

NEW FEE-TO-TRUST REGULATIONS

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FEE-TO-TRUST: OVERVIEW

- Tribal vs. Individual
- Mandatory v. Discretionary
 - Discretionary: 25 U.S.C. 5108
 - Mandatory Congressional Act
 - Fee-to-Trust Forthwith (Mandatory): 25 U.S.C. 2216
 - Property has to have been in trust on November 7, 2000

FEE-TO-TRUST: UPDATES SINCE 2020

- 1. Secretarial Order 3400 (April 27, 2021)** Redelegated non-gaming off-reservation decisions back to the Regions.
 - On reservation already at the Region

FEE-TO-TRUST: UPDATES SINCE 2020

2. Issuance of **M-Opinions** (April 27, 2021)

- a. M-37070** withdrawing Trump era M-37054 (“Interpreting the Second Definition of Indian in Section 19...”)
- b. M-37055** (Withdrawal of M-37029 - “The Meaning of ‘Under Federal Jurisdiction’...” with “Procedures for Determining Eligibility for Land into Trust under the First Definition...” and reinstating Obama era M-37029.
- c. M-37069** withdrawing Trump era M-37064 which withdrew M37043 (“Authority to Acquire Land in Alaska...”) and reinstating Obama era M-37043.

FEE-TO-TRUST: UPDATES SINCE 2020

3. Consultation on the Protection and Restoration of Homelands, which covered Fee-to-Trust, Rights-of way and Leasing (Oct. 2021)
4. Consultation on draft revisions to 25 C.F.R. Part 151 (March, 2022)

FEE-TO-TRUST: UPDATES SINCE 2020

5. NPM-TRUS-43: Removal of requirement for Land Description Review (LDR) (April 2022)

- Realty Land Description Review (RDLR) (aliquot part, lot block, or government lot)
- Land Description Examination & Validation (LDEV) (complicated aliquot part, metes and bounds)

6. TAAMS Business Rules for A&D (May 2022)

7. Final rule for Part 151 (January 2024)

NEW FEE-TO-TRUST REGULATIONS - HIGHLIGHTS

Codified *Carcieri* Analysis – 151.4

- Conclusive Evidence
- Presumptive Evidence
- Historic Evidence

NEW FEE-TO-TRUST REGULATIONS - HIGHLIGHTS

Created 4 Classes of Acquisitions

- On Reservation (151.9)
- Contiguous (151.10)
- Off Reservation (151.11)
- Initial Reservation (151.12)

NEW FEE-TO-TRUST REGULATIONS - HIGHLIGHTS

Deadlines

- Application package complete: 30 days
- Decision within 120 days of package complete notice

NEW FEE-TO-TRUST REGULATIONS - HIGHLIGHTS

Complete Package (Applicant Requirements)

- Request Letter
- Documentation per 151.9/10/11/12
- Land description
- NEPA Analysis and Phase I ESA
- Title evidence
- Non-Interference Statement
- Other

NEW FEE-TO-TRUST REGULATIONS - HIGHLIGHTS

Complete Package (BIA Requirements)

- Sufficiency of the Land Description
- Acceptance of NEPA Analysis and Phase I ESA
- Preliminary Title Opinion

FEE-TO-TRUST: BEST PRACTICES

QUESTIONS?

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Thank You!

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Sarah Lawson works with tribal governments and tribal entities to achieve self-governance and economic development goals while protecting tribal resources and sovereignty.

Before joining Schwabe, Sarah spent over 10 years working in tribal government, advising tribal council and tribal departments on a variety of matters including contracts, real estate development, and legislation.

Sarah's work is particularly focused on tribal tax and real estate matters, and she is widely regarded as an authority on issues involving Indian trust land.

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