant that you have received the application, as required by 52 IAM Chapter 12, 1.3 Policy A. "Acknowledging Receipt of Applications for Fee-to-Trust Acquisitions" [*See Exhibit 5.4.1: Sample Acknowledgement Letter*].
5. The application will then require the following, to allow for a complete review of the application:
  - a. Map depicting boundary and location of subject property if necessary.
  - b. Title evidence consisting of:
    - 1) The deed or other conveyance instrument providing evidence of the applicant's title or, if the applicant does not yet have title, the deed providing evidence of the transferor's title and a written agreement or affidavit from the

transferor, that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust; and

- 2) Either: (i) a current title insurance commitment; or (ii) the policy of title insurance issued to the applicant or current owner and an abstract of title dating from the time the policy of title insurance was issued to the applicant or current owner to the present.
    - The Department will look to the appropriate licensing authority for qualifications for the preparer of the abstract of title. An abstract of title means a compilation of all instruments of public record which in any manner affect title to the parcel of real property.
    - “To the present” means a date as close to the date of the review as possible.
  - 3) The applicant may choose to provide title evidence meeting the title standards issued by the U.S. Department of Justice, in lieu of the evidence required by number 2, above.
    - If the applicant chooses to comply with DOJ Title Standards, they must comply with the requirements of that process. E.g., The preliminary commitment, or a binder of title evidence with a commitment, to issue final title insurance on the current ALTA U.S. Policy Form.
    - The proposed insured should state, “The United States of America in trust for [insert legal name of the applicant (for Tribes, the legal name is the name as found in the Federal Register or a federally approved Constitution)].”
    - The proposed policy coverage must meet the minimum title insurance required by the DOJ Title Standards, or the alternate title evidence submitted by the Tribe.
- c. A draft Warranty Deed for the acquisition, with designation of BIA approval and delegation of authority or Warranty Deed with acceptance of conveyance. The deed must conform to local statutory recording requirements. [*See Exhibit 5.4.12 for a sample*]
  - d. A Restrictive Covenant Acknowledgement form may also be required [*See Exhibit 5.4.8: Restrictive Covenants Acknowledgement*].
  - e. A Legal Land Description Review (LDR) from a qualified individual that concurs with the validity of the legal land description including acreage. The concurrence is intended to verify that the description is accurate, correctly describes the subject property, and that it is consistent throughout the acquisition documents, such as commitments for title insurance, [survey] maps, deeds, etc.

- 1) Legal land descriptions shall be reviewed to identify insufficiencies due to confusing boundaries, gaps or overlaps, encroachments, and other conflicts along a property line.
  - 2) Relying solely on title evidence and title insurance creates the potential for overlooking boundary defects.
6. 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. Refer to Step 3 “Responding to an Incomplete Case” [*See Exhibit 5.4.2: Sample 30-day Notice-Incomplete Application Package*].
7. Advise the applicant that it is beneficial to provide the following documentation, if available.
- a. 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.
  - b. 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.
  - c. Agreements that have been negotiated with the State or local government.
    - Example: payment in lieu of taxes (PILT).
  - d. Description of those services not required of the state or local government(s) to the property because they are provided by the Tribal government.
  - e. Any information in support of the Tribal applicant being “under Federal jurisdiction” in 1934, if applicable, or other statutory authority for the acquisition.
  - f. Additional information or justification to assist in reaching a decision.
8. If the applicant has requested the transfer of an undivided fractional interest, there are two processing options to acquire this interest, and BIA must determine which applies.
- a. Discretionary. If the parcel did not have existing trust or restricted interests as of November 7, 2000, as evidenced by a report reflecting tract history from the BIA’s official system of land records, the acquisition is discretionary. [*See 25 U.S.C. § 2216(c)*]. Refer to 25 CFR § 151.7 and this section of the handbook (covering On-Reservation Discretionary Trust Acquisitions) for further processing requirements.

- b. **Mandatory.** If any interests in the parcel were held in trust or restricted status as of November 7, 2000 [See 25 U.S.C. § 2216(c)], the acquisition is mandatory.]. Refer to the Mandatory Acquisitions section of this handbook and the most recent mandatory acquisition guidance. (*Adhere to Policy and Directives 4.1: Mandatory Acquisition Guidance*).

### **Step 3: Responding to an Incomplete Case**

1. When a written request or application is determined to be incomplete:
  - a. Prepare a written notice to applicant including the following information and send by certified mail, return receipt requested. [*See Exhibit 5.4.2: Sample Original 30-Day Notice of Incomplete Fee-to-Trust Application*]. (*Adhere to Policy and Directives 4.2: IAM, Part 52, Chapter 12 “Processing Discretionary Fee-to-Trust Applications”, 1.3 Policy B. “Gathering information for Incomplete Fee-to-Trust Applications”, and C. “Administrative and Legal Timeframes”*).
    - 1) A statement that the application is incomplete.
    - 2) Specify what information or documentation was omitted or required and explain why the requested information is necessary.
    - 3) Request the applicant provide the omitted or required documentation or information to BIA within 30 days of the applicant’s receipt of the written notice or the application will be inactivated and returned.
  - b. If the applicant does not provide the omitted or required documentation or information to BIA in accordance with the notice, send applicant a final notice and a notice enclosing the application and stating that BIA did not receive the information, so the application has been inactivated. [*See Exhibit 5.4.3: Sample Final Notice of Incomplete Fee-to-Trust Application Package, and Exhibit 5.4.4: Sample Return of Incomplete Fee-to-Trust Application*].

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

Whenever possible, the following should be done early in the acquisition process:

1. Conduct an inquiry. Ask the landowner and any occupants whether there are any third party rights in the land.
2. Conduct a physical inspection of the land. Compare condition and use of property as described in submitted documents. Examples of things to check during inspection are:
  - a. Persons living on the property not shown as record owner(s).

- b. Work being done by contractors.
  - c. Change in use other than noted in application.
  - d. Lack of access to property.
  - e. Location of existing utility lines, roads, etc., not defined in title evidence.
3. Prepare a Certificate of Inspection and Possession (CIP).
- a. The CIP (including the inquiry and physical inspection, above) may be prepared by:
    - 1) A duly authorized BIA or other Federal employee; or
    - 2) A Tribal employee (whether or not performing contracted/compacted BIA realty functions) or contractor, as long as:
      - The Tribal employee is not also an employee of the landowner (in other words, as long as the property is not being acquired in trust for the employee or the Tribe). Neither the owner nor an employee of the owner of the inspected property should perform the inspection or execute the certificate. AND
      - The CIP is approved by BIA or other Federal employee.
  - b. The CIP should be on Form #1 [*see Exhibit 5.7.1*] or Form #2 [*see Exhibit 5.7.2*]. Form # 1 is designed to be completed by one individual. Form #2 is designed to be completed by two individuals -- one who does the inspection and one who makes inquiry of the landowner and any occupants.
    - 1) No portion of the CIP forms may be deleted or scratched out.
    - 2) All blanks must be filled in.
    - 3) If a particular blank is not applicable to an acquisition, it should be filled in with "N/A".
    - 4) Both forms anticipate that additional information can and often will be added to the CIP, especially if the inspection or inquiry reveals possible possessory rights of others in the property.
4. Prepare a written notice to applicant advising of any inconsistencies that require an explanation and/or correction. Advise applicant that unless the inconsistencies are addressed, applicant may be prohibited from taking land into trust. See Step 3 “Responding to an Incomplete Case” to issue the notice and 52 IAM 12 [*Policy and Directives 4.2: 52 IAM Chapter 12, 1.3 Policy B. “Gathering information for Incomplete Fee-to-Trust Applications”*].



### **Step 5: Preparing the Preliminary Title Opinion (PTO)**

1. Confirm that you have the required title evidence documentation from applicant and copies of all documents that create encumbrances or exceptions to title.
2. Submit a written request for a Preliminary Title Opinion (PTO) to the Solicitor's Office. Attach the title evidence documents (listed in Step 2, above) and the following information/documents:
  - a. Draft deed in trust to the United States, conforming to local statutory recording requirements and/or Draft Acceptance of Conveyance.
  - b. Property boundary and location maps, if applicable.
  - c. Initial Certificate of Inspection and Possession, if one has been completed.
  - d. The LDR.
  - e. Consistent with § 151.9, a written request for approval of the acquisition which adequately demonstrates it has been duly authorized by the Tribe.
  - f. A copy of any agreement (such as a lease or right-of-way) currently applicable to the property.
  - g. If the property is identified as a lot in a subdivision, a copy of the plat (which may contain restrictions) and, if there are any deed restrictions, a copy of each document that creates the restrictions.

### **Step 6: Preparing Notice of Application (NOA)**

1. If the application is to acquire a parcel or parcels that will cumulatively total 200 acres or more, notify the AS-IA of the application, by email at [F2Tnotice@bia.gov](mailto:F2Tnotice@bia.gov), and by mail at: 1849 C Street, NW, MS-4141-MIB, Washington, DC 20240.
2. Prepare the NOA to inform state and local governments, including Tribal governments, having regulatory jurisdiction over the proposed acquisition property and/or any person or entity submitting a written request for notice that they have 30 days to submit comments.
3. Include the following in the notice [*See Exhibit 5.4.6: Sample Notice of Application*]:
  - a. General description of need and purpose.
  - b. Solicitation of comments on the potential impact of the acquisition regarding regulatory jurisdiction, real property taxes and special assessments.

- c. Notification that parties have 30 days to submit comments.
  - d. A statement informing the state and local governments to forward the notification on to any of their local sub-districts.
4. Send NOA by certified mail return receipt to the state and local governments.
  5. In consultation with the applicant, consider the option of posting the application on a website to make it easily accessible to the public (with confidential information redacted).

#### **Step 7: Environmental Compliance Review**

1. Transmit NEPA, 602 DM 2 and other environmental compliance documents to the appropriate environmental staff and request environmental compliance review. Update environmental staff on any changes in the application.
2. The environmental staff is responsible for completing the Environmental Compliance Review Memorandum (ECRM) or other documentation of NEPA compliance. NEPA compliance for every discretionary fee-to-trust transaction must be documented [*See Exhibit 5.4.5: Sample Environmental Compliance Review Memorandum*].
3. If the acquisition is for the purpose of gaming, the environmental compliance review must be performed in accordance with the Gaming Handbook and the Indian Gaming Regulatory Act.

#### **Step 8: Comments to Notice of Application**

1. Provide a copy of all information responsive to the NOA to the applicant for their written response. Send by certified mail return receipt [*See Exhibit 5.4.7: "Sample Notice of Application Comments to Applicant"*].
2. The regulations state that the applicant has a reasonable amount of time to provide BIA its written response to the comments. BIA has determined that 30 days with the opportunity for an extension is a reasonable amount of time. If the applicant requests the Secretary to issue a decision without providing a response to any comment(s), proceed with Step 10, "Preparing Analysis and Notice of Decision."

#### **Step 9: Clearance of PTO Objections before Notice of Decision (NOD)**

1. Notify applicant of objections outlined in the Preliminary Title Opinion (PTO). The Solicitor's Office may require the elimination of any such liens, encumbrances, or infirmities (i.e., defects) prior to taking final approval action on the acquisition, and will

require elimination prior to such approval if she determines that the liens, encumbrances or infirmities (i.e., defects) make title to the land unmarketable.

2. Do not send the PTO to the applicant, as it is attorney-client privileged information.
3. Request applicant to provide documents to show that objections of the PTO have been cleared.
4. If the applicant does not send the responsive information within a reasonable amount of time, refer to the policy found at 52 IAM Chapter 12 (Processing Discretionary Fee-to-Trust Applications). If no response is received within the timelines established by the policy, proceed with Step 10, "Preparing Analysis and Notice of Decision."

### **Step 10: Preparing Analysis and Notice of Decision (NOD)**

1. All gaming acquisition NOD's shall be prepared pursuant to the procedures outlined in the Gaming Handbook and submitted to OIG for publication in the Federal Register.
2. If a significant amount of time lapses between the date of the NOA and the NOD, reissue the NOA to allow for updates to the comments, applicant's responses to comments, and application documents (e.g., title evidence and ESA).
3. Consult with the Office of the Solicitor to prepare an analysis of whether the Tribal applicant was under Federal jurisdiction in 1934 for inclusion in the decision, if applicable.<sup>1</sup> BIA should consult with the Solicitor's Office as early in the process as possible (i.e., as soon as BIA has determined an application is complete) so that the Solicitor's Office has sufficient time to prepare a *Carciere* opinion. For Tribes for whom the Solicitor's Office has already prepared an analysis of whether the Tribal applicant was under Federal jurisdiction in 1934, BIA may rely on that analysis.
4. Document case analysis and prepare NOD, which must include language on the right to appeal. The analysis and NOD must be based on the facts contained in the record and responsive to the following factors:
  - a. The existence of statutory authority for the acquisition and any limitations contained in such authority, including analysis addressing whether the Tribal applicant was under Federal jurisdiction in 1934, if applicable.
  - b. The need of the individual Indian or the Tribe for additional land.
  - c. The purposes for which the land will be used.

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<sup>1</sup> An opinion whether a tribal applicant was under Federal jurisdiction in 1934 (a "*Carciere* opinion") is only required for applications submitted pursuant to 25 U.S.C. § 465 and that rely on the first definition of "Indian."

- d. 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.
- 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.
- 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 BIA to comply with the National Environmental Policy Act (NEPA), and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. If a categorical exclusion applies (e.g., where there will be no change in land use), the decision should explain why the categorical exclusion applies and it should be documented in the record.
- i. While not specified in the regulations, the NOD should contain analysis of comments and concerns by state and local governments.

**Step 11: Providing Notice of the Decision**

NOTE: The notice and procedures for providing notice of the decision differ depending upon whether a BIA official (e.g., the Superintendent or Regional Director) or the AS-IA makes the acquisition decision. The process for each is set out below.

**If a BIA official makes a decision to approve a request:**

1. Prepare Public Notice of the decision to acquire land in trust pursuant to 25 CFR § 151.12(d) and the right to administratively appeal that decision. The Public Notice must include the following [*See Exhibit 5.4.10: Sample Public Notice to Acquire land into Trust*]:
  - a. Statement that a decision to acquire land in trust has been made and that there is a 30-day administrative appeal period.
  - b. Instructions on how to obtain a copy of the BIA decision, including a website and/or physical location where a copy of the decision will be available.
  - c. A legal land description of the land.

2. *Promptly* after approving the request:
  - a. Address and send the original decision to the applicant. Attach a list of all parties, including state and local government entities that were provided a copy under paragraph d., below.
  - b. Publish the Public Notice in a newspaper of general circulation serving the affected area, when the approval is at the Regional or Agency level. Complete this step as near in time as possible with sending the original decision to the applicant.
  - c. Make a copy of the decision publicly available on the website and/or at a physical location identified in the Public Notice and ensure a copy of the decision is available at that location by the time the Public Notice is published.
  - d. As near in time as possible with publication of the Public Notice, send a copy of the decision to:
    - 1) All interested parties<sup>2</sup> who have made themselves known, in writing, to BIA prior to the decision being made; and
    - 2) The state and local governments having regulatory jurisdiction over the land to be acquired.
3. If the decision is issued by the Regional Director and is for an acquisition of a parcel or parcels that cumulatively total 200 acres or more, notify AS-IA by email at [F2Tnotice@bia.gov](mailto:F2Tnotice@bia.gov), and by mail at: 1849 C Street, NW, MS-4141-MIB, Washington, DC 20240.
4. After expiration of the 30-day appeal period\*, confirm whether an appeal has been filed with the Interior Board of Indian Appeals (IBIA) (or with the Regional Director, if the Superintendent issued the decision). If an appeal has been filed with the IBIA, then:
  - a. Consult with the Solicitor's Office on next steps, including the preparation of the administrative record;
  - b. If the decision being appealed is for an acquisition of a parcel or parcels that cumulatively total 200 acres or more, notify AS-IA by email at [F2Tnotice@bia.gov](mailto:F2Tnotice@bia.gov), and by mail at: 1849 C Street, NW, MS-4141-MIB, Washington, DC 20240.
5. Once administrative remedies are exhausted and the decision is final for the Department, proceed to Step 12 "Preparing Final Certificate of Inspection and Possession."

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<sup>2</sup> BIA should assume every party making themselves known is an interested party for purposes of sending out notice of the decision.

\* When does the 30-day appeal period expire?

| <b>For:</b>  | <b>The 30-day appeal period expires:</b>   |
|--|--|
| All interested parties who have made themselves known in writing to the BIA prior to the decision being made | 30 days after such interested party receives a copy of the decision                  |
| All state and local governments having regulatory jurisdiction over the land to be acquired                  | 30 days after such state or local government entity receives a copy of the decision  |
| All other persons and entities   | 30 days after publication of the Public Notice in a newspaper of general circulation |

To the greatest extent possible, these 30-day appeal periods should be timed to run at the same time, and should never run back-to-back. In other words, the Public Notice should be published as close in time as possible to the notice of decision date.

If the Public Notice is provided several days after the notice of decision is provided to interested parties or state or local government entities:

- The issuance of Public Notice does not extend the time for interested parties or state or local government entities who received actual written notice to file an appeal.
- The 30-day appeal period (for all other persons and entities) provided by the Public Notice will extend beyond the interested parties' or state or local government entities' 30-day appeal period.
- **Wait until the expiration of the latest 30-day appeal period before proceeding with this step.**

If an interested party or state or local government entity receives a notice of decision after other parties or after the Public Notice is published:

- The 30-day appeal period for that interested party or state or local government entity extends beyond the 30-day appeal period provided by the other notices and Public Notice.
- **Wait until the expiration of the latest 30-day appeal period before proceeding with this step**

If the AS-IA makes a decision to approve a request:

1. In coordination with AS-IA (through OIG or other AS-IA staff, as appropriate), prepare the Public Notice of the final Departmental decision to acquire land in trust pursuant to 25 CFR § 151.12 (d) and include the following [*See Exhibit 5.4.10: Sample Public Notice to Acquire Land into Trust – AS-IA Decisions*]:
  - a. Statement that a decision to acquire land in trust has been made and that the decision is final for the Department.
  - b. A legal land description of the land.
  - c. Website address where the decision is made publicly available.
2. *Promptly* after approving the request:
  - a. Address and send the original decision to the applicant.
  - b. Publish the Public Notice in the Federal Register. Complete this step as near in time as possible with sending the decision to the applicant.

- c. Proceed to Step 12 “Preparing Final Certificate of Inspection and Possession.” Note: Where AS-IA is issuing the decision, AS-IA will notify BIA of the anticipated or actual decision date to allow BIA time to complete this step and comply with Departmental requirements in 602 DM 2.
3. If a decision may be challenged in Federal court, consult with the Solicitor’s Office on preparing the administrative record as early in the decision-making process as possible.
4. Upon the completion of any judicial review, instructions may be provided by the Office of the Solicitor based upon the outcome of the judicial review.

**If a BIA official makes a decision to deny a request:**

Promptly provide the applicant with the decision and notification of any right to file an administrative appeal under 25 C.F.R. Part 2.

**If the AS-IA makes a decision to deny a request:**

Promptly provide the applicant with the decision.

**Step 12: Preparing Final Certificate of Inspection and Possession (CIP)**

1. Complete the Final CIP in the same manner as stated under Step 4 “Conducting Site Inspection and Completing Initial Certificate of Inspection” as close in time as possible to closing of the transfer.
2. Compare the Final CIP with the PTO and Initial CIP. [CIP’s prepared more than 180 days prior to closing are not acceptable.]
3. If there are any inconsistencies between the initial and final CIP in relation to possessory rights or interests, provide written notice to the applicant requiring response within 30 days of receipt of notice identifying a plan for curative action and/or request for extension of time. Ascertain the interest or claim of any person(s) other than the record owner(s) who is occupying or using any part of the lands. If the interest will interfere with the contemplated use of the land, measures should be taken to eliminate claims which are not compatible by, for example:
  - a. Obtaining disclaimers or quitclaim deeds from any person who has an uncertain interest in the property that we are trying to solve to ensure clear title;
  - b. Obtaining attornment agreements from tenants with unrecorded leases;
  - c. Agreeing to grant a private right-of-way or pipeline easement with specific terms and an agreed location and dimension for the easement, in return for the claimant’s

agreement to quitclaim any poorly defined possible easement which he/she may have acquired by prescription.

4. If the applicant does not respond or follow through with curative action within the 30-day period or any granted extension(s), evaluate the effects of this failure and if those effects will impact the decision issued under Step 10.

### **Step 13: Acceptance of Conveyance**

Note: All gaming acquisition acceptance of conveyances are approved by the Assistant Secretary, Indian Affairs through OIG pursuant to the Gaming Handbook and are completed by the applicable field office.

1. Immediately following completion of the CIP (Step 12) and fulfillment of any applicable Departmental requirements (including compliance with 602 DM 2), complete this step (Step 13) and Steps 14 and 15 to formally accept the land into trust.
2. Confirm that the file contains all documentation that meets the requirements of the PTO and is in compliance with 25 CFR Part 151.
3. Process the formal acceptance of conveyance. The conveyance document must include:
  - a. Signature of the appropriate BIA official.
  - b. The statutory authority must be stated on the deed.
  - c. The delegation of authority must be stated on the acceptance document (e.g., Acceptance of Conveyance form or the Warranty Deed) [*See Exhibit 5.4.121: Acceptance of Conveyance*].

### **Step 14: Final Title Opinion and Recordation**

1. Obtain the \*original county-recorded deed and updated title evidence from the applicant.
2. Request a Final Title Opinion (FTO) from the Office of the Solicitor and provide the Office of the Solicitor with a copy of the environmental compliance review memorandum.
3. The request shall include:
  - a. The recorded Deed and Acceptance of Conveyance
  - b. Title Insurance Policy, if submitted



- c. PTO
- d. Updated title evidence to date of closing including evidence of corrective actions
- e. LDR
- f. Final Certificate of Inspection and Possession.

\*A copy, versus the original recorded Warranty Deed may be sufficient to initiate a request for the final title opinion.

### **Step 15: Recording at Land Titles and Records Office**

1. Submit the following documents to the Land Titles and Records Office (LTRO) for recording:
  - a. The original county-recorded Warranty Deed and, if no federal approval is included on the Warranty Deed, the Acceptance of Conveyance.
  - b. LDR, including acreage.
  - c. Copy of applicable referenced surveys and maps.

If any of these documents are missing or incomplete, fulfill the requirements in 52 IAM Chapter 12, 1.3 Policy C. “Administrative and Legal Timeframes.” Additionally, see 25 CFR § 150.7(a).

2. Upon receipt of these documents the LTRO shall record and return to the entity that submitted the request within 5 business days.
3. The processing office has the discretion to submit documents for recording in addition to those required above; upon receipt, the LTRO shall record those documents.

### **Step 16: Completed Application Package**

1. When the recorded documents have been received from the LTRO:
  - a. Return the original recorded documents to the office that is responsible to maintain custody of the record in accordance with Bureau record standards.
  - b. Provide a copy of the recorded package to the applicant.
  - c. Provide a recorded copy of the deed showing trust status to the Bureau of Land Management to update their records.

2. Close out electronic case file in Fee-to-trust system of record.

**END OF PROCEDURE**

## 3.1.2 Off-Reservation Discretionary Trust Acquisitions

## **OFF-RESERVATION DISCRETIONARY TRUST ACQUISITIONS**

### **Scope**

This section of the handbook contains procedures for off-reservation discretionary trust acquisitions for Tribes. This section applies to undivided fractional and full interests owned in fee by an eligible Tribe.

### **Procedure**

To assist the applicant in preparing a request, provide the applicant a copy of “Required Elements: Application for Fee-to-trust” and the brochure, “Understanding the Fee-to-Trust Process for Discretionary Acquisitions.”

#### **Step 1: Encoding the Fee-to-trust System of Record**

Refer to Step 1 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

#### **Step 2: BIA Review of Written Request or Application**

1. In addition to Step 2 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook, the application must include:
  - a. Appropriate documentation of the location of the land relative to state boundaries, and its distance from the boundaries of the reservation. This may include maps and/or surveys.
  - b. Where the land is being acquired for business purposes the applicant must provide a plan which specifies the anticipated economic benefits associated with the proposed use (“economic plan”).

#### **Step 3: Responding to an Incomplete Written Request or Application**

Refer to Step 3 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

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

Refer to Step 4 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

#### **Step 5: Preparing the Preliminary Title Opinion (PTO)**

Refer to Step 5 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 6: Preparing Notice of Application, (NOA)**

Refer to Step 6 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 7: Environmental Compliance Review**

Refer to Step 7 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 8: Comments to Notice of Application**

Refer to Step 8 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 9: Clearance of PTO Objections before Notice of Decision (NOD)**

Refer to Step 9 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 10: Preparing Analysis and Notice of Decision (NOD)**

1. For a gaming acquisition, prepare a memorandum with a recommended decision pursuant to the procedures outlined in the Gaming Handbook and submit the memorandum to OIG. OIG will then prepare the NOD for publication in the Federal Register.
2. Refer to Step 10 (Preparing Analysis and Notice of Decision (NOD)) at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook, and also include:
  - a. The submitted documentation of the location of the land relative to state boundaries, and its distance from the boundaries of the reservation. This may include maps and/or surveys.
  - b. The economic plan, including justification of anticipated benefits of proposed acquisition.
3. Consider the scrutiny and weight outlined in the regulations at 25 CFR § 151.11(b) as defined by applicable policies.

**Step 11: Preparing the Publication Notice**

Refer to Step 11 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 12: Preparing Final Certificate of Inspection and Possession (CIP)**

Refer to Step 12 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 13: Acceptance of Conveyance**

Refer to Step 13 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 14: Final Title Opinion and Recordation**

Refer to Step 14 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 15: Recording at Land Titles and Records Office**

Refer to Step 15 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

**Step 16: Completed Application Package**

Refer to Step 16 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

END OF PROCEDURE

### 3.1.3

## Mandatory Trust Acquisitions

## **MANDATORY TRUST ACQUISITIONS**

### **Scope**

This section of the handbook contains procedures for mandatory trust acquisitions for individual Indians and Tribes. This section applies to undivided fractional and full interests owned in fee by an eligible Tribe or individual.

### **Purpose**

A mandatory trust acquisition is one directed by Congress or a judicial determination 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 discretion to deny the request to accept title of land into trust.

In the absence of statutory or judicial language requiring the Secretary to proceed with the mandatory acquisition without notice or application, the individual Indian or Tribe must submit a written request to commence the acquisition process.

### **Step 1: Encoding the Fee-to-trust System of Record**

Refer to Step 1 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

### **Step 2: Initiate the Mandatory Acquisition**

1. A Tribe or individual Indian must submit a written request to the BIA to commence the acquisition process unless a specific statute or judicial order requires the Secretary to proceed without the submission of a request. The written request shall contain the following:
  - a. Documents verifying individual Indian or Tribal ownership.
  - b. The Tribe's name as it appears in the Federal Register for Federally Recognized Tribes or as it appears in a federally approved Tribal constitution.
  - c. Legal Land Description (Refer to Step 2 at 3.1.1, On-Reservation Discretionary Trust Acquisitions of this handbook).
  - d. Statutory authority.
  - e. Map depicting boundary and location of subject property if necessary.
  - f. Warranty Deed (i.e., draft acquisition deed) with designation of BIA approval and delegation of authority or Warranty Deed with Acceptance of Conveyance.



- g. Additional information identified in policy relating to mandatory acquisitions, if applicable.
2. To determine whether or not the acquisition is mandatory refer to applicable policy and guidance, and consult with the Office of the Solicitor.
    - a. Acquisitions made pursuant to 25 U.S.C. § 2216(c) have previously been determined to be mandatory. For these acquisitions, proceed to Step 3. (Section 2216(c) provides that “[a]n Indian, or recognized Tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on [November 7, 2000] and located within a reservation, may request that the interest be taken into trust by the Secretary, upon such a request, the Secretary shall forthwith take such interest into trust.”)
    - b. For all other acquisitions, consult with the Office of the Solicitor as early as possible to obtain a written determination that the statute or judicial order mandates the acquisition. If the Office of the Solicitor has already issued a written determination that a specific statute or judicial decree mandates an acquisition, you may process another request under the same mandatory authority using that written determination.
    - c. Upon a determination that the statute or judicial decree mandates the acquisition, determine whether the parcel meets any additional criteria required by the statute or judicial decree. If information from the applicant is necessary to demonstrate that the parcel meets the criteria, contact the applicant to request the information.

### **Step 3: Responding to an Incomplete Written Request**

Refer to Step 3 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

### **Step 4: Conducting Site Inspection**

Refer to applicable policy and guidance.

### **Step 5: Obtaining Title Evidence**

Note: This step is in lieu of preparing a preliminary title opinion (PTO) and final title opinion (FTO). Neither a PTO nor an FTO is required for mandatory acquisitions, unless the statute mandating the acquisition so requires.

1. If the acquisition is mandatory under 25 U.S.C. § 2216(c) -- Obtain current evidence of title ownership from the Tribe or individual Indian demonstrating that the fractional interest is owned by the Tribe or individual Indian and how it was acquired including one of the following:

- a. An abstract of title dating from the time the interest was transferred from trust ownership to partial fee ownership to the present; or
  - b. If an abstract of title is not available, a copy of the recorded document through which the owner's interest was acquired and a sworn declaration from the owner that states: (1) how the owner acquired the interest; and (2) that the owners has not conveyed the interest away.
2. For all other mandatory acquisitions -- Obtain the following:
- a. Current evidence of title ownership from the Tribe or individual Indian and how it was acquired or written evidence that title will be transferred to the Tribe or individual Indian upon acquisition in trust; and
  - b. An abstract of title or a title commitment dating from the time the interest was acquired in fee ownership by the current owner or the current owner's predecessor(s) in title to the present.

### **Step 6: Environmental Compliance Review**

NEPA and 602 DM 2 requirements are not applicable to mandatory acquisitions, but to understand any environmental hazards or any potential legal liabilities that may be present, perform due diligence by performing the following:

1. Conduct an initial site inspection; and
2. Document the results of the site inspection.

Completion of the initial site inspection and the findings of the inspection are not a precondition to completing the mandatory acquisition.

### **Step 7: Preparing Notice of the Acquisition**

NOTE: The notice and procedures for providing notice differ depending upon whether a BIA official (e.g., the Superintendent or Regional Director) or the Assistant Secretary – Indian Affairs (AS-IA) issues the mandatory acquisition decision. The process for each is set out below.

#### **If a BIA official is issuing the decision:**

1. Prepare the mandatory acquisition decision.
  - a. If the decision is to deny the mandatory acquisition, provide a written notice of the determination and notice of the right to appeal pursuant to 25 CFR Part 2 to the Tribe or individual Indian.

- b. If the decision is to proceed with the mandatory acquisition, address and send the original decision to the applicant. As near in time as possible to sending the original decision to the applicant, prepare Public Notice of the mandatory acquisition, including:
  - 1) Statement that BIA intends to acquire land in trust as required by a statute or judicial order and that there is a 30-day administrative appeal period.
  - 2) Citation to the mandatory authority;
  - 3) Instructions on how to obtain a copy of the BIA decision, including a website and/or physical location where a copy of the decision will be available.
  - 4) A legal land description of the land.
2. *Promptly* after the decision is issued:
  - a. Publish the Public Notice in a newspaper of general circulation serving the affected area, when the approval is at the Regional or Agency level.
  - b. Make a copy of the decision publicly available on the website and/or at a physical location identified in the Public Notice and ensure a copy of the decision is available at that location by the time the Public Notice is published.
3. If the decision is for an acquisition of a parcel or parcels that cumulatively total 200 acres or more, notify AS-IA by email at [F2Tnotice@bi.gov](mailto:F2Tnotice@bi.gov), and by mail at: 1849 C Street, NW, MS-4141-MIB, Washington DC 20240.
4. After expiration of the 30 day appeal period\*, confirm whether an appeal has been filed with the Interior Board of Indian Appeals (IBIA) (or with the Regional Director, if the Superintendent issued the decision). If an appeal has been filed with the IBIA, then:
  - a. Consult with the Solicitor's Office on next steps, including the preparation of the administrative record; and
  - b. If the decision being appealed is for an acquisition of a parcel or parcels that cumulatively total 200 acres or more, notify AS-IA by email at [F2Tnotice@bia.gov](mailto:F2Tnotice@bia.gov), and by mail at: 1849 C Street, NW, MS-4141-MIB, Washington, DC 20240. .
5. Once the administrative review process has been exhausted, instructions may be provided by the Office of the Solicitor based upon the outcome of the administrative appeal.

6. Once administrative remedies are exhausted and the decision is final for the Department, proceed to Step 8 “Conducting Final Inspection.”

When does the 30-day appeal period expire?

| <b>For:</b>  | <b>The 30-day appeal period expires:</b>   |
|--|--|
| All interested parties who have made themselves known in writing to the BIA prior to the decision being made | 30 days after such interested party receives a copy of the decision                  |
| All state and local governments having regulatory jurisdiction over the land to be acquired                  | 30 days after such state or local government entity receives a copy of the decision  |
| All other persons and entities   | 30 days after publication of the Public Notice in a newspaper of general circulation |

To the greatest extent possible, these 30-day appeal periods should be timed to run at the same time, and should never run back-to-back. In other words, the Public Notice should be published as close in time as possible to the notice of decision date.

If the Public Notice is provided several days after the notice of decision is provided to interested parties or state or local government entities:

- The issuance of Public Notice does not extend the time for interested parties or state or local government entities who received actual written notice to file an appeal.
- The 30-day appeal period (for all other persons and entities) provided by the Public Notice will extend beyond the interested parties’ or state or local government entities’ 30-day appeal period.
- **Wait until the expiration of the latest 30-day appeal period before proceeding with this step.**

If an interested party or state or local government entity receives a notice of decision after other parties or after the Public Notice is published:

- The 30-day appeal period for that interested party or state or local government entity extends beyond the 30-day appeal period provided by the other notices and Public Notice.
- **Wait until the expiration of the latest 30-day appeal period before proceeding with this step**

If the AS-IA is issuing the decision:

1. If AS-IA makes a decision to deny a mandatory acquisition, provide a written notice of the determination to the Tribe or individual Indian.
2. If AS-IA makes a decision to proceed with the mandatory acquisition, address and send the original decision to the applicant. As near in time as possible to sending the original decision to the applicant, prepare the Public Notice of the mandatory acquisition, in coordination with AS-IA), prepare the Public Notice of the mandatory acquisition and include the following:
  - a. Statement that the Department determines it must acquire a particular parcel in trust and that the decision is final for the Department;
  - b. Citation to the mandatory authority; and
  - c. A legal land description of the land.

3. *Promptly* after the decision is issued:
  - a. Publish the Public Notice in the Federal Register.
  - b. Proceed to Step 8 “Conducting Final Inspection.”
4. If a decision may be challenged in Federal court, consult with the Solicitor’s Office on preparing the administrative record as early in the decision-making process as possible.
5. Upon the completion of any judicial review, instructions may be provided by the Office of the Solicitor based upon the outcome of the judicial review.

### **Step 8: Conducting Final Inspection**

Refer to applicable policy and guidance.

### **Step 9: Acceptance of Conveyance**

1. Confirm that the file contains all documentation required as identified in Step 2, Initiate Mandatory Acquisition.
2. Include the signature of the appropriate BIA or AS-IA official on the conveyance document.
3. Include the statutory authority on the deed.
4. Include the delegation of authority on the acceptance document (e.g., the Acceptance of Conveyance form or the Warranty Deed [*See Exhibit 5.4.11: Acceptance of Conveyance. Exhibit 5.4.12: Warranty Deed and Acceptance of Conveyance*]).

### **Step 10: Recordation**

1. Obtain the \*original county-recorded from the applicant.
2. If the fee fractional interest has been recorded at the county, record the trust acquisition deed at the county.

\*A copy, versus the original recorded warranty deed may be sufficient to initiate a request for title evidence.

### **Step 11: Recording at Land Titles and Records Office**

1. Submit the following documents to the Land Titles and Records Office (LTRO) for recording:

- a. The original county-recorded Warranty Deed and, if no federal approval is included on the Warranty Deed, the Acceptance of Conveyance.
- b. LDR, including acreage.
- c. Copy of applicable referenced surveys and maps.

If any of these documents are missing or incomplete, fulfill the requirements in 52 IAM Chapter 12, 1.3 Policy C. "Administrative and Legal Timeframes." Additionally, see 25 CFR § 150.7(a).

2. Upon receipt of these documents the LTRO shall record and return to the entity that submitted the request within 5 business days.

3. The processing office has the discretion to submit documents for recording in addition to those required above; upon receipt, the LTRO shall record those documents.

#### **Step 12: Completed Mandatory Acquisition Package**

1. When the recorded documents have been received from the LTRO:
  - a. Return the original recorded documents to the office that is responsible to maintain custody of the record in accordance with Bureau record standards.
  - b. Provide a copy of the recorded package to the applicant.
  - c. Provide a recorded copy of the deed showing trust status to the Bureau of Land Management to update their records.
2. Close out the electronic case file in the Fee-to-Trust System of Record.

# 3.4 Reservation Proclamations

## **GUIDELINES AND REQUIREMENTS FOR PROCESSING A RESERVATION PROCLAMATION**

### **Scope**

This section of the handbook contains procedures for processing reservation proclamation applications.

### **Purpose**

The guidelines and requirements for processing reservation proclamations are intended to expedite and streamline the Indian Affairs' review process for proclamations. Realty staff should use these guidelines and requirements when preparing request packages that are sent to the AS-IA for issuance of a proclamation for adding trust lands to a reservation or establishing a new reservation. Any proclamation package that does not meet the requirements of these guidelines will be returned to the Regional Office as incomplete.

### **Selecting the Correct Standard Operating Procedure**

When a Tribe submits a request for a reservation proclamation, the first step to determine the trust status of the underlying land. If the land is already in trust, proceed with the operating procedures at 3.4.1 for post-trust acquisition reservation proclamations. If the Tribe is seeking to acquire the land in trust and have it proclaimed as reservation, proceed with the operating procedures at 3.4.2 for concurrent trust acquisitions and reservation proclamations.



# 3.4.1 Post-Trust Acquisition Reservation Proclamations

## **Step 1: BIA Review of Reservation Proclamation Requests Received From Tribes**

BIA review of reservation proclamations starts with the receipt of a request from a Tribe. Tribal requests for reservation proclamations for land that was already acquired in trust should be submitted to the BIA official with jurisdiction and should include:

1. A tribal resolution requesting the reservation proclamation. The resolution should include:
  - a. A citation to Tribal authority for the action.
  - b. The legal land description for the land in question and the trust deed.
    - i. The acreage and legal land description in the Tribal resolution should match the TSR, the LDR, and the trust deed, and, if they do not match, an explanation should be provided for the discrepancy if known.
    - ii. If the Tribe requests that only a portion of the trust parcel be proclaimed reservation, the Tribal resolution must specify that fact and include the legal land description of only the requested parcel. BIA should ensure the BILS provides a new legal land description review of only the requested parcel.
    - iii. Multiple parcels may be submitted as one request.
  - c. A brief justification for the reservation proclamation. For example, a Tribe may seek a reservation proclamation to clarify land status, or to support a request for funding from a state or federal agency.
  - d. A brief statement of the use for the land, such as housing or agricultural.
2. The application should include a map, plat, or survey that depicts the location of the subject land in relation to the present reservation, or other trust and restricted lands, where applicable.

BIA should review the application to ensure it is complete. If it is complete, proceed to Step 2. If it is not complete, notify the Tribe of any missing documentation.

## **Step 2. Prepare 30-Day Notice Letter to Local Governments**

Once the necessary information is received for a reservation proclamation under Step 1, a 30-day notice letter will be sent to local governments. [*See Exhibit 5.4.13: Sample Notice of Reservation Proclamation Request*] The notice letter will include the following information:

1. A statement that the BIA has received a request to proclaim reservation status to certain lands.
2. The legal land description(s) and map(s) of the parcel(s) requested to be proclaimed reservation.
3. A statement that the Secretary of the Interior may proclaim an Indian reservation or add lands to existing reservations, supported by a reference to Section 7 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 USC 467).
4. A statement that the Office of the Assistant Secretary – Indian Affairs reviews all tribal requests for adding land to a reservation and prepares the proclamation and notice for submission to the Federal Register.
5. A statement that the letter provides a 30-day notice of the proposed action and such action is simply an administrative function that allows the Tribe to take advantage of special federal assistance programs.

### **Step 3. Prepare Reservation Proclamation Memorandum**

The Regional Director is responsible for preparing a reservation proclamation memorandum to the BIA Director. The BIA Regional Office will work with the BIA agency to ensure the proclamation memorandum is complete. The requirements for the reservation proclamation memorandum from the Regional Director to the BIA Director are as follows:

1. State that the Tribal resolution from the Tribe is authorized by the Tribe's governmental organization.
2. Provide a brief history of the land acquisition.
3. Provide the acreage of the subject land, the statutory authority conferring trust status, and the date of trust status.
4. Provide a legal land description of the subject land. If the TSR, the LDR, and the trust deed acreages and legal land descriptions do not match, state the reason.
5. State whether any comments were received from the notices to state, county, and municipal governments. If notices were not sent to municipal governments, state the reason.
6. If comments were received, describe the contents of the comments. Also, provide the Region's response to the comments in the body of the memo.
7. Provide a justification and recommendation for reservation status.

#### **Step 4. Prepare Attachments for Reservation Proclamation Memorandum**

This step addresses the required attachments for the reservation proclamation memorandum discussed in Step 3, above. Please provide the following documents with index tabs in the following numerical order:

1. Copy of the resolution enacted by the Tribe that cites Tribal authority for action and requests the reservation proclamation.
2. Copy of the document(s) that transfers title of the property into trust status for the Tribe. Document(s) must clearly show date of approval for trust status covering subject land(s). In most cases, a trust deed with legal land description will suffice.
3. A plat, map, plot, or survey that depicts the location of the subject land in relation to the present reservation, or other trust or restricted lands. If new reservation, provide map showing subject land and current Tribal headquarters.
4. Legal land description review of lands being proclaimed reservation.
5. Evidence that a 30-day notice of the proposed action has been provided by the BIA to the state, county, and municipal governments within whose jurisdiction such land is located, as required under Step 2.
6. Submission of any comments and/or remarks (resulting from the notices) received by the BIA.
7. Submission of proof of compliance with the NEPA. Compliance with 602 DM 2 is not required. Reminder: Any Federal action requiring approval by the Secretary must be in compliance with NEPA. Based on the Tribe's intended use of the property, the action may be a Reservation Proclamation CAT EX if there will be no changes in the use of the land. If so, only an Exception Review Checklist and a CAT EX are needed. However, if the use of the property changes, an EA is needed for the determination of the FONSI statement.
8. A Draft Reservation Proclamation document in hard and electronic copy.
9. A Draft Federal Register Notice document in hard and electronic copy.
10. A Draft Memo from the Director to AS-IA in hard and electronic copy.

### **Step 5. Submit Reservation Proclamation Memorandum to the BIA Director**

1. Once the reservation proclamation package is complete, the Regional Director submits the package to the Division of Real Estate Services (DRES).
2. DRES reviews the package in consultation with the Solicitor's Office and the Regional BIA Office, decides whether to recommend that the tribe's request be granted, and then finalizes a memorandum for signature by the BIA Director.

The package and the signed BIA Director memorandum are then sent to the AS-IA, who reviews the materials and determines whether to issue the reservation proclamation document. If the AS-IA decides to issue the reservation proclamation, notice of the decision is published in the Federal Register. A copy of the Federal Register notice should be provided to the BIA Regional Director and the Tribe.

## 3.4.2

# Concurrent Trust Acquisitions and Reservation Proclamations

## **Step 1: BIA Review of Reservation Proclamation Requests Received From Tribes**

BIA review of reservation proclamations for land that is not yet in trust and is the subject of a pending fee-to-trust application should be submitted to the BIA official with jurisdiction and should include:

1. A tribal resolution requesting the reservation proclamation. If the Tribe submitted a resolution as part of a fee-to-trust application, the request can be included as part of the same tribal resolution requesting that BIA acquire land in trust status. The resolution should include:
  - a. A citation to Tribal authority for the action.
  - b. The legal land description for the land in question
    - i. If the Tribe requests that only a portion of the fee-to-trust parcel be proclaimed reservation, the Tribal resolution must specify that fact and include the legal description of only the requested parcel. BIA should ensure the BILS provides a legal land description review of only the requested parcel.
    - ii. Multiple parcels may be submitted as one request.
  - c. A brief justification for the reservation proclamation. For example, a Tribe may seek a reservation proclamation to clarify land status, or to support a request for funding from a state or federal agency.
  - d. A brief statement of the use for the land, such as housing or agricultural.
2. The application should include a map, plat, or survey that depicts the location of the subject land in relation to the present reservation, or other trust and restricted lands, where applicable.

BIA should review the application to ensure it is complete. If it is complete, proceed to Step 2. If it is not complete, notify the Tribe of any missing documentation.

## **Step 2. Provide Notice to State and Local Governments in Fee-to-Trust Decision**

If BIA determines to acquire land in trust for a Tribal applicant, BIA should prepare a Notice of Decision (NOD) pursuant to Step 10 and Step 11 under Sections 3.1.1 and 3.1.2 and refer to the Reservation Proclamation request in the NOD. *[See Exhibit 5.4.14: Sample Reservation Proclamation Insert for BIA Notice of Decision]* In addition to the information required by Step 10, the NOD should include the following information.

1. A statement that the BIA has received a request from the Tribe to proclaim reservation status to certain lands that are the subject of the Tribe's fee-to-trust application.
2. The legal land description(s) and map(s) of the parcel(s) requested to be proclaimed reservation.
3. A statement that the Secretary of the Interior may proclaim an Indian reservation or add lands to existing reservations, supported by a reference to Section 7 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 USC 467).
4. A statement that, immediately following the expiration of the 30-day administrative appeal period, if no appeal is filed, the BIA official will recommend that the Assistant Secretary – Indian Affairs issue the recommendation proclamation. If an appeal is filed, and a final decision is issued affirming the BIA official's decision, BIA will immediately recommend that the Assistant Secretary - Indian Affairs issue the recommendation proclamation.
5. A statement that the Office of the Assistant Secretary – Indian Affairs reviews all tribal requests for proclaiming a reservation or adding land to a reservation and prepares the proclamation and notice for submission to the Federal Register.
6. A statement that a reservation proclamation may only be issued after the land is acquired in trust.
7. A statement that the letter provides a notice of the proposed action and such action is simply an administrative function that will allow the Tribe to take advantage of special federal assistance programs.

If the fee-to-trust decision is made by the AS-IA (eg, for gaming), the decision should include the following information:

1. A statement that the AS-IA has received a request from the Tribe to proclaim reservation status to certain lands that are the subject of the Tribe's fee-to-trust application.
2. The legal land description(s) and map(s) of the parcel(s) requested to be proclaimed reservation.
3. A statement that the Secretary of the Interior may proclaim an Indian reservation or add lands to existing reservations, supported by a reference to Section 7 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 USC 467).
4. A statement that the Office of the Assistant Secretary – Indian Affairs reviews all tribal requests for proclaiming a reservation or adding land to a reservation and prepares the proclamation and notice for submission to the Federal Register.



5. A statement that the letter provides a 30-day notice of the proposed action and such action is simply an administrative function that will allow the Tribe to take advantage of special federal assistance programs.
6. A statement that, subject to the expiration of the 30-day notice period, and following the transfer of the property to trust status, the Assistant Secretary will issue a reservation proclamation.

### **Step 3. Prepare Reservation Proclamation Memorandum**

Regardless of whether the fee-to-trust decision is made by the Regional Director or the AS-IA, the Regional Director is responsible for preparing a reservation proclamation memorandum. If the Regional Director issues the fee-to-trust decision, follow Track A where designated. If the AS-IA is to issue the fee-to-trust decision, follow Track B where designated. The BIA Regional Office will work with the BIA agency to ensure the application and proclamation memorandum are complete.

#### **Track A - When the Regional Director issues the fee-to-trust decision:**

The Regional Director will include a statement in the fee-to-trust decision recommending that the AS-IA proclaim the subject lands as reservation. Within 10 business days of the expiration of any administrative appeal period, if no appeal is filed, the Regional Director will send a memorandum to the BIA Director providing the information outlined in 1-7 below. If the land is not yet in trust at the time the Regional Director prepares a reservation proclamation memorandum, the Regional Director should note the fact in his memorandum and provide the trust deed to the BIA Director as soon as the land is in trust. If an administrative appeal is filed and a final decision issued affirming the Regional Director's decision, the Regional Director should prepare a memorandum to the BIA Director within 10 business days of signing the trust deed.

#### **Track B - When the AS-IA issues the fee-to-trust decision:**

The reservation proclamation package should be submitted prior to AS-IA's issuance of a fee-to-trust decision. The Regional Director may combine the reservation proclamation memorandum with the memorandum recommending whether the land should be taken into trust. This consolidated memorandum should be sent to the Division of Real Estate Services (DRES) and the Office of Indian Gaming (for gaming). The consolidated memorandum should include the information outlined in 1-7 below, in addition to information and analysis required for the fee-to-trust decision.

**Contents of the Regional Director’s reservation proclamation memorandum (Tracks A and B):**

1. State that the Tribal resolution from the Tribe is authorized by the Tribe’s governmental organization.
2. Provide a brief history of the land acquisition.
3. Provide the acreage of the subject land and, if the Region issued the underlying fee-to-trust decision, the statutory authority conferring trust status and the date of trust status. If the land is not yet in trust, note that the reservation proclamation may not be issued until the land in trust and the trust deed will be provided immediately upon issuance.
4. Provide a legal land description of the subject land. If the TSR, the LDR, and the trust deed acreages and legal land description (for Track A) do not match, state the reason.
5. For Track A, state whether the reservation proclamation insert language (*See Exhibit 5.4.14*) was included in the NOD and any comments that were received. If the reservation proclamation insert language was not included, state the reason. If comments were received, describe the contents of the comments and provide the Region’s response to the comments in the body of the memo.
6. Provide a justification and recommendation for reservation status.

**Step 4. Prepare Attachments for Reservation Proclamation Memorandum (Tracks A and B)**

This step addresses the required attachments for the reservation proclamation memorandum discussed in Step 3, above. Please provide the following documents with index tabs in the following numerical order (or in any logical order for Track B):

1. Copy of the resolution enacted by the Tribe that cites Tribal authority for action and requests the reservation proclamation.
2. If a trust deed has already been issued, for Track A, a copy of the document(s) that transfers title of the property into trust status for the Tribe. Document(s) must clearly show date of approval for trust status covering subject land(s). In most cases, a trust deed with legal land description will suffice. If the trust deed has not yet been issued at the time the Regional Director sends the reservation proclamation package, it should be noted and sent immediately after issuance.
3. A plat, map, plot, or survey that depicts the location of the subject land in relation to the present reservation, or other trust or restricted lands. If new reservation, provide map showing subject land and current Tribal headquarters.

4. Legal land description review of lands being proclaimed reservation.
5. For Track A, evidence that the reservation proclamation insert language (*See Exhibit 5.4.14*) was included as required under Step 2.1. Include submission of any comments and/or remarks received by the BIA.
6. Submission of proof of compliance with the NEPA. BIA environmental documents are not required (e.g. Phase 1). Reminder: Any Federal action requiring approval by the Secretary must be in compliance with NEPA. Generally, the NEPA process undertaken for the fee-to-trust decision, such as the issuance of a FONSI or EIS, may be used to demonstrate NEPA compliance for purposes of the reservation proclamation.
7. A Draft Reservation Proclamation document in hard and electronic copy.
8. A Draft Federal Register Notice document in hard and electronic copy.
9. A Draft Memo from the Director to AS-IA in hard and electronic copy (Track A only).

#### **Step 5. Submit Reservation Proclamation Memorandum**

##### **Track A - When the Regional Director issues the fee-to-trust decision:**

Once the reservation proclamation package is complete, and no more than 10 business days following the expiration of the 30-day appeal period if no appeal is filed, the Regional Director submits the package to the Division of Real Estate Services (DRES). If an appeal is filed and a final decision issued affirming the Regional Director's decision, the Regional Director should submit the package to DRES within 10 business days of signing of the trust deed.

DRES reviews the package in consultation with the Solicitor's Office and the Regional BIA Office, decides whether to recommend that the tribe's request be granted, and then finalizes a memorandum for signature by the Director of the BIA.

The package and the signed BIA Director memorandum are then sent to the AS-IA, who reviews the materials and determines whether to issue the reservation proclamation document. If the AS-IA decides to issue the reservation proclamation, notice of the decision is published in the Federal Register. Note: The AS-IA should only issue the reservation proclamation and publish the Federal Register notice after the trust deed has been finalized.

**Track B - When the AS-IA issues the fee-to-trust decision:** Once the reservation proclamation/fee-to-trust package is complete, the Regional Director submits the package to the Division of Real Estate Services (DRES). For gaming applications, the package should be submitted simultaneously to the Office of Indian Gaming (OIG). DRES/OIG reviews the package in consultation with the Solicitor's Office and the Regional BIA office. DRES/OIG will then prepare its final recommendation to the AS-IA on the combined fee-to-trust and reservation

proclamation application. For packages that are non-gaming related, OIG review and final recommendation is not necessary.

The AS-IA will review the materials and determine whether to acquire the land in trust and proclaim it reservation, subject to the 30-day notice period set forth in Step 2.2.

**END OF PROCEDURE**

## 4.0 POLICY AND DIRECTIVES

### 4.1 Mandatory Acquisition Guidance



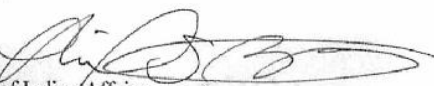
## United States Department of the Interior

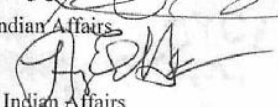
OFFICE OF THE SECRETARY  
Washington, DC 20240

Memorandum

APR 06 2012

To: Regional Directors  
Superintendents

Through: Michael S. Black   
Director, Bureau of Indian Affairs

From: Larry Echo Hawk   
Assistant Secretary – Indian Affairs

Subject: Updated Guidance on Processing of Mandatory Trust Acquisitions

In connection with the Department of the Interior's duty to acquire land in trust for Indian tribes under various mandatory acquisition statutes and ongoing efforts to streamline that process, we have reviewed the Department's prior guidance memoranda regarding processing mandatory land acquisitions.<sup>1</sup> For all of the reasons set forth in this memorandum, we provide clarification regarding the BIA's method of processing mandatory fee-to-trust acquisitions. This guidance memorandum replaces and supersedes all previous guidance regarding the processing of fee-to-trust acquisitions pursuant to a statute or judicial decree that mandates the acquisition of land in trust for a tribe or Indian individual. All mandatory fee-to-trust acquisitions shall now be processed as follows:

### Mandatory Determinations

#### *Statutory and Judicial Mandates<sup>2</sup>*

A tribe or individual Indian must submit a written request to the BIA to commence the acquisition process unless a specific statute or judicial order requires the Secretary to proceed

<sup>1</sup> These memoranda include, but are not exclusively limited to, the April 17, 2002 memorandum regarding the "Processing of Mandatory Lands Into Trust Applications" issued by the Deputy Commissioner of Indian Affairs; the May 2, 2003 memorandum regarding the "Applicability of the Department of Justice's Title Regulations to Applications to Place Lands into Trust" memorandum issued by Acting Assistant Secretary – Indian Affairs and, most recently, the guidance of November 2, 2011, entitled "Processing of Mandatory Acquisitions of Lands Into Trust for Tribes and Individual Indians" issued by the Director of the BIA.

<sup>2</sup> This guidance memorandum does not apply to legislative transfers of title. There is a distinction between mandatory acquisition statutes where "Congress directs the Secretary to complete the administrative process of accepting trust title" and legislative transfers of title, which occur when "Congress directly transfers land into trust status on behalf of tribes or individual Indians." 64 Fed. Reg. 17574, 17578 (April 12, 1999). When Congress legislatively transfers title into trust it "remove[s] the need for any administrative action to effectuate the title transfer." *Id.*

Therefore, BIA will continue to provide written notice of the mandatory acquisition determination (approval or denial) to the tribe or individual Indian. In the event of a denial by a BIA official, notice of the right to appeal pursuant to 25 C.F.R. Part 2 shall be provided to the tribe or individual Indian.

Consistent with the policy behind the revisions to section 151.12 to clarify and broaden notice of trust acquisition decisions, once the Department determines that it must acquire a particular parcel in trust for a tribe or an individual Indian, it should provide public notice of the decision consistent with the requirements of the revised section 151.12 and the revised Fee-to-Trust Handbook (Acquisition of Title to Land Held in Fee or Restricted Fee Status, Version III, Issued 12/12/13). A copy of revised section 151.12 is attached for your reference. In addition, consistent with the revised section 151.12, the Department will immediately acquire the land in trust on or after the date a mandatory acquisition decision is final for the Department and upon fulfillment of any Departmental requirements.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

Memorandum

APR 06 2012

To: Regional Directors  
Superintendents

Through: Michael S. Black  
Director, Bureau of Indian Affairs

From: Larry Echo Hawk  
Assistant Secretary – Indian Affairs

Subject: Updated Guidance on Processing of Mandatory Trust Acquisitions

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without the submission of a request. Acquisitions made pursuant to 25 U.S.C. § 2216(c)<sup>3</sup> have previously been determined to be mandatory<sup>4</sup> and should be processed accordingly. In all other cases, a determination that a particular acquisition is mandatory is made on a case-by-case basis. The BIA should consult the Solicitor's Office as early as possible to request a written determination that the statute or judicial decree mandates the Secretary to acquire land into trust for a tribe or individual Indian. The BIA may rely on the Solicitor's determination that a congressional enactment is a mandatory acquisition statute or a judicial decree provides for mandatory acquisitions to process that request and to process future requests under the same mandatory authority.

#### *Parcel Qualification*

Upon determining that the statute or judicial decree mandates the acquisition, the BIA will determine whether the parcel meets any additional required criteria. For example, a statute might require that a parcel be located within a specific geographical area or that certain funds be used for the acquisition. If so, the BIA will ensure that those criteria are met in order to process the request as a mandatory acquisition. The tribe or individual Indian shall submit information demonstrating that the parcel meets these additional criteria. Questions concerning these criteria should be referred to the Solicitor's Office as early as possible to confirm that acquisition of the parcel is mandated and that the applicable criteria have been met.

#### **Title Evidence**

Our regulations provide that:

[i]f 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.

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<sup>3</sup> Section 2216(c) provides that “[a]n Indian, or the recognized tribal government of a reservation, in possession of an interest in trust or restricted lands, at least a portion of which is in trust or restricted status on the date of enactment of the Indian Land Consolidation Act Amendments of 2000 [enacted Nov. 7, 2000] and located within a reservation, may request that the interest be taken into trust by the Secretary. Upon such a request, the Secretary shall forthwith take such interest into trust.”

<sup>4</sup> Memorandum from Assistant Solicitor, Branch of Trust Responsibility, Division of Indian Affairs to the Director, Bureau of Indian Affairs, entitled “Acquisitions in Accordance with 25 U.S.C. § 2216(c)” (Aug. 30, 2011).

25 C.F.R. §151.13.

It is our reasoned interpretation that this provision does not apply to mandatory acquisitions because the regulation applies to situations where the Secretary acts on a “request” by a tribe to take land into trust, which is not the case in mandatory trust acquisitions.<sup>5</sup> Furthermore, the regulations authorize the Secretary to require the elimination of any liens encumbrances or infirmities prior to “taking approval action,” which contemplates Secretary discretionary decisionmaking and the weighing of certain factors that are not typically found in the mandatory acquisition context. Furthermore, as a matter of sound policy, when Congress or a court mandates acquisitions of land for a tribe or individual Indian, it has done so generally to restore land to the tribe’s homelands<sup>6</sup> or in settlement of a dispute or to address a grievance<sup>7</sup> or a perceived injury<sup>8</sup> to a tribe or individual Indian.

In this context, Congress or a court has made a determination that the tribe or Indian individual is entitled to certain lands, sometimes subject to certain additional conditions, but not subject to the standard requirements for discretionary acquisitions. Given our interpretation of 25 C.F.R. §151.13, that it only applies to situations where a tribe has requested that the Secretary exercise his/her discretion, and our policy determination that requiring full title review per DOJ Title Standards would potentially frustrate the intent of Congress or the judiciary, we conclude that that full compliance with DOJ Title Standards for mandatory acquisitions is not warranted. Nonetheless, we also conclude that having some evidence of title ownership is a wise, reasonable practice as the BIA should have an understanding of any potential liabilities or conflicts that may exist upon acquisition of the land. Thus, the BIA shall adhere to the following guidance.

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<sup>5</sup> Letter from Lewis Baylor, Division Counsel for Title Matters, Land Acquisition Section, DOJ to Colleen Kelley and Priscilla A. Wilfahrt, Field Solicitors, Office of the Solicitor, DOI (Dec. 20, 2002); Letter from Lewis Baylor, Division Counsel for Title Matters, Land Acquisition Section, DOJ to Robert J. McCarthy, Field Solicitor, Office of the Solicitor, DOI (Feb. 19, 2003); Letter from Edith Blackwell, Acting Associate Solicitor, Division of Indian Affairs, Office of the Solicitor, DOI to Lewis Baylor, Division Counsel for Title Matters, Land Acquisition Section, DOJ (April 25, 2003); Letter from Patrice Kunesh, Deputy Solicitor for the Division of Indian Affairs, Office of the Solicitor, DOI to Lewis Baylor, Division Counsel for Title Matters, Land Acquisition Section, DOJ (April 6, 2012).

<sup>6</sup> For example, Congress mandated certain acquisitions on behalf of the Devils Lake Sioux Tribe based, in part, on Congress’ determination that the “continued existence of the Devils Lake Sioux Reservation, North Dakota, as a permanent homeland of the Devils Lake Sioux Tribe and as a necessary foundation for continued self-determination requires that the Secretary of the Interior have authority to . . . consolidate and increase the trust and base in the reservation for the tribe and individual tribal members . . . [and] prevent further loss of trust land.” Pub. L. No. 97-459, 96 Stat. 2515 (1983).

<sup>7</sup> Congress mandated acquisitions for the White Earth Band of Minnesota Chippewa as part of the White Earth Land Compensation Act which was intended to settle “claims on behalf of Indian allottees or heirs and the White Earth Band involving substantial amounts of land within the White Earth Indian Reservation in Minnesota [which were the] subject of existing and potential lawsuits involving many and diverse interests in Minnesota, and [were] creating great hardship and uncertainty for government, Indian communities, and non-Indian communities . . . .” Pub. L. No. 99-264, 100 Stat. 61 (1986). Congress intended for the Act to “settle unresolved legal uncertainties relating to th[o]se claims.” *Id.*

<sup>8</sup> Congress mandated acquisition of certain lands for the Ponca Tribe as part of the Ponca Restoration Act which was intended to restore the Tribe’s federally recognized status and remedy the effects of the government’s termination and mistreatment of the tribe which resulted in loss of lands, economic hardship and cultural damage to the Tribe. 25 U.S.C. § 983b.

### *25 U.S.C. § 2216(c) Acquisitions*

Title determinations for acquisitions of fractional interests pursuant to 25 U.S.C. § 2216(c) will adhere to the following criteria. Submissions shall include current evidence of title ownership from the tribe or individual Indian demonstrating that the fractional interest is owned by the tribe or individual Indian and how it was acquired. This information should include an abstract of title dating from the time the interest was transferred from trust ownership to partial fee ownership to the present. In the absence of an abstract of title, the BIA will accept a sworn declaration from the owner that states (a) how the owner acquired the interest, and a copy of the recorded document through which the owner's interest was acquired, and (b) that the owner has not conveyed the interest away.

### *All Other Mandatory Acquisitions*

Title determinations for all other mandatory acquisitions shall require current evidence of title ownership from the tribe or individual Indian demonstrating that the interest is owned by the tribe or individual Indian and how it was acquired.<sup>9</sup> This should include an abstract of title or a title commitment dating from the time the interest was acquired in fee ownership by the current owner or the current owner's predecessor(s) in title to the present.

### **Notice**

As a matter of practice, the Department has provided notice of its intention to take land into trust for a tribe or individual Indian or, alternatively, its refusal to complete a fee-to-trust acquisition. A notice of a decision to deny a trust acquisition also has included specific reference to a right of appeal pursuant to 25 C.F.R. Part 2 (or, if the decision is issued by the Assistant Secretary – Indian Affairs, appeal under Part 2 is unavailable, since the decision is final for the Department). The Department has followed this practice for both mandatory and discretionary acquisitions. Sound policy reasons weigh in favor of continuing to provide public notice in order to allow for judicial review prior to acquisition of lands because, once the United States acquires title, the Quiet Title Act, 28 U.S.C. § 2409a, precludes judicial review. Although the Department's regulations (specifically 25 C.F.R. § 151.12) may not explicitly require notice of mandatory acquisitions, the policy of providing notice is consistent with our regulations.

Therefore, the Bureau will continue to provide written notice of the acquisition determination to the tribe or individual Indian. In the event of a denial, notice of the right to appeal pursuant to 25 C.F.R. Part 2 shall be provided unless the decision was made by the Assistant Secretary – Indian Affairs.

Once the Department determines that it must acquire a particular parcel in trust for a tribe or an individual Indian, written notice shall be published in the *Federal Register* or in a newspaper of general circulation serving the affected area.<sup>10</sup> The notice will reference the applicable

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<sup>9</sup> This requirement may also be met by submitting written evidence that title will be transferred to the tribe or individual upon acquisition in trust by the Department on behalf of the tribe or the individual Indian.

<sup>10</sup> Decisions from appeals under Part 2 are final upon exhaustion of administrative remedies.

mandatory authority, state that the Secretary is required to take the land into trust, and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published. If an appeal of the determination is filed in Federal Court before the 30-day notice time period expires, you should consult the Solicitor's Office prior to transferring and recording title.

Absent a judicial challenge within the 30-day period (or, if litigation has been filed, upon a final decision upholding the acquisition), the Secretary shall then issue or approve an appropriate instrument of conveyance to finalize the mandated acquisition.

### **Environmental Review**

It is well-established that the environmental review requirements of the National Environmental Policy Act (NEPA) are not applicable to mandatory acquisitions.<sup>11</sup>

In addition, we find that the plain language of our regulations (25 C.F.R. §§ 151.10(h) and 151.11(a)) makes clear that compliance with 602 DM 2 is not a precondition to completing a mandatory fee-to-trust acquisition. In addition to the plain language of our regulations, we also find there are good policy reasons for treating mandatory acquisitions differently with regard to 602 DM 2. The Secretary has no discretion to refuse to acquire land that qualifies under the statute or decree regardless of what information might exist under a 602 DM 2 analysis. Therefore, BIA shall not require compliance with 602 DM 2 as a precondition to processing and completing mandatory acquisitions and we set aside any previous direction to the contrary.

Nevertheless, it still is important for the Department to understand any environmental hazards that might be present on the lands it must acquire or any potential legal liabilities. To do this, the BIA must conduct an initial site inspection to satisfy its due diligence requirement, however, completion of the acquisition is not conditioned upon the initial site inspection or the findings and/or results of the inspection.

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Please refer any questions concerning this guidance to the Director's Office. Thank you in advance for your cooperation with this important work.

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<sup>11</sup> For example, *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9<sup>th</sup> Cir. 1995) held that NEPA only applies to discretionary agency actions.

4.2 Indian Affairs Manual (IAM) Part 52, Chapter 12, “*Processing Discretionary Fee-to Trust Applications*”

## INDIAN AFFAIRS MANUAL

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Processing Discretionary Fee-to-Trust Applications

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**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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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.

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Replaces: Version IV, Issued: 5/16/16



## 5.0 EXHIBITS

### 5.1 Brochure: “*Understanding the Fee-to-Trust Process for Discretionary Acquisitions*”

*[See enclosed PDF file]*

# UNDERSTANDING THE

## Fee-to-Trust Process For Discretionary Acquisitions



DEPARTMENT OF  
THE INTERIOR

BUREAU OF INDIAN  
AFFAIRS

### Fee-to-Trust Step-by-step process for On-Reservation (Discretionary)

|                |  |
|----------------|--|
| <b>STEP 1</b>  | Encode into the Fee-to-Trust Tracking System |
| <b>STEP 2</b>  | Review of Written Request or Application     |
| <b>STEP 3</b>  | Respond to an incomplete application         |
| <b>STEP 4</b>  | Site Visit and Certificate of Inspection     |
| <b>STEP 5</b>  | Preliminary Title Opinion                    |
| <b>STEP 6</b>  | Notice of Application to Interested Parties  |
| <b>STEP 7</b>  | Environmental Compliance Review              |
| <b>STEP 8</b>  | Comments to Notice of Application            |
| <b>STEP 9</b>  | Satisfy Preliminary Title Opinion Objections |
| <b>STEP 10</b> | Prepare Analysis & Notice of Decision        |
| <b>STEP 11</b> | Provide Notice of the Decision               |

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

For more information about this  
process contact:

Steps Continued 

## 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 people 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 to?** 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 what BIA office has jurisdiction over the lands the applicant should contact the 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 individual(s), 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 Department of the Interior must comply with all federal laws, including compliance with NEPA, 602 DM 2 Hazardous Substances Determinations, National Historical Preservation Act (NHPA) and US 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 applicant maintains written communication with the BIA throughout the process when the applicant is contacted by the BIA. If applicant needs additional time to respond to a request from the BIA 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 applicant for additional time to provide information, and will notify the applicant in writing of the decision regarding the applicant's 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, BIA will either return the application or take into consideration failure to provide the information. If the applicant has failed to provide infor-

mation 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.

**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 and § 151.11), and the official authorized to accept the fee-to-trust acquisition will decide whether 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.** BIA tracks the steps and progress of applications. BIA will provide you a report upon your request.

## 5.2 “Fee to Trust Quick Reference Guide”

*[Under development]*

### 5.3 "Required Elements: Application for Fee-to-Trust"

#### **Required elements: Application for fee-to-trust.**

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

A. 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 legal land descriptions shall contain the following information
      - State
      - County
      - Acreage
    2. All legal 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 legal 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 bound description which closes mathematically on itself.
    4. All legal 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 bound 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. Title evidence meeting the requirements of 151.13, but need not be submitted at the time of the initial application.
  - g. Written Tribal consent for nonmember application, or for Tribal acquisitions of land under jurisdiction of another Tribe
- B. 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)]
- C. 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

## 5.4 Sample Documents

### 5.4.1

#### *Sample Acknowledgement Letter*

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Date

Applicant  
P.O. Box 123  
Somewhere, USA 99999

Dear (Applicant Name):

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 land description & acreage)

To assist you in the processing of your request is our brochure, “Understanding the Fee-to-trust Process for Discretionary Acquisitions”. For your convenience, we are also enclosing a copy of 25 CFR Part 151.

If you have any questions, please contact (BIA contact name), Realty Specialist, at (000) 000-0000.

Sincerely,

Regional Director/Superintendent

Enclosure

5.4.2

*Sample Original 30-Day Notice of Incomplete Fee-to-Trust Application Package*

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Date

Applicant Name, Title  
Address

Dear (Applicant name):

On (application receipt date), the Bureau of Indian Affairs received your application to have the following described land accepted into trust by the United States of America:

(Insert Property Name, Case Number (if available), Legal Land Description, and Acreage)

Upon review of the subject fee-to-trust application, it has been determined that the package is incomplete. Therefore, we are issuing this *Original 30-Day Notice of Incomplete Fee-to-Trust Application Package* to you under Indian Affairs Manual (IAM), Part 52, Section 12. Please submit the following within 30 days of your receipt of this notice:

(Specify what information or documentation is necessary)

If we do not receive responsive information from you within 30 days from the date of receipt of this notice, a final notice will be issued to you stating that we did not receive the information required and the application will be inactivated and returned as incomplete, [45 or 60] days from the date of this Original Notice.

If you have any questions regarding this matter, you may contact this office at (000) 000-0000.

Sincerely,

[Superintendent or Regional Director]

[Enclosures]



5.4.3

*Sample Final Notice of Incomplete Fee-to-Trust Application Package*

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Date

Applicant Name, Title  
Address

Dear (Applicant Name):

On (date of Original 30-Day Notice), we issued the enclosed *Original 30-Day Notice of Incomplete Fee-To-Trust Application Package* stating that your fee-to-trust application for the following described land was incomplete and additional information is necessary:

(Insert Property Name, Case Number (if available), Legal Land Description, and Acreage)

The 30-day notice period has expired and the package remains incomplete. Therefore, we are issuing this *Final Notice of Incomplete Fee-to-Trust Application Package* under Indian Affairs Manual (IAM), Part 52, Section 12.

The application subject to this notice will be inactivated and returned as incomplete in [45 or 60] days from the date of the *Original 30-Day Notice of Incomplete Fee-To-Trust Application Package*.

You may resubmit the application at a later date with complete information and it will be assigned a new case number.

You may contact this office at (000) 000-0000 if you have any questions.

Sincerely,

[Superintendent or Regional Director]

Enclosure

5.4.4

*Sample Return of Incomplete Fee-to-Trust Application*

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Date

Applicant Name, Title  
Address

Dear (Applicant Name):

On (date of Final Notice of Incomplete Package), we issued the enclosed *Final Notice of Incomplete Fee-To-Trust Application Package* for the following described land:

(Insert Property Name, Case Number (if available), Legal Land Description, and Acreage)

Enclosed is the subject application package, which has been inactivated and is being returned, as stated in the *Final Notice of Incomplete Fee-to-Trust Application Package* under Indian Affairs Manual (IAM), Part 52, Section 12. We are required under 52 IAM 12 to return the incomplete package no sooner than [45 or 60] days from the date of the *Original 30-Day Notice of Incomplete Fee-To-Trust Application Package*.

You may contact this office at (000) 000-0000 if you have any questions.

Sincerely,

[Superintendent or Regional Director]

Enclosure

5.4.5

*Sample Environmental Compliance Review Memorandum*

Date

**Memorandum**

To: Regional Director/Superintendent

From: Environmental Services

Subject: (Applicant Name), Fee-to-Trust Application for XX acres

We have reviewed the subject undertaking for compliance with the National Environmental Policy Act of 1969 (NEPA), which included appropriate consultation under applicable laws. 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 (date). The NOA was published in a local newspaper and in Tribal administrative offices. No comments were received during that 30 comment period.

602 DM 2 Using ASTM E 1527 Standard Practice The attached Phase I Environmental Site Assessment dated (date) 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:

5.4.6  
*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 Name) 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 land description)

**Project Description/Proposed Land Use:**

(Insert project/proposed land use)

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 (NEPA) 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 (FOIA), 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 the (BIA Name) Office at (000) 000-0000.

Attachment

5.4.7

*Sample Notice of Application Comments to Applicant*

Date

Applicant  
P.O. Box 123  
Somewhere, USA 99999

Dear (Applicant Name):

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 Name). The parcel of land affected by this proposed action is described as:

(Insert legal land description)

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

If you choose to respond, you have 30-days from receipt of this letter to provide a written response that should be addressed to the Bureau of Indian Affairs at the address stated above. You may be granted an extension of time, provided we receive a written justification requesting such an extension within 30-days of your receipt of this letter.

For further assistance on this project, please contact this office at (000) 000-0000.

Sincerely,

Regional Director/Superintendent

Enclosures

5.4.8

*Restrictive Covenants Acknowledgement Form*

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 and may encumber this property and my rights to use and develop this property. Attached is a copy of the document that created this encumbrance.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant

#### 5.4.9

### *Sample Appeal Rights for Inclusion in BIA Officials' Decisions*

For Superintendent decisions, include the following appeal rights language in the decision:

Any party who wishes to seek judicial review of this decision must first exhaust administrative remedies. This decision may be appealed to the (Region) Regional Director in accordance with the regulations in 25 CFR Part 2. Your notice of appeal must be filed in the Superintendent's office at (Superintendent address) within 30 days of the date of receipt of this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to the Superintendent's office. Your notice of appeal must include your name, address, and telephone number and it should clearly identify the decision being appealed. If possible, attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "Notice of Appeal." Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at: (Regional Director address). If you are an Indian or Indian Tribe and are not represented by an attorney, you may request assistance from this office in the preparation of your appeal.

You may include a statement of reasons with your notice of appeal, explaining why you believe the decision being appealed is in error. If you do not include your statement of reasons with your notice of appeal, you must mail or deliver it to the Superintendent's office within 30 days after you file your notice of appeal. The statement of reasons and the envelope in which it is mailed should be clearly labeled "Statement of Reasons." It must be accompanied by or otherwise incorporate all supporting documents. You must send copies of your statement of reasons to all interested parties and the Regional Director.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

For Regional Director decisions, include the following appeal rights language in the decision:

Any party who wishes to seek judicial review of this decision must first exhaust administrative remedies. The Regional Director's decision may be appealed to the Interior Board of Indian Appeals (IBIA) in accordance with the regulations in 43 C.F.R. 4.310-4.340.



If you choose to appeal this decision, your notice of appeal to the IBIA must be signed by you or your attorney and **must be either postmarked and mailed (if you use mail) or delivered (if you use another means of physical delivery, such as FedEx or UPS) to the IBIA within 30 days from the date of receipt of this decision.** The regulations do not authorize filings by facsimile/fax or by electronic means. Your notice of appeal should clearly identify the decision being appealed. You must send your **original** notice of appeal to the IBIA at the following address: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203. You must send **copies** of your notice of appeal to (1) the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, MS-4141-MIB, 1849 C Street N.W., Washington, D.C. 20240; (2) each interested party known to you; and (3) the Regional Director. Your notice of appeal sent to the IBIA must include a statement certifying that you have sent copies to these officials and interested parties and should identify them by names or titles and addresses.

If you file a notice of appeal, the IBIA will notify you of further procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

## 5.4.10

### *Sample Public Notice to Acquire Land in Trust – BIA Superintendent Decisions (for publication in the local newspaper)*

**ACTION:** Notice of decision to acquire land into trust under 25 Code of Federal Regulations, Part 151.

**SUMMARY:** The Superintendent, Bureau of Indian Affairs, U.S. Department of the Interior, on the below date, has made a determination to acquire real property in trust for the (Applicant Name). The land referred to as former “(Name)” property, herein and is described as: (Legal Land Description and Case Number).

**DATE:** This determination was made on (Decision Date).

**FOR FURTHER INFORMATION CONTACT:** BIA (Agency) Superintendent Office, Bureau of Indian Affairs, (Address), telephone (000) 000-0000.

**SUPPLEMENTARY INFORMATION:** This notice is published to comply with the requirement of 25 CFR § 151.12(d)(2)(iii) that notice be given of the decision by the authorized representative of the Secretary of the Interior to acquire land in trust.

A copy of the determination is available [at the following website: \_\_\_\_\_ AND/OR from the office identified in the FOR FURTHER INFORMATION section of this notice]. Any party who wishes to seek judicial review of this decision must first exhaust administrative remedies under 25 CFR Part 2. This decision may be appealed to the (Region) Regional Director in accordance with the regulations in 25 CFR Part 2. Your notice of appeal must be filed in the Superintendent’s office at the address listed in the FOR FURTHER INFORMATION CONTACT section above within 30 days of the date of publication of this notice. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to the Superintendent’s office. Your notice of appeal must include your name, address, and telephone number and it should clearly identify the decision being appealed. If possible, attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled “Notice of Appeal.” Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at: (Address). If you are an Indian or Indian Tribe and are not represented by an attorney, you may request assistance from this office in the preparation of your appeal.

You may include a statement of reasons with your notice of appeal, explaining why you believe the decision being appealed is in error. If you do not include your statement of reasons with your notice of appeal, you must mail or deliver it to the Superintendent’s office within 30 days after you file your notice of appeal. The statement of reasons and the envelope in which it is mailed should be clearly labeled “Statement of Reasons.” It must be accompanied by or otherwise

incorporate all supporting documents. You must send copies of your statement of reasons to all interested parties and the Regional Director.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

*Sample Public Notice to Acquire Land into Trust – BIA Regional Director  
Decisions  
(for publication in the local newspaper)*

ACTION: Notice of decision to acquire land into trust under 25 Code of Federal Regulations, Part 151.

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

The land referred to as former “(Name)” property, herein and is described as: (Legal Land Description and Case Number)

DATE: This determination was made on (Decision Date).

FOR FURTHER INFORMATION CONTACT: BIA (Region) Regional Office, Bureau of Indian Affairs, (Address), telephone (000) 000-0000.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR § 151.12(d)(2)(iii) that notice be given of the decision by the authorized representative of the Secretary of the Interior to acquire land in trust.

A copy of the determination is available [at the following website: \_\_\_\_\_ AND/OR from the office identified in the FOR FURTHER INFORMATION section of this notice]. Any party who wishes to seek judicial review of the Regional Director’s decision must first exhaust administrative remedies. The Regional Director’s decision may be appealed to the Interior Board of Indian Appeals (IBIA) in accordance with the regulations in 43 C.F.R. 4.310-4.340.

If you choose to appeal this decision, your notice of appeal to the IBIA must be signed by you or your attorney and **must be either postmarked and mailed (if you use mail) or delivered (if you use another means of physical delivery, such as FedEx or UPS) to the IBIA within 30 days from the date of publication of this notice.** The regulations do not authorize filings by facsimile/fax or by electronic means. Your notice of appeal should clearly identify the decision being appealed. You must send your **original** notice of appeal to the IBIA at the following address: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203. You must send **copies** of your notice of appeal to (1) the Assistant Secretary – Indian Affairs, U.S. Department

of the Interior, MS-4141-MIB, 1849 C Street N.W., Washington, D.C. 20240; (2) each interested party known to you; and (3) the Regional Director. Your notice of appeal sent to the IBIA must include a statement certifying that you have sent copies to these officials and interested parties and should identify them by names or titles and addresses.

If you file a notice of appeal, the IBIA will notify you of further procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

*Sample Public Notice to Acquire Land into Trust – AS-IA Decisions  
(for publication in the Federal Register)*

ACTION: Notice of final agency determination to acquire land into trust under 25 CFR part 151.

SUMMARY: The Assistant Secretary – 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 (Applicant Name).

DATE: This determination was made on (Decision Date).

FOR FURTHER INFORMATION CONTACT: BIA (Office), Bureau of Indian Affairs, (Address), telephone (000) 000-0000.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR § 151.12(c)(2)(ii) that notice be published in the Federal Register of the final agency determination to acquire land in trust. On (Decision Date), the Assistant Secretary – Indian Affairs issued a decision to accept land in trust for (Applicant Name) under the authority of (List of Statutory Authority(ies)).

The Assistant Secretary – Indian Affairs, on behalf of the Secretary of the Interior, (has acquired / will immediately acquire) title in the name of the United States of America in trust for (Applicant Name) upon fulfillment of Departmental requirements.

The land referred to as former “(Name)” property, herein and is described as: (Legal land description and case number).



5.4.12

*SAMPLE DEED AND ACCEPTANCE OF CONVEYANCE*

*[CAUTION – CONFORM THIS TO LOCAL AND STATE REQUIREMENTS. CONTACT THE SOLICITOR’S OFFICE WITH ANY QUESTIONS]*

GENERAL WARRANTY DEED

This indenture, made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the \_\_\_\_\_, also known as \_\_\_\_\_, a sovereign Indian Nation, \_\_\_\_\_ address-\_\_\_\_\_, party of the first part (Grantor), and the **United States of America in Trust for the \_\_\_\_\_**, party of the second part (Grantee).

WITNESSETH, that the party of the first part in consideration for the trust responsibilities to be performed by the United States, and other good and valuable consideration, paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns forever, in fee simple,

**All That Certain Plot, Piece, or Parcel of Land**, lying, situate, and being in the County of [County], [State], as described on the attached Schedule “A” and otherwise known as Lot \_\_\_\_\_ in the system of lot numbers assigned by the Grantor.

**Together with** all the appurtenances thereunto belonging or in anywise appertaining to the proper use and benefit of the said Grantee and its assigns, forever, and the Grantor releases and quitclaims unto the Grantee and its assigns, all the right, title and interest which the Grantor may have in the banks, beds and water of any streams opposite to or fronting upon said land, including all littoral and/or riparian rights incident thereto and in alleys, roads, streets, ways, strips, gores or railroad rights-of-way abutting or adjoining said land, and in any means of ingress and egress appurtenant thereto;

**Subject to** the covenants, easements and restrictions of record;

**To Have and To Hold** the premises herein granted unto the party of the second part, its successors and/or assigns forever.

And the party of the first part covenants as follows:

**First**, that said party of the first part is seized of the said premises in fee simple, and has good right to convey the same; **Second**, that the party of the second part shall quietly enjoy the said premises; **Third**, that the said premises are free from encumbrances, except as aforesaid; **Fourth**, that the party of the first part will execute or procure any further







5.4.13

*SAMPLE NOTICE OF RESERVATION PROCLAMATION REQUEST*

NOTICE OF RESERVATION PROCLAMATION REQUEST

Applicant

[TRIBE NAME]

Legal Land Description/Site Location:

[LEGAL LAND DESCRIPTION]

[ACREAGE], more or less.

[PARCEL ID]

[ADDRESS IF AVAILABLE]

Project Description/Proposed Land Use:

The [OFFICE] has under consideration a request by the [TRIBE] that the lands described above be proclaimed “reservation” pursuant to Section 7 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 24 U.S.C. 467), which provides that the Secretary of the Interior may proclaim an Indian reservation or add lands to existing reservations. The Office of the Assistant Secretary – Indian Affairs reviews all requests for adding land to a reservation, and prepares the proclamation and Federal Register notice. A Proclamation is simply an administrative function that allows the Tribe to take advantage of special federal assistance programs.

[DESCRIBE CURRENT AND PROPOSED USE OF PROPERTY]

This letter provides official notice of the proposed action. Should you have any questions, please contact [POINT OF CONTACT].

Sincerely,

Regional Director [Sup000erintendent]

BY CERTIFIED MAIL:

[Governor's address] 9171 9690 0935 0036 0684 39

[County admin address] 9171 9690 0935 0036 0684 46

[Mayor or town board address] 9171 9690 0935 0036 0684 53

[Other interested party address] 9171 9690 0935 0036 0684 60

BY FIRST CLASS MAIL:

[Tribe point of contact address]

#### 5.4.14

#### *SAMPLE RESERVATION PROCLAMATION INSERT*

#### *FOR BIA NOTICE OF DECISION*

The Tribe has also requested that certain lands be proclaimed “reservation” pursuant to Section 7 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 24 U.S.C. 467), which provides that the Secretary of the Interior may proclaim an Indian reservation or add lands to existing reservations. A Proclamation is simply an administrative function that allows the Tribe to take advantage of special federal assistance programs. The Office of the Assistant Secretary – Indian Affairs reviews all requests for adding land to a reservation, and prepares the proclamation and Federal Register notice.

BIA has reviewed the Tribe’s Proclamation request and has determined that, immediately following the expiration of the 30-day administrative appeal period, if no appeal is filed, the BIA official will recommend that the Assistant Secretary – Indian Affairs issue the Proclamation. If an appeal is filed, and a final decision is issued affirming the BIA official’s decision, BIA will immediately recommend that the Assistant Secretary - Indian Affairs issue the Proclamation. Reservation proclamations will only be issued after land is acquired in trust.

*5.5 Preliminary Title Opinion Document Checklist  
[Under development.]*

*5.6 Handbook for Gaming Acquisitions*  
*[Under development.]*

## 5.7 Certificates of Inspection and Possession

### 5.7.1

#### CERTIFICATE OF INSPECTION AND POSSESSION (Form # 1)

This relates to an acquisition of the following described land, or an interest therein, by the United States of America.

#### A. Property and project information:

1. The acquiring federal agency is:

*[name the agency]*

2. The name and address of the owner(s) of the property is:

*[name and address of owner]*

3. The property is identified and/or described as follows:

*[insert some or all of the following: agency parcel number and project name, street address, acreage, common name of property or other reference sufficient to identify it; plus the name of the county and state where it is located; plus, if available, a legal land description here or on an attached exhibit]*

4. The estate(s) to be acquired is/are:

*[insert and identify estate]*

#### B. Certification:

**I hereby certify that on \_\_\_\_\_ [date], I made a personal examination and inspection of that certain tract or parcel of land identified above, and that I am fully informed as to the boundaries, lines and corners of said tract. I also spoke with the above-named owner(s) and with any other occupants (identified below) of said land. On the basis of my inspection and inquiry, I hereby certify that the following statements are accurate, or, if one or more statements is not accurate I have marked it/them and I have indicated on this sheet or on an attachment my findings which vary from the statement:**

\_\_\_\_\_ (date)

\_\_\_\_\_ (signature)

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(print name, title, address and telephone number)

1. No work or labor has been performed or any materials furnished in connection with the making of any repairs or improvements on said land within the past \_\_\_\_ months that would entitle any person to a lien upon said premises for work or labor performed or materials furnished,
2. There are no persons or entities (corporations, partnerships, etc.) which have, or which may have, any rights of possession or other interest in said premises adverse to the rights of the above-named owner(s) or the United States of America.
3. There is no outstanding unrecorded deed, mortgage, lease, contract, or other instrument adversely affecting the title to said premises.
4. There are no vested or accrued water rights for mining, agricultural, manufacturing, or other purpose; nor any ditches or canals constructed by or being used thereon under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas or other minerals on said lands; and there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.
5. There are no outstanding rights whatsoever in any person or entity (corporation, partnership, etc.) to the possession of said premises, nor any outstanding right, title, interest, lien, or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records, as revealed by the public land records.
6. Said premises are now wholly unoccupied and vacant except for the occupancy of the following, from whom disclaimer(s) of all right, title and interest in and to said premises, executed on \_\_\_\_\_[date] has (have) been obtained:

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5.7.2

CERTIFICATE OF INSPECTION AND POSSESSION (Form # 2)

This relates to an acquisition of the following described land, or an interest therein, by the United States of America.

**A. Property and project information:**

1. The acquiring federal agency is:

*[name the agency]*

2. The name and address of the owner(s) of the property is:

*[name and address of owner]*

3. The property is identified and/or described as follows:

*[insert some or all of the following: agency parcel number and project name, street address, acreage, common name of property or other reference sufficient to identify it; plus the name of the county and state where it is located; plus, if available, a legal land description here or on an attached exhibit]*

4. The estate(s) to be acquired is/are:

*[insert and identify estate]*

**B. Certification (physical inspection): I hereby certify that on**

**\_\_\_\_\_ [date] I made a personal examination and inspection of that certain tract or parcel of land identified above, and that I am fully informed as to the boundaries, lines and corners of said tract. On the basis of my inspection, I hereby certify that the following statements are accurate, or, if one or more statements is not accurate I have marked it/them and I have indicated on this sheet or on an attachment my findings which vary from the statement:**

\_\_\_\_\_(date)

\_\_\_\_\_(signature)

\_\_\_\_\_  
(print name, title, address and telephone number)

1. No work or labor has been performed or any materials furnished in connection with the making of any repairs or improvements on said land within the past months that would entitle any person to a lien upon said premises for work or labor performed or materials furnished.
2. There are no persons or entities (corporations, partnerships, etc.) which have, or which may have, any rights of possession or other interest in said premises adverse to the rights of the above-named owner(s) or the United States of America.
3. There are no vested or accrued water rights for mining, agricultural, manufacturing, or other purpose; nor any ditches or canals constructed by or being used thereon under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas or other minerals on said lands; and there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.
4. There are no outstanding rights whatsoever in any person or entity (corporation, partnership, etc.) to the possession of said premises, nor any outstanding right, title, interest, lien, or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records, as revealed by public land records.
5. Said premises are now wholly unoccupied and vacant except for the occupancy of the following, from whom disclaimer(s) of all right, title and interest in and to said premises, executed on \_\_\_\_\_ [date] has (have) been obtained:

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**C. Certification (owner inquiry): I hereby certify that on \_\_\_\_\_ [date] I spoke with the above-named owner(s) and with any other occupants (identified below) of said land. On the basis of my inquiry, I hereby certify that the following statements are accurate, or, if one or more statements is not accurate I have marked it/them and I have indicated on this sheet or on an attachment my findings which vary from the statement:**

\_\_\_\_\_ (date)  
 \_\_\_\_\_ (signature)

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(print name, title, address and telephone number)

1. No work or labor has been performed or any materials furnished in connection with the making of any repairs or improvements on said land within the past months that would entitle any person to a lien upon said premises for work or labor performed or materials furnished,
2. There are no persons or entities (corporations, partnerships, etc.) which have, or which may have, any rights of possession or other interest in said premises adverse to the rights of the above-named owner(s) or the United States of America.
3. There is no outstanding unrecorded deed, mortgage, lease, contract, or other instrument adversely affecting the title to said premises.
4. There are no vested or accrued water rights for mining, agricultural, manufacturing, or other purpose; nor any ditches or canals constructed by or being used thereon under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas or other minerals on said lands; and there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.
5. There are no outstanding rights whatsoever in any person or entity (corporation, partnership, etc.) to the possession of said premises, nor any outstanding right, title, interest, lien, or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records, as revealed by the public land records.
6. Said premises are now wholly unoccupied and vacant except for the occupancy of the following, from whom disclaimer(s) of all right, title and interest in and to said premises, executed on \_\_\_\_\_ [date] has (have) been obtained:

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c. Disclaimer

DISCLAIMER

County of \_\_\_\_\_

ss:

State of \_\_\_\_\_

We (I) \_\_\_\_\_ (wife) (husband), being first duly sworn, depose and say (deposes and says) that we are (I am) occupying all (a part) of the land (proposed to be) acquired by the United States of America from \_\_\_\_\_, described as \_\_\_\_\_ acres, Tract No. \_\_\_\_\_, lying in \_\_\_\_\_ County, State of \_\_\_\_\_; that we are (I am) occupying said land as the tenants (tenant) of \_\_\_\_\_; that we (I) claim no right, title, lien or interest in and to the above-described premises or any part thereof by reason of said tenancy or otherwise and that we (I) will vacate said premises upon demand for the possession of said lands by the United State of America.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. (Month) (Year)

\_\_\_\_\_  
(Tenant)

\_\_\_\_\_  
(Spouse)

Witnesses: \_\_\_\_\_  
\_\_\_\_\_