

EXHIBIT A, TAB 4N



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245

IN REPLY REFER TO:

APR 17 2002

Memorandum

To: Regional Directors and Agency Superintendents

Through: Deputy Assistant Secretary - Indian Affairs *[Signature]*

From: Deputy Commissioner of Indian Affairs *[Signature: Sharon Blackwell]*

Subject: Processing of Mandatory Lands Into Trust Applications

This memorandum addresses how BIA realty staff should process mandatory land into trust applications. A determination that a statute is mandatory is made on a case by case basis. No clear definition of a mandatory statute currently exists. However, in order for a statute to be considered mandatory, the statutory language must include some restrictions on the Secretary's discretion in addition to the word "shall." The Regional/Field Solicitor's Office should issue a written determination that a statute is mandatory before the Bureau processes the application as a mandatory acquisition.

Once a determination is made that a statute is mandatory, certain provisions of the Part 151 regulations do not apply to the processing of the application. Most notably, the notice and comment provision of 25 CFR 151.10, where the agency notifies the local governments of the Tribe's application is not applicable and compliance with the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 *et. seq.*, is not required.

In processing a mandatory trust acquisition, you must still comply with the remaining relevant portions of the Part 151 regulations. The first requirement is that the Tribe submit a request in writing that the land be placed in trust. The Tribe's resolution requesting that the land be taken into trust should cite the specific statutory authority mandating the acquisition. Even though NEPA compliance is not required, the BIA must conduct a contaminant survey on the lands to be acquired to ensure that no hazardous materials exist. 602 DM 2. The Bureau must also examine the title insurance to ensure compliance with the Department of Justice's Title Standards. 25 CFR 151.13. Even though an acquisition is mandated, the Department of Justice requires that lands to be acquired by the United States be free from liens and encumbrances.

After the contaminant survey and title review are completed, the Regional Director or delegated official should notify the Tribe of the approval of its request and that notice must contain the appeal

provisions of Part 2 of the regulations. After the Part 2 appeal period has run (30 days) and if no appeal is filed, the Regional Director or delegated official must publish notice in the local newspaper of the decision to take the land into trust, pursuant to 151.12(b). That notice must state that a final agency determination has been made to take the land into trust and that the Secretary shall acquire title to the land no sooner than 30 days after the notice is published. 25 CFR 151.12(b). (*Note:* If the Assistant Secretary - Indian Affairs issues the decision to take land into trust, that decision is final for the Department (unless provided for otherwise in the decision), and no Part 2 appeal process is provided. After the AS-IA's decision is issued, the notice of final agency action is published in the FEDERAL REGISTER pursuant to 25 CFR 151.12(b)).

Any questions concerning the processing of mandatory applications should be directed to the Office of Trust Responsibilities, Central Office, (202) 208-5831.