


## FEE-TO-TRUST

Presented by Bureau of Indian Affairs  
Rocky Mountain Region & Northwest Region  
For Montana State-Tribal Relations Committee  
January 13, 2022



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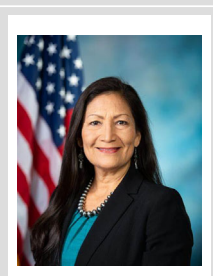
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**OBJECTIVES OF PRESENTATION TO  
MONTANA STATE-TRIBAL RELATIONS  
COMMITTEE**

- Provide a general overview of the fee-to-trust land acquisition process by BIA
- How does the process/consideration differ for off-reservation property?
- What causes the process to be lengthier in some cases?
- What is the impact of comments/concerns from local governments on the process?



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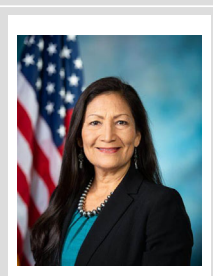
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## WHAT IS FEE-TO-TRUST?

Congress authorizes the Secretary of Interior with the discretion to acquire title to land or interests in land on behalf of Tribes and Individual Indians in trust.

The Secretary bases her decision to make a trust acquisition on the evaluation of the criteria set forth in Title 25 Code of Federal Regulations (CFR) Part 151 and any applicable policy.

The United States holds in trust title to the lands or interests in lands for the individual Indian or tribe upon completion of the process and approval.



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**BIA REGIONS  
PROCESSING MONTANA  
FTT APPLICATIONS**

**Rocky Mountain Region:**

- Blackfeet
- Rocky Boys
- Fort Belknap
- Fort Peck
- Northern Cheyenne
- Crow
- Little Shell
- Wind River

**Northwest Region**

- Confederate Salish-Kootenai



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**WHAT ARE THE STATUTORY  
AUTHORITIES?**

- Section 5 of the IRA Act of June 18, 1934 (48 Stat. 984), 25 U.S.C. § 5108
  - Confederate Salish-Kootenai, Blackfeet, Fort Belknap, Northern Cheyenne, & Rocky Boy's
- ILCA of 1983 (25 U.S.C. § 2202), as amended by the Act of October 30, 1984 (98 Stat. 3171) extended the authority to "Non-IRA Tribes"
  - Crow, Fort Peck, Wind River, & Little Shell
- 25 U.S.C. § 2216(c)

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**WHAT CRITERIA DOES THE SECRETARY BASE  
THE DECISION FOR A TRUST ACQUISITION?**

- Title 25 Code of Federal Regulations, Part 151
- Indian Affairs Manual i.e. 52 IAM 12 and Department Manual 602 DM 2
- Various Policy
- Standard Procedures though the Fee-to-Trust Handbook



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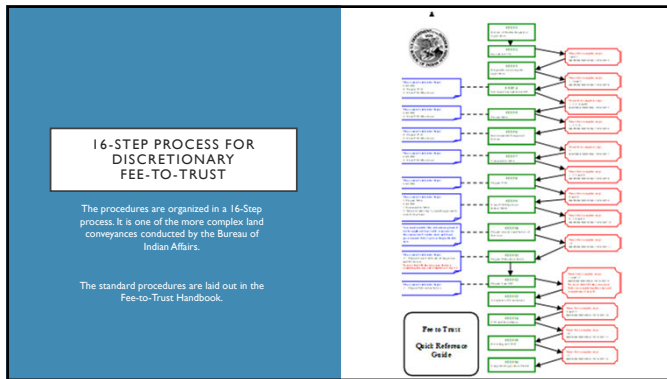
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**ON-RESERVATION DISCRETIONARY TRUST ACQUISITIONS**

- "On Reservation" means land that is within or contiguous to the exterior boundaries of a reservation.
- If there is a question whether the property is contiguous, BIA consults the DOI-Office of the Solicitor (SOL) to review and concur.

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**STEP 1: ENCODE IN FTT SYSTEM OF RECORD**

When BIA receives a written request to initiate the application process:

- 3 business days to enter Written Request in BIA's system of record
- Information is updated within 3 business days throughout the process

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**STEP 2: REVIEW OF WRITTEN REQUEST  
TO INITIATE APPLICATION PROCESS**

The request need not be in any special form but must provide specific information

- Identity of the Applicant
- Description of the land
- **Need** for the acquisition (Economic Development, Self-determination, or Indian Housing)
- **Purpose** of the acquisition
- Statutory authority
- A statement that the Applicant is requesting approval of a trust application by the United States for their benefit.
- Tribe's written request comes in a Tribal Resolution

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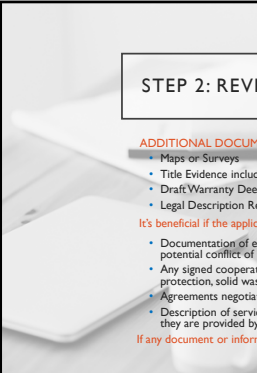
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**STEP 2: REVIEW OF WRITTEN REQUEST**

**ADDITIONAL DOCUMENTATION INCLUDED WITH APPLICATION**

- Maps or Surveys
- Title Evidence including a Title Insurance Commitment on ALTA Form 9/28/91
- Draft Warranty Deed
- Legal Description Review\*

**It's beneficial if the applicant provides the following documentation:**

- Documentation of efforts taken to resolve identified jurisdictional problems or potential conflict of land use do to FTT action
- Any signed cooperative agreements relating to FTT action. Ex. utilities, fire protection, solid waste disposal
- Agreements negotiated with the State or local governments. Example PILT
- Description of services not required of State or local governments because they are provided by the Tribal govt

**If any document or information missing will result in an Incomplete Application**

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**STEP 2: REVIEW OF WRITTEN  
NOTICE**

When BIA reviews a written request:

- Send an Acknowledgement Letter to the Applicant
- In Rocky Mountain Region, BIA requests a Land Description Review by the BLM Indian Land Surveyor (BILS)

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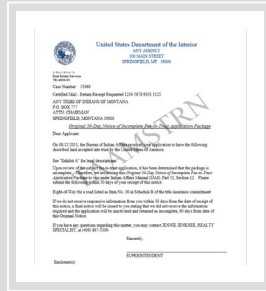
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### STEP 3: RESPONDING TO AN INCOMPLETE APPLICATION

If additional documentation is required to progress the application:

- Written notice sent to the applicant requesting omitted/required documentation or information
- 30-days of receipt
- If an applicant is unresponsive, BIA sends a Final Notice letter and case is inactivated.



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Title Evidence	Notice & Comment	Environmental
Step 2 <sup>nd</sup> : LDR	Step 6: Notice of Application	Step 7: Environmental Compliance Review
Step 4: Inspection	Step 8: Comments to Tribe	
Step 5: Preliminary Title Opinion		
Step 9: Clearing PTO Objections		

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### TITLE EVIDENCE & PRELIMINARY TITLE OPINION

Steps 4, 5, & 9

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### WHAT DOES THE ATTORNEY GENERAL HAVE TO DO WITH THE FTT PROCESS?

The Attorney General was charged with the responsibility of reviewing titles for federal land acquisitions in 1841.


Delegation of Authority to review was extended to 11 federal Agencies including the Solicitor of the Department of Interior.

Bob Anderson is the current Solicitor for DOI

Title Review is conducted:

- Regional Solicitor's Office in Portland Oregon
- Field Solicitor's Office in Billings, Montana

DOI Title Standards is the guidance



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### STEP 4: CONDUCTING A SITE INSPECTION

- Required from DOJ Title Standards
- An inspection of the land is conducted, usually by a BIA employee
- Compare the condition and use of the property as described with the title commitment and documents.
  - Persons living on the property not shown as record owners (may obtain Disclaimers)
  - Work being done by contractors
  - Change in the use other than noted in application
  - Lack of access
- Documented in a Certificate of Inspection and Possession form (CIP)

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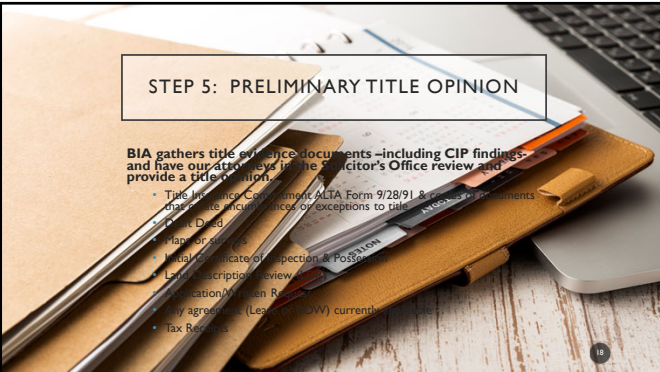
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### STEP 5: PRELIMINARY TITLE OPINION

BIA gathers title evidence documents—including CIP findings—and have our attorneys in the Solicitor's Office review and provide a title opinion.

- Title Insurance Commitment ALTA Form 9/28/91 & related documents that state encumbrances or exceptions to title
- CIP Data
- Map for survey
- Initial Certificate of Inspection & Possession
- Land Description Review
- Application/Material Review
- Lease agreements (Leases/COV) currently
- Tax Records

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### WHAT'S IN THE PRELIMINARY TITLE OPINION?

- Adequacy of the title evidence
- Whether title is vested in the Tribe
- Any cures for infirmities to title
- It is subject to attorney/client privilege & will not be released to the applicant

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### STEP 9: CLEARANCE OF PTO OBJECTIONS

WHAT DOES BIA DO WITH THE PTO?

- Review the PTO
- Notify the applicant of objections by Certified Letter
  - Informs of the requirements & instructions on how to clear the objections of the PTO
  - Notes the exceptions that must be removed
- The PTO may note certain exceptions that will not interfere with the planned use of the property can be administratively waived
- If applicant is not responsive, BIA sends Step 3 letters



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## NOTICE & COMMENT

Steps 6 & 8

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### STEP 6: PREPARING NOTICE OF APPLICATION

- The NOA informs the following that they have 30 days to submit comments:
  - State; local governments – including Tribal govts with jurisdiction over the land; & any person or entity submitting a written request for notice
- NOA should have the general description of the need & purpose
- Solicits comments on potential impact of the acquisition on regulatory jurisdiction, taxes & assessments
- Notifies the State & local govts to forward to local sub-districts
- NOA is sent by Certified Mail



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### STEP 8: COMMENTS TO NOTICE OF APPLICATION

#### WHAT DOES BIA DO WITH THE COMMENTS RECEIVED?

- BIA must provide all comments & information received to the Tribe for their written response.
- Tribe has 30 days for response. Can request an extension.

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### ENVIRONMENTAL

Step 8

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**STEP 7: ENVIRONMENTAL COMPLIANCE REVIEW**

- Phase I Environmental Site Assessment is provided by the Tribe
- NEPA and Phase I is given to BIA Environmental Staff
- BIA Environmental Staff is responsible to Review and prepare the **Environmental Compliance Review Memorandum**

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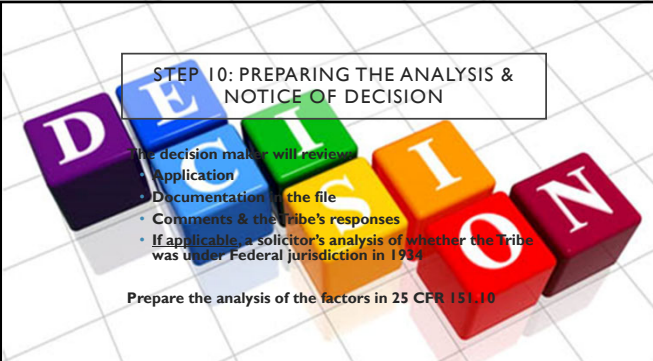
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**STEP 10: PREPARING THE ANALYSIS & NOTICE OF DECISION**

The decision maker will review:

- Application
- Documentation in the file
- Comments & the Tribe's responses
- If applicable, a solicitor's analysis of whether the Tribe was under Federal jurisdiction in 1934

Prepare the analysis of the factors in 25 CFR 151.10

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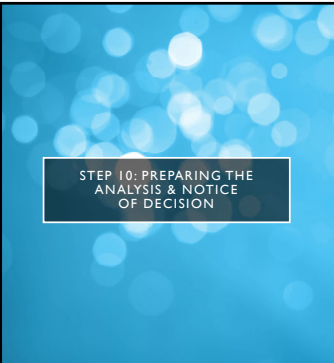
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**STEP 10: PREPARING THE ANALYSIS & NOTICE OF DECISION**

The analysis & decision must be based on the facts contained in the record.

**25 CFR 151.10 – Criteria Considered**

151.10 (a) Statutory Authority

151.10 (b) Need of the individual Indian or Tribe for Additional Land

151.10 (c) Purposes for which the land will be used

151.10 (d) Individual Indian: Amount of trust or restricted land already owned by that individual and the degree to which he/she need assistance handling their affairs

151.10 (e) If the land is in unrestricted fee status, the impact on Political Sub-Divisions resulting from removal of the land from the tax rolls

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**STEP 10: PREPARING THE  
ANALYSIS & NOTICE  
OF DECISION**

**25 CFR 151.10 – Criteria Considered**

151.10 (f) Jurisdictional problems and potential conflicts

151.10 (g) Whether the BIA is equipped to discharge additional responsibilities resulting from the acquisition of the land in trust status

151.10 (h) The extent to which the applicant has provided information that allows BIA to comply with NEPA, 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

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**STEP 11: PROVIDING NOTICE OF  
THE DECISION**

**If a BIA Official makes the Decision to approve the request**

- The Public Notice is prepared with the right to administratively appeal the decision (30-day administrative appeal period). Includes instructions how to obtain a copy
- Promptly after approving the request:
  - Original decision is sent to the Applicant with a list of all parties including the State & local govts that were provided a copy
  - Publish the Public Notice in a newspaper of general circulation serving the affected area
  - Make a copy of the decision publicly available
- If an appeal is filed, BIA begins the Administrative Appeal process pursuant to 25 C.F.R. Part 2
- Any further work on the case is halted until all administrative remedies are exhausted.

**If a BIA Official makes the Decision to disapprove the request**

- Promptly provide the applicant with the decision and notification of any right to file and administrative appeal under 25 C.F.R. Part 2

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**STEP 11: PROVING NOTICE OF  
THE DECISION**

**If the Assistant Secretary-Indian Affairs (AS-IA) Official makes the Decision to approve the request**

- Regional Office coordinates with AS-IA to prepare the Public Notice of the final Departmental decision to acquire land
  - It will include a statement that a decision to acquire the land in trust has been made and the decision is final for the Department.
  - Website address where the decision is made publicly available
- Promptly after the approving the request
  - Original decision is sent to the applicant
  - The Public Notice is published in the Federal Register

**If the Assistant Secretary-Indian Affairs (AS-IA) Official makes the Decision to disapprove the request**

- Promptly provide the applicant with the decision

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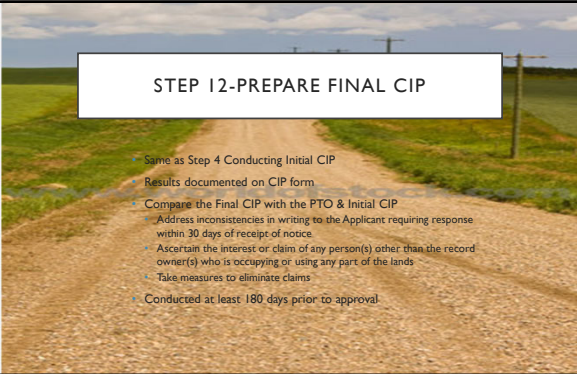
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### STEP 12-PREPARE FINAL CIP

- Same as Step 4 Conducting Initial CIP
- Results documented on CIP form
- Compare the Final CIP with the PTO & Initial CIP
  - Address inconsistencies in writing to the Applicant requiring response within 30 days of receipt of notice.
  - Ascertain the interest or claim of any person(s) other than the record owner(s) who is occupying or using any part of the lands
  - Take measures to eliminate claims
- Conducted at least 180 days prior to approval

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### STEP 13: ACCEPTANCE OF CONVEYANCE

**Warranty Deed**

- Ensure the edits noted by Field Solicitor during PTO have been made before executing the deed
- For Individual Indians, it must be signed by spouse, if applicable
- Must be notarized
- The Statutory authority must be stated on the deed
- The Delegation of Authority must be stated on the deed

**Delegated Official formally accepts the conveyance**

- BIA officials applies a digital signature



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### \*STEP 15: RECORDING AT LAND TITLES AND RECORDS OFFICE

- Recordable Packet is already scanned in BIA's System of Record (TAAMS). It is electronically transferred to LTRO.
  - Warranty Deed, Acceptance of Conveyance, Maps, & LDR
- The Warranty Deed is recorded and TAAMS information is updated. A Tract Number is assigned to the property
  - A note will remain on title until the Final Title Opinion is issued
- Warranty Deed is then recorded in the county clerk & recorder's office



\* An 8-28-2019 policy memorandum directed procedural changes of the timing when BIA records the Warranty Deed in LTRO and requesting the Final Title Opinion

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**\*STEP 14:  
FINAL  
TITLE  
OPINION**

**BIA requests a Final Title Opinion**

- Recorded warranty deed & AOC
- Title Insurance Policy
- PTO & evidence of corrective actions
- LDR
- Final CIP
- Maps/Surveys
- Tax Receipts

When the FTO confirms title is vested in the United States of America in Trust for the Tribe/Individual, Realty notifies LTRQ to remove the note on title. BIA proceeds with case close out.

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**STEP 16: COMPLETED APPLICATION PACKAGE**

- Returned to the appropriate office responsible for the custody of the records
- Send Transaction Complete Letter to Applicant
  - Provide copies of the recorded package and a TSR of the new tract to the applicant (*except FTO – attorney client privilege*)
- BIA notifies Bureau of Land Management
- Update office records
- Close out case in TAAMS



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**OFF-RESERVATION**

How does the process/consideration differ for off-reservation property?

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### OFF-RESERVATION

- 25 C.F.R. 151.11
- 52 IAM 15 Off-Reservation Fee-to-Trust Decisions issued Oct. 5, 2021
  - Decisions will be issued by the Regional Director
  - Gaming with AS-IA
  - Fee-to-Trust Handbook
- The location of the land relative to state boundaries
- Distance between the Tribe's reservation & the property
- 25 C.F.R. 151.11(c): If the land is used for business purposes, the tribe must provide a business plan which specifies the economic benefits

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### WHAT CAUSES THE PROCESS TO BE LENGTHIER IN SOME CASES?

- Incomplete Application or missing documents
- Requests for extensions
- Delay with Environmental and NEPA
- Resolving Solicitor opinion objections (Step 9)
- Expanding workforce and training
- Delays

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### WHAT IS THE IMPACT OF COMMENT/CONCERN FROM LOCAL GOVERNMENTS ON THE PROCESS?

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THANK YOU!

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