

Supporting Statement A

Acquisition of Trust Land, 25 CFR 151

OMB Control Number 1076-0100

Terms of Clearance: None.

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 his/her discretion, to acquire lands through purchase, relinquishment, gift, exchange, or assignment within or without existing reservations for the purpose of providing land for Indian Tribes. 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.

The following table details the IC requirements in 25 CFR 151.

Table 1 – Information Collections Associated with Acquisition of Trust Land		
Citation 25 CFR 151	Section Title	Information Collection Requirement
25 CFR 151 – Land Acquisitions		
151.9	Requests for approval of acquisitions.	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.
151.10	On-reservation acquisitions.	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 this section.
151.11	Off-reservation acquisitions.	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. Additional information set out in 151.11(c), is required for off-reservation acquisitions (when the lands are located outside of and non-contiguous to the Tribe's reservation.
151.13	Title examination.	Provides for additional information or justification if the Secretary considers it necessary to enable him to reach a decision. Also requires the applicant to furnish title evidence meeting the <u>Standards for the Preparation of Title Evidence in Land Acquisition by the United States</u> , 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 in person, by fax, and by regular mail. Individual Indians and Tribes submit required information in standard written formats and considered as an official written request to initiate the application process. This is necessary because much of the information collected is considered official documentation for the purpose of the acquisition of land by the United States in trust status for individual Indians and Tribes. The BIA has issued a Fee-to-Trust Handbook to provide a guideline of how to submit an application package at <http://www.bia.gov/cs/groups/xraca/documents/text/idc1-024504.pdf>.

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.

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.

A 60-day notice for public comments was published in the Federal Register on April 29, 2016 (81 FR 25698). There was one comment received in response to this notice. On June 22, 2016, one Tribe responded to the questions listed in the 60-day notice.

- a) The necessity of this information collection for proper performance of agency functions.

This information collection is absolutely necessary for the proper performance of agency functions because the acquisition of land in trust to help restore the homelands of American Indian Tribes is a critical function of the BIA and the Department of the Interior (DOI). It also is essential to strengthen Tribal communities and build tribal economies, which also are key BIA and DOI functions.

BIA Response: the BIA appreciates the response from the Tribe.

- b) The accuracy of DOI's estimate of the time and cost burden for this information collection.

The Federal Register notice estimates that each trust-land acquisition application requires from 60 to 110 hours. Based on our experience, this estimate is too low. In particular, submission of a trust-acquisition application requires addressing no fewer than ten separate matters under the governing regulations 25 CFR 151. Many of these matters require preparation or compilation and review, discussion, and submission of documentation, some of which can be quite extensive. For example, each application must include and discuss a Tribal resolution, a land description, information on property taxes and jurisdiction and land use issues, a Phase I Environmental Site Assessment regarding possible hazardous substances, and historic title documents and title exceptions. Depending on the proposed use and locations of the relevant land, an application also may involve preparation, discussion, and submission of a business plan as well as an environmental assessment or an environmental impact statement and related public notice for compliance with the National Environmental Policy Act. Also, the presence of any hazardous substances may require substantial additional time for obtaining and documenting completion of any required environmental remediation. All trust-land acquisition applications also involve substantial additional time for follow up in responding to BIA or local government comments, ensuring that the BIA acts promptly and appropriately, obtaining and providing any required updated information or documents, and addressing title issues that may be raised by the DOI through preliminary title options. After all that, these applications also require closing preparation. All this work can be done efficiently only with many years of experience, so it takes even longer for many Tribes without substantial prior relevant experience or institutional expertise.

Based on all this, we estimate that each trust-acquisition application requires between 120 and 250 hours spent by Tribal applicants in collecting and submitting relevant information, though it could be more depending on the issues involved.

BIA Response: There may on occasion be cases that warrant more hours of document preparation for an acquisition due to the complexity of the case or the environmental issues presented by the lands involved. However, the BIA has received many cases that involve no change in use of the land and that are minimal acres (1.0 to 40 acres). BIA's

estimation has been based upon the total cases received and takes into consideration the varying degrees of complexity and proposed use of the lands. In addition, in June 2016, the requirements for title evidence have been relaxed somewhat, in that the Department of Justice 2001 Title Standards no longer govern acquisitions to trust. This change may further minimize the cost burden to the applicants.

The comment received does have merit and the BIA is in agreement that applications may require more than 60-110 hours previously estimated. Therefore the BIA has increased the burden hours to 100 – 150. The BIA still retains technical assistance and will perform the completion of some documentation in order to accommodate such requests from the tribes. That, along with less complex issues and cases that have no change in land use, as well as the less stringent title evidence requirements, the BIA will increase the burden hours and has considered the suggestion made by the Tribe.

c) Ways that DOI and BIA could minimize this information collection burden.

This information collection burden could be reduced by revising the regulatory process to provide an explicit presumption of approval for acquisitions that are located within or contiguous to existing Indian reservations without material environmental hazards or land-use charges. In addition, this information collection could be reduced by ensuring that the BIA and the DOI promptly and fully address all trust-land acquisition applications, so that applicants would have to spend less time for follow up.

BIA Response: The current standards for information collection must be held to a higher standard due to the fiduciary trust standards the BIA is held to apply. Mandatory acquisitions have been somewhat reduced by policy and in the Handbook; discretionary acquisitions have not been reduced, in order to fulfill our trust obligations and to ensure we continue to protect the environmental aspect of new trust lands management. In response to the second comment regarding prompt action by the BIA, we are also continually revising the Fee-to-Trust (FTT) Handbook and updating the process to incorporate streamlining efforts and monitoring of activities to ensure cases are moving forward in a timely manner. Time frames have been established concerning the processing and review of acquisitions which address the burden of the process on the Tribes.

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.

The BIA reached out to several contacts who recently submitted an application to take land into trust under 25 CFR 151. The BIA received 33 responses. The responses were received from:

- Eastern Shawnee Tribe of Oklahoma, Wyandotte, OK
- Executive Director, The Seneca-Cayuga Nation, Grove, OK
- Chief, Ottawa Tribe of Oklahoma, Miami, OK
- Realty Specialist, Quapaw Tribe of Oklahoma, Quapaw, OK
- Realty Specialist, Choctaw Nation of Oklahoma, Durant, OK
- Muscogee (Creek) Nation Realty Division, Okmulgee, OK (2 individuals)
- Osage Nation, Pawhuska, OK (2 individuals)
- Director of Tribal Development, Chickasaw Nation, Ada, OK
- Director of Tribal Land Management, Karuk Tribe, Happy Camp, CA
- Senior Counsel, Stockbridge-Munsee Community
- Director of Land Management, Lac du Flambeau Tribe
- Wessen & Associates, Inc., Port Townsend, WA
- Realty, Stillaguamish Tribe of Indians, Arlington, WA
- Director of Economic Development, Mississippi Band of Choctaw Indians, Choctaw, MS
- Assistant Director, Real Estate Services, Seminole Tribe of Florida, Hollywood, FL
- General Counsel, Pokagon Gaming Authority, New Buffalo, MI
- Staff Attorney, Navajo Nation, Window Rock, AZ
- Director, Land Department, Blackfeet Tribe, Browning, MT
- Natural Resource Officer, Assiniboine & Sioux Tribes, Poplar, MT
- Realty Officer, Pueblo of Sandia, Sandia, NM
- Tribal Attorney, Pueblo of Pojoaque, Santa Fe, NM
- Realty Officer, Sac & Fox Tribe of the Mississippi in Iowa
- Comanche Nation Realty Specialist, Oklahoma
- President, Wichita and Affiliated Tribes, Oklahoma
- Attorney, Washington, DC
- Applicants, North Dakota (2 individuals)
- Applicant, Montana
- Applicant, South Dakota
- Applicant contacted by the Midwest Region
- Applicant contacted by the Horton Agency

A. The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility.

The respondents had the following statements:

- The collection of the information is practical, the information requested under 25 CFR 151 is clear, the FTT Handbook found online is helpful, and both the agency and regional staff are helpful with the process;
- The regulatory guidance was not entirely clear on the process and exactly what information was to be provided in light of the variables inherent in the process; the

process was lengthy and untimely, and the BIA should look for ways to streamline the process;

- The collection of information at the beginning of the process was practical, although some of the information would not be needed until further in the process. She felt it works to provide up front; providing the Title Insurance Commitment early in the process was necessary it was not practical as an applicant and creates burden and financial liability at the Tribal level and that the standard forms and the Title Insurance Commitments should be submitted electronically;
- A central database for all Tribes where information could be located should be created, the database should be as large as possible so all information can continue to be uploaded (don't limit space), and the database should have an electronic signature and be considered at the original;
- The collection of information was excessive and felt that educating the Tribe on Federal policies regarding FTT could benefit the Tribe by reducing timelines and alleviate redundant requests by the BIA;
- One individual felt that only 5% of information collected is necessary and will have practical utility – very time consuming;
- One individual expressed the expense of obtaining updated abstracts updated which cost \$200-\$300. Title Guarantee and developing a draft deed showing the United States taking the land into trust cost \$200+. The time to process is around 30 days;
- One individual did not agree with the evaluation of the information or with the analysis. For example, with a Phase I Environmental Site Assessment, you could find a normal farm junk pile of old post etc., and that could be an issue with the analysis. Yet a similar pile could be on trust land and not be an issue;
- The Tribe has to pay for the Phase I Environmental Analysis, whereas, within other regions the BIA pay the costs. The responsibility to pay for the Phase I Environmental Analysis across regions is not consistent; and
- One individual stated that maybe some of the requested information such as a lease with redactions would suffice if the tract was currently leased. Instead of holding the case because of the redacted lease, the case could move forward until it was required after the Preliminary Title Option (PTO) to have the un-redacted version submitted.

BIA Response

- The BIA has developed and provided reference guides, brochures, the FTT Handbook and a copy of the 25 CFR 151 Land Acquisition Regulations on the BIA webpage at <http://www.bia.gov/WhoWeAre/BIA/OTS/FTT/index.htm> for all Tribes and applications to retrieve to assist with the process;
- The BIA has established time frames for acknowledgement and review of an acquisition, as well as minimizing the documents required for a complete case.
- The BIA Regions have varying processes for who should perform the environmental requirements, usually based on time and costs. If it will be a large amount of time before the Region can perform the environmental work, the tribe is advised of the lengthy time and will be given the opportunity to do the work itself and submit to the BIA for review and approval. This accounts for the differing processes across the BIA.

- The requirement of a redacted lease is not a standard practice across the BIA. Becoming aware of these types of differences and requirements is helpful so that the Central Office can reach out to the Region(s) and address the issue of discontinuing additional requirements.
- Obtaining an Abstract of Title is a public record and should be obtained at a minimal cost. The feedback received was in reference to obtaining an updated Abstract of Title which is not within the control of the BIA and any expenses incurred will vary from State to State.
- The BIA conducts outreach and training on the FTT process, as well as on the requirements and standards which apply to acquisitions of land into trust. We are aware that one Region may have training annually, while other Regions may have more or less frequent sessions with the Tribes, based on the level of caseload in the Regions involved.
- The BIA maintains a central database for all FTT cases, which is accessible by BIA and tribes which contract and compact the realty function. A public database was considered, however, many tribes opposed the concept of a national public database due to desires to keep their activities private.

B. The accuracy of the agency's estimate of burden hours (hours and cost) of the collection of information, including the validity of the methodology and assumptions used.

The respondents had the following statements:

- The estimate is probably a little high for our purposes but it may be accurate for other Tribes;
- One individual stated they participate in the FTT Consortium (Pacific Region) and contributes a portion of their funds to assist with costs associated with processing applications. The transfer of information runs smoothly between the Tribe and BIA;
- The estimated burden hours is under estimated especially if outside counsel and other expertise were involved;
- The cost would vary depending on the amount of research necessary;
- The collection of information was not burdensome but it was costly in regards to Title Insurance Commitments. Tribal FTT financial resources are running low and delays in the process due to Federal staff turnover has created a financial burden on the tribe to provide updated and current title commitments;
- It is a burden due to the amount of legal time, land, and Tribal council spends on the FTT issues. Some applications are small in acreage and the time and money the tribe spend on both staff personal and resources is financial burdensome;
- The Agency's estimate was not provided;
- One individual estimates approximately 30 to 40 hours used to collect information;
- While another individual stated they wait for a month to process certain documents and document at least 16 hours of consistent work. Other costs associated with this information collections is up to \$500 for abstract updating and lawyer work;
- 60 hours may be too low. 80 to 110 hours would be more accurate as Phase I takes time to complete;

- Information sharing could be faster if the Agency provided a courtesy copy of requested information via email before sending a letter in mail. Or scanned and emailed all notification letters to the proper departments with the hardcopy just being mailed to the Tribal leader (e.g., Chairman, President, Chief, etc.). This would save time, increase response time, save paper, and reduce the number of duplicate correspondence and notifications received;
- Sending information via email might be more effective and efficient;
- The issue delaying the FTT is the timely review and issuance of Preliminary and Final Opinion of Titles as the wait is beyond the 30 days even when the title insurance policy may only have a few special exceptions noted as acceptable in the preliminary opinion of title. It would be most efficient if the Tribe or BIA Realty perform some of the Final Opinion of Title evaluation for the Solicitor to concur;
- Frequent changes to the requirements for applications create confusion for Tribes and BIA staff; the BIA should be judicious about changes to the FTT process, especially change that complicate rather than simplify the process. Examples, changing expectations for compliance, changes to the required form of the title insurance commitments, changes in the interpretation and application of the DOJ Title Standards, minor/non-substantive changes related to legal descriptions, changes to environmental requirements, and changes to NEPA requirements;
- A recommendation to submit one application at a time with the initial acceptance of the application. Also have the Agency to oversee the FTT application before submitting and to continue to meet with the Tribe in addition to quarterly letters;
- Follow up phone calls and emails are also very helpful; and
- Would like to see formal FTT workshops for Tribal staff.

BIA Response

- The BIA understands that whether the cost estimate is too high or too low is largely dependent upon several factors, which many respondents have already identified: complexity of the case, which may require legal counsel by the Tribe, environmental issues, which may require professional expertise by the Tribe, or the size of the parcel to be acquired, which may or may not require additional resources to adequately identify, such as surveys or site visits. The BIA has increased the hour estimation, which will have a resulting effect of increasing the cost estimate.
- The BIA can provide e-mail notifications of requirements, if the email does not contain personally identifiable information. As a normal course of business, our e-mail is tracked and e-mail with attachments is automatically scrutinized by the e-mail software that is utilized by the Department. This suggestion will be further investigated for possible implementation into our routine communications with the tribal applicants, not for document submission.
- In some Regions, the BIA performs preliminary reviews of the title evaluation, which is finalized by the Solicitor or is concurred to by the Solicitor. These practices have been implemented on a Region-by-Region basis, usually due to the lack of resources and staff in the Solicitor's office. Other measures taken by the BIA to assist in the title activities are to fund additional staff in the Solicitor's office which would perform only title

review duties. These steps have been taken to provide more timely title opinions, which will help the cases to be completed more quickly.

- The BIA would not limit the number of applications a Tribe may submit; however, some BIA locations already provide preliminary review of applications which assists the Tribe in completing a case and in receiving basic casework training.

C. Ways we could enhance the quality, utility, and clarity of the information to be collected.

The respondents had the following statements:

- If the process stayed consistent from year to year, especially the Legal Description Reviews, it would help;
- The suggestion of the creation of a FTT Application form for each type of FTT requests;
- An updated FTT checklist for each type of FTT package would enhance the collection of information;
- More in depth FTT training would be helpful for the Agencies and Tribes, including cross-training for greater accountability for staff responsibility;
- An FTT website for the Tribes would be beneficial;
- Tribal access to the FTT database would be helpful;
- Status reports each time the package progresses to the next step in the FTT process would be helpful;
- An example of an off Reservation Business Plan for FTT packages would be helpful;
- Staffing may be the biggest issue, especially at the Solicitor level and in regards to environmental timeliness. She noticed that the turnaround time for the preliminary title opinion (PTO) and the final title opinion FTO requests was increasing with the low staffing;
- Guidance for information required for environmental assessments for FTT process is not thoroughly addressed or explained within government regulations. She suggested that consultation with the Tribes and/or providing fee to trust regulatory information to groups such as Indian Land Tenure Foundation and National land Trust Association, who communicate regularly with the Tribal people;
- Sending the Statutory Warranty Deed to be signed by the Tribe and returned for final acceptance can be done earlier in the process as it tends to delay the process when done towards the end of the process and Tribal realty needs to gather signatures and notary.
- A concern with the length of time it takes to process their applications, particularly with the time it takes the Regional office to obtain a Solicitor's opinion;
- Increase staff for realty and environmental staff at the BIA Regional level, including within the Solicitor's office;
- The Field Solicitor's Preliminary Title Objections have become lengthy in nature.
- BIA could have better informed them throughout the process with each step or with how long the time frame could take;
- Minimize duplication of review as applications move from BIA Agency to Regional and to Central office; second and third level reviews of the same portions of applications is inefficient and adds months and sometimes years of additional time to process;

- An initial meeting with the BIA to discuss the transaction, then a follow up meeting once applications are in process would be very helpful;
- A preliminary FTT meeting with the individuals or the Tribes would be beneficial;
- It would be helpful if there were clearer timelines for BIA actions on Fee to Trust;
- Before 2011 when the PTO was issued by the Field Solicitor, BIA would provide the actual PTO to the Tribe. The actual PTO should again be shared directly with the Tribe and it would be easier and faster for the Tribe to respond and follow-up; and
- When issuing the Notice of Application, the City Government should also be notified.

BIA Response

- Standardization of the legal land description reviews has been implemented via the Boundary Standards handbook (52 IAM 2-H), issued May 14, 2012.
- A standard FTT application would not be practical, since the applications have such a large variety of considerations and factors which are presented in the applications. A letter from the Tribe is the most expedient form of application.
- The BIA has developed a FTT Handbook which identifies requirements for each category of case. The Handbook is updated whenever changes or requirements are made, and the Handbook is posted in several locations on the internet. An updated Handbook is the cornerstone of guidance and standardization of the process, which would be the most beneficial to the Tribes and individual applicants.
- The BIA has created and continually updates a FTT website. This site is available to the Tribes and provides the tools and references that have been developed for trust acquisitions, at <http://www.indianaffairs.gov/WhoWeAre/BIA/OTS/FTT/index.htm>
- The BIA conducts outreach and training on the FTT process, as well as on the requirements and standards which apply to acquisitions of land into trust. We are aware that one Region may have training annually, while other Regions may have more or less frequent sessions with the Tribes, based on the level of caseload in the Regions involved.
- The BIA maintains a central database for all FTT cases, which is accessible by BIA and Tribes which contract and compact the realty function. A public database was considered, however, many Tribes opposed the concept of a national public database due to desires to keep their activities private.
- The BIA requires the statutory warranty deed after receipt of the preliminary title opinion and after the certificate of inspection is completed. We will note to the Regions that adequate time should be given to the Tribes to prepare the deed, which may include an advance notice that the deed will soon be requested from the Tribe.
- Several comments received addressed the lack of resources and staff both at the BIA and the Solicitor's office. The BIA is aware that additional resources and staff are needed. Steps have been taken to ensure assistance is requested and received at these offices, in an effort to keep up with the caseload. BIA has provided funding to the Solicitor's office to assist with the FTT casework. Establishing a standard handbook has also positively impacted the working relationship between the two offices by clearly identifying requirements and documents needed for a complete case.
- The BIA does not require additional review of Agency cases by the Region, or of Regional cases by the Central Office. The only duplication of review occurs when the delegated authority to approve a case lies at a higher level; in that case the submitting

office (Agency) ensures the case is ready for review and approval and the receiving office (Region) must review and ensure the case is ready for approval. This occurs mostly for off-reservation acquisition cases, which the Agencies (Superintendents) do not have authority to approve.

- The 52 IAM 12 establishes clear time frames for the acknowledgement of receipt of the application, as well as notification of completeness of the case. These time frames are a requirement for all BIA offices to comply with. The amount of time that it takes for a title opinion to be issued is not under the BIA's control. Although, as stated in previous responses, some BIA offices offer assistance to the Solicitor's office in order that cases can be completed in a more efficient manner.
- The BIA does not share the title opinions received from the Solicitor's office. These communiques are deemed confidential correspondence from the legal advisors to their client, who is the BIA. Most Regions, however, provide a synopsis or detail of the legal advice to the Tribes, under signature of the Regional Director.
- The BIA sends the Notice of Application (NOA) to the applicant, which should be copied to the state and local governments. The city, if there is one that is impacted by the acquisition, would be considered a "local" government and, thus, should be copied on the NOA.

D. Ways we could minimize the burden of the collection of the information on the respondents.

The respondents had the following statements:

- The location of the Tribe in proximately to the BIA was a factor;
- Increase communication between the BIA and the Tribes on the collection of information;
- The consistency of the process from year to year should be increased;
- The review and approval of the surveys by the Bureau of Land Management Indian Land Surveyor BILS prior to the submission of the application would be beneficial;
- Suggestion of a preliminary meeting to discuss any special supporting documents that need to be included in the acquisition package;
- Suggestion of a pre-review of documents before official submission to the Agency;
- Suggestion of an exit meeting directly before submission to Regional Realty for final review – to ensure PTO is clear and all documents are included;
- Obtaining title commitments and policies seem to be getting more difficult and the suggestion was made that BIA work directly with title companies with some type of authorization or release from the Tribe after the initial application is submitted to obtain documents directly, such as updated commitments or request any additional or removal of items and not have to contact the Tribe for every change;
- If no impacts are planned at the time, then no field investigation is needed (as long as there is a firm commitment to do so when an impact is planned); this would make things go faster;

- Evaluate sending documents electronically as PDF documents for the record and efficiently moving the process along to the next step, as required hard copies delays the process;
 - The documentation could be put in digital format and sent via email. Response time seemed to improve when responding via email.
 - The dialogue between the Tribe and the Agency could be improved with response time if allowed to conduct business via email.
- Suggestion of BIA to look for ways to minimize the back and forth exchange of requested information, possibly through more effective use of electronic file sharing (i.e., DropBox, Cloud, etc.);
- Clearer instructions on the amount and detail of requested information would be helpful;
- Streamline the process by having the Agency or Regional Office process an applicant's case from start to finish. And all entities (BIA, title companies, County and State) involved should know the importance of the BIA's trust responsibility to Indian Country;
- Improvements to forms accompanying transfer of applications to different BIA offices and include signed certification by responsible staff to confirm completion of review and compliance;
- The BIA could do the environmental assessments for the Tribes as I know they are a huge burden. Title work has to be done. Those two things are the biggest deterrent because of cost. Environmental work is cost prohibitive;
- If you look at the flow chart it is not clear cut that it has to be in that order. For example, Step 4 appears to have to be done before title work or environments, yet the Agency didn't do the inspection while we were getting the environmental;
- More fee to trust training for the Agencies and Tribes; and
- Issues outside of the BIA's process are the title companies and their timeframe in issuing commitments, policies and/or abstracts for minerals; there is frustration with the cost in updating policies as each applicant is required to pay for updated title commitments or policies.

BIA Response

- The location of the tribe (tribal headquarters) in proximity to the BIA should not be a factor which impacts the submission and review of a case. Since we primarily accept cases by postal mail, it is only a matter of how long it takes for the mail to be delivered.
- We support the idea of increasing communication between the BIA and the tribe. This fosters better documents being submitted as well as a partnership being forged between the BIA and the tribe in bringing the case to completion.
- The FTT Handbook provides the basis for consistent case preparation and reviews. Changes from one year to the next are usually the result of regulatory changes which are then incorporated into the Handbook.
- The survey reviews are done by the Bureau of Land Management Indian Land Surveyors after a case is submitted. The resources of the BILS are somewhat limited and their expertise is utilized when an application is made. A "pre-application" review would not be a prudent utilization of the limited resource.
- In response to suggestions that a preliminary meeting be held to identify any special circumstances or documents needed, and a pre-review of case documents before

submission, we understand that some applicants don't want to invest a large amount of time and effort in an application only to have the application returned as incomplete. The Bureau often doesn't know what the tribes' plans are and what cases the tribe plans to submit or prioritize for review. We encourage the use of preliminary meetings, which are held at the Tribes' request. Due to limited staff and resources, BIA is unable to provide a pre-review of documents.

- In response to the suggestion of an exit meeting, prior to submission to the Regional Office of a final package, the BIA would be receptive to such a request from the Tribe.
- Obtaining title commitments and associated documents for the title review is the responsibility of the landowner. The land in question, although owned by the Tribe is fee property for which the BIA has no responsibility.
- The BIA is responsible to conduct a field inspection, not for future planned impacts but for current use and condition of the property. If there is no plan to make a change to the land use, the environmental requirements may be less; the field inspection is a confirmation of the current use.
- The suggestion that more routine use of electronic filings and pdf documents, as well as the use of electronic data bases, is not possible at this time. The BIA requires original hard copies of documents.
- The comment that the amount of detail required for case documents should be made clear to the tribal applicants is well received. The BIA has provided checklists, brochures, and has a handbook, all of which attempt to identify the process and the required documents. In addition, each BIA Regional office conducts training for tribes within their jurisdictional area. The level of detail is somewhat dependent upon the purpose of the acquisition and other case-specific factors that cannot be provided for all cases. The BIA will identify ways in which further case preparation details and training can be provided to applicants and tribes.
- The suggestion is to streamline the process by having the BIA offices conduct their reviews from start to finish. The BIA should be reviewing a case from start to finish so that all comments and requirements can be provided to the applicant at once. The review is an intensive effort by the BIA and can sometimes result in an item being overlooked. Secondary reviews, usually by another office within the Bureau, may result in the identification of additional requirement(s). This cannot be avoided in all cases, but the BIA attempts to minimize the time for reviews and issue one set of comments for requirements.
- Environmental assessments can be done by the Bureau; however, due to limited staff and resources, the time in which an assessment must be done may not accommodate the time frame in which the Tribe wants the assessment to be done. For this reason, the Tribes choose to use their own resources to conduct the environmental assessment.
- Step 4 is the site inspection and initial certificate of inspection and possession, required before the preliminary title opinion is requested. The 16-step flow chart identifies that certain steps are consecutive, and some steps are concurrent. The brochure may not clearly state that information, but the detailed flow chart contains that information. BIA will add
- The Tribes sometimes must update certain documentation in the application due to the length of time it takes to complete a case. Regarding updating title commitments or

abstracts of title, the 52 IAM 12 requires a complete application be submitted by the Tribes. If the application is complete, the title commitment should be still valid by the time to case is ready for a decision.

Overall BIA Response:

The amount of feedback received from the various Tribes and individuals was well received. As indicated above from the feedback received:

- The comments received from the 60-day published notice and the Tribal outreach conducted, the BIA will increase the burden hours from 100 to 150 hours as part of the renewal process;
- Expenses related to obtaining an updated Abstract of Title is not within the control of the BIA and no adjustments were made to the non-hour cost burden associated with this information collection;
- Becoming aware of differences amount the Regions, Central Office will reach out and address the issues to ensure all Regions are consistent;
- The BIA will look into email notifications with the Tribes and looked into further for possible implementation into BIA's routine communication with Tribal applicants; and
- Several comments addressed the lack of resources and staff. Steps have been taken to ensure assistance is requested and received at various offices in the efforts to keep up with the caseload.

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 500 applications per year, which breaks down to 400 on-reservation applications and 100 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. 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 **55,000** hours per year or the amount equivalent to **\$1,846,900.00**. The total hourly burden is shown in the following table.

25 CFR 151	Description	Information Collection Requirement	No. of Respondents	No. of Responses per	Average No. of Hours	Total Annual Burden Hours	Total Annual Cost (Salary & Benefits)
151.9 151.10 151.13	Applicants must submit: a) Copy of authority b) Explanation of need c) Explanation of ownership status (Tribe) d) Title evidence e) Documentation for NEPA – Tribe furnish documentation f) Documentation for NEPA - Tiering	Tribal application to take on-reservation land into trust	350	1	100	35,000	\$1,175,300.00
151.9 151.11 151.13	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	Tribal application to take off-reservation land into trust	100	1	150	15,000	\$503,700.00

	on State & political subdivisions f) Description of jurisdictional issues g) Title evidence h) Documentation for NEPA – Tribe provides documentation						
151.10	Applicants must submit: a) Copy of authority b) Explanation of need c) Explanation of ownership status (Individual) d) Title evidence e) Documentation for NEPA – individual furnish documentation f) Documentation for NEPA - Tiering	Individual application to take on-reservation land into trust	50	1	100	5,000	\$167,900.00
Totals			500			55,000	\$1,846,900

*To obtain the hourly rate for Tribal government employees, we used **\$33.58**, which includes a benefits multiplier. This estimate is based on the Bureau of Labor Statistics', *Employer Costs for Employee Compensation—December 2015*, Table 1, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: State and Local Governments, by major occupational and industry group, December 2015*, USDL 16-0463. The document can be referenced at http://www.bls.gov/news.release/archives/ecec_03102016.pdf. 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 the 450 tribes will spend 20 hours preparing the tiering information needed for NEPA and another 15% will spend an additional 40 hours to furnish the NEPA documentation. The 100 off-reservation applicants spend an average of 150 hours each to prepare their request.

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 **\$3,193,200**. For each of 500 applications, approximately \$5,386.40 represents 80 hours for a GS-12/5 (80 X \$67.33); and an additional \$1,000 per application covers overhead expenses, e.g., paperwork, travel, surveys and appraisals. Each application at a cost of (80 X \$67.33 + \$1,000) \$6,386.40 x 500 applications = **\$3,193,200.00**. This does not include any funding appropriation by Congress for new land purchases.

*Using the Office of Personnel Management Salary Table 2016-DCB (Locality Pay Area of Washington-Baltimore-Northern Virginia), the salary rate for a GS-12/step 5 is \$67.33 including benefits (\$42.08 hourly rate multiplied by 1.6 to account for benefits) which can be found at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/DCB_h.pdf. We calculated the benefits in accordance with BLS news release USDL 16-1150, March 2016 (at http://www.bls.gov/news.release/archives/ecec_03102016.pdf).

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

The comment received from the Tribe (question 8) in response to the 60-day notices does have merit and the BIA is in agreement that applications may require more than 60-110 hours as previously estimated. Therefore, the BIA has increased the burden hours to 100 – 150. The BIA still retains technical assistance and will perform the completion of some documentation in order to accommodate such requests from the tribes. That, along with less complex issues and cases

that have no change in land use, as well as the less stringent title evidence requirements.

- *Decrease to the number of respondents from 800 to 350 – Tribal application to take on-reservation land into trust:*

The BIA has been tracking the number of new applications on what is referred to as the BIA national spreadsheet, which is internal to BIA. The average number of respondents for the renewal of this information collection was calculated from the numbers reported for the last five years. The data reflects a decrease in the average of new applications. While this number reflects a decrease, BIA estimated the future expected applications on the high side of the average numbers.

- *Decrease of the number of respondents from 160 to 100 – Tribal application to take off-reservation land into trust:*

The BIA has been tracking the number of new applications on what is referred to as the BIA national spreadsheet, which is internal to BIA. The average number of respondents for the renewal of this information collection was calculated from the numbers reported for the last five years. The data reflects a decrease in the average of new applications. While this number reflects a decrease, BIA estimated the future expected applications on the high side of the average numbers.

- *Removed information collection for – Individual application to take off-reservation land into trust:*

Within 25 CFR 151.11 Off-reservation acquisitions – this section only speaks to Tribal request for the acquisition of lands into trust status. Individual Indians are only authorized by law to submit an application for the acquisition of lands into trust status for On-Reservation land; 25 CFR 151.10 On-Reservation acquisition.

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.

There are no forms used for this information collection. Everything required is all spelled out in 25 CFR § 151. In 25 CFR § 151.15(a) cites the OMB has approved the information collection requirements under assigned OMB control number 1076-0100.

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

There are no exceptions.