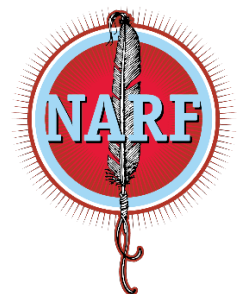


Putting Land in Trust: A Guidebook for Alaska Native Tribes and Individuals

July 1, 2022



Emmett Environmental
Law & Policy Clinic
HARVARD LAW SCHOOL



This Guidebook was written by Anna Todd (JD '23), a student in Harvard Law School's Emmett Environmental Law and Policy Clinic, in collaboration with Tommy Landers, a Clinical Fellow in the clinic, and Matthew Newman, a Senior Staff Attorney at the Native American Rights Fund.

Since 1970, the **Native American Rights Fund (NARF)** has provided legal assistance to Indian tribes, organizations, and individuals nationwide who might otherwise have gone without adequate representation. NARF has successfully asserted and defended the most important rights of Indians and tribes in hundreds of major cases, and has achieved significant results in such critical areas as tribal sovereignty, treaty rights, natural resource protection, and Indian education. NARF is a non-profit 501c(3) organization that focuses on applying existing laws and treaties to guarantee that national and state governments live up to their legal obligations.

The **Emmett Environmental Law and Policy Clinic** at Harvard Law School trains students in the practice of environmental law through work on a variety of litigation, administrative, legislative, and policy projects. The Clinic collaborates with scientists, medical professionals, nonprofit and public interest organizations, and government clients on environmental and energy issues at the federal, state, and local level. The work includes writing briefs and comment letters, preparing guidance documents and manuals for non-lawyers, drafting model legislation, and preparing policy papers.

If you have any questions about the contents of this Guidebook, please contact:

Matthew Newman
Native American Rights Fund
745 West Fourth Avenue, Suite 502
Anchorage, AK 99501
(907) 276-0680
mnewman@narf.org

Cover photo credit: *Printable Alaska Template*, PINTEREST,
<https://www.pinterest.com/pin/325455510548075954> (last visited June 22, 2022)

Table of Contents

Purpose	1
I. Introduction	2
<i>A. How to Use This Guidebook</i>	2
<i>B. How to Use the Model Application</i>	3
<i>C. Resources</i>	3
<i>D. What is Fee Land and Trust Land?</i>	3
<i>E. What is Fee-to-Trust Land Acquisition?</i>	4
<i>F. History of Fee-to-Trust Acquisitions in Alaska</i>	4
II. Types of Acquisition	6
<i>A. Discretionary Trust Acquisitions</i>	6
<i>B. Mandatory Trust Acquisitions</i>	6
III. Deciding Whether to Have Land Taken into Trust	7
<i>A. Benefits</i>	7
<i>B. Disadvantages</i>	8
<i>C. Other Considerations</i>	9
IV. Applying to Have Land Taken into Trust	10
<i>A. General Information on the Application Process</i>	10
<i>B. General Information on the Model Application</i>	10
<i>C. Identification of Applicant</i>	10
<i>D. Description of Land to Be Acquired in Trust</i>	11
<i>E. Secretarial Authority to Accept Land into Trust</i>	12
<i>F. Tribal Authority to Request that Land be Taken into Trust</i>	12
<i>G. Acquisition Policy (§ 151.3)</i>	12
<i>H. BIA's Criteria for Reviewing Applications</i>	14
V. After the Application	19
<i>A. Timeline</i>	19
<i>B. Incomplete Applications</i>	19
<i>C. Environmental Assessments</i>	20
<i>D. Comments by State and Local Government</i>	21

<i>E. Title Status</i>	21
<i>F. Right to Appeal</i>	21
VI. Definitions, Abbreviations, and Resources	23
<i>A. Abbreviations</i>	23
<i>B. Definitions</i>	23
<i>C. Resources</i>	24
Appendix.....	25
<i>Attachment I.....</i>	31
<i>Attachment II.....</i>	33
Endnotes.....	37

PURPOSE

This Guidebook helps Alaska Native tribes and individuals navigate the process of applying to have land held in trust. It summarizes and explains the applicable federal regulations as well as guidance in a fee-to-trust handbook published by the Bureau of Indian Affairs.

In an appendix, this Guidebook provides a Model Application—a template which Alaska applicants can use as a starting point for their own applications. Naturally, each application will be unique based on the individual or tribe's needs and the land parcel at issue. At the same time, both the Guidebook and Model Application provide examples of application contents to inform applicants.

This Guidebook and Model Application are not intended to be comprehensive, scholarly discussions of fee-to-trust acquisitions. Instead, they are practical resources designed to introduce the reader to this topic, help them understand some of the benefits and disadvantages of trust land acquisitions, and explain step-by-step how to craft a fee-to-trust application.

Legal Disclaimer

This Guidebook is not intended to operate as a substitute for legal representation and does not create an attorney-client relationship. Each trust lands application presents its own unique challenges and circumstances. If you wish to consult with a NARF attorney when deciding whether to move forward with a trust lands application, please see the contact information listed above. Neither NARF, the Clinic, nor any of the authors assumes any liability for the actions taken (or not taken) by any party in reliance on this Guidebook.

I. INTRODUCTION

Fee-to-trust acquisitions transfer land to the United States, which then holds it in trust for the benefit of an Indian tribe or individual.¹ After years of legal and policy debates about whether Alaska Natives may apply to have their land held in trust, they may now do so. This history means that trust acquisitions are relatively new in Alaska, though there have been numerous acquisitions in the lower 48 states.

Land held in trust becomes “Indian Country.” This designation gives tribes increased governmental authority over activities currently handled by the state, such as managing resources and regulating subsistence hunting and fishing. The additional authority also allows tribes to exercise their sovereign legislative, regulatory, and adjudicatory powers. Specifically, trust lands are not subject to state or local taxes, and tribes have increased control over services and law enforcement on trust lands.

To have land taken into trust, Alaska Natives—tribes or individuals—will need to submit applications to the Alaska Regional Office of the Bureau of Indian Affairs (BIA), which is a division of the U.S. Department of the Interior (DOI). That office will review applications pursuant to a set of criteria outlined in federal regulations.² While past applications have varied in length, these applications can be relatively short (no more than a dozen pages or so).

This Guidebook addresses considerations when deciding whether to apply for a trust land acquisition, as well as eligibility and how to apply. The Appendix of this Guidebook is a Model Application to assist tribes and individuals in writing their applications to transfer lands into trust. This Guidebook and the Model Application provide some examples and lessons learned from acquisitions in the lower 48 states. But, as much as possible, the Guidebook and Model Application are tailored to the needs and circumstances likely to be most relevant to Alaska Natives.

This Guidebook and the Model Application do not directly address gaming-related acquisitions. However, many acquisitions in the lower 48, including some examples in this Guidebook, have involved gaming (subject to the Indian Gaming Regulatory Act³). This Guidebook and the Model Application note where examples from such gaming acquisitions may be relevant for Alaska Natives.

A. How to Use This Guidebook

The Guidebook begins with an explanation of fee-to-trust acquisitions and eligibility. It then discusses the history of the process that is relevant to Alaska including an explanation as to why trust acquisitions have been rare in the state. Next, in Section IV, the Guidebook explains the criteria used by BIA in assessing fee-to-trust applications.

Section IV is where this Guidebook walks through the elements of a fee-to-trust application, following the regulatory criteria. Applicants can structure their applications by addressing those criteria one at a time, as in the Model Application (Appendix). In fact, Section IV has headings that match those used in the Model Application.

Finally, the Guidebook discusses what applicants should expect after applying, including that BIA will solicit comments from state and local governments, and that parties can challenge, or “appeal,” BIA decisions on fee-to-trust applications.

B. How to Use the Model Application

The Model Application, which is in this Guidebook’s Appendix, is a template for future applications. It is not a complete, usable application by itself. Future applicants will need to tailor the Model Application to reflect their own needs and circumstances. Indeed, each actual application to have land taken into trust will be unique due to the differences between parcels of land and the varying needs of tribes and individuals to have the land acquired into trust.

However, the Model Application can help applicants understand the type of information that needs to be included. As mentioned above, headings in the Model Application match those in Section IV of the Guidebook. Applicants can look to the Guidebook for a discussion of why those sections are included in the Model Application and further explanation of how BIA evaluates the information provided in the application.

C. Resources

While applicants should be able to prepare much of the application without the aid of lawyers or other professionals, expert assistance may be useful for a few aspects of the application. Most importantly, describing the relevant land parcel may require an applicant to hire a professional land surveyor.

In addition, if an individual or tribe is submitting an off-reservation application (see Section II.A.1.) for business purposes, the applicant will need to include a business plan that covers anticipated economic benefits.⁴ Applicants may, therefore, want to engage a consultant to assist in drafting this business plan.

Otherwise, applicants may—but are not required to—hire an environmental professional to prepare a so-called “Phase I Environmental Site Assessment.” (See more on environmental site assessments below in Sections IV.H.9 and V.C.)

Finally, if possible, applicants may want to inquire about potential legal assistance in the event of opposition to their applications from the State of Alaska or local governments. As part of the application process, BIA must give notice of the application to Alaska and any relevant local governments, who then may submit comments potentially opposing the requested trust acquisition. If available, legal assistance could help tribes respond to any such opposition.

D. What is Fee Land and Trust Land?

When many people think of ownership, what comes to mind is likely the legal concept of “fee” or “fee simple” ownership. The terms fee or fee simple are broad and can refer to both Indian and non-Indian owners. The owner of fee land has an absolute right to use the land including being able to possess it, dispose of it, and keep others from accessing it.⁵ The federal government does not typically play a role in the management of fee land.⁶ These lands can be owned by a tribe or an individual tribal member.⁷

Importantly, fee land is not Indian Country even when it is owned by an individual Indian or tribe. Similarly, the power of tribal governments is more limited on fee land than trust land.⁸

When land is placed into trust, however, it becomes Indian Country and tribal governments have greater authority over the land.⁹ Placing parcels into trust may also make the land eligible for certain federal programs and services.¹⁰ The United States holds title to trust lands for the benefit of a tribe or individual Indian.¹¹ For more discussion of the benefits and disadvantages of taking land into trust, see Section III.

E. What is Fee-to-Trust Land Acquisition?

In a fee-to-trust (or “land into trust”) acquisition, an Indian tribe or individual transfers land title to the United States, which then holds the land in trust for the benefit of that tribe or individual. As stated above, even though the United States holds the title, this transfer results in the tribe having greater authority over the land.

Unless Congress mandates the acquisition, tribes need to apply to have their fee lands placed in trust, and the BIA has discretion over whether to grant those applications, guided by certain criteria as discussed below.¹² (Regarding the amount of land, there is no minimum or maximum amount that can be taken into trust.)

As of May 2021, the U.S. government held approximately 55 million surface acres in trust for the benefit of federally recognized Indian tribes.¹³ Nearly all of that land is in the lower 48 states because, for decades, Alaska Natives had been categorically excluded from fee-to-trust acquisitions.

There are different types of such acquisitions: [1] mandatory, [2] on-reservation and [3] off-reservation (see Section II).¹⁴ For Alaska Natives, the most common type applicable to their circumstances will likely be off-reservation acquisitions.

F. History of Fee-to-Trust Acquisitions in Alaska

For much of the time since Congress authorized fee-to-trust acquisitions, Alaska Natives were not eligible for them. This section outlines a brief history of statutes and agency documents that have affected trust lands in Alaska. It also walks through the history of claims on land by Alaska Natives to explain why this type of land transfer has only recently become available.

Alaska Natives have occupied, utilized, and stewarded the land now known as Alaska since time immemorial. The United States acquired the territory from the Russian Empire in 1867. Within the Treaty of Cession, tribes were placed under the laws and regulations of the United States.¹⁵ Two Organic Acts, in 1884 and 1900, provided that the occupancy and use of lands by Alaska Natives was not to be disturbed.¹⁶ While both Organic Acts did not disturb possession, the United States Supreme Court in *Tee-Hit-Ton Indians v. United States* held these acts did not grant Alaska Natives permanent ownership but rather “retain[ed] the status quo until further congressional or judicial action was taken.”¹⁷ Later acts of Congress—the Alaska Native Allotment Act¹⁸ (1906) and Alaska Native Townsite Act¹⁹ (1926)—conveyed restricted land titles to Alaska Natives,²⁰ but both were repealed.

In 1934, Section 5 of the Indian Reorganization Act (IRA) granted authority to the Secretary of the Interior to take land into trust.²¹ The IRA did not initially apply to Alaska,²² but only two years later, in 1936, Congress amended the law to make it applicable to the Territory.²³

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA),²⁴ which extinguished aboriginal titles to land along with some use and occupancy rights.²⁵ This Act also did away with all reservations except the Annette Island Reserve.²⁶ ANCSA was a “comprehensive statute designed to settle all land claims by Alaska Natives.”²⁷ The law created corporations to receive title to the land, and Alaska Natives received stock in those corporations.²⁸ As part of settling the land claims, ANCSA repealed the 1906 Alaska Native Allotment Act.²⁹

However, ANCSA did not expressly repeal Section 5 of the IRA.³⁰ In 1976, the Federal Land Policy Management Act (FLPMA) repealed the Alaska Native Townsite Act and rescinded the DOI Secretary’s authority to establish reservations in Alaska.³¹ But FLPMA, similarly, did not expressly repeal Section 5 of the IRA in Alaska.³²

In addition to the statutes that granted and removed land claims to Alaska Natives, DOI also more recently changed its long-standing position that Alaska lands could not be taken into trust. Specifically, today the Secretary has the authority to grant land-into-trust applications,³³ but this was not always the case. In a 1978 memorandum (Fredericks Memorandum) Associate Solicitor – Indian Affairs, Thomas Fredericks, concluded that land-into-trust acquisitions in Alaska would contravene Congressional intent behind ANCSA.³⁴ Accordingly, DOI’s 1980 regulations governing the acquisition of land into trust excluded Alaska (the “Alaska Exception”).³⁵

The Alaska Exception stayed in place until 2013, when four Alaska Tribes successfully challenged the policy as discriminatory in federal court.³⁶ In 2014, DOI issued a final rule removing the Alaska Exception.³⁷ Then, in 2017, the DOI Solicitor issued a memorandum addressing whether ANCSA and FLPMA or recent Supreme Court cases had limited the Secretary’s discretion to conduct fee-to-trust land transfers in Alaska.³⁸ The Solicitor specifically noted neither ANCSA nor FLPMA revoked the Secretary’s discretionary authority to take lands into trust in Alaska through Section 5 of the IRA.³⁹ ANCSA did not “prohibit the creation of any trusteeship or new reservation proclamation in Alaska beyond the settlement”; therefore, ANCSA does not limit Section 5 of the IRA or the Secretary’s discretion.⁴⁰ Although the Trump-era DOI withdrew the 2017 memorandum,⁴¹ the Biden Administration reinstated it.⁴² As of the publication of this Guidebook, DOI regulations and agency memoranda all support the Secretary’s authority to place land from Alaska into trust.

Due to the Alaska Exception and debate around it, little land in Alaska has been placed into trust. As of the writing of this Guidebook, one trust application has been approved⁴³ and several others have been filed.⁴⁴ With the application process now open to Alaska Natives, this Guidebook explains how to apply, and it helps individuals and tribes determine if placing land into trust is right for their needs.

The following sections explain the process of taking lands into trust, including the various types of acquisitions and how BIA analyzes applications. The Guidebook then discusses potential benefits, disadvantages, and other factors to consider when deciding whether to apply to have land held in trust.

II. TYPES OF ACQUISITION

There are three types of land-into-trust acquisitions, and each has a separate operating procedure. The following sections will define the three types and help readers understand what type of acquisition is most suited to their needs. A tribe may also place land into trust for the purposes of creating a gaming establishment, but this Guidebook will not address the requirements for that type of land acquisition.⁴⁵ The majority of land acquisitions in Alaska will be off-reservation.

Land can be taken into trust either through discretionary or mandatory acquisition, and there are two types of discretionary acquisitions: off-reservation and on-reservation.

A. Discretionary Trust Acquisitions

These are the acquisitions for which tribes or individuals must apply, and which the BIA has discretion to grant or deny. As discussed below, federal regulations govern the BIA's procedure and criteria for deciding whether to grant these acquisitions.⁴⁶ The criteria for assessing on- and off-reservation acquisitions mostly overlap.

1. Off-Reservation

Land is considered off-reservation when it is "located outside of and noncontiguous to the tribe's reservation, and acquisition is not mandated."⁴⁷ Any lands that are not inside or directly next to a tribe's reservation fall under this type of acquisition. As mentioned above, off-reservation acquisitions are likely to be the most common in Alaska and the Guidebook will focus on this type.

2. On-Reservation

For land to be taken into trust as an on-reservation acquisition, it must be located "within or contiguous to an Indian reservation, and the acquisition is not mandated."⁴⁸ Presently, the only reservation in Alaska is the Annette Island Reserve established for the Metlakatla Indian Community. Therefore, it is more likely that lands in Alaska will be subject to the off-reservation acquisition process.

B. Mandatory Trust Acquisitions

Given the current state of the law, mandatory trust acquisitions are unlikely to occur within Alaska. In a mandatory trust acquisition, Congress directs the Secretary to take lands into trust for a tribe.⁴⁹ Unlike the other forms of land acquisition, the Secretary does not have discretion on whether or not to take the land into trust. A recent example of this type of acquisition is the purchase of 200 acres for the newly federally recognized Little Shell Band of Chippewa Indians in Montana that were then put into trust.⁵⁰ After Congress directs the Secretary to make such an

acquisition, a tribe may need to submit a written request to have BIA commence the acquisition.⁵¹

The next section will address potential benefits, disadvantages, and other factors that Alaska Native individuals and tribes should consider when deciding whether to submit a fee-to-trust application.

III. DECIDING WHETHER TO HAVE LAND TAKEN INTO TRUST

There are many potential benefits to tribes and individuals that choose to have land taken into trust, but there can also be disadvantages and other considerations that should be taken into account. Not every factor of taking land into trust will be relevant to each application, but this Section provides a starting point to analyze whether to apply for fee-to-trust acquisitions.

A. Benefits

1. *Law Enforcement and Tribal Jurisdiction*

One of the main benefits of having land taken into trust is that it affirms tribal sovereign power over those lands. Land held in trust is considered Indian Country.⁵² This designation grants tribes more authority over the land than a traditional landowner would have, including over exclusion and enforcing laws. Tribes would also have enhanced authority over public safety.

Alaska is one of the states governed by Public Law 83-280 (commonly referred to as Public Law 280) which affects the balance of power between the state and tribe in Indian Country. Even after land is taken into trust, the state of Alaska and any local government will maintain criminal jurisdiction as well as limited civil jurisdiction.⁵³ However, the tribal government would also have concurrent jurisdiction over Indians, including those who are not members of the tribe, and authority to provide law enforcement services on the trust land.⁵⁴ By taking land into trust, tribes gain enhanced authority over public safety including criminal jurisdiction over Indian offenders on trust lands.⁵⁵ Additionally, a tribe's civil authority over non-members is at its highest within Indian Country, including on trust lands.⁵⁶

Once land is taken into trust, tribes can exercise their sovereignty in many ways including by assessing a tax within the trust land as well as creating and enforcing traffic ordinances and business and environmental regulations.⁵⁷ Trust lands also do not need to comply with zoning requirements established by state and local governments; therefore, the tribe or individual has more choice in the permitted uses of the land.⁵⁸ Nor are trust lands subject to state eminent domain powers.⁵⁹ An increase in control over the permitted uses of land can also help tribes to meet housing needs for their members. Trust land acquisition can allow tribes to gain suitable building areas for affordable housing for its members.⁶⁰

2. *Tax Benefits*

Tribes do not pay state or local property taxes on land taken into trust.⁶¹ This is referred to as having land taken off the tax roll. BIA analyzes any impacts of this change. However, in

practice, this issue may not arise for many Alaska Natives, because only a small portion of Alaska is subject to state or local property tax.⁶²

3. Natural Resources and Subsistence Activities

After lands have been transferred into trust, tribes have greater regulatory authority when it comes to natural resources and subsistence activities. As will be further discussed in Section IV, tribes can apply for a fee-to-trust acquisition for cultural and recreation purposes.⁶³ This can include protecting sacred sites, such as pilgrimage areas.⁶⁴ In addition to protecting important cultural lands, taking land into trust also gives tribes more control over recreational hunting and fishing on the land.⁶⁵ This additional control can assist the tribe in preserving natural resources and assuring subsistence activities for their members.

4. Restraint on Alienation (Conveyance) of Land

When land is taken into trust, ownership goes to the federal government for the benefit of the individual Indians or tribe. Because of this transfer of ownership, there is a restraint on alienation,⁶⁶ which is the ability to sell or transfer title of the property to someone else. These limitations can help to preserve tribal homelands for current and future generations.

5. Economic Incentives and Federal Programs

Putting land in trust can give rise to economic benefits, including expanded eligibility for federal grant or housing programs. For instance, BIA's Office of Indian Energy and Economic Development has outlined several potential economic benefits available to trust land, including: New Market Tax Credits, Indian Employment Tax Credits, Tax-Exempt Financing, Discounted Leasing Rates, Federal Contracting Preferences, State/County Land Use Exemption, and Foreign Trade Zone Customs Duty Deferral, Elimination or Reduction.⁶⁷ Not all of these benefits will likely be available for all applicants and can depend on how the land will be used. As an example, tribes can issue tax-exempt debt involving trust land if the money is financing an exercise of an essential governmental function.⁶⁸ Similarly, Indian Employment Tax Credits may be a benefit depending on a tribe's plans for the land, as non-Indian businesses are eligible to receive tax credits for creating jobs for tribal members.⁶⁹ Additionally, economic incentives can also include economic development. This can take different forms for many tribes but can include setting up shops or other businesses.⁷⁰

B. Disadvantages

1. Restrictions on Alienation

While restricting alienation (the sale or transfer of the land) can be a benefit in terms of maintaining tribal control over land, some individuals and tribes may view it as a disadvantage. Generally, once land is taken into trust, approval from DOI may be required to mortgage or place a lien against the parcel.⁷¹ Thus, while it is possible to mortgage some trust lands, it may be more challenging to find a lender because the lender cannot foreclose or place a lien on the property as collateral for the loan.⁷²

2. Adjustments to Services

Taking lands into trust may adjust the provision of services from state and local governments. Under Public Law 280, the state has concurrent criminal jurisdiction with tribes on trust lands.⁷³ Therefore, the state will continue to supply services like law enforcement. While not a required element of applications, some tribes create agreements with local governments for the provision of services.⁷⁴ For example, tribes can enter into agreements with the city or local government on providing utility and emergency services like water, wastewater, solid waste collection, fire protection, and emergency medical services.⁷⁵ While the state maintains concurrent jurisdiction in some areas, taking lands into trust may necessitate working with local governments to develop agreements about necessary services to the area that is taken into trust.

C. Other Considerations

1. Split Estate

A “split estate” occurs when the owner of the surface and the subsurface are different. The subsurface estate remains dominant,⁷⁶ meaning the subsurface owner has a right to reasonable access to the minerals below.⁷⁷ Thus, the surface owner cannot wholly block the ability of the owner to access the subsurface.

A parcel of land being subject to a split estate is not a barrier to placing land into trust. In the past, DOI has taken parcels into trust subject to such parameters.⁷⁸ When land subject to split estates is taken into trust, however, only the surface right is transferred to the U.S. government. The surface owner will not gain royalties or a stake in the subsurface estate. Rather, subsurface owners will retain their dominant rights when surface land is put into trust. Although this dynamic is not likely to have a strong influence on whether an individual or tribe decides to apply for a trust acquisition because it does not change the allocation of rights, surface owner applicants should be aware that the acquisition will not remove the subsurface owners’ rights.

2. Alcohol and Marijuana Sales

In Indian Country, alcohol sales must conform to both tribal and state law.⁷⁹ States can enforce their permitting requirements for alcohol within the trust land.⁸⁰ Federal laws related to marijuana would also apply, and marijuana remains a controlled substance under federal law.⁸¹ Jurisdictional impacts of alcohol and marijuana sales may affect an applicant’s decision to take land into trust.

3. Land Staying in Trust

After land is taken into trust, it stays in that status indefinitely. There are presently no legal mechanisms to remove land from trust status. As such, tribes and individual applicants should consider whether the permanence of the trust status fits their goals for the parcel.

The next section will also cover some of the benefits of trust lands, including the opportunity for tribes to increase or enhance housing opportunities for their members. It will also further explain the process of applying to put land in trust.

IV. APPLYING TO HAVE LAND TAKEN INTO TRUST

If a tribe or individual decides that taking land into trust will serve their needs, the next step is to submit an application to BIA. This Section walks through general information on the application process. It then discusses the elements BIA analyzes when reviewing an application to assist applicants in developing the required information.

BIA has issued a handbook on fee-to-trust acquisitions (Fee-to Trust Handbook) that describes the standard procedures used by the Bureau.⁸² This Section addresses portions of this handbook and how they impact the application process.

The headings in this Section correspond to those in the Model Application, and they help to explain the information included within the Model. As each land parcel and tribal or individual circumstance is unique, each application will be different. Nonetheless, this section will explain the types of information that should be included to facilitate BIA's review of the application.

A. General Information on the Application Process

A tribe or individual Indian that wants the United States to acquire land in trust status needs to file a written request with their regional Bureau of Indian Affairs office.⁸³ The application does not need to be in a specific form, but this section, guided by BIA's review criteria, covers what the application should include.⁸⁴

B. General Information on the Model Application

The Model Application (Appendix) is a template. Tribes and individuals will need to tailor its structure and content to meet their specific needs. When possible (and when the documents are publicly available), the Model Application includes examples of certain sections of previous fee-to-trust applications. The Model Application is not designed with any particular tribe or piece of land in mind. As there are very few pieces of land that have been taken into trust in Alaska, in explaining portions of the Model Application, this Guidebook sometimes refers to applications and adjudications from the lower 48 states.

C. Identification of Applicant

BIA can only take land into trust from eligible parties. This section discusses the IRA's definition of 'Indian' and its impact on eligibility. Then it addresses the eligibility of both tribes and individuals applying to have land taken into trust.

1. Eligibility

Eligibility as an 'Indian' will be straightforward to demonstrate for Alaska Native tribes due to the definition of 'Indian' in the IRA. In 1936, the Alaska IRA extended Section 5 of that law to Alaska.⁸⁵ Section 5 grants the Secretary discretion to acquire land, including surface rights to lands, "for the purpose of providing land for Indians."⁸⁶ The definition of 'Indian' appears in Section 19 and states that "[f]or the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians."⁸⁷ For tribes outside of Alaska, there has been extensive litigation over what it means for a tribe to have been under Federal jurisdiction in 1934.⁸⁸

However, Alaska Natives including “Eskimos and other aboriginal people” are directly recognized as ‘Indians’ within the IRA’s definition. Therefore, the Secretary has the discretion to take land into trust for Alaska Natives.

2. Identification of Requesting Tribe

Applicants must be tribes or individual Indians. As such, the beginning of an application should state who is applying and how they are eligible for trust land acquisition. The federal regulations governing these acquisitions define “tribe” as “any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.”⁸⁹ The Fee-to Trust Handbook also requires a tribe’s name to appear on the list of *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*.⁹⁰ A list of federally recognized tribes is published each year in the Federal Register (which contains federal rulemakings and similar documents).⁹¹ Because Alaska Tribes qualify as “Indian tribes” and are included in the annual list published by the Secretary of Interior, they are eligible to participate in the program.

3. Identification of Requesting Individual

Individual Indians can also apply to have land taken into trust. Generally, their applications will look substantially similar to those of a tribe. Like tribes, individuals should begin their applications by confirming their eligibility. The federal regulations define an individual Indian as “(1) Any person who is an enrolled member of a tribe; (2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation; (3) Any other person possessing a total of one-half or more degree Indian blood of a tribe.”⁹² When applying, an individual needs to explain which of these factors makes them eligible.

Although individuals in Alaska will not likely apply for an on-reservation acquisition, such an application would need to include information on the amount of trust (or restricted) land the person already owns, and what degree of assistance the individual would need in handling their affairs.⁹³

D. Description of Land to Be Acquired in Trust

BIA regulations require that applications include a description of the parcel to be taken in trust.⁹⁴ While the regulations do not provide many details about what is required, BIA’s Fee-to-Trust Handbook explains how to describe the land. The Handbook states that the description is to be “in legally acceptable terms that is definite, legally defensible and susceptible to only one interpretation.”⁹⁵ All legal land descriptions will need to include the state, county (borough for Alaska), and acreage.⁹⁶

A common way to describe land and one that Alaska Natives may choose to employ is the Public Land Survey System (PLSS). The PLSS system divides the area surveyed into 36 square mile blocks and further divides those blocks into smaller sections.⁹⁷ Example 2 in the Model

Application uses a PLSS description. If a tribe uses a PLSS description, the Fee-to-Trust Handbook states that it needs to include the Township, Range, Principal Meridian, Section(s), Government Lots or Aliquot Parts.⁹⁸ This information helps define the size of the property and helps situate it in comparison to a tribe's reservation or state boundaries. Not all lands have been mapped using the PLSS system. Therefore, applicants can use other methods like metes and bounds for their land descriptions. If using metes and bounds, the description needs to mathematically close on itself (form a shape with no gaps), and the point of beginning (where the survey begins) needs to be easily located on the ground.⁹⁹ It would be helpful to include a map of the parcel depicting its boundaries and location if one is available.

After the application is submitted, BIA will review the description of the land. This will include conducting a legal Land Description Review (LDR).¹⁰⁰ The LDR confirms the land description in the application. A LDR is completed by BIA or a tribal official in collaboration with a cadastral surveyor, a Certified Federal Surveyor, or a pre-approved Agency or Tribal Official or Agent who has completed the DOI certification program.¹⁰¹ The land description is an integral part of the application and helps BIA understand where the parcel is and how it can meet the tribe's or individual's needs.

E. Secretarial Authority to Accept Land into Trust

This section of the application describes the Secretary's authority to grant the request and take the land into trust. It should state that the Secretary's authority comes from Section 5 of the IRA which appears in the U.S. Code (where U.S. laws are systematically arranged by subject matter) at 25 U.S.C. § 5108. As noted in the History of Fee-to-Trust Acquisitions in Alaska earlier in this Guidebook, Section 5 of the IRA was extended to cover Alaska in 1936 (in a law often called the "Alaska IRA").¹⁰² This extension was not revoked in any subsequent statutes and, therefore, this section of the IRA gives the Secretary authority to take land into trust for the benefit of the Alaska Native tribe or individual applicant.

F. Tribal Authority to Request that Land be Taken into Trust

It is not required for a tribe's government to issue a resolution to have land taken into trust. However, if the tribe creates a resolution in accordance with its constitution to ask the Secretary to take land into trust, the resolution can be attached to the application. Attachment II of the Model Application is an example of such a resolution from the Crow Tribe of Montana.¹⁰³ Each tribal resolution will be unique based on the governing structure of the tribe and the parcel of land being taken into trust. Attachment II serves as one example of how a tribe has structured such a resolution in the past.

Individual applicants do not need to seek a formal resolution from their tribal government to submit an application to have land taken into trust.

G. Acquisition Policy (§ 151.3)

Land can only be acquired into trust for a tribe if it fulfills one or more of the following three criteria:

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing¹⁰⁴

Applications can satisfy more than one of these criteria. Applicants should be sure to describe all of the criteria that their land fulfills to assist BIA in understanding the fee-to-trust application. The most relevant criteria for tribes in Alaska are (2) and (3).

On-reservation acquisition applications meet criterion (1) which will be rare in Alaska.¹⁰⁵ Having a well-defined legal land description, detailed in Section IV. D. above, will help applicants to know whether their land is adjacent to or within the tribal reservation and determine whether their land is able to be taken into trust under criterion (1).

Criterion (2) is satisfied when a tribe has a property interest (often ownership) in the land to be acquired. Fee simple ownership achieves this criterion. As discussed above, fee simple ownership is what most people think of as land ownership. It includes the ability to exclude persons from the land, along with being able to sell or lease it.

Criterion (3) is the broadest and can be met in a number of ways. Tribal self-determination can encompass trust acquisition of land that houses tribal government buildings.¹⁰⁶ It can also include taking land into trust for a tribal wildlife preserve that is administered by the tribe.¹⁰⁷ A tribe could build new housing for its members or build a shop to provide jobs and economic development. As this criterion is so broad, it is important for the applicants to express as specifically as possible how their proposed use of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

For applications from individuals, land can only be acquired if it meets one or both of the following criteria:

- (1) When the land is located within the exterior boundaries of an Indian reservation or adjacent thereto; or
- (2) When the land is already in trust or restricted status¹⁰⁸

Individual applications for on-reservation acquisitions are likely to be rare in Alaska. BIA has not defined "adjacent" in its regulations, but it has interpreted the word narrowly. In an IBIA case, the board did not reverse a finding by the Area Director that a piece of property approximately a half-mile from the reservation was not adjacent and could not be taken into trust. Therefore, while adjacent does not have to mean contiguous (sharing a border), BIA appears to consider adjacency narrowly. However, it is possible for BIA to waive its regulations and take land into trust for an individual when the land is not adjacent.¹⁰⁹

Individual applications in Alaska are more likely to qualify under the second criterion. Restricted properties are those that are inalienable, such that BIA must approve any change in the

status of the land, like selling it or obtaining a mortgage on it.¹¹⁰ Restricted properties in Alaska were likely received through either the Native Allotment Act or the Native Townsite Act.¹¹¹

Apart from the two criteria above, BIA also cannot take land into trust posthumously. Therefore, if the applicant dies, the application cannot move forward.¹¹²

H. BIA's Criteria for Reviewing Applications

BIA uses the criteria in 25 C.F.R. § 151.10 and § 151.11 to evaluate on- and off-reservation trust acquisitions, respectively. The DOI Fee-to-Trust Handbook states that the government's analysis of the application "must be based on facts contained in the record."¹¹³ Therefore, it is important to include information in the application that will assist BIA in assessing these criteria. The factors will be listed and then described below.

Both on- and off-reservation applications are assessed through the following criteria, except that provision (d) is not considered in reviewing off-reservation applications:

- (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 or for that individual and the degree to which he needs assistance in handling his 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[; and]
- (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.¹¹⁴

In addition, the following criteria are applied in reviewing off-reservation applications:

- (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 [of state and local governments].
- (c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.¹¹⁵

1. *Scrutiny of Parcel's Location for Off-Reservation Acquisitions*
(§ 151.11(b))

BIA only applies § 151.11 to off-reservation acquisitions. The Bureau analyzes the distance of the parcel in the application from state boundaries and the distance to the tribe's reservation.¹¹⁶ Greater weight is also given to comments from state and local governments for off-reservation acquisitions.¹¹⁷

Unlike many tribes applying to have land taken into trust, Alaskan tribes generally do not have reservations, but BIA may still consider the distance between the land to be acquired and the tribe's recognized traditional homeland or headquarters.¹¹⁸ For an Alaska tribe with no reservation, BIA has considered where the parcel of land was in relation to the tribes recognized traditional homelands.¹¹⁹ Outside of Alaska, for example, this distance was an issue in a Record of Decision for the Shawnee Tribe, which has no reservation.¹²⁰ For Alaska Native applicants in the future, BIA may similarly consider the distance between tribal headquarters or traditional homelands and the parcel in the application. When possible, tribes should include in their applications the distance between the parcel and their headquarters or traditional homelands to help BIA in analyzing this factor.

BIA gives greater scrutiny to the tribe's anticipated benefits and its justification the further the parcel is from the tribe's reservation or headquarters. For example, BIA did not show concern or higher scrutiny for a parcel located 15 miles from the reservation boundary that was 328 miles from the state border.¹²¹ However, in a separate case, BIA did put more scrutiny on a parcel that was located 170 miles from the main tribal offices and only 28 miles from a state border.¹²² The 3-hour driving distance did not categorically disqualify the site but raised significant concerns and contributed to the tribe's application to have land taken into trust being denied.¹²³

BIA also weighs the concerns from state and local governments against the anticipated benefits to the tribe.¹²⁴ The anticipated benefits can be drawn from the business plan (see Section IV. H. 10)¹²⁵ or other sections of the application. Generally, the further the land is from the tribal headquarters, the more BIA will scrutinize expected benefits to the tribe. If these benefits do not outweigh the concerns by the state and local governments, then the application might not be approved.

2. *Existence of Statutory Authority (§ 151.10(a))*

For Alaska Native applicants, this criterion is easily satisfied. This concerns whether the Secretary can take land into trust for the individual or tribe under Section 5 of the IRA or another statute. This analysis generally focuses on the definition of 'Indian' within the IRA because the Secretary can only take lands into trust "for the purpose of providing lands for Indians."¹²⁶ Section 19 of the IRA defines the term 'Indian' as including:

all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or

more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians.¹²⁷

For applicants outside of Alaska, there has been extensive litigation over what it means for a tribe to have been under federal jurisdiction in 1934.¹²⁸ However, as tribes in Alaska are included in the definition, satisfying this criterion will be straightforward.

3. Need for Additional Land (§151.10(b))

This criterion is less stringent than the word “need” would suggest. The applicant is not required to explain why having the land in trust status is more beneficial than keeping the land in fee simple ownership status.¹²⁹ A tribe’s need to have land taken into trust can take a number of forms. In general, applicants should tie their need to their statements about the “acquisition policy” (housing, economic development, or self-determination) to help BIA evaluate their application.

This need can be justified in a number of ways and is often closely linked to the next criterion, the purpose for which land will be used. In past applications, BIA has assessed this “need” factor in many ways, including by looking to the amount of trust land per tribe member,¹³⁰ the need for additional land for housing or economic development,¹³¹ and putting tribes in a better position to bid for grants or qualify for funding.¹³²

Economic development can take many forms including operating gaming facilities¹³³ or shops or even a gas station,¹³⁴ and each tribe should determine what kind of business enterprises serve their members and region. Additionally, tribes without any land in trust¹³⁵ may consider and express in their application whether establishing a land base would assist with the promotion of economic development through the establishment of a sustainable revenue base, or help tribes access BIA programs that require possession of trust lands.

Tribes can also establish a need involving housing. This can include requesting to have land taken into trust due to a lack of land suitable for development where the acquisition will facilitate building affordable housing units for tribal members.¹³⁶ A tribe can also use revenue from economic development to support programs that subsidize the rent or housing needs of its members.¹³⁷

Need can also be satisfied by explaining that the proposed use will alleviate a budget shortage and allow the tribe to provide services to its members. This situation can arise, for instance, when a tribe’s increasing membership is leading to higher expenses.¹³⁸ However, in the past, BIA has not approved applications whose proposed land use alleviates only a small portion of the tribe’s anticipated budgetary gaps.¹³⁹

4. Purpose for Which Land Will be Used (§ 151.10(c))

The purposes for which the land will be used will be closely tied to the need for additional land. This section of the application should describe the tribe’s plans for when the land has been taken into trust. It should explain how the purpose will address the need asserted in the previous section of the tribe’s application. The purpose does not have to involve changing the land use.

¹⁴⁰ This can include having land taken into trust for cultural and recreation purposes¹⁴¹ or to continue a tribal wildlife preserve.¹⁴² Applicants should provide information to help BIA understand its future plans for the parcel and how the proposed (or continuing) land use will assist the tribe.

5. *Individual Indian's Need for Assistance in Handling their Affairs*
(§ 151.10(d))

BIA has not issued guidance on how the amount of land owned by an individual compares with an individual's need for assistance in handling business matters.¹⁴³ BIA looks at whether the individual is capable of attending to their own affairs. In past decisions, BIA has considered an individual's education and work history in deciding whether to take their lands into trust.¹⁴⁴ Additionally, BIA does not accept the potential future need for government supervision as support for a present inability of an individual to manage their affairs.¹⁴⁵ For example, BIA does not consider possible future health care needs to support a current application for trust land. When applying, an individual should include any factors that currently contribute to needing assistance in managing their lands to have them taken into trust.

6. *Impact on State and Local Tax Rolls* (§ 151.10(e))

Tax issues can be very contentious in the acquisitions of land in the lower 48 states. For Alaska tribes, however, impacts on state and local tax rolls will only apply to tribes in boroughs that have the authority to levy property taxes. In addressing tax issues, BIA only looks at information for the parcel described in the application. It does not look at the cumulative impacts of possible future trust acquisitions.¹⁴⁶ This was even true when a tribe has submitted multiple fee-to-trust applications at the same time.¹⁴⁷

It is unlikely to occur or be needed in Alaska, but it is possible for tribes to voluntarily contribute to local taxes to make up for lost taxes that resulted from having their land taken into trust.¹⁴⁸ Generally, tax issues are less likely to be an issue in acquisitions in Alaska than in other states, but Alaska Native tribes or individuals should still include in their application the amount of taxes paid on the parcel, if relevant.

7. *Jurisdictional Problems and Potential Land Use Conflicts* (§ 151.10(f))

Land use conflicts may occur if the proposed use is incompatible with the zoning or nearby land uses.¹⁴⁹ Land use conflicts are not anticipated to be a major issue for tribes in Alaska, but applicants should understand how the parcel is zoned. Land can also be rezoned, if necessary. For example, in one Record of Decision for the Kiowa Indian Tribe of Oklahoma, a parcel originally zoned for agriculture would be rezoned by the city if the tribe's application was approved.¹⁵⁰ It is also possible to mitigate land use conflicts through a buffer zone.¹⁵¹ It is fairly unlikely that zoning will greatly affect fee-to-trust applications in Alaska, but, if necessary, tribes can attempt to change the parcel's zoning or propose a buffer zone within their land use plan.

BIA often looks to potential issues with law enforcement, fire, and emergency services. If a tribe has signed any memoranda of agreement between the tribe and borough or municipality¹⁵² on the continuation of these services, they should be mentioned in the application. If the tribe has any

plans to establish a police and emergency response force, information on those plans can be included in the application.¹⁵³

8. *Whether BIA is Equipped to Discharge the Additional Responsibilities (§ 151.10(g))*

BIA must evaluate if it has the resources to administer the land being taken into trust. This analysis can be impacted by the distance of the trust land from the BIA office if a tribe would need a regular federal oversight presence.¹⁵⁴ In past Records of Decision, this has not appeared to be a limiting factor for an application to have land taken into trust,¹⁵⁵ but in the future, it is possible that BIA may find that it cannot take on the extension of duties that would accompany taking land into trust.

At the time of writing, there has only been one successful fee-to-trust acquisition in Alaska, and it was submitted by the Craig Tribal Association. This criterion was not an issue in that acquisition because the tribe's trust and native service programs were handled by a service provider that worked under the oversight of BIA, and the acquisition was not anticipated to significantly increase the service provider's responsibilities.¹⁵⁶ The decision also noted that BIA was prepared to take on additional duties should the service provider feel BIA would better handle them.¹⁵⁷

Applicants may address any known mitigating factors like the tribe having contracted to perform BIA functions¹⁵⁸ or if the new trust land is located close to lands already managed by BIA,¹⁵⁹ but it is uncertain whether BIA's capacity to discharge additional responsibilities will present a challenge to applications to have land taken into trust in Alaska.

9. *Compliance with NEPA and 602 DM 2 (§ 151.10(h))*

BIA must comply with national environmental rules and DOI hazardous remediation policies when assessing applications. Specifically, under the National Environmental Policy Act (NEPA), BIA will assess the potential environmental impacts of the requested acquisition. And, under a DOI policy known as "602 DM2, Land Acquisitions: Hazardous Substances Determinations" (or simply "602 DM 2"), BIA must check for any existing hazardous contamination on the site. (NEPA and 602 DM 2 are discussed further in Section V.C below.)

For their part, applicants should be aware of the possibility that the land may contain hazardous contaminants, in which case the applicant may need to clean up, or remediate, the land before BIA will grant a fee-to-trust acquisition application.

BIA will consider "the extent to which the applicant has provided information that allows the Secretary to comply with [NEPA and 602 DM 2]."¹⁶⁰ There is limited guidance on what information the applicant should include, but applications could cover any known information on how applicants' plans are likely to impact the environment, or any known information about hazardous contamination on the land to be held in trust.

If applicants have had a so-called "Phase I Environmental Site Assessment" conducted, they can include that information with their application. These assessments evaluate evidence of

contamination due to hazardous substances. However, applicants are not required to procure an environmental site assessment as part of the trust acquisition process.¹⁶¹

10. Plan for Land Being Acquired for Business Purposes (§ 151.11(c))

A business plan must be submitted when the land is being taken into trust for business purposes. This section only applies if the acquisition is off-reservation. No plan is needed if the land is not being acquired for business purposes—for instance, if the parcel is being taken into trust for recreational purposes.¹⁶² If a tribe intended to bring land into trust with no change to its current use, the tribe may not need to submit a business plan, but instead should make clear that there is no anticipated business purpose.

Business plans need to speak to anticipated economic benefits associated with the proposed use of the land. The business plan can take multiple forms. Some tribes have included information on the number of jobs the plan is expected to create, including any jobs anticipated from the construction of a facility and the estimated increase in income that will be generated.¹⁶³ The plans can also speak to how those anticipated economic benefits will be used.

Section IV has outlined the criteria that BIA uses to assess applications. This information can assist applicants as they craft their applications. The next section discusses what happens after an application is submitted to BIA, including how BIA handles incomplete applications and how to challenge or “appeal” a decision.

V. AFTER THE APPLICATION

A. Timeline

The amount of time it takes to process an application can vary drastically. In 2005, the median time for a decision on an application was 1.2 years, with application times ranging from 58 days to 19 years. As DOI has recently started accepting applications from Alaska, it is unclear how the timeline for this state will compare to applications from elsewhere in the United States.

B. Incomplete Applications

After a tribe or individual submits an application, BIA will review it and determine if anything is missing. If so, BIA will notify applicants. BIA will send a written notice that includes information on the missing portions of the application and a deadline to return the needed portions.¹⁶⁴ BIA’s Fee-to-Trust Handbook generally gives applicants 30 days to supply the incomplete portions; however, this timeline is not set directly by statute or regulation and could vary.¹⁶⁵ If the applicant does not supply the needed information, BIA will issue a final notice.¹⁶⁶ Typically, BIA gives the applicant 45–60 days to respond to the final notice before deeming the application inactive.¹⁶⁷ Again this timeline is set by the Fee-to-Trust Handbook and not the statute or regulations. As the timeframes to respond to incomplete application notices are fairly short, applicants should be aware of these deadlines and prepare to meet them if necessary.

C. Environmental Assessments

This section outlines the environmental reviews that occur when BIA is assessing an application. After an application is submitted, BIA must comply with NEPA when it decides whether to take the land into trust (see also Section IV.H.9 above).

NEPA's purpose is to aid the federal government in making informed decisions about the likely environmental effects of alternative courses of action. Specifically, for all major federal actions significantly affecting the quality of the human environment, the government must assess those actions' environmental impacts (see Section V.C. for further discussion).¹⁶⁸ BIA, therefore, must determine if granting a given fee-to-trust application will fall within a "categorical exclusion," or if it will significantly impact the quality of the human environment. For actions that are not categorically excluded, BIA first conducts an "Environmental Assessment" (not to be confused with an environmental *site* assessment in the hazardous remediation context—see below) to determine whether granting the application will significantly impact the human environment.

BIA's first step in the NEPA analysis is to determine that taking land into trust constitutes a major federal action. Then, BIA determines if the site fits a categorical exclusion. DOI's Departmental Manual lists a number of actions that would fall into this exclusion, including "approvals or grants of conveyances and other transfers of interest in land where no change in land is planned."¹⁶⁹ A categorical exclusion finding satisfies BIA's compliance with NEPA.¹⁷⁰

If a trust application does not fall into one of the categorical exclusions, BIA conducts an Environmental Assessment, in which BIA analyzes alternatives to the proposed use including a no-action alternative where the land will not be transferred into trust. It will then look at a number of environmental factors including but not limited to impacts on land resources, water resources, biological resources, air quality, cultural resources, visual resources, noise, transportation and circulation, land use, and hazardous materials.¹⁷¹ A "finding of no significant impact" might then be issued at the end of an Environmental Assessment.

Otherwise, if BIA finds significant impacts, BIA must prepare an Environmental Impact Statement (EIS). An EIS is, in effect, a more in-depth Environmental Assessment. EISs are often lengthy and can take a long time to prepare.¹⁷² In addition, public comment periods are required.¹⁷³ At the end of the EIS process, BIA can still choose to take land into trust even if the impacts cannot be mitigated. NEPA sets out a procedure that the agency needs to follow but does not dictate the agency's decision.

Under 25 C.F.R § 151.10(h), BIA also must comply with 602 DM 2 by addressing any contamination of the land due to hazardous material, including petroleum products, nuclear source material, and substances listed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, more commonly known as Superfund).¹⁷⁴ DOI has a policy to minimize its potential liability from acquiring real property that is contaminated by hazardous substances.¹⁷⁵ Thus, BIA may need to conduct a Pre-Acquisition Environmental Site Assessments to determine the levels of contamination at the site and to preserve defenses to liability under federal statutes like CERCLA.¹⁷⁶ These environmental site assessments must be completed before taking title and within one year of the date of acquisition.¹⁷⁷

Properties with hazardous contamination may need to be cleaned before being placed in trust. Nonetheless, it is possible for the Secretary or an authorized representative to approve an acquisition even for contaminated land.¹⁷⁸ The level of official who must grant that approval will depend on the anticipated clean-up costs.¹⁷⁹ At the time of writing, it is unclear how much liability BIA is willing to assume when bringing land into trust, or whether BIA will not approve acquisitions whose remediation costs exceed a certain level.

D. Comments by State and Local Government

For both on- and off-reservation acquisitions, BIA is required to notify state and local governments that have regulatory jurisdiction over the land.¹⁸⁰ These comments are especially important for off-reservation applications because BIA is required to give such comments greater weight.¹⁸¹

BIA specifically requests comments on the “acquisition’s potential impact on regulatory jurisdiction, real property taxes and special assessments.”¹⁸² Requests for such comments include information on the parcel as well as the applicant’s name.¹⁸³ Generally, BIA gives state and local governments 30 days to respond with their comments, although governments may ask for an extension.¹⁸⁴

BIA will send the comments they receive from state and local governments to the applicant. The applicant then can respond to those comments.¹⁸⁵ BIA generally gives applicants 30 days to respond, but that time is not set by statute or regulation.¹⁸⁶

E. Title Status

If BIA decides to take the land into trust from unrestricted fee status, the applicant must show that they have title to the land. To do this, the applicant will need to produce the deed to the parcel.¹⁸⁷ If the applicant does not yet have title to the land, they will need to provide (1) a written agreement from the entity that will be transferring the land to the applicant, stating that the title will be transferred to the United States on behalf of the applicant, and (2) evidence of the entity’s title to the land.¹⁸⁸

The applicant will also need to show either a current title insurance commitment or “policy of title insurance issued to the applicant or current owner and an abstract of title dating from the time the policy of title insurance was issued to the applicant or current owner to the present.”¹⁸⁹ A title insurance commitment is a document where the title insurer discloses all liens, defects, and burdens and obligations that affect the parcel of land.¹⁹⁰ The abstract of title is a document that shows the chain of title for the parcel.¹⁹¹ Both of these processes establish the applicant’s ownership of the land so that it can be acquired by the U.S. government and put into trust.

F. Right to Appeal

If a tribe or individual’s application is denied, BIA will promptly provide the applicant with an explanation of the denial and a notification of any right to file an administrative appeal.¹⁹² Appealing a BIA decision can be a lengthy process. In 2005, the average time an appeal was

pending was almost three years.¹⁹³ To appeal a decision, the challenging party needs to submit a notice of appeal to the office that made the decision.

Various administrators within BIA can make decisions on fee-to-trust applications, including a Superintendent or Regional Director. After a Secretarial Order in 2021, Regional Directors are now able to issue decisions on applications for non-gaming, off-reservation fee-to-trust acquisitions.¹⁹⁴ Applicants who wish to appeal should confirm which official issued the decision before submitting the appeal.

Appeals must be filed within 30 days of receiving the decision.¹⁹⁵ Appeals should include the name, address, and phone number of the person or group appealing the decision.¹⁹⁶ Further, the appeal needs to be clearly labeled “NOTICE OF APPEAL” and identify the decision being appealed. The person or group appealing the decision also needs to send copies of the notice to interested parties.¹⁹⁷ The names and addresses of those parties along with a certification that they were sent notice should be included with the appeal.¹⁹⁸

A party may also need to send notice of the appeal to the Regional Director or the Interior Board of Indian Appeals depending on which BIA official issued the decision on the application.¹⁹⁹ The appeals rights notification sent by BIA will state which office the notice of appeal should be sent to.

While not required to be included with the initial notice of appeal, the appealing party must submit a statement of reasons within 30 days after the party submits its notice of appeal.²⁰⁰ The document should clearly be labeled “STATEMENT OF REASONS” whether it is included with the initial notice of appeal or separately.²⁰¹

Appeals can be brought by both applicants and outside parties like community groups and local governments. Appeals are brought for a number of reasons including that the BIA decision maker did not sufficiently consider all necessary criteria described above in Section IV.²⁰² It is important to be aware of the short timeline to submit notice of an appeal (30 days) and to recognize that the appeals process can be lengthy.

VI. DEFINITIONS, ABBREVIATIONS, AND RESOURCES

A. Abbreviations

ANCSA	Alaska Native Claims Settlement Act
BIA	Bureau of Indian Affairs
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
DOI	U.S. Department of the Interior
FLPMA	Federal Land Policy Management Act
IRA	Indian Reorganization Act
NEPA	National Environmental Policy Act

B. Definitions

Contiguous	In the context of trust lands contiguous means sharing a border with another property. The term is not exactly synonymous with adjacent (see endnote 105 for discussion).
Fee land	Lands owned by an individual or entity that are freely alienable without federal approval.
Guidebook	Putting Land in Trust: A Guidebook for Alaska Native Tribes and Individuals (this document).
Indian	Section 19 of the IRA partially defines Indian to include “Eskimos and other aboriginal peoples of Alaska.”
Indian Country	BIA’s definition of Indian Country can be found in 18 U.S.C. § 1151. Indian Country means all lands within the limits of any Indian reservation under the jurisdiction of the U.S. government. This can include lands held in trust for an individual or tribe.
Model Application	Model Application for Alaska Native Tribes and Individuals Fee-to-Trust Land Acquisitions. This is the Appendix to this Guidebook.
Restricted land	In 25 C.F.R. § 151.2, restricted land is defined as “land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal

law or because of a Federal law directly imposing such limitations.”
Restricted land is land that needs approval by DOI to be conveyed.

Split estate	If a property is subject to a split estate, rights to the surface and subsurface are owned separately and in many cases by separate parties.
Tribe	BIA defines a federally recognized tribe as an “American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.” ²⁰³
Trust land	Lands owned by the federal government that are held in trust for the benefit of tribes and individual tribal members.
602 DM 2	A section of DOI’s departmental manual that governs the pre-acquisition environmental due diligence assessments for real property (i.e., evaluating whether land is contaminated by hazardous substances).

C. Resources

Indian Reorganization Act, 25 U.S.C. § 5108

Regulations governing BIA analysis of applications, 25 C.F.R. Part 151

Treatise on Federal Indian Law: Cohen’s Handbook of Federal Indian Law

APPENDIX

Model Application

The following document is a template for an application to BIA's Alaska Regional Office to have land taken into trust by the U.S. government for the benefit of a tribe or individual. The template will address on- and off-reservation applications along with applications by either tribes or individuals. This template is designed to assist tribes and individuals in Alaska in drafting applications.

Each fee-to-trust acquisition application will be unique based on the tribe's or individual's needs and the property. As such, a group or person applying will need to fill in relevant details and make other adjustments as relevant to the applicant's circumstances.

The template application below uses certain formatting in the following ways:

- **[brackets and bold text]**: information will need to be filled in
- *italics*: examples of text that will need to be adjusted
- *[bracketed, italicized text]*: other types of explanatory language, e.g., indicating which sections are for tribal applicants and which are for individual applicants

This Model Application addresses the criteria used by BIA when evaluating petitions to have land taken into trust. However, applicants should include all information, including attachments, that they feel will support the application.

For further explanation, refer to the above document, *Putting Land in Trust: A Guidebook for Alaska Native Tribes and Individuals*.

If you need assistance or have questions about the process of taking land into trust, you may wish to contact the Alaska Regional Office. Points of contact include:

Eugene R. Peltola Jr.
Regional Director
(907) 271-1572

Colleen LaBelle
Lands Titles Records Officer
(907) 271-4593

Glenn Ivanoff
Property Officer
(907) 271-4508
Glen.Ivanoff@bia.gov

Ronelle Beardslee
Self Determination Officer
(907) 271-1712
Ronelle.Beardslee@bia.gov

Alaska Regional Office website: <https://www.bia.gov/regional-offices/alaska>

Send completed fee-to-trust applications to:

Alaska Regional Office
Indian Affairs
3601 C St., Suite 1200
Anchorage, AK 99503

Request by [APPLICANT] to Have Land Taken into Trust by the United States

Identification of Requesting [Tribe or Individual]

[If applicant is a tribe →]

The **[Tribe name as it appears on the list of federally recognized tribes]** (“Tribe”) is a federally recognized Indian tribe with its Tribal headquarters in **[village]**, Alaska. The Tribe’s constitution was approved by the Secretary of the Interior on **[date]**.

[If applicant is an individual →]

[Individual’s Name] is a member of the **[Tribe]**, a federally recognized tribe organized under the Indian Reorganization Act (hereinafter the Tribe). The Tribe’s constitution was approved by the Secretary of the Interior on **[date]**. **[Individual’s Name]** presently has **[acres]** of land held in trust.

Description of Land to Be Acquired into Trust

[Tribe or individual’s name] requests the Secretary to acquire in trust **[acreage]** acres of land (herein termed “**[parcel name]**”). The legal description is as follows:

[Example 1]

Lot Q-3, Subdivision of the unsubdivided remainder of Tract Q, U.S. Survey 2327, according to the plat thereof filed December 7, 1988, as plat No. 88-39, Ketchikan Recording District, First Judicial District, State of Alaska, containing 1.08 acres.

[Example 2]

Lot 1, located in the SE 1/4 of the SE 1/4 of Section 9, Township 12 North, Range 6 East, Town of Delton (Town), in the State of Wisconsin (State).

[If applicable] Appended is a **[survey, map, aerial photograph, etc.]** (Attachment I) that indicates the boundaries and location of **[parcel name]**.

Secretarial Authority to Accept Land into Trust

The Secretary of the Interior has authority under Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108, to acquire land for the purpose of providing lands for Indians. Congress extended Section 5 to Alaska through the 1936 Amendments to the Indian Reorganization Act, 25 U.S.C. § 5119. Section 5 of the Indian Reorganization Act was not expressly nor impliedly repealed by the Alaska Native Claims Settlement Act nor the Federal Land Policy and Management Act. DOI has stated that this authority is not constrained by *Carciere v. Salazar* and, therefore, the Secretary has the authority to take lands into trust from the state of Alaska.

[Tribal Authority for Requesting Land be Taken into Trust – If applicable to tribal applicant (not for individual applicants)]

On **[date of resolution]**, **[Tribal governing body name]** adopted resolution number **[number]** (Attachment II).

Acquisition Policy

[If applicant is a tribe →]

The **[Tribe]** owns the parcel in fee simple. It is seeking to have **[parcel]** taken into trust to further *[self-determination, economic development, and/or housing]*. The land will be used for *[include purpose]*. This plan will help to facilitate the Tribe's *[self-determination/economic development/ and or housing]*.

[If applicant is an individual →]

[Individual] owns the parcel in restricted status. They seek to have the land taken into trust to *[include a purpose for why land should be taken into trust]*.

Need for Acquisition

Tribe is located in **[town/village]** with **[number of members]** members. It is currently facing **[issue]**.

[Explain how taking the land into trust will help solve the issue the Tribe is facing like a housing shortage, a place to conduct cultural activities, a site for tribal government, etc. This section should speak to why taking the land into trust facilitates tribal self-determination, economic development, or housing.]

[If applicant is an individual →]

[Individual] owns the parcel in fee simple. **[Individual]** is seeking to have this land taken into trust because they cannot manage their lands. *[Include any information on why the individual needs assistance such as education, work history, or any other factor that will help BIA determine whether the individual needs assistance.]*

Purpose for Which Land Will be Used

The **[Tribe]** intends to use **[parcel]** for the following purpose(s).

[List and explain what the tribe plans to use the parcel for. This may include housing, cultural, uses, business, governmental, recreational, or other purposes. See below for examples]

[Example 1]

The Tribe intends to use the parcel to fulfill housing needs of its members. It plans to construct affordable housing units for tribal members. The tribe currently has 10 families that have applied for housing assistance from the Tribe. This housing project will enable the Tribe to assist those members and to continue to support other families that may need assistance in the future as the number of members of the Tribe continues to grow.

[Example 2]

The tribe plans to maintain the current land use. The land is currently wilderness area that is used by tribal members for recreational, cultural, and subsistence purposes. The tribe seeks to have this land taken into trust so that it can establish a land base to support self-determination. Taking this land into trust will allow the Tribe more control over access to the area.]

[Example 3]

The Tribe seeks to have land taken into trust that houses Tribal Government offices. The Tribe does not currently have any land in trust and taking this parcel in trust will support the Tribe's self-determination. It will provide a land base from which the Tribe can provide services to its members and protect tribal land for current and future generations. The land will house government offices and an area for the community to gather. In addition, by taking this land into trust, the Tribe can continue to pursue economic development on the parcel and through BIA programs only available to tribes with trust lands.

[If off-reservation land is being acquired for business purposes, the tribe must include a plan that specifies the anticipated economic benefits associated with the proposed use]

Impacts of Taking Land into Trust on Tax Rolls

[If applicant pays taxes to a borough →]

The Tribe currently pays \$[**property taxes paid**] to [**borough**]. The total taxes borough property tax revenue for [**most recent year in which data is accessible**] is \$[**total tax revenue**]. Removing the parcel does not greatly impact the tax roll because the amount of tax generated by this parcel is a de minimis portion of the borough's overall tax roll.

Land Use Conflicts or Jurisdictional Problems

Upon the Secretary's decision to accept the [**parcel**] into trust, the State of Alaska will have concurrent criminal jurisdiction with [**Tribe**] over offenses committed by or against Indians on the trust land. 18 U.S.C. § 1162. The state shall also maintain concurrent jurisdiction over civil causes of actions under civil laws of general applicability involving private persons or private property that arise on the trust land and to which at least one Indian is a party. 28 U.S.C. § 1360. *[List any agreements with local law enforcement]*

The [**parcel**] is zoned [**zoning**] and the area surrounding it are also zoned [**zoning**]. The Tribe's purpose to [**list purpose(s)**] are not anticipated to cause any land use conflicts. *[If land being placed into trust will cause land use conflicts, explain any mitigating factors like a buffer zone].*

Impact on BIA From Acquisition

The acquisition of [**parcel**] into trust is not likely to impose significant additional responsibilities or burdens on BIA. There are no natural resources on the land that BIA would need to manage. *[If there are municipal services include the following, if accurate]* The Tribe will also pay for municipal services related to the parcel. The Tribe only anticipates requiring BIA management assistance with the maintenance of property records.

[Additional Information]

[Include information on any known site contaminations including release or threatened release of hazardous substances, oil or other environmental concern]

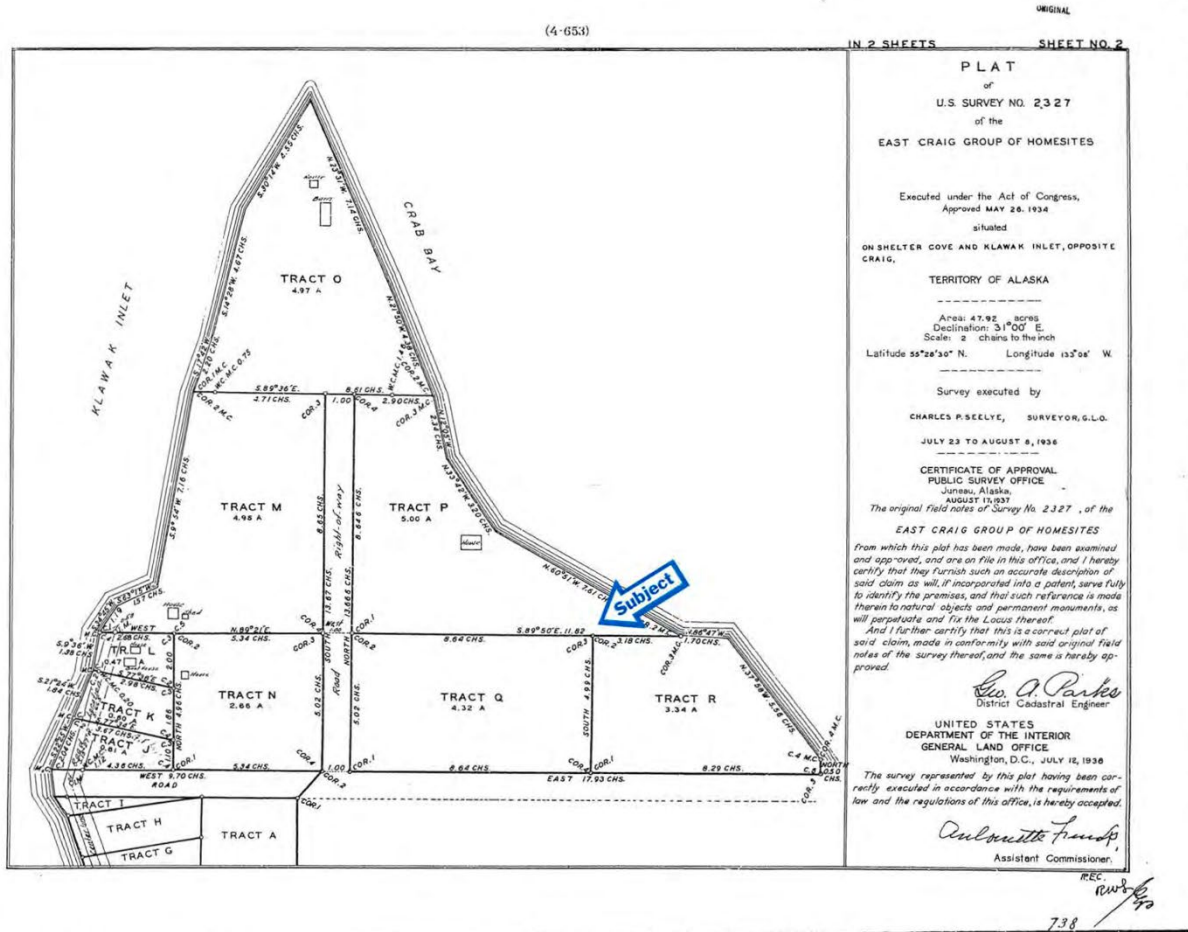
Title Status

The property in question is currently owned in fee by [**Tribe**]. The Tribe will transmit title to the parcel upon the Secretary's decision to accept the land into trust.

Attachment I²⁰⁴



Putting Land in Trust: A Guidebook for Alaska Native Tribes and Individuals



Attachment II

JANUARY 2016 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR 16-01

INTRODUCED BY DARRIN OLD COYOTE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

JOINT ACTION RESOLUTION OF THE CROW TRIBAL LEGISLATURE AND THE
CROW TRIBAL EXECUTIVE BRANCH ENTITLED:

**“RESOLUTION REQUESTING FEE TO TRUST ACQUISITIONS OF CROW
TRIBAL FEE LANDS”**

WHEREAS, the Crow Tribe of Montana is a federally-recognized Indian Tribe (77 Fed. Reg. 47868, 47869); and

WHEREAS, under the Preamble of the Constitution and Bylaws of the Crow Tribe of Indian (the “Constitution”), as approved by the Secretary of the Interior (the “Secretary”) effective July 14, 2001, states, “[w]e the adult members of the Crow Tribe of Indians located on the Crow Indian Reservation as established by the Fort Laramie Treaties of 1851 and 1868, in an effort to enforce and exercise our treaty rights, our inherent sovereign rights, to secure certain privileges and retain inherent powers do hereby adopt this Constitution to create a governing body to represent the members of the Crow Tribe of Indians, to promote the general welfare of the Crow Tribe and to provide for the lawful operation of government”; and

WHEREAS, Article II of the Constitution states, “[t]he jurisdiction of the Crow Tribal General Council shall extend to all lands within the exterior boundaries of the Crow Indian Reservation including those lands within the original boundaries of the Crow Indian Reservation as determined by federal statutes and case law and to such other lands as may hereafter be acquired by or for the Crow Tribe of Indians”; and

WHEREAS, under the Constitution, the Crow Tribe has the inherent authority to acquire trust or fee land in the Tribe’s name; and

WHEREAS, the Chairman of the Executive Branch has authority and responsibility pursuant to the “enumerated powers” in Article IV, Section 3(a) of the Constitution to represent the Crow Tribe in negotiations in matters of economic development, and in Article IV, Section 3(f) to “negotiate and approve or prevent any sale, disposition, lease or encumbrance of Tribal lands, interests in lands or other Tribal assets, including buffalo, minerals, gas and oil with final approval granted by the Legislative Branch”; and

WHEREAS, the Legislative Branch has authority and responsibility pursuant to its “powers and duties” in Article V, Section 2(d) of the Constitution to “grant final approval or disapproval of items negotiated by the Executive Branch of Government pertinent to the sale, disposition, lease or encumbrance of Tribal lands, interests in lands or mineral assets”; and

WHEREAS, the Indian Reorganization Act, 25 U.S.C. Section 465 authorizes the Secretary of the Interior to acquire any interest in lands, water rights, or surface rights to lands, within or without existing reservations, in trust for Indian Tribes, and the Indian Land Consolidation Act, 25 U.S.C. Section 2202, extends the Secretary’s authority to non-IRA Tribes including the Crow Tribe; and

WHEREAS, the Crow Tribe has acquired with its unrestricted funds, and now holds fee simple title to hundreds of tracts of land on the Crow Indian Reservation, including those certain lands as listed in Appendix A attached hereto, on which the Tribe has been paying substantial State and local property taxes; and

WHEREAS, in 2011 the Montana Legislature enacted law, codified at Montana Code Annotated Section 15-6-230, allowing for temporary exemption of tribally-owned fee lands from state taxation and which reads in relevant part as follows:

Property owned in fee by a federally recognized Indian tribe located within the boundaries of the state of Montana is temporarily exempt from taxation on January 1 after the following conditions are met: (a) the United States department of the interior, bureau of Indian affairs, has determined that the initial written request or trust application submitted by the tribe is complete; and (b) the tribe has submitted a timely property tax exemption application to the department [of revenue] and the department has approved the tribe's exemption application; and

WHEREAS, the temporary state tax exemption applies only during the timeframe upon which a decision on the trust application is officially pending before the United States Department of Interior, up to a period of 5 years and expires earlier if the United States denies the trust application; and

WHEREAS, pursuant to Montana Code Annotated Section 15-6-201(1)(a)(viii), and subject to certain limitations, the land of federally recognized Indian tribes is exempt from taxation “if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities[;]” and

WHEREAS, it is the continuing desire and intention of the Crow Tribe to request the United States, through the Secretary of the Interior, to acquire such Tribally-owned fee lands in the name of the United States in trust for the Crow Tribe.

**NOW, THEREFORE, BE IT RESOLVED BY THE CROW TRIBAL LEGISLATURE
AND THE CROW TRIBAL EXECUTIVE BRANCH:**

Section 1. Official Request to Secretary of Interior. The Secretary of the Interior or his or her designee is hereby requested to acquire in the name of the United States to hold in trust for the benefit of the Crow Tribe the lands described in Appendix A (the "Property") attached hereto and incorporated by reference. This Resolution shall apply to mandatory as well as discretionary acquisitions of lands located both within and outside the exterior boundaries of the Crow Indian Reservation, as described in Appendix A.

Section 2. Tribal Intent, Use of Lands. Acquisition of the Property by the Secretary for the United States, along with other tribally-owned fee lands as may be made in the future, is needed in order to promote Tribal economic development, Tribal self-determination, and to enhance the jurisdiction of the United States and the Crow Tribe over the Property, the use of which shall include agricultural use, commercial and industrial development, housing and municipal development, and all other lawful and beneficial tribal uses under tribal and federal law.

Section 3. Urgency of Request. The Crow Tribe hereby requests that the Secretary take prompt action on the request set forth in this Resolution.

Section 4. Supplemental Applications for Other Tribal Fee Lands. The Executive Branch is hereby authorized to prepare and submit future applications for the United States to acquire additional Tribally-owned fee lands to be held in trust for the benefit of the Crow Tribe, which shall be added to and incorporated into Appendix A. This Resolution shall apply to mandatory as well as discretionary acquisitions of lands located both within and outside of the Crow Indian Reservation including the Ceded Strip (Act of April 27, 1904, ch. 624, 33 Stat. 352) and Crow aboriginal territory. Supplemental applications shall be subject to approval by Legislative Resolution of the Legislative Branch upon the request of the Chairman of the Executive Branch.

Section 5. Effective Date. This Resolution shall take effect on the date of approval by the Legislative Branch and the Chairman of the Executive Branch.

• * * Remainder of Page Intentionally Left Blank * *

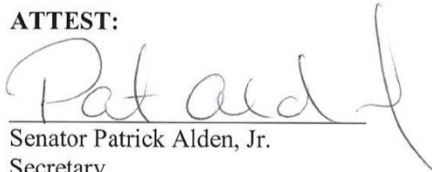
CERTIFICATION

I hereby certify that this Joint Action Resolution entitled **“RESOLUTION REQUESTING FEE TO TRUST ACQUISITIONS OF CROW TRIBAL FEE LANDS”** was duly enacted by the Crow Tribal Legislature with a vote of 15 in favor 0 opposed, and 0 abstaining and that a quorum was present on this 13th day of January, 2016.



Senator R. Knute Old Crow, Sr.
Speaker of the House
Crow Tribal Legislature

ATTEST:



Senator Patrick Alden, Jr.
Secretary
Crow Tribal Legislature



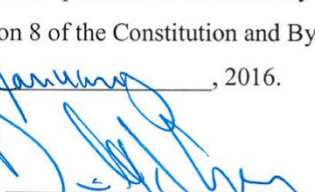
EXECUTIVE ACTION

I hereby

X approve or

_____ veto.

this Joint Action Resolution entitled **“RESOLUTION REQUESTING FEE TO TRUST ACQUISITIONS OF CROW TRIBAL FEE LANDS”** pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 29th day of January, 2016.


Darin Old Coyote, Chairman
Crow Tribal Executive Branch

ENDNOTES

¹ Bureau of Indian Affairs, *Fee to Trust Land Acquisitions*, <https://perma.cc/2Y5F-NQ2A> (last visited June 22, 2022).

² 25 C.F.R. Part 151.

³ 25 U.S.C. § 2719.

⁴ 25 C.F.R. § 151.11(c).

⁵ See THOMAS W. MERRILL & HENRY E. SMITH, PROPERTY 508 (3d ed. 2017).

⁶ Tana Fitzpatrick, Cong. Rsch. Serv., IF 11944, *Tribal Lands: An Overview* (2021), available at <https://perma.cc/9MFL-KUAC>.

⁷ *Id.*

⁸ *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 532 (1998).

⁹ Padraic I. McCoy, *The Land Must Hold the People: Native Modes of Territoriality and Contemporary Tribal Justifications for Placing Land into Trust Through 25 C.F.R. Part 151*, 27 AM. INDIAN L. REV. 421, 445 (2003); *Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993).

¹⁰ Tana Fitzpatrick, Cong. Rsch. Serv., R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress* (2021), available at <https://perma.cc/55NX-AG4Q> [hereinafter “Fitzpatrick, *Selected Issues*”].

¹¹ BIA, *Fee to Trust Land Acquisitions*, *supra* note 1.

¹² See 25 C.F.R. Part 151.

¹³ Fitzpatrick, *Selected Issues*, *supra* note 10.

¹⁴ See discussion *infra* II.A.

¹⁵ See Treaty of Cession, U.S.-Russia, art. 3, Mar. 30, 1867, 15 Stat. 542.

¹⁶ 23 Stat. 24, 26; 31 Stat. 321; *Authority to Acquire Land into Trust in Alaska*, Sol. Op. M-37043, at 2 (DOI, Jan. 13, 2017), available at <https://perma.cc/HDP5-8JMS>.

¹⁷ 348 U.S. 272, 278 (1955).

¹⁸ 34 Stat. 197 (1906).

¹⁹ 44 Stat. 629 (1926).

²⁰ *Akiachak Native Cmty. v. Salazar*, 935 F. Supp. 2d 195, 198 (D.D.C. 2013).

²¹ 25 U.S.C. § 5108.

²² 25 U.S.C. § 5118.

²³ 25 U.S.C. § 5119.

²⁴ 43 U.S.C. §§ 1601–1629h.

²⁵ 43 U.S.C. § 1603.

²⁶ 43 U.S.C. § 1618.

²⁷ *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 523 (1998).

²⁸ *Akiachak Native Cmty. v. Salazar*, 935 F. Supp. 2d 195, 199 (D.D.C. 2013).

²⁹ *Id.*

³⁰ The court in *Akiachak Native Cmty. v. Salazar* rejected DOI’s argument that ANCSA implicitly repealed Section 5 of the IRA, finding that it is “perfectly possible for land claims to be settled by transferring land and money to tribal

corporations, while the [DOI] Secretary retains the discretion—but not the obligation—to take additional lands (or, perhaps, those same transferred lands) into trust.” 935 F.Supp.2d 195, 207 (D.D.C. 2013).

³¹ *Id.*

³² *Id.* at 200–01.

³³ *Withdrawal of M-37064 and Announcement of Consultation on the Department’s Interpretation of the Indian Reorganization Act and the Alaska Native Claims Settlement Act in Connection with the Secretary’s Land into Trust Authority*, Sol. Op. M-37069 (DOI, Apr. 27, 2021), available at <https://perma.cc/SQ2Q-VZN4>.

³⁴ Sol. Op. M-37043, *supra* note 16, at 8.

³⁵ Land Acquisitions, 45 Fed. Reg. 62,034 (Sept. 18, 1980).

³⁶ *Akiachak Native Cmty. v. Salazar*, 935 F. Supp. 2d 195 (D.D.C. 2013).

³⁷ Land Acquisitions in the State of Alaska, 79 Fed. Reg. 76,888, 76,889 (Dec. 23, 2014). DOI regulations were briefly changed in 2001 to consider the legal and policy issues surrounding taking Alaskan land into trust for three years, but that change was rescinded later that year and thus the Alaska Exception stayed in place. *See* Acquisition of Title to Land in Trust, 66 Fed. Reg. 3,452 (Jan. 16, 2001); Acquisition of Title to Land in Trust, 66 Fed. Reg. 56,608, 56,609 (Nov. 9, 2001). While the Fredericks Memorandum was rescinded in 2001, DOI continued to enforce the Alaska Exception.

³⁸ Sol. Op. M-37043, *supra* note 16.

³⁹ *Id.* at 21.

⁴⁰ *Id.*

⁴¹ *See Withdrawal of Solicitor Opinion M-37043, “Authority to Acquire land into Trust in Alaska” Pending Review*, Sol. Op. M-37053 (DOI, June 29, 2018), available at <https://perma.cc/8GRR-2CWE>; *Permanent Withdrawal of Solicitor Opinion M-37043, “Authority to Acquire Land into Trust in Alaska”*, Sol. Op. M-37064 (DOI, Jan. 19, 2021), available at <https://perma.cc/H683-3EWR>.

⁴² Sol. Op. M-37069, *supra* note 33, at 2.

⁴³ LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION (Jan. 12, 2017).

⁴⁴ Press release, State of Alaska Dep’t of Law, *BIA Sends Notice on Lands Into Trust Applications for Ninilchik and Fort Yukon* (Sept. 8, 2017), <https://perma.cc/527M-3Z8C>; Press release, State of Alaska Dep’t of Law, *BIA Sends Notice on Lands Into Trust Applications for Lands Used as Parking Lots* (April 7, 2017), <https://perma.cc/6XYU-RVLD>. There may also have been an application from the Ketchikan Indian Community. *See* Transcript of United States Department of the Interior Office of the Secretary Government to Government Tribal Consultation Session (2) (Aug. 3, 2018), <https://perma.cc/W976-B2L2>.

⁴⁵ 25 U.S.C. § 2719.

⁴⁶ 25 C.R.F. § 151.

⁴⁷ 25 C.F.R. § 151.11.

⁴⁸ 25 C.R.F. § 151.10.

⁴⁹ Fitzpatrick, *Selected Issues*, *supra* note 10; *see also* BUREAU OF INDIAN AFFAIRS, ACQUISITION OF TITLE TO LAND HELD IN FEE OR RESTRICTED FEE STATUS (FEE-TO-TRUST HANDBOOK) 32 (2016), <https://perma.cc/ZPY8-8CJW> [hereinafter “BIA Handbook”].

⁵⁰ Fitzpatrick, *Selected Issues*, *supra* note 10; *American Indian and Indigenous Peoples Resources*, MONTANA STATE UNIVERSITY, <https://perma.cc/JD4Y-XXDG> (last visited June 22, 2022).

⁵¹ BIA Handbook, *supra* note 49, at 32.

⁵² McCoy, *supra* note 9, at 445; *Okla. Tax Comm’n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993).

⁵³ COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 6.04(3) (2019) [hereinafter “Cohen”].

⁵⁴ *Id.* § 6.04(3)(c); Letter from Lawrence S. Roberts, Principal Deputy Assistant Secretary–Indian Affairs, to Clinton Cook, Sr., Tribal President, Craig Tribal Association, 8 (Jan. 12, 2017).

⁵⁵ INDIAN LAW AND ORDER COMM’N, A ROADMAP FOR MAKING NATIVE AMERICANS SAFER, REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES, 7 (Nov. 2013), <https://perma.cc/S3TC-DGXL>; *see also id.* at 51–56 (discussing recommendations to reform tribal, state, and federal jurisdiction in Alaska to improve public safety).

⁵⁶ *See Strate v. A-1 Contractors*, 520 U.S. 438, 454 (1997); *Montana v. United States*, 450 U.S. 544, 565–66 (1981).

⁵⁷ McCoy, *supra* note 9, at 478.

⁵⁸ Cohen, *supra* note 53, § 6.04; McCoy, *supra* note 9, at 495 n.363.

⁵⁹ Letter from Jahna Lindemuth, Alaska Attorney General, to Kathy Cline, Acting Reg’l Dir. Bureau of Indian Affairs Alaska Region (Dec. 9, 2016); Joseph William Singer, *Property Law Developments*, HARVARD UNIVERSITY, (June 14, 2017), <https://perma.cc/9PEH-NV2Q>; Todd Miller, *Easements on Tribal Sovereignty*, 26 AM. INDIAN L. REV. 105, 123 (2001).

⁶⁰ *Shawano Cnty., Wis., Board of Supervisors and Town of Red Springs v. Midwest Reg’l Dir.*, 40 IBIA 241, 243 (2005).

⁶¹ 25 U.S.C. § 5108; *see also* McCoy, *supra* note 9, at 445; Cohen, *supra* note 53, § 6.04.

⁶² *See Office of the State Assessor Alaska Tax Facts*, DEP’T OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION OF COMMUNITY AND REG’L AFFAIRS, <https://perma.cc/39J5-HEXW> (last visited June 22, 2022).

⁶³ *Carroll Cnty., Miss., Board of Supervisors v. Acting Eastern Regional Director*, 56 IBIA 194, 195 (2013).

⁶⁴ Letter from Ranald Trahan, Chairman, Confederated Salish Kootenai Tribes, to Ravalli County Commissioners (Apr. 14, 2018), <https://perma.cc/3QHU-423E>.

⁶⁵ *N.M. v. Mescalero Apache Tribe*, 462 U.S. 324, 337 (1983). This decision refers to tribal jurisdiction over hunting and fishing on a reservation, and courts have treated trust lands and reservations similarly. *See Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1294 (D.C. Cir. 2000).

⁶⁶ Fitzpatrick, *Selected Issues*, *supra* note 10, at 10.

⁶⁷ Bureau of Indian Affairs, *Benefits of Trust Land Acquisition (Fee to Trust)*, <https://perma.cc/XZ94-22RT> (last visited June 22, 2022); OFFICE OF INDIAN ENERGY AND ECONOMIC DEVELOPMENT, CONVERTING FEE LAND INTO TRUST LAND AND THE ASSOCIATED ECONOMIC BENEFITS, *available at* <https://perma.cc/9KKA-2RKF>.

⁶⁸ *Id.* at 7.

⁶⁹ *Id.*

⁷⁰ *See City of Moses Lake, Wash. v. Northwest Reg’l Dir.*, 60 IBIA 111, 113 (2015).

⁷¹ OFFICE OF THE COMPTROLLER OF THE CURRENCY COMMUNITY AFFAIRS DEP’T, COMMERCIAL LENDING IN INDIAN COUNTRY: POTENTIAL OPPORTUNITIES IN A GROWING MARKET 2 (2016), *available at* <https://perma.cc/W9FJ-5Q7A>.

⁷² *See id.*

⁷³ Cohen, *supra* note 53, § 6.04(3).

⁷⁴ INDIAN LAW AND ORDER COMM’N, *supra* note 55, at 11–17.

⁷⁵ LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION 8 (Jan. 12, 2017).

⁷⁶ *Norken Corp v. McGahan*, 832 P.2d 622, 628 (Alaska 1991).

⁷⁷ *Hayes v. A.J. Assocs.*, 960 P.2d 556, 574 (Alaska 1998); LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION 8 (Jan. 2017).

⁷⁸ *See, e.g., Land Acquisitions; Paskenta Band of Nomlaki Indians of California*, 65 Fed. Reg. 76,275 (Dec. 6, 2000); *Land Acquisitions; Little River Band of Ottawa Indians of Michigan*, 63 Fed. Reg. 64,968 (Nov. 24, 1998).

⁷⁹ Cohen, *supra* note 53, § 6.04(5)(e).

⁸⁰ *Rice v. Rehner*, 463 U.S. 713, 733 (1983).

⁸¹ 21 U.S.C. § 812; LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION 8 (Jan. 12, 2017).

⁸² BIA Handbook, *supra* note 49.

⁸³ 25 C.F.R. § 151.9 (2021); Sec’y of Interior Order No. 3400 (Apr. 27, 2021), *available at* <https://perma.cc/2JL5-H6YN>.

⁸⁴ *Id.*

⁸⁵ 25 U.S.C. § 5119.

⁸⁶ 25 U.S.C. § 5108.

⁸⁷ 25 U.S.C. § 5129.

⁸⁸ *See e.g., Carcieri v. Salazar*, 555 U.S. 379 (2009). *See also Akiachak Native Cmty. v. Jewell*, 995 F.Supp.2d 1, 5 n.3 (D.D.C 2013) (parties agreed that *Carcieri* does not control because the Alaska IRA makes Section 5 of the IRA applicable to Alaska Natives and tribes).

⁸⁹ 25 C.F.R. § 151.2.

⁹⁰ BIA Handbook, *supra* note 49, at 12.

⁹¹ Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 87 Fed. Reg. 4,636 (Jan. 28, 2022).

⁹² 25 C.F.R. § 151.2(c).

⁹³ 25 C.F.R. § 151.10(d). BIA has not issued guidance on how the amount of land owned by an individual compares with an individuals need for assistance in handling business matters. U.S. GOV’T ACCOUNTABILITY OFF., GAO-06-781, INDIAN ISSUES BIA’S EFFORTS TO IMPOSE TIME FRAMES AND COLLECT BETTER DATA SHOULD IMPROVE THE PROCESSING OF LAND IN TRUST APPLICATIONS 18 (2006), <https://perma.cc/R3QH-RX59>.

⁹⁴ 25 C.F.R. § 151.9.

⁹⁵ BIA Handbook, *supra* note 49, at 10.

⁹⁶ *Id.* at 11. The BIA Fee-to-Trust Handbook has not been updated since it became possible to submit applications to put land into trust in Alaska therefore, the Handbook only refers to counties rather than boroughs. This is unlikely to cause an issue with applications as BIA accepts fee-to-trust applications from Louisiana, a state that uses parishes rather than counties. *See Avoyelles Parish La, Police Jury v. Eastern Area Dir.*, 34 IBIA 149 (challenge to two tracts of land being taken into trust in Avoyelles Parish, Louisiana).

⁹⁷ The 36 square mile block is described by a township (marks how far north and south of a starting point the block is) and range (marks how far east or west of a starting point the block is). Each 36 square mile block is divided into 36 sections, each being 1 square mile. The block can also be further divided into smaller sections as necessary. *Tutorial on the Public Land Survey System Descriptions*, WISCONSIN DEPARTMENT OF NATURAL RESOURCES, <https://perma.cc/5NFF-V77R> (last visited June 22, 2022).

⁹⁸ BIA Handbook, *supra* note 49, at 11.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 13.

¹⁰¹ BUREAU OF INDIAN AFFAIRS OFFICE OF TRUST SERVICES, STANDARDS FOR INDIAN TRUST LANDS BOUNDARY EVIDENCE HANDBOOK 14, 25 (2012).

¹⁰² 25 U.S.C. § 5119.

¹⁰³ *Resolution Requesting Fee to Trust Acquisitions of Crow Tribal Fee Lands*, CROW TRIBAL LEGISLATURE (Jan. 13, 2016), <https://perma.cc/65DU-DXZP>.

¹⁰⁴ 25 C.F.R. § 151.3.

¹⁰⁵ The term “adjacent” is not defined by BIA directly in its regulations but it has been explained in appeals decisions from the Interior Board of Indian Appeals (IBIA), a body that reviews appeals of decisions from DOI involving Indian matters. “Adjacent” is a “term of flexible meaning.” *Philemena Maahs v. Acting Portland Area Dir.*, 22 IBIA 294, 296 (1992). Lands that are in close proximity to each other that do not touch fulfill the definition of ‘adjacent.’ *Jefferson County, Oregon, Board of Commissioners v. Northwest Reg’l Dir.*, 47 IBIA 187, 206 (citing *Philemena Maahs v. Acting Portland Area Dir.*, 22 IBIA 294, 296 (1992)). Contiguous lands are those “that adjoin or abut.” *Id.* at 205. While these words seem like synonyms, a piece of land that is close but does not touch (shares a common boundary) a tribe’s reservation may fulfill 25 C.F.R. § 151.10(3)(a)(1) but would likely be treated as an off-reservation acquisition. Whereas a piece of land that touches the tribe’s reservation both fulfills 25 C.F.R. § 151.10(3)(a)(1) and will be assessed as an on-reservation acquisition which subjects the application to different analysis.

¹⁰⁶ LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION (Jan. 12, 2017).

¹⁰⁷ *Benewah County, ID v. Northwest Reg’l Dir.*, 55 IBIA 281, 283 (2012).

¹⁰⁸ 25 C.F.R. § 151.3.

¹⁰⁹ *See Virginia Cross v. Acting Portland Area Dir.*, 23 IBIA 149, n.6 (1993).

¹¹⁰ Bureau of Indian Affairs, *Real Estate Services*, <https://perma.cc/ZG23-ZNJY> (last visited June 22, 2022).

¹¹¹ *Id.*

¹¹² *Darrell Chisoe v. Acting Eastern Oklahoma Reg’l Dir.*, 59 IBIA 304, 307 (2015).

¹¹³ BUREAU OF INDIAN AFFAIRS OFFICE OF TRUST SERVICES, STANDARDS FOR INDIAN TRUST LANDS BOUNDARY EVIDENCE HANDBOOK 19 (2012).

¹¹⁴ 25 C.F.R. § 151.10.

¹¹⁵ 25 C.F.R. § 151.11.

¹¹⁶ 25 C.F.R. § 151.11(b).

¹¹⁷ *Id.*

¹¹⁸ The only tribe in Alaska that has a reservation is the Metlakatla Indian Community of the Annette Island Reserve.

¹¹⁹ LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION 10 (Jan. 12, 2017) (“Although the Tribe does not have a reservation as the term is used in the pertinent federal regulations, the Tribe does have a recognized traditional homeland”).

¹²⁰ RYAN K. ZINKE, LETTER OF DECISION FOR THE SHAWNEE TRIBE 23 (Jan. 19, 2018), <https://perma.cc/FG8V-RNB5>.

¹²¹ TARA SWEENEY, LETTER OF DECISION FOR THE TULE RIVER INDIAN TRIBE (Dec. 11, 2020), <https://perma.cc/X6NS-YU2T>.

¹²² TARA SWEENEY, LETTER OF DECISION FOR THE COQUILLE INDIAN TRIBE 8 (May 27, 2020), <https://perma.cc/T25U-DGEP>.

¹²³ *Id.*

¹²⁴ ZINKE, LETTER OF DECISION FOR THE SHAWNEE TRIBE, *supra* note 120, at 23–24.

¹²⁵ SWEENEY, LETTER OF DECISION FOR THE COQUILLE INDIAN TRIBE, *supra* note 122, at 8–9.

¹²⁶ 25 U.S.C. § 5108.

¹²⁷ 25 U.S.C. § 5129.

¹²⁸ *See, e.g., Carcieri v. Salazar*, 55 U.S. 379 (2009).

¹²⁹ *See Cass County, MN and City of Cass Lake, MI v. Midwest Reg’l Dir.*, 42 IBIA 243, 247–250 (2006).

¹³⁰ TARA SWEENEY, LETTER OF DECISION FOR THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS 32 (Mar. 31, 2020), <https://perma.cc/A684-RE3C>.

¹³¹ *Id.* at 32–33.

¹³² TARA SWEENEY, LETTER OF DECISION FOR THE SNOQUALMIE INDIAN TRIBE 39 (Mar. 18, 2020) <https://perma.cc/8VN8-BKVC>.

¹³³ *See* SWEENEY, LETTER OF DECISION FOR THE TULE RIVER INDIAN TRIBE, *supra* note 121.

¹³⁴ *See City of Moses Lake, Wash. v. Northwest Reg'l Dir.*, 60 IBIA 111, 113 (2015).

¹³⁵ ZINKE, LETTER OF DECISION FOR THE SHAWNEE TRIBE, *supra* note 120, at 12.

¹³⁶ *Shawano Cnty., Wis., Board of Supervisors and Town of Red Springs v. Midwest Reg'l Dir.*, 40 IBIA 241, 248 (2005).

¹³⁷ KEVIN K. WASHBURN, RECORD OF DECISION TRUST ACQUISITION AND RESERVATION PROCLAMATION FOR 151 ACRES IN THE CITY OF TAUNTON, MASSACHUSETTS, AND 170 ACRES IN THE TOWN OF MASHPEE, MASSACHUSETTS, FOR THE MASHPEE WAMPANOAG TRIBE 121 (Sep. 2015), <https://perma.cc/SL5B-YPQE>.

¹³⁸ TARA SWEENEY, LETTER OF DECISION FOR THE OSAGE NATION 30 (June 26, 2020), <https://perma.cc/4YU8-4TA6>.

¹³⁹ SWEENEY, LETTER OF DECISION FOR THE COQUILLE INDIAN TRIBE, *supra* note 122, at 9.

¹⁴⁰ *See e.g., Benewah County, ID v. Northwest Reg'l Dir.*, 55 IBIA 281, 288 (2012).

¹⁴¹ *Carroll Cnty., Miss., Board of Supervisors v. Acting Eastern Reg'l Dir.*, 56 IBIA 194, 195 (2013).

¹⁴² *Benewah County, ID v. Northwest Reg'l Dir.*, 55 IBIA 281, 288 (2012).

¹⁴³ U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-781, INDIAN ISSUES BIA'S EFFORTS TO IMPOSE TIME FRAMES AND COLLECT BETTER DATA SHOULD IMPROVE THE PROCESSING OF LAND IN TRUST APPLICATIONS 18 (2006), <https://perma.cc/QTW2-J4B4>.

¹⁴⁴ *Louis J. King, Jr. v. Eastern Okla. Reg'l Dir.* 46 IBIA 149, 152 (2007).

¹⁴⁵ *Id.*

¹⁴⁶ *State of Kan. V. Acting Southern Plains Reg'l Dir.*, 53 IBIA 32, 37 (2011).

¹⁴⁷ *Thurston Cnty., Neb. V. Acting Great Plains Reg'l Dir.*, 56 IBIA 62, 74 (2012).

¹⁴⁸ SWEENEY, LETTER OF DECISION FOR THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, *supra* note 130, at 33.

¹⁴⁹ *See* SWEENEY, LETTER OF DECISION FOR THE TULE RIVER INDIAN TRIBE, *supra* note 121, at 12.

¹⁵⁰ TARA SWEENEY, LETTER OF DECISION FOR THE KIOWA INDIAN TRIBE OF OKLAHOMA 12 (Dec. 16, 2020), <https://perma.cc/KV57-8LB2>.

¹⁵¹ SWEENEY, LETTER OF DECISION FOR THE OSAGE NATION, *supra* note 138, at 32.

¹⁵² TARA SWEENEY, LETTER OF DECISION FOR THE AGUA CALIENTE BAND OF CAHUILLA INDIANS 14 (Oct. 7, 2019), <https://perma.cc/QE69-RTUZ>.

¹⁵³ ZINKE, LETTER OF DECISION FOR THE SHAWNEE TRIBE, *supra* note 120, at 18.

¹⁵⁴ KEVIN K. WASHBURN, RECORD OF DECISION TRUST ACQUISITION AND RESERVATION PROCLAMATION FOR 151 ACRES IN THE CITY OF TAUNTON, MASSACHUSETTS, AND 170 ACRES IN THE TOWN OF MASHPEE, MASSACHUSETTS, FOR THE MASHPEE WAMPANOAG TRIBE 133 (Sep. 2015), <https://perma.cc/9Y93-A75C>.

¹⁵⁵ *See* SWEENEY, LETTER OF DECISION FOR THE SNOQUALMIE INDIAN TRIBE, *supra* note 132, at 42; SWEENEY, LETTER OF DECISION FOR THE OSAGE NATION, *supra* note 138, at 33.

¹⁵⁶ LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION 9 (Jan. 12, 2017).

¹⁵⁷ *Id.*

¹⁵⁸ SWEENEY, LETTER OF DECISION FOR THE SNOQUALMIE INDIAN TRIBE, *supra* note 132, at 42 (the tribe contracted to perform the realty functions of BIA).

¹⁵⁹ SWEENEY, LETTER OF DECISION FOR THE KIOWA INDIAN TRIBE OF OKLAHOMA, *supra* note 150, at 13.

¹⁶⁰ 25 C.F.R. § 151.10(h).

¹⁶¹ DOI, DEPARTMENTAL MANUAL SERIES: PUBLIC LANDS, CHAPTER 2: REAL PROPERTY PRE-ACQUISITION ENVIRONMENTAL SITE ASSESSMENTS, PART 602: LAND ACQUISITIONS, EXCHANGE AND DISPOSAL 5, 7 (2016), <https://perma.cc/LG53-VM5L> (requiring DOI bureaus/offices to conduct either a Pre-Acquisition Environmental Site Assessment (PA-ESA) or in some cases a Limited Environmental Due Diligence: Transaction Screen Process; BIA needs to conduct its own PA-ESA unless a previous assessment meets all timing and compliance requirements). *See* KOI NATION OF NORTHERN CALIFORNIA FEE TO TRUST APPLICATION PURSUANT TO 26 C.F.R. PART 151, KOI NATION OF NORTHERN CALIFORNIA 6, <https://perma.cc/4XQE-YAWW> (including a Phase I Environmental Site Assessment within the application); APPLICATION TO PLACE LAND IN TRUST FOR THE PRAIRIE ISLAND INDIAN COMMUNITY, PRAIRIE ISLAND INDIAN COMMUNITY 18, <https://perma.cc/EUC4-BNY5> (stating that a Phase I Environmental Site Assessment will be completed in the near future); JOHN TAHSUDA, LETTER OF DECISION FOR THE ARAPAHO TRIBE OF THE WIND RIVER RESERVATION 9 (Dec. 21, 2018), <https://perma.cc/K8LN-EEYM> (showing that BIA conducted the Phase I Environmental Site Assessment rather than the tribe).

¹⁶² *Carroll Cnty., Miss., Board of Supervisors v. Acting Eastern Reg'l Dir.*, 56 IBIA 194, 195 (2013).

¹⁶³ *See* SWEENEY, LETTER OF DECISION FOR THE TULE RIVER INDIAN TRIBE, *supra* note 121, at 24.

¹⁶⁴ BIA Handbook, *supra* note 49, at 15.

¹⁶⁵ *Id.*; *id.* at 72.

¹⁶⁶ *Id.* at 15.

¹⁶⁷ *Id.* at 73.

¹⁶⁸ 42 U.S.C. § 4332.

¹⁶⁹ DOI, DEPARTMENTAL MANUAL SERIES: ENVIRONMENTAL QUALITY PROGRAMS PART 516: NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 CHAPTER 10: MANAGING THE NEPA PROCESS—BUREAU OF INDIAN AFFAIRS 10.5(I), <https://perma.cc/D8FP-GQPL>.

¹⁷⁰ *See, e.g., State of NY; Franklin Cnty, NY; and Town of Fort Covington, NY v. Acting Eastern Regional Director*, 58 IBIA 323, 325, 349–352 (2014).

¹⁷¹ *See* TARA SWEENEY, FINDING OF NO SIGNIFICANT IMPACT FOR THE CHICKASAW NATION KINGSTON FEE-TO-TRUST PROJECT (Oct. 14, 2020), <https://perma.cc/SW4U-7WHP>.

¹⁷² *See* BUREAU OF INDIAN AFFAIRS, DRAFT ENVIRONMENTAL IMPACT STATEMENT REDDING RANCHERIA FEE-TO-TRUST AND CASINO PROJECT VOLUME 1-EIS (APR. 2019), <https://perma.cc/5FLD-36QQ>.

¹⁷³ *See, e.g.,* LAWRENCE S. ROBERTS, RECORD OF DECISION TRUST ACQUISITION OF 165.81± ACRES IN THE CITY OF SOUTH BEND, INDIANA, FOR THE POKAGON BAND OF POTAWATOMI INDIANS, MICHIGAN AND INDIANA 72–73 (Nov. 2019), <https://perma.cc/PZ4P-K3U9>; LAWRENCE S. ROBERTS, RECORD OF DECISION TRUST ACQUISITION OF 61.83 ACRES SONOMA COUNTY, CALIFORNIA, FOR THE CLOVERDALE RANCHERIA OF POMO INDIANS OF CALIFORNIA 65–66 (Apr. 2019), <https://perma.cc/HY8H-DHTM>.

¹⁷⁴ DOI, 602 DM 2, *supra* note 161.

¹⁷⁵ *Id.* at 3.

¹⁷⁶ *Id.* at 2 & 14.

¹⁷⁷ *Id.* at 7.

¹⁷⁸ *Id.* at 3, 10.

¹⁷⁹ *Id.*

¹⁸⁰ 25 C.F.R. § 151.10–11.

¹⁸¹ 25 C.F.R. § 151.11(b).

¹⁸² *Id.* § 151.11(d).

¹⁸³ BIA Handbook, *supra* note 49, at 76.

¹⁸⁴ *Id.* at 74–75; LAWRENCE S. ROBERTS, LETTER OF DECISION FOR THE CRAIG TRIBAL ASSOCIATION 4 (Jan. 12, 2017).

¹⁸⁵ BIA Handbook, *supra* note 49, at 76.

¹⁸⁶ *Id.*

¹⁸⁷ 25 C.F.R. § 151.13(a).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Land Title Guarantee Company, *Understanding the Title Commitment*, <https://perma.cc/YMY5-X8ZS> (last visited June 22, 2022).

¹⁹¹ *Where is my abstract!?*, MCV LAW, <https://perma.cc/3LFN-RC5A> (last visited June 22, 2022).

¹⁹² 25 C.F.R. § 151.12(d).

¹⁹³ U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-781, INDIAN ISSUES BIA'S EFFORTS TO IMPOSE TIME FRAMES AND COLLECT BETTER DATA SHOULD IMPROVE THE PROCESSING OF LAND IN TRUST APPLICATIONS 21 (2006).

¹⁹⁴ Sec'y of Interior Order No. 3400, *supra* note 83. Previously, non-gaming off-reservation applications were processed at the BIA Central Office. Sarah Roubidoux Lawson, *Department of the Interior Announces Changes to Fee-to Trust Policy for Tribes*, SCHWABE WILLIAMSON & WYATT (APR. 28, 2021), <https://perma.cc/UJL3-H44M> (last visited June 22, 2022).

¹⁹⁵ 25 C.F.R. § 2.9.

¹⁹⁶ 25 C.F.R. § 2.9; *see* BIA Handbook, *supra* note 49, at 78.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ 25 C.F.R. § 2.10.

²⁰¹ *Id.*

²⁰² For example, in *Benewah County, Idaho v. Northwest Reg'l Dir.*, a county challenged BIA's decision by claiming that the Regional Director did not sufficiently consider the impact on the county of placing parcels of land into trust. 55 IBIA 281 (2012).

²⁰³ Bureau of Indian Affairs, *Frequently Asked Questions*, <https://perma.cc/2QEM-Z3AJ> (last visited June 22, 2022).

²⁰⁴ Weldon B. Loudermilk, Notice of (Non-Gaming) Trust Land Acquisition Application (Oct. 7, 2016), <https://perma.cc/2VYY-J5LM>.