

U.S. Department of the Interior  
Assistant Secretary-Indian Affairs  
Office of Indian Energy and Economic Development  
Division of Economic Development

Tribal Economic Development Principles-at-a-Glance Series  
Converting Fee Land into Trust Land and the  
Associated Economic Benefits

**Tribal Economic Development Principles-at-a-Glance Series**

# **Converting Fee Land into Trust Land and the Associated Economic Benefits**



## **Tribal Economic Development Principles-at-a-Glance Series**

### **Converting Fee Land into Trust Land and the Associated Economic Benefits**

*This is the 20<sup>th</sup> in a series of economic development primers produced by the Division of Economic Development (DED), Indian Affairs Office of Indian Energy and Economic Development (IEED), to offer answers to fundamental questions about creating jobs and expanding economies in tribal communities.*

*If you would like to discuss in more detail the land into trust process, please contact DED at (202) 219-0740.*

#### **What is fee simple land?**

Fee simple land is usually known as the highest possible type of property ownership. Land held under fee simple is under complete control of the owner (a person or an entity such as a tribe) who holds the title to it. He or she or the tribe, for example can sell, lease or develop the land as they see fit.<sup>1</sup>

#### **What is trust land?**

Trust land is land that the United States government holds in trust on behalf of an American Indian or Alaska Native individual or a federally recognized tribe.<sup>2</sup> Unlike with fee simple land, the federal government, instead of the individual or tribe, holds the title for the trust land.



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<sup>1</sup> <https://www.investopedia.com/terms/r/real-property.asp>

<sup>2</sup> <https://www.bia.gov/frequently-asked-questions>

<sup>3</sup> streamlined leasing on Indian lands (Bureau of Indian Affairs)

### **What must a tribe do to convert fee simple land into trust land?**

Federally recognized American Indian tribes and individuals, as defined under federal law, are eligible to apply for a fee-to-trust land acquisition. Applicants must submit a written request specifically requesting the Secretary of the Interior to take land into trust for the benefit of the applicant. Indian tribes may submit a tribal resolution to satisfy this requirement.

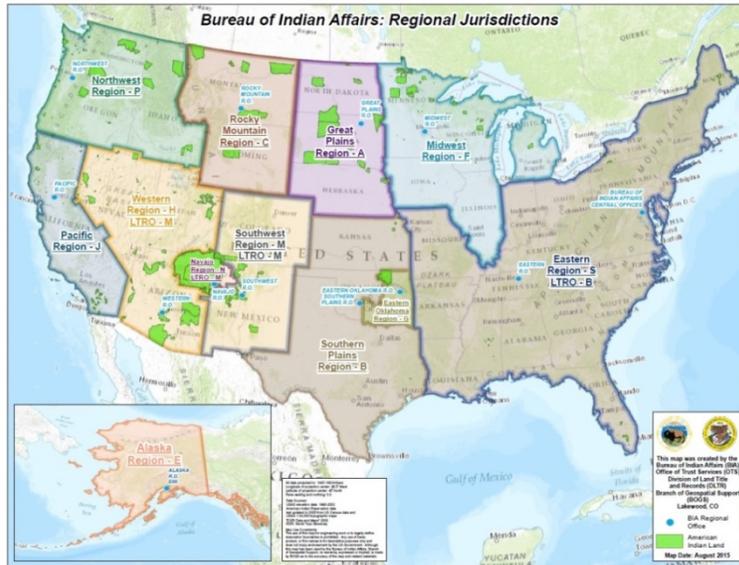
These requests should be submitted to the Bureau of Indian Affairs (BIA) Real Estate Services Office that has jurisdiction over the lands contained in the application. Please consult the map on the next page to figure out which Regional Reality Office you should contact. You may call the BIA Real Estate Services Office directly and ask them for the e-mail address or mailing address that you should use. Upon receipt of the written request, the Reality Office will send you a Land-into-Trust Application. The BIA Division of Real Estate Services can be reached at (202) 208-7737.

You must also provide the following along with your application:

- A legal description of the land to be acquired and 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 U.S. acquire the land for the applicant's benefit; and
- 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.

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. The BIA tracks the steps and progress of applications and, upon request, will provide you with a report of the status of your application.<sup>4</sup>



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### What if the applicant is not a tribe or a member of a tribe?

When the applicant is not a tribe nor a member of the tribe with jurisdiction, or is a tribe that is not the tribe with jurisdiction and does not already own an undivided trust or restricted interest in the parcel of land to be acquired, written tribal consent for non-member applications or the tribal acquisition of land must be provided.<sup>6</sup>

### Operating Procedures

There are separate operating procedures for each type of acquisition: 1) On-Reservation Discretionary Trust Acquisitions; 2) Off-Reservation Discretionary Trust Acquisitions; 3) Mandatory Trust Acquisitions; and 4) Gaming Acquisitions

<sup>4</sup> <https://www.bia.gov/bia/ots/fee-to-trust>

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

- 1. On-Reservation Discretionary Trust Acquisition:** A trust acquisition located on a reservation or contiguous to a reservation 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 person or a tribe. The Secretary has discretion to accept or deny the request for any such acquisition. For more information, please click [here](#).
- 2. Off-Reservation Discretionary Trust Acquisition:** A trust acquisition not located on a reservation nor contiguous to a reservation 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 person or a tribe. The Secretary has discretion to accept or deny the request for any such acquisition. For more information, please click [here](#).
- 3. 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 person or tribe. The Secretary does not have the discretion to accept or deny the request to accept title of land into trust. For more information, please click [here](#).
- 4. Gaming Acquisition:** A trust acquisition for the purpose of gaming includes just the land where the actual gaming operations will occur. It 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. For information on the land-into-trust process for the purpose of gaming, please contact the Indian Affairs Office of Indian Gaming:

**Phone:** (202) 219-4066

**Fax:** (202) 273-3153

**Email:** [IndianGaming@bia.gov](mailto:IndianGaming@bia.gov)

**Mailing Address:**

Office of Indian Gaming – Indian Affairs  
U.S. Department of the Interior  
1849 C Street, N.W.  
MS-3657-MIB  
Washington, D.C. 20240

**Useful Terms to Know:**

- **Trust Acquisition:** The act or process by which the Secretary of the Interior acquires title to any interest in land to be held in trust by the United States on behalf of an individual Indian person or a tribe.
- **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.”
- **Undivided Fractional Interest:** An ownership interest in property that is held in common with other owners as co-tenants in a parcel of land.
- **Encumbrance:** A limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind.
- **Reservation Proclamation:** A formal declaration issued by the Secretary of the Interior or her/his designee proclaiming that certain lands are a new reservation or an addition to an existing reservation. A reservation proclamation can encompass multiple trust parcels or a portion of a parcel taken into trust.<sup>7</sup>

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<sup>7</sup> Ibid.

### What are the economic advantages of converting fee land into trust land?

- **New Market Tax Credits (NMTCs)** – This advantage applies to both trust land and tribal fee land. Investors are incentivized to make qualified equity investments in Community Development Entities (CDEs), which exist in many tribal communities. Qualified investments in tribal economic development ventures, made through CDEs allow the investor’s tax credits to equal 39% of the investment allocated over a seven-year period. Off-reservation tribal fee and/or trust land, particularly in rural areas, may also be designated as low-income areas for NMTC purposes. The NMTC program has the potential to bring millions of dollars in private capital investment to Indian Country.<sup>8</sup>
- **Indian Employment Tax Credits** – Non-Indian businesses are incentivized to start businesses on tribal trust land. Non-Indian businesses are eligible to receive a \$20,000 tax credit each tax year for every “qualified employee” that is paid a “qualified wage.”

A qualified employee must: 1) be an enrolled member of an Indian tribe or the spouse of a tribal member; 2) perform substantially all of his or her services for the business on the reservation; and 3) reside on or near the reservation. Qualified wages are any wages the business pays or incurs for services performed by a qualified employee, including health insurance costs.<sup>9</sup> The Indian Employment Credit initially expired on December 31, 2007, but has been extended repeatedly by acts of Congress and is in effect as of 2018.<sup>10</sup>

- **Tax-Exempt Financing** – Tribes can issue tax-exempt debt involving trust land, like state and local governments, so long as the proceeds will be used in the “exercise of an essential governmental function.” Accordingly, interest on tax-exempt tribal bonds can be excluded from income, which results in significantly decreased borrowing costs for a tribal nation as compared to conventional interest rates. Tribes can issue non-taxable bonds when exercising such essential governmental functions as constructing government

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<sup>8</sup> [http://seebury.com/uploads/Sovereign\\_Advantages\\_Article.pdf](http://seebury.com/uploads/Sovereign_Advantages_Article.pdf)

<sup>9</sup> Ibid.

<sup>10</sup> <https://www.investopedia.com/terms/i/indian-employment-credit.asp>

buildings, health clinics and hospitals, parks, schools and libraries, roads, parking lots, and water and sewer systems. In recent years, however, the Internal Revenue Service (IRS) has cast doubt on whether tribal “commercial” ventures like golf courses and hotel-resorts can be financed as tax-exempt.<sup>11</sup>

- **Discounted Leasing Rates** – Tribal trust lands and improvements on those lands are exempt from state taxation. As a result, typical pass-through lease costs such as real property taxes can be significantly minimized, if not eliminated, to the benefit of non-Indian commercial lessees on tribal trust land. A non-Indian company’s leasehold interest in trust lands may also be exempt from state excise taxation.

For example, in October 2004, the *Wall Street Journal* reported how the Salt River Pima-Maricopa Indian Community in Arizona attracted a private developer to lease land from tribal members and construct two office parks on those lands for leasing purposes. While purchasing off-reservation land in Phoenix would cost \$10 per square foot, lands within the Pima-Maricopa community were leasing for \$1.50 per square foot annually, resulting in tremendous savings for both the developer and lessees. Tribes could also incentivize developers and lessees to come to their reservations by offering below-market lease rates.<sup>12</sup>

- **Federal Contracting Preferences** – Indian and non-Indian businesses can obtain federal contracting priority based on the designation of tribal trust lands as HUBZones. A HUBZone is defined as a non-metropolitan county, area on an Indian reservation or qualified census tract. Initiated in 1997, the Historically Underutilized Business Zone (HUBZone) program gives qualified participants preference in competing for federal contracts and creates jobs in historically distressed areas.

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<sup>11</sup> [http://seebury.com/uploads/Sovereign\\_Advantages\\_Article.pdf](http://seebury.com/uploads/Sovereign_Advantages_Article.pdf)

<sup>12</sup> *Ibid.*

To receive preferential treatment by federal departments and agencies, a non-Indian business situated in a HUBZone must: 1) be owned by U.S. citizens; 2) ensure 35% of its workers reside in the HUBZone; 3) maintain its principal office in the HUBZone; and 4) qualify as “small” under the Small Business Administration’s (SBA) regulations. According to the North American Industry Classification System followed by SBA, a “small” company could employ as many as 500 to 1,000 people and thus qualify for HUBZone preferences.<sup>13</sup>

- **Foreign Trade Zone Customs Duty Deferral, Elimination or Reduction** – A U.S. Foreign Trade Zone (FTZ) is a designated geographical area where foreign and domestic goods are treated, for tax and tariff purposes, as if they had never entered the United States. If a tribe decides to create a tribal corporation, the corporation is eligible to establish a Foreign Trade Zone<sup>14</sup>. Businesses involved in international trade that are located on a reservation with a Foreign-Trade Zone designation (FTZ) can defer, reduce or in some instances, eliminate U.S. Customs duties on products imported or exported through the reservation.<sup>15</sup> For more information on Foreign Trade Zones please consult IEED’s [Native American Foreign Trade Zones](#) primer.
- **State/County Land Use Exemption** – Development and construction on tribal trust lands are exempt from local, county and state zoning and land use restrictions. Avoiding the state permitting requirements process saves a business time and in turn, expense.<sup>16</sup>
- **Accelerated Depreciation for Business Property on Indian Reservations** – Note: This provision expired as of December 31, 2017<sup>17</sup>, however it is worth keeping an eye on

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<sup>13</sup> Ibid.

<sup>14</sup> <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/ieed/pdf/Primer%20on%20Native%20American%20FTZ%20508%20Compliant%202.6.18.pdf>

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> <https://www.congress.gov/115/bills/hr1892/BILLS-115hr1892enr.pdf>

whether or not Congress might approve this provision in the future as it has been retroactively approved in the past.

Under this provision, business property in Indian Country is eligible for accelerated depreciation. Businesses that operate on Indian reservations can use shorter recovery periods when calculating depreciation deductions for its production equipment located both on the reservation and “qualified infrastructure property” that is located off of the reservation but is still connected to qualified infrastructure within it. Power lines, water systems and telecommunication facilities are examples of qualified infrastructure property.<sup>18</sup>

An item’s recovery period is the timespan that the IRS believes an item will take to completely depreciate. For example, office furniture has a 7-year life under the General Depreciation System. This means that each year, 1/7 of the initial price of the furniture may be deducted from a business’s total taxable income. Under accelerated depreciation, an increased percentage of the initial price of the furniture may be deducted, i.e. 2/7 instead of 1/7, for example. This will reduce the amount of taxable income for the first few years and defer tax payments to the last few years of the item’s recovery period. Although accelerated depreciation does not reduce the overall taxes a company will pay over the 7 years, it does defer the payment of those taxes.<sup>19</sup>

Deferring tax payments to a later date is more advantageous according to the economic principle of time value of money (TVM). The concept of TVM is that money earned now in the present is more valuable than the same amount of money earned in the future at a later date. This is because money earned now can be placed in a savings account and will begin earning interest each subsequent year.<sup>20</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> <https://yourbusiness.azcentral.com/recovery-period-mean-taxes-15533.html>

<sup>20</sup> <https://www.investopedia.com/terms/t/timevalueofmoney.asp>

**What has the U.S. federal government done to help tribes develop trust land for economic development purposes?**

Prior to 2012, the Indian Long-Term Leasing Act of 1955 (25 U.S.C. Sec. 415) mandated that tribes request approval for each individual lease of land they wanted to grant. As a result, the lengthy approval process discouraged private businesses from coming to reservations. However, thanks to the Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act), federally recognized tribes are allowed to formulate their own leasing regulations. If their regulations meet environmental standards and DOI's 25 CFR Part 162 leasing qualifications, and the Secretary of the Interior approves the proposal, tribes will be able to: 1) Grant business and agricultural leases of tribal trust land initially for 25 years and up to two renewal terms of 25 years each, and 2) Lease tribal trust land for the use of educational, religious, residential, and recreational functions for 75 years, all without approval from the Secretary of the Interior.<sup>21</sup>



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<sup>21</sup> <https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/16686/Faith%20Begay-final.pdf?sequence=1&isAllowed=y>

<sup>22</sup> Doi.gov

## Resources

**Fee-to-Trust Process Additional Tools:** Click [here](#).

**Tax Information for Tribal Governments:** Click [here](#).



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<sup>23</sup> <http://www.offthederech.org/tell-us-about-your-resources/>