INDIAN AFFAIRS

TRUST AND RESTRICTED LAND

ACQUISITION & DISPOSAL CONVEYANCES HANDBOOK

52 IAM 18-H

Bureau of Indian Affairs
Office of Trust Services
1849 C Street N.W., Room 4600
Washington, DC 20240

#26-25, Issued: 5/27/26
New

FOREWORD

This handbook provides guidance from the Bureau of Indian Affairs (BIA), Office of Trust Services (OTS), Division of Real Estate Services (DRES) to Realty personnel (including BIA regional and agency staff, including Tribal Contact/Compact realty staff in preparing, reviewing, and processing trust and restricted fee land acquisition & disposal (A&D) conveyances. Trust lands and restricted fee lands are administered under the jurisdiction of the BIA. The corresponding Indian Affairs Manual (IAM), 52 IAM 18: Processing Acquisition and Disposal (A&D) Applications, provides the general authorities and responsibilities, and is the official policy for processing trust and restricted fee land conveyance transactions.

This handbook supersedes all other guidance or procedures related to processing trust and restricted fee land conveyance transactions that may have been created and/or distributed throughout Indian Affairs (IA). This handbook does not cover all scenarios that may occur at BIA regional and agency offices and is not intended to create additional requirements above what is required by the regulations under 25 Code of Federal Regulations (CFR) Part 152 found at: eCFR :: 25 CFR Part 152 -- Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands.

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5/27/2026

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Director, Bureau of Indian Affairs

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Chapter 1: Purpose[1]

The purpose of this handbook is to provide guidance to Realty staff on processing trust and restricted fee land conveyance transactions for land currently held in trust or restricted fee status by federally recognized Tribes and individual Indians. Specifically, this handbook describes procedures used by BIA to review and analyze acquisition and disposal (A&D) conveyance requests from applicants using a streamlined and standardized process. These procedures include: (1) criteria used to determine eligibility for an applicant to request the Secretary of the Department of the Interior (Secretary or DOI) to convey title to land held in trust or restricted fee status; (2) acquisition and/or disposal requirements; (3) processing of requests for acquisitions and/or disposals; and (4) criteria used by BIA to evaluate requests for acquisitions and/or disposals.

The Secretary bases the decision for an acquisition on the evaluation of the criteria set forth in 25 CFR Part 152 and any applicable policy. Approval is required by the Secretary to acquire title (see 25 CFR 152, Issuance of Patents in Fee, Certificate of Competency, Removal of Restrictions, and Sale of Certain Indian Lands).

All references to "days" within this handbook are to calendar days, not business days, unless otherwise noted. All references for agency staff or programs within this handbook are to BIA agency staff and programs unless otherwise specified. The term "trust" used throughout the handbook shall be inclusive of "restricted" properties in Alaska.

Note: All A&D conveyances that involve trust land connected to one of the Five Civilized Tribes need to contact the Tribe directly and/or the BIA Eastern Oklahoma Regional Office for direction. For Regions with their own processes in place pursuant to the authorities that apply only in those regions some actions listed may not apply.

1.1 Overview of Acquisitions

Given the complexity involved in trust and restricted fee land transactions, it is important to understand the differences in the types of transactions as well as the related requirements. Each acquisition is different and requires an independent analysis. A&D conveyances may involve whole or undivided interests of land. The process within this handbook is standardized. However, each transaction can vary based on the application.

[1] The "L" and "F" forms mentioned in this handbook are generated through the Trust Asset Accounting Management System (TAAMS). All other forms and checklists referenced can be found at the DRES SharePoint Site: Trust and Restricted Land Conveyances.

1.2 Authorities[2,3]

The following is a non-exclusive list of the many laws and regulations that grant the Secretary the authority to process A&D conveyances.

- **Indian Reorganization Act of 1934 (IRA) 48 Stat. 984, 25 United States Code (U.S.C.) § 5101 et seq**
  Authorizes sales, gifts, and exchanges. Requires Secretarial approval of the conveyance. Provides the Secretary with the discretion to acquire or convey title to trust land or interests in trust land for the benefit of Tribes or individual Indians.

- **Indian Land Consolidation Act (ILCA) as amended[4,5]**
  ILCA is a key piece of legislation that governs the acquisition and management of Indian trust and restricted fee lands. It aims to promote tribal self-sufficiency and self-determination while reversing the effects of the allotment policy on Indian Tribes. The act allows Tribes to consolidate fractional interests and ownership into usable parcels, enhancing tribal sovereignty and promoting self-sufficiency. It also provides for the acquisition of trust or restricted fee lands at fair market value and establishes conditions for such sales and purchases. The act is subject to the approval of the Secretary of the Interior and is designed to facilitate the transfer and exchange of tribal lands in a manner that is consistent with federal policy and tribal self-determination. Section 217 authorizes sales, exchanges, and gift deeds. Provides for waiver of appraisal, estimates of value, and waivers of estimates of value. All of the below Public Laws (P.L.) are codified at Chapter 24 ILCA - 25 U.S.C. § 2201-2221.

    - P.L. 97-459, Act of January 12, 1983, 96 Stat. 2515, Title II.
    - P.L. 98-608, Act of October 30, 1984, 98 Stat. 3172.
    - P.L. 109-157, Act of December 30, 2005, 119 Stat. 2949.
    - P.L. 109-221, Act of May 12, 2006, 120 Stat. 336.
    - P.L. 110-453, Act of December 2, 2008, 122 Stat. 5027.

- **American Indian Probate Reform Act (AIPRA) 118 Stat. 1173 as amended[6,7]**
  Enacted to address land fractionation and improve probate for Indian trust lands. This act is a key piece of legislation aimed at consolidating land ownership and reducing the complexities associated with multiple fractional interests in Indian trust lands.

- **Sale of land by individual Indian owners (May 14, 1948, Chapter 293, 62 Stat. 236.)**

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[2] There are many unique statutory authorities for conveyances of trust and restricted fee lands. Some may be specific to area. Check with your local BIA office to ensure the proper statutory authority is being cited on your conveyances.
[3] Statute has precedence over the regulations. We follow the statute where it conflicts with or is not addressed in the regulations.
[4] Not applicable in Alaska.
[5] ILCA as amended is the recommended authority for sales, exchanges, and gift deeds.
[6] Not applicable in Alaska.
[7] It is important to note that while the ILCA amendments and AIPRA resulted in separate public laws, each merely amended the original ILCA.

The Secretary of the Interior, or his duly authorized representative, is authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians under the provisions of the Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. § 5101 et seq.], or the Act of June 26, 1936 (49 Stat. 1967).

1.3 Types of Acquisitions

There are separate procedures for each type of acquisition titled as follows:

Gift Conveyance: Gift Conveyances or also commonly known as "Gift Deeds" formally transfers trust title ownership from one individual to another without compensation or other valuable consideration and will only be approved if a special relationship or special circumstance exists. Gift conveyances may result in the creation of new tracts or special interests.

Land Sales: Formally transfers ownership from one person to another individual or a federally recognized Tribe with compensation or other valuable consideration. Types include:

- **Negotiated –** A negotiation between grantor and grantee on a value for the sale of trust land is agreed upon.
- **Advertised –** Pursuant to 25 CFR 152.26, upon approval of an application for an advertised sale, notice of the sale will be published not less than 30 days prior to the date fixed for the sale unless for good cause a shorter period is authorized by the Secretary.
- **Deferred Payment Sale –** Pursuant to 152.35, when the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan.
- **Forced –** Pursuant to 25 U.S.C. § 2204(a), the Tribe may purchase with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

The sale of a minor's lands or interest with the consent of the natural guardian, or with the consent of a person designated by the Secretary to act on behalf of an orphaned minor or a non-compos mentis owner are authorized[8].

Guardians, conservators, or other fiduciaries appointed by State or Tribal courts, may, upon written order of the Court, convey with the approval of the Secretary or consent to the

[8] Not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236) 25 U.S.C. § 483. The Act of May 14, 1948, addresses ". . . Lands or interests in lands held by individual Indians under the provisions of the Act of June 18, 1934 (48 Stat. 984) 25 U.S.C. § 5101 et seq., or the Act of June 26, 1936 (49 Stat. 1967)."

conveyance by the Secretary of trust or restricted fee land belonging to their Indian wards who are minors, non-compos mentis or otherwise under legal disability[9].

Under the Act of June 25, 1910 (36 Stat.855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, they may sell any or all interests in that land.[10]

Certain tribal land may be sold or exchanged pursuant to authorizing Acts. Except as otherwise provided by law, and as far as practicable, the regulations in 25 CFR Part 152 shall be applicable to sale or exchanges of such tribal land.

Land Exchange: The voluntary exchange of land or interest in land between two parties, including another individual or a federally recognized Tribe with compensation or other valuable consideration.

Partition: A partition is the division of trust property that can be the result of a conveyance transaction.

Patents in Fee[11]: A land patent that grants title to the land in fee simple. This can take place by request of an applicant, or as the result of a Probate decision.

1.4 Types of Special Interests

1.4.1 Joint Tenancy

A joint tenancy is an estate planning tool that has no effect on title until a joint tenant's death. Therefore, we treat joint tenancy interests in a similar manner to tenancy in common interests during the lifetime of the joint tenants. A joint tenant is not obligated to hold their interest in joint tenancy and may take actions such as conveying or extinguishing their interest in joint tenancy. Joint tenants are not required to consent to actions involving the conveyance or use of their interests. A joint tenant may solely apply to convey his/her interest, seek a partition, etc. A joint tenant may solely grant consent to leasing or permitting activities on the parcel.

Four Unities required:

1) Interest – All joint tenants must hold equal undivided interests in the property. A joint tenancy cannot be created if any joint tenant(s) acquires a share that is unequal to the other owner(s).

2) Title - All joint tenants must accrue their interests by one and the same conveyance.

[9] This section is subject to the exceptions contained in 25 U.S.C. § 954(b) which pertains to the Agua Caliente of the Palm Springs Reservation.
[10] This authority is not applicable to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236) 25 U.S.C. § 483, now recodified at 5134.
[11] Patents in Fee are issued by the Bureau of Land Management.

3) Time - All joint tenancy interests must vest at one and the same time.

4) Possession - All joint tenants must have equal rights to possess and enjoy the property.

An important feature of joint tenancy is that any joint tenant has the right to extinguish their joint tenancy interest during their lifetime by conveying the interest to another, or to themselves, as a tenant in common. This type of transfer is referred to as an inter vivos, "while alive" or "between the living" transfer. Other joint tenants do not need to grant their consent to the transfer, nor do they need to be notified of the transfer.

Joint tenants may, as between themselves, agree that one shall have exclusive possession. This is an informal agreement that is not reflected on the title, similar to an owners' use agreement. Agreement among joint tenants that one of them may have possession of the whole. Consent may be revoked by any joint tenant at any time. Does not destroy the unity of possession, as each joint tenant may restore their possession rights at will. Joint tenants may also grant a lease or permit to a single joint tenant.

Example: If a joint tenancy exists between Rick, Jolene, and Becky; and Rick conveys to Carla; Jolene and Becky continue to hold their interests in joint tenancy, while Carla holds her interest as a tenant in common. Furthermore, a subsequent conveyance from Carla back to Rick does not re-establish Rick as a joint tenant.

1.4.1.1 Right of Survivorship

Under the right of survivorship, upon the death of one of the joint tenants, their interest will automatically transfer to the remaining joint tenant(s) in equal shares. When only one joint tenant is alive, they receive the entire interest, and the joint tenancy is extinguished. An entity, such as a corporation or a Tribe, may not be a joint tenant, as an entity does not die in the ordinary sense. Therefore, an entity leaves no heirs, only successors.

Generally, only an original death certificate is required by the BIA Land Titles and Records Office (LTRO) to remove a deceased individual joint tenant from title. The surviving joint tenant(s) will automatically receive their additional share without the need for a probate proceeding.

The "Right of Survivorship" should be clearly expressed in the conveyance; otherwise, the tenancy could be construed as a tenancy in common.

1.4.1.2 Termination of a Joint Tenancy

Joint tenancy is terminated by an act that is inconsistent with its continued existence or that operates to destroy one or more of its essential four unities (interest, title, time, possession)—converting it into a tenancy in common. Common methods are the following:

- Flexibility – Joint tenancy may be extinguished during the lifetime of the joint tenant if plans change, making it a useful estate planning tool.

- Voluntary Termination - Such termination can occur voluntarily through a conveyance. When a joint tenant transfers their interest, their joint tenancy interest terminates, and the new grantee holds the property with a different title. Consequently, the remaining joint tenant(s) continue to hold their interest independently.

- Involuntary Termination - The termination may be involuntary as by operation of law upon the death of a joint tenant. At the moment of death, the deceased's interest automatically passes to the surviving joint tenant(s), ending the joint tenancy. Because of this automatic transfer, a conveyance by the deceased to extinguish the joint tenancy can only be executed during the lifetime of a joint tenant.

- Will and Joint Tenancy - If a joint tenant attempts to bequeath their interest in a Last Will & Testament, and dies possessed of the joint tenancy interest, such devise will be ineffective. The interest will automatically pass by operation of law to the surviving joint tenant(s).

1.4.2 Life Estate

Under AIPRA, a life estate applies to interests created by operation of law for individuals who died on or after June 20, 2006, owning trust or restricted fee property. However, certain beneficiaries are not permitted to inherit undivided interests in trust lands; instead, they may only receive a life estate in trust. In the absence of federal law or federally approved tribal law to the contrary, state law governs all other life estates.

A life estate holder may convey their interest to the remainderman, which would extinguish the life estate and transfer full ownership - both legal title and beneficial interest - to the remainderman. Alternatively, the holder may transfer their life estate to a third party, creating a temporary beneficial interest for the grantee. This interest, however, remains contingent upon the life of the original life tenant.

1.4.2.1 Without Regard to Waste

A life estate holder operating without regard to waste may lawfully deplete or benefit from the lawful depletion of the resources (e.g., extract income, royalties, or other benefits). However, such holder may not cause or permit damage to the trust property through culpable negligence or malicious acts that harm the interests of the remainder beneficiaries.

1.4.2.2 With Regard to Waste

Unless the document creating the life estate specifies a distribution of proceeds, the holder of a life estate with regard to waste is entitled to:

- All rents and profits generated by the estate as income.
- One-half of any contract bonus, with remaining half payable to the remainderman.

- In the case of mineral contracts, the principal/royalties are to be invested, and the interest income paid to the life estate holder with regard to waste. Upon the extinguishment of the life estate, the base principal royalties collected are to be distributed to the remainderman.
- In all other cases, the principal is to be distributed and shall follow the Actuarial Table referenced at 25 CFR 179.102, which is based on the table at 26 CFR 20.2031.

1.4.2.3 Termination

A life estate terminates either upon relinquishment by the holder, or upon the death of the measuring life.

1.5 Restrictions

Any Indian who is not under a legal disability under the laws of the state where they reside or where the land is located, or the court-appointed guardian or conservator, may petition for an order removing restrictions from his restricted fee land or the restricted fee land of their ward. The application must be in writing, outlining the reasons for removal of restrictions, and filed with the agency having immediate jurisdiction over the lands.

Chapter 2: Gift Conveyance

A gift conveyance is the transfer of title ownership in trust or restricted fee land in which an individual has interest. One may gift convey to another enrolled Indian of a federally recognized Tribe, someone who is eligible for enrollment, someone who meets the definition of an Indian, or a Tribe with jurisdiction over the land.

With the proper guardianship, conservatorship, or power-of-attorney (POA) documentation which specifically authorizes a gift conveyance of the Indian Ward's or Principal's land, a gift conveyance may be executed by such guardian, conservator, or attorney-in-fact.

2.1 Process

The procedure, documents, and timeframes in this section outline the process for Realty staff to process a gift conveyance transaction. The process begins when the intended grantor contacts Realty staff to initiate a gift conveyance transaction. Document all activities within the Trust Asset and Account Management System (TAAMS) A&D Module within three (3) days of receipt of information, including scanning all documents into the case.

If there are multiple grantors or title owners, a separate case will be created for each grantor, as each owner must complete their own application and deed.

2.2 Consultation and Application

The grantor is responsible for submitting requests to the BIA agency that has jurisdiction over the land. The agency shall interview the grantor to determine intent (see Attachment 1: Consultation Best Practices). The interview may be in person or over the phone. A grantee interview is not required but recommended as contact may be needed to validate and verify their information to complete the transaction.

After receiving counseling, if the grantor still wishes to proceed, Realty staff will encode a new case in TAAMS and generate the application package to mail to the grantor within three (3) days.

All application packages returned to the BIA must include the following:

- Application
- Owner Inventory Interest Summary
- Grantor Waiver of Estimate Value
- Grantee Waiver of Estimate Value, if applicable
- Information Sheet on Grantee, if applicable

The applicant may submit any additional information or justification to assist in reaching a decision.

If the grantor requests an extension via letter or email, inform them whether their request for an extension was granted or denied (see L20 Extension Letter).

2.3 Acknowledging Receipt of an Application Package

Within 10 days of receipt, Realty staff must complete a comprehensive review of the application package for the items identified above and the authorized BIA official must formally acknowledge receipt of the request.

This formal acknowledgement must be in writing to the grantor and grantee (see L3 Acknowledgement Notice Application for A&D Conveyance and L4 Grantee Notice Application for A&D Conveyance).

If the grantor (applicant) requests an extension via letter or email, generate an L20 Extension Letter to inform them whether their request for an extension was granted or denied.

2.4 Providing Notice of Incomplete

Realty staff will initiate the Notice of Incomplete process when the applicant does not submit any of the required documents within the 30 days of the date on the Initial Application Request Letter; or within 10 days of determining whether an application package is **incomplete**.

Realty staff must identify all missing information or documentation that is required, and materials submitted that do not have appropriate signatures, dates, or other deficiencies that would prevent a complete review of the written request and notify the applicant.

1) Prepare a written notice for the applicant that includes the following information, and send it by certified mail, return receipt requested (see L2 Original 30-Day Notice of Incomplete).

    a. A statement that the written request is incomplete.
    b. Specify what information or documentation was omitted or required and explain why the requested information is necessary.
    c. Notify the applicant that they must provide the omitted or required documentation or information to BIA within 30 days of the applicant's receipt of the written notice.

2) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe, BIA must immediately send the applicant a Final Notice stating that BIA did not receive the information, and the written request will be inactivated and returned within 45 days from receipt of the **original notice** and removed from the active caseload unless the responsive information is received (see L10 Final Notice of Incomplete).

3) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe of the Final Notice, BIA must immediately notify the applicant that the written request has been inactivated and is being returned (see L19 Return of Incomplete xx Application).

Note: There are no administrative appeal rights for applicants regarding A&D conveyances that are cancelled because they are incomplete.

If the applicant requests an extension via letter or email, by letter inform them whether their request for an extension was granted or denied.

2.5 Review of Interest to be Conveyed

Within 10 days of receipt, Realty staff will:

1) Review the case to determine if the conveyance deed will result in a mineral severance; creation of a life estate for the grantor or another party; or creation or removal of a joint tenancy.
2) Review tract to determine if there are any defects that must be cleared before moving forward.
3) Verify all accounts in Indian Trust Systems Query (ITSQ) are not "Restricted" unless address unknown.
4) Request timber resource value from Forestry to include with appraisal request, if applicable.
5) Create an Indian/Non-Indian Number in TAAMS, if applicable.
6) Review TAAMS IDs and request global ID change from LTRO, if applicable.

Gift conveyances may result in a unique circumstance that requires coordination with other BIA program offices to move forward.

2.5.1 Partition

If an applicant wishes to partition a portion of their land for a gift conveyance, a survey may be required and is completed at the expense of the applicant. Additionally, if a survey is required, the surveyed land description must be reviewed and approved by the Bureau of Land Management (BLM) Indian Land Surveyor (BILS) and the subdivision approved by the BIA Regional Director (RD).

2.6 Valuation

Each transaction must have one of the following to comply with the regulatory appraisal requirement, as updated by the amendments to ILCA:

- An appraisal;
- An estimate of value, sometimes titled a land worth statement, signed by the grantor, wherein the grantor waives the right to an appraisal and chooses to proceed with the conveyance using just an estimate of value; or
- A waiver of estimate of value, signed by the grantor, when applicable. However, it may only be used when the grantee(s) meet the categories within 25 U.S.C. § 2216(b)(1)(B):
    - to an Indian person who is the owner's spouse, brother, sister, lineal descendent, or collateral heir; or
    - to an Indian co-owner or to the Tribe w/jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents five (5) percent or less of the parcel.

As a part of the 10 day review, Realty staff must determine if an appraisal is needed to determine the fair market value (FMV) of the property and request the appraisal(s) from the following:

- Appraisal and Valuation Services Office (AVSO), for surface appraisals; and
- Division of Mineral Evaluation (DME), for mineral appraisals, if applicable.

Realty Service Providers who contract their own appraisals or employ their own appraisers must contact AVSO prior to preparing the appraisal and must submit the completed appraisal report to AVSO for review and concurrence. It is important that the grantor is advised that we do not have any control over the timeliness of the completion of appraisal requests.

Generally, an existing appraisal report dated two (2) years or older, can be reviewed by the AVSO by way of consultation of market conditions, often referred to as a consultation memorandum. The consultation memorandum assesses whether that same appraisal report can be used, or if a new appraisal will be necessary to reflect the current market conditions.

2.7 Environmental Compliance

Federal actions, such as a conveyance, that may require National Environmental Policy Act (NEPA) compliance, will be reviewed on a case-by-case basis. The Responsible Official will make the determination on whether the action requires NEPA review based on recommendations from the Regional Environmental Scientist (RES) and/or Regional NEPA Coordinator. Expertise in NEPA compliance can usually be found at the local agency and/or regional office. The DOI NEPA regulations may be found at 43 CFR 46, and DOI's guidance on implementing these regulations through an accompanying DOI Handbook of NEPA Implementing Procedures. Realty staff are encouraged to check with the Tribe for additional requirements.

BIA environmental staff conduct a review to ensure NEPA documents address the federal action and its potential environmental and adverse impacts, and that the document follows all applicable federal environmental, land use, historic preservation, and cultural resource laws and ordinances.

Additionally, staff should verify that the environmental document has been signed by the appropriate authorizing officials, and that the document is not older than five (5) years. If the document is more than five years old, then an updated environmental document will need to be prepared.

Additionally, archeological compliance is required by Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations at 36 CFR 800. Federal undertakings carried out, funded, or authorized by the BIA must undergo Section 106 review to determine whether the project may affect historic properties, including sites of cultural religious or historical significance to Tribes.

Under the identification stage of the Section 106 process in 36 CFR 800.4, properties may be examined to determine whether historic properties are present. This review begins when staff submit a request to initiate Section 106 review to the BIA Archaeology Section. At present, there is no standardized Bureau-wide form for this request. Consistent with long-standing practice, each BIA Region follows the standards and submittal formats developed by the State Historic Preservation Office (SHPO) in that state, or by the Tribal Historic Preservation Office (THPO) when working with Tribes. If the applicant Tribe has already completed the inventory and concurrences discussed below, please ensure that they are submitted with any other NEPA material.

Upon receipt of a request for Section 106 review, the BIA Regional Archaeologist determines whether an archaeological inventory is necessary and identifies the appropriate level of identification effort. Because the BIA, as the lead federal agency, is responsible for defining the Area of Potential Effects (APE), consulting with Tribes, identifying and evaluating historic properties, and making findings of effect. The request for Section 106 review should be submitted as early as possible. Early initiation ensures that identification efforts can inform project planning and support timely, compliant decision-making.

Archaeological inventories conducted directly by the BIA are provided at no cost to the landowner but are subject to staff availability and priority mission needs.

Landowners may alternatively hire a private Secretary of the Interior-qualified archaeologist at their own expense. Any privately prepared inventory report must meet all applicable SHPO or THPO standards, comply with federal requirements, and is subject to BIA review and approval, which may require revisions to the submitted report.

Private archaeologists must coordinate with BIA Archaeology staff before beginning fieldwork to ensure alignment with BIA identification-level expectations, Section 106 procedures, and Tribal consultation requirements. They must also apply for an Archaeological Resources Protection Act (ARPA) permit for any ground-disturbing excavations, consistent with 25 CFR 262 and policy guidance in 59 IAM 8. (Most other agencies follow 36 CFR 296, and contracted archaeologists may need to be informed of this distinction.)

Tribal Archaeologists may conduct archaeological work on both Tribal and allotted lands. Their determinations of effect will generally be supported by the BIA Regional Archaeologist.

The Bureau does not maintain separate national archaeological reporting standards beyond what is established in federal regulations; therefore, BIA relies on SHPO/THPO guidance and regional practice for reporting expectations.

Realty staff should initiate all requests for NEPA and Section 106 compliance in the Tracking System for NEPA within 30 days of receipt of a complete written request, including:

- All relevant environmental documentation included in the written request must be submitted to the Tracking System for NEPA. Realty staff must update environmental staff on any changes to the written request.
- NEPA and Section 106 compliance for every transaction must be completed by environmental staff in the Tracking System for NEPA. Realty staff are responsible for retrieving and reviewing the documentation from the Tracking System for NEPA.

2.8 Application Approval

Within three (3) days of receiving all supporting documents from the applicant and relevant BIA programs, Realty staff must review the application and complete the Application Checklist in TAAMS.

Once the application checklist is completed, the delegated authority in accordance with 3 IAM 4—the approving official—has one (1) day to approve the application in TAAMS.

If the delegated authority disapproves an application, the grantor must be notified in writing, and the decision notice must include appeal language in accordance with 25 CFR Part 2 (refer to L9 Disapproval Letter).

2.9 Deed

Within three (3) days of the application being approved, Realty staff will prepare and mail the deed request for grantor signature package (see L13 Deed Request for Signature, L14 Deed Standard Instruction Letter, F8 Exhibit A Grantor Deed Interest Report, and F14 Exhibit C Grantee Acquired Interests Report). The grantor must sign the deed in the presence of a notary public.

2.10 Acceptance of Conveyance (AOC)

Within three (3) days of receipt of signed deed, Realty staff must complete and review the Deed Checklist.

Once the Deed Checklist is complete, the delegated authority has one (1) day to complete the formal AOC in TAAMS.

2.11 Recording Documents

Recordation of documents must be initiated as soon as the conveyance is accepted:

1) Realty staff must immediately notify the LTRO that the signed deed and AOC have been submitted through TAAMS for recording.

2) The processing office has the discretion to submit documents for recording in addition to the signed deed and AOC; upon receipt, the LTRO will also record these documents.

3) LTRO must record the signed deed and AOC (and any additional documents) within two business days of receipt of the notice above.

2.12 Case Closeout

Realty staff must begin case close-out as soon as LTRO records the conveyance:

1) Provide a Notice of Approval to the grantor, in writing, with appeal language per 25 CFR Part 2 (see L15 Transaction Complete Grantor Letter) that includes an Individual Tribal Interest Report that no longer shows the interest conveyed.

2) Provide a Notice of Approval to the grantee, in writing, with appeal language per 25 CFR Part 2 (see L16 Transaction Complete Grantee Letter) that includes the Recorded Deed, and the Grantee Acquired Interests Report.

3) Return the original recorded documents to the office that is responsible for maintaining custody of the record in accordance with the BIA records schedule.

4) Close out the electronic case file in the A&D system of record.

Chapter 3: Land Sale

A Land Sale Conveyance is the sale of title ownership of trust or restricted fee land in which an individual has interest.

For a period of five (5) years after the Secretary approves a conveyance pursuant to 25 U.S.C. § 2216(b)(2), the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

This chapter is outlined to address a standard Negotiated Sale with special circumstances[12] addressed throughout the chapter in sections and subsections for the following:

- Deferred Payment Sale; and
- Advertised Sale

3.1 Process

The procedure, documents, and timeframes in this section outline the process for Realty staff to process a land sale. The process begins when the intended seller contacts Realty staff to initiate a land sale transaction. Document all activities within the TAAMS A&D Module within three (3) days of receipt of information, including scanning all documents into the case.

If there are multiple applicants, a separate case will be created for each applicant, as each owner must complete their own application and deed.

3.2 Consultation and Application

The grantor is responsible for submitting requests to the BIA agency that has jurisdiction over the land. The agency shall interview the grantor to determine intent (see Attachment 1: Consultation Best Practices). The interview may be in person or over the phone. A grantee interview is not required but contact may be needed to validate and verify their information to complete the transaction.

After receiving counseling, if the applicant still wishes to proceed, Realty staff will encode a new case in TAAMS and generate the application package to mail to the grantor within three (3) days.

All application packages returned to the BIA must include the following:

- Application
- Owner Inventory Interest Summary
- Grantor Waiver of Estimate Value
- Grantee Waiver of Estimate Value, if applicable

[12] For Forced Sale Conveyance, see Chapter 5 of this handbook.

- Information Sheet on Grantee, if applicable
- If the grantor/grantee is a Tribe, a Tribal resolution or other act of the governing body of the Tribe

The applicant may submit any additional information or justification to assist in reaching a decision.

3.3 Acknowledging Receipt of an Application Package

Within 10 days of receipt, Realty staff must complete a comprehensive review of the application package for the items identified above and the authorized BIA official must formally acknowledge receipt of the request.

This formal acknowledgement must be, in writing, to the grantor and grantee (see L3 Acknowledgement Notice Application for A&D Conveyance and L4 Grantee Notice Application for A&D Conveyance).

3.4 Providing Notice of Incomplete

Realty staff will initiate the Notice of Incomplete process when the applicant does not submit any of the required documents within the 30 days of the date on the Initial Application Request Letter; or within 10 days of determining whether an application package is **incomplete**.

Realty staff must identify all missing information or documentation that is required, and materials submitted that do not have appropriate signatures, dates, or other deficiencies that would prevent a complete review of the written request and notify the applicant.

1) Prepare a written notice for the applicant that includes the following information, and send it by certified mail, return receipt requested (see L2 Original 30-Day Notice of Incomplete).
    a. A statement that the written request is incomplete.
    b. Specify what information or documentation was omitted or required and explain why the requested information is necessary.
    c. Notify the applicant that they must provide the omitted or required documentation or information to BIA within 30 days of the applicant's receipt of the written notice.
2) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe, BIA must immediately send the applicant a Final Notice stating that BIA did not receive the information, and the written request will be inactivated and returned within 45 days from receipt of the **original notice** and removed from the active caseload unless the responsive information is received (see L10 Final Notice of Incomplete).

3) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe of the Final Notice, BIA must immediately notify the applicant that the written request has been inactivated and is being returned (see L19 Return of Incomplete xx Application).

Note: There are no administrative appeal rights for grantors/applicants for written requests to trust acquisition actions that are inactivated because they are incomplete.

If the applicant requests an extension via letter or email, by letter inform them whether their request for an extension was granted or denied.

3.5 Review of Interest to be Conveyed

Within 10 days of receipt, Realty staff will:

1) Determine if the transaction may adversely affect the best interest of other Indians, or other Tribes.
2) Review tract to determine if there are any defects that must be cleared before moving forward.
3) Verify all accounts in ITSQ are not "Restricted" unless address unknown.
4) Review the tract(s) associated with the application for encumbrances on title including but not limited to liens, mortgages, assignments of income, and ingress/egress concerns.
5) Review the case to determine if the deed will result in a mineral severance; creation of a life estate for the grantor or another party; creation or removal of a joint tenancy; or in certain scenarios, convey the land to unrestricted fee status.
6) Request timber resource value from Forestry to include with appraisal request, if applicable.
7) Create an Indian/Non-Indian Number in TAAMS, if applicable.
8) Review TAAMS IDs and request global ID change from LTRO, if applicable.

Transactions may result in a unique circumstance that requires coordination with other BIA program offices to move forward.

3.5.1 Indian Land Consolidation Program (ILCP) Payments

Realty staff will request an account balance from the Bureau of Trust Funds Administration (BTFA) to use for payment.

3.5.2 Partition

If the sale is going to result in a partition of land, a survey may be required and is at the expense of the grantor. Additionally, if a survey is required, the surveyed land description must be reviewed and approved by the BILS and the subdivision approved by the BIA RD.

3.5.3 Fee Patent

Within three (3) days of determining that a fee patent would be the result of the land sale, Realty staff will prepare a written notice to the federally recognized Tribe with jurisdiction over the land to be sent certified mail, return receipt requested and a courtesy copy to the applicant that includes the following information:

- Purchase price offered in the application, if any;
- Appraised value or an estimate of the value of the property; and
- Inform the Tribe that they must respond to BIA within 60 days of the written notice.

If no response is received within 60 days or the Tribe responds within 60 days stating that they do not wish to purchase the property, the agency may continue processing the land sale application.

3.6 Valuation

Each transaction must have one of the following to comply with the regulatory appraisal requirement, as updated by the amendments to ILCA:

a. An appraisal;

b. An estimate of value, sometimes titled a land worth statement, signed by the grantor, wherein the grantor waives the right to an appraisal and chooses to proceed with the conveyance using just an estimate of value; or

c. A waiver of estimate of value, signed by the grantor, when applicable. However, it may only be used when the grantee(s) meet the categories within 25 U.S.C. § 2216(b)(1)(B):
    - to an Indian person who is the owner's spouse, brother, sister, lineal descendent, or collateral heir; or
    - to an Indian co-owner or to the Tribe w/jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents five (5) percent or less of the parcel.

    As a part of the 10 day comprehensive review, Realty staff must determine if an appraisal is needed to determine the FMV of the property and request the appraisal(s) from the following:

    - AVSO for surface appraisals; and

- DME for mineral appraisals, if applicable

Realty Service Providers who contract their own appraisals or employ their own appraisers must contact AVSO prior to preparing the appraisal and must submit the completed appraisal report to AVSO for their review and concurrence. It is important that the landowner is advised that BIA does not have any control over the timeliness of the completion of appraisal requests.

Generally, an existing appraisal report dated two (2) years or older can be reviewed by AVSO by way of consultation of market conditions, often referred to as a consultation memorandum. The consultation memorandum assesses whether that same appraisal report can be used, or if a new appraisal will be necessary to reflect the current market conditions.

Within three (3) days of receiving the appraisal and appraisal review reports and after application approval, Realty staff will mail the Appraisal Notice (see L7 Appraisal Letter).

3.6.1 Grantor Acknowledgement of FMV and Consideration to be Paid

If the offer is acceptable to the grantor, prepare an F12 Grantor Acknowledgement of FMV and Consideration to be Paid for the landowner's signature. Completion of the form is formal acceptance of the offer and terms of the sale. This form is **not** sent to the purchaser as it reflects the appraised FMV of the land. If the purchaser requests something formal indicating that their offer has been accepted, you can notify them in writing, with a caveat that it is subject to BIA approval.

3.6.2 Counteroffer

Once the appraisal is received, a copy is provided to the grantor. The grantor must be informed that the appraisal is **confidential** and **must not** be given to anyone, especially the purchaser. The Realty Specialist is also prohibited from providing the appraised value to the purchaser. A counteroffer must be made if the offer is not at fair market value, or if the landowner requests a higher selling price. Request a new or amended offer from the purchaser.

3.7 Advertisement, If Applicable

3.7.1 Notice

Upon approval of an application for an advertised sale, notice of the sale must be published not less than 30 days prior to the date fixed for the sale, unless for good cause a shorter period is authorized by the Secretary.

The notice of sale will include:

1) Terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedure as set out in 25 CFR 152.27(b)(2), if applicable;

2) Where and how bids should be submitted;

3) A statement warning all bidders against violation of 18 U.S.C. § 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and

4) Description of the tracts, all reservations to which title will be subject and any restrictions and encumbrances of record with the BIA and any other information that may improve sale prospects.

3.7.2 Submitting Bids

Advertised sales shall be by sealed bids except as otherwise provided herein.

The bid must include:

1) An offer conforming to the requirements set out in the advertisement of sale.

2) 10 percent of the amount of the bid must be enclosed in a sealed envelope marked as prescribed in the notice of sale along with:
    a. Certified check, cashier's check, money order, or U.S. Treasury check, payable to the BIA; or
    b. A cash deposit may be submitted in lieu of the above-specified negotiable instruments at the bidder's risk.

Note: Tribes submitting bids may guarantee the required 10 percent deposit by an appropriate resolution.

3.7.3 Bid Process

1) The sealed envelopes containing the bids will be publicly opened at the time fixed for sale. The bids will be announced and will be appropriately recorded.

2) The policy of the Secretary recognizes that in many instances a Tribe or a member thereof has a valid interest in acquiring trust or restricted fee lands offered for sale.

3) With the consent of the owner and when the notice of sale so states, the Tribe or members of such Tribe shall have the right to meet the high bid.

3.7.4 Auction, if applicable

Provided the Tribe is not the high bidder and when one or more acceptable sealed bids are received and when so stated in the notice of sale, an oral auction may be held following the bid opening. Bidding in the auction will be limited to the Tribe, and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction, the highest bidder must increase his/her deposit to not less than 10 percent of his/her auction bid.

3.7.5 Close of Bidding

To close the bidding, the officer in charge of the sale must:

1) publicly announce the apparent highest acceptable bid; and

2) immediately return deposits submitted by the unsuccessful bidders.

At close of bidding Realty staff shall process the successful bid to be held until payment is to be issued for the advertised sale.

If the highest bid received at an advertised sale is less than the appraised fair market value of the land, the Secretary, with the consent of the owner, may accept that bid if the amount bid approximates said appraised fair market value and in the Secretary's judgment it is the highest price that may be realized in the circumstances. The Secretary shall:

1) Award the bid; and

2) Notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days. The successful bidder may request an extension of time within 30 days of receipt of the notice to pay the balance due.

If the remainder of the purchase price is not paid within the time allowed, then:

1) the bid will be rejected; and

2) the apparent successful bidder's 10 percent deposit will be forfeited to the landowner's use.

3.7.6 Rejection of Bids

The Secretary reserves the right to reject any and all bids before the award, after the award, or at any time prior to the issuance of a patent or delivery of a deed, when he/she shall have determined such rejection to be in the best interests of the Indian owner.

3.7.7 Bidding by Indian Affairs Employees

No person employed in Indian Affairs shall directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his/her bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of 25 CFR 140 (25 U.S.C. § 68 and 441).

3.8 Environmental Compliance

Federal actions such as a conveyance, that may require NEPA compliance, will be reviewed on a case-by-case basis. The Responsible Official will make the determination on whether the action requires NEPA review based on recommendations from the RES and/or Regional NEPA Coordinator. Expertise in NEPA compliance can usually be found at the local agency and/or regional office. DOI NEPA regulations may be found at 43 CFR Part 46, and DOI's guidance on implementing these regulations through an accompanying DOI Handbook of NEPA Implementing Procedures. Realty staff are encouraged to check with the Tribe for additional requirements.

BIA environmental staff conduct a review to ensure NEPA documents address the federal action and its potential environmental and adverse impacts, and that the document follows all applicable federal environmental, land use, historic preservation, and cultural resource laws and ordinances. Additionally, staff should verify that the environmental document has been signed by the appropriate authorizing officials, and that the document is not older than five (5) years. If the document is more than five (5) years old, then an updated environmental document may need to be prepared.

Additionally, archeological compliance is required by Section 106 of the NHPA and its implementing regulations at 36 CFR 800. Federal undertakings carried out, funded, or authorized by the BIA must undergo Section 106 review to determine whether the project may affect historic properties, including sites of cultural religious or historical significance to Tribes.

The property may be inventoried for any potential cultural and/or historic remains, consistent with the identification stage of the Section 106 process under 36 CFR 800. This review is initiated by submitting a *Section 106 Clearance Request* form directly to the BIA Archeology Section. The BIA Regional Archaeologist clearance will determine whether an archaeological inventory is required and will oversee the appropriate level of identification effort. Because the BIA, as the lead federal agency, is responsible for carrying out the full Section 106 process – including defining the APE, consulting with Tribes, evaluating historic properties, and making findings of effect – the request must be submitted as early as possible after the application is received.

Archaeological inventories conducted by the BIA are completed at no cost to the landowner. A landowner may choose to hire a private archaeologist at their own expense; however, any privately prepared inventory reports must follow the BIA's Archaeology standards and is subject to BIA review and approval. Private archaeologists must coordinate with BIA Archaeology staff prior to conducting any field inspection to ensure consistency with federal requirements, Tribal consultation needs, and Section 106 procedural steps.

Realty staff should initiate all requests for NEPA and Section 106 compliance in the Tracking System for NEPA within 30 days of receipt of a complete written request, including:

- All relevant environmental documentation included in the written request must be submitted to the Tracking System for NEPA. Realty staff must update environmental staff on any changes to the written request.
- NEPA and Section 106 compliance for every transaction must be completed by environmental staff in the Tracking System for NEPA. Realty staff are responsible for retrieving and reviewing the documentation from the Tracking System for NEPA.

3.9 Application Approval

Within three (3) days of receipt of all application supporting documents from the applicant and supporting BIA programs, Realty staff must review and complete the Application Checklist.

Once the application checklist is complete, the delegated authority has one (1) day to approve the application in TAAMS.

If the delegated authority disapproves an application, the grantor must be notified in writing, and the decision must include appeal language per 25 CFR Part 2 (see L9 Disapproval Letter).

3.9.1 Negotiated Sale

Land Purchase Agreement, if applicable, must be included in the case file.

3.9.2 Deferred Payment Sale

If the transaction is for a deferred payment sale, the following must be included in the case file:

- Memorandum of Sale that includes the Terms of the Sale;
- Executed Promissory Note; and
- Schedule of Payments.

3.9.3 Patent

If the applicant refuses to sell their land or interest in land to the Tribe, or the applicant does not respond within 30 days from the date of the letter notifying them of the Tribe's intent to purchase, they will be notified, by certified mail, of BIA's decision to disapprove their land sale application. When this occurs, applicants will continue to own the land in trust.

If the delegated authority disapproves an application, the grantor must be notified in writing, and the decision must include appeal language per 25 CFR Part 2 (see L9 Disapproval Letter).

3.10 Payments

Realty staff will encode the payment into TAAMS and generate an invoice to be delivered for collection of payment from the purchaser. The payment will be made electronically via www.pay.gov and matched directly to the invoice.

3.10.1 Prior to Deed

Once the deed package has been reviewed and is ready for submission for approval, Realty staff will request payment from the purchaser.

3.10.2 Deferred Payment Sale

The terms of the sale shall require that the purchaser pay not less than 10 percent of the purchase price in advance as required by the Act of June 25, 1910. If the purchaser on any deferred payment plan defaults in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

3.10.3 Post Deed Approval Payments

These payments are placed on hold in a Lockbox until after the AOC. These payments include the following:

- Tribal Funds Payment Type/ILCP Payments;
- Escrow Payments; or
- Government Payments.

Once the payment is invoiced the delegated authority must immediately complete the formal AOC in TAAMS.

For ILCP Payments, the deed must be fully recorded before BTFA releases the payment.

3.10.4 Prepaid Rental Deduction

This is the act of reducing the amount of consideration that the grantor will receive in a land sale due to a proration of any prepaid rental from existing agricultural leases or grazing permits.[13] The deduction may also be processed manually after receiving consideration price from the purchaser. The prepaid rental deduction may be calculated and then refunded to the purchaser. The purchaser could agree to waive any prepaid rental reduction.

3.11 Conveyance Document

Within three (3) days of the application being approved the Realty staff will prepare and mail the deed request for grantor signature package (see L13 Deed Request for Signature, L14 Deed Standard Instruction Letter, F8 Exhibit A Grantor Deed Interest Report, and F14 Exhibit C Grantee Acquired Interests Report). The grantor must sign the deed in the presence of a notary public.

[13] Example: John sells his land to Spencer for the purchase price of $100,000. The land is subject to an agricultural lease extending through December 31, 2025. The lease requires an annual payment of $4,000 due December 31st each year for the upcoming lease year. The payment for the 2024 lease year was received by John at the end of December 2023. The land sale is approved on March 31, 2024. Thus, as John will not be the owner of the parcel for the entire 2024 lease year, he should not be entitled to the full $4,000 in prepaid lease revenue that he previously received. John was the owner for one-fourth of 2024; therefore, John should be entitled to $1,000 of the total of $4,000 in rental received and Spencer would be entitled to $3,000 of said rental, as he will be the owner for three fourths of 2024.

3.11.1 Patent

Within three (3) days of the application being approved, the Realty staff must draft a letter to BLM stating that a land sale has been approved and BIA is requesting that a patent in fee be issued to the applicant. The letter must also include the following information:

- Date;
- Correct legal name to be listed on the Patent;
- Act under which the conveyance is made;
- Land description and the interest being conveyed;
- Reservations, terms, conditions, restrictions, and covenants, if any; and
- Encumbrances, if any.

After the letter has been signed, promptly address and send the letter to the BLM State Director with jurisdiction.

3.12 AOC

Within three (3) days of receipt of signed deed by the grantor, Realty staff must complete and review the Deed Checklist.

Once the Deed Checklist is complete, the delegated authority has one (1) day to complete the formal AOC in TAAMS.

Deeds that were properly executed by a grantor and notarized prior to the death of the grantor, may still be approved posthumously, if everything else is completed for the conveyance.

3.12.1 Deeds Approved Prior to Payment

Confirm that you have a generated invoice for payments that included the following:

- Tribal Funds Payment Type/ILCP
- Escrow Payments, or
- Government Payments.

Once the payment is invoiced, the delegated authority must immediately complete the formal AOC in TAAMS.

For ILCP Payments, the deed must be fully recorded before BTFA releases the payment.

3.12.2 Deferred Payment Sale

The executed deed will be held by the BIA and will be delivered only upon full compliance with the terms of the sale. The deed will be approved upon the completion of all payments required by the memorandum of sale, even if the grantor is deceased at the time of approval.

3.13 Recording Documents

Recordation of documents must be initiated as soon as the conveyance is accepted:

1) Realty staff must immediately notify the LTRO that the signed deed and AOC have been submitted through TAAMS for recording.

2) The processing office has the discretion to submit documents for recording in addition to the signed deed and AOC; upon receipt, the LTRO will also record these documents.

3) LTRO must record the signed deed and AOC (and any additional documents) within two (2) business days of receipt of the notice above.

For ILCP Payments, the deed must be fully recorded before BTFA releases the payment.

3.14 Case Closeout

Realty staff must initiate case closeout as soon as LTRO records the conveyance:

1) Provide a Notice of Approval to the grantor in writing with appeal language per 25 CFR Part 2 (see L15 Transaction Complete Grantor Letter) that includes an Individual Tribal Interest Report that no longer shows the interest conveyed.

2) Provide a Notice of Approval to the grantee in writing with appeal language per 25 CFR Part 2 (see L16 Transaction Complete Grantee Letter) that includes the Recorded Deed, and the Grantee Acquired Interests Report.

3) Return the original recorded documents to the office that is responsible for maintaining custody of the record in accordance with the BIA records schedule.

4) Close out the electronic case file in the A&D system of record.

Chapter 4: Land Exchange

A Land Exchange Conveyance is between two (2) individual Indians, or a federally recognized Tribe and an individual Indian. The exchange may involve land or other items of value (e.g., livestock, machinery, custom work, satisfaction of debt); however, if only items of value are involved, it does not qualify as a land exchange. In such cases, land must also be a part of the exchange. The transaction may constitute a true A&D.

Land Exchange Conveyances can often include:

1. An Exchange of Land of Equal Value with No Other Consideration
2. An Exchange of Lands of Approximately Equal Value and a Monetary Amount
3. An Exchange of Lands of Approximately Equal Value and a Non-Monetary Consideration

For a period of five (5) years following the Secretary's approval of a conveyance under 25 U.S.C. § 2216(b)(2), the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

Equitable Land Exchanges are based on value rather than acreage. These exchanges may be negotiated without the need for advertisement. Exchanges are made at the appraised FMV. With the Secretary's approval, Indian owners may exchange trust or restricted fee land, or a combination of such land and other items of value, for other lands or combinations of land and other items of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised FMV of the consideration given by him. Generally, values within 10 percent of each other are considered substantially equal.

4.1 Process

The procedure, documents, and timeframes in this section outline the process for Realty staff to process a land exchange. The process begins when the intended grantor contacts Realty staff to initiate a land exchange transaction. Document all activities within the TAAMS A&D Module within three (3) days of receipt of information, including scanning all documents into the case.

If there are multiple applicants, a separate case will be created for each applicant, as each owner must complete their own application and deed.

4.2 Consultation and Application

The grantor is responsible for submitting requests to the BIA agency that has jurisdiction over the land. The agency shall interview the grantor to determine intent (see Attachment 1: Consultation Best Practices). The interview may be in person or over the phone. A grantee interview is not required but contact may be needed to validate and verify their information to complete the transaction.

After receiving counseling, if the applicant still wishes to proceed, Realty staff will encode a new case in TAAMS and generate the application package to mail to the grantor within three (3) days.

All application packages returned to the BIA must include the following:

- Application
- Grantor Waiver of Estimate Value
- Grantee Waiver of Estimate Value, if applicable
- If the grantor/grantee is a Tribe, a Tribal resolution or other act of the governing body of the Tribe.

The applicant may submit any additional information or justification to assist in reaching a decision.

4.3 Acknowledging Receipt of an Application Package

Within 10 days of receipt, Realty staff must complete a comprehensive review of the application package for the items identified above and the authorized BIA official must formally acknowledge receipt of the request.

This formal acknowledgement must be in writing to the grantor and grantee (see L3 Acknowledgement Notice Application for A&D Conveyance and L4 Grantee Notice Application for A&D Conveyance).

4.4 Providing Notice of Incomplete

Realty staff will initiate the Notice of Incomplete process when the applicant does not submit any of the required documents within the 30 days of the date on the Initial Application Request Letter; or within 10 days of determining whether an application package is **incomplete**.

Realty staff must identify all missing information or documentation that is required, and materials submitted that do not have appropriate signatures, dates, or other deficiencies that would prevent a complete review of the written request and notify the applicant.

1) Prepare a written notice for the applicant that includes the following information, and send it by certified mail, return receipt requested (see L2 Original 30-Day Notice of Incomplete).

    a. A statement that the written request is incomplete.
    b. Specify what information or documentation was omitted or required and explain why the requested information is necessary.
    c. Notify the applicant that they must provide the omitted or required documentation or information to BIA within 30 days of the applicant’s receipt of the written notice.

2) If the applicant does not provide the omitted or required documentation or does not provide the information to BIA within the noted timeframe, BIA must immediately send the applicant a Final Notice stating that BIA did not receive the information, and the written request will be inactivated and returned within 45 days from receipt of the **original notice** and removed from the active caseload unless the responsive information is received (see L10 Final Notice of Application).

3) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe of the Final Notice, BIA must immediately notify the applicant that the written request has been inactivated and is being returned (see L19 Return of Incomplete Application).

Note: There are no administrative appeal rights for written requests for trust acquisition actions that are inactivated because they are incomplete.

If the applicant requests an extension via letter or email, by letter inform them whether their request for an extension was granted or denied.

4.5 Review of Interest to be Conveyed

Within 10 days of receipt, Realty staff will:

1) Determine if the transaction may adversely affect the best interest of other Indians, or other Tribes.

2) Review tract to determine if there are any defects that must be cleared before moving forward.

3) Verify all accounts in ITSQ are not "Restricted" unless address unknown.

4) Review the tract(s) associated with the application for encumbrances on title including but not limited to liens, mortgages, assignments of income, and ingress/egress concerns.

5) Review the case to determine if the deed will result in a mineral severance; creation of a life estate for the grantor, or another party; creation of a joint tenancy or remove one; or in certain scenarios, conveying the land to unrestricted fee status.

6) Request timber resource value from Forestry to include with appraisal request, if applicable.

7) If fee land is proposed to be included in the exchange, consult with your Regional Realty Office to see if you may proceed with the land exchange.

8) Create an Indian/Non-Indian Number in TAAMS, if applicable.

9) Review TAAMS IDs and request global ID change from LTRO, if applicable.

Transactions may result in a unique circumstance that requires coordination with other BIA program offices to move forward.

4.5.1 Partition

If the land exchange is going to result in a partition of land, a survey may be required and is at the expense of the applicant/landowner. Additionally, if a survey is required, the surveyed land description must be reviewed and approved by the BILS and the subdivision approved by the BIA RD.

4.5.2 Patent

Within three (3) days of determining a patent would be the result of the land exchange, Realty staff will prepare a written notice to the Indian Tribe with jurisdiction to be sent certified mail, return receipt requested and a courtesy copy to the applicant that includes the following information:

- Purchase price offered in the application if any;
- Appraised value or an estimate of the value of the property; and
- Notify the Tribe that they must respond to BIA within 60 days of the written notice.

If no response is received within 60 days or the Tribe responds within 60 days stating that they do not wish to purchase the property, the agency may continue processing the land exchange application.

4.6 Valuation

With the approval of the Secretary, Indian owners may exchange trust or restricted fee land, or a combination of such land and other things of value, for other lands or combinations of land and other things of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised FMV of the consideration given by him/her.

Some Tribes have provisions in their constitutions which preclude the disposal of Tribal lands. A Tribe would normally be free to exchange Tribal lands for other lands of equal value, but that same Tribe may not be able to dispose of Tribal land by any other means. Therefore, appraisals for each parcel involved in a Tribal land exchange would be required so that the BIA can assure itself that the transaction is a value for value exchange[14], and not an actual disposal of Tribal land.

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[14] Example: If the Tribal land is worth $175,000, and the land being acquired by the Tribe in the exchange is only worth $100,000, the Tribe would technically be disposing of $75,000 worth of Tribal land. The Tribe could not accept $75,000 in cash to equalize the values because that would also be considered a disposal (sale) of Tribal land. To equalize the exchange, the Tribe could reduce the amount of land to be included in the exchange or the individual who the Tribe is exchanging with could add more land to the exchange, increasing its value to be at or above the value of the Tribe's land.

An individual could waive some value in order to equalize an exchange[15] with the Tribe, or if the Tribe so chooses, they can pay for the additional value.

Each transaction must have one of the following to comply with the regulatory appraisal requirement, as updated by the amendments to ILCA:

a. An appraisal;

b. An estimate of value, sometimes titled a land worth statement, signed by the grantor, wherein the grantor waives the right to an appraisal and chooses to proceed with the conveyance using just an estimate of value; or

c. A waiver of estimate of value, signed by the grantor, when applicable. However, it may only be used when the grantee(s) meet the categories within 25 U.S.C. § 2216(b)(1)(B):
    - to an Indian person who is the owner's spouse, brother, sister, lineal descendent, or collateral heir; or
    - to an Indian co-owner or to the Tribe w/jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents five (5) percent or less of the parcel.

As a part of the 10 day comprehensive review, Realty staff must determine if an appraisal is needed to determine the FMV of the property and request the appraisal(s) from the following:

- AVSO for surface appraisals; and
- DME for mineral appraisals, if applicable.

Realty Service Providers who contract their own appraisals or employ their own appraisers must contact AVSO prior to preparing the appraisal and must submit the completed appraisal report to AVSO for their review and concurrence. It is important that the landowner is advised that BIA does not have any control over the timeliness of the completion of appraisal requests.

Generally, an existing appraisal report dated two (2) years or older, can be reviewed by the AVSO by way of consultation of market conditions, often referred to as a consultation memorandum. The consultation memorandum assesses whether that same appraisal report can be used, or if a new appraisal will be necessary to reflect the current market conditions.

Within three (3) days of receiving the appraisal and appraisal review reports and after application approval, Realty staff will mail the Appraisal Notice (see L7 Appraisal Letter).

[15] Example: If the Tribal land is worth $175,000, and the land being acquired by the Tribe in the exchange is only worth $178,000, the individual owner could offer to waive the difference in value of $3,000, or if the Tribe chose to do so, they could pay the $3,000 difference in value. The Tribe is free to purchase land. In this scenario, the consideration for the deed from the individual to the Tribe would be "An exchange of lands of approximately equal value and $3,000."

4.6.1 Personal Items

If the exchange is for item(s) other than land, then a value[16] will have to be assigned to the item(s).

4.6.2 Grantor Acknowledgement of FMV and Consideration to Be Paid

If the offer is acceptable to the landowner, prepare an F12 Grantor Acknowledgement of FMV and Consideration to be Paid for the landowner's signature. Completion of the form is formal acceptance of the offer and terms of the sale. This form is **not** sent to the purchaser as it reflects the appraised FMV of the land. If the purchaser requests something formal indicating that their offer has been accepted, you can notify them in writing, with a caveat that it is subject to BIA approval.

4.6.3 Counteroffer

Once the appraisal is received, a copy is provided to the landowner. The landowner must be informed that the appraisal is **confidential** and **must not** be given to anyone, particularly the purchaser. Additionally, the Realty Specialist is also prohibited from disclosing the appraised value to the purchaser. If the offer does not reflect FMV, or if the landowner requests a higher selling price, a counteroffer should be made. A new request or amended offer should then be requested from the purchaser.

4.7 Environmental Compliance

Federal actions such as a conveyance, that may require NEPA compliance, will be reviewed on a case-by-case basis. The Responsible Official will make the determination on whether the action requires NEPA review based on recommendations from the RES and/or Regional NEPA Coordinator. Expertise in NEPA compliance can usually be found at the local agency and/or regional office. DOI NEPA regulations may be found at 43 CFR 46, and DOI's guidance on implementing these regulations through an accompanying DOI Handbook of NEPA Implementing Procedures. Realty staff are encouraged to check with the Tribe for additional requirements.

BIA environmental staff conduct a review to ensure NEPA documents address the federal action and its potential environmental and adverse impacts, and that the document follows all applicable federal environmental, land use, historic preservation, and cultural resource laws and ordinances. Additionally, staff should verify that the environmental document has been signed by the appropriate authorizing officials, and that the document is not older than five (5) years. If the document is more than five (5) years old, then an updated environmental document may need to be prepared.

Additionally, archeological compliance is required by Section 106 of the NHPA and its implementing regulations at 36 CFR 800. Federal undertakings carried out, funded, or authorized

[16] Example: Cattle (15 bred heifers valued at $36,000)/Farm Equipment (2021 John Deere baler valued at $42,000).

by the BIA must undergo Section 106 review to determine whether the project may affect historic properties, including sites of cultural religious or historical significance to Tribes.

The property may be inventoried for any potential cultural and/or historic remains, consistent with the identification stage of the Section 106 process under 36 CFR 800. This review is initiated by submitting a *Section 106 Clearance Request* form directly to the BIA Archeology Section. The BIA Regional Archaeologist clearance will determine whether an archaeological inventory is required and will oversee the appropriate level of identification effort. Because the BIA, as the lead federal agency, is responsible for carrying out the full Section 106 process – including defining the APE, consulting with Tribes, evaluating historic properties, and making findings of effect – the request must be submitted as early as possible after the application is received.

Archaeological inventories conducted by the BIA are completed at no cost to the landowner. A landowner may choose to hire a private archaeologist at their own expense; however, any privately prepared inventory reports must follow the BIA's Archaeology standards and is subject to BIA review and approval. Private archaeologists must coordinate with BIA Archaeology staff prior to conducting any field inspection to ensure consistency with federal requirements, Tribal consultation needs, and Section 106 procedural steps.

Realty staff should initiate all requests for NEPA and Section 106 compliance in the Tracking System for NEPA within 30 days of receipt of a complete written request, including:

- All relevant environmental documentation included in the written request must be submitted to the Tracking System for NEPA. Realty staff must update environmental staff on any changes to the written request.
- NEPA and Section 106 compliance for every transaction must be completed by environmental staff in the Tracking System for NEPA. Realty staff are responsible for retrieving and reviewing the documentation from the Tracking System for NEPA.

4.8 Application Approval

Within three (3) days of receipt of all application supporting documents from the applicant and supporting BIA programs, Realty staff must review and complete the Application Checklist.

Once the application checklist is complete, the delegated authority has one (1) day to approve the application in TAAMS.

If the delegated authority disapproves an application, the grantor must be notified in writing, and the decision must include appeal language per 25 CFR Part 2 (see L9 Disapproval Letter).

4.9 Payments

4.9.1 Agreement

At a minimum an agreement should include:

- Payments terms;
- Settlement negotiations;
- Valuation; and
- Adjustments

4.9.2 Non-Distributable Terms

Once the deed package is ready to be submitted for approval, request terms are adhered to between both parties.

4.9.3 Distributable Terms

Realty staff will encode the payment into TAAMS and generate an invoice to be delivered for collection of payment from the purchaser. The payment will be made electronically via www.pay.gov. The payment will be matched directly to the invoice.

4.9.4 Sale Price

Once the deed package is ready to be submitted for approval, request payment from the purchaser.

4.10 Conveyance Document

4.10.1 Deed

Within three (3) days of the application being approved the Realty staff will prepare and mail the deed request for grantor signature package (see L13 Deed Request for Signature, L14 Deed Standard Instruction Letter, F8 Exhibit A Grantor Deed Interest Report, and F14 Exhibit C Grantee Acquired Interests Report). The grantor must sign a deed in the presence of a notary public.

4.10.2 Patent

Within three (3) days of the application being approved, the Realty staff must draft a letter to BLM stating that a land exchange has been approved and BIA is requesting that a patent in fee be issued to the applicant. The request must also include the following information:

- Date;
- Correct legal name to be listed on the Patent;
- Land description and the interest being conveyed;
- Reservations, terms, conditions, restrictions, and covenants, if any; and
- Encumbrances, if any.

After the letter has been signed, promptly address and send the letter to the BLM State Director with jurisdiction.

4.11 AOC

Within three (3) days of receipt of signed deed, Realty staff must complete and review the Deed Checklist.

Once the Deed Checklist is complete, the delegated authority has one (1) day to complete the formal AOC in TAAMS.

The exchange deeds should be approved at approximately the same time.

4.12 Recording Documents

This must be initiated as soon as the conveyance is accepted:

1) Realty staff must immediately notify the LTRO that the signed deed and AOC have been submitted through TAAMS for recording.

2) The processing office has the discretion to submit documents for recording in addition to the signed deed and AOC; upon receipt, the LTRO will also record these documents.

3) LTRO must record the signed deed and AOC (and any additional documents) within two business days of receipt of the notice above.

4.13 Case Closeout

Realty staff must initiate case closeout as soon as LTRO records the conveyance:

1) Provide a Notice of Approval to the grantor, in writing, with appeal language per 25 CFR Part 2 (see L15 Transaction Complete Grantor Letter) that includes an Individual Tribal Interest Report that no longer shows the interest conveyed.

2) Provide a Notice of Approval to the grantee, in writing, with appeal language per 25 CFR Part 2 (see L16 Transaction Complete Grantee Letter) that includes the Recorded Deed, and the Grantee Acquired Interests Report.

3) Return the original recorded documents to the office that is responsible for maintaining custody of the record in accordance with the BIA records schedule.

4) Close out the electronic case file in the A&D system of record.

Chapter 5: Forced Sale

A Forced Sale is a purchase by the Tribe with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract. Interests owned by an Indian Tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under 25 U.S.C 2204(a)(2)(A) has been met.

5.1 Process

The procedure, documents, and timeframes in this section outline the process for Realty staff to process a forced sale. The process begins when the Tribe contacts Realty staff to initiate a forced sale transaction.

5.2 Tribe Request

Process starts upon receipt of the Tribal resolution or other act of the governing body of the Tribe. The Tribe may submit any additional information or justification to assist in the processing of a forced sale.

5.3 Acknowledging Receipt of a Request

Within 10 days of receipt, Realty staff must complete a comprehensive review of the Tribes request, and the authorized BIA official must formally acknowledge receipt of the request.

This formal acknowledgement must be in writing to the Tribe (see L3 Acknowledgement Notice Application for A&D Conveyance).

5.4 Providing Notice of Incomplete

Realty staff will initiate the Notice of Incomplete process if the Tribe does not submit any of the required documents within 10 days of determining whether the request is **incomplete**.

Realty staff must identify all missing information or documentation that is required, and materials submitted that do not have appropriate signatures, dates, or other deficiencies that would prevent a complete review of the written request and notify the applicant.

1) Prepare a written notice for the applicant that includes the following information, and send it by certified mail, return receipt requested (see L2 Original 30-Day Notice of Incomplete).

    a. A statement that the written request is incomplete.

    b. Specify what information or documentation was omitted or required and explain why the requested information is necessary.

c. Notify the applicant that they must provide the omitted or required documentation or information to BIA within 30 days of the applicant's receipt of the written notice.

2) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe, BIA must immediately send the applicant a Final Notice stating that BIA did not receive the information, and the written request will be inactivated and returned within 45 days from receipt of the **original notice** and removed from the active caseload unless the responsive information is received (see L10 Final Notice of Incomplete).

3) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe of the Final Notice, BIA must immediately notify the applicant that the written request has been inactivated and is being returned (see L19 Return of Incomplete xx Application).

Note: There are no administrative appeal rights for written requests for trust acquisition actions that are inactivated because they are incomplete.

If the applicant requests an extension via letter or email, by letter inform them whether their request for an extension was granted or denied.

5.5 Review of Interest to be Conveyed

Within 10 days of receipt, Realty staff will:

1) Verify owners on record have a residential address listed in their TAAMS profile; and

2) Review tract to determine if there are any defects that must be cleared before moving forward.

3) Verify all accounts in ITSQ are not "Restricted" unless address unknown;

4) Review the tract(s) associated with the application for encumbrances on title including but not limited to liens, mortgages, assignments of income, and ingress/egress concerns.

5) Review the case to determine if the deed will result in a mineral severance; creation of a life estate for the grantor, or another party; creation of a joint tenancy or remove one; or in certain scenarios, conveying the land to unrestricted fee status.

6) Request timber resource value from Forestry to include with appraisal request, if applicable

Transactions may result in a unique circumstance that requires coordination with other BIA program offices to move forward.

5.6 Valuation

Each transaction must have one of the following to comply with the regulatory appraisal requirement, as updated by the amendments to ILCA:

1) An appraisal;

2) An estimate of value, sometimes titled a land worth statement, signed by the grantor, wherein the grantor waives the right to an appraisal and chooses to proceed with the conveyance using just an estimate of value; or

3) A waiver of estimate of value, signed by the grantor, when applicable. However, it may only be used when the grantee(s) meet the categories within 25 U.S.C. § 2216(b)(1)(B):
    - to an Indian person who is the owner's spouse, brother, sister, lineal descendent, or collateral heir; or
    - to an Indian co-owner or to the Tribe w/jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents five (5) percent or less of the parcel.

As a part of the 10 day comprehensive review, Realty staff must determine if an appraisal is needed to determine the FMV of the property and request the appraisal(s) from the following:

- AVSO for surface appraisals; and
- DME for mineral appraisals, if applicable

Tribes that contract their own appraisals or have their own appraisers on staff must contact AVSO before working on the appraisal and will submit the completed appraisal report to AVSO for their review and concurrence. It is important that the landowner is advised that BIA does not have any control over the timeliness of the completion of appraisal requests.

Generally, if there is an existing appraisal report dated two (2) years or more, you can submit a request to AVSO for a consultation of market conditions referred to as a consultation memorandum. The consultation memorandum is an assessment to determine whether that same appraisal report can be used, or if a new appraisal will be necessary to reflect the current market conditions.

5.7 Environmental Compliance

Federal actions such as a conveyance, that may require NEPA compliance, will be reviewed on a case-by-case basis. The Responsible Official will make the determination on whether the action requires NEPA review based on recommendations from the RES and/or Regional NEPA Coordinator. Expertise in NEPA compliance can usually be found at the local agency and/or regional office. DOI NEPA regulations may be found at 43 CFR Part 46; DOI also provides guidance on implementing these regulations through an accompanying DOI Handbook of NEPA

Implementing Procedures. Realty staff are encouraged to check with the Tribe for additional requirements.

BIA environmental staff conduct a review to ensure NEPA documents address the federal action and its potential environmental and adverse impacts, and that the document follows all applicable federal environmental, land use, historic preservation, and cultural resource laws and ordinances. Additionally, staff should verify that the environmental document has been signed by the appropriate authorizing officials, and that the document is not older than five (5) years. If the document is more than five (5) years old, then an updated environmental document may need to be prepared.

Additionally, archeological compliance is required by Section 106 of the NHPA and its implementing regulations at 36 CFR Part 800. Federal undertakings carried out, funded, or authorized by the BIA must undergo Section 106 review to determine whether the project may affect historic properties, including sites of cultural religious or historical significance to Tribes.

The property may be inventoried for any potential cultural and/or historic remains, consistent with the identification stage of the Section 106 process under 36 CFR 800. This review is initiated by submitting a *Section 106 Clearance Request* form directly to the BIA Archeology Section. The BIA Regional Archaeologist clearance will determine whether an archaeological inventory is required and will oversee the appropriate level of identification effort. Because the BIA, as the lead federal agency, is responsible for carrying out the full Section 106 process – including defining the APE, consulting with Tribes, evaluating historic properties, and making findings of effect – the request must be submitted as early as possible after the application is received.

Archaeological inventories conducted by the BIA are completed at no cost to the landowner. A landowner may choose to hire a private archaeologist at their own expense; however, any privately prepared inventory reports must follow the BIA's Archaeology standards and is subject to BIA review and approval. Private archaeologists must coordinate with BIA Archaeology staff prior to conducting any field inspection to ensure consistency with federal requirements, Tribal consultation needs, and Section 106 procedural steps.

Realty staff should initiate all requests for NEPA and Section 106 compliance in the Tracking System for NEPA within 30 days of receipt of a complete written request, including:

- All relevant environmental documentation included in the written request must be submitted to the Tracking System for NEPA. Realty staff must update environmental staff on any changes to the written request.
- NEPA and Section 106 compliance for every transaction must be completed by environmental staff in the Tracking System for NEPA. Realty staff are responsible for retrieving and reviewing the documentation from the Tracking System for NEPA.

5.8 Decision

Within three (3) days of receipt of all supporting documents from the applicant and supporting BIA programs, Realty staff must draft a decision including appeal language per 25 CFR Part 2 for Office of the Solicitor (SOL) review and comment.

Within one (1) day of receiving SOL concurrence, the decision must be routed for surname and signature.

After the decision has been approved, promptly address and send the decision to the Tribe and landowners with the following:

1) Tribe
    a. Copy of the appraisal; and
    b. Copy of 25 CFR Part 2 - Appeals from Administrative Decisions.

2) Landowner
    a. Application for the Sale of Indian Land;
    b. Copy of the appraisal;
    c. Landowner Individual/Tribal Interests (ITI) Report with the tract being purchased highlighted;
    d. Copy of 25 CFR Part 2 - Appeals from Administrative Decisions; and
    e. Copy of the 25 U.S.C. § 2204(a) Purchase of trust or restricted fee or controlled lands at no less than fair market value; requisite conditions.

5.9 Landowner/Applicant Response

If the landowner is willing to sell, see Chapter 3 and process the sale as a negotiated sale.

For those landowner(s) who do not respond within the 30 day appeal period, prepare a deed for the delegated authority signature or use a Transfer Order as the deed image if one was obtained.

5.10 Payments

Once the deed package is ready to be submitted for approval, Realty staff will encode the payment into TAAMS and generate an invoice to be delivered for collection of payment from the purchaser. The payment will be made electronically via www.pay.gov. The payment will be matched directly to the invoice.

5.11 Conveyance Document

Within three (3) days of the application being approved the Realty staff will prepare and mail the deed request for landowner signature package (see L13 Deed Request for Signature, L14 Deed

Standard Instruction Letter, F8 Exhibit A Grantor Deed Interest Report, and F14 Exhibit C Grantee Acquired Interests Report). The grantor must sign the deed in the presence of a notary public.

Note: Verify deed contains restriction language pursuant to 25 U.S.C. § 2204(b)(2).

5.12 AOC

Within three (3) days of receipt of signed deed, Realty staff must prepare the Deed for AOC.

The delegated authority has one (1) day to complete an AOC.

Deeds that were properly executed by a grantor and notarized prior to the death of the grantor, may still be approved posthumously, if everything else is completed for the conveyance.

5.13 Recording Documents

This must be initiated as soon as the conveyance is accepted:

1) Realty staff must immediately notify the LTRO that the signed deed and AOC have been submitted for recording.

2) The processing office has the discretion to submit documents for recording in addition to the signed deed and AOC; upon receipt, the LTRO will also record these documents.

3) LTRO must record the signed deed and AOC (and any additional documents) within two (2) business days of receipt of the notice above.

5.14 Case Closeout

Realty staff must initiate this as soon as LTRO records the conveyance:

1) Provide a Notice of Approval to the Tribe, in writing, that includes an Individual Tribal Interest Report.

2) Provide a Notice of Approval to each Landowner, in writing, that includes an Individual Tribal Interest Report.

3) Return the original recorded documents to the office that is responsible for maintaining custody of the record in accordance with the BIA records schedule.

4) Close out the electronic case file.

Chapter 6: Patents in Fee

A Patent in fee conveyance is a land patent that grants title to the land in fee simple.

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application. Realty staff should submit a request for the issuance of the fee patent, including a copy of the probate order by which the non-Indian inherited. For a patent in fee that is the result of a Probate start at section 6.9 Request Patent in Fee.

Except in the cases noted above, patents in fee for undivided interests in lands held in multiple ownership, where the balance remains in trust will not be issued.

For a period of five (5) years after the Secretary approves a conveyance pursuant to 25 U.S.C. § 2216(b)(2), the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

6.1 Process

The procedure, documents, and timeframes in this section outline the process for Realty staff to process patents in fee. The process begins when the applicant contacts Realty staff to initiate a patent in fee transaction.

6.2 Consultation and Application

Process starts upon receipt of an application from an Indian landowner 18 years of age or older, requesting a patent in fee for their trust land.

The grantor is responsible for submitting requests to the BIA agency that has jurisdiction over the land. The agency must interview the grantor to determine intent (see Attachment 1: Consultation Best Practices). The interview may be done in person or over the phone.

After receiving counseling, if the landowner still wishes to proceed, Realty staff will send the application package to the grantor within three (3) days.

All application packages returned to the BIA must include the following:

- Application
- Owner Inventory Interest Summary
- Grantor Waiver of Estimate Value

The applicant may submit any additional information or justification to assist in reaching a decision.

6.3 Acknowledging Receipt of an Application Package

Within 10 days of receipt, Realty staff must complete a comprehensive review of the request, and the authorized BIA official must formally acknowledge receipt of the request.

6.4 Providing Notice of Incomplete

Realty staff will initiate the Notice of Incomplete process if the applicant does not submit any of the required documents within 10 days of determining whether the request is **incomplete**.

Realty staff must identify all missing information or documentation that is required, and materials submitted that do not have appropriate signatures, dates, or other deficiencies that would prevent a complete review of the written request and notify the applicant.

1) Prepare a written notice for the applicant that includes the following information, and send it by certified mail, return receipt requested (see L2 Original 30-Day Notice of Incomplete).
    a. A statement that the written request is incomplete.
    b. Specify what information or documentation was omitted or required and explain why the requested information is necessary.
    c. Notify the applicant that they must provide the omitted or required documentation or information to BIA within 30 days of the applicant's receipt of the written notice.

2) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe, BIA must immediately send the applicant a Final Notice stating that BIA did not receive the information, and the written request will be inactivated and returned within 45 days from receipt of the **original notice** and removed from the active caseload unless the responsive information is received (see L10 Final Notice of Incomplete).

3) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe of the Final Notice, BIA must immediately notify the applicant that the written request has been inactivated and is being returned (see L19 Return of Incomplete Application).

Note: There are no administrative appeal rights for written requests for trust acquisition actions that are inactivated because they are incomplete.

If the applicant requests an extension via letter or email, by letter inform them whether their request for an extension was granted or denied.

6.5 Review of Interest to be Conveyed

6.5.1 Review

Within three (3) days of receipt, Realty Staff will:

1) Verify all accounts in ITSQ are not "Restricted" unless address unknown.
2) Review tract to determine if there are any defects that must be cleared before moving forward.
3) Request a Land Description Review (LDR) from the BILS;
4) Determine if the termination of the trust status may adversely affect the best interest of other Indians, or other Tribes;
5) Review the tract(s) associated with the application for encumbrances on title including but not limited to liens, mortgages, assignments of income, and ingress/egress concerns;
6) Request timber resource value from Forestry to include with appraisal request, if applicable; and
7) Review TAAMS IDs and request global ID change from LTRO, if applicable.

6.5.2 Land Description

A metes-and-bounds land description may require a survey.

6.5.3 Tribe Notice

Within three (3) days of receipt, Realty staff will prepare a written notice to the Indian Tribe with jurisdiction to be sent certified mail, return receipt requested and a courtesy copy to the applicant that includes the following information:

- Purchase price offered in the application if any;
- Appraised value or an estimate of the value of the property; and
- Notify the Tribe that they must respond to BIA within 60 days of the written notice.

If no response is received within 60 days or the Tribe responds within 60 days stating that they do not wish to purchase the property, the agency may continue processing the fee patent application.

If the applicant is claiming the Family Farm Exception, the Tribe is still notified of the proposed action, and the BIA may continue to process the fee patent application.

If the Tribe responds by indicating that they wish to exercise their right to purchase, within three (3) days, Realty staff will notify the applicant of the Tribe's intent by creating a case in TAAMS and initiating the process as a negotiated sale as outlined in Chapter 3 of this handbook.

6.6 Valuation

Each transaction must have one of the following to comply with the regulatory appraisal requirement, as updated by the amendments to ILCA:

a. An appraisal;

b. An estimate of value, sometimes titled a land worth statement, signed by the grantor, wherein the grantor waives the right to an appraisal and chooses to proceed with the conveyance using just an estimate of value; or

c. A waiver of estimate of value, signed by the grantor, when applicable. However, it may only be used when the grantee(s) meet the categories within 25 U.S.C. § 2216(b)(1)(B):
    - to an Indian person who is the owner's spouse, brother, sister, lineal descendent, or collateral heir; or
    - to an Indian co-owner or to the Tribe w/jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents five (5) percent or less of the parcel.

As a part of the 10 day comprehensive review, Realty staff must determine if an appraisal is needed to determine the FMV of the property and request the appraisal(s) from the following:

- AVSO for surface appraisals; and
- DME for mineral appraisals, if applicable.

Tribes that contract their own appraisals or have their own appraisers on staff must contact AVSO before working on the appraisal and will submit the completed appraisal report to AVSO for their review and concurrence. It is important that the landowner is advised that we do not have any control over the timeliness of the completion of appraisal requests.

Generally, if there is an existing appraisal report dated two (2) years or more, you can submit a request to AVSO for a consultation of market conditions referred to as a consultation memorandum. The consultation memorandum is an assessment to determine whether that same appraisal report can be used, or if a new appraisal will be necessary to reflect the current market conditions.

6.7 Environmental Compliance

Federal actions such as a conveyance, that may require NEPA compliance, will be reviewed on a case-by-case basis. The Responsible Official will make the determination on whether the action requires NEPA review based on recommendations from the RES and/or Regional NEPA

Coordinator. Expertise in NEPA compliance can usually be found at the local agency and/or regional office. DOI NEPA regulations may be found at 43 CFR Part 46; DOI also provides guidance on implementing these regulations through an accompanying DOI Handbook of NEPA Implementing Procedures. Realty staff are encouraged to check with the Tribe for additional requirements.

BIA environmental staff conduct a review to ensure NEPA documents address the federal action and its potential environmental and adverse impacts, and that the document follows all applicable federal environmental, land use, historic preservation, and cultural resource laws and ordinances. Additionally, staff should verify that the environmental document has been signed by the appropriate authorizing officials, and that the document is not older than five (5) years. If the document is more than five (5) years old, then an updated environmental document may need to be prepared.

Additionally, archeological compliance is required by Section 106 of the NHPA and its implementing regulations at 36 CFR Part 800. Federal undertakings carried out, funded, or authorized by the BIA must undergo Section 106 review to determine whether the project may affect historic properties, including sites of cultural religious or historical significance to Tribes.

The property may be inventoried for any potential cultural and/or historic remains, consistent with the identification stage of the Section 106 process under 36 CFR 800. This review is initiated by submitting a *Section 106 Clearance Request* form directly to the BIA Archeology Section. The BIA Regional Archaeologist clearance will determine whether an archaeological inventory is required and will oversee the appropriate level of identification effort. Because the BIA, as the lead federal agency, is responsible for carrying out the full Section 106 process – including defining the APE, consulting with Tribes, evaluating historic properties, and making findings of effect – the request must be submitted as early as possible after the application is received.

Archaeological inventories conducted by the BIA are completed at no cost to the landowner. A landowner may choose to hire a private archaeologist at their own expense; however, any privately prepared inventory reports must follow the BIA's Archaeology standards and is subject to BIA review and approval. Private archaeologists must coordinate with BIA Archaeology staff prior to conducting any field inspection to ensure consistency with federal requirements, Tribal consultation needs, and Section 106 procedural steps.

Realty staff should initiate all requests for NEPA and Section 106 compliance in the Tracking System for NEPA within 30 days of receipt of a complete written request, including:

- All relevant environmental documentation included in the written request must be submitted to the Tracking System for NEPA. Realty staff must update environmental staff on any changes to the written request.
- NEPA and Section 106 compliance for every transaction must be completed by environmental staff in the Tracking System for NEPA. Realty staff are responsible for retrieving and reviewing the documentation from the Tracking System for NEPA.

6.8 Application Approval

Within three (3) days of receipt of all application supporting documents from the applicant and supporting BIA programs, Realty staff must review and complete the Application Checklist.

If the applicant refuses to sell their land or interest in land to the Tribe, or the applicant does not respond within 30 days from the date of the letter notifying them of the Tribe's intent to purchase, they will be notified, by certified mail, of our decision to disapprove their fee patent application and will be provided with their appeal rights, pursuant to 25 CFR Part 2. The applicant continues to own the land in trust.

If the delegated authority disapproves an application, the grantor must be notified in writing, and the decision must include appeal language per 25 CFR Part 2 (see L9 Disapproval Letter).

6.9 Request Patent in Fee

Within three (3) days of the application being approved, Realty staff must draft a letter to BLM stating that a land sale has been approved and BIA is requesting that a patent in fee be issued to the applicant, that includes the following information:

- Date;
- Correct legal name to be listed on the Patent;
- Act under which the conveyance is made;
- Land description and the interest being conveyed;
- Reservations, terms, conditions, restrictions, and covenants, if any; and
- Encumbrances, if any.

After the letter has been signed, promptly address and send the letter to the BLM State Director with jurisdiction.

6.10 Recording Documents

This must be initiated as soon as the fee patent is received:

1) Realty staff must immediately notify LTRO that the patent has been submitted for recording.

2) LTRO must record the patent within two (2) business days of receipt of the notice above.

6.11 Case Closeout

Realty staff must initiate this as soon as LTRO records the conveyance:

1) Provide a letter to the applicant that includes the following:

a. Original patent;

b. A request to have the original patent recorded with the County; and

c. An updated Individual Tribal Interest Report showing that the land interest in the patent is no longer shown on the report.

2) Provide a letter to BLM that includes the LTRO recorded patent.

3) Return the original recorded documents to the office that is responsible for maintaining custody of the record in accordance with the BIA records schedule.

4) Close out the electronic case file.

Chapter 7: Removal of Restrictions

Removal of restrictions is conveyance that grants title to the land in fee simple removing the restricted fee status.

For a period of five (5) years after the Secretary approves a conveyance pursuant to 25 U.S.C. § 2216(b)(2), the Secretary shall not approve an application to terminate the trust status or remove the restrictions of such an interest.

7.1 Process

The procedure, documents, and timeframes in this section outline the process for Realty staff to process removal of restrictions. The process begins when the intended grantor contacts Realty staff to initiate a removal or restrictions transaction. Document all activities within the TAAMS A&D Module within three (3) days of receipt of information, including scanning all documents into the case.

7.2 Consultation and Application

Process starts upon receipt of an application from an Indian landowner requesting removal of restrictions for their restricted fee land.

The grantor is responsible for submitting requests to the BIA agency that has jurisdiction over the land. The agency must interview the grantor to determine intent (see Attachment 1: Consultation Best Practices). The interview may be in person or over the phone. A grantee interview is not required but contact may be needed to validate and verify their information to complete the transaction.

After receiving counseling, if the landowner still wishes to proceed, Realty staff will encode a new case in TAAMS and generate the application package to mail to the grantor within three (3) days.

All application packages returned to the BIA must include the following:

- Application
- Owner Inventory Interest Summary
- Grantor Waiver of Estimate Value

The applicant may submit any additional information or justification to assist in reaching a decision.

7.3 Acknowledging Receipt of an Application Package

Within 10 days of receipt, Realty staff must complete a comprehensive review of the request, and the authorized BIA official must formally acknowledge receipt of the request.

7.4 Providing Notice of Incomplete

Realty staff will initiate the Notice of Incomplete process if the applicant does not submit any of the required documents within 10 days of determining whether the request is **incomplete**.

Realty staff must identify all missing information or documentation that is required, and materials submitted that do not have appropriate signatures, dates, or other deficiencies that would prevent a complete review of the written request and notify the applicant.

1) Prepare a written notice for the applicant that includes the following information, and send it by certified mail, return receipt requested (see L2 Original 30-Day Notice of Incomplete).
    a) A statement that the written request is incomplete.
    b) Specify what information or documentation was omitted or required and explain why the requested information is necessary.
    c) Notify the applicant that they must provide the omitted or required documentation or information to BIA within 30 days of the applicant's receipt of the written notice.

2) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe, BIA must immediately send the applicant a Final Notice stating that BIA did not receive the information, and the written request will be inactivated and returned within 45 days from receipt of the **original notice** and removed from the active caseload unless the responsive information is received (see L10 Final Notice of Incomplete).

3) If the applicant does not provide the omitted or required documentation or information to BIA within the noted timeframe of the Final Notice, BIA must immediately notify the applicant that the written request has been inactivated and is being returned (see L19 Return of Incomplete xx Application).

Note: There are no administrative appeal rights for written requests for trust acquisition actions that are inactivated because they are incomplete.

If the applicant requests an extension via letter or email, by letter inform them whether their request for an extension was granted or denied.

7.5 Review of Interest to be Conveyed

Within 10 days of receipt, Realty staff will:

1) Determine if the termination of the restricted fee status may adversely affect the best interest of other Indians, or other Tribes.

2) Review tract to determine if there are any defects that must be cleared before moving forward.

3) Verify all accounts in ITSQ are not "Restricted" unless address unknown.

4) Review the tract(s) associated with the application for encumbrances on title including but not limited to liens, mortgages, assignments of income, and ingress/egress concerns.

5) Review TAAMS IDs and request global ID change from LTRO, if applicable.

7.6 Environmental Compliance

Federal actions such as a conveyance, that may require NEPA compliance, will be reviewed on a case-by-case basis. The Responsible Official will make the determination on whether the action requires NEPA review based on recommendations from the RES and/or Regional NEPA Coordinator. Expertise in NEPA compliance can usually be found at the local agency and/or regional office. DOI NEPA regulations may be found at 43 CFR Part 46; DOI also provides guidance on implementing these regulations through an accompanying DOI Handbook of NEPA Implementing Procedures. Realty staff are encouraged to check with the Tribe for additional requirements.

BIA environmental staff conduct a review to ensure NEPA documents address the federal action and its potential environmental and adverse impacts, and that the document follows all applicable federal environmental, land use, historic preservation, and cultural resource laws and ordinances. Additionally, staff should verify that the environmental document has been signed by the appropriate authorizing officials, and that the document is not older than five years. If the document is more than five years old, then an updated environmental document may need to be prepared.

Additionally, archeological compliance is required by Section 106 of the NHPA and its implementing regulations at 36 CFR Part 800. Federal undertakings carried out, funded, or authorized by the BIA must undergo Section 106 review to determine whether the project may affect historic properties, including sites of cultural religious or historical significance to Tribes.

The property may be inventoried for any potential cultural and/or historic remains, consistent with the identification stage of the Section 106 process under 36 CFR 800. This review is initiated by submitting a *Section 106 Clearance Request* form directly to the BIA Archeology Section. The BIA Regional Archaeologist clearance will determine whether an archaeological inventory is required and will oversee the appropriate level of identification effort. Because the BIA, as the lead federal agency, is responsible for carrying out the full Section 106 process – including defining the APE, consulting with Tribes, evaluating historic properties, and making findings of effect – the request must be submitted as early as possible after the application is received.

Archaeological inventories conducted by the BIA are completed at no cost to the landowner. A landowner may choose to hire a private archaeologist at their own expense; however, any privately prepared inventory reports must follow the BIA's Archaeology standards and is subject to BIA review and approval. Private archaeologists must coordinate with BIA Archaeology staff prior to conducting any field inspection to ensure consistency with federal requirements, Tribal consultation needs, and Section 106 procedural steps.

Realty staff should initiate all requests for NEPA and Section 106 compliance in the Tracking System for NEPA within 30 days of receipt of a complete written request, including:

- All relevant environmental documentation included in the written request must be submitted to the Tracking System for NEPA. Realty staff must update environmental staff on any changes to the written request.
- NEPA and Section 106 compliance for every transaction must be completed by environmental staff in the Tracking System for NEPA. Realty staff are responsible for retrieving and reviewing the documentation from the Tracking System for NEPA.

7.7 Application Approval

Within three (3) days of receipt of all application supporting documents from the applicant and supporting BIA programs, Realty staff must review and complete the Application Checklist.

If the delegated authority disapproves an application, the grantor must be notified in writing, and the decision must include appeal language per 25 CFR Part 2 (see L9 Disapproval Letter).

7.8 Request Unrestricted Conveyance Document

Within three (3) days of application approval, Realty staff must draft a letter to BLM stating the application has been approved and that the BIA is requesting that an unrestricted deed be issued to the applicant, that includes the following information:

- Legal name to be listed on the unrestricted deed;
- Land description; and
- Encumbrances.

After the letter has been signed, promptly address and send the letter to the BLM state director.

7.9 Recording Documents

This must be initiated as soon as the deed is received:

1) Realty staff must immediately notify LTRO that the deed has been submitted for recording.

2) LTRO must record the deed within two (2) business days of receipt of the notice above.

7.10 Case Closeout

Realty staff must initiate this as soon as LTRO records the conveyance:

1) Provide a letter to the applicant that includes the following:
    a. Deed;
    b. A request to have the deed recorded with the County; and
    c. An updated Individual Tribal Interest Report showing that the land interest in the deed is no longer shown on the report.

2) Provide a letter to BLM that includes the LTRO recorded patent.

3) Return the original recorded documents to the office that is responsible for maintaining custody of the record in accordance with the BIA records schedule.

4) Close out the electronic case file.

Chapter 8: Case Management and Administrative Appeals

8.1 Special Interest Holder Relinquishment

Generally, relinquishment of special interests are handled through a process similar to that of a Gift Conveyance, see section 1.4 for Types of Special Interests.

1) The special interest holder, also known as the grantor, is responsible for submitting a request to the BIA agency that has jurisdiction over the land. The agency shall interview the grantor to determine intent (see Attachment 1: Consultation Best Practices). The interview may be in person or over the phone.

2) If the grantor did not appear in person, within three (3) days of receipt of a request to relinquish a special interest, Realty staff must complete a review of the request, and the authorized BIA official must formally acknowledge receipt of the request. This formal acknowledgement of receipt must be in writing to the special interest holder.

3) If, after counseling, the grantor chooses to proceed, Realty staff will prepare the deed for signature. If the grantor did not appear in person, the deed must be mailed within three (3) days.

4) The delegated authority has one (1) day to sign the AOC once the signed deed is received.

5) Recordation of documents must be initiated as soon as the conveyance is accepted.

6) LTRO must record the signed deed, AOC, and any additional documents within two (2) business days of receipt of the notice to record.

8.2 Upon Death of a Special Interest Holder

Special interests that may need to be updated include:

- Life Estate
- Joint Tenancy
- Curtesy
- Dower

If BIA Realty is the office notified about the death of a special interest holder, they will provide the contact information of individual who contacted them to the local Probate Office.

8.3 Partition Request

An individual that requests to partition their land will need to contact the other landowners regarding their intent and if all landowners are in agreement they will need to contact the BIA for an application.

8.4 Miscellaneous Fees

8.4.1 Administrative Fee

The amount of the administrative fee shall be $22.50 for each A&D/conveyance transaction. The fee may be reduced to a lesser amount or may be waived, if the Superintendent determines circumstances justify such action. If any or all of the costs of the work performed or expenses incurred are paid with Tribal funds, an alternate schedule of fees may be established, subject to approval of the Secretary. When the grantee is the Tribe which bears all or any part of such costs, the collection of the proportionate share from the Tribe may be waived.

Realty staff will encode the fee into TAAMS and generate an invoice to be delivered for collection of payment from the applicant. The payment will be made electronically via www.pay.gov. The payment will be matched directly to the invoice.

8.4.2 Irrigation Fee

Collection of construction costs for Indian owned lands in an irrigation project are deferred as long as Indian title has not been extinguished. When a person acquires the land in fee status, the grantee must enter into an agreement for the pro rata share of the construction of the project chargeable to the land. Operation and Maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale. A lien covering all unpaid construction costs, past and future, will be inserted in the patent or deed.

8.4.3 Water Contract Requirements

Realty staff will coordinate with their Regional Realty Officer, Natural Resources Officer, and SOL, as needed.

8.5 Modifications

Refer to 52 IAM 7, Corrective Deeds and Affidavits, for guidance. How the action will be completed will also depend on where the case is at in the TAAMS process. Special circumstances not addressed in 52 IAM 7 can be reviewed with the BIA regional office for assistance.

8.6 Withdrawals

If the grantee or the grantor, or both, decide to withdraw their interest and no longer wish to proceed with the request, an L21 Voluntary Cancellation/Withdraw Letter for either an Application or Deed should be generated and mailed.

8.7 Administrative Appeals

A decision is not considered a final agency action until administrative remedies are exhausted under 25 CFR Part 2 and under 43 CFR Part 4, subpart D, or until the time for filing a notice of appeal has expired and no administrative appeal has been filed. Administrative appeals are governed by 25 CFR Part 2 and by 43 CFR Part 4, subpart D.

The administrative appeal period begins on:

- the date of receipt of written notice by the applicant or interested parties entitled to notice or;
- the date of first publication of the notice for unknown interested parties.

Any party who wishes to seek judicial review of an official's decision must first exhaust administrative remedies under 25 CFR Part 2 and under 43 CFR Part 4, subpart D.

The decision-maker must compile an administrative record in order to defend a decision on an appeal before the Regional Director or IBIA. The DOI SOL issued an internal memorandum on June 27, 2006, providing standardized guidance on compiling Decision Files and Administrative Records. This guidance establishes uniform procedures for Bureaus and Offices within DOI for preparing these records. Please contact the SOL for any applicable revisions or updates.

The RD will issue a decision on an appeal from a decision within 90 days of receipt of all pleadings. A decision from IBIA may take longer.

The regulations at 25 CFR 2.213 and 43 CFR 4.335 require the BIA to assemble and transmit the record within 20 days after receipt of a notice of appeal or upon request or notice from the decision maker or the IBIA.

The following is key guidance for preparing an administrative record:

1) Assemble the Administrative Record
    - It is best to assemble the administrative record during the course of decision making rather than after the fact upon receipt of a notice of appeal.
    - Consists of original documentation (not photocopies).
    - Documents are to be placed in reverse chronological order by date issued or date received with the most recent document on top.
    - All documents should be single sided without staples, dated, and legible.
    - Each document must be individually separated and tabbed with the number corresponding to the index.

2) Prepare an Index

    - An index references the contents of the administrative record.
    - Each document tab number in the folder must correspond to the number on the index.
    - Enter the document date, the subject matter, and the number of pages of each document.
    - No document should be added or removed from the administrative record.
    - Any additional pre-decisional documents discovered after the administrative record has been submitted should be sent to the SOL for possible supplementation to the administrative record.
    - Include a privilege log for all privileged materials and indicate the material withheld or redacted and a brief justification.

3) SOL Review/Approval

    - Send a paper copy (not electronic) of the administrative record with the index to the SOL for review/approval.
    - After the administrative record is approved, prepare exact duplicates for the office's use as a working file while the matter is under appeal, and for the SOL use in handling the appeal.

If any other office is involved, prepare a duplicate file for that office.

8.7.1 Appeal Decision and Files Management

The BIA will maintain the record on its decision to approve or deny an application. Even if a BIA letter is not classified as a decision, it may be considered a decision if it has the effect of denying relief to an appellant or otherwise adversely affecting someone.

Additionally, all Realty staff responsible for establishing an administrative record must follow the guidance related to documentation and file management:

- Written contemporary records are preferable to reconstructed statements.
- A Log Sheet should be created for each file to document activities associated with the file/project.
- **ONLY** include the records that were considered directly or indirectly by the approving official when he/she made the decision.
- The decision should appear in the first paragraph of the decision letter.
- A decision should be clearly identified as a decision.

- A decision should be distinguished from other forms of communication, such as an informational letter.
- The subject matter of the decision should be clearly described.
- After discussion, explain the ruling in more detail if appropriate.
- The end of the decision must inform the addressee of procedures for appeal under 25 CFR Part 2 and include the language provided in 25 CFR 2.104.

If BIA cannot find an address for a non-Indian, the person's name must be included on the distribution list, and their address should be typed as "unknown." If the person is an Indian and their address is unknown or in estate, a copy of the decision letter is sent in "care of" the Superintendent at their home agency.

For all known addresses, unknown addresses, and addresses in care of the Superintendent, the Agency will prepare a letter. The distribution list, which can be obtained from TAAMS, must be typed out and attached to the decision under cc: See Distribution List.

When preparing the Administrative Record, **DO NOT** include the memorandum requesting the Administrative Record.

Definitions

Aggregated Owner Interests. The total ownership interest is held by an individual landowner.

Applicant. Individual or Tribe applying for an acquisition or disposal land transaction.

Appraisal. is the process of determining the fair market value of a property.

Beneficial Interest. The right to receive the benefits from the land.

Beneficial Interest Landowner. Someone who financially benefits from land tract.

Beneficiary. An individual Indian or a Tribe who is eligible to receive funds, land, or other assets held in trust by the United States

Contingent Life Estate. An individual who wishes to reserve a life estate when they acquire property; however, they do not own the property now.

Contingent Remainderman. A person, or class of people, whose right to receive the remainder estate is not certain but is based upon the happening of a future event, such as living longer than the life tenant.

Conveyance. The transfer of ownership of property from one person to another and the document by which this is effected.

Deed. A deed is a legal instrument used for the conveyance of land or an interest in land.

Encumbrance. A claim against a property made by a party who is not the property owner.

Escrow Payment. Payment made through a third party such as an escrow company. The third party needs the approved deed to complete the sale.

Estate. The trust or restricted fee land and trust personalty owned by the decedent at the time of death.

Estate Planning. The process of arranging one's affairs to carry out personal wishes for property or financial distribution.

Fee Land aka Fee Simple Patent. Title is held completely by the individual Indian owner. The land is no longer held in trust and no longer restricted. The owner can sell, mortgage, lease, or otherwise convey the land without federal oversight.

Forced Partition - Effectively subdivides a tract to create one or more economic parcels, upon the application of any one trust owner.

Fractionated Interest. Is an undivided ownership “share” in a tract of land or minerals, not a physically identifiable portion of the property.

Government Payment. Payment made by a federal agency. The federal agency must have an approved deed before it can send funds to the Lockbox.

Grantee. The person or Tribe to whom a grant is made.

Grantor. One that conveys property or a right in property by deed. Must be 18 years of age. Must be competent.

Indian. (A) any person who is a member of any Indian Tribe, is eligible to become a member of any Indian Tribe, or is an owner (as of October 27, 2004) of a trust or restricted fee interest in land; (B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479)[17] and the regulations promulgated thereunder; and (C) with respect to the inheritance and ownership of trust or restricted fee land in the State of California pursuant to section 2206 of this title, any person described in subparagraph (A) or (B) or any person who owns a trust or restricted fee interest in a parcel of such land in that State.

Indian Land Consolidation Payment. Payments made by the Bureau of Trust Funds Administration with an internal transfer of funds coming from an existing Trust Fund Accounting System account. Deeds must be approved and recorded for internal transfer to occur.

Individual. Means a natural person.

Joint Tenancy. A tenancy with two or more co-owners who take identical interests simultaneously by the same instrument and with the same right of possession. Example: John and Jerry own land in joint tenancy with the right of survivorship. Each owns half of the entire (undivided) property. Upon John's death, Jerry will, by operation of law, receive John's trust or restricted fee interests, and vice versa should Jerry decease first.

Land Patent. An instrument by which the government conveys a grant of public land to a private person.

Life Estate. A person has the right to use the land during his or her lifetime. The life estate holder will receive the income from that land. *Example:* John holds a life estate interest with Jerry being the remainderman. Upon John's death his beneficial interest (life estate), automatically transfers to Jerry, as the remainderman, without the need to go through the probate process. Jerry then owns both the title and beneficial interests; title is merged, and the life estate

[17] The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian Tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "Tribe" wherever used in this Act shall be construed to refer to any Indian Tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years. (June 18, 1934, ch. 576, §19, 48 Stat. 988.)

is extinguished.

Life Estate Without Regard to Waste. Holder of the life estate interest in land is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

Partition. The division of property, held jointly or in common, allowing owners to hold their shares independently. When completed, each landowner will have complete title to an individual lot from the original property.

Patent in Fee. Title is held completely by the individual Indian owner. The land is no longer held in trust and no longer restricted. The owner can sell, mortgage, lease, or otherwise convey the land without federal oversight.

Person. Means a natural person.

Quit Claim. The deed form used when there are clouds on the title, questionable legal descriptions, or to clear defects not covered in 52 IAM 7.

Remainderman. A person who holds or is entitled to receive a remainder *or* the person entitled to a beneficial interest in the property upon the extinguishment of the life estate. We refer to this as a "title only" interest.

Restricted Fee Land (also known as Restricted Fee Patent). Title is held by the individual Indian owner, *not* the U.S., but the land is subject to federal restrictions on sale or encumbrance. Still requires federal approval for most transactions. The difference from a trust patent is essentially who holds title (U.S. vs. individual), while the restrictions remain.

Right of Survivorship. a legal structure where two or more parties share ownership of a financial account or another asset. When one of the joint owners dies, their share automatically passes to the surviving co-owner(s).

Segregated Owner Interests. Creation of distinct legal or financial units (like separate leases or IIM accounts) to ensure that the individual interests of Indian landowners are preserved and managed according to specific rules and regulations, especially in situations where different parts of a property are subject to different agreements or different individuals hold distinct shares.

Tenancy in Common. A tenancy by two or more people, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. Example: John and Jerry own land as tenants in common. Each owns half of the entire (undivided) property. Upon the death of either co-tenant, their legal heirs/devisees will inherit their trust or restricted fee interests.

Termination of Life Estate. When the life estate holder relinquishes their interest in trust or restricted fee property; or when a notice of death is received and recorded for the life estate holder.

Trust Patent. Title is held by the United States in trust for the Indian owner. The individual has beneficial ownership, but cannot sell, encumber, or otherwise convey the land without federal approval. This is the most federally protected status.

Title Interest. Ownership interests in land held in trust or restricted fee status by the U.S. government for individual Indians or Tribes.

Undivided Interest. Fractional share in the ownership of Indian land, where the land is held in common by multiple Indian landowners or fee owners. This means no individual owner has a defined, exclusive portion of the land; rather, they all share ownership of the whole.

Voluntary Partition. Division of trust land whereby all landowners are in mutual agreement to the partition. 100% consent is required; the partition must be feasible, equitable, accessible, and beneficial to all landowners.

Warranty Deed. The deed form used by the BIA when there are no issues or defects on the title and when the conveyance has direct authority by an Act of Congress.

Acronyms

AIPRA	American Indian Probate Reform Act of 2004
AOC	Acceptance of Conveyance
APE	Area of Potential Effects
AVSO	Appraisal and Valuation Services Office
BIA	Bureau of Indian Affairs
BILS	BLM Indian Land Surveyor
BLM	Bureau of Land Management
CATEX	Categorical Exclusion
CFR	Code of Federal Regulations
DM	Departmental Manual
DOI	Department of the Interior
DRES	Division of Real Estate Services
ESA	Environmental Site Assessment
FMV	Fair Market Value
GIS	Geographic Information System
GLO	General Land Office
IA	Indian Affairs
IAM	Indian Affairs Manual
ILCA	Indian Land Consolidation Act
IRA	Indian Reorganization Act
LDR	Land Description Review
LE	Life Estate
LTRO	Land Titles and Records Office
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
POA	Power of Attorney
ROW	Right-of-Way
SOL	Office of the Solicitor
SOP	Standard Operating Procedure
TAAMS	Trust Asset and Accounting Management System
TSR	Title Status Report

Attachment 1: Consultation Best Practices

A. Consultation Format.

Consultation may be in person or over the phone and should be attended by two (2) BIA staff members. BIA must document the consultation for the case file.

B. Information to Convey.

Realty staff must adequately counsel the landowner so they are aware of all options available to them and so they understand the effects and finality of the action they select. Highlight that once the land is conveyed, the grantor cannot get it back and any lease or permit income derived from the land will cease. This time is also used to confirm the landowner's intention regarding minerals and a life estate.

As part of the counseling process, verify any encumbrances not on title, and whether they will be conveyed along with the land. If there are any encumbrances, consult with the regional BIA office, as needed.

During counseling we can also look for any signs of undue influence or duress imposed on the grantor by others. The counseling can also assist BIA in making the best-interest determination.

Realty staff should counsel in regard to options such as Life Estate, Tenants in Common, and Joint Tenants with rights to survivorship.