

INDIAN AFFAIRS MANUAL

Part 52

Real Estate Services

Chapter 15

Off-Reservation Fee-to-Trust Decisions

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- 1.1 Purpose.** This chapter establishes the authorities, policy, and processes for reviewing and approving off-reservation fee-to-trust acquisitions.
- 1.2 Scope.** This policy applies to all employees of the Bureau of Indian Affairs (BIA) involved in the review and approval of off-reservation fee-to-trust acquisitions under 25 CFR 151.11. It does not affect any delegations of authority issued by BIA Regional Directors (RDs) to subordinate officials (as documented in 3 IAM 4). Nor does it affect the existing authority of BIA RDs to review and determine requests for non-gaming discretionary or mandatory on-reservation fee-to-trust acquisition requests.
- 1.3 Policy.** The delegated authority to issue decisions on all requests for off-reservation fee-to-trust acquisitions remains with the Office of the Assistant Secretary – Indian Affairs (AS-IA). This includes the authority to decide requests for mandatory and discretionary off-reservation fee-to-trust acquisitions, regardless of whether such requests are gaming-related or not.
- 1.4 Authority.**
- A. Statutes and Regulations.**
- 1) 25 U.S.C. §§ 5101 – 5129, The Indian Reorganization Act of 1934, as amended
 - 2) 25 U.S.C. § 409a, Sale of restricted lands; reinvestment in other restricted lands
 - 3) 25 U.S.C. § 1466 and § 1495, Land and personal property title
 - 4) 42 U.S.C. §§ 4321-4370h, National Environmental Policy Act of 1969
 - 5) 25 CFR 151, Land Acquisitions
- B. Policy.**
- 1) 602 DM 2, Real Property Pre-Acquisition Environmental Site Assessments: Environmental Due Diligence, October 12, 2016
- C. Handbooks.**
- 1) BIA Fee-to-Trust Handbook, June 28, 2016

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1.5 Responsibilities.

- A. **AS- IA** is responsible for issuing decisions on all requests for off-reservation fee-to-trust acquisitions. This includes the authority to decide requests for mandatory and discretionary off-reservation fee-to-trust acquisitions, regardless of whether such requests are gaming-related or not.
- B. **Deputy Bureau Director (DBD), Office of Trust Services (OTS)** is responsible for collecting, docketing, and conveying all requests for off-reservation fee-to-trust acquisitions, administrative records, and associated notices of availability for environmental compliance documents to the AS-IA.
- C. **RDs** are responsible for complying with Indian Affairs (IA) and Department of the Interior (Department) policy and procedures for fee-to-trust acquisitions, including all requirements for records management and related responsibilities, and any other policy and procedures as applicable.
- D. **Associate Solicitor, Division of Indian Affairs (DIA), Office of the Solicitor (SOL)** is responsible for reviewing and concurring with field or regional SOL opinions submitted to him/her on contiguity, on mandatory authority, and on whether a Tribe was “under federal jurisdiction” in 1934 under Section 19 of the Indian Reorganization Act for purposes of non-mandatory fee-to-trust applications.

1.6 Definitions.

- A. **Indian reservation** has the meaning assigned to it by 25 CFR 151.2: “Unless another definition is required by the act of Congress authorizing a particular trust acquisition, Indian reservation means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, Indian reservation means that area of land constituting the former reservation of the tribe as defined by the Secretary.”
- B. **Off-reservation** means land that is not “on reservation.” See 25 CFR 151.11.
- C. **On-reservation** means land that is within or contiguous to an Indian reservation. If a question arises whether property that is the subject of a particular fee-to-trust application qualifies as contiguous, an opinion should be requested from the appropriate field or regional SOL. The RD will submit an electronic copy of the field or regional SOL’s opinion on contiguity to the Associate Solicitor, DIA for his or her review and concurrence before the application in question can move forward.

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1.7 Standards, Requirements, and Procedures. The following describes the steps necessary to process discretionary non-gaming and gaming off-reservation applications and mandatory off-reservation applications.

A. Notice of Receipt of Off-Reservation Applications. When an RD receives any off-reservation fee-to-trust application, or determines that an application is an off-reservation application, the RD will immediately provide notice of the application via electronic mail to the DBD OTS, who will forward the notice to the AS-IA.

B. Processing Discretionary Non-Gaming Off-Reservation Applications.

Discretionary non-gaming off-reservation applications will be processed in accordance with the standard procedures set forth in Steps 1 through 16 of section 3.1.2 of the BIA Fee-to-Trust Handbook and the additional procedures set out below.

1) RD Completion of Steps 1 through 9. Upon providing notice to the DBD OTS of the receipt of a discretionary, off-reservation fee-to-trust application for non-gaming purposes, the RD will complete Steps 1 through 9.

a. With respect to notices of availability for environmental compliance documents issued in accordance with Step 7 (Environmental Compliance Review), RDs will notify the DBD OTS of their intent to issue such notices at least 30 days in advance of issuance.

b. The DBD OTS will immediately forward the RD's notice to the AS-IA.

2) RD Submission of Administrative Record and Summary of Part 151 Factors.

Upon completion of Step 9 (Clearance of Preliminary Title Opinion (PTO) Objections before Notice of Decision (NOD)), the RD will submit both an electronic copy of the entire administrative record to the DBD OTS for all work completed on the application through Step 9.

a. The administrative record must include an index; the complete application package submitted by the applicant; all correspondence with the applicant and interested parties including electronic mail; all documentation showing compliance with Steps 1 through 9; and any other relevant documentation. Incomplete administrative records will be returned to the RD.

b. The RD will ensure the case is entered and up to date in the system of record, the Trust Asset and Accounting Management System (TAAMS) prior to submission to the DBD OTS, including images of documents saved in TAAMS.

c. Additionally, the RD will prepare and submit with the administrative record a

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summary of the 25 CFR Part 151 factors as applied to the application. In no event will the RD submit a recommendation as to whether the application should be approved.

3) AS-IA Completion of Steps 10 and 11. The AS-IA will complete Step 10 (Preparing Analysis and NOD) and Step 11 (Preparing the Publication Notice) upon receipt of the administrative record and summary of the Part 151 factors from the RD.

- a. In the event that the application also contains a request for a reservation proclamation, then the NOD and Federal Register Notice prepared by the AS-IA must reference the reservation proclamation request.
- b. If the AS-IA decides to approve the request, the AS-IA will return the package, NOD, and Federal Register Notice to the RD for completion of Steps 12 through 16. The authority to complete Step 12 (Preparing Final Certificate of Inspection and Possession (CIP)) and Step 13 (Acceptance of Conveyance), which require fieldwork and special expertise, is therefore delegated back to the RD.
- c. If the AS-IA makes a decision to deny an application, the AS-IA must provide notice to the applicant consistent with 25 CFR 151.12, and return the administrative record to the RD for archiving.
- d. Decisions by the AS-IA are final for the Department and are effective immediately. Challenges to the AS-IA's decisions are not subject to administrative review by the Interior Board of Indian Appeals.

4) RD Preparation of Administrative Record Supplement. When an RD is advised of federal court litigation challenging a fee-to-trust decision by the AS-IA, the RD must prepare a supplement to the administrative record within 20 calendar days containing any additional correspondence or work completed by the RD after providing the original package to the AS-IA. The supplement must contain an index and must be provided to the Associate Solicitor, DIA.

C. Processing Discretionary Off-Reservation Gaming Applications. The delegated authority for deciding requests for off-reservation fee-to-trust acquisitions for gaming purposes lies with the AS-IA. The AS-IA will process such applications in coordination with the IA Office of Indian Gaming.

D. Processing Mandatory Off-Reservation Applications. Decisions regarding off-reservation mandatory trust acquisitions will be issued by the AS-IA in accordance with

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the standard procedures set forth in Steps 1 through 12 of Section 3.1.3 of the BIA Fee-To-Trust Handbook and the additional procedures set out below, including entry into TAAMS reflecting the case facts and status.

- 1) **RD Completion of Steps 1 through 6.** Upon notifying the DBD OTS of an off-reservation mandatory application, the RD will be responsible for completing Steps 1 through 6 of Section 3.1.3 of the Fee-to-Trust Handbook. The legal analysis to determine if an acquisition is mandatory, required at Step 2.2, must be prepared by the field or regional SOL, and when completed, sent to the Associate Solicitor, DIA for review and concurrence with the legal analysis.
- 2) **RD Submission of Administrative Record and Summary of Information.** Upon completion of Step 6, the RD will submit both a paper and an electronic copy of the entire administrative record documenting all work completed on the application through Step 6 to the DBD OTS.
 - a. The administrative record must include an index; the complete application package submitted by the applicant; all correspondence with the applicant and interested parties including electronic mail; all documentation showing compliance with Steps 1 through 6; and any other relevant documentation. Incomplete administrative records will be returned to the RD.
 - b. Instead of submitting a draft decision, the RD will prepare and submit a summary of the information required for the Notice of Acquisition. In no event will the RD submit a recommendation as to whether the application should be approved.
- 3) **AS-IA Completion of Step 7.** The AS-IA will complete Step 7 (Preparing Notice of Acquisition) upon receipt of the administrative record and summary of information from the RD.
 - a. If the AS-IA decides to approve the request, the AS-IA will return the package to the RD to complete Steps 8 through 12. The authority to complete Step 8 (Conducting Final Inspection) and Step 9 (Acceptance of Conveyance), which require fieldwork and special expertise, is therefore delegated back to the RD.
 - b. If the AS-IA decides to deny the application, the AS-IA will provide notice to the applicant consistent with 25 CFR 151.12, and return the administrative record to the RD for archiving.
 - c. Decisions by the AS-IA are final for the Department and are effective immediately. Challenges to the AS-IA's decisions are not subject to

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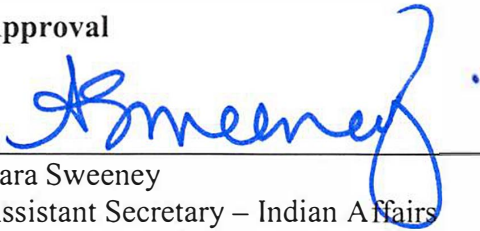
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administrative review by the Interior Board of Indian Appeals.

- 4) **RD Preparation of Administrative Record Supplement.** When an RD is advised of federal court litigation challenging a fee-to-trust decision by the AS-IA, the RD must prepare a supplement to the administrative record within 20 calendar days containing any additional correspondence or work completed by the RD after providing the original package to the AS-IA. The supplement must contain an index and must be provided to the Associate Solicitor, DIA.

Approval



Tara Sweeney
Assistant Secretary – Indian Affairs

AUG - 7 2020

Date