



CONSULTATION DRAFT
PART 151—LAND ACQUISITIONS
§§ 151.11 – 151.12

§ 151.11 Off-Reservation Acquisitions.

The Secretary must consider the following requirements in evaluating 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:

(a) Application contents. The applicant must submit an application that states the purposes for which the land will be used, and, if applicable, provide a detailed description of the project to be developed.

(1) For Tribal applicants, if the acquisition is for gaming purposes, the application must include:

- (i) The Tribe's historical or modern connection, if any, to the land;
- (ii) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (iii) The need of the applicant for additional land;
- (iv) A map showing the location of the land to be acquired and:
 - (A) The exterior boundaries of the Tribe's reservation, if any;
 - (B) The shortest distance, in miles, between the Tribe's reservation, if applicable, and the land to be acquired; and
 - (C) The shortest distance, in miles, between the Tribe's trust lands, if any, and the land to be acquired;
- (v) An analysis whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction;
- (vi) An analysis whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site;
- (vii) A plan that specifies the anticipated economic benefits to the Tribe and its members associated with the gaming project, including investment and recurring revenues;
- (viii) Information on economic benefits, if any, to the local community from the gaming project;

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(ix) Identification of the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming project; and

(x) Identification of the on-reservation benefits from the proposed gaming project, including whether any of the revenue will be used to create on-reservation job opportunities.

(xi) Evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the State and local governments, if any, or an explanation as to why no such agreements or efforts exist;

(2) For Tribal applications, if the acquisition is not for gaming purposes, the application must address the criteria listed in this paragraph.

(i) The Tribe's historical and/or modern connection, if any, to the land;

(ii) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(iii) The need of the applicant for additional land;

(iv) A map showing the location of the land to be acquired; and

(A) The exterior boundaries of the Tribe's reservation, if any;

(B) The shortest distance, in miles, between the Tribe's reservation, if applicable, and the land to be acquired; and

(C) The shortest distance, in miles, between the Tribe's trust lands, if any, and the land to be acquired;

(v) An analysis whether the acquisition will facilitate the consolidation of the Tribe's land holdings and reduce checkerboard patterns of jurisdiction; and

(vi) An analysis whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site.

(vii) For acquisitions for economic development purposes, excluding gaming, a plan that specifies the anticipated economic benefits to the Tribe, its members, and the local community (if any), associated with the economic development.

(3) For individual requests for off-reservation trust acquisitions of restricted fee land under § 151.3, the applicant must provide the information required by § 151.11(a)(2)(ii), (iii), the amount of trust or restricted land already owned, and a description of the degree to which he or she needs assistance in handling his or her affairs.

(b) Notice

(1) Upon receipt of the information required in paragraph (a), if the land is in unrestricted fee status, the Secretary will notify the State and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the State and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, potential conflicts of land use, real property taxes, and special assessments.

(2) A copy of the State and local comments will be provided to the applicant, which will be given a reasonable time in which to reply and/or request that the Secretary issue a decision.

(c) Secretarial Review

(1) Initial review. Upon receipt of the application information required in paragraphs (a) and (b), the Secretary will complete an initial review of the application.

(i) The initial review of an off-reservation application should precede any effort to comply with NEPA and 602 DM 2.

(ii) In completing the initial review, as the distance between the Tribe's reservation, if any, and the land to be acquired increases, the Secretary will give greater scrutiny to the applicant's justification of anticipated benefits from the acquisition, and greater weight to the concerns raised pursuant paragraph (b).

(iii) If the initial review reveals that the application fails to address, or does not adequately address, the information required in paragraph (a), the Secretary will deny the application and promptly inform the applicant in accordance with section 151.12.

(2) If the Secretary does not deny the application during the initial review, the applicant will be informed and must submit the following information:

(i) Documentation that the Secretary needs in order to comply with NEPA and 602 DM 2;

(ii) If applicable, any information in support of the Tribal applicant being "under federal jurisdiction" in 1934.

(iii) If the application is for gaming, information regarding the eligibility to conduct gaming, in accordance with 25 CFR Part 292;

(iv) Any additional information the Secretary requires.

(3) Final review. Upon receipt of the information required by this paragraph, and review of the entire application record, the Secretary will issue a decision to approve or deny the application in accordance with section 151.12. The Secretary's decision will document consideration of all of the criteria required by this section and:

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(i) 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; and

(ii) As the distance between the Tribe's reservation, if any, and the land to be acquired increases, the Secretary will give greater scrutiny to the Tribe's justification of anticipated benefits from the acquisition, and greater weight to the concerns raised pursuant paragraph (b).

(d) Effect of Regulation.

(1) This section applies to all applications to acquire off-reservation land in trust where the acquisition is not mandated, including applications that are pending before the Secretary for consideration on XX/XX/20XX, where no final agency decision has been made.

(2) This section does not alter agency decisions made before the date of enactment of this section.

§ 151.12 Action on requests.

(a) The Secretary will review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary's decision to approve or deny a request will be in writing and state the reasons for the decision.

(c) A decision made by the Secretary, or the Assistant Secretary – Indian Affairs pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.

(1) If the Secretary or Assistant Secretary denies the request, the Assistant Secretary will promptly provide the applicant with the decision.

(2) If the Secretary or Assistant Secretary approves the request, the Assistant Secretary will:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish in the Federal Register a notice of the decision to acquire land in trust under this part; and

(iii) Acquire the land in trust under § 151.14 no sooner than 30 days after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(d) A decision made by a Bureau of Indian Affairs official pursuant to delegated authority is not a final agency action of the Department under 5 U.S.C. 704 until administrative remedies are exhausted under part 2 of this chapter or until the time for filing a notice of appeal has expired and no administrative appeal has been filed.

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(1) If the official denies the request, the official will promptly provide the applicant with the decision and notification of any right to file an administrative appeal under part 2 of this chapter.

(2) If the official approves the request, the official will:

(i) Promptly provide the applicant with the decision;

(ii) Promptly provide written notice of the decision and the right, if any, to file an administrative appeal of such decision pursuant to part 2 of this chapter, by mail or personal delivery to:

(A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and

(B) The State and local governments having regulatory jurisdiction over the land to be acquired;

(iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under part 2 of this chapter; and

(iv) Acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or no sooner than 30 days after exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(3) The administrative appeal period under part 2 of this chapter begins on:

(i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section;

(ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section.

(4) Any party who wishes to seek judicial review of an official's decision must first exhaust administrative remedies under 25 CFR part 2.

(e) If land has been acquired in trust before judicial review of the decision to take the land into trust has concluded, and a court rules that the Department erred in making the trust acquisition decision, the Department will comply with a final court order and any resulting judicial remedy, including, for example, taking land out of trust.