



United States Department of the Interior

OFFICE OF THE SECRETARY
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National Policy Memorandum

Assistant Secretary – Indian Affairs

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Title: Off-Reservation Fee-to-Trust Decisions

1. Purpose

The purpose of this memorandum is to establish interim policy regarding delegated authority for the review and approval of off-reservation fee-to-trust acquisitions under 25 CFR 151.11.

Fee-to-trust applications involve the acquisition in trust of whole or undivided interests in land held in fee. There are several different types of possible acquisitions, and operating procedures for each type are documented in detail in the following handbook: “Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook),” June 2016, which can be found online: <https://www.bia.gov/WhatWeDo/Knowledge/Directives/Handbooks/index.htm>.

The policy and procedures documented in this memorandum are specific to off-reservation applications.

Effective immediately, the delegated authority to issue decisions on all requests for off-reservation fee-to-trust acquisitions lies with the Office of the Assistant Secretary - Indian Affairs (AS-IA). This includes the authority to decide requests for mandatory and discretionary off-reservation fee-to-trust acquisitions, regardless of whether such requests are gaming-related or not.

2. Scope

This policy applies to all employees of the Bureau of Indian Affairs (BIA) involved in the review and approval of off-reservation fee-to-trust acquisitions under 25 CFR 151.11.

It does not affect any delegations of authority issued by BIA Regional Directors (RDs) to subordinate officials (as documented in 3 IAM 4). Nor does it affect the existing authority of BIA RDs to review and determine requests for non-gaming discretionary or mandatory on-reservation fee-to-trust acquisition requests.

3. Policy and Procedures

On April 6, 2017, the Acting AS-IA provided notice to all BIA RDs that the delegated authority for off-reservation fee-to-trust decisions will lie with the Acting AS-IA, and that delegated authority for off-reservation fee-to-trust decisions for gaming will lie with the Deputy Secretary of the Department of the Interior (DOI).

Since then, questions have arisen regarding implementation of the AS-IA's notice. This policy rescinds and replaces the AS-IA's April 6, 2017, notice and the directives contained therein.

Effective immediately, the following interim policy will be implemented with regard to the review and approval of all off-reservation fee-to-trust acquisitions under 25 CFR 151.11.

A. Determining When an Application is On- or Off-Reservation

"On-reservation" means land that is within or contiguous to an Indian reservation as defined in 25 CFR 151.2. If a question arises whether property that is the subject of a particular fee-to-trust application qualifies as contiguous, an opinion should be requested from the appropriate field or regional Office of the Solicitor (SOL). The RD will submit an electronic copy of the field or regional SOL's opinion on contiguity to the Associate Solicitor, Division of Indians Affairs, for his or her review and concurrence before the application in question can move forward.

B. Notice of Receipt of Off-Reservation Applications

When an RD receives an off-reservation fee-to-trust application, or determines that an application is an off-reservation application, the RD will immediately provide notice of the application via electronic mail to the BIA Office of Trust Services (OTS) Deputy Bureau Director (Deputy Bureau Director), who will forward the notice to the AS-IA.

C. Processing Discretionary Non-Gaming Off-Reservation Applications

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

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

With respect to notices of availability for environmental compliance documents issued in accordance with Step 7 (Environmental Compliance Review), RDs will notify the Deputy Bureau Director of their intent to issue such notices at least 30 days in advance of issuance. The Deputy Bureau Director will immediately forward the RD's notice to the AS-IA.

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

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

Additionally, the RD will prepare and submit with the administrative record a summary of the 25 CFR Part 151 factors as applied to the application. In no event will the RD submit a recommendation as to whether the application should be approved.

The AS-IA will complete Step 10 (Preparing Analysis and NOD) and Step 11 (Preparing the Publication Notice) upon receipt of the administrative record and summary of the Part 151 factors from the RD. In the event that the application also contains a request for a reservation proclamation, then the NOD and Federal Register Notice prepared by the AS-IA must reference the reservation proclamation request.

If the AS-IA decides to approve the request, the AS-IA will return the package, NOD, and Federal Register Notice to the RD for completion of Steps 12 through 16. The authority to complete Step 12 (Preparing Final Certificate of Inspection and Possession (CIP)) and Step 13 (Acceptance of Conveyance), which require fieldwork and special expertise, is therefore delegated back to the RD.

If the AS-IA makes a decision denying an application, the AS-IA must provide notice to the applicant consistent with 25 CFR 151.12, and return the administrative record to the RD for archiving.

Decisions by the AS-IA are final for the Department and are effective immediately. Challenges to the AS-IA's decisions are not subject to administrative review by the Interior Board of Indian Appeals.

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

D. Processing Discretionary Off-Reservation Gaming Applications

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

E. Processing Mandatory Off-Reservation Applications

Decisions regarding mandatory off-reservation trust acquisitions will be issued by the AS-IA in accordance with the Fee-To-Trust Handbook.

Upon notifying the Deputy Bureau Director of a mandatory off-reservation application, the RD will be responsible for completing Steps 1 through 6 of Section 3.1.3 of the Fee-to-Trust Handbook. The legal analysis to determine if an acquisition is mandatory, required at Step 2.2, must be prepared by the field or regional SOL, and when completed, sent to the Associate Solicitor, Division of Indian Affairs, for review and concurrence with the legal analysis.

Upon completion of Step 6, the RD will submit both a paper and an electronic copy of the entire administrative record documenting all work completed on the application through Step 6 to the Deputy Bureau Director.

The administrative record must include an index; the complete application package submitted by the applicant; all correspondence with the applicant and interested parties including electronic mail; all documentation showing compliance with Steps 1 through 6; and any other relevant documentation. Incomplete administrative records will be returned to the RD.

Instead of submitting a draft decision, the RD will prepare and submit a summary of the information required for the Notice of Acquisition. In no event will the RD submit a recommendation as to whether the application should be approved.

The AS-IA will complete Step 7 (Preparing Notice of Acquisition). If the AS-IA decides to approve the request, the AS-IA will return the package to the RD to complete Steps 8 through 12. The authority to complete Step 8 (Conducting Final Inspection) and Step 9 (Acceptance of Conveyance), which require fieldwork and special expertise, is therefore delegated back to the RD.

If the AS-IA decides to deny the application, the AS-IA will provide notice to the applicant consistent with 25 CFR 151.12, and return the administrative record to the RD for archiving.

As stated previously, decisions by the AS-IA are final for the Department and are effective immediately. Challenges to the AS-IA's decisions are not subject to administrative review by the Interior Board of Indian Appeals.

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

4. Roles and Responsibilities

- A. **AS-IA** is responsible for issuing decisions on all requests for off-reservation fee-to-trust acquisitions. This includes the authority to decide requests for mandatory and discretionary off-reservation fee-to-trust acquisitions, regardless of whether such requests are gaming-related or not.
- B. **Deputy Bureau Director, OTS** is responsible for collecting, docketing, and conveying all requests for off-reservation fee-to-trust acquisitions, administrative records, and associated notices of availability for environmental compliance documents to the AS-IA.
- C. **RDs** are responsible for complying with Indian Affairs and DOI policy and procedures for fee-to-trust acquisitions, including all requirements for records management and related responsibilities, and any other policy and procedures as applicable.
- D. **Associate Solicitor, Division of Indian Affairs** is responsible for reviewing and concurring with Field or Regional SOL opinions on contiguity or on mandatory authority submitted to him or her.

5. Approval



MAY 31 2018

John Fahsuda

Date

Principal Deputy Assistant Secretary – Indian Affairs

Exercising the Authority of the Assistant Secretary – Indian Affairs