

## **Supporting Statement A**

### **Acquisition of Trust Land, 25 CFR 151**

#### **OMB Control Number 1076-0100**

**Terms of Clearance:** By Notice of Action dated May 7, 2014, OMB required that the agency do the following, prior to publication of the final rule:

- Submit to OMB a summary of all comments related to the information collection contained in the proposed rule and the agency response; and
- Clearly indicate any changes made to the information collection as a result of these comments.

The summary of the comments and agency's response are provided in item #8 of this supporting statement. No changes were made to the information collection as a result of these comments.

#### **General Instructions**

**A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question "Does this ICR contain surveys, censuses, or employ statistical methods?" is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.**

#### **Specific Instructions**

#### **Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

Section 5 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 465) and the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. 2202) authorize the Secretary of the Interior (Secretary), in her discretion, to acquire lands through purchase, relinquishment, gift,

exchange, or assignment within or without existing reservations for the purpose of providing land for Indians. Other specific laws also authorize the Secretary to acquire lands for individual Indians and tribes. Regulations implementing the acquisition authority are at 25 CFR 151. In order for the Secretary to acquire land on behalf of individual Indians and tribes, the Bureau of Indian Affairs (BIA) must collect certain information to identify the party(ies) involved and to describe the land in question. The Secretary also solicits additional information deemed necessary to make a determination to accept or reject an application to take land into trust for the individual Indian or tribe, as set out in 25 CFR 151. Specifically:

- Section 151.9 provides for an individual Indian or tribe desiring to acquire land in trust status to file a written request for approval of such acquisition with the Secretary;
- In order to properly evaluate the request and make a determination, the Secretary also solicits additional information necessary to satisfy the pertinent factors listed in section 151.10 for on-reservation acquisitions;
- Additional information, set out in section 151.11(c), is required for off-reservation acquisitions (when the lands are located outside of and non-contiguous to the tribe's reservation);
- Section 151.11 also requires that if the land is being acquired for commercial purposes, the applicant provide a plan that specifies the anticipated benefits and potential risks associated with the proposed use;
- Section 151.13 provides for additional information or justification if the Secretary considers it necessary to enable him to reach a decision; and
- Section 151.13 also requires the applicant to furnish title evidence meeting the Standards For The Preparation of Title Evidence In Land Acquisitions by the United States, issued by the U.S. Department of Justice.

The Secretary may solicit additional information to ensure that the title to such property is free of any liens, encumbrances, or infirmities prior to taking final approval action. The acquisition of land in trust for the use and benefit of Indian tribes and individual Indians is one of the prime responsibilities of the Federal government in its unique relationship with American Indians.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.**

BIA uses the information collected to:

- Identify the applicant to confirm eligibility and have a means of contacting the applicant;
- Identify the property to determine location, ownership and adherence to Federal policies concerning possible restrictions and limitations as to future uses and development;
- Review the acquisition request in light of any limitations on statutory authority;
- Understand the applicant's need for the land and purpose for which it will be used;
- Identify land the Secretary already holds in trust for the applicant;

- Ensure that title to the property is marketable and unencumbered;
- Identify the impact on State and political subdivisions caused by the removal of the land from the tax rolls;
- Identify jurisdictional problems and potential land use conflicts which may arise from the acquisition;
- Identify BIA's ability to discharge the additional responsibilities resulting from the acquisition;
- Identify the location of the land relative to State boundaries and its distance from the boundaries of the tribe's reservation; and
- Review the tribe's plan specifying anticipated economic benefits, where land is being acquired for business purposes.

Once an application is submitted, the Secretary may request additional or clarifying information during the evaluation process. This ongoing information collection effort is necessary to account for differences of conditions and issues on both a regional and local case-by-case basis. A short phrase or explanation may be satisfactory for lands proposed to be acquired in trust within an existing reservation, but more precise detail is necessary when such acquisitions involve lands located off-reservation.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.**

This collection of information uses limited automated, electronic, mechanical, or other technological collection techniques. Respondents may submit this information electronically using e-mail, by fax, and by regular mail.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Because of the uniqueness and diversity of applications, no similar information pertaining to land acquisition in trust status for Indians is collected by the BIA or other Federal agencies. If BIA possesses any of the information needed for the application, BIA provides that information to the applicant.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The information collection will not have a significant impact on small businesses or other small

entities. The information is collected only from individual Indians and tribes who wish to obtain the benefit of having a particular parcel of land taken into trust status. Applicants are also requested to supply information pertaining to the land and the effect on State and local governments of its being taken in trust and off tax rolls.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The BIA's land acquisition program could not continue if the collection is not conducted. The Secretary uses the information to make a decision in determining whether or not to acquire land in trust status for an individual Indian or tribe. Applications are initiated by Indian tribes and individuals; the Secretary is obligated to evaluate such applications and respond accordingly.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- \* **requiring respondents to report information to the agency more often than quarterly;**
- \* **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- \* **requiring respondents to submit more than an original and two copies of any document;**
- \* **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- \* **in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- \* **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- \* **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- \* **requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no circumstances that require BIA to collect the information in the manner stated above.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA**

**statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Comment was taken on this information collection in the proposed rule, as part of the proposed rule, in compliance with OMB regulations. One entity, the State of Alaska, commented extensively on the information collection. A summary of the State of Alaska's comments, and the Department's responses follow.

Comment 1: The necessity or utility of the information collection cannot be determined for yet-to-be identified application criteria. While BIA collects information from applicants on the criteria in 25 CFR §§ 151.10-11, BIA has not determined how these criteria will be tailored to Alaska, for example: it is not clear how BIA will apply the provision allowing the Secretary to give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition as the distance between the tribe's reservation and the land to be acquired increases, because potential applicant tribes have no reservations. It is unclear what additional criteria may apply or what unique considerations BIA intends to impose.

Response to Comment 1: BIA is not revising the criteria at 25 CFR §§ 151.10-11 at this time, and therefore will apply the criteria as they are written, and to the extent applicable, to Alaskan tribes.

Comment 2: The accuracy of BIA's estimate, including validity of the methodology and assumptions used, cannot be determined without knowing how BIA estimated the information collection burden.

Response to Comment 2: The current ICR approved by OMB is based on estimates of the current number of applications received and estimates confirmed by the public as accurate for the time it takes to provide an application. The increase in 60 responses results from this rule. The Department has estimated that the time it takes to prepare an application for Alaska will be approximately equal to the time it takes to prepare an application elsewhere. Based on the current average number of off-reservation applications received each year for all tribes located in the lower 48 states (150 applications), the Department estimated that the tribes in Alaska (40% of all tribes) would account for an increase of 40% in the estimate, which totals 60 new applications. The Department has not received comment from current or prior applicants regarding its estimated zero cost burden, but will revisit its cost burden estimate upon renewal in three years to account for any new experience in Alaska.

Comment 3: BIA could enhance the quality, utility, and clarity of the information by providing more objective application criteria and more meaningful state, local and community participation.

Response to Comment 3: This comment again requests development of Alaska-specific criteria. As described above, BIA is not revising the criteria at 25 CFR §§ 151.10-11 at this time, and therefore will apply the criteria as they are written, and to the extent applicable, to Alaskan tribes. This comment also seeks further amendments to the regulations to allow for expanded stakeholder involvement in the land-into-trust determination. The current regulations include opportunities for stakeholder input; BIA is not revising these provisions.

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

We reached out to several contacts who have submitted an application to take land into trust under 25 CFR 151, for their views on recordkeeping, disclosure, and the data elements. One individual responded to our inquiry:

Angela Tate  
Puyallup Tribe  
3009 E. Portland Avenue  
Tacoma, WA 98404  
Phone: (253) 573-7856

In summary, Ms. Tate felt the purpose of the information collection was necessary. She stated the instructions were mostly clear and easy to understand, but she would like additional clarification on the environmental requirements. She stated that she has received technical assistance from the local BIA agency office and it was helpful. She concurred with estimated hourly burden time to complete this information collection. She had no issues regarding the frequency in which it is collected.

BIA has considered her input and will continue to closely examine its fee-to-trust process to identify any areas for improvement.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are provided to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality provided to respondents in connection with this information collection.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature included in the information collected.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- \* **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- \* **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- \* **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

The BIA receives an average of 1,000 applications per year, which breaks down to 850 on-reservation applications and 150 off-reservation applications. Experience indicates that the number varies from year to year. However this average figure is expected to be maintained for the next several years. As a result of the program change captured in this revision, we anticipate receiving at approximately 60 additional off-reservation applications each year, for a total of 1060 applications for year. Our estimates of burden include time spent in organizing and preparing necessary information, completing the application (including clerical time), and preparing a resolution for tribal council vote to accompany the application. Most of the

information is readily available to the tribe or individual making the application. This results in a total hour burden of **74,400** hours per year or the amount equivalent to **\$2,267,712**. The total hourly burden is shown in the following table

Citation 25 CFR 151	INFORMATION	Average No. of Hours	Average No. per Year	Estimated Annual Burden Hours	Burden Cost per Hour
151.9, 151.10(On-Res), and 151.13	Applicants must submit: (a) Copy of authority (b) Explanation of need (c) Explanation of ownership status (Tribe) (d) Explanation of ownership status (Individual) (e) Title evidence	50	850 (800 tribal + 50 individual)	42,500	\$1,295,400
	(f) Documentation for NEPA – tribe and individual furnish documentation	40	120	4,800	\$146,304
	(f) Documentation for NEPA – Tiering	20	200	4,000	\$121,920
151.9, 151.11 (Off-Res), and 151.13	Applicants must submit: (a) Copy of Authority (b) Explanation of need (c) Description of proposed use (d) Description of location of land (e) Description of effect on State & political subdivisions (f) Description of jurisdictional issues (g) Title evidence	70	210 (160 tribal + 50 individual)	14,700	\$448,056
	(h) Documentation for NEPA – tribe provides documentation	40	210	8,400	\$256,032
	Totals		1,060	74,400	\$2,267,712

\*To obtain the hourly rate for tribal government employees, we used \$21.77, the wages and salaries figure for all workers from BLS Release USDL 14-0390, *Employer Costs for Employee Compensation—December 2013*, Table 1, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, December 2013*. To account for benefits, we then multiplied this rate by 1.4, for a total of \$30.48. For purposes of this collection, we also used this rate for individuals.

These hour burdens include time spent in organizing and preparing necessary information, completing the application (including clerical time), and preparing a resolution for tribal council vote to accompany the application. In addition, almost 25% of tribes will spend 20 hours preparing the “tiering” information needed for NEPA for on-reservation applications. A total of 51,300 hours is expended by the 850 respondents for an average hourly burden of 60.4 hours for on-reservation applications. A total of 23,100 hours is expended by the 210 respondents for an average hourly burden of 10 hours for off-reservation applications.



**13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)**

- \* **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- \* **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- \* **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There is no non-hour cost burden associated with this information collection.

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.**

We estimate the annual cost to the Federal government for processing land acquisition applications to be **\$6,611,220**. For each of 1,060 applications, approximately \$5,237 represents 85 hours for a GS-12; and an additional \$1,000 per application covers overhead expenses, e.g., paperwork, travel, surveys and appraisals. Each application at a cost of \$6,237 x 1,000 applications = **\$6,611,220**. This does not include any funding appropriation by Congress for new land purchases.

\*Using the Office of Personnel Management Salary Table 2014-DCB (Locality Pay Area of Washington-Baltimore-Northern Virginia), the salary rate for a GS-12/step 5 is \$61.61 including benefits (\$41.07 hourly rate multiplied by 1.5 to account for benefits). We calculated the benefits in accordance with BLS news release USDL 14-0390, December 2013 (<http://www.bls.gov/news.release/pdf/ecec.pdf>).

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

This revision adjusts the number of respondents to account for a program change, expanding the availability of the program to tribes in the State of Alaska. Only off-reservation land in Alaska is affected by the program change. We estimate that this program change will result in 60 more off-reservation applications each year, for a total of 210 off-reservation applications each year. This results in **an increase in 6,600 burden hours** [74,400 – 67,800].

This program change implements a U.S. District Court decision holding that the Department has the statutory authority to take Alaska land into trust for Alaska Natives outside of Metlakatla subsequent to the enactment of Alaska Native Claim Settlement Act, and vacating the provision of the regulations prohibiting the Department from taking Alaska land into trust. *Akiachak Native Cmty. v. Salazar*, 935 F. Supp. 2d 195 (D.D.C. 2013); *Akiachak Native Cmty. v. Jewell*, 2013 U.S. Dist. LEXIS 141120 (D.D.C. 2013). We came to this estimate based on our experience that, with approximately 60% of all tribes in the 48 states, approximately 150 off-reservation applications are submitted each year. The program change would allow the remaining 40% of tribes the opportunity to submit applications, so we increased our estimate of off-reservation applications by 40%.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

There are no plans to publish the results of this collection of information.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

We will display the OMB Control Number and the expiration date, as appropriate.

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

There are no exceptions.