



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 04 2017

Dear Tribal Leader:

The application process for taking land in trust can be costly for Tribes. In consideration of the often-times limited tribal resources, the Department of the Interior (Department) is considering revisions to 25 CFR § 151.11 and § 151.12 that will reduce the burden on tribal applicants. In furtherance of the Department's commitment to government-to-government consultation, enclosed is a copy of draft revisions to the fee-to-trust regulations at 25 C.F.R. Part 151.

The draft revisions create a two-step review and approval process for off-reservation trust acquisitions, while distinguishing off-reservation trust acquisitions for the purposes of gaming from off-reservation trust acquisitions for other purposes. During the initial review, Tribes would be required to provide certain application information. Only if an application meets certain threshold criteria, would the applicant proceed to the final review in which more resource-intensive information would be required. This two-step process would provide Tribes with more certainty as to the possibility of an approval before expending significant resources.

Additionally, the draft revisions reinstate the 30-day waiting period between when a decision is issued and when land is taken into trust. This will help to prevent situations where title is transferred into trust and a Tribe expends resources developing that land, only to face protracted litigation and the possibility of a court reversing the Department's decision and ordering that the land be taken out of trust. The draft revisions provides that on the 31st day, the Department will take the land into trust unless a court orders otherwise.

In addition to comments on the draft revisions, we are seeking input on the following questions:

1. Under what circumstances should the Department approve or disapprove an off-reservation trust application?
2. What criteria should the Department consider when approving or disapproving an off-reservation trust application?
3. Should different criteria and/or procedures be used in processing off-reservation applications based on:
 - a. Whether the application is for economic development as distinguished from non-economic development purposes (for example tribal government buildings, or Tribal health care, or tribal housing)?
 - b. Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?
 - c. Whether the application involves no change in use?

4. Should pending applications be subject to new revisions if/when they are finalized?
5. Do Memoranda of Understanding (MOUs) and other similar cooperative agreements between tribes and state/local governments help facilitate improved tribal/state/local relationships in off-reservation economic developments? If MOUs help facilitate improved government-to-government relationships, should that be reflected in the off-reservation application process?

We will be hosting a listening session at the National Congress of American Indians (NCAI) annual convention in Milwaukee, Wisconsin, on Monday, October 16, at 9:00 a.m. (in conjunction with the session on Indian trader regulations). In addition, we will be hosting the following formal Tribal consultation sessions:

Date	Time (Local)	Location
Tuesday, November 14, 2017	9:00 a.m. - Noon	Seattle, WA
Thursday, November 16, 2017	9:00 a.m. - Noon	Sacramento, CA
Wednesday, November 29, 2017	9:00 a.m. - Noon	Phoenix, AZ

Please RSVP to consultation@bia.gov if you plan to attend one of the three consultation sessions listed above. As our schedule is still evolving, please periodically check the calendar on the following website for times and other updates, found at:

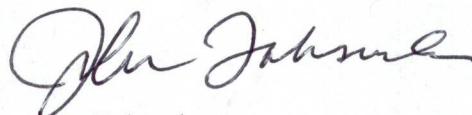
<https://www.indianaffairs.gov/as-ia/raca/regulations-development-andor-under-review/fee-trust-regulations-25-cfr-151>

Please provide any written input on the Consultation Draft, as well as any input on the questions listed above, by midnight on December 15, 2017, to consultation@bia.gov or the address below:

Attn: Fee-To-Trust Consultation
 Office of Regulatory Affairs & Collaborative Action
 Office of the Assistant Secretary – Indian Affairs
 1849 C Street NW, Mail Stop 4660-MIB
 Washington, DC 20240

I look forward to your ideas for decision-making criteria and your input on the Consultation Draft. Please feel free to contact Elizabeth Appel at (202) 273-4680 if you would like any additional information on this effort.

Sincerely,



John Tahsuda
 Acting Assistant Secretary – Indian Affairs

Enclosures

**SUMMARY SHEET OF CONSULTATION DRAFT
OF REVISIONS TO TRUST ACQUISITION REGULATIONS AT
25 CFR § 151.11 & § 151.12**

What does the Consultation Draft suggest revising?

The Consultation Draft suggests revising existing regulations governing trust acquisitions, and specifically sections 151.11 (Off-Reservation Acquisitions) and 151.12 (Action on Requests).

Specifically, the Draft suggests:

- A. Creating a **two-phased Secretarial review and approval process** for discretionary off-reservation trust acquisitions so that certain resource-intensive application information will be required only if the application meets the threshold criteria to reach the second phase of review and approval;
- B. **Distinguishing acquisitions for gaming** from off-reservation trust acquisitions for other (non-gaming) purposes;
- C. Revising **application items** required for a discretionary off-reservation trust acquisition, including:
 - Information on the Tribe’s connection to the land,
 - Whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction;
 - Whether the Tribal government can effectively exercise its governmental and regulatory jurisdiction over the land (in deference to Tribal sovereignty and self-determination, instead of focusing on whether the BIA is equipped to discharge additional responsibilities);
 - For acquisitions for economic development (including gaming) a plan that specifies anticipated economic benefits to the Tribe, its members, and to the local community (if any); and,
 - For acquisitions for gaming, an analysis of the effect the project would have on the unemployment rate, on-reservation benefits from the proposed gaming, and evidence of cooperative efforts to mitigate impacts to the local community.
- D. Reinstating the 30-day delay for taking land into trust following a decision by the Secretary or Assistant Secretary, or exhaustion of administrative remedies under 25 CFR Part 2; and
- E. Explicitly stating that the Department will comply with court orders to take land out of trust.

Affects Off-Reservation Trust Acquisitions Only

Affects Both Off- and On-Reservation Trust Acquisitions

Each of these changes is described in more detail on the following pages.

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A. Two-Phased Secretarial Review and Approval Process

Currently, applicants must submit all the application information, including certain resource-intensive application information, before the Department will consider whether to approve the trust application.

The Consultation Draft would bifurcate that process, so that an applicant must first provide basic application information and, only if an application meets certain threshold criteria, may the applicant then proceed to the next step of:

- Undergoing the sometimes lengthy and costly process of complying with the National Environmental Policy Act (NEPA),
- Providing an analysis of whether the Tribe was under Federal jurisdiction in 1934 under the reasoning in *Carcieri*¹ and,
- If applicable, complying with the requirements of 25 CFR part 292 regarding the eligibility to conduct gaming.

Although identification of the statutory authority is required during the initial application phase, evidence to support the Department's statutory authority analysis is not required until the final phase. This approach reduces burden, saving applicants time and money from expending resources on NEPA compliance, a *Carcieri* analysis, and (if applicable) information regarding eligibility to conduct gaming under 25 CFR 292, for an application that the Department would ultimately disapprove on other factors. If the Department disapproves an application following initial review, depending on the official who issues the decision, that decision could be administratively appealed or challenged in Federal district court.

B. Distinguishing Acquisitions for Gaming from Other Off-Reservation Acquisitions

Currently, the same application requirements apply to all discretionary off-reservation trust acquisitions, regardless of whether the purposes for which the land will be used are for gaming, other economic development, government facilities, housing, or some other use. Distinguishing acquisitions for gaming purposes allows the Secretary to better assess the unique issues raised by off-reservation gaming and reduces the burden on applications that do not include gaming.

The Consultation Draft suggests requiring four additional items in off-reservation trust acquisitions for gaming purposes. A list of those items and explanations for each is provided in the following table:

Suggested Additional Item for Off-Reservation Acquisitions for Gaming	Explanation
Identification of the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming project	This item is necessary to determine the effect the trust acquisition will have on the current reservation. This information is already frequently provided by applicants under § 151.11(c) and/or as part of NEPA compliance.
Identification of the on-reservation benefits from the proposed gaming, including whether any of the revenue will be used to create on-reservation job opportunities	This item is necessary to determine the effect the trust acquisition will have on the current reservation. This information is already frequently provided by applicants under § 151.11(c) and/or as part of NEPA compliance.
Evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the State and local governments, if any, or an explanation as to why no such agreements or efforts exist	This item is not explicitly required under the current regulations; nevertheless, applicants provide it as a matter of practice.
Identification of economic benefits, if any, to the local community from the gaming project	This item is not explicitly required under the current regulations; nevertheless, applicants provide it as a matter of practice through the NEPA process and in response to comments from state and local governments.

¹ *Carcieri v. Salazar*, 555 U.S. 379 (2009).

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C. Revising Criteria BIA Considers and Items That Must Be Included in a Discretionary Off-Reservation Trust Acquisition Application

Currently, the regulations require BIA to consider certain criteria as part of their review for an off-reservation trust acquisition but do not specify what an application for an off-reservation acquisition should include. Applicants provide information to assist BIA in its review of the regulatory criteria. The Consultation Draft instead suggests the regulations explicitly list what an application must include, depending on whether the applicant is a Tribe or individual, and whether the purpose of the acquisition is gaming or non-gaming and, further, revises some of the criteria. Appendix A shows a comparison of these requirements.

D. Suggested Revisions to § 151.12 (Action on Requests), Which Affect All Trust Acquisitions

The Consultation Draft suggests making the following changes that will affect all trust acquisitions.

Existing 25 CFR § 151.12	Suggested Change in Consultation Draft
(c)(2)(iii) "Immediately acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Department requirements."	<ul style="list-style-type: none"> • Delete the word "Immediately" and replace the words "on or" with the phrase "no sooner than 30 days". The draft amended § 151.12(c)(2)(iii) would read: "Acquire the land in trust under § 151.14 no sooner than 30 days after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Department requirements." On the 31st day, the Department will take the land into trust unless a court orders otherwise.
(d)(2)(iv) "Immediately acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon fulfillment of the requirements of § 151.13 and any other Department requirements."	<ul style="list-style-type: none"> • Delete the word "Immediately" and insert the phrase "no sooner than 30 days after" before the phrase "exhaustion of administrative remedies..." The draft amended § 151.12(d)(2)(iv) would read: "Acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or no sooner than 30 days after exhaustion of administrative remedies under part 2 of this title, and upon fulfillment of the requirements of § 151.13 and any other Department requirements. On the 31st day, the Department will take the land into trust unless a court orders otherwise.
	<ul style="list-style-type: none"> • Add a paragraph (e) • The draft paragraph (e) would read: "If land has been acquired in trust before judicial review of the decision to take the land into trust had concluded, and a court rules that the Department erred in making the trust acquisition decision, the Department will comply with a final court order and any resulting judicial remedy, including, for example, taking land out of trust."

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Appendix A: Comparison of Application Items

Current regulations	Draft application requirements for Tribal acquisitions for gaming purposes	Draft application requirements for Tribal acquisitions for other (non-gaming) purposes	Draft application requirements for individuals' trust acquisitions of restricted fee land
N/A	New requirement for the historical or modern connection, if any, of the Tribe to the land. This includes a historical connection or present-day connection, such as the location of the Tribal government offices on or near the site. See draft § 151.11(a)(1)(i).	New requirement for the historical or modern connection, if any, of the Tribe to the land. This includes a historical connection or present-day connection, such as the location of the Tribal government offices on or near the site. See draft § 151.11(a)(2)(A).	N/A
The existence of statutory authority for the acquisition and any limitations contained in such authority. See § 151.10(a), as incorporated by § 151.11(a).	Clarifies this is an application requirement. No change to criteria BIA must consider. See draft § 151.11(a)(1)(ii).	Clarifies this is an application requirement. No change to criteria BIA must consider. See draft § 151.11(a)(2)(ii).	Clarifies this is an application requirement. No change to criteria BIA must consider. See draft §§ 151.11(a)(2)(ii) and (a)(3).
The need of the individual Indian or the [T]ribe for additional land. See § 151.10(b), as incorporated by § 151.11(a).	Clarifies this is an application requirement. No change to criteria BIA must consider. See draft § 151.11(a)(1)(iii).	Clarifies this is an application requirement. No change to criteria BIA must consider. See draft § 151.11(a)(2)(iii).	Clarifies this is an application requirement. No change to criteria BIA must consider. See draft §§ 151.11(a)(2)(iii) and (a)(3).
The purposes for which the land will be used. See § 151.10(c), as incorporated by § 151.11(a).	Clarifies this is an application requirement. Revises criteria BIA required to consider to include a detailed description of the project, if applicable. See draft § 151.11(a).	Clarifies this is an application requirement. Criteria BIA required to consider revised to require a detailed description of the project, if applicable. See draft § 151.11(a).	Clarifies this is an application requirement. Revises criteria BIA required to consider to include a detailed description of the project, if applicable. See draft § 151.11(a).

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Current regulations	Draft application requirements for Tribal acquisitions for gaming purposes	Draft application requirements for Tribal acquisitions for other (non-gaming) purposes	Draft application requirements for individuals' trust acquisitions of restricted fee land
<p>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.</p> <p>See § 151.10(e); § 151.11(d), as incorporated by § 151.11(a).</p>	<p>The State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify the impact resulting from removal of the land from their tax rolls.</p> <p>See draft § 151.11(b)(1).</p> <p>New requirement for Tribal applicants to provide evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the state and local governments, if any, or an explanation as to why no such agreements or efforts exist.</p> <p>See draft § 151.11(a)(1)(xi).</p>	<p>No change to information applicant must provide or criteria BIA must consider. State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify the impact resulting from removal of the land from their tax rolls.</p> <p>See draft § 151.11(b)(1).</p>	<p>N/A</p>

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Current regulations	Draft application requirements for Tribal acquisitions for gaming purposes	Draft application requirements for Tribal acquisitions for other (non-gaming) purposes	Draft application requirements for individuals' trust acquisitions of restricted fee land
<p>Jurisdictional problems and potential conflicts of land use which may arise.</p> <p>See § 151.10(f), as incorporated by § 151.11(a).</p>	<p>The State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify potential impacts on regulatory jurisdiction, and potential conflicts of land use. This will continue to be considered in the Secretarial review.</p> <p>See draft § 151.11(b)(1); § 151.11(c)(1)(B).</p> <p>New requirement for Tribal applicants to provide evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the state and local governments, if any, or an explanation as to why no such agreements or efforts exist.</p> <p>See draft § 151.11(a)(1)(xi).</p>	<p>The State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify potential impacts on regulatory jurisdiction, and potential conflicts of land use. This will continue to be considered in the Secretarial review.</p> <p>See draft § 151.11(b)(1); § 151.11(c)(1)(B).</p>	<p>N/A</p>

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Current regulations	Draft application requirements for Tribal acquisitions for gaming purposes	Draft application requirements for Tribal acquisitions for other (non-gaming) purposes	Draft application requirements for individuals' trust acquisitions of restricted fee land
<p>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.</p> <p>See § 151.10(g), as incorporated by § 151.11(a).</p>	<p>BIA is still required to consider this, and new requirement for Tribal applicants to provide an analysis by the Tribe whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site.</p> <p>See draft § 151.11(a)(vi).</p> <p>The Department must still determine during the second review phase whether BIA is equipped to discharge additional responsibilities.</p> <p>See draft § 151.11(c)(3)(A).</p>	<p>BIA is still required to consider this, and new requirements for Tribal applicants to provide an analysis by the Tribe whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site.</p> <p>See draft § 151.11(a)(2)(vi).</p> <p>The Department must still determine during the second review phase whether BIA is equipped to discharge additional responsibilities.</p> <p>See draft § 151.11(c)(3)(A).</p>	<p>N/A</p>
<p>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.</p> <p>See § 151.10(h), as incorporated by § 151.11(a).</p>	<p>Moved to the second review phase, so that NEPA and hazardous substance documentation and analysis need only be completed if the application is not denied during the first review phase.</p> <p>See draft § 151.11(c)(2).</p>	<p>Moved to the second review phase, so that the NEPA and hazardous substance documentation and analysis need only be completed if the application is not denied during the first review phase.</p> <p>See draft § 151.11(c)(2).</p>	<p>Moved to the second review phase, so that the NEPA and hazardous substance documentation and analysis need only be completed if the application is not denied during the first review phase.</p> <p>See draft § 151.11(c)(2).</p>

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Current regulations	Draft application requirements for Tribal acquisitions for gaming purposes	Draft application requirements for Tribal acquisitions for other (non-gaming) purposes	Draft application requirements for individuals' trust acquisitions of restricted fee land
<p>The location of the land relative to state boundaries, and its distance from the boundaries of the [T]ribe's reservation.</p> <p>See § 151.11(b).</p>	<p>Clarifies that the Tribal applicant must submit a map showing the location of the land to be acquired, the exterior boundaries of the reservation, if any, the shortest distance of the land from the boundaries of the Tribe's reservation, if any, and the shortest distance between the Tribe's trust lands, if any, and the land to be acquired, as part of the application. Revised to delete the requirement that BIA must consider the location of the land relative to state boundaries, because that information is irrelevant.</p> <p>See draft § 151.11(a)(1)(iv).</p>	<p>Clarifies that the Tribal applicant must submit a map showing the location of the land to be acquired, the exterior boundaries of the reservation, if any, the shortest distance of the land from the boundaries of the Tribe's reservation, if any, and the shortest distance between the Tribe's trust lands, if any, and the land to be acquired, as part of the application. Revised to delete the requirement that BIA must consider the location of the land relative to state boundaries, because that information is irrelevant.</p> <p>See draft § 151.11(a)(2)(iv).</p>	<p>N/A</p>
<p>Where land is being acquired for business purposes, a plan which specifies the anticipated economic benefits associated with the proposed use.</p> <p>See § 151.11(c).</p>	<p>Revised to clarify that the plan should specify anticipated economic benefits to the Tribe and its members.</p> <p>See draft § 151.11(a)(1)(vii).</p>	<p>Revised to clarify that the plan should specify anticipated economic benefits to the Tribe, its members, and the local community (if any).</p> <p>See draft § 151.11(a)(2)(vii).</p>	<p>N/A</p>
<p>N/A</p>	<p>New requirement for an analysis of whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction.</p> <p>See draft § 151.11(a)(1)(v).</p>	<p>New requirement for an analysis of whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction.</p> <p>See draft § 151.11(a)(2)(v).</p>	<p>New requirement for the amount of trust or restricted land the individual already owns.</p> <p>See draft § 151.11(a)(3).</p>

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Current regulations	Draft application requirements for Tribal acquisitions for gaming purposes	Draft application requirements for Tribal acquisitions for other (non-gaming) purposes	Draft application requirements for individuals' trust acquisitions of restricted fee land
N/A	<p>New requirement to identify the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming, although this information is frequently provided by applicants under 151.11(c) and/or as part of NEPA compliance.</p> <p>See draft § 151.11(a)(1)(ix).</p>	N/A	N/A
N/A	<p>New requirement, although frequently provided by applicants under 151.11(c) and/or as part of NEPA compliance. Identification of the on-reservation benefits from the proposed gaming, including whether any of the revenue will be used to create on-reservation job opportunities.</p> <p>See draft § 151.11(a)(1)(x).</p>	N/A	N/A
N/A	<p>New requirement; however, in practice, applicants often provide this information currently and it is required by the BIA FTT Handbook. Evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the State and local governments, if any, or an explanation as to why no such agreements or efforts exist.</p> <p>See draft § 151.11(a)(1)(xi).</p>	N/A	N/A

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Current regulations	Draft application requirements for Tribal acquisitions for gaming purposes	Draft application requirements for Tribal acquisitions for other (non-gaming) purposes	Draft application requirements for individuals' trust acquisitions of restricted fee land
N/A	<p>New requirement; however, in practice applicants often provide this information. Information on economic benefits, if any, to the local community from the gaming project.</p> <p>See draft § 151.11(a)(1)(viii).</p>	<p>Revised requirements for applications for economic development purposes, excluding gaming, to add benefits to local community; however, in practice applicants often provide this information.</p> <p>See draft § 151.11(a)(2)(vii).</p>	N/A
<p>The Secretary notifies State and local governments having regulatory jurisdiction over the land to be taken into trust to provide them with 30 days to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.</p> <p>See § 151.10(e); § 151.11(d).</p>	<p>No change.</p> <p>See draft § 151.11(b)(1).</p>	<p>No change.</p> <p>See draft § 151.11(b)(1).</p>	N/A
N/A	N/A	N/A	<p>A description of the degree to which the individual needs assistance in handling his or her affairs.</p> <p>See draft § 151.11(a)(3).</p>



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PART 151—LAND ACQUISITIONS
§§ 151.11 – 151.12

§ 151.11 Off-Reservation Acquisitions.

The Secretary must consider the following requirements in evaluating requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the Tribe's reservation, and the acquisition is not mandated:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(b) Notice

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

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

(c) Secretarial Review

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

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

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

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

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

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

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

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

(iv) Any additional information the Secretary requires.

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

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(i) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and

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

(d) Effect of Regulation.

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

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

§ 151.12 Action on requests.

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

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

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

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

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

(i) Promptly provide the applicant with the decision;

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

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

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

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

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

(i) Promptly provide the applicant with the decision;

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

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

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

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

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

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

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

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

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

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