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

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TABLE OF CONTENTS

1. INTRODUCTION

2. DEFINITIONS OF TERMS & ACRONYMS

3. PROCESS AND PROCEDURES
   3.1. Standard Operating Procedures: Fee-to-Trust Acquisitions
      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 (Policy memorandum)
   3.2 Selecting the Correct Operating Procedure
   3.3 Step Sequence

4. POLICY AND DIRECTIVES
   4.1. Mandatory Acquisition Guidance
   4.2. Indian Affairs Manual (IAM) Part 52, Chapter 12 Processing Discretionary Fee-to-Trust Applications

5. EXHIBITS
   5.1. Brochure: "Understanding the Fee-to-Trust Process for Discretionary Acquisitions"
   5.2. Fee to Trust Quick Reference Guide
   5.3. Required Elements: Application for Fee-to-Trust
   5.4. Sample Documents
      5.4.1 Sample Acknowledgement Letter
      5.4.2 Sample Original 30-Day Notice of Incomplete Fee-to-Trust Application Package
      5.4.3 Sample Final Notice of Incomplete Fee-to-Trust Application Package
      5.4.4 Sample Return of Incomplete Fee-to-Trust Application
      5.4.5 Sample Environmental Review Compliance Memorandum
      5.4.6 Sample Notice of Application
      5.4.7 Sample Notice of Application Comments to Applicant
      5.4.8 Restrictive Covenants Acknowledgement Form
      5.4.9 Sample Appeal Rights for Inclusion in BIA Officials' Decisions
      5.4.10 Sample Public Notice to Acquire Land into Trust
      5.4.11 Sample Acceptance of Conveyance
   5.5 Preliminary Title Opinion Document Checklist
   5.6 Handbook for Gaming Acquisitions (Gaming Handbook)

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.

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.

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 commonly used acronyms used in 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
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	Land Description Review (by BILS)
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
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
USCA	United States Code Annotated

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 four operating procedures 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, utilizing the factors in 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]*

3.1.1
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 description to assure the obvious elements identified below are present. A Legal 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.

   a) All land descriptions utilizing PLSS or any other survey system shall contain the following elements:
      - State
      - County
      - Approximate Acreage

   b) 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 description.
      - Township
      - Range
      - Principal Meridian
      - Section(s)
      - Government Lots or Aliquot Parts

   c) All 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.

   d) All 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. A legal instrument (such as a deed), to verify current ownership.

g. Written Tribal consent for nonmember applications, or for Tribal acquisitions of land that is under the jurisdiction of another Tribe.

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 Federal Register for Federally recognized Tribes 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 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 <u>if necessary</u>.

    b. A commitment, or a binder of title evidence with a commitment, to issue a final title insurance on the ALTA U.S. Policy Form 9/28/91 *[See: Department of Justice (DOJ) Title Standards]*. Documents in support of all exceptions to coverage of title as set forth in Schedule B of the title evidence, including liens, encumbrances and infirmities and documents referred to in the legal description. A Restrictive Covenant Acknowledgement form may also be required *[See Exhibit 5.4.8: Restrictive Covenants Acknowledgement]*.

    c. Obtain a Legal Description Review (LDR) from a qualified individual that concurs with the validity of the legal 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.

    Legal descriptions shall be reviewed to identify insufficiencies due to confusing boundaries, gaps or overlaps, encroachments, and other conflicts along a property line. Relying solely on title evidence and title insurance creates the potential for overlooking boundary defects.

d. Warranty Deed (i.e., draft acquisition deed) 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.

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.

   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 USC 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 USC 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

1. Pursuant to "Department of Justice Standards 2001," Section 4. Supplemental and Supporting Title Evidence, b. Certificate of Inspection and Possession (CIP), "Whenever possible an inquiry and physical inspection of the land should be made early in the acquisition process by a duly authorized employee of, or contractors for, the acquiring agency, and a CIP should be prepared and submitted to the Department of Justice or the reviewing attorney with the agency's title evidence and its request for a preliminary opinion of title."

2. Compare condition and use of property as described in submitted documents and title commitment. 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 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 a title commitment from applicant and copies of all documents referenced or identified in the exceptions to title coverage commitment.

2. Submit a written request for a Preliminary Title Opinion (PTO) to the Solicitor's Office; include a contiguous determination for Solicitor concurrence, if applicable. Attach the following information/documents:

    a. The preliminary commitment, or a binder of title evidence with a commitment, to issue final title insurance on the ALTA U.S. Policy Form 9/28/91. The proposed insured should state, "The United States of America in trust for [insert legal name of the applicant – for tribes it is the name as found in the federal register or a federally approved Constitution]." The proposed policy coverage must meet the minimum title insurance required by the DOJ Title Standards.

    b. Draft deed in trust to the United States, conforming to local statutory recording requirements and/or Draft Acceptance of Conveyance.

    c. Property boundary and location maps, if applicable.

    d. Initial Certificate of Inspection and Possession, if one has been completed.

    e. Include the LDR.

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, 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). NEPA compliance for every discretionary fee-to-trust transaction must be documented by an ECRM *[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).

2. Do **not** send the PTO to the applicant, as it is attorney-client privileged information.

3. Request applicant to provide updated title commitment or endorsement 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. If no response is received within the timelines established by the policy, note the record and 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.[1] 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 *Carcieri* 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.

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

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.

    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 Assistant Secretary – Indian Affairs (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 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[2] 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.

[2] BIA should assume every party making themselves known is an interested party for purposes of sending out notice of the decision.

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, 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, 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."

<u>If the **AS-IA** makes a decision to approve a request</u>:

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 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."

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.

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 5.4.11: Acceptance of Conveyance]*.

Step 14: Final Title Opinion and Recordation

1. Obtain the *original county-recorded deed and final title insurance policy (ALTA Policy 9/28/91) from the applicant.

2. Request a Final Title Opinion (FTO) from the Office of the Solicitor.

3. The request shall include:

   a. The recorded Deed and Acceptance of Conveyance

   b. Title Insurance Policy

   c. PTO and title commitment

   d. LDR

   e. If applicable, updated title commitment or endorsement as evidence of corrective actions

   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).

Note: Do not include the Final Title Opinion (FTO) with the submission to the LTRO for recording. These FTO is subject to attorney-client privilege and should not be released.

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. (Note: The recorded package does not include the FTO).

   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 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:

i. 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.

ii. Citation to the mandatory authority;

iii. 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.

iv. A legal 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, 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, 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."

<u>If the **AS-IA** is issuing the decision</u>:

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 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*]).

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 in52 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.

END OF PROCEDURE

4.0 POLICY AND DIRECTIVES

4.1 Mandatory Acquisition Guidance

Note: The notice procedures of the April 6, 2012 Mandatory Acquisition Guidance are out of date, in light of changes to 25 C.F.R. 151.12, and will be updated; therefore, where the provisions of the Mandatory Acquisition Guidance conflict with the procedures in this handbook for mandatory acquisitions, follow the procedures in this handbook (e.g., do not wait 30 days to take land into trust after AS-IA issues a decision).

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.[1] 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[2]

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

[1] 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.

[2] 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.*

without the submission of a request. Acquisitions made pursuant to 25 U.S.C. § 2216(c)[3] have previously have been determined to be mandatory[4] 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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[3] 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."

[4] 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.[5] 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[6] or in settlement of a dispute or to address a grievance[7] or a perceived injury[8] 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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[5] 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).

[6] 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).

[7] 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.*

[8] 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.[9] 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.[10] The notice will reference the applicable

[9] 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.

[10] 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.[11]

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.

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

[11] For example, *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th 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

Part 52 Real Estate Services

Chapter 12 Processing Discretionary Fee-to-Trust Applications Page 1

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

#10-24
New

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

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.

5.0 EXHIBITS

5.1 Brochure: *"Understanding the Fee-to-Trust Process for Discretionary Acquisitions"*

[See enclosed PDF file]

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

STEP 1
Encode into to the Fee-to-Trust Tracking System

STEP 2
Review of Written Request or Application

STEP 3
Respond to an incomplete application

STEP 4
Site Visit and Certificate of Inspection

STEP 5
Preliminary Title Opinion

STEP 6
Notice of Application to Interested Parties

STEP 7
Environmental Compliance Review

STEP 8
Comments to Notice of Application

STEP 9
Satisfy Preliminary Title Opinion Objections

STEP 10
Prepare Analysis & Notice of Decision

STEP 11
Provide Notice of the Decision

Steps Continued

STEP 12
Prepare Final Certificate of Inspection

STEP 13
Acceptance of Conveyance

STEP 14
Final Title Opinion and Recordation

STEP 15
Recording at Land Titles and Records

STEP 16
Completed Application Packet

For more information about this process contact:

Understanding the

Fee-to-Trust Process
For Discretionary Acquisitions

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Frequently Asked Questions

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

2. Who is eligible to apply for a fee-to-trust land acquisition? Indian Tribes and individual Indian 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 information on a non-critical title issue, BIA will take into consideration that there is insufficient or negative information in forming BIA's decision on your application and may result in a denial of your application.

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 accomplished by government survey of the Public Land Survey System (PLSS), metes and bounds, or lot numbers of a recorded plat, so as to show exactly where the real property is located and how many acres it contains.
         1. All land descriptions shall contain the following information
            - State
            - County
            - Approximate Acreage
         2. All land descriptions described by Public Land Survey System (PLSS) shall contain the following applicable information
            - Township
            - Range
            - Principal Meridian
            - Section(s)
            - Government Lots
            - Aliquot Parts
         3. All land descriptions described by metes and bounds within the Public Land Survey System (PLSS) shall contain the following applicable information.
            - Township
            - Range
            - Principal Meridian
            - Section(s), Aliquot part, or Government Lot parcel lies in
            - Commencement tie from a Government corner of PLSS to point of beginning of metes and bounds parcel.
            - A metes and bound description which closes mathematically on itself.
         4. All land descriptions described by metes and bounds not within the Public Land Survey System (PLSS) shall contain the following applicable information.
            - A point of beginning easily located of the ground.
            - A metes and 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. A legal instrument such as a deed, to verify current ownership
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 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 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 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 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 Review Compliance 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 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 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. I have read the attached document, understand the limitations on my use of my property, and agree to be bound by those restrictions and limitations so long as they remain effective.

Dated: _____

_____

Signature of Applicant

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 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 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 Finterested 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 description and case number).

5.4.11

Sample Acceptance of Conveyance

ACCEPTANCE OF CONVEYANCE

The foregoing conveyance from the __(Applicant Name)_____ to the UNITED STATES OF AMERICA IN TRUST FOR THE ___(Applicant Name)_____ is hereby accepted and approved on behalf of the United States pursuant to (Cite statutory authority), and the authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, 230 DM 1, 3 IAM 4 (Release No. 12-42, Reissue of 12/19/12), and further delegations.

_____ Date:_____
Regional Director/Superintendent, (BIA Office)
Bureau of Indian Affairs
Address

Attest: Regional Director/Superintendent, (BIA Office), Bureau of Indian Affairs

STATE OF _____)
)SS
COUNTY OF_____)

On this _____day of_____, 20__, there personally appeared before me a Notary Public,_____personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that he/she executed the instrument.

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

_____
Notary Public

My Commission expires on:_____

EXHIBITS 5.5

Preliminary Title Opinion Document Checklist

[Under development.]

EXHIBITS 5.6
Handbook for Gaming Acquisitions

[Under development. Contact OIG for most recent copy.]