

25 C.F.R. Part 151

Contents

§ 151.1 What is the purpose of this part?.....	2
§ 151.2 How are key terms defined?.....	2
§ 151.3 What is the Secretary’s land acquisition policy?	4
§ 151.4 How will the Secretary determine that statutory authority exists to acquire land in trust status?....	5
§ 151.5 May the Secretary acquire land in trust status by exchange?.....	7
§ 151.6 May the Secretary approve acquisition of a fractional interest?	7
§ 151.7 Is tribal consent required for nonmember acquisitions?	8
§ 151.8 What documentation must I submit to request land be acquired in trust status?	8
§ 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?	9
§ 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?.....	10
§ 151.11 How will the Secretary evaluate a request involving land outside the boundaries of an Indian reservation?.....	11
§ 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?.....	12
§ 151.13 How will the Secretary act on requests?	13
§ 151.14 How will the Secretary review title?.....	15
§ 151.15 How will the Secretary conduct a review of environmental conditions?.....	15
§ 151.16 When is formalization of acceptance and trust status attained?.....	16
§ 151.17 What effect does this part have on pending requests and final agency decisions already issued?	17

25 C.F.R. Part 151

§ 151.1 What is the purpose of this part?

This part sets forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. ~~Acquisition~~ This part does not cover acquisition of land by individual Indians and tribes in fee simple status ~~is not covered by these regulations~~ even though such land may, by operation of law, be held in restricted status following acquisition. ~~Acquisition; acquisition of land mandated by Congress or a federal court unless required by federal law or federal court order; acquisition~~ of land in trust status by inheritance or escheat ~~is not covered by these regulations; or transfers of land into restricted fee status unless required by federal law.~~

§ 151.2 ~~Definitions.~~ How are key terms defined?

~~(a) Secretary means the Secretary of the Interior or authorized representative.~~

~~(b) Tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, "Tribe" also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. (a) Contiguous means two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point.~~

~~(b) Fee interest means an interest in land that is owned in unrestricted fee status and is, thus, freely alienable by the fee owner.~~

~~(c) Fractionated tract means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.~~

~~(d) Indian reservation or tribe's reservation means, unless 1967; 25 U.S.C. 503).~~

~~(e) Individual Indian means:~~

~~(1) Any person who is an enrolled member of a tribe;~~

~~(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;~~

~~(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;~~

~~(4) For purposes of acquisitions outside of the State of Alaska, Individual Indian also means a person who meets the qualifications of paragraph (e)(1), (2), or (3) of this section where "Tribe" includes any Alaska Native Village or Alaska Native Group which is recognized by~~

Consultation Draft - Part 151 – 2022.03.28

~~the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.~~

~~(d) **Trust land** or *land in trust status* means land the title to which is held in trust by the United States for an individual Indian or a tribe.~~

~~(e) **Restricted land** or *land in restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.~~

~~(f) Unless another definition is required by ~~the act of Congress~~ federal law authorizing a particular trust acquisition, ~~*Indian reservation means*~~ that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary.~~

~~(e) Individual Indian means:~~

~~(1) Any person who is an enrolled member of a tribe;~~

~~(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation; or~~

~~(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe.~~

~~(f) Initial Indian acquisition means an acquisition of land in trust status for the benefit of a tribe that has no land yet held in trust status.~~

~~(g) Land means real property or any interest therein.~~

~~(h) (h) Preliminary Title Opinion means an opinion issued by the Office of the Solicitor that reports the existing status of title and sets forth all requirements to be met before acquiring land in trust status.~~

~~(i) Preliminary title report means a report prepared prior to issuing a policy of title insurance that shows the ownership of a specific parcel of land together with the liens and encumbrances thereon.~~

~~(j) Restricted land or land in restricted status means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary due to limitations contained in the conveyance instrument pursuant to federal law or because a federal law directly imposes such limitations.~~

~~(k) Secretary means the Secretary of the Interior or authorized representative.~~

Consultation Draft - Part 151 – 2022.03.28

- (l) Tribal consolidation area means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the ~~acquisition of~~acquiring land in trust status for the tribe.
- (m) Tribe means any Indian tribe listed under § 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130). For purposes of acquisitions made under the authority of 25 U.S.C. § 5136 and § 5138, or other statutory authority which specifically authorizes trust acquisitions for such corporations, Tribe also means a corporation chartered under § 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 5124) or § 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 5203).
- (n) Trust land or land in trust status means land the title to which is held in trust by the United States for an individual Indian or a tribe.
- (o) Undivided interest means a fractional share of ownership in an estate of Indian land where the estate is owned in common with other Indian landowners or fee owners.

§ 151.3 ~~Land~~What is the Secretary's land acquisition policy:?

It is the Secretary's policy to acquire land in trust status through direct acquisition or transfer for individual Indians and tribes to strengthen self-determination and sovereignty, ensure that every tribe has protected homelands where its citizens can maintain their tribal existence and way of life, and consolidate land ownership to strengthen tribal governance over reservation lands and reduce checkerboarding. The Secretary retains discretion whether to acquire land in trust status where discretion is granted under federal law.

- (a) Land not held in trust or restricted status may only be acquired for an individual Indian or a ~~tribe~~ in trust status when ~~such~~the acquisition is authorized by ~~an act of Congress~~federal law. No acquisition of land in trust status under these regulations, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the ~~Secretary~~.
- (b) ~~(a)~~ Subject to the provisions ~~contained in the acts of Congress which authorize federal law authorizing trust~~ land acquisitions, the Secretary may acquire land ~~may be acquired~~ for a tribe in trust status:
- (1) ~~(1)~~ When the ~~property~~land is located within the exterior boundaries of the ~~tribe's~~tribe's reservation or ~~adjacent~~contiguous thereto, or within a tribal consolidation area; ~~or~~
- (2) ~~(2)~~ When the tribe already owns an interest in the land; or
- ~~(3)~~ When the Secretary determines that the acquisition of the land is necessary to establish or protect tribal homelands, protect sacred sites or cultural resources, establish or maintain conservation areas, consolidate land ownership, reduce checkerboarding, protect treaty or subsistence rights, or facilitate tribal self-determination, economic development, ~~or~~ Indian housing;

Consultation Draft - Part 151 – 2022.03.28

(3) ~~(b) Subject to, or for other reasons~~ the Secretary determines will support tribal welfare.

(c) Subject to the provisions contained in ~~the acts of Congress~~ federal law which authorize land acquisitions or holding land in trust or restricted status, ~~and the Secretary~~ may be ~~acquired~~ acquire land in trust status for an individual Indian ~~in trust status~~:

(1) ~~When the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or~~

(2) ~~When the land is already in trust or restricted status.~~

§ 151.4 ~~Acquisitions-How will the Secretary determine that statutory authority exists to acquire land in trust of lands owned~~status?

(a) In determining whether a tribe was “under federal jurisdiction” in 1934 within the meaning of § 19 of the Indian Reorganization Act of June 18, 1934 (IRA) (48 Stat. 990; 25 U.S.C. 5129), and is, thus, eligible for trust acquisition under § 5 of the IRA. (48 Stat. 985; 25 U.S.C. ~~fee by an Indian~~ 5108), the Secretary shall consider evidence of federal jurisdiction in the manner provided in paragraphs (1) - (3).

(1) ~~Unrestricted land owned by an individual~~The following is conclusive evidence that a tribe was under federal jurisdiction in 1934:

(i) A vote under § 18 of the IRA (48 Stat. 990; 25 U.S.C. 5125) to ratify or reject the IRA as recorded in *Ten Years of Tribal Government Under I.R.A., Theodore Haas, United States Indian* ~~or a tribe may be conveyed into trust status~~ Service (Jan. 1947) (Haas List);

(ii) Secretarial approval of a tribal constitution under § 16 of the IRA as recorded in the Haas List;

(iii) Secretarial approval of a charter of incorporation issued to a tribe under § 17 of the IRA as recorded in the Haas List;

(iv) An Executive Order for a specific tribe that was still in effect in 1934;

(v) Treaties to which a tribe is a party, ratified by the United States and still in effect as to that party in 1934; or

(vi) Other forms of evidence deemed conclusive by the Secretary.

(2) The following is presumptive evidence, subject to rebuttal, that a tribe was under federal jurisdiction in 1934:

(i) Continuing existence of treaty rights guaranteed by a treaty ratified by the United States;

- (ii) Evidence of treaty negotiations or evidence a tribe signed a treaty with the United States whether or not such treaty was ratified by Congress;
 - (iii) Listing of a tribe in the Department of the Interior’s 1934 Indian Population Report;
 - (iv) Evidence that the United States took efforts to acquire lands on behalf of a tribe in the years leading up to the passage of the IRA;
 - (v) Inclusion in Volume V of Charles J. Kappler’s *Indian Affairs, Laws and Treaties*;
 - (vi) Federal legislation for a specific tribe, including a conveyance to termination legislation enacted after 1934, which acknowledges the existence of a government-to-government relationship with a tribe at the time it is enacted;
 - (vii) When a tribe is recognized under the 25 C.F.R. part 83 process with a finding that the tribe “has been identified as an American Indian entity on a substantially continuous basis since 1900” pursuant to 25 C.F.R. § 83.11 (a); or
 - (viii) Other forms of evidence deemed presumptive by the Office of the Solicitor.
- (3) In the absence of conclusive or presumptive evidence, the Secretary may find that a tribe was under federal jurisdiction in 1934 when the United States in 1934 or at some point in the tribe's history prior to 1934, took an action or series of actions that, when viewed in concert through a course of dealings or other relevant acts on behalf of a tribe, or in some instances tribal members, establishes or generally reflects federal obligations, or duties, responsibility for or authority over the tribe, and that such jurisdictional status remained intact in 1934.
- (i) Examples of federal actions that exhibit probative evidence of federal jurisdiction include but are not limited to, the attendance of tribal members at Bureau of Indian Affairs operated schools, federal decisions regarding whether to remove or not remove a tribe from its homelands, the inclusion of a tribe in federal reports and surveys, the inclusion of a tribe or tribal members in federal census records prepared by the Office of Indian Affairs, and the provision of health and social services to a tribe or tribal members.
 - (b) For some tribes, Congress enacted legislation after 1934 making the IRA applicable to the tribe. The existence of such legislation making the IRA and its trust for the owner, subject to the acquisition provisions of this part applicable to a tribe eliminates the need to determine whether a tribe was under federal jurisdiction in 1934.

Consultation Draft - Part 151 – 2022.03.28

~~§ 151.5 Trust~~(c) In order to be eligible for trust acquisitions ~~in Oklahoma~~ under ~~section~~ § 5 of the I.R.A.

~~In addition to acquisitions~~IRA, no additional “under federal jurisdiction” analysis is required under this part for tribes ~~for which did not reject the provisions~~Office of the Indian Reorganization Act and their members, ~~and~~Solicitor has previously issued an “under federal jurisdiction” analysis.

(d) Land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under ~~section~~ § 5 of the ~~Act of June 18, 1934 (48 Stat. IRA 985; 25 U.S.C. 465)~~, if ~~such~~the acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

§ 151.6 Exchanges.

~~An~~(e) The Secretary may also acquire land in trust status for an individual Indian or a tribe ~~may~~under this part when specifically authorized by federal law other than § 5 of the IRA, subject to any limitations contained in that federal law.

§ 151.5 May the Secretary acquire land in trust status by exchange?

The Secretary may acquire land in trust status on behalf of an individual Indian or tribe by exchange under this part if ~~the acquisition comes~~authorized by federal law and within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

§ 151.7 Acquisition~~6~~ May the Secretary approve acquisition of a fractional interests-interest?

~~Acquisition~~The Secretary may approve the acquisition of a fractional ~~land~~-interest in a fractionated tract in trust status by an individual Indian or a tribe ~~in trust status can be approved by the Secretary~~only if:

- (a) ~~__~~ The buyer already owns a fractional interest in the same parcel of land; ~~or~~
- (b) ~~__~~ The interest being acquired by the buyer is in fee status; ~~or~~
- (c) ~~__~~ The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; ~~or~~
- (d) ~~__~~ There is a specific law which grants to the ~~particular~~ buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all ~~of~~ such interests; or
- (e) ~~__~~ The owner ~~or owners~~ of ~~a majority~~more than fifty percent of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

§ 151.8 ~~Tribal~~ Is tribal consent required for nonmember acquisitions.?

An individual Indian or tribe may acquire land in trust status on ~~an~~ an Indian reservation other than its own only when the governing body of the ~~tribe~~ tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

§ 151.9 ~~Requests for approval of acquisitions.~~

§ 151.8 What documentation must I submit to request land be acquired in trust status?

An individual Indian or tribe ~~desiring~~seeking to acquire land in trust status ~~shall~~must file a written request ~~for approval of such acquisition, i.e., application,~~ with the Secretary ~~for approval of the acquisition.~~ The request need not be in any special form but ~~shall~~must set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part. The Secretary will prepare the acquisition package using information provided by the applicant and assessments developed by the Secretary, as described below:

~~§ 151.10 On-reservation acquisitions.~~

~~Upon receipt of (a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the)~~ A complete acquisition is mandated by legislation. The notice will inform package consists of the state or local government following:

- (1) The applicant's request that each will the land be given 30 days acquired in which to provide trust, as follows:
 - (i) If the applicant is an Indian tribe, the tribe's written request must be a signed tribal letter for trust acquisition supported by a tribal resolution or other act of the governing body of the tribe;
 - (ii) If the applicant is an individual Indian, the individual's written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will request must be provided to a signed letter requesting trust status;
- (2) Documentation from the applicant, who will be given a reasonable time in which to reply and/or request that addresses all the applicable information requirements in this part;
- (3) A map from the applicant depicting the location of the land to be acquired, and:

- (i) A legal description of the land from the applicant, including a statement of the estate to be acquired, e.g., all surface and mineral rights, surface rights only, surface rights and a portion of the mineral rights, etc.; or
 - (ii) A survey if the land cannot be described by an aliquot legal description. The survey must be completed by a land surveyor registered in the jurisdiction in which the land is located when the land being acquired is fee simple land; and
 - (iii) Concurrence by the Secretary that the legal description or survey is legally sufficient;
- (4) Information from the applicant that allows the Secretary issue a decision. The to comply with the National Environmental Policy Act and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations; and
 - (i) An acquisition package is not complete until the public review period of a final environmental impact statement or, where appropriate, a final environmental assessment is complete;
- (5) Title evidence submitted by the applicant, and a completed Preliminary Title Opinion based on such evidence;
- (7) Notification letters sent by the Bureau of Indian Affairs pursuant to § 151.9, § 151.10, § 151.11, or § 151.12 including all associated responses;
- (8) Statement from the applicant that any existing covenants, easements, or restrictions of record will not interfere with the applicant’s intended use of the land; and
- (9) Any additional information requested by the Secretary, in writing, if warranted by the specific application.
- (b) After the Bureau of Indian Affairs is in possession of a complete acquisition package, we will:
 - (1) Notify the applicant in writing that the acquisition package is complete; and
 - (2) Issue a decision on a request within 120 calendar days after issuance of the notice of a complete acquisition package.

§ 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?

- (a) The Secretary will consider the following criteria in this section when evaluating requests for the acquisition of land in trust status when the land is located within ~~or~~ ~~contiguous to~~ an Indian reservation, and the acquisition is not mandated:.

Consultation Draft - Part 151 – 2022.03.28

- ~~(a) 1) The existence of statutory authority for the acquisition and any limitations contained in such authority, as identified in § 151.4;~~
- ~~(b) The need of the individual Indian or the tribe for additional land;~~
- ~~(c) The purposes for which the land will be used;~~
- ~~(d) 2) If the land applicant is ~~to be acquired for~~ an individual Indian, the need for additional land, the amount of trust or restricted land already owned by or for that individual, and the degree to which ~~he~~ the individual needs assistance in handling ~~his~~ 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; and~~
- ~~(g) (3) The purposes for which the land will be used; and~~
- (4) 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 the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)~~

§ 151.11 Off-reservation acquisitions:

- (b) The Secretary shall give great weight to any of the following in accordance with § 151.3: the tribe's need to establish or protect tribal homelands, protect sacred sites or cultural resources, establish or maintain conservation areas, consolidate land ownership, reduce checkerboarding, protect treaty or subsistence rights, or facilitate self-determination.
- (c) When reviewing a tribe's request for land inside a reservation, the Secretary presumes, subject to rebuttal, that the acquisition will be approved.
- (d) Upon receipt of a written request to have lands inside a reservation acquired in trust status, the Secretary will notify the state and local governments with regulatory jurisdiction over the land to be acquired of the applicant's request.

§ 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?

- (a) The Secretary will consider the criteria in this section when evaluating requests for the acquisition of land in trust status when the land is located contiguous to an Indian reservation:

Consultation Draft - Part 151 – 2022.03.28

- (1) The existence of statutory authority for the acquisition and any limitations contained in such authority, as identified in § 151.4;
 - (2) If the applicant is an individual Indian, the need for additional land, the amount of trust or restricted land already owned by or for that individual, and the degree to which the individual needs assistance in handling their affairs;
 - (3) The purposes for which the land will be used; and
 - (4) 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.
- (b) The Secretary shall give great weight to any of the following in accordance with § 151.3: the tribe's need to establish or protect tribal homelands, protect sacred sites or cultural resources, establish or maintain conservation areas, consolidate land ownership, reduce checkerboarding, protect treaty or subsistence rights, or facilitate self-determination.
- (c) Upon receipt of a written request to have lands contiguous to an Indian reservation acquired in trust status, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the state or local government that each will be given 30 calendar days in which to provide written comments on the acquisition's potential impact on regulatory jurisdiction, real property taxes, and special assessments. If the state or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply if they choose to do so in their discretion, or request that the Secretary issue a decision. In reviewing such comments, the Secretary presumes, subject to rebuttal, community benefits, negligible impacts on regulatory jurisdiction, and limited impacts on real property taxes and special assessments.

§ 151.11 How will the Secretary evaluate a request involving land outside the boundaries of an Indian reservation?

- (a) The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the ~~tribe's~~ tribe's reservation, ~~and the acquisition is not mandated:~~
- (a)-1) The ~~criteria listed in § 151.10 (a) through (e) and (e) through (h);~~
- (b) ~~The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from existence of statutory authority for the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section, and any limitations contained in such authority, as identified in § 151.4;~~

~~(e) Where (2) The purposes for which the land is being will be used; and~~

~~(3) If the land to be acquired for business purposes, the tribe 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.~~

~~(b) The Secretary shall provide a plan which specifies the anticipated economic benefits associated give great weight to any of the following in accordance with the proposed use § 151.3: the tribe's need to establish or protect tribal homelands, protect sacred sites or cultural resources, establish or maintain conservation areas, consolidate land ownership, reduce checkerboarding, protect treaty or subsistence rights, or facilitate self-determination.~~

~~(d) Contact with state and local governments pursuant to § 151.10 (e) and (f) shall be completed as follows: (c) Upon receipt of a tribe's written request to have lands taken outside the boundaries of an Indian reservation to a reservation acquired in trust status, the Secretary shall will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice shall will inform the state and/or local government that each will be given 30 calendar days in which to provide written comment as to comments on the acquisition's acquisition's potential impacts impact on regulatory jurisdiction, real property taxes and special assessments.~~

~~§ 151.12 Action on requests.~~

~~(If the state or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply if they choose to do so in their discretion, or request that the Secretary issue a) The decision. In reviewing such comments, the Secretary will consider the location of the land. The Secretary presumes, subject to rebuttal, community benefits without regard to distance of the land from a tribe's reservation boundaries or trust lands.~~

§ 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?

~~(a) The Secretary will consider the criteria in this section when evaluating tribal requests for the acquisition of land in trust status when the land will be an initial Indian acquisition.~~

~~(1) The existence of statutory authority for the acquisition and any limitations contained in such authority, as identified in § 151.4;~~

~~(2) The purposes for which the land will be used; and~~

~~(3) 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.~~

Consultation Draft - Part 151 – 2022.03.28

- (b) The Secretary shall give the greatest weight to any of the following in accordance with § 151.3: the tribe’s need to establish or protect tribal homelands, protect sacred sites or cultural resources, establish or maintain conservation areas, protect treaty or subsistence rights, or facilitate self-determination.
- (c) Upon receipt of a written request for land to be acquired in trust for an initial Indian acquisition, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 calendar days in which to provide written comments on the acquisition’s potential impact on regulatory jurisdiction, real property taxes, and special assessments. If the state or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply if they choose to do so in their discretion, or request that the Secretary issue a decision. In reviewing such comments, the Secretary will consider the location of the land.

§ 151.13 How will the Secretary act on requests?

- (a) The Secretary shall review each request and may request any additional information or justification deemed necessary to reach a decision.
- (b) ~~The Secretary's~~ Secretary’s decision to approve or deny a request shall be in writing and state the reasons for the decision.
- (c) ~~A decision made by the~~ Office of the Secretary, or the Assistant-~~Secretary-~~ Indian Affairs pursuant to delegated authority, is a final agency action under ~~5 U.S.C. § 704~~ upon issuance.
- (1) ~~If the~~ Office of the Secretary- or Assistant-~~Secretary-~~ denies the request, the Assistant-~~Secretary-~~ shall promptly provide the applicant with the decision.
- (2) ~~If the~~ Office of the Secretary- or Assistant-~~Secretary-~~ approves the request, the Assistant-~~Secretary-~~ shall:
- (i) ~~Promptly provide the applicant with the decision;~~
- (ii) ~~Promptly publish in the~~ FEDERAL REGISTER ~~a~~ notice of the decision to acquire land in trust status under this part; and
- (iii) ~~Immediately acquire the land in trust~~ status under ~~§ 151.14-16~~ on or after the date such decision is issued and upon fulfillment of the requirements of ~~§ 151.13-14, § 151.15,~~ and any other ~~Departmental~~ Department of the Interior requirements.
- (d) ~~A decision made by a~~ Bureau of Indian Affairs- official, rather than the Office of the Secretary or Assistant Secretary, pursuant to delegated authority is not a final agency action of the Department of the Interior under ~~5 U.S.C. § 704~~ until administrative

remedies are exhausted under ~~part 2~~ of this chapter or until the time for filing a notice of appeal has expired and no administrative appeal has been filed.

- (1) ~~__~~ If the official denies the request, the official shall promptly provide the applicant with the decision and notification of any right to file an administrative appeal under ~~part 2~~ of this chapter.
- (2) ~~__~~ If the official approves the request, the official shall:
 - (i) ~~__~~ Promptly provide the applicant with the decision;
 - (ii) ~~__~~ Promptly provide written notice of the decision and the right, if any, to file an administrative appeal of such decision pursuant to ~~part 2~~ of this chapter, by mail or personal delivery to:
 - (A) ~~__~~ Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and
 - (B) ~~__~~ The State and local governments having regulatory jurisdiction over the land to be acquired;
 - (iii) ~~__~~ Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under ~~part 2~~ of this chapter; and
 - (iv) ~~__~~ Immediately acquire the land in trust status under ~~§ 151.14-16~~ upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under ~~part 2~~ of this ~~title~~chapter, and upon the fulfillment of the requirements of § 151.~~13~~14, § 151.15, and any other ~~Departmental~~Department of the Interior requirements.
- (3) ~~__~~ The administrative appeal period under ~~part 2~~ of this chapter begins on:
 - (i) ~~__~~ The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section; or
 - (ii) ~~__~~ The date of first publication of the notice for unknown interested parties under ~~paragraph (d)(2)(iii)~~ of this section.
- (4) ~~__~~ Any party who wishes to seek judicial review of an ~~official's~~official's decision must first exhaust administrative remedies under ~~25~~ CFR C.F.R. part 2.

§ 151.13 ~~Title~~14 How will the Secretary review ~~title~~?

- (a) ~~__~~ If the ~~Secretary determines that she will approve~~ approves a request for the acquisition of land ~~from unrestricted fee status to~~ in trust status, ~~she~~ the Secretary shall require the applicant to furnish title evidence as follows:
- (1) ~~__~~ The deed or other conveyance instrument providing evidence of the applicant's title or, if the applicant does not yet have title, the deed providing evidence of the transferor's title and a written agreement or affidavit from the transferor, that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust status; and
- (2) ~~__~~ Either:
- (i) ~~__~~ A current title insurance commitment; or
- (ii) ~~__~~ The policy of title insurance issued to the applicant or current owner and an abstract of title dating from the time the policy of title insurance was issued to the applicant or current owner to the present. If an applicant is unable to obtain an abstract of title based upon practice in their local jurisdiction, and the policy of title insurance issued to the applicant or current owner is less than five years old, the applicant may furnish evidence of declination based upon local practice and the Secretary shall accept the applicant's preliminary title report in place of an abstract of title for purposes of this subpart (a)(2)(ii).
- (3) ~~__~~ The applicant may choose to provide title evidence meeting the title standards issued by the U.S. ~~Department of Justice~~, in lieu of the evidence required by ~~paragraph (a)(2)~~ of this section.
- (b) ~~__~~ After reviewing ~~submitted~~ title evidence, the ~~Secretary~~ shall notify the applicant of any liens, encumbrances, or infirmities that the ~~Secretary~~ identified and may seek additional information from the applicant needed to address such issues. The ~~Secretary~~ may require the elimination of any such liens, encumbrances, or infirmities prior to ~~taking final approval action on the acquisition, and she shall require elimination prior to such approval~~ acceptance of the land in trust status if ~~she~~ the Secretary determines that the liens, encumbrances, or infirmities make title to the land unmarketable.

§ 151.14 ~~Formalization~~15 How will the Secretary conduct a review of environmental conditions?

- (a) The Secretary shall comply with the requirements of the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 et seq.) and applicable Council on Environmental Quality regulations (40 C.F.R. parts 1500 – 1508) and Department of the Interior regulations (43 C.F.R. part 46) and guidance. The Secretary's compliance may require preparation of an environmental impact statement, an environmental assessment, a categorical exclusion, or other documentation that satisfies the requirements of NEPA.

- b) The Secretary shall comply with the terms of 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. If the Secretary approves a request for the acquisition of land in trust status, the Secretary may require, before formalization of acceptance pursuant to § 151.16, that the applicant provide information updating a prior pre-acquisition environmental site assessment conducted under 602 DM 2.

~~Formal~~(1) If no recognized environmental conditions and other environmental issues of concern are identified in the updated pre-acquisition environmental site assessment and all other requirements of this section are met, the Secretary shall acquire the land in trust.

(2) If recognized environmental conditions or other environmental issues of concern are identified in the updated pre-acquisition environmental site assessment, the Secretary shall notify the applicant and may seek additional information from the applicant to address such issues of concern. The Secretary may require the elimination of any such issues of concern prior to taking the land in trust status.

§ 151.16 When is formalization of acceptance and trust status attained?

- (a) The Secretary will formalize acceptance of the land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances-. The Secretary will approve the instrument of conveyance after publication of a notice of intent to acquire the land in trust status pursuant to § 151.12 (c)(2)(ii) or § 151.12 (d)(2)(ii) - (iii), the requirements of § 151.13 and § 151.14 have been met, and upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this chapter.

§ 151.15 Information collection.

~~(a) The information collection requirements contained in §§ 151.9; 151.10; 151.11(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.~~

~~(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337-SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076-0100], Office of Management and Budget, Washington, DC 20502.~~

- (b) The land will attain trust status once the Bureau of Indian Affairs records the deed in the appropriate Bureau of Indian Affairs Land Titles and Records Office under part 150 of this chapter.

§ 151.17 What effect does this part have on pending requests and final agency decisions already issued?

- (a) Requests pending at the time this part is enacted will continue to be processed under the previous version of this regulation unless the applicant requests in writing to proceed under this regulation. Upon receipt of such a request, the Secretary shall process the pending application under this regulation, except for § 151.8 (b)(2).
- (b) This part does not alter final agency decisions made pursuant to this part before the date of enactment of these regulations.