Fee-to-Trust Handbook
Version II

Issue Date: July 13, 2011

Issued By:

Department of the Interior
Bureau of Indian Affairs
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1.0 INTRODUCTION

The Indian Reorganization Act (IRA) [48 Stat. 984, 25 U.S.C. § 461 et seq. (June 18, 1934)] provides the Secretary with the discretion to acquire trust title to land or interests in land. Congress or the federal courts may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

The Secretary bases the decision to make a trust acquisition on the evaluation of the criteria set forth in Title 25 Code of Federal Regulations (CFR) Part 151 and any applicable policy. With the exception of certain mandatory acquisitions, prior to title to land being acquired in trust by the United States the acquisition requires Secretarial approval.

This handbook describes Bureau of Indian Affairs (BIA) standard procedures for the transfer of land in fee to land in trust or restricted status. These procedures include: (1) eligibility for an individual or tribe to request the Secretary to take title in trust; (2) application requirements; (3) processing of an application for a trust acquisition, and (4) criteria used by BIA to evaluate trust acquisition requests.

The BIA will review the content of this handbook periodically to determine the need for revisions. This review may include input from tribes, tribal organizations and DOI; all of whom rely on the procedures described in this handbook.

2.0 DEFINITION OF TERMS AND LISTING OF ACRONYMS

Definition of Terms: Terms used in this handbook have specific definitions. For the definition of terms used in this handbook, refer to the definitions in 25 CFR Part 151 and those provided in this section.

Contiguous parcels: Two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way, including parcels that touch at a point. Also referred to as "adjacent parcels".

Discretionary Trust Acquisition: A trust acquisition authorized by Congress that does not require the Secretary to acquire title to any interest in land to be held in trust by the United States on behalf of an individual Indian or a tribe. The Secretary has discretion to accept or deny the request for any such acquisition.

Encumbrance: A limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind.

Fee: A form of ownership status where the person may freely alienate and encumber title without federal approval. Land in trust status or restricted status is not held in fee.

Gaming Acquisition: The lands where the actual gaming operations will occur. This does not include lands that are acquired to supplement the actual lands that the gaming establishment will

or does reside upon. This does not include parcels acquired for parking lots, hotels, golf courses, gift shops etc.

*The term "Gaming Related" is no longer utilized by the Department of Interior and any acquisitions that are not specifically for gaming will be processed pursuant to the regulations at 25 CFR § 151 and the applicable section of this Handbook. This includes parking lots, hotels, golf courses and any lands other than those where a gaming facility is located.

Mandatory Trust Acquisition: A trust acquisition authorized by Congress or a judicial order that requires the Secretary to accept title to land into trust, or hold title to certain lands in trust by the United States, for an individual Indian or tribe. The Secretary does not have the discretion to accept or deny the request to accept title of land into trust.

Trust Acquisition: The act or process by which the Secretary acquires title to any interest in land to be held in trust by the United States on behalf of an individual Indian or a tribe.

Undivided Fractional Interest: An ownership interest in property that is held in common with other owners as co-tenants in a parcel of land.

The following list of acronyms and terms are not all used in this handbook. Some commonly used acronyms used in BIA Real Estate Services are included.

ALTA	American Land Title Association
BIA	Bureau of Indian Affairs
BILS	BLM Indian Land Surveyor
BLM	Bureau of Land Management
CAT EX, CAT, or CX	Categorical Exclusion
CFR	Code of Federal Regulations
CC & R	Covenants, Conditions, and Restrictions
DM	Department Manual
DOI	Department of Interior
DOJ	Department of Justice
EA	Environmental Assessment
EIS	Environmental Impact Statement
ECRM	Environmental Compliance Review Memorandum
ESA	Environmental Site Assessment
FTO	Final Title Opinion
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
IAM	Indian Affairs Manual
IBIA	Interior Board of Indian Appeals
IGRA	Indian Gaming Regulatory Act
ILCA	Indian Land Consolidation Act
IRA	Indian Reorganization Act
ITO	Interim Title Opinion
LDR	Land Description Review (by BILS)
LTRO	Land Titles and Records Office
MSA	Municipal Service Agreement

NEPA	National Environmental Policy Act
NHPA	National Historical Preservation Act
NOA	Notice of Application
NOD	Notice of Decision
PILT	Payment in Lieu of Taxes
PTO	Preliminary Title Opinion
ROW	Right-of-way
SHPO	State Historical Preservation Office
THPO	Tribal Historical Preservation Office
TIN	Taxpayer Identification Number
USCA	United States Code Annotated

3.0 PROCESS AND PROCEDURE

3.1 Standard Operating Procedures

Fee-to-trust applications involve the acquisition of whole or undivided interest in land held in fee. There are four operating procedures and each section is titled as follows:

- 3.1.1 On-reservation Discretionary Trust Acquisitions (25 CFR § 151.10)
- 3.1.2 Off-reservation Discretionary Trust Acquisitions (25 CFR § 151.11)
- 3.1.3 Mandatory Trust Acquisitions (Applicable policy)
- 3.1.4 Reinvestment of Money in Other Lands Discretionary Trust Acquisitions (25 U.S.C. § 409a)

3.2 Selecting the Correct Standard Operating Procedure

To identify which operating procedure applies, you must review the submitted documentation and determine the following:

- Is the applicant a tribe or eligible individual Indian as defined in 25 CFR § 151.2?
- Is there legal authority for the requested acquisition?
- Is this a mandatory or discretionary trust acquisition?
  Is the requested parcel on-reservation or off-reservation? If there is a question whether the property is contiguous, consult the Office of the Solicitor (SOL) to review and concur. If the property is clearly contiguous to the exterior boundaries, no SOL analysis is needed.

If the stated purpose of the proposed acquisition is for gaming, utilizing the factors in the Office of Indian Gaming (OIG) Handbook for Gaming Acquisitions (Exhibit 5.2.12) (Gaming Handbook), the processing office in the field will notify OIG and provide that office the required documents and information. The processing office will continue to process the fee-to-trust application pursuant to the regulations at 25 CFR § 151 and the applicable section of the Fee-to-Trust Handbook concurrently with any gaming determinations being processed by OIG.

*The term "Gaming Related" is no longer utilized by the Department of Interior and any acquisitions that are not specifically for gaming will be processed pursuant to the regulations at

25 CFR § 151 and the applicable section of this Handbook. This includes parking lots, hotels, golf courses and any lands other than those where a gaming facility is located.

3.3 Step Sequence:

While steps within each of the standard operating procedures are numbered sequentially, you may proceed concurrently on other steps, when appropriate, or may repeat certain steps until the operating procedure is completed. *[See Exhibit 5.2: Fee-to-Trust Quick Reference Guide]*

3.1.1
On-Reservation Discretionary Trust Acquisitions

ON-RESERVATION DISCRETIONARY TRUST ACQUISITIONS

Scope

This section of the handbook contains procedures for discretionary trust acquisitions on-reservation and/or contiguous to a reservation for individual Indians and tribes. This section applies to undivided fractional and full interests owned in fee by an eligible Tribe or individual.

Procedure

To assist the applicant in preparing a request, the applicant should be provided a copy of "Required Elements: Application for Fee-to-trust" *[See Exhibit: 5.3]*, the brochure- "Understanding the Fee-to-Trust Process for Discretionary Acquisitions", and any other relevant information.

Step 1: Review of Written Request to Initiate Application Process

All fee-to-trust applications must contain the following (the complete package may require additional information):

1. Written request.
   A written request need not be in any special form but must contain each of the following items.

   a. A statement that the applicant is requesting approval of a trust acquisition by the United States of America for their benefit.

   b. Identification of applicant(s).

   c. Legal Land Description.

      1) A description of real property in legally acceptable terms that is definite, legally defensible and susceptible to only one interpretation. Perform a preliminary informal review of the legal description to assure the obvious elements identified below are present. A formal Legal Description Review (LDR) is required later in the process.

      2) Lands can be legally described a number of ways, most commonly by referencing the Public Land Survey System (PLSS), however, lands in the 13 original states and Texas are subject to other survey systems.

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

b) If the lands contained in the application are described using the PLSS, the description will contain the following elements that must be included to be a legitimate legal description.
   - Township
   - Range
   - Principal Meridian
   - Section(s)
   - Government Lots or Aliquot Parts

c) All land descriptions described by metes and bounds within the PLSS, in addition to the elements contained in b) shall include:
   - Commencement tie from a Government corner of PLSS to point of beginning of metes and bounds parcel.
   - A metes and bound description which closes mathematically on itself.

d) All land descriptions described by metes and bounds not within the PLSS shall contain the following applicable information:
   - A point of beginning easily located on the ground.
   - A metes and bound description which closes mathematically on itself.

d. Need for acquisition of the property
   1) Economic Development
   2) Tribal Self-Determination
   3) Indian housing (non-commercial)

e. Purpose for which the property is to be used. (If the purpose of the acquisition is identified by the Tribal applicant as "gaming" processors shall follow the procedures outlined in the Gaming Handbook and continue to process the application pursuant to the regulations at 25 CFR § 151 and this section of the Fee-to-Trust Handbook. "Gaming Related" is no longer a term utilized by the Department of Interior.)

f. A legal instrument (such as a deed), to verify applicant ownership.

g. Written Tribal consent for nonmember application, or Tribal acquisitions in land under jurisdiction of another Tribe.

2. In addition to the requirements of Step 1, 1.,above, the Tribal applicant will also submit the following:

   a. The application must state the Tribal name as it appears in the Federal Register for Federally recognized Tribes or as it appears in a federally approved Constitution.

   b. Statutory Authority.

c. If the property subject to the application is located off-reservation the applicant will also include the following:

   1) A business plan, if the application is for business purposes *[See: 151.11 (c)]*.

   2) The location of the subject property relative to state and reservation boundaries *[See: 151.11 (b)]*.

3. In addition to the requirements of 1. above, the following information is also required for an individual application:

   a. Evidence of eligible Indian status of the applicant.

   b. Amount of trust or restricted Indian land already owned by the applicant.

   c. Information or a statement from the applicant addressing the degree to which the applicant needs assistance in handling their affairs.

   d. When the required elements as noted above (1-3) have been fulfilled, refer to 52 IAM Chapter 12, 1.3 Policy A. "Acknowledging Receipt of Applications for Fee-to-Trust Acquisitions" which is a requirement *[See Exhibit 5.4.1: Sample Acknowledgement Letter]*.

4. The application will eventually require the following:

   a. Map depicting boundary and location of subject property <u>if necessary</u>.

   b. A commitment or a binder of title evidence with a commitment to issue a final title insurance on the ALTA U.S. Policy Form 9/28/91 *[See: Department of Justice (DOJ) Title Standards]*. Documents in support of all exceptions to coverage of title as set forth in Schedule B of the title evidence, including liens encumbrances and infirmities and documents referred to in the legal description. A Restrictive Covenant Acknowledgement form may also be required *[See Exhibit 5.4.7: Restrictive Covenants Acknowledgement]*.

   c. Obtain a Legal Description Review (LDR) from a qualified individual that concurs with the validity of the legal description including acreage. The concurrence is intended to verify that the description accurately describes the subject property, and that it is consistent throughout the acquisition documents, such as tribal resolutions, commitments for title insurance, [survey] maps, deeds, etc.

   d. Warranty Deed with designation of BIA approval and delegation of authority or Warranty Deed with acceptance of conveyance. The deed must conform to local statutory recording requirements.

5. Identify all missing information or documentation that is required, or materials submitted that do not have appropriate signatures, dates or other deficiencies that would prevent a complete review of the application and result in incomplete status. Refer to Step 3 "Responding to an Incomplete Written Request or Application" *[See Exhibit 5.4.2: Sample 30-day Notice-Incomplete Application Package]*.

6. Advise the applicant that it is beneficial to provide the following documentation, if available.

   a. Any documentation describing efforts taken to resolve identified jurisdictional problems and potential conflicts of land use that may arise as a result of the fee-to-trust acquisition.

   b. Any signed cooperative agreements relating to the fee-to-trust acquisition. Describe agreements for infrastructure development or services.

      - Examples: utilities, fire protection, solid waste disposal.

   c. Agreements that have been negotiated with the State or local government.

      - Example: payment in lieu of taxes (PILT).

   d. Description of those services not required of the state or local government(s) to the property because they are provided by the tribal government.

   e. Any additional information or justification to assist in reaching a decision.

7. If the applicant has requested the transfer of an undivided fractional interest, confirm that parcel contains existing trust or restricted undivided fractional interests by obtaining a title status report from the BIA's official system of land records.

Step 2: Encode Fee-to-Trust System of Record

1. Encode information into the Fee-to-trust system of record within three (3) business days of receipt of written request that meets the requirements set out in Step 1, "Review of Written Request to initiate application process", numbers 1-3. If the application does not meet the minimum requirements outlined in Step 1, do not enter into system until those requirements are met.

2. The system of record must be updated within three (3) business days upon receipt of any additional information.

Step 3: Responding to an Incomplete Case

1. When a written request or application is determined to be incomplete:

    a. Prepare a written notice to applicant that should include the following information in the notice *(Adhere to Policy and Directives 4.2: IAM, Part 52, Chapter 12 "Processing Discretionary Fee-to-Trust Applications", 1.3 Policy B. "Gathering information for Incomplete Fee-to-Trust Applications", and C. "Administrative and Legal Timeframes").*

        1) A statement that the application is incomplete.

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

        3) Request the applicant provide the omitted or required documentation or information to BIA.

Step 4: Conducting Site Inspection and Completing Initial Certificate of Inspection

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

2. Compare condition and use of property as described in submitted documents and title commitment. Examples of things to check during inspection are:

    a. Persons living on the property not shown as record owner(s).

    b. Work being done by contractors.

    c. Change in use other than noted in application.

    d. Lack of access to property.

    e. Location of existing utility lines, roads, etc., not defined in title evidence.

3. Prepare a written notice to applicant advising of any inconsistencies that require an explanation and/or correction. Advise applicant that unless the inconsistencies are addressed, applicant may be prohibited from taking land into trust. See Step 3 "Responding to an Incomplete Case" to issue the notice. *[See Policy and Directives 4.2:*

52 IAM Chapter 12, 1.3 Policy B. "Gathering information for Incomplete Fee-to-Trust Applications" which is a requirement.]

Step 5: Preparing the Preliminary Title Opinion (PTO)

1. Confirm that you have a title commitment from applicant and copies of all documents referenced or identified in the exceptions to title coverage commitment.

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

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

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

   c. Property boundary and location maps, if applicable.

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

   e. Include the LDR.

Step 6: Preparing Notice of Application, (NOA)

1. The NOA will inform state and local governments, including tribal governments having regulatory jurisdiction over the proposed acquisition property and/or any person or entity submitting a written request for notice that they have 30 days to submit comments.

2. Include the following in the notice *[See Exhibit 5.4.5: Sample Notice of Application]*:

   a. General description of need and purpose.

   b. Solicit comments on the potential impact of the acquisition regarding regulatory jurisdiction, real property taxes and special assessments.

   c. Advise state and local governments that they have 30 days to submit comments.

   d. The NOA should also include a statement informing the State and local governments to forward the notification on to any of their local sub-districts.

3. Send NOA by certified mail return receipt to the State and local governments.

Step 7: Environmental Compliance Review

1. Transmit NEPA, 602 DM 2 and other environmental compliance documents to the appropriate environmental staff and request environmental compliance review. Update environmental staff on any changes in application.

2. The environmental staff is responsible for completing the Environmental Compliance Review Memorandum (ECRM). NEPA compliance for every discretionary fee-to-trust transaction must be documented by an ECRM *[See Exhibit: 5.4.4 Sample Environmental Compliance Review Memorandum].*

3. If the acquisition is for the purpose of gaming the environmental compliance review must be performed in accordance with the Gaming Handbook and the Indian Gaming Regulatory Act.

Step 8: Comments to Notice of Application

1. Provide a copy of all information responsive to the NOA to the applicant for their written response. Send by certified mail return receipt *[See Exhibit 5.4.6: "Sample Notice of Application Comments to Applicant"].*

2. The regulations state that the applicant has a reasonable amount of time to provide written response. BIA to the comments. BIA has determined that 30 days with the opportunity for an extension is a reasonable amount of time. If the applicant requests the Secretary to issue a decision without providing a response to any comment(s), proceed with Step 10, "Preparing Analysis and Notice of Decision".

Step 9: Clearance of PTO Objections before Notice of Decision (NOD)

1. Notify applicant of objections outlined in the Preliminary Title Opinion (PTO).

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

3. Request applicant to provide updated title commitment or endorsement to show that objections of the PTO have been cleared.

4. If the applicant does not send the responsive information within a reasonable amount of time, refer to the policy found at 52 IAM Chapter 12. If no response is received within the timelines established by the policy, note the record and proceed with Step 10, "Preparing Analysis and Notice of Decision".

Step 10: Preparing Analysis and Notice of Decision (NOD)

1. All gaming acquisition NOD's shall be prepared pursuant to the procedures outlined in the Gaming Handbook and submitted to OIG for publication in the Federal Register.

2. If a significant amount of time lapses between the date of the NOA and the NOD, update the comments and/or application documents (e.g., title evidence and ESA).

3. Document case analysis and prepare NOD, which must include language on the right to appeal. The analysis and NOD must be based on the facts contained in the record and responsive to the following factors:

   a. The existence of statutory authority for the acquisition and any limitations contained in such authority.

   b. The need of the individual Indian or the tribe for additional land.

   c. The purposes for which the land will be used.

   d. If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by that individual and the degree to which he/she needs assistance in handling their affairs.

   e. If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

   f. Jurisdictional problems and potential conflicts of land use which may arise.

   g. If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

   h. The application must include information that will allow for compliance with the National Environmental Policy Act (NEPA), and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

4. Address and send original to applicant. Attach a list of all interested parties provided a copy.

5. Upon expiration of the 30 day appeal period, confirm with Interior Board of Indian Appeals (IBIA) whether an appeal is filed. If an appeal is filed cease work on the application until a decision is rendered on the appeal.

6. Confirm also with the applicable Federal District Court(s) that no court action has been filed based upon on administrative appeal. If a court action has been filed, cease work

until the judicial review process has been exhausted and instructions are received from the Office of the Solicitor based upon the court's findings and conclusions.

Step 11: Preparing the Publication Notice

1. All gaming acquisition publication notices are approved by the Assistant Secretary, Indian Affairs through OIG.

2. The Public Notice is the Final Agency Determination. Prepare the Public Notice/Final Agency Determination to take land in trust pursuant to 25 CFR §151.12 (b) and include the following *[See Exhibit 5.4.9: Sample Public Notice to Take land into Trust; optional from to include is Exhibit 5.4.8: Sample Final Agency Determination]*:

   a. Statement that a final agency determination to take land in trust has been made and the Secretary shall acquire title in the name of the United States if no action is filed in federal court within the 30-day period following the publication.

   b. A legal description of the land.

   c. Known interested parties and parties that received a copy of the Notice of Decision.

3. Publish the Notice of Publication in a local newspaper and/or federal register when the approval is at the Regional or Agency level. Central Office approval requires publication in the Federal Register.

4. After 30 days has lapsed since the date of publication, contact must be made with the applicable Federal District Court(s) to verify whether litigation was filed.

5. If an action is filed, take no further action until the judicial review process has been exhausted.

6. If advised by the Office of the Solicitor, furnish the administrative record to the Department of Justice in any such action.

7. Once the judicial review process has been exhausted, instructions may be provided by the Office of the Solicitor based upon the court's findings and conclusions.

8. If no action is filed, proceed to Step 12 "Preparing Final Certificate of Inspection and Possession".

Step 12: Preparing Final Certificate of Inspection and Possession (CIP)

1. Complete the Final Site Inspection in the same manner as the Initial Site Inspection under Step 4 "Conducting Site Inspection and Completing Initial Certificate of Inspection".

2. Compare the Final Site Inspection with the PTO and Initial CIP.

3. If there are any inconsistencies between the initial and final CIP in relation to possessory rights or interests, provide written notice to the applicant requiring response within 30 days of receipt of notice identifying a plan for curative action and/or request for extension of time.

4. If the applicant does not respond or follow through with curative action within the 30-day period or any granted extension(s), evaluate the effects of this failure and if those effects will impact the decision issued under Step 10.

5. CIP's prepared more than 180 days prior to closing are not acceptable.

Step 13: Acceptance of Conveyance

1. All gaming acquisition acceptance of conveyances are approved by the Assistant Secretary, Indian Affairs through OIG pursuant to the Gaming Handbook and are completed by the applicable field office.

2. Confirm that the file contains all documentation that meets the requirements of the PTO and is in compliance with 25 CFR, Part 151.

3. Process the formal acceptance of conveyance. The conveyance document must include:

   a. Signature of the appropriate BIA official.

   b. The statutory authority must be stated on the deed.

   c. The delegation of authority must be stated on the acceptance document (e.g, Acceptance of Conveyance form or the Warranty Deed) *[See Exhibit 5.4.10: Acceptance of Conveyance]*.

Step 14: Final Title Opinion and Recordation

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

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

3. The request shall include:

   a. The recorded Deed and Acceptance of Conveyance

   b. Title Insurance Policy

   c. PTO and title commitment

d. LDR

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

f. Final Certificate of Inspection and Possession.

*A copy, versus the original recorded warranty deed may be sufficient to initiate a request for the final title opinion.

Step 15: Recording at Land Titles and Records Office

1. Submit the following documents to the Land Titles and Records Office (LTRO) for recording:

   a. The original County recorded warranty deed and Acceptance of Conveyance if no federal approval is included on the warranty deed.

   b. LDR or certification that the legal description, including acreage, identified in the FTO is sufficient.

   c. The original Final Title Opinion.

   d. Copy of applicable referenced surveys and maps.

   If any of these documents are missing or incomplete refer to 52 IAM Chapter 12, 1.3 Policy C. "Administrative and Legal Timeframes" which is a requirement. Additionally see 25 CFR § 150.7(a).

2. Upon receipt of these documents the LTRO shall record and return to the entity that submitted the request within 5 business days.

3. The processing office has the discretion to submit documents for recording in addition to those required above, upon receipt, the LTRO shall record those documents.

Step 16: Completed Application Package

1. When the recorded documents have been received from the LTRO:

   a. Return the original recorded documents to the office that is responsible to maintain custody of the record in accordance with Bureau record standards.

   b. Provide a copy of the recorded package excluding the Final Title Opinion (attorney client privilege) to the applicant.

2. Close out electronic case file in Fee-to-trust system of record.

3. Provide a recorded copy of the deed to trust status to the Bureau of Land Management to update their records.

END OF PROCEDURE

3.1.2
Off-Reservation Discretionary Trust Acquisitions

OFF-RESERVATION DISCRETIONARY TRUST ACQUISITIONS

Scope

This section of the handbook contains procedures for discretionary trust acquisitions off-reservation for individual Indians and tribes. This section applies to undivided fractional and full interests owned in fee by an eligible Tribe or individual.

Procedure

To assist the applicant in preparing a request, the applicant should be provided a copy of "Required Elements: Application for Fee-to-trust" and the brochure, "Understanding the Fee-to-Trust Process for Discretionary Acquisitions".

Step 1: BIA Review of Written Request or Application

1. In addition to Step 1 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook, the application must include:

a. Appropriate documentation of the location of the land relative to state boundaries, and its distance from the boundaries of the reservation. This may include maps and/or surveys.

b. Where the land is being acquired for business purposes the applicant must provide a plan which specifies the anticipated economic benefits associated with the proposed use.

Step 2: Encode Fee-to-trust System of Record

Refer to Step 2 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 3: Responding to an Incomplete Written Request or Application

Refer to Step 3 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 4: Conducting Site Inspection and Completing Initial Certificate of Inspection

Refer to Step 4 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 5: Preparing the Preliminary Title Opinion (PTO)

Refer to Step 5 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 6: Preparing Notice of Application, (NOA)

Refer to Step 6 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 7: Environmental Compliance Review

Refer to Step 7 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 8: Comments to Notice of Application

Refer to Step 8 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 9: Clearance of PTO Objections before Notice of Decision (NOD)

Refer to Step 9 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 10: Preparing Analysis and Notice of Decision (NOD)

1. All gaming acquisition NOD's shall be prepared pursuant to the procedures outlined in the Gaming Handbook and submitted to OIG for publication in the Federal Register.

2. In addition to Step 10 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook, analysis must be conducted on:

    a. The documentation submitted of the location of the land relative to state boundaries, and its distance from the boundaries of the reservation. This may include maps and/or surveys.

    b. Economic plan and justification of anticipated benefits of proposed acquisition.

3. The preparer must consider the scrutiny and weight outlined in the regulations at 25 CFR 151.11 (b) as defined by applicable policies.

Step 11: Preparing the Publication Notice

Refer to Step 11 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 12: Preparing Final Certificate of Inspection and Possession (CIP)

Refer to Step 12 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 13: Acceptance of Conveyance

Refer to Step 13 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 14: Final Title Opinion and Recordation

Refer to Step 14 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 15: Recording at Land Titles and Records Office

Refer to Step 15 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 16: Completed Application Package

Refer to Step 16 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

END OF PROCEDURE

3.1.3
Mandatory
Trust Acquisitions

MANDATORY TRUST ACQUISITIONS

Scope

This section of the handbook contains procedures for mandatory trust acquisitions for individual Indians and tribes. This section applies to undivided fractional and full interests owned in fee by an eligible Tribe or individual.

Purpose

A mandatory trust acquisition is one authorized by Congress or a judicial determination that requires the Secretary to accept title to land into trust, or hold title to certain lands in trust by the United States, for an individual Indian or tribe. The Secretary does not have discretion to deny the request to accept title of land into trust.

In the absence of statutory or judicial language requiring the Secretary to proceed with the mandatory acquisition without notice or application, the individual Indian or Tribe must submit a written request to commence the acquisition process.

Step 1: Initiate the Mandatory Acquisition

1. Determine whether or not the acquisition is mandatory. To make this determination, refer to applicable policy and guidance. The statute or judicial order may contain all information necessary for the Secretary to proceed with the mandatory acquisition. If the statute or judicial order does not contain all information necessary for the Secretary to proceed, a written request from the Individual Indian or Tribe is needed and shall contain the following:

    a. Identification of Individual Indian or Tribe

    b. Legal Land Description
    Refer to Step 1 at 3.1.1, On-reservation Discretionary Trust Acquisitions of this handbook.

    c. A legal instrument, such as a deed, to verify Individual Indian or Tribal ownership

    d. The Tribal acquisition must state the Tribe's name as it appears in the Federal Register for Federally recognized Tribes or as it appears in a Federally approved Constitution

    e. Statutory Authority

    f. Map depicting boundary and location of subject property if necessary.

    g. Warranty Deed with designation of BIA approval and delegation of authority or Warranty Deed with Acceptance of Conveyance.

h. Additional information identified in policy relating to mandatory acquisitions, if applicable.

Step 2: Encode Fee-to-trust System of Record

Refer to Step 2 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 3: Responding to an Incomplete Written Request

Refer to Step 3 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 4: Conducting Site Inspection and Completing Initial Certificate of Inspection

Refer to applicable policy and guidance.

Step 5: Preparing the Preliminary Title Opinion (PTO)

Refer to applicable policy and guidance.

Step 6: Preparing Notice of Application, (NOA)

Refer to applicable policy and guidance.

Step 7: Environmental Compliance Review

Refer to applicable policy and guidance.

Step 8: Comments to Notice of Application

Refer to applicable policy and guidance.

Step 9: Clearance of PTO Objections before Notice of Decision (NOD)

Refer to applicable policy and guidance.

Step 10: Preparing Analysis and Notice of Decision (NOD)

Refer to applicable policy and guidance.

Step 11: Preparing the Publication Notice

Refer to Step 11 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

Step 12: Preparing Final Certificate of Inspection and Possession (CIP)

Refer to applicable policy and guidance.

Step 13: Acceptance of Conveyance

1. Confirm that the file contains all documentation required as identified in Step 1, Initiate Mandatory Acquisition.
   Refer to Step 13 at 3.1.1, "On-Reservation Discretionary Trust Acquisitions" of this handbook.

Step 14: Final Title Opinion and Recordation

Refer to applicable policy and guidance.

Step 15: Recording at Land Titles and Records Office

1. Submit the following documents to the Land Titles and Records Office (LTRO) for recording:

   a. The original County recorded Deed and Acceptance of Conveyance or other legal instrument.

   b. LDR or certification that the legal description, including acreage, identified in the transmittal document is sufficient.

   c. Copy of applicable referenced surveys and maps.

   If any of these documents are missing or incomplete refer to 52 IAM Chapter 12, 1.3 Policy C. "Administrative and Legal Timeframes". Additionally see 25 CFR § 150.7(a).

2. For further direction refer to applicable policy and guidance.

3. Upon receipt of these documents the LTRO shall record and return to the entity that submitted the request within 5 business days.

4. The originating office has the discretion to submit documents for recording in addition to those required above.

Step 16: Completed Mandatory Package

Refer to Step 16 at 3.1.1 On-Reservation Discretionary Trust Acquisitions of this handbook.

25 USC 2216(c)

If the acquisition is requesting the transfer of an undivided fractional interest, confirm that parcel contains existing trust or restricted undivided fractional interests by obtaining a title status report from the BIA's official system of land records.

To process this acquisition we need to consider the following:

a. Documents verifying Individual Indian or Tribal ownership.
b. Tribal acquisitions must state the Tribe's name as it appears in the Federal Register for Federally recognized Tribes or as it appears in a Federally approved Constitution.
c. Tract number
d. Additional information identified in policy relating to mandatory acquisitions, if applicable.

e. Encode information into the Fee-to-trust system of record within three (3) business days of receipt of written request.
f. If additional information is needed to process this acquisition, refer to 52 IAM Chapter 12, 1.3 Policy B. "Gathering information for Incomplete Fee-to-Trust Applications" *[See: Exhibit 4.2]*.

g. Process the formal acceptance of conveyance. The conveyance document must include:

    - Signature of the appropriate BIA official.

    - The statutory authority must be stated on the deed.

    - The delegation of authority must be stated on the acceptance document (e.g, Acceptance of Conveyance form or the Warranty Deed) *[See Exhibit 5.4.10: Acceptance of Conveyance form]*.

h. If the fee fractional interest has been recorded at the county, record the trust acquisition deed at the county.

i. Submit the original Warranty Deed, and Acceptance of Conveyance if applicable, to the Land Titles and Records Office (LTRO) for recording.
    - Upon receipt of these documents the LTRO shall record and return to the entity that submitted the request within 5 business days.
    - The originating office has the discretion to submit documents for recording in addition to those required above.

j. When the recorded documents have been received from the LTRO:
    - Return the original recorded documents to the office that is responsible to maintain custody of the record in accordance with Bureau record standards.
    - Provide a copy of the recorded package to the Individual Indian or Tribe.

k. Close out electronic case file in Fee to Trust system of record.
l. Provide a recorded copy of the deed to trust status to the Bureau of Land Management to update their records.

END OF PROCEDURE

4.0 POLICY AND DIRECTIVES

4.1 Mandatory Acquisition Guidance

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245

IN REPLY REFER TO:

APR 17 2002

RECEIVED
GREAT PLAINS REGIONAL OFFICE
BRANCH OF REALTY
RECEIVED
'02 APR 22 AM 9 12
OFFICE

Memorandum

To: Regional Directors and Agency Superintendents

Through: Deputy Assistant Secretary - Indian Affairs

From: Deputy Commissioner of Indian Affairs /s/ Sharon Blackwell

Subject: Processing of Mandatory Lands Into Trust Applications

This memorandum addresses how BIA realty staff should process mandatory land into trust applications. A determination that a statute is mandatory is made on a case by case basis. No clear definition of a mandatory statute currently exists. However, in order for a statute to be considered mandatory, the statutory language must include some restrictions on the Secretary's discretion in addition to the word "shall." The Regional/Field Solicitor's Office should issue a written determination that a statute is mandatory before the Bureau processes the application as a mandatory acquisition.

Once a determination is made that a statute is mandatory, certain provisions of the Part 151 regulations do not apply to the processing of the application. Most notably, the notice and comment provision of 25 CFR 151.10, where the agency notifies the local governments of the Tribe's application is not applicable and compliance with the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 *et. seq.*, is not required.

In processing a mandatory trust acquisition, you must still comply with the remaining relevant portions of the Part 151 regulations. The first requirement is that the Tribe submit a request in writing that the land be placed in trust. The Tribe's resolution requesting that the land be taken into trust should cite the specific statutory authority mandating the acquisition. Even though NEPA compliance is not required, the BIA must conduct a contaminant survey on the lands to be acquired to ensure that no hazardous materials exist. 602 DM 2. The Bureau must also examine the title insurance to ensure compliance with the Department of Justice's Title Standards. 25 CFR 151.13. Even though an acquisition is mandated, the Department of Justice requires that lands to be acquired by the United States be free from liens and encumbrances.

After the contaminant survey and title review are completed, the Regional Director or delegated official should notify the Tribe of the approval of its request and that notice must contain the appeal

Route	Initial	Date
✓ Regional Director	AAct	4/22/02
✓ Deputy Regional Director		

provisions of Part 2 of the regulations. After the Part 2 appeal period has run (30 days) and if no appeal is filed, the Regional Director or delegated official must publish notice in the local newspaper of the decision to take the land into trust, pursuant to 151.12(b). That notice must state that a final agency determination has been made to take the land into trust and that the Secretary shall acquire title to the land no sooner than 30 days after the notice is published. 25 CFR 151.12(b). (*Note*: If the Assistant Secretary - Indian Affairs issues the decision to take land into trust, that decision is final for the Department (unless provided for otherwise in the decision), and no Part 2 appeal process is provided. After the AS-IA's decision is issued, the notice of final agency action is published in the FEDERAL REGISTER pursuant to 25 CFR 151.12(b)).

Any questions concerning the processing of mandatory applications should be directed to the Office of Trust Responsibilities, Central Office, (202) 208-5831.

4.2 Indian Affairs Manual (IAM) Part 52, Chapter 12, "*Processing Discretionary Fee-to Trust Applications*"

INDIAN AFFAIRS
DIRECTIVES TRANSMITTAL SHEET

(Modified DI-416)

DOCUMENT IDENTIFICATION NUMBER	SUBJECT	RELEASE NUMBER
52 IAM 12	Processing Discretionary Fee-to-Trust Applications	10-24
FOR FURTHER INFORMATION Trust Services		DATE JUN 24 2010

EXPLANATION OF MATERIAL TRANSMITTED:

This policy establishes IA procedures to acknowledge receipt of applications for fee-to-trust land acquisitions; define timeframes with regard to gathering of information to complete fee-to-trust applications on a timely basis; define timeframes associated with administrative and legal challenges to decisions to accept land into trust; implement reporting requirements for pending fee-to-trust cases; and to identify how employee time working all aspects of fee-to-trust will be recorded. All references to "days" within this policy are **calendar days**, not business days. All references to "written correspondence to applicants" within this policy are to be made via **certified-return receipt mail.**

for Michael Black
Director, Bureau of Indian Affairs

FILING INSTRUCTIONS:

Remove: None

Insert: 52 IAM 12

1.1 Purpose. This chapter establishes Indian Affairs (IA) policy and procedures to acknowledge receipt of applications for fee-to-trust land acquisitions; define timeframes with regard to gathering of information to complete fee-to-trust applications on a timely basis; define timeframes associated with administrative and legal challenges to decisions to accept land into trust; implement reporting requirements for pending fee-to-trust cases; and to identify how IA employees will record time spent working any and all aspects of fee-to-trust. All references to "days" within this policy are **calendar days**, not business days. All references to "written correspondence to applicants" within this policy are to be made via **certified-return receipt mail**.

1.2 Scope. This policy applies to all Bureau of Indian Affairs (BIA) employees and to all discretionary fee-to-trust applications currently in the possession of the Department of the Interior (DOI) and to all future applications to convert fee land into trust land received by DOI.

1.3 Policy.

A. Acknowledging Receipt of Applications for Fee-to-Trust Acquisitions.

After receipt of an application to acquire land into trust, as identified in 25 CFR §151.9, the authorized official (Superintendent, Regional Director, or Central Office) receiving the application will formally acknowledge receipt of the application **in writing**, to the applicant within 10 calendar days. This formal acknowledgement by the authorized official **must include** a copy of the brochure titled "Understanding the Fee-to-Trust Process for Discretionary Acquisitions."

B. Gathering information for Incomplete Fee-to-Trust Applications.

The "Acquisition of Title to Land held in Fee or Restricted Fee Status Handbook" (hereafter Fee-to-Trust Handbook) addresses incomplete applications at "Step 3: Responding to an Incomplete Written Request or Application." Pursuant to this policy, BIA staff is required to review all pending fee-to-trust applications currently in their possession and take one or more of the following actions, as appropriate, for each pending application:

1) Applications that are pending as of the date of this policy:

If there are expired or missing documents in pending applications that are required from the applicant, BIA staff will contact the applicant **in writing**, according to the steps identified in the Handbook under "Step 3: Responding to an Incomplete Written Request or Application." This written correspondence is the "original notice," and will advise the applicant that the requested, responsive information must be received from the applicant within 30 days, or the application will be considered inactive.

If the requested information is not received within 30 calendar days after the original notice, BIA staff will send the applicant a "final notice" that BIA did not receive the requested information and the application will be returned to them. The application must

be returned after 60 days of the date of the original notice and removed from the active caseload unless the responsive information is received by BIA. The authorized official (Superintendent, Regional Director, or Central Office) is responsible for ensuring return of the application to the applicant and updating the system of record, (presently the Fee to Trust Tracking System (FTTS)) to reflect that the application has been returned within five days of that action.

2) Applications received after the date of this policy:

If there are expired or missing documents in applications received after the date of this policy that are required from the applicant, BIA staff will contact the applicant **in writing** according to the steps in the Handbook under "Step 3: Responding to an Incomplete Written Request or Application." This written correspondence is the "original notice," and will also advise the applicant that if the requested, responsive information is not received within **30 days**, the application will be considered inactive.

If the requested information is not received within 30 calendar days after the original notice, BIA staff will send the applicant a "final notice" that their application will be returned to them after 45 days of the date of the original notice and removed from the active caseload unless the responsive information is received from them. The authorized official (Superintendent, Regional Director, or Central Office) is responsible for returning the application to the applicant and for updating the system of record to reflect that the application has been returned within five days of that action.

C. Administrative and Legal Timeframes

1) If there are expired or missing documents that are required from DOI staff, BIA will contact the responsible office **in writing** within seven calendar days to request that the responsive information be provided within 21 days.

The BIA staff will also assure that all pending (incomplete) cases are in the system of record and that the data is current and accurate so reports can be generated to produce work lists for the responsible agencies and provide a quarterly status report to the respective Tribe having jurisdiction over the lands subject to the application(s). The work lists will be reviewed and the responsible agencies contacted on a regular basis to assure that the cases keep moving forward.

2) If the application is complete and there are no expired or missing documents, BIA staff will take the necessary actions to assure that a Notice of Decision is issued as soon as possible, but **no later than 15 days** from the date of receipt of final document(s) required to issue the Notice of Decision.

3) If the decision to take land into trust is appealed to a Regional Director, the official whose decision is being appealed will provide the complete administrative record to the respective regional office **within 10 days** of notice of the appeal. The administrative

record will be compiled as required in the Fee to Trust Handbook. The Regional Director has 60 days to issue a decision.

4) If a case is appealed to the Interior Board of Indian Appeals (IBIA), the Regional Director will immediately put the Director, BIA on notice. Applications under administrative appeal or judicial review will be encoded in system of record within five days to reflect the appropriate status.

D. Quarterly Reports to Tribe(s) for Pending Applications. Each location authorized to accept land into trust (Agency Office, Regional Office, or Central Office) is responsible for providing the Tribe(s) who have jurisdiction over the lands in pending fee-to-trust applications, with quarterly reports of all pending applications (including individual Indian applications) within each Tribe's respective jurisdiction. Quarterly reports will be sent to the Tribe(s) the first week in the months of October, January, April and July.

E. Fee to Trust Activity Codes for Employee Time Accounting. All time spent and actions performed by BIA employees to process, manage, report, provide training and receive training regarding fee-to-trust will be coded in the Quick Time System (or its successor) as follows:

- To process fee-to-trust applications: WCV2
- To manage the process or report on the progress: WCVC
- To provide training, or perform outreach: WCVA
- To receive training: WCVB

1.4 Authority. 25 CFR §151.9

1.5 Roles and Responsibilities

A. Director, Bureau of Indian Affairs (BIA). The BIA Director is responsible for the development of National Policy affecting Indian lands.

B. Deputy Bureau Director, Field Operations, BIA. The BIA Deputy Bureau Director of Field Operations is responsible for overseeing the Regional Directors and dissemination of policy to them.

C. Deputy Bureau Director, Trust Services, BIA. The BIA Deputy Bureau Director of Trust Services is responsible for assisting in the dissemination of trust resource policy and information to the Regional Directors.

D. Regional Directors, BIA. The BIA Regional Directors are responsible for carrying out policy as directed, and for overseeing the implementation of policy either directly or via Agency Superintendents.

5.0 EXHIBITS

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

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

STEP 1
Review of Written Request or Application

STEP 2
Encode Fee-to-Trust System of Record

STEP 3
Respond to Incomplete Request/Application

STEP 4
Site Visit and Certificate of Inspection & Possession (CIP)

STEP 5
Preparing Preliminary Title Opinion (PTO)

STEP 6
Preparing Notice of Application (NOA)

STEP 7
Environmental Compliance Review

STEP 8
Comments to Notice of Application

STEP 9
Clearance of PTO objections before Notice of Decision (NOD)

STEP 10
Prepare Analysis & Notice of Decision (NOD)

STEP 11
Preparing the Publication Notice

Steps Continued

STEP 12
Preparing Final CIP

STEP 13
Acceptance of Conveyance

STEP 14
Final Title Opinion and Recordation

STEP 15
Recording at Land Titles and Records Office

STEP 16
Completed Application Packet

For more information about this process contact:

UNDERSTANDING THE

Fee-to-Trust Process For Discretionary Acquisitions

U.S DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

Frequently Asked Questions

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

2. Who is eligible to apply for a fee-to-trust land acquisition? Indian tribes and individual Indian persons who meet the requirements established by federal statutes and further defined in federal regulations are eligible to apply for a fee-to-trust land acquisition. See 25 Code of Federal Regulations (CFR) § 151.2; 25 United States Code (USC) § 479and § 2201.

3. If you are eligible, how do you submit an application? All applications for a fee-to-trust acquisition must be in writing and specifically request that the Secretary of the Interior take land into trust for the benefit of the applicant. If you are an eligible Indian tribe, the request may be in the form of a tribal resolution. See 25 CFR § 151.9.

4. Where should an eligible applicant submit an application ? Applications shall be submitted to the Bureau of Indian Affairs (BIA) office that has jurisdiction over the lands contained in the application. If the applicant does not know which BIA office has jurisdiction the applicant should contact the BIA Division of Real Estate Services at (202) 208-7737 or at http://www.bia.gov/WhoWeAre/RegionalOffices/index.htm

5. What information is the applicant required to provide to accompany the application for a fee-to-trust acquisition? The applicant must provide a legal description of the land to be acquired, the legal name of the eligible Indian tribe or individual, proof of an eligible Indian tribe or eligible person, the specific reason the applicant is requesting that the United States of America acquire the land for the applicant's benefit, a title insurance commitment addressing the lands to be acquired and information that allows the Secretary of the Interior to comply with the National Environmental Policy Act (NEPA) and 602 Departmental Manual 2 (602 DM 2) – Hazardous Substances.

6. What laws, regulations and standards apply to a fee-to-trust acquisition? There are different laws that must be satisfied. Most acquisitions are authorized under 25 USC § 465, Section 5 Indian Reorganization Act (1934) and reviewed under 25 CFR § 151. However, the Interior Department must comply with all federal laws, including compliance with NEPA, 602 DM 2 Hazardous Substances Determinations, National Historical Preservation Act (NHPA) and U.S. Department of Justice Title Standards. See 25 CFR § 151.13.

7. What are the applicant's responsibilities if they receive a written request from the Bureau of Indian Affairs requesting additional information to process an application? The applicant must reply back to the BIA within the time frames identified in the written correspondence requesting additional information. All correspondence from the BIA requesting additional information will include each specific document needed to proceed with processing the application and will include the specific time the applicant has to provide the requested information. It is very important that the applicant maintain written communication with the BIA throughout the process when the applicant is contacted by the BIA. If the applicant needs additional time to respond to a request for additional information, they must contact the BIA as soon as possible and make the request for an extension of time in writing. The BIA will reasonably accommodate requests from applicants for additional time to provide information, and will notify applicants in writing of the decision regarding the request.

8. What happens if I do not respond? If the applicant does not respond in the time stated in the letter or any extension, the BIA will either return the application or take into consideration failure to provide the information. If the applicant has failed to provide information on a non-critical title issue, the BIA will take into consideration that there is insufficient or negative information in forming BIA's decision on the application and may result in a denial.

9. Are there entities that will be provided notice of an application for a fee-to-trust acquisition? Yes. State and local governments, including tribal governments having regulatory jurisdiction over the land contained in the application, will be notified upon written receipt of an application for a fee-to-trust acquisition. The notice will inform the entities that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

10. Will all applications from eligible Indian tribes and eligible Indian individuals result in a fee-to-trust acquisition? No. Each application will be evaluated to determine if the applicable criteria defined in the CFR has been addressed (25 CFR § 151.10). The official authorized to accept the fee-to-trust acquisition will decide whether or not to accept the fee-to-trust acquisition. All decisions to accept or deny a fee-to-trust acquisition shall be in writing. If the acquisition is denied, the applicant will be advised of the reasons for the denial and will be notified of the right to appeal the decision and where the applicant's appeal must be filed.

11. How long does the process take? The length of time to complete the process varies depending on the required steps. The required steps differ for on-reservation or off-reservation trust acquisitions and mandatory or discretionary acquisitions.

12. Can I get a report on the progress of my application? Yes. The BIA tracks the steps and progress of applications and they will provide you a report upon your request.

5.2 *"Fee to Trust Quick Reference Guide"*

STEP 1
Review of Written Request to Initiate Application Process

STEP 2
Encode Fee-to-Trust System of Record

Must first complete steps:
1and 2
BEFORE MOVING TO STEP 3

STEP 3
Responding to an Incomplete Case

Must first complete steps:
1, 2 and 3
BEFORE MOVING TO STEP 4

May concurrently take Steps:
5. Preparing the Preliminary Title Opinion (PTO)
7. Environmental Compliance Review
9. Clearance of PTO Objections before Notice of Decision (NOD)

STEP 4
Conducting Site Inspection and Completing Initial Certificate of Inspection (CIP)

Must first complete steps:
1, 2, 3, and 4
BEFORE MOVING TO STEP 5

May concurrently take Steps:
7. ECRM
6. Preparing Notice of Application

STEP 5
Preparing the Preliminary Title Opinion (PTO)

Must first complete steps:
1, 2, 3, 4
BEFORE MOVING TO STEP 6

May concurrently take Steps:
5. Preparing the Preliminary Title Opinion (PTO)
7. ECRM
9. Clear PTO Objections

STEP 6
Preparing Notice of Application

Must first complete steps:
1,2,3, and 4
BEFORE MOVING TO STEP 7

May concurrently take Steps:
9. Clear PTO Objections
8. Comments to Notice of Application

STEP 7
Environmental Compliance Review

Must first complete steps:
1, 2, 3, 4 and 6
BEFORE MOVING TO STEP 8

May concurrently take Steps:
7. ECRM
9. Clearance of PTO Objections before Notice of Decision (NOD)

STEP 8
Comments to Notice of Application

Must first complete steps:
1, 2, 3, 4 and 5
BEFORE MOVING TO STEP 9

May concurrently take Steps:
5. Prepare NOA
6. ECRM
8. Comments to Notice of Application3

STEP 9
Clearance of PTO Objections before Notice of Decision (NOD)

Must first complete steps:
1-9
BEFORE MOVING TO STEP 10

You must consider the extensions granted to the applicant to provide responses to the comments from the state and local governments before proceeding with this step.

STEP 10
Preparing Analysis and Notice of Decision (NOD)

Must first complete steps:
1-10
BEFORE MOVING TO STEP 11

May concurrently take Steps:
12. Prepare Final Certificate of Inspection and Possession.
No more that 180 days may pass between completing this step and completion of step 13

STEP 11
Preparing the Publication Notice

STEP 12
Preparing Final Certificate of Inspection and Possession (CIP)

Must first complete steps:
1-12
BEFORE MOVING TO STEP 13
No more that 180 days may pass between completing this step and completion of step 13

May concurrently take Steps:
11. Prepare Publication Notice

STEP 13
Acceptance of Conveyance

Must first complete steps:
1-13
BEFORE MOVING TO STEP 14

STEP 14
Final Title Opinion and Recordation

Must first complete steps:
1-14
BEFORE MOVING TO STEP 15

STEP 15
Recording at Land Titles and Records Office

Must first complete steps:
1-15
BEFORE MOVING TO STEP 16

STEP 16
Completed Application Packet

Fee to Trust Quick Reference Guide

Note: For Mandatory Acquisitions-refer to applicable policy and guidance to determine which steps are appropriate.

5.3 *"Required Elements: Application for Fee-to-Trust"*

Required elements: Application for fee-to-trust.
All fee-to-trust applications must contain the following:

8. A written request
    a. The request must state the applicant is requesting approval of a trust acquisition by the United States of America for their benefit
    b. Identification of applicant(s)
    c. Legal Land Description
        1) A description of real property in legally acceptable terms that is definite, legally defensible and susceptible to only one interpretation.
        2) This can accomplished by government survey of the Public Land Survey System (PLSS), metes and bounds, or lot numbers of a recorded plat, so as to show exactly where the real property is located and how many acres it contains.
            a) All land descriptions shall contain the following information
                - State
                - County
                - Approximate Acreage
            b) All land descriptions described by Public Land Survey System (PLSS) shall contain the following applicable information
                - Township
                - Range
                - Principal Meridian
                - Section(s)
                - Government Lots
                - Aliquot Parts
            c) All land descriptions described by metes and bounds within the Public Land Survey System (PLSS) shall contain the following applicable information.
                - Township
                - Range
                - Principal Meridian
                - Section(s), Aliquot part, or Government Lot parcel lies in
                - Commencement tie from a Government corner of PLSS to point of beginning of metes and bounds parcel.
                - A metes and bound description which closes mathematically on itself.
            d) All land descriptions described by metes and bounds not within the Public Land Survey System (PLSS) shall contain the following applicable information.
                - A point of beginning easily located of the ground.
                - A metes and bound description which closes mathematically on itself.
    d. Need for acquisition of the property (one of the following)
        1) Economic Development
        2) Tribal Self-Determination

3) Indian housing (non-commercial)

e. Purpose for which the property is to be used (See Exhibit "Create list of examples")
f. A legal instrument such as a deed, to verify applicant's fee ownership
g. Written Tribal consent for nonmember application, or Tribal acquisitions in land under jurisdiction of another Tribe

9. In addition to the requirements of 1. above, the Tribal applicant will also submit the following:
   a. The application must state the Tribal name as it appears in the Federal Register for Federally recognized Tribes
   b. Statutory Authority
   c. If the property subject to the application is located off-reservation the applicant will also include the following:
      1) A business plan, if the application is for business purposes [See 151.11 (c)]
      2) The location of the subject property relative to state and reservation boundaries [See 151.11 (b)]
10. In addition to the requirements of 1. above, the following information is also required for an individual application:
   a. Evidence of eligible Indian status of the applicant
   b. Amount of trust or restricted Indian land already owned by the applicant
   c. Information or a statement from the applicant addressing the degree to which the applicant needs assistance in handling their affairs

5.4 Sample Documents

5.4.1
Sample Acknowledgement Letter

Date

Applicant
P.O. Box 123
Somewhere, USA 99999

Dear (Applicant Name):

This is to advise you that the Bureau of Indian Affairs (BIA) is in receipt of your request for a fee-to-trust acquisition. The parcel(s) of land affected by this action are described as:

(Insert legal description & acreage)

To assist you in the processing of your request is our brochure, "Understanding the Fee-to-trust Process for Discretionary Acquisitions". For your convenience, we are also enclosing a copy of 25 CFR § 151.

If you have any questions, please contact _____, Realty Specialist, at (000) 000-0000.

Sincerely,

Regional Director/Superintendent

Enclosure

5.4.2

Sample 30-Day Notice-Incomplete Application Package

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Date

Applicant Name, Title
Address

Dear (Applicant's name):

On _____, the Bureau of Indian Affairs received your application to have the following parcel(s) accepted into trust by the United States of America:

(Insert Legal Description)

Upon review of the subject fee-to-trust application, it has been determined that the package is incomplete. Therefore, we are issuing this 30-day notice to you under Indian Affairs Manual (IAM), Part 52, Section 12 requiring submission of the following:

(Specify what information or documentation is necessary)

If we do not receive a response from you within 30 days from the date of receipt of this notice, a final notice will be issued to you stating that we did not receive the information required and the application will be inactivated and returned.

If you have any questions regarding this matter, you may contact this office at (Telephone #).

Sincerely,

Superintendent or Regional Director

5.4.3

Sample Return of Incomplete Application Package

Date

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Applicant Name, Title
Address

Dear (Applicant Name):

On _____ we issued the enclosed 30 day notice stating that your fee-to-trust application was incomplete and additional information is necessary.

We have not received a response and , therefore, are returning your original request and closing out this case.

You may resubmit the application at a later date and it will be assigned a new case number.

You may contact this office at 000-000-0000 if you have any questions.

Sincerely,

Superintendent/Regional Director

5.4.4

Sample Environmental Review Compliance Memorandum

Date

Memorandum

To: Regional Director/Superintendent

From: Environmental Services

Subject: (Name of Applicant), Fee-to-Trust Application for 54 acres

We have reviewed the subject undertaking for compliance with the National Environmental Policy Act of 1969 (NEPA), which included appropriate consultation under applicable laws. Compliance with Department Manual Section 602 DM-2 has been completed, documenting that the Department would incur no environmental liability from accepting this parcel into trust.

National Environmental Policy Act (NEPA) No further compliance is required for NEPA. The Regional Director signed a Finding of No Significant Impact and a 30-day Notice of Availability on September 5th, 2004. The NOA was published in a local newspaper and in tribal administrative offices. No comments were received during that 30 comment period.

602 DM 2 Using ASTM E 1527 Standard Practice The attached Phase I Environmental Site Assessment dated February 14, 2005 found no Recognized Environmental Conditions. With the Regional Directors signature of the ESA no further compliance with 602 DM 2 is required.

Joe Employee
Environmental Protection Specialist

John Doe
Regional Archaeologist

cc w/attachments:

5.4.5

Sample Notice of Application

NOTICE OF (NON-GAMING) LAND ACQUISITION APPLICATION

Pursuant to the Code of Federal Regulations, Title 25, INDIANS, Part 151.10, notice is given of the application filed by the (Applicant Name) to have real property accepted "in trust" for said applicant by the United States of America. The determination whether to acquire this property "in trust" will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior, or his authorized representative, U.S. Department of the Interior. To assist us in the exercise of that discretion, we invite your comments on the proposed acquisition. In order for the Secretary to assess the impact of the removal of the subject property from the tax rolls, and if applicable to your organization, we also request that you provide the following information:

(1) If known, the annual amount of property taxes currently levied on the subject property allocated to your organization;
(2) Any special assessments, and amounts thereof, that are currently assessed against the property in support of your organization;
(3) Any governmental services that are currently provided to the property by your organization; and
(4) If subject to zoning, how the intended use is consistent, or inconsistent, with the zoning.

We provide the following information regarding this application:

Applicant:

(Name)

Legal Land Description/Site Location:

(Insert legal description)

Project Description/Proposed Land Use:

(Insert project/proposed land use)

As indicated above, the purpose for seeking your comments regarding the proposed trust land acquisition is to obtain sufficient data that would enable an analysis of the potential impact on local/state government, which may result from the removal of the subject property from the tax roll and local jurisdiction.

This notice does not constitute, or replace, a notice that might be issued for the purpose of compliance with the National Environmental Policy Act (NEPA) of 1969.

Your written comments should be addressed to the Bureau of Indian Affairs office listed at the top of this notice. Any comments received within thirty days of your receipt of this notice will be considered and made a part of our record. You may be granted one thirty day extension of time to furnish comments, provided you submit a written justification requesting such an extension within thirty days of receipt of this letter. Additionally, copies of all comments will be provided to the applicant for a response. You will be notified of the decision to approve or deny the application.

If any party receiving the enclosed notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy to said party.

A copy of the application, excluding any documentation exempted under the Freedom of Information Act (FOIA), is available for review at the above address. A request to make an appointment to review the application, or questions regarding the application, may be directed to the (BIA Name) Office at (000) 000-0000.

Attachment

5.4.6
Sample Notice of Application Comments to Applicant

Date

Applicant
P.O. Box 123
Somewhere, USA 99999

Dear (Applicant Name):

This is to advise you that the Bureau of Indian Affairs (BIA) has initiated the Fee-to-Trust process in accordance with Title 25, Code of Federal Regulations (CFR), Part 151, for (Applicant Name). The parcel of land affected by this proposed action is described as:

(Insert legal description)

Enclosed you will find copy of the comments received in response to the Notice of Application issued on (date). We are required to provide the aforementioned comments to the applicant who may choose to respond and/or request that we issue a decision.

If you choose to respond, you have 30-days from receipt of this letter to provide a written response that should be addressed to the Bureau of Indian Affairs at the address stated above. You may be granted an extension of time, provided we receive a written justification requesting such an extension within 30-days of your receipt of this letter.

For further assistance on this project, please contact this office at (000) 000-0000.

Sincerely,

Regional Director/Superintendent

Enclosures

5.4.7
Restrictive Covenants Acknowledgement Form

RESTRICTIVE COVENANT ACKNOWLEDGMENT

I, _____, have requested that the United States acquire and hold in trust for my benefit a parcel of land described as:

_____

_____

I understand that certain restrictive covenants have been recorded that may encumber this property and my rights to use and develop this property. Attached is a copy of the document that created this encumbrance. I have read the attached document, understand the limitations on my use of my property, and agree to be bound by these restrictions and limitations so long as they remain effective.

Dated: _____

_____

Signature of Applicant

5.4.8

Sample Final Agency Determination

FINAL AGENCY DETERMINATION
Fee-to-Trust Application
Applicant Name

On May 14, 2007, the undersigned, as Regional Director/Superintendent, (Name) Office, Bureau of Indian Affairs (BIA), an authorized representative of the Secretary of the Interior, issued a Notice of Decision concerning the fee-to-trust applications for the (Applicant Name), concerning the below-described real property.

The land referred to herein is situated in the (city/town/village, state, meridian) and is identified as:

(Legal description)

The known interested parties and the parties receiving copies of the Notice of Decision, by certified mail with return receipt, were as follows:

The Notice of Decision included a statement advising the above-named interested parties of their right to file an administrative appeal pursuant to 43 CFR 4.310—4.340 within 30 days of their receipt thereof. The time period for filing has expired.

The undersigned did not receive notice of appeal within the prescribed time frame or as of the below date. Based on the foregoing, it is now my determination to proceed with execution of the Acceptance of Conveyance/Warranty Deed which must be recorded in the official records of (Name) County.

The conveyance document is held in abeyance pending issuance of a public notice of this determination and the expiration of a 30-day waiting period pursuant to 25 CFR 151.12(b).

Dated: _____

_____
Regional Director/Superintendent, (BIA office)

5.4.9
Sample Public Notice to Take Land into Trust

ACTION: Notice of final agency determination to take land into trust under 25 Code of Federal Regulations, Part 151.

SUMMARY: The Regional Director/Superintendent, Bureau of Indian Affairs, U.S. Department of the Interior on the below date, has made a final determination to acquire real property "in trust" for the (Applicant Name).

DATE: This determination was made on _____ .

FOR FURTHER INFORMATION CONTACT: BIA Office, Bureau of Indian Affairs, Address, telephone (000) 000-0000.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR, Part 151.12(b) that notice be given to the public of the decision by the authorized representative of the Secretary of the Interior to acquire land "in trust" at least 30 days prior to signatory acceptance of land "in trust." The purpose of the 30-day waiting period is to afford interested parties the opportunity to seek judicial review of administrative decisions to take land "in trust" for Tribes or individual Indians before transfer of title to the properties occurs. On _____, 20___, the Regional Director/Superintendent issued a Notice of Decision to accept land "in trust" for the (Applicant Name) under the authority of (list statutory authority).

The Regional Director/Superintendent, on behalf of the Secretary of the Interior, shall acquire title in the name of the United States of America in trust for (Applicant Name) no sooner than 30 days after the initial date this notice is published in a newspaper.

The land referred to as former "(Name)" property, herein and is described as: (Insert legal description and case number)

5.4.10

Sample Acceptance of Conveyance

A C C E P T A N C E OF CONVEYANCE

The foregoing conveyance from the __(Applicant Name)_____ to the UNITED STATES OF AMERICA IN TRUST FOR THE __(Applicant Name)_____ is hereby accepted and approved on behalf of the United States pursuant to (Cite statutory authority), and the authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8, 230 DM 1, 3 IAM 4 (Release No. 00-03), 10 BIAM 11, as amended, and further delegations as needed to effectuate the Reorganization embodied in DM Releases dated April 21, 2003.

_____ Date:_____

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

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

STATE OF _____)
)SS
COUNTY OF_____)

On this _____day of_____, 2007, there personally appeared before me a Notary Public,_____personally known (or proved) to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that he/she executed the instrument.

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

_____
Notary Public

My Commission expires on:_____

EXHIBITS 5.5

Preliminary Title Opinion Document Checklist

HANDBOOK FOR GAMING ACQUISITIONS

(Gaming Handbook)

Office of Indian Gaming
1849 C Street NW, MS-3657 MIB
Washington, DC 20240
(202) 219-4066

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    - II. Flowchart for Gaming Acquisition & Eligibility
    - III. Sample Consultation Letter

1. INTRODUCTION

In order for a Federally recognized tribe to game on land taken into trust after October 17, 1988, the Tribe must comply with the requirements of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§2701-2721, the Indian Reorganization Act (IRA), [IRA Stat. 984, 25 U.S.C. § 461 et seq. (June 18, 1934)], the directive issued by Secretary Salazar on June 18, 2010, and the guidance memorandum issued by Assistant Secretary-Indian Affairs Echo Hawk dated June 13, 2011. See Exhibit I.

The Secretary bases the decision to accept a parcel in trust and a determination that the land is eligible for gaming on the evaluation of the criteria set forth in Title 25 Code of Federal Regulations (CFR) Part 151, Part 292 and any applicable policy. All gaming acquisitions require Secretarial approval prior to title to land being acquired.

This Handbook is in conjunction with the Bureau of Indian Affairs (BIA) Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook) for land that is being acquired for gaming purposes. These procedures include: (1) eligibility for a tribe to game on land that the tribe has requested the Secretary take in trust; (2) application requirements; (3) processing of a gaming application; (4) criteria used by the BIA and the Office of Indian Gaming (OIG) to develop and evaluate applications for gaming on after acquired land, and (5) identifies the final approval steps taken by the Secretary to take land in trust and/or allow a Tribe to game on after acquired land.

1.1 Purpose

The purpose of this Handbook is to assist Regional Directors in making recommendations, compiling the administrative record, and conducting an analysis for discretionary gaming land acquisitions under the IGRA, the IRA, and Secretary Salazar's policy directive.

The Regional Director's must ensure that the record of a tribe's acquisition application contains all the appropriate information, analysis, and recommendations to assist the OIG in making recommendations to the Assistant Secretary – Indian Affairs ("ASIA") for a final determination to acquire land in trust for gaming purposes.

The Regional Director's analysis and recommendation must address whether the record complies with the IRA and IGRA, and their implementing regulations set forth at 25 C.F.R. Part 151 and 25 C.F.R Part 292, respectively. Compliance with the IRA regulations includes ensuring compliance with the National Environmental Policy Act ("NEPA").

The Regional Director's Recommendation should include Findings of Facts and conclusions that are based upon an analysis of all the documents in the record.

1.2 Authority

The Secretary of Interior has the authority to acquire land in trust for gaming purposes in accordance with the Indian Reorganization Act of 1934 and Indian Gaming Regulatory Act of 1988. The Secretary has delegated the authority to the ASIA to approve or disapprove acquisitions of land for gaming purposes. See 209 Departmental Manual 8.1.

2. DEFINITIONS

Contiguous means two parcels of land having a common boundary, notwithstanding the existence of non-navigable waters or a public road or right-of-way including parcels that touch at a point, also referred to as "adjacent parcels."

Former reservation means lands in Oklahoma that are within the exterior boundaries of the last reservation established by treaty, Executive Order, or Secretarial Order for an Oklahoma tribe.

Land Claim means any claim by a tribe concerning the impairment of title or other real property interest or loss of possession that:

a. Arises under the United States Constitution, Federal common law, Federal statute or treaty;
b. Is in conflict with the right, or title or other real property interest claimed by an individual or entity (private, public, or governmental); and
c. Either accrued on or before October 17, 1988, or involves lands held in trust, or restricted fee for the tribe, prior to October 17, 1988.

Legislative termination means Federal legislation that specifically terminates or prohibits the government-to-government relationship with an Indian tribe or that otherwise specifically denies the tribe, or its members, access to or eligibility for government services.

Nearby Indian tribe means an Indian tribe with tribal Indian lands located within a 25 mile radius of the location of the proposed gaming establishment, or, if the tribe has no trust lands, within a 25-mile radius of its government headquarters.

Newly acquired lands means land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988.

NIGC means the National Indian Gaming Commission

Reservation means:

a. Land set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order of Federal statute for the tribe, notwithstanding the issuance of any patent;
b. Land of Indian colonies and Rancherias (including restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland;
c. Land acquired by the United States to reorganize adult Indians pursuant to statute; or
d. Land acquired by a tribe through a grant from a sovereign, including Pueblo lands, which is subject to a Federal restriction against alienation.

Secretarial Determination means a two-part determination that a gaming establishment on newly acquired lands:

a. Would be in the best interest of the Indian tribe and its members; and
b. Would not be detrimental to the surrounding community.

Significant historical connection means the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, and the Tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use of the land.

Surrounding community means local governments and nearby Indian tribes located within a 25-mile radius of the site of the proposed gaming establishment. A local government or nearby Indian tribe located beyond the 25-mile radius may petition for consultation if it can establish that its governmental functions, infrastructure or services will be directly, immediately and significantly impacted to an extent greater than business competition by the proposed gaming establishment.

3.0 PROCEDURE AND PROCESSES

3.1 Standard Operating Procedures

Gaming Fee-to-Trust Acquisitions involve the acquisition of land acquired after the date of enactment of IGRA, October 17, 1988, and the eligibility of those lands for gaming. See Exhibit II. Flowchart for Gaming Acquisitions. There are two operating procedures and each section is titled as follows:

- Subpart B-Exceptions to prohibition on Gaming on land Newly Acquired
- Subpart C-Secretarial Determination and Governor's Concurrence

3.2 Selecting the Exception for the Correct Standard Operating Procedure

The Regional Office will continue to process the fee-to-trust application pursuant to the regulations at 25 CFR § 151 and the applicable section of the Fee-to-Trust Handbook concurrently with any gaming determinations being developed by the Regional Office and reviewed by OIG. Indian Lands Determinations will be made by the OIG.

*The term "Gaming Related" is no longer used by the Department of Interior and any acquisitions that are not specifically for gaming will be processed pursuant to the regulations at 25 CFR § 151 and the applicable Fee-to-Trust Handbook. These include parking lots, hotels, golf courses, etc.

To identify the applicable operating procedure review the submitted documentation and determine the following:

- Is the land already in trust?
- What is the authority presented for the requested acquisition?
- Which exception to prohibition on gaming on Newly acquired land is applicable?

3.3 Standard Operating Process

All Gaming Fee-to-Trust Acquisitions are submitted to the Regional Director for processing in accordance with applicable laws, regulations and policies. The Regional Office will continue to process the fee-to-trust application pursuant to the regulations at 25 CFR § 151 and the applicable section of the Fee-to-Trust Handbook concurrently with any gaming determinations being developed by the Regional Office. After the Region has completed its review and

formulated a recommendation, the recommendation along with the administrative record is submitted to the OIG. OIG will review, evaluate and formulate a recommendation to the Assistant Secretary – Indian Affairs. Along with the operating procedures there are two operating processes that are needed to conclude the process. The information collected during the NEPA process will be used during the 25 CFR Part 151 and 292 processes and should be started early.

- OIG's Evaluation Process
- NEPA Process

3.4 Step Sequence

While steps within each of the standard operating procedures are numbered sequentially, you may proceed concurrently on other steps or may repeat certain steps until the operating procedure is completed.

Subpart B
Exceptions to Prohibition
On
Gaming on Newly Acquired Land

EXCEPTIONS TO PROHIBITIONS ON GAMING ON NEWLY ACQUIRED LANDS

Scope

This section of the handbook contains procedures for Exceptions to Prohibition on Gaming on land that has been newly acquired. See Exhibit II Gaming Acquisition Flow Chart. This section describes the procedures that the tribe will follow when requesting an Indian Lands Determination from OIG.

Procedure

To assist the OIG in making a determination that an applicant is eligible to game on newly acquired land, the OIG must first determine the following:

1. If the newly acquired lands are already in trust and the request does not concern whether a specific area of land is a "reservation," the tribe may submit a request for an opinion to either the National Indian Gaming Commission; or,
2. If the tribe seeks to game on newly acquired lands that requires a land-in-trust application or the request concerns whether a specific area of land is a "reservation," the tribe must submit a request for determination to the OIG to determine whether the land is eligible for gaming. That request for a determination must include Step 1 and Step 2 below in addition to one of the following:
    a. If the tribe is seeking land that is under a "Settlement of a Land Claim," Step 3 applies.
    b. If the tribe is seeking land that is an "initial reservation," Step 4 applies.
    c. If the tribe is seeking land that is "restored lands," Step 5 applies.

Step 1: Requesting an opinion from OIG to determine if an Exception to the prohibition on Gaming on Newly Acquired Land applies

All requests for an exception to the prohibition on gaming on newly acquired land must be in writing and contain the following information (the complete package may require additional information):

1. Identification of applicant tribe(s).
2. The request must state which exception applicant is requesting.
3. The request must include a legal land description as defined in the Fee-to-Trust Handbook.
4. A legal instrument (such as a deed or title insurance) to verify current ownership.

Step2: The request for a determination must include evidence establishing the exceptions for tribes with and without a reservation

1. If the tribe had a reservation on October 17, 1988, the lands must be located within or contiguous to the boundaries of the reservation.

    a. The application must provide evidence such as maps and/or land surveys that shows exactly where the land is located;
    b. The request must provide a map that includes the exterior boundaries of the Reservation; and

c. The requester must submit a statement which asserts that the site is within or contiguous to the boundaries of the reservation as those terms are defined in the definitions section of this Gaming Handbook.

2. If the tribe had no reservation on October 17, 1988, the lands must be either:
   a. Located in Oklahoma and within the boundaries of the tribe's former reservation or contiguous to other land held in trust or restricted status for the tribe in Oklahoma; or
   b. Located in a State other than Oklahoma and within the tribe's last recognized reservation within the State or States within which the tribe is presently located, as evidenced by the tribe's governmental presence and tribal population.
      i. The application should provide evidence such as maps, and land survey that show exactly where the land is located; and
      ii. The application must provide a map of the exterior boundaries of the reservation or the exterior boundaries of the former reservation; and
      iii. If the application is for land contiguous to trust or restricted land the application must provide the deed for the trust land or restricted land which shows the date of when the trust or restricted land was created; and
      iv. The application must submit a statement confirming that the site is within the tribe's former reservation or contiguous to other land held in trust or restricted status for the tribe as those terms are defined in the definitions section of this Gaming Handbook.

Step 3: The application must include the following evidence in order to meet the exception regarding newly acquired land under a Settlement of a Land Claim

1. The application must include the Act of Congress that allows the tribe to acquire the land under a settlement of a land claim that resolves or extinguishes with finality the tribe's land claim in whole or in part, thereby resulting in the alienation or loss of possession of some or all of the lands claimed by the tribe, in legislation enacted by Congress; or
2. The application must include the document/agreement that was used to acquire the land under a settlement of a land claim; and
   a. Is executed by the parties, which includes the United States, returns to the tribe all or part of the land claimed by the tribe, and resolves or extinguishes with finality the claims regarding the returned land; or
   b. Is not executed by the United States, but is entered as a final order by a court of competent jurisdiction or is an enforceable agreement that in either case predated
      October 17, 1988 and resolves or extinguishes with finality the land claim at issue.
3. The application must include evidence that all requirements of the land claim settlement act have been fulfilled. For example, if land must be purchased with settlement funds, then conclusive evidence must be included in the application that shows how expenditures from the settlement fund have been used to comply with the act; or if land must be acquired in a specified location, then conclusive evidence must be included that shows that the land location complies with the act.

Step 4: The application must include evidence that the following requirements are met in order to meet the exception regarding INITIAL RESERVATION

1. The application must provide the *Federal Register* notice that shows the tribe has been acknowledged through the administrative process under 25 CFR Part 83.
2. The application must state whether the tribe has a gaming facility on newly acquired lands under the restored land exception of the regulations at 25 CFR Part 292.
   a. If the tribe has a gaming facility, the application must include the documentation that establishes that the parcel is "Indian lands."
   b. If the tribe has a gaming facility the application must include documentation establishing when the tribe was authorized to game on the parcel.
3. The application must provide evidence that the land has been proclaimed a reservation under 25 U.S.C. 467 and is the first proclaimed reservation of the tribe following acknowledgment.
   a. The application must provide documentation of any acquisition that the tribe has made since becoming recognized and the dates of those acquisitions.
4. If the tribe does not have a proclaimed reservation on August 25, 2008, the effective date of the regulations, in order to be proclaimed an initial reservation the application must provide evidence that the land to be acquired is located within the State or States where the tribe is presently located, as evidenced by the tribe's governmental presence and tribal presence and tribal population, and within an area where the tribe has significant historical connections and one or more of the following modern connections to the land:
   a. The land is near where a significant number of tribal members reside; or
   b. The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land in trust; or
   c. The tribe can demonstrate other factors that establish the tribe's current connection to the land.
      i. The application should provide demographics showing the population in a 25-mile radius, 50-mile radius, and 100-mile radius of the parcel to be acquired;
      ii. The application should provide maps showing where the headquarters are located and where the parcel to be acquired is located;
      iii. The application should provide documentation showing when the government headquarters was established at that location;
      iv. The application should provide information on all other parcels of land and how the land is held; and
      v. The application must provide any agreements that the tribe has with any local governmental entity.

Step 5: The application must include evidence that the following requirements are met in order to qualify as an exception regarding RESTORED LANDS

In order for a tribe to game on newly acquired lands under this exception the application must provide evidence of the following:

1. The tribe at one time was federally recognized, as evidenced by:
   a. The United States at one time entered into treaty negotiations with the tribe;
   b. The Department determined that the tribe could organize under the IRA or the Oklahoma Indian Welfare Act;

c. Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
d. The United States at one time acquired land for the tribe's benefit; or
e. Other evidence that demonstrates the existence of a government-to-government relationship between the tribe and the United States.

2. The tribe at some later time lost its government-to-government relationship by one of the means specified below:
   a. Legislative termination;
   b. Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; and
   c. Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.
3. The tribe at a time after it lost its government-to-government relationship was restored to Federal recognition by one of the means specified below:
   a. Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, if the tribe was terminated by Congressional action;
   b. Recognition through the administrative Federal Acknowledgment Process under 25 CFR Part 83.8; and
   c. A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.
4. The application must get a determination from OIG that the newly acquired lands meet the following criteria:
   a. If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the evidence must show that either:
      i. The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or
      ii. If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements listed below in Step 6.
   b. If the tribe is acknowledged under 25 CFR Part 83.8 it must show that it:
      i. Meets the requirements below in Step 6, and
      ii. Does not already have an initial reservation proclaimed after October 17, 1988.
   c. If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must also meet the requirements below in Step 6.

Step 6: The application will request a determination from the OIG on how a tribe can establish a connection to newly acquired lands for the purposes of the "RESTORED LANDS" exception

1. In assisting the OIG in making this determination the application must provide evidence that the newly acquired land must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence

and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:

a. The land is within reasonable commuting distance of the tribe's existing Reservation;
    i. The application should provide OIG a map that identifies the closest driving distance between the proposed site and the reservation boundaries.
b. If the tribe has no reservation, the land is near where a significant number of tribal members reside;
c. The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for the land-in-trust; or
    i. The application should provide demographics showing the tribe's population in a 25-mile radius, 50-mile radius, and 100-mile radius of the parcel to be acquired.
d. Other evidence demonstrating the tribe's current connection to the land.

2. The application must provide documentation that demonstrates a significant historical connection to the land as defined in the definition section of this Gaming Handbook.
3. The application must provide documentation that demonstrates a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the documentation must be able to show that either:
    a. The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
    b. The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

Subpart C
Secretarial Determination
And
Governor's Concurrence

SECRETARIAL DETERMINATION AND GOVERNOR'S CONCURRENCE

Scope

This section of the handbook contains the application procedures for requesting a Secretarial Determination and Governor's Concurrence regarding gaming on trust land acquired after October 17, 1988. The Subpart C application process may run concurrently with the Part 151 process (Fee-To-Trust Handbook) and the NEPA process as provided for in this Gaming Handbook.

Procedure

A Secretarial Determination and Governor's Concurrence is more commonly referred to as a two part determination that questions whether gaming on the newly acquired property is in the best interest of an Indian tribe and its members, and is not detrimental to the surrounding community.

The following steps are developed to assist the Regional Director in preparing a recommendation for a determination that the tribe is eligible for gaming on newly acquired land because it is in the best interest of the Indian tribe and it members and is not detrimental to the surrounding community.

Step 1: Written Request to Initiate Application Process

All Secretarial Determinations and Governor's Concurrence applications must include, but are not limited to the following (the complete package may require additional information):

1. The Regional Director must have determined that no Subpart B exception applies.
2. The Regional Director must initiate the Secretarial Determination and Governor's Concurrence review process (Subpart C).

    a. The Application must include:
        i. Documentation addressing the regulations in 25 CFR Part 292 (if all sections of the regulations are not addressed the application will be considered incomplete);
        ii. The full name, address, and telephone number of the tribe submitting the application;
        iii. A description of the location of the land, including a legal description supported by a survey or other documents;
        iv. Proof of identity of present ownership and title status of the land;
        v. Distance of the land from the tribe's reservation or trust lands, if any, and tribal government headquarters;
        vi. The authorizing resolution from the tribe submitting the application;
        vii. The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with 25 U.S.C. 2710, if any;
        viii. The tribe's organic documents, if any;
        ix. The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated;
        x. If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed

scope of gaming, including the size of the proposed gaming establishment; and

xi. A copy of the existing or proposed management contract required to be approved by the National Indian Gaming Commission under 25 U.S. C. 2711 and part 533 of this title, if any.

Step 2: The Regional Director determines whether a gaming establishment on newly acquired land be in the best interest of the tribe and its members

The Information must include:

1. Projections of income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the Tribe prepared in accordance with generally accepted accounting principles and National Indian Gaming Commission standards. The statements should cover at least three years or the term of the proposed financing, whichever is longer. Fixed asset accounting should include investment, and depreciation and amortization schedules. Cash flow projections should show separately the financial results to the tribe, proposed manager, non-tribal governments, and debt holders, and establish that the Tribe is the primary beneficiary of the Indian gaming;
2. Projected tribal employment, job training, and career development, including the basis for projection of an increase in tribal employment considering the off-reservation location of the facility and the impact on the tribe, if tribal members leave to take jobs off-reservation;
3. Projected benefits to the tribe from tourism and the basis for the projection;
4. Projected benefits to the tribe and its members from the proposed uses of the increased tribal income;
5. Projected benefits to the relationship between the tribe and the surrounding community;
6. Possible adverse impacts on the tribe and plans for dealing with those impacts;
7. Distance of the land from the location where the tribe maintains core governmental functions;
8. Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred directly to the United States since acquiring land in trust for the benefit of an Indian tribe is part of the Secretary's trust responsibility to Indians. The tribe's option to acquire the land must be at its sole discretion in order to justify expending the Department's resources on a land acquisition review;
9. Evidence of significant historical connections, if any, to the land; and
10. Information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of:
    a. Consulting agreements relating to the proposed gaming establishment;
    b. Financial and loan agreements relating to the proposed gaming establishment; and
    c. Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.

Step 3: The Regional Director must include information to determine whether or not a gaming establishment on the newly acquired land is detrimental or not to the surrounding community

The information should include:

1. Information regarding environmental impacts and plans for mitigating adverse impacts, including information that allows the Secretary to comply with the requirements of the NEPA; e.g., an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), if required by NEPA;
2. Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;
3. Anticipated impacts on the economic development, income, and employment of the surrounding community;
4. Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;
5. Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment;
6. If a nearby Indian tribe has a significant historical connection to the land, then the impact on that tribe's traditional cultural connection to the land; and
7. Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and inter-governmental agreements with affected local governments.

Step 4: The Regional Director must conduct Consultation with State and Local Official and Officials of Nearby Indian Tribes

The Consultation letters requesting information on environmental issues should only be sent after a draft EA or draft EIS has been made public. Once that has occurred the Consultation letters should include the following information:

1. The Regional Director must send consultation letters requesting comments from the Governor of the State, appropriate local government officials, and officials of nearby Indian tribes within a 25-mile radius, within a 60-day time period, on the proposed gaming acquisition on the factors listed in Step 3 of this section. The comment period may be extended an additional 30 days at the discretion of the Regional Director. See Exhibit III.
2. If officials of a local government or nearby Indian tribe located beyond a 25-mile radius of the proposed gaming establishment request consultation, the Regional Director, using his discretion, will decide if the entity should be consulted.. The Regional Director also uses the criteria of 25 CFR 292.2 in the definition of surrounding community and any other information he deems appropriate.
3. The Regional Director may decide another method of consultation is necessary in addition to the consultation conducted by letter.
    a. When an additional method is used, the Regional Director must fully describe the process and the outcome or results, and provide documentation of the process. For example, if public hearings or meetings are held, copies of the hearing transcripts, minutes or videotapes may be provided as part of the administrative record.
    b. Documentation of the public response to the proposed acquisition should also be included.

Step 5: The Regional Director must include a Recommendation and Finding of Facts

Upon completion of all actions relating to the proposed two-part determination, including an independent analysis of all the information and factual evidence provided by the tribe and the

parties consulted, the Regional Director must prepare Finding of Facts addressing the two-part determination and the items of information relating to such a determination. The Findings and Conclusions must be supported by the facts, supporting exhibits, or other documentation contained in the administrative record, including but not limited to the following:

1. The Regional Director's Finding of Facts should include an analysis by program officers, i.e., social services, law enforcement, finance, environmental, and tribal operations, to ensure that aspects of those program areas have been adequately addressed by the tribe's application.
2. The Regional Director's Finding of Facts should also include an analysis of all agreements between the tribe and other governmental entities relied on to arrive at conclusions on the two-part determination.
3. To assure that all important documents and issues are received and adequately reviewed and considered, the administrative record should be organized in such a manner to allow easy access for review. The information and exhibits should be tabbed and indexed for easy reference. For purposes of organization, the Regional Director's factual findings relative to the two-part determination should be placed under the topical heading identified for each of the two-parts. For example, the "Best Interest of the Tribe" category should serve as a topical heading, and should be followed by facts, findings and conclusions on each factor listed under that category.
4. The Regional Director must make a Recommendation based on the facts, findings and conclusion each factor listed under Subpart C.

Step 6: Recommendation to OIG

The Regional Director needs to forward Recommendation to OIG.

OIG's Evaluation Process

OIG'S EVALUATION OF THE REGIONAL DIRECTOR'S RECOMMENDATION FOR GAMING ON TRUST LANDS ACQUIRED AFTER OCTOBER 17, 1988 AND THE REGIONAL DIRECTOR'S REQUEST FOR AN EXCEPTION TO THE PROHIBITION ON GAMING ON NEWLY ACQUIRED LANDS

Scope

This section of the handbook contains the process for OIG's evaluation of the Regional Director's Recommendation for gaming on trust lands acquired after October 17, 1988, 25 U.S.C. § 2719 and the Regional Director's request for an exception to the prohibition on Gaming on Newly Acquired lands, 25 CFR Part 292.

Procedure

OIG's review will confirm that the Regional Director's Recommendation, Finding of Facts and Record of Decision are based on the facts contained in the record, and confirm that the Regional Director's Recommendation, Finding of Facts and Record of Decision contain all the required elements in the IGRA and the IRA, as well as the implementing regulations at 25 CFR Part 292 and 25 CFR Part 151, and the policy directive from Secretary Salazar dated June 18, 2010.

To assist the OIG in their review, the Regional Director's Recommendation, Finding of Facts and Record of Decision must comply with the following steps.

Step 1: Review of Regional Director's Recommendation, Finding of Facts and Record of Decision

If a Determination from the OIG has been included that confirms that an Exception to Prohibition on Newly Acquired Lands exists, the OIG will review the Recommendation to ensure the following information is included:

1. The tribe's written request;
2. Identification of the tribe submitting the request. The OIG will verify that the Tribal name on the application is the same as it appears on the list of Federally recognized tribes as published in Federal Register for Federally recognized tribes and as it appears in the tribe's governing documents;
3. Legal land description. The OIG will review the description to verify that the description accurately describes the subject property, and that it is consistent throughout the application;
4. Need for acquisition of the property OIG will verify that the application is for gaming;
5. A legal instrument, (such as a deed), that verifies that the applicant owns the land in fee, or has an option at its sole discretion to acquire title to the land;
6. Legal analysis of the tribe's authority to take land in trust;
7. Tax consequence. OIG will look at the consultation letters from state and political subdivisions to verify the impact of removing the land from the tax rolls;
8. Jurisdictional conflicts. OIG will review the consultation letters to verify any jurisdictional conflicts that may arise and how the tribe addresses those issues;
9. OIG will review any other agreements that have been entered into between the tribe and state, as well as any other local government;

10. OIG will review the Regional Director's statement as to whether or not the BIA is equipped to assume the additional responsibilities resulting from the acquisition of the land in trust;
11. The Recommendation must include information that allows the Secretary to comply with NEPA process section 3.3 of this Gaming Handbook;
12. A Preliminary Title Commitment. OIG will examine this document to make sure there are no restrictions on the land prior to recommending the land be taken in trust;
13. Any additional information or justification to assist in reaching a decision; and
14. A statement that the applicant has complied with the requirements of IGRA. OIG will review this section to determine that the Regional Director has included a determination that the application comes within an exception to the prohibition on gaming on newly acquired land:
    a. if a management contract exist it complies with IGRA;
    b. if a tribe has a tribal-state compact in complies with IGRA; and
    c. that the tribe needs a tribal gaming ordinance in accordance with IGRA.

Step 2: The OIG will advise the Regional Director to proceed with Steps 9 through Step 14 to complete the process

Step 3: The OIG review process is-if the property is located off reservation and no exception to the prohibition on newly acquired lands exists-the Regional Director's Recommendation must include the factors in 25 CFR 151.11

Those factors are:

1. A business plan. OIG will evaluate the business plan for the economic benefits associated with the proposed use and to ensure the tribe is the primary beneficiary of the gaming.
2. Distance between tribe's reservation and the land to be acquired. OIG will use the distance between the tribe's reservation boundaries and the land to be acquired as a way to measure the acquisition impacts on regulatory jurisdiction and real property taxes and special assessments, on a case-by-case, basis to analyze the weight that will be given to concerns raised by state and local governments.

Step 4: If the property is located off reservation and no exception to the prohibition on newly acquired lands exists then the Regional Director's Recommendation must also include the following "best interest" test in 25 CFR 292(b)(1)(a)

The OIG's review will consist of the following:

1. All elements Step 1 and Step 3.
2. Projections of gross and net gaming income for the tribe. OIG will look to make sure the projections are reasonable.
3. Projected tribal employment, job training and career development. OIG will look to make sure that the projections are reasonable.
4. Projected benefits to the tribe from tourism and the basis for the projection. OIG will look to make sure the projections are reasonable.
5. Projected benefits to the relationship between the tribe and the surrounding community. OIG will review to make sure the projections are reasonable.
6. Possible adverse impacts on the tribe and plans for dealing with those impacts. OIG will review the adequacy of the plans to deal with the adverse impacts.

7. Distance of the land from the location where the tribe maintains core governmental functions. OIG will review to ensure that core governmental functions can be properly maintained.
8. Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States. OIG will verify the evidence submitted.
9. Evidence of significant historical connections to the land. OIG will determine if there is significant historical connections to the land.
10. Any other information that may provide a basis for a Secretarial Determination that the gaming establishment will be in the best interest of the tribe and its members. OIG will review to make sure the documents support the findings.

Step 5: If the property is located off reservation and no exception to the prohibition on newly acquired lands exists then the Regional Director's Recommendation must also include the following "not detrimental to the surrounding community" test in 25 CFR 292(b)(1)(a)

OIG's review will consist of the following:

1. Review the evidence of the environmental impacts and plans for mitigating adverse impacts including an environmental assessment, an environmental impact statement, or other information required by NEPA.
2. Review the reasonableness of the anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding communities.
3. Review the anticipated impacts on the economic development, income, and employment of the surrounding community.
4. Review the anticipated costs of impacts to the surrounding community and analyze the reasonableness of the identified sources of revenue to mitigate them.
5. Review the reasonableness of the anticipated cost to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.
6. The effects of the impact on the traditional, cultural connection of a nearby Indian tribe that has a significant historical connection to the land.
7. OIG will review any other information that may provide the basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community.

Step 6: If it is determined that the acquisition is in the "best interest of the tribe and its members" and "not detrimental to the surrounding communities," a letter will then be sent to the Governor of that state seeking concurrence in the Secretary's determination

OIG will prepare written notification to the Governor of the state where the land is to be acquired. The letter will include the Secretary's Determination and Finding of Facts, a copy of the entire application and a request for the Governor's concurrence.

Step 7: If the Governor does not affirmatively concur with the Secretarial Determination

1. OIG will notify the tribe of the Governor's non-concurrence, and that the newly acquired land may be acquired for only non-gaming purposes.

2. If the Notice of Intent to acquire the land in trust has been issued then the Secretary will withdraw that notice pending a revised application for non-gaming purposes.
3. Within one year from the date of the request for concurrence of the Secretarial Determination the Secretary may, at the request of the applicant tribe or the Governor, grant an extension up to 180 days.
4. If no extension is granted or if the Governor does not respond during the extension period, the Secretarial Determination will no longer be valid.

Step 8: If the Governor does affirmatively concur with the Secretarial Determination and the Secretary decides NOT to take the land in trust

OIG will notify the tribe of the Secretary's decision.

Step 9: If the Governor does affirmatively concur with the Secretarial Determination and the Secretary decides to take the newly acquired land in trust or if the Secretary decides, (pursuant to an exception), to take the newly acquired land in trust

The following will occur:

1. The OIG will prepare a letter to the tribe advising them that a decision has been made:
   a. To acquire land in trust for gaming; and/or
   b. That the tribe is eligible to game on trust land acquired after October 17, 1988
2. The OIG will prepare a memorandum to the Regional Director advising him that the Tribe's application is approved and that the Regional Director is authorized to acquire the property conveyance to the United States in trust subject to the following conditions:
   a. The completion of an updated contaminate survey;
   b. The expiration of the 30-day waiting period;
   c. That OIG will publish in the Federal Register the Notice of Intent to acquire the land; and
   d. That no action can be taken until the OIG gives confirmation to the Regional Director that no legal actions were filed in federal court within the 30-day period following the publication.

Step 10: The OIG will prepare the Federal Register Notice of the Final Agency Determination to take land in trust. See 25 CFR 151.12(b)

Step 11: The OIG will contact Department of Justice through the Office of the Solicitor to determine whether or not any legal actions have been filed in Federal District court during the 30-day waiting period

Step 12: OIG will take the following steps if any legal action is filed

1. Notify the Regional Director to take no further action until the judicial review process has been exhausted.
2. Upon notification from the Office of the Solicitor, OIG will furnish the administrative record of the application to the Office of the Solicitor.

Step 13: Once the judicial process has been exhausted OIG will notify the Regional Director of the instructions based upon the court's findings and conclusions

Step 14: If no action is filed OIG will notify the Regional Director to proceed with taking the land in trust in accordance with the Fee-to-Trust Handbook

The Acceptance of Conveyance should cite the authorizing acquisition authority and the authorizing gaming authority, i.e., Sec. 20 of the IGRA.

NEPA Process

NEPA COMPLIANCE REVIEW

NEPA compliance is required for discretionary land acquisitions as well as for a two-part determination even for lands already held in trust. *See supra* Gaming Acquisitions Flowchart, "NEPA Process."

Step 1: The Regional Director must first prepare and submit to OIG a draft Environment Assessment ("EA") or a draft Environmental Impact Statement ("EIS").

Step 2: SOL-DIA will review the draft EA or draft EIS and provide written comments to the OIG.

Step 3: The OIG will forward such comments to the Regional Director for further review and implementation in the draft EA or draft EIS.

Step 4: Once revisions to the draft EA or draft EIS have been made to the satisfaction of SOL-DIA and the OIG, the Regional Director will initiate publication of the draft EA or draft EIS to allow for public review and comment.

Step 5: After the public review and comment period has closed, the Regional Director will prepare a draft final EA or draft final EIS and submit it to the OIG for review by the SOL-DIA and OIG.

Step 6: After approval by the SOL-DIA and OIG, the Regional Director will make a Recommendation as to whether to issue a FONSI if the Region prepared an EA, or a ROD if the Region prepared an EIS. The Regional Director will submit a draft FONSI or draft ROD to the OIG.

Step 7: OIG will make a recommendation to the AS-IA. Only the AS-IA may issue a FONSI or ROD based upon the EA or EIS for decisions to acquire land in trust for gaming or for two-part determinations.

Following is a *Checklist of Environmental Issues for NEPA Review of Proposed Gaming Actions*. The Regional Director must include this *Checklist* with NEPA documents which are being submitted to OIG for review.

EXHIBITS

Sample Consultation Letter for Tribal Applicant (Gaming Acquisition)

Appropriate Letterhead

(To:)
Applicant Tribe

Dear (Title):

This office has received your application to conduct off-reservation gaming activities on (property description and/or location) in (county), under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721. The IGRA requires consultation by the Bureau of Indian Affairs on the proposed acquisition with appropriate State and local officials, including officials of other nearby Indian tribes.

Prior to taking off-reservation fee land into trust for gaming, the Secretary must complete a two-part determination required in Section 20 of the IGRA. This determination must address the following questions:

> Part 1. Would a gaming establishment on newly acquired land be in the best interest of the (name of tribe) and its members?
>
> Part 2. Would a gaming establishment on the newly acquired land not be detrimental to the surrounding community?

We are requesting you, as the applicant tribe, to furnish this office with documentation addressing whether the gaming establishment on newly acquired land would be in the best interest of the Indian tribe and its members. The documents should contain findings and supporting data on items including, but not limited to, the following:

1. Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe.

2. Projected tribal employment, job-training, and career development.

3. Projected benefits to the tribe and its members from tourism.

4. Projected benefits to the tribe and its members from the proposed uses of the increased tribal income.

5. Projected benefits to the relationship between the tribe and non-Indian communities.

6. Possible adverse impacts on the tribe and its members and plans for addressing those impacts.

7. Distance of the land from the location where the tribe maintains core governmental functions.

8. Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred directly to the United States.

9. Evidence of significant historical connections, if any, to the land.

10. Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any:

(a) Consulting agreements relating to the proposed gaming establishment.

(b) Financial and loan agreements relating to the proposed gaming establishment.

(c) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.

In order to analyze the second part of Section 20, we are requiring your input whether the gaming establishment on newly acquired land would not be detrimental to the surrounding community by use of the items listed below:

1. Information regarding environmental impacts and plans for mitigating adverse impacts, including information that allows the Secretary to comply with the requirements of the National Environmental Policy Act (NEPA); e.g., an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), if required by NEPA.

2. Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.

3. Anticipated impacts on the economic development, income, and employment of the surrounding community.

4. Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.

5. Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.

6. If a nearby Indian tribe has a significant historical connection to the land, then the impact on that tribe's traditional cultural connection to the land.

7. Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would understanding and inter-governmental agreements with affected local governments.

This information will be used by this office to develop proposed findings of fact. You should not feel prevented from commenting on the above items even if you lack extensive information or documented proof. The Secretary of the Department of the Interior will make a two-part determination based on these findings of fact. The Governor of (state) will be contacted for concurrence after a determination has been made by the Secretary.

Your response to this letter is requested to be addressed to this office and received within 60 days from the date of this letter.

Sincerely,

Regional Director

Sample Consultation Letter to Local, State and Other Tribal Governments

Appropriate Letterhead

(To:)
City
County
State
Nearby Indian tribes

Dear (Title):

This office has received an application from the (name of tribe) to conduct off-reservation gaming activities on (property description and/or location) in (county) under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721. The IGRA requires consultation by the Bureau of Indian Affairs on the proposed acquisition with appropriate State and local officials, including officials of other nearby Indian tribes.

Prior to taking off-reservation fee land into trust for gaming, the Secretary must complete a two-part determination required in Section 20 of the IGRA. This determination must address the following questions:

> Part 1. Would a gaming establishment on newly acquired land be in the best interest of the (name of tribe) and its members?
>
> Part 2. Would a gaming establishment on the newly acquired land not be detrimental to the surrounding community?

In order to analyze the second part of Section 20, we are requesting your input on whether the gaming establishment on newly acquired land would not be detrimental to the surrounding community. Please indicate your position on this matter by providing this Office with your findings and supporting data on items including, but not limited to, the following:

1. Information regarding environmental impacts and plans for mitigating adverse impacts, including information that allows the Secretary to comply with the requirements of the National Environmental Policy Act (NEPA); e.g., an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), if required by NEPA.

2. Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community.

3. Anticipated impacts on the economic development, income, and employment of the surrounding community.

4. Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them.

5. Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment.

6. If a nearby Indian tribe has a significant historical connection to the land, then the impact on that tribe's traditional cultural connection to the land.

7. Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and inter-governmental agreements with affected local governments.

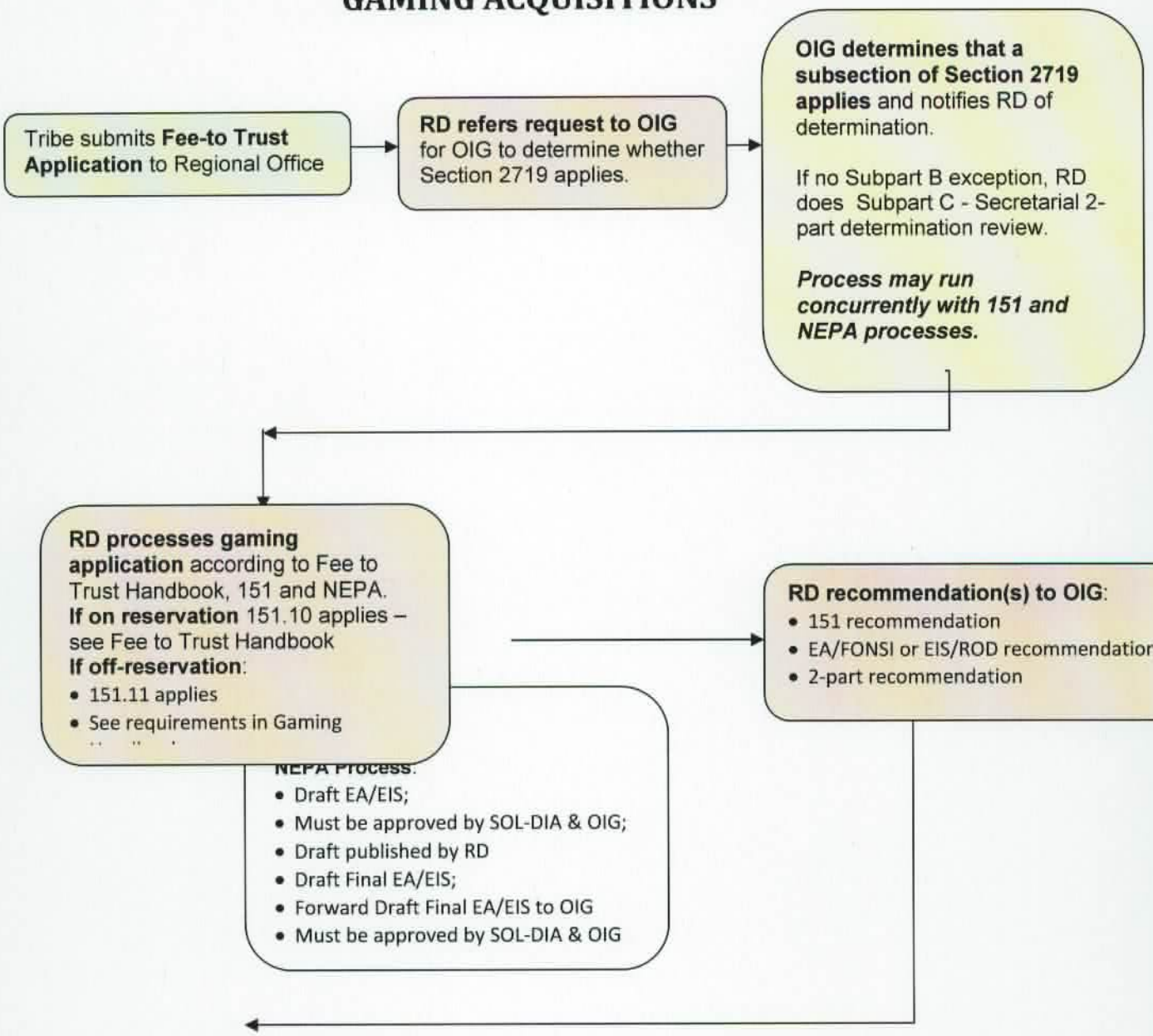
This information will be used by this office to develop proposed findings of fact. You should not feel prevented from commenting on the above items even if you lack extensive information or documented proof. The Secretary of the Department of the Interior will make a two-part determination based on these findings of fact. The Governor of (state) will be contacted for concurrence after a determination has been made by the Secretary.

Your response to this letter is requested to be addressed to this office and received within 60 days from the date of this letter.

Sincerely,

Regional Director

FLOWCHART
for
GAMING ACQUISITIONS



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 13 2011

Memorandum

To: All Regional Directors, Bureau of Indian Affairs
Director, Office of Indian Gaming

From: Assistant Secretary – Indian Affairs

Subject: Guidance for Processing Applications to Acquire Land in Trust for Gaming Purposes

On June 18, 2010, Secretary Salazar issued a memorandum regarding the gaming policy of the Department of the Interior (Department) noting that the Indian Gaming Regulatory Act (IGRA) generally prohibits Indian gaming on lands acquired in trust after October 17, 1988. The Secretary also described the two types of exceptions to this general prohibition: the "equal footing" exceptions, and the "off-reservation" exception. The Secretary directed me to move forward in processing applications under the "equal footing" exceptions, while also recommending that I undertake a review of issues, guidance, and regulatory standards relating to off-reservation gaming, in consultation with tribal leaders.

Since that time, my office has participated in six tribal consultation sessions with tribal leaders, and has thoroughly reviewed issues and policies regarding off-reservation gaming. I am writing you to explain the findings of my review and to inform you that, for all of the reasons discussed herein, I am withdrawing the January 3, 2008, memorandum of the Assistant Secretary – Indian Affairs, entitled "Guidance on taking off-reservation land into trust for gaming purposes." This memorandum also describes how we will consider applications for gaming under IGRA's "off-reservation" exception moving forward.

I. BACKGROUND

One of the most important authorities and responsibilities I have at the Department is to acquire land in trust for tribes and individual Indians pursuant to the legal standards set forth in Federal law, including the Indian Reorganization Act (IRA). In addition, I also have the authority and responsibility under IGRA to determine whether gaming can occur on lands acquired after October 17, 1988, the date of IGRA's enactment.[1] These decisions often raise difficult and contentious issues among the parties involved.

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[1] This responsibility is shared with National Indian Gaming Commission (NIGC) under certain circumstances. *See, e.g.*, 25 C.F.R. §292.3; Memorandum of Agreement Between the NIGC and DOI (2007), *available at* http://www.nigc.gov/Portals/0/NIGC%20Uploads/indianlands/mou/DOIMOU022607.pdf.

It is important to note that there are three independent and distinct requirements that a tribe must satisfy in order to legally operate a Class III facility on lands acquired in trust after IGRA's enactment. First, the Department must acquire lands in trust for the tribe pursuant to applicable Federal law. Second, those lands must be eligible for gaming pursuant to one of IGRA's exceptions. Lastly, the tribe must enter into a valid tribal-state gaming compact. Each of these requirements has varying levels of review, which can result in a process that consumes both time and resources.

With respect to the second requirement, as the Secretary noted in his June 18, 2010, memorandum, IGRA's "equal footing" exceptions were intended to place recently recognized and restored tribes on an equal footing with those tribes that were federally recognized at the time of IGRA's enactment. For example, IGRA provides exceptions to allow tribes to game on lands that qualify as "Restored Lands" (25 C.F.R. § 292.7), lands that are provided to the tribe as a "Settlement of a Land Claim" (*Id.* at § 292.5), or lands that qualify as a tribe's "Initial Reservation." *Id.* at § 292.6.

The "off-reservation" exception, meanwhile, offers tribes a limited opportunity to conduct gaming outside of their existing reservations where appropriate. Local communities have several meaningful opportunities to contribute to the Secretary's review of a tribe's application for off-reservation gaming. In addition, a state's governor must concur in all gaming proposals under the "off-reservation" exception as well as execute a tribal-state gaming compact with the tribe. Due largely to the multiple layers of this review process, the off-reservation exception has proven difficult to satisfy since the enactment of IGRA. Since 1988, only five tribes have received final approval from both the Secretary and the state governor in order to successfully establish an off-reservation gaming facility.

II. DISCUSSION

A. January 3, 2008 Guidance Memorandum

On January 3, 2008, prior to the Department's promulgation of the 25 C.F.R. Part 292 regulations, then-Assistant Secretary – Indian Affairs Carl Artman issued a memorandum entitled "Guidance on taking off-reservation land into trust for gaming purposes" (Guidance Memorandum) to Regional Directors and the Office of Indian Gaming. The Guidance Memorandum provided internal guidance to Bureau of Indian Affairs staff regarding the interpretation and application of the fee-to-trust regulations at 25 C.F.R. Part 151. The Guidance Memorandum was issued without government-to-government consultation with tribal leaders. It was referenced in letters disapproving numerous off-reservation gaming applications issued the very next day, on January 4, 2008.[2]

[2] As noted above, when the Guidance Memorandum was issued the Department was in the process of promulgating regulations governing the eligibility of Indian lands for gaming. Those regulations, finalized on May 20, 2008, and located at 25 C.F.R. Part 292, set forth the process by which the Secretary makes a determination regarding off-reservation gaming applications.

On August 24, 2010, my office sent a letter to tribal leaders announcing that we would conduct a series of six government-to-government consultations regarding the Department's guidance and regulatory standards for taking land into trust for gaming.[3] That letter specifically identified eight different issues for consultation, including: whether certain provisions of the Department's regulations governing off-reservation gaming, at 25 C.F.R. Part 292, should be amended; and, "[w]hether the Memorandum issued by Assistant Secretary Carl Artman on January 3, 2008, regarding guidance on taking off-reservation land into trust for gaming purposes should be withdrawn, modified, or incorporated into the regulations in 25 C.F.R. Part 292."

During the tribal consultation process, we received a number of comments regarding the Guidance Memorandum. Many tribes recommended that the Department rescind the Guidance Memorandum because it was not subject to tribal consultation and because it was, in their view, inconsistent with broader Federal Indian policy. Other tribes contended that the Guidance Memorandum was unreasonable because it makes inappropriate judgments regarding what is in the "best interests" of tribes, assumes that a tribe will experience a reduced benefit if its gaming facility is located at a certain distance from its reservation, and equates "reduced benefit" with a harm to the tribe. Other tribes maintained that the Guidance Memorandum unfairly prejudices tribes with reservations located at great distances from population centers and ignores historical facts regarding the locations where the Federal Government created reservations. Some tribal leaders expressed support for the primary objective of the Guidance Memorandum, which is to limit off-reservation gaming to areas close to existing Indian reservations.

I have carefully considered the viewpoints expressed during our recent tribal consultations. Based upon those consultations and comments provided during the same, as well as for the additional reasons stated herein, I have decided to withdraw the Guidance Memorandum.[4]

B. Processing "off-reservation" gaming applications under Part 292.

The Guidance Memorandum does not reflect the varied and complex issues that exist for tribes based on their own unique circumstances, and therefore may unintentionally constrain the Secretary's consideration of a tribe's application. The Department rarely has authorized a tribe to engage in off-reservation gaming. Nevertheless, it is vital that any decision regarding

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[3] Letter from George Skibine, Acting Principal Deputy Assistant Secretary – Indian Affairs, U.S. Department of the Interior, to Tribal Leaders (Aug. 24, 2010), *available at* http://www.indianaffairs.gov/idc/groups/public/documents/text/idc010719.pdf.

[4] It is the policy of this Administration to engage in government-to-government consultations to secure meaningful input from tribes with respect to certain actions taken by the Department. When directing me to conduct a review of the Department's "current guidance and regulatory standards" governing off-reservation exception, the Secretary recognized that this is an area where "deliberate government-to-government consultations would lead [the Department] to the implementation of a sound policy in this area." *See* Memorandum from the Honorable Ken Salazar, Secretary, DOI to Larry Echo Hawk, Assistant Secretary – Indian Affairs, DOI (June 18, 2010).

off-reservation gaming carefully examine and apply the rigorous criteria and standards provided by applicable laws and regulations in a fact-specific manner, rather than in the abstract. In my view, IGRA and the Department's regulations, at 25 C.F.R. Parts 151 and 292, adequately account for the legal requirements and policy considerations that must be addressed prior to approving fee-to-trust applications, including those made pursuant to the "off-reservation" exception.[5] Specifically, the recently enacted Part 292 regulations require exacting review of requests for off-reservation gaming.

The Part 292 regulations were promulgated pursuant to IGRA and other statutory authorities. Under the IGRA's "off-reservation" exception, a tribe may conduct gaming on lands acquired after October 17, 1988 only if:

1) The Secretary, after consultation with the [applicant] tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community; and

2) The Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.

25 U.S.C. § 2719(b)(1)(A). This evaluation is often referred to as the "Two Part Determination."

On May 8 2008, shortly after the release of the Guidance Memorandum, the Department published final regulations that implement the "off-reservation" exception. These regulations set forth four general steps an applicant tribe must take prior to successfully receiving a positive determination:

1) The tribe must submit a written request to the Secretary for a determination that the proposed gaming establishment is in the best interest of the tribe and is not detrimental to the surrounding community. 25 C.F.R. § 292.13(a). The tribe's application must include, among other things:

   - "[T]he distance of the land from the tribe's reservation or trust lands, if any, and the governmental headquarters;"[6] and
   - Information to assist the Secretary in making a determination regarding whether the proposed gaming establishment will be in the best interest of the tribe and its

[5] My decision is also consistent with the views tribal leaders expressed during our government-to-government consultation on the Department's guidance and regulatory standards for taking land into trust for gaming purposes. During the consultations a number of tribes expressed frustration that they participated in the consultations during the initial drafting and promulgation of 25 C.F.R. Part 292, and that the Department should simply move forward with processing applications under that Part rather than seeking further comment.

[6] *Id.* at § 292.16(d).

members,[7] including, but not limited to, information regarding projected tribal income and employment; projected benefits to the tribe and its member from projected income; possible adverse impacts on the tribe and its members and plans for addressing such impacts; and distance of the land from the location where the tribe maintains core governmental functions;[8] and

- Information to assist the Secretary in determining whether the proposed gaming facility will not be detrimental to the surrounding community,[9] including, but not limited to, anticipated impact on the social structure, infrastructure, services, housing, community character and land use patterns of the surrounding community; anticipated impacts on the economic development, income, and employment of surrounding community; and if any nearby Indian tribe has a significant historical connection to the land, then the impact on that tribe's traditional cultural connection to the land.[10]

2) Once the applicant tribe submits the required information, the Secretary will then consult with the tribe and appropriate state and local officials, including officials of nearby Indian tribes, regarding the tribe's request for a secretarial determination. 25 C.F.R. § 292.13(b).

3) Following that consultation, the Secretary will determine whether the proposed gaming establishment is in the best interest of the tribe, and whether the gaming establishment would be detrimental to the surrounding community. 25 C.F.R. § 292.13(c).

4) If the Secretary makes a positive determination, he will then notify the Governor of the affected state. The Governor must then determine whether to concur in the Secretary's determination. 25 C.F.R. § 292.13(d).

In conjunction with IGRA and the IRA, the regulations provide comprehensive and rigorous standards that set forth the Department's authority and duties when considering applications for off-reservation gaming. I find that the Department's regulations governing off-reservation gaming acquisitions adequately provide standards for evaluating such acquisitions and, consequently, that the Guidance Memorandum's interpretation of our fee-to-trust regulations is unnecessary.

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[7] *Id.* at § 292.16(e).

[8] *Id.* at § 292.17.

[9] *Id.* at § 292.16(f).

[10] *Id.* at § 292.18.

C. Processing "off-reservation" gaming applications under Part 151.

The Guidance Memorandum provided interpretation and guidance with respect to 25 C.F.R. § 151.11(b), the regulation governing taking off-reservation land into trust for a tribe. On this point, I also view that guidance as unnecessary and potentially confusing. The Department's fee-to-trust regulations, which govern the process by which the Secretary acquires land in trust on behalf of tribes and individual Indians, have been in effect for 30 years. Where a tribe seeks to have land acquired in trust outside of its existing reservation:

> The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:
>
> ...
>
> (b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give ***greater scrutiny*** to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised [by state and local governments regarding regulatory jurisdiction, real property taxes and special assessments].

25 C.F.R. § 151.11 (emphasis added).

The land acquisition process already provides an opportunity to scrutinize applications that seek to acquire land off-reservation. The Secretary must consider concerns raised by state and local officials pursuant to 25 C.F.R. §§ 151.11 and 151.10, and must balance those concerns when making his determination.

The Guidance Memorandum thus has the potential to unnecessarily constrain the Department's decision making process. Clearly, the Department must consider the impact of jurisdictional issues identified for consideration in the regulations. At the same time, each tribe's relationship with its state and local governments is unique and each should be considered on a case-by-case basis by balancing *all* of the relevant factors identified in the regulations, not just those identified in the Guidance Memorandum. Finally, the regulations do not require the Department to deny an application based on any single issue to be considered thereunder. The regulations speak for themselves and no guidance beyond the regulations is necessary in guiding the Department's case-by-case analysis for each unique fee-to-trust application.

III. CONCLUSION

For all of the reasons discussed herein, I hereby withdraw the January 3, 2008, memorandum of the Assistant Secretary – Indian Affairs entitled "Guidance on taking off-reservation land into trust for gaming purposes." In its place are the Department's existing regulations, referenced above, which provide strict and transparent standards for evaluating tribal applications to conduct off-reservation gaming.

Going forward, the Department will review off-reservation gaming applications on a case-by-case basis to determine whether they comply with IGRA and existing regulations. It is worth noting once again that a positive gaming eligibility determination is only one of three necessary steps an applicant tribe must go through to open a Class III facility. In addition to a positive two-part determination under the "off-reservation" exception, the applicant tribe generally must have land acquired in trust on its behalf, and must enter into a valid tribal-state gaming compact.

I appreciate your consideration of these important and sensitive issues. If you have any questions regarding this letter, you may contact the Office of Indian Gaming.

THE SECRETARY OF THE INTERIOR
WASHINGTON

JUN 18 2010

Memorandum

To: Assistant Secretary – Indian Affairs

From: Secretary Ken Salazar

Subject: Decisions on Indian Gaming Applications

BACKGROUND

The issue of Indian gaming engenders strong feelings among many parties. The Department of the Interior, through the Assistant Secretary – Indian Affairs, has the authority and responsibility to review and approve applications to take land into trust for Indian gaming, adhering to the legal standards set forth in federal law, including the Indian Reorganization Act and the Indian Gaming Regulatory Act (IGRA). Under IGRA's implementing regulations, the Department also has the responsibility to determine whether gaming can occur on lands acquired after IGRA's enactment in 1988.[1]

It is important that all interested persons know the facts. Of the 564 federally recognized tribes, less than half, or 238 tribes, operate gaming facilities. Two hundred thirty-two of these tribes operate Class III, or "casino-style," gaming facilities under tribal-state compacts. Most tribal gaming operations are quite small and are located in rural areas.

There is no question that gaming has provided important economic opportunities for some tribes. Indeed, Congress' declared policy under IGRA was to provide a basis for gaming by tribes "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702. Revenues from tribal gaming are used for specific purposes, including funding tribal government operations and programs, and providing for the general welfare of the Indian tribe and its members. The proceeds that tribes realize from gaming allow many of them to provide greatly needed services such as health care, education and housing, which increases tribal self-reliance.

GAMING "INDIAN LANDS" DETERMINATIONS

Decisions whether to take off-reservation land-into-trust for gaming purposes, or other gaming determinations, can raise difficult and contentious issues. IGRA prohibits gaming on lands acquired in trust after its enactment in 1988 (so-called "after acquired lands"), except where those trust lands meet certain conditions explicitly specified in IGRA at 25 U.S.C. § 2719. These exceptions can be separated into two types: (1)"off reservation" applications; and (2) reservation or equal footing applications. I believe that the Department needs to provide clarity regarding all

[1] Part of this responsibility is shared with the NIGC under certain circumstances

aspects of how it will review and make decisions on these two distinct types of Indian gaming applications or requests.

"Off Reservation" Land-in-Trust/Gaming Requests Under IGRA, 25 U.S.C. § 2719(b)(1)(A)

The normal rule under IGRA is that a "two part" determination is applied to tribal requests that "off reservation" lands be taken into trust for potential gaming purposes. The "two part" test includes: (1) a determination by the Secretary that the gaming establishment is in the best interest of the tribe and would not be detrimental to the surrounding community; and (2) the concurrence of the state's Governor. The review of these applications is appropriately lengthy and deliberate. Given the complicated issues that applications of this nature raise, and the various levels of review and approval involved, they have been approved rarely despite a number of submissions over the years. In the 20 years since IGRA was passed, only five "off reservation," or so-called "two-part" determinations, have been approved by the Department. In addition, the tribe and the state must negotiate and approve a gaming compact prior to commencement of Class III gaming operations.

I understand the Department currently has nine "two-part" applications under review. For these, I recommend that you undertake a thorough study of these issues and review current guidance and regulatory standards to guide the Department's decision-making in this important area. During this review, your office should engage in government-to-government consultations consistent with the policy of this administration to obtain input from Indian tribes. I realize that engaging in this exercise in connection with the application of the two-part test may cause some delay, but given the Department's discretion in this area, it is appropriate that we take the necessary time to identify and adopt principled and transparent criteria regarding such gaming determinations. Moreover, deliberate government-to-government consultations will lead us to the implementation of a sound policy in this area.

Reservation and Equal Footing Exceptions Under IGRA 25 U.S.C. § 2719(a) and (b)(1)(B)

Certain lands that are acquired after IGRA's passage in 1988 are treated under the statute as though they were part of pre-IGRA reservation lands and, therefore, are eligible for gaming purposes. These types of lands include lands that are located within or contiguous to the boundaries of the tribe's reservation, or are within the tribe's last recognized reservation within the state(s) within which such tribe is presently located.[2]

Lands that are taken into trust for settlement of a land claim, as part of an initial reservation, or as restoration of lands for a tribe that is restored to federal recognition are also excepted from the IGRA prohibition in order to place certain tribes on equal footing.

These exceptions too are rare, as in the 20 years since IGRA was enacted, there have only been 36 applications approved under these exceptions. There are currently 24 applications pending before the Department that request approval based on one of these IGRA exceptions.

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[2] Except for Oklahoma, where the lands must be within the boundaries of the Indian tribe's former reservation or contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma.

For applications or requests submitted under one of these exceptions in IGRA, their approval largely depends upon a legal determination as to whether the application or request meets one of the delineated exceptions under IGRA. I recommend that you obtain such a legal determination from the Solicitor's Office. If the lands are eligible to conduct gaming pursuant to one of the exceptions set forth in IGRA, the tribe may be eligible to conduct Class III gaming on those lands pursuant to a negotiated and approved tribal-state gaming compact.

MOVING FORWARD WITH DECISIONS

It is important that we move forward with processing applications and requests for gaming on Indian lands within the context of objective statutory and regulatory criteria. I expect that you will undertake regular and meaningful consultation and collaboration with tribal leaders to continue to develop sound federal Indian gaming policy, in furtherance of this Administration's commitment to strengthening the unique government-to-government relationship with Indian tribes. In addition, it is important that we keep the United States Congress fully aware of our efforts.

It will be important that your office continues to coordinate closely with the Solicitor's office, and with the Deputy Secretary because your decisions can have significant legal and policy implications. I have full confidence in your exercise of your delegated authority on these important matters.

cc: Deputy Secretary
Solicitor