



# **Eastern Regional Office Real Estate Service Fee to Trust Presentation**

June 14, 2023



Our goal today is to provide an overview of fee-to-trust and to give you a better understanding of the process.

- **The Indian Reorganization Act** (IRA) was signed by President Roosevelt on June 18, 1934, also known as the Wheeler – Howard Act.
- The IRA was legislation authorizing tribal self-rule under federal supervision, thereby putting an **end to land allotment** and promoting measures to enhance tribes and encouraging education.
- The IRA is the authority that allows the Secretary to acquire land in trust for the benefit of the Tribe. **25 USC § 5108, 48 Stat. 984, (June 18, 1934)**
  - Fee to Trust (FTT) land acquisitions, also called “land into trust,” transfer a land title to the United States of America to be held in trust for the benefit of an individual Indian or Tribe.
  - Taking land into trust is one of the most important functions of the Bureau of Indian Affairs (BIA). Acquisition of land in trust is essential to Tribal self-determination. Tribes are sovereign governments and trust lands are a primary focus of Tribal authority.

# Fee to Trust – What is it?

**Fee land** – Land that is taxable land owned by the Tribe that can be trespassed upon without Federal Approval. **Trust Land** - Land held in trust status is land that cannot be alienated or encumbered unless approved by the Secretary.

- ▶ Two types of fee-to-trust applications by authority.
  - ▶ **Discretionary** and **Mandatory**
  - ▶ **Discretionary Acquisition**: A fee-to-trust acquisition authorized by Congress that **does not require** the Secretary (may) to acquire title to any interest in land to be held in trust by the United States on behalf of a Tribe. The Secretary has discretion to accept or deny the request for any such acquisition. When we look at the authority for discretionary acquisitions, we have to make a UFJ determination.
    - ▶ On Reservation - Title 25 Code of Federal Regulations (CFR), Part 151.10 (25 CFR § 151.10)
    - ▶ Off Reservation - Title 25 Code of Federal Regulations (CFR), Part 151.11 (25 CFR § 151.11)

# Fee to Trust – What is it?

➤ **Mandatory Acquisition**: A fee-to-trust acquisition directed by Congress or a judicial order that **requires** the Secretary (**shall**) to accept title to land into trust by the United States for a Tribe. The Secretary does not have the discretion to accept or deny the request to accept title of land into trust.

➤ As determined by the specific settlement act for that Tribe.

- What to include in a fee-to-trust application?
- Starting with the authority...

# Fee to Trust

Authority:

The Indian Reorganization Act (IRA) **[25 USC § 5108, 48 Stat. 984, (June 18, 1934)]** provides the Secretary with the **discretion** to acquire trust title to land or interests in land.

For **Mandatory** applications, **Congressional Settlement Agreements** that **requires** the **Secretary** to **acquire** title to particular land and interests in land into trust under statutes other than the IRA. This type of acquisition is referred to as a mandatory acquisition.

Applications and resolutions should cite the **statutory authority** for the land acquisition.

## Fee to Trust - What to include in a fee-to-trust application?

- ▶ There are 3 areas under which land may be taken into trust. An application must cite at least one of the following reasons:
  - ▶ 25 CFR 151.3 (3) When the Secretary determines that the acquisition of the land is necessary to facilitate
    1. Tribal Self-Determination,
    2. Economic Development,
    3. Indian housing (non-commercial)
- ▶ The application transmittal letter should address **25 CFR 151.10 (a-c) & (e-h) or 25 CFR 151.11 (a-d)**
  - ▶ Statutory Authority **25 CFR §151.10(a)**
  - ▶ Need (Justification for additional land) **25 CFR §151.10(b)**

## Fee to Trust - What to include in a fee-to-trust application?

- Purpose for the land use **25 CFR §151.10(c)**
- Own other lands in trust or restricted status **25 CFR §151.10(e)**
- Any jurisdictional problems and potential conflicts **25 CFR §151.10(f)**
- Whether the BIA is equipped to discharge additional responsibilities resulting from the land coming into trust status. **25 CFR §151.10(g) (include any supportive corporative agreements the Tribe has with the local authorities for ambulance, fire and/or 911 services showing the Tribe is able to assist with these services.)**
- Address National Environmental Procedures Act (**NEPA**) by providing information that allows the Secretary to comply with 516 DM 6, appendix 4 as well as 602 DM 2 (Contaminant Survey Phase I, II or III) for Land Acquisitions, Hazardous Substances Determinations **25 CFR §151.10(h)**


# Fee to Trust - What to include in a fee-to-trust application?

- ▶ Written request - A written request need not be in any special form but must be accompanied by a **duly enacted tribal resolution** which requests Secretarial action. The resolution must also name the representative of the tribe authorized to sign any and all documents on the tribe's behalf. 25 CFR 151.9
- ▶ The application must state the Tribal name as it appears in the list of Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs published in the Federal Register, or as it appears in a federally approved Constitution.
- ▶ A Fee to Trust application should contain each of the following items:
  - 1. Tribal Resolution:** A statement that identifies the applicant, requesting approval of a trust acquisition by the United States of America for their benefit. (Should also state this in the written request)



## Fee to Trust - What to include in a Draft Warranty Deed for a Fee to Trust Application?

2. **Draft Warranty Deed** The BIA Acceptance of Conveyance for the Regional Director will be generated through TAAMS. The deed must conform to their local statutory recording requirements. Draft Warranty Deed should not include the legal descriptions as part of the body of the Draft Deed itself but should reference the descriptions as an attached Exhibit A
  - 1) Legal Land Descriptions - A description of real property in legally acceptable terms that is definite, legally defensible and susceptible to only one interpretation. (Prior to submission to BIA, perform a preliminary informal review of the legal land description to assure the obvious elements are present.)
  - 2) Lands can be legally described a number of ways, most commonly by referencing the Public Land Survey System (PLSS), however, lands in the 13 original states are subject to various other survey systems.




## **Fee to Trust** -What to include in the legal descriptions for a fee-to-trust application?

- 3) If the lands contained in the application are described using the PLSS, the description will contain the following elements that must be included to be a legitimate legal land description.
- 4) Section
- 5) Township
- 6) Range
- 7) Principal Meridian
- 8) Govt Lots or a Lot Block or Subdivision description
- 9) A minimum of 2 Longitude and Latitude on the survey identifying the location of the property



# Fee to Trust - What to include in a fee-to-trust application?

3. **Environmental** documentation (Environ. Assessment if there **IS** a proposed change in use for the property) (CATEX- if **NO** change in use is proposed)
4. **Plat map or land survey** (see the link in the chat for the Tribal Leader Letter re FTT Survey Requirements 11-29-2017 on last slide)
5. **Commitment of Title Insurance** (ALTA Form acceptable 9-28-91 as revised 12-3-2012) with a 1 yr expiration. Exhibit A -Legal descriptions should match the survey and draft deed
  1. The proposed insured should state, "The United States of America in trust for [insert legal name of the applicant] (for Tribes, the legal name is the name as found in the Federal Register or a federally approved Constitution)."
  2. The proposed policy coverage amount should meet the minimum title insurance. We recommend using the property value as purchased by the Tribe.



## Fee to Trust - What to include from the commitment for title insurance in a fee-to-trust application?

It is necessary to provide the following supporting documentation from the commitment for title insurance.

3. For any exception listed on the title evidence Schedule B, a copy of the referenced document must be included, some examples are:
  - a. Rights-of-way of record; all information relevant to any existing special assessment districts;
  - b. Legible copies of all maps or plats referenced
  - c. Any Deeds or recorded deeds referenced or any judgments that might be referenced.
  - d. If monetary liens exist, tribe must state the plan for their elimination prior to acceptance of title by the U.S.



## Fee to Trust - What to include in a fee-to-trust application?

- e. Any agreements or efforts resolving identified jurisdictional problems and potential conflicts of land use that may arise as a result of the fee-to-trust acquisition.
- f. Any signed cooperative agreements relating to the fee-to-trust acquisition. Describe agreements for infrastructure development or services. Examples: utilities, fire protection, solid waste disposal.
- g. PILOT Agreements that have been negotiated with the State or local government.
- h. Services provided by the Tribal Government. Description of those services not required of the state or local government to the property because they are provided by the Tribal government.
- i. Additional information or justification to assist in reaching a decision.

## Fee to Trust - What to include in a fee-to-trust application?

- 3) All legal land descriptions described by metes and bounds within the PLSS, in addition to the elements mentioned above shall include:
  - I. Commencement tie from a BLM monument or Government corner of PLSS to point of beginning of metes and bounds for the parcel
  - II. A metes and bound description which closes mathematically on itself.
- 4) All legal land descriptions described by metes and bounds not within the PLSS shall contain the following applicable information
  - I. A point of beginning easily located on the ground with 2 latitude and longitude.
  - II. A metes and bound description which closes mathematically on itself.

# Fee to Trust — Dear Tribal Leader Letter for Surveys

In order to expedite and assure a point of definite location on the ground, it is necessary to acquire the following documents, to implement the following survey requirements. (see Tribal Leader Letter re FTT Survey Requirements 11-29-2017)

- All surveys shall be prepared by a state licensed land surveyor in True Meridian.
- A minimum of two Latitudes and Longitudes annotated on the survey plat.
- Copies of all of the current deeds to the adjoiner's properties submitted for the Legal Description Evaluation and Validation Review by the GIS Strike Team(LDEV).
- Copy of the subject parcels current deed.
- Tax Assessor map for Fee-to-Trust applications (if available).
- All boundaries between fee lands and future trust lands should be monumented with a minimum of a ½" rebar 18" long. Other more substantial monumentation is preferred but not mandatory.
- Curve information should include; radius, length of curve, chord bearing and chord distance.
- The Meanders of riparian boundaries must be shown and described.
- The Legal Description and the survey plat must be conformable whereby a parcel can be defined with either record.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Eastern Regional Office  
545 Marriott Drive, Suite 700  
Nashville, TN 37214

NOV 29 2017

IN REPLY REFER TO:  
Regional Director's Office

Dear Tribal Leader,

It has come to my attention that many Eastern Region Tribes processing Fee-to-Trust acquisitions that require Certified Land Title Status or Title Status Reports from the Eastern Region's Real Estate Service Division are lacking sufficient information to record with Land Title Records Office.

In order to expedite and assure a point of definite location to acquire such documents, it is necessary to implement the following survey requirements.

- All surveys shall be prepared by a state licensed land surveyor in True Meridian.
- A minimum of two Latitudes and Longitudes annotated on the survey plat.
- Copies of all of the current deeds to the adjoiner's properties submitted for the Legal Description Evaluation and Validation Review (LDEV).
- Copy of the subject parcels current deed.
- Tax Assessor map for Fee-to-Trust applications (if available).
- All boundaries between fee lands and future trust lands should be monumented with a minimum of a ½" rebar 18" long. Other more substantial monumentation is preferred but not mandatory.
- Curve information should include: radius, length of curve, chord bearing and chord distance.
- The Meanders of riparian boundaries must be shown and described.
- The Legal Description and the survey plat must be conformable whereby a parcel can be defined with either record.

The effective date for these standards should be implemented for all new survey contracts and will be implemented on all future projects by January 1, 2018. If a new survey is not needed, flexibility will be given, providing that the old survey is correct and has a sufficient amount of information to clearly depict the parcel. Also, if conforming to these survey requirements and issues arise, please contact us in writing so we may address them specifically to allow us to provide technical support if necessary.

If you have questions, please contact Mr. Randall Trickey, Eastern Region Realty Officer at (615) 564-6500.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Maytubby".

Bruce Maytubby, Director  
Eastern Region

# Fee to Trust – Steps in TAAMS

## Discretionary FTT Steps in TAAMS

Step 01-Encoded in TAAMS (3 days to issue the acknowledgement letter to the Tribe)

Step 02-Review/LDEV (review 10 days & request LDEV to GIS Team, 30 days to complete the LDEV)

Step 03-Incomplete Application (30 days for the Tribe to provide information)

Step 04-Certificate of Inspection and Possession (CIP)

Step 05-Preliminary Title Opinion (PTO)/Title Evidence

Step 06-Notice of Application (NOA) (30 day for the local and state govt to provide comments)

Step 07-Environmental NEPA/ESA Phase 1(6months expiration)

Step 08- NOA Comments (30 days for the Tribe to provide response to the comments received)

Step 09-PTO Clearance (30 days for the Tribe to provide response addressing the PTO exceptions)

Step 10-Notice of Decision (NOD) (30 day given to the local and state govts w/appeal rights)

Step 11- Public Notice in the newspaper (1 time publication w/a 30 day timeframe w/appeal rights)

Step 12-Final CIP

Step 13-Acceptance of Conveyance (AOC)

Step 14- LTRO Recording (once received by LTRO 5 days for recording title)

Step 15-Final Title Opinion

Step 16-Complete

## Legend

\*Only the portions highlighted for FTT Mandatory application steps are NOT required for Mandatory FTT while the unhighlighted portion is still a requirement to be provided.





# Fee to Trust – Reference Materials

[FTT Quick Reference Guide](#)

[Fee-to-trust Process for Discretionary Acquisitions.pdf \(bia.gov\)](#)

[Fee-to-Trust Process for Mandatory Acquisitions.pdf \(bia.gov\)](#)

[Fee to Trust Handbook - Acquisition of Title to Land Held in Fee or Restricted Fee Status.pdf \(bia.gov\)](#)

[Brochure Fee-to-Trust Process for On Res Discretionary Acquisitions](#)

[Brochure Fee-to-Trust Process for Off-Res Discretionary Trust Acquisitions](#)

Electronic Code of Federal Regulations can be found at: <https://www.ecfr.gov/>



# Helpful info:

- ▶ Kimberly A. Bouchard – Regional Director
  - ▶ Eric L. Wilcox – Deputy Regional Director (Eric.Wilcox@bia.gov)
  - ▶ Randall (Randy) Trickey – Regional Realty Officer (Randall.Trickey@bia.gov)
  - ▶ John (JW) Smith – Deputy Regional Realty Officer (John.Smith@bia.gov)
    - ▶ Courtney Gesinger – Realty Specialist (Courtney.Gesinger@bia.gov)
    - ▶ Alexandra (Lexie) McWilliams – Realty Specialist (Alexandra.McWilliams@bia.gov)
    - ▶ Amanda Smith – Realty Specialist (Amanda.Smith@bia.gov)