

July 2006

# INDIAN ISSUES

## BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications



GAO

Accountability \* Integrity \* Reliability



Highlights of [GAO-06-781](#), a report to congressional committees

## Why GAO Did This Study

In 1980, the Department of the Interior (Interior) established regulations to provide a uniform approach for taking land in trust. Trust status means the government holds title to the land in trust for tribes and individual Indians. Trust land is exempt from state and local taxes. The Secretary of the Interior has delegated primary responsibility for processing, reviewing, and deciding on applications to take land in trust to the Bureau of Indian Affairs (BIA). As part of this process, BIA must seek comments from affected state and local governments.

Congress directed GAO to study BIA's processing of land in trust applications to determine the extent to which (1) BIA followed its regulations, (2) applications were processed in a timely manner, and to (3) identify any concerns raised by state and local governments about land in trust applications. GAO is also providing information on problems with BIA's data on the processing of land in trust applications.

## What GAO Recommends

GAO is making a number of recommendations to improve the timeliness and transparency of the land in trust process and to ensure that BIA has accurate and reliable data in the land in trust database.

In commenting on the draft report, Interior agreed with our findings and recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-06-781](http://www.gao.gov/cgi-bin/getrpt?GAO-06-781).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin M. Nazzaro at (202) 512-3841 or [nazzaror@gao.gov](mailto:nazzaror@gao.gov).

## INDIAN ISSUES

# BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications

## What GAO Found

BIA generally followed its regulations for processing land in trust applications, although most of the criteria in the regulations are not specific and thus do not offer clear guidance for how BIA should apply them. For example, there are no guidelines on how to weigh the impact of lost tax revenues on local governments. As a result, the BIA decision maker has wide discretion. Generally, all of the 87 applications with decisions in fiscal year 2005 were approved, except for 1 denial and 6 that were closed because the applications were incomplete. BIA is considering revisions to the regulations that would clarify that applications will generally be approved unless there is clear evidence of significant negative impacts. These revisions would make BIA's decision-making process more transparent.

Currently, BIA has no deadlines for making decisions on land in trust applications, but BIA is considering imposing about a 6-month time frame. In addition, there is also a 60-day time frame for BIA regional directors to rule on appeals. Based on these time frames, it appears that many land in trust applications have not been processed in a timely manner. First, the median processing time for the 87 applications with decisions in fiscal year 2005 was 1.2 years—ranging from 58 days to almost 19 years. Second, 28 complete off-reservation applications had been waiting an average of 1.4 years for a decision as of September 30, 2005. Third, 34 appeals had been waiting an average of about 3 years for resolution by a BIA regional director as of September 30, 2005.

When opposing land in trust applications or appealing decisions, state and local governments principally cited concerns about lost tax revenues and jurisdictional issues. In commenting on applications prior to decisions made in fiscal year 2005, state and local governments opposed 12 of 87 applications, or about 14 percent. Also, as of September 30, 2005, 45 decisions were on administrative appeal to either a BIA regional director or Interior's Board of Indian Appeals, including 5 appealed decisions from fiscal year 2005. Although GAO found little opposition to applications with decisions in fiscal year 2005, some state and local governments we contacted said (1) they did not have access to sufficient information about the land in trust applications and (2) the 30-day comment period was not sufficient time in which to comment.

GAO found the data in BIA's land in trust database, which was implemented in August 2004, were frequently incomplete and inaccurate. The database was hastily developed without defining user requirements and data fields. Specifically, (1) not all of the applications had been entered into the database and (2) the status of an application, as either approved or denied, was frequently incorrect. A properly designed and implemented database with accurate data would provide BIA with important information to help better manage the land in trust process. BIA has already recognized the shortcomings and initiated an effort to redesign the database as necessary.

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**Abbreviations**

BIA	Bureau of Indian Affairs
IBIA	Department of the Interior's Board of Indian Appeals
NEPA	National Environmental Policy Act

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United States Government Accountability Office  
Washington, D.C. 20548

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July 28, 2006

The Honorable Conrad Burns  
Chairman  
The Honorable Byron L. Dorgan  
Ranking Minority Member  
Subcommittee on Interior and Related Agencies  
Committee on Appropriations  
United States Senate

The Honorable Charles H. Taylor  
Chairman  
The Honorable Norman D. Dicks  
Ranking Minority Member  
Subcommittee on Interior, Environment, and Related Agencies  
Committee on Appropriations  
House of Representatives

In 1980, the Department of the Interior (Interior) established a regulatory process intended to provide a uniform approach for taking land in trust.<sup>1</sup> Trust status means that the federal government holds title to the land in trust for tribes or individual Indians. Land taken in trust is no longer subject to state and local property taxes and zoning ordinances. Many Indians believe that having their land placed in trust status is fundamental to safeguarding it against future loss and ensuring their sovereignty. While some state and local governments support the federal government's taking additional land in trust for tribes or individual Indians, others strongly oppose it because of concerns about the impacts on their tax base and jurisdictional control. Further, the growth of Indian gaming, its impacts on local communities, and the possibility that newly acquired land taken in trust could be used for gaming have led to heightened concerns about Indian land acquisitions by some members of the public and some state and local governments.

Taking land in trust can be mandated by Congress through legislation or at the discretion of the Secretary of the Interior. Under the regulations, tribes or individual Indians who purchase or own property on which they pay property taxes can submit a written request to the Secretary of the Interior to have the land taken in trust. If approved, the ownership status of the

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<sup>1</sup>25 C.F.R. pt. 151.

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property would be converted from taxable status to nontaxable Indian trust status. For requests made by tribes or individual Indians under Interior's discretionary authority, the regulations establish criteria that the Secretary of the Interior must consider in evaluating whether to approve or deny the request. The criteria differ slightly for requests involving land located within or contiguous to an existing Indian reservation—referred to as on-reservation acquisitions—and land located outside of and not contiguous to an existing Indian reservation—referred to as off-reservation acquisitions. The on-reservation criteria require that the Secretary consider, among other things, the impact on the state and its political subdivisions resulting from removing the land from the tax rolls and jurisdictional problems and potential conflicts surrounding land use that could arise.<sup>2</sup> As part of the process, state and local governments must be notified of a request and allowed 30 days to provide written comments on the potential impacts of regulatory jurisdiction, real property taxes, and special assessments. For off-reservation requests, the regulations also require the Secretary to, among other things, give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition as the distance away from the reservation increases and give greater weight to concerns raised by state and local governments.<sup>3</sup>

The Secretary of the Interior has delegated to the Assistant Secretary for Indian Affairs, primarily through the Bureau of Indian Affairs (BIA), the day-to-day responsibility for processing, reviewing, and deciding on applications to take land in trust. Written applications are submitted to BIA regional offices and local agency offices across the country.<sup>4</sup> In most cases, the decision maker for on-reservation applications is the superintendent of the local agency office. For off-reservation applications, the decision maker is the applicable BIA regional director. However, under Interior's policy, the Assistant Secretary for Indian Affairs is to review all off-reservation applications and provide input before the regional director issues a decision. On- and off-reservation applications are generally processed by a combination of BIA realty staff at BIA's Central Office in Washington, D.C., a BIA regional office, and a local agency office. Decisions by BIA superintendents and regional directors are not Interior's final position until

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<sup>2</sup>25 C.F.R. §151.10.

<sup>3</sup>25 C.F.R. §151.11.

<sup>4</sup>Tribes and individual Indians can not apply to have land taken in trust in the state of Alaska, except for the Metlakatla Indian Community of the Annette Island Reserve or its members.

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the administrative appeals process has been exhausted. Decisions may be appealed to the applicable BIA regional director or to Interior's Board of Indian Appeals (IBIA), depending on who the decision maker was.<sup>5</sup> Ultimately, disputes over taking land in trust may be litigated in federal court.

To be able to provide agencywide data on the processing of land in trust applications, BIA created a land in trust database in the summer of 2004. Each BIA office is responsible for entering key dates and information about the processing of their land in trust applications, such as the date comments were requested and received from state and local governments and the date of BIA's decision. By the end of fiscal year 2005, BIA officials had entered information on over 1,000 applications into the database. The applications cover tracts of land that are less than an acre to tracts that are thousands of acres, located in both rural and urban areas. The database shows most of the applications are pending. However, the information in the database is not complete or accurate enough to use in describing the status or condition of applications overall. Therefore, to provide such a description for this report, we primarily relied upon applications with decisions in fiscal year 2005, as we were able to verify the accuracy and completeness of these applications by reviewing the actual documents in select BIA offices across the country. In this manner we were able to ensure that we had the complete population for applications with decisions in fiscal year 2005. In fiscal year 2005, BIA superintendents and regional directors issued decisions on 87 applications covering more than 5,800 acres for 31 tribes or their members in 12 states. Since 1934, the total acreage held in trust by the federal government for the benefit of tribes and their members has increased from about 49 million to about 54 million.

The fiscal year 2006 House Appropriations Committee Report for Interior's appropriation bill directed GAO to study BIA's procedures and practices in implementing the land in trust regulations.<sup>6</sup> In response to this direction and subsequent discussions with congressional offices, we (1) assessed the extent to which BIA's processing of land in trust applications followed its regulations, (2) determined the extent to which applications were processed in a timely manner, and (3) identified any state and local government concerns about land in trust applications and how they were

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<sup>5</sup>25 C.F.R. pt. 2.

<sup>6</sup>H.R. Rep. No. 109-80, at 68 (2005).

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addressed in BIA's decision-making process. In addition, we are providing information on the problems we encountered with the data BIA collects on the processing of land in trust applications. We also agreed to review the Department of the Interior's Bureau of Land Management's process for issuing allotments of land to individual Indians out of the public domain. We will report on that issue separately because it involves a different agency and different legislative authority.

In conducting our work, we reviewed applicable laws, regulations, and land in trust applications. We reviewed applications and interviewed BIA realty staff at six regional offices—Eastern, Midwest, Northwest, Pacific, Southern Plains, and Southwest—and eight agency offices—Blackfeet (Browning, Montana), Chickasaw (Ada, Oklahoma), Great Lakes (Ashland, Wisconsin), Horton (Horton, Kansas), Minnesota (Bemidji, Minnesota), Siletz (Siletz, Oregon), Warm Springs (Warm Springs, Oregon), and Wind River (Fort Washakie, Wyoming). We visited all of the BIA offices with 10 or more land in trust applications decided in fiscal year 2005. From the offices we visited, we collected 67 of the 87 discretionary nongaming land in trust applications decided in fiscal year 2005, or 77 percent. BIA staff from the locations we did not visit made copies of an additional 18 applications and mailed them to us. We obtained the remaining two applications from the IBIA. We analyzed these applications in the following ways:

- To determine how BIA processed land in trust applications, we reviewed the 87 applications with decisions in fiscal year 2005, and we compared how the applications were processed with the requirements in the regulations.
- To determine whether applications were processed in a timely manner, we compared the processing times for (1) 87 applications with decisions in fiscal year 2005 and (2) 28 complete off-reservation applications awaiting comments from the Office of the Assistant Secretary for Indian Affairs to 120 business days, or about 6 months, the time frame BIA is considering imposing for making decisions on on- and off-reservation land in trust applications. In addition, we compared the length of time that 34 appealed decisions had been awaiting resolution by BIA regional directors with the current 60-day time frame set forth in the regulations on appeals. We also interviewed BIA officials and tribal representatives involved in the process to obtain their views on the time taken for processing applications.



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- To determine whether state and local governments had any concerns about land in trust applications, we analyzed the content of comments made by these governments for the 87 applications with decisions in fiscal year 2005. We also reviewed the issues raised by state and local governments in all 45 appeals pending as of September 30, 2005—34 appeals pending before BIA regional directors and 11 appeals pending before the IBIA. In addition, we obtained the perspectives of representatives of the National Governors Association and the National Association of Counties.
  - To determine the accuracy and reliability of BIA's land in trust database, we compared the information in the database with other data sources: spreadsheets used by a number of the BIA offices we visited to track land in trust applications, BIA realty reports prepared under the Government Performance and Results Act, and BIA annual acreage reports. We also discussed the development of the current database and the proposed redesign of the database with staff in the Office of the Chief Information Officer within the Office of the Assistant Secretary for Indian Affairs.

A more detailed description of our objectives, scope and methodology can be found in appendix I. We performed our work between August 2005 and June 2006 in accordance with generally accepted government auditing standards.

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## Results in Brief

BIA generally followed its regulations for processing land in trust applications. In processing these applications, BIA realty staff notified and obtained comments from affected state and local governments, ensured that required environmental reviews were performed, and obtained title reviews from Interior's Office of the Solicitor. After reaching its decision, BIA normally provided a decision letter to the applicant and the affected state and local governments documenting BIA's consideration of the applicable criteria in the regulations. Decision letters also included an explanation of the appeals process. Generally all of the 87 applications with decisions in fiscal year 2005 were approved, except for 1 application that was denied based on failure to meet the criteria and 6 applications that were closed by BIA because the applications were incomplete. While BIA realty staff generally followed the necessary procedural steps, the criteria in the regulations provide BIA's decision makers with wide discretion in deciding to take land in trust. Most of the criteria are not specific and do not offer clear guidelines for what constitutes an unacceptable result. For

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example, one criterion requires BIA to consider the impact of lost tax revenues on state and local governments. However, there is no guidance on how to evaluate lost tax revenue, such as comparing it with a county's total budget or evaluating its impact on particular tax-based services. In addition, there is no threshold for what might constitute an unacceptable level of lost tax revenue—an amount that might lead BIA to deny an application. BIA is considering revisions to the regulations that states that applications will generally be approved "...unless the record shows clear and demonstrable evidence that the trust acquisition will result in significant negative impact to the environment or to the local government." These revisions would make BIA's decision-making process more transparent. While we found that BIA procedurally followed the regulations for the 87 applications with decisions in fiscal year 2005, there was an issue that is not specifically addressed in the regulations that raised a concern at one office. We found that one BIA agency office did not document its decision-making process, including the consideration of the criteria in the regulations, despite BIA's policy to do so.

While BIA's current regulations do not set a specific time frame for making an initial decision on an application, BIA is considering revisions to the regulations that would impose a time frame of 120-business days, or about 6 months, for making a decision for both on- and off-reservation applications once an application is complete. In addition, the existing regulations on appeals of a decision set forth a 60-day time frame for resolution "...after all time for pleadings (including all extensions granted) has expired." Based on these time frames, it appears that many land in trust applications have not been decided in a timely manner. First, for the 87 applications with decisions in fiscal year 2005, the median time from the start of the application until BIA officials made a decision was 1.2 years. The processing times ranged from a low of 58 days to a high of almost 19 years. At least 10 of the 87 applications with decisions in fiscal year 2005 were decided within the time frame under consideration; however, a number of applications took an exceedingly long time because of delays on the part of either the applicant or BIA. Second, 28 complete off-reservation applications had been pending review at the Central Office an average of 1.4 years from the date of the draft decision to September 30, 2005. Twenty-two of these 28 off-reservation applications had not been processed in a timely manner, as of September 30, 2005, based on the time frames under consideration. Third, 34 appealed decisions awaiting resolution by a BIA regional director have been pending an average of 2.8 years from the time of the decision to September 30, 2005.

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When opposing land in trust applications or appealing decisions, state and local governments principally cited concerns about lost tax revenues and jurisdictional issues. In commenting on applications prior to decisions made in fiscal year 2005, state and local governments opposed 12 of 87 applications, or about 14 percent, mainly citing concerns about lost tax revenues and jurisdictional issues. For example, the state of Kansas raised questions about who would be responsible for providing road maintenance and fire protection if the land was taken in trust. BIA generally reviewed the comments it received on pending applications and considered them in its decision-making process. Ten of the 12 applications with some initial opposition were approved by BIA in its decision in fiscal year 2005; the remaining 2 applications were closed by BIA because the applications were incomplete. State and local governments have also opposed some applications through administrative appeals, again primarily citing lost tax revenues and jurisdictional issues. As of the end of fiscal year 2005, a total of 45 decisions were pending review on appeal, including 5 appealed decisions from fiscal year 2005. Although we found little opposition to the applications with decisions in fiscal year 2005, some state and local government representatives we contacted regarding land in trust issues said that (1) they did not have access to sufficient information about the land in trust applications to provide comments and (2) the 30-day comment period was not sufficient time in which to provide comments. For example, according to some state and local governments, BIA's notifications on pending applications provide no information about the tribe's proposed use of the land once it is approved for trust status. Interior is considering revisions to the regulations that would provide state and local governments with additional information about the applications and 60 and 90 days, respectively, to provide comments for on- and off-reservation applications.

During the course of our review, we found the data in BIA's land in trust database, which was implemented agencywide in August 2004, were frequently incomplete and inaccurate. As a result, the data are of questionable value to Interior and BIA management; we did not rely on these data. The database was hastily developed and deployed agencywide in the summer of 2004 without defining and documenting user requirements and clearly defining data fields. In a June 2005 memo, almost a year after the system was put in place, BIA's Deputy Director for Trust Services noted that only 4 of the possible 11 regions had entered any data into the database. The memo directed each BIA regional and agency office to enter all of its land in trust applications into the database within 5 days. By the end of fiscal year 2005, the database contained information on more than 1,000 applications, but we still found that not all of the applications

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had been entered into the database. Furthermore, the status of an application, as either approved, denied, or pending, was frequently incorrect in the database. While some of these errors were simply data entry errors, others were the result of systemic problems, such as the lack of common definitions for key terms. A properly designed and implemented database with accurate data would provide BIA with important information to help better manage the land in trust process. BIA has already recognized these shortcomings and initiated an effort to reevaluate and redesign the database, as necessary.

We are recommending that the Secretary of the Interior direct BIA to (1) reinforce the requirement that all decisions be fully documented; (2) adopt revisions to the regulations under consideration to include specific time frames for the decision-making process, as well as guidelines for providing state and local governments with more information and a longer period of time to provide meaningful comments on the applications; and (3) implement appropriate internal controls to help ensure the accuracy and reliability of the data in the land in trust database. In commenting on a draft of this report, Interior agreed with our findings, conclusions, and recommendations. Interior commented that BIA is working to address the recommendations and that a corrective action plan will be developed and implemented in response to the report. Specifically, BIA is taking steps to finalize the regulations under consideration. After the regulations are completed, BIA will develop a handbook to ensure consistent application of the regulations. The handbook will also include specific internal control procedures to ensure all decisions are properly and completely documented, as well as entered into the land in trust database accurately and in a timely manner. See appendix VI for Interior's written comments.

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## Background

Since the early days of American colonization, Indian lands have diminished significantly, in large part because of federal policy. By 1886, Indian lands had been reduced to about 140 million acres, largely on reservations west of the Mississippi River. Federal policy encouraging assimilation in the late 1800s and early 1900s further reduced Indian lands by two-thirds, to about 49 million acres by 1934. However, in 1934, the enactment of the Indian Reorganization Act changed the government's Indian policy to encourage tribal self-governance.<sup>7</sup> Section 5 of the act

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<sup>7</sup>Act of June 18, 1934, ch. 576, 48 Stat. 984 (1934) (codified as amended at 25 U.S.C. §§ 461-479).

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provided the Secretary of the Interior the discretionary authority to take land in trust on behalf of federally recognized tribes or their members. Specifically, section 5 states:

The Secretary of the Interior is hereby authorized, *in his discretion*, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, *within or without existing reservations* ... for the purpose of providing land for the Indians. ... Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and *such lands or rights shall be exempt from State and local taxation*. [Emphasis added]

Since 1934, the total acreage held in trust by the federal government for the benefit of tribes and their members has increased from about 49 million to about 54 million acres.<sup>8</sup>

Within Interior, BIA is responsible for the administration and management of all land held in trust by the United States and for serving the 561 federally recognized tribes and about 1.9 million individual Indians and Alaska Natives.<sup>9</sup> The Assistant Secretary for Indian Affairs has primary responsibility for BIA while the BIA Director oversees its day-to-day operations. BIA has over 9,600 staff and an annual budget of about \$2.39 billion. BIA's responsibilities include the administration of education systems, social services, and natural resource management, among other things. BIA is organized by 12 regions with 58 underlying agencies located throughout the country. One region covers the state of Alaska, and the

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<sup>8</sup>The 5-million acre difference between these two figures represents the net change of Indian land in trust from 1934 to 1997. While this report discusses Indian applicants seeking to have land converted to trust status, Indian applicants can also seek to have land already in trust status converted to fee status (i.e., land that property taxes must be paid on) and tribes and individual Indians can also lose trust lands through a variety of means, including probate and foreclosure. These two processes result in land "coming into trust" (referred to as acquisitions) and land "going out of trust" (referred to as disposals). The regulations governing taking land out of trust are in 25 C.F.R. pt. 152. For example, for the calendar year ending December 31, 1997, BIA reported acquiring about 360,000 acres and disposing of about 260,000 acres, for a net increase in tribal and individual Indian trust acreage of about 100,000 acres.

<sup>9</sup>70 *Fed. Reg.* 71194 (Nov. 25, 2005).

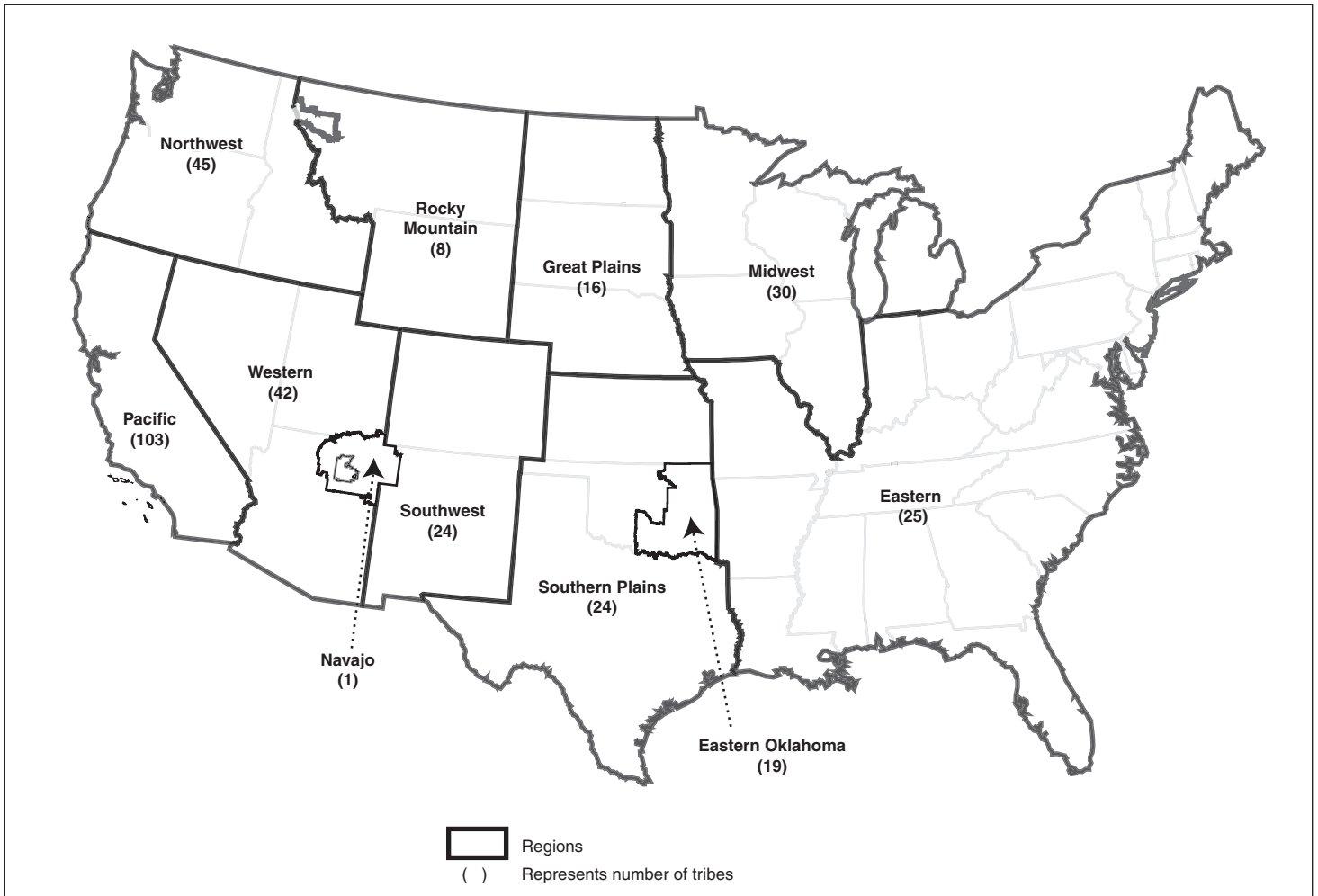
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remaining 11 cover the continental United States.<sup>10</sup> (See fig. 1.) A regional director is in charge of each regional office and a superintendent is in charge of each agency office.

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<sup>10</sup>The regulations do not cover the acquisition of land in trust status in the state of Alaska, except for acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members. The Metlakatla Indian Community is served by BIA's Northwest Region. Excluding the Metlakatla Indian Community, there are 224 federally recognized Indian entities in the state of Alaska. Therefore, 337 of the 561 federally recognized tribes are eligible to submit land in trust applications.

**Figure 1: BIA Regions in the Continental United States and the Number of Tribes They Serve**



Sources: BIA and GAO.

Note: BIA's Western Region serves the Hopi Indian Reservation, which is located within the boundaries of the Navajo Region. Also, one of the tribes served by BIA's Northwest Region—the Metlakatla Indian Community of the Annette Island Reserve—is located in Alaska.

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The Office of Trust Services, which includes BIA's Central Office realty staff, provides overall guidance for the land in trust program as one of its many responsibilities.<sup>11</sup> Real estate services staff, about 390 total with an annual budget near \$41 million, are located at BIA offices across the country and are responsible for processing land in trust applications, as well as other functions, including property management, land leasing and title activity, and lease compliance. Real estate services staff are under the line authority of regional directors and agency superintendents.

In 1980, Interior established a regulatory process intended to provide a uniform approach for taking land in trust.<sup>12</sup> For on-reservation applications under the Secretary's discretionary authority, the deciding official must consider

- the statutory authority to take land into trust;
- the need for the land;
- the purpose of acquiring the land;
- for individual Indians, the amount of land already held in trust and the individual's need for assistance in handling business matters;
- the implications for state and local governments of removing land from the tax rolls;
- the potential jurisdictional concerns of state and local governments;
- BIA's ability to discharge its duties on the newly acquired land; and
- environmental compliance, particularly with the National Environmental Policy Act (NEPA).

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<sup>11</sup>Other responsibilities of the Office of Trust Services include managing real estate services, probate, and environmental cultural resource compliance.

<sup>12</sup>25 C.F.R. pt. 151. The regulations were first proposed in 1978, see 43 *Fed. Reg.* 32311 (July 26, 1978). The final rule was published on Sept. 18, 1980 and it became effective on Oct. 20, 1980, see 45 *Fed. Reg.* 62034 (Sept. 18, 1980). The regulations, which were originally designated as 25 C.F.R. pt. 120a, were redesignated in 1982 as 25 C.F.R. pt. 151. The regulations were significantly revised in 1995.



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For off-reservation applications under the Secretary's discretionary authority, BIA must also place greater weight on the concerns of state and local governments as the distance of the land from the tribe's reservation increases and review a business plan if the land is to be acquired for business purposes. Once these steps have been completed, BIA provides a decision to the applicant and affected parties. Several additional steps follow, including publication of the decision in the *Federal Register* or a local newspaper, and possible administrative appeals and litigation.

In 1988, about 8 years after the regulations for taking land in trust were issued, the Indian Gaming Regulatory Act was enacted.<sup>13</sup> The act provided the statutory basis for the operation and regulation of certain gaming activities on Indian lands. It generally prohibits gaming activities on Indian trust lands acquired by the Secretary after October 17, 1988, the date the act was signed into law. However, the act does provide several exceptions that allow gaming on lands acquired in trust after its enactment.<sup>14</sup> For fiscal year 2005, gaming revenues from Indian gaming facilities totaled \$22.6 billion.

On applications for land in trust, applicants must declare the anticipated use of the property, particularly whether the property will be for gaming or nongaming purposes. Applications to take land in trust for gaming purposes are handled by the Office of Indian Gaming Management within the Office of the Assistant Secretary for Indian Affairs. In September 2005, Interior's Office of the Inspector General reported on the processing of applications for land in trust for gaming purposes.<sup>15</sup> The Inspector General reported that while the review and approval process for gaming applications was "sufficient," the process took an average of 17 months—or about 1.4 years—from the time BIA received the application until its final action. Furthermore, the Inspector General reported 10 instances where tribes had converted lands acquired for nongaming purposes to gaming without first getting the necessary approvals pursuant to the Indian Gaming Regulatory Act. Interior subsequently determined that five of these

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<sup>13</sup>Pub. L. No. 100-497, 102 Stat. 2467 (1988).

<sup>14</sup>GAO, *Indian Gaming Regulatory Act: Land Acquired for Gaming After the Act's Passage*, GAO/RCED-00-11R (Washington, D.C.: Oct. 1, 1999).

<sup>15</sup>U.S. Department of the Interior, Office of the Inspector General, *Process Used to Assess Applications to Take Land into Trust for Gaming Purposes*, E-EV-BIA-0063-2003 (Washington, D.C.: Sept. 1, 2005).

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conversions were eligible for gaming under the Indian Gaming Regulatory Act, one was not, and four were still under review at the time of the Inspector General's report. The gaming facility on the one ineligible conversion was later closed.

Our report focuses on discretionary nongaming land in trust applications, which fall into three categories—on-reservation, off-reservation, and “gaming related” applications. The gaming related category was added in 2001, and it refers to applications involving support facilities for gaming establishments, such as parking lots and maintenance buildings, but not the actual gaming activity itself. By directive of the Assistant Secretary for Indian Affairs, each category of applications is processed slightly differently or by a different office. In most cases, the decision maker for on-reservation applications is the superintendent of the local BIA agency office. For the remaining on-reservation applications and for the off-reservation applications, the decision maker is the applicable BIA regional director. Off-reservation applications are processed using the criteria in 25 C.F.R. §151.11 and the Assistant Secretary for Indian Affairs is to review the draft decision and supporting materials and provide input before the regional director issues a decision. On- and off-reservation applications are generally processed by a combination of BIA realty staff at BIA's Central Office in Washington, D.C.; a BIA regional office; or a local BIA agency office. Finally, gaming-related applications are processed by the Office of Indian Gaming Management in Washington, D.C., and the decision maker is the Assistant Secretary for Indian Affairs.

During the land in trust process, administrative appeals must be filed within 30 days of receipt by the applicant of the notice of the decision, and parties have at least 30 days to file judicial challenges after the decision is published in the *Federal Register* or a local newspaper. Administrative appeals can be filed with the applicable BIA regional director or the IBIA, depending on who the BIA deciding official was. First, if a superintendent was the deciding official, parties can appeal the decision to a regional director. The regional director then reviews the application's administrative record and any other available information and renders a ruling. The regulations governing appeals state that a regional director must make a ruling within 60 days after all times for pleadings, including extensions, have expired.<sup>16</sup> The regional director's ruling can then be further appealed to the IBIA, the administrative review body at Interior. The IBIA's ruling is

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<sup>16</sup>25 C.F.R. § 2.19.

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the final position for Interior. Second, if a regional director was the decision maker, parties may appeal the decision to the IBIA.<sup>17</sup> Once a decision is final for Interior, it is published in the *Federal Register* or a local newspaper and parties have at least 30 days to file judicial challenges to the decision. Appendix II provides an overview of the land in trust process.

Interior is considering revisions to the land in trust regulations, among a number of other possible regulation changes.<sup>18</sup> Preliminary revisions under consideration were distributed to tribes on December 27, 2005. Changes are under consideration throughout the regulations, including the institution of a trust acquisition request form, new criteria for considering on- and off-reservation acquisitions, extended state and local government comment periods, and time frames for issuing a decision. Although Interior held tribal consultations in February and March to discuss draft regulations, the land in trust regulations were not part of the meetings' agendas. Interior set the date of March 31, 2006, for tribes to submit comments on the proposed changes. According to the Associate Deputy Secretary, Interior is planning to hold consultation meetings in the last quarter of calendar year 2006, followed by publishing a proposed rule in the *Federal Register* for public comment.

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## BIA Generally Followed the Regulations for Taking Land in Trust, and These Regulations Provide BIA with Wide Discretion

BIA generally followed its regulations for processing the 87 land in trust applications with decisions in fiscal year 2005, such as properly notifying affected state and local governments and providing time for comments and appeals. The criteria in the regulations for taking land in trust are not specific and do not include guidelines for how BIA should apply them. Apart from the regulations, we found one BIA agency office did not properly document its decision-making process, including the consideration of the criteria in the regulations. Furthermore, we found that two separate agreements between groups of tribes and two BIA regional offices, designed to expedite the processing of certain applications, have

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<sup>17</sup>The Assistant Secretary for Indian Affairs can also be the decision maker. In such a case, the decision is final for Interior and may not be appealed to the IBIA, but could be appealed in Federal court.

<sup>18</sup>Interior is also considering revisions to regulations regarding probate/life estates (25 C.F.R. pts. 15, 18, and 179, and 43 C.F.R. pt. 4), land records and title documents (25 C.F.R. pt. 150), leasing (25 C.F.R. pt. 162), grazing (25 C.F.R. pt. 166), administrative accounting appeals (new regulations), whereabouts unknown (new regulations), and fees (new regulations).

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raised concerns and were under investigation by Interior's Office of Inspector General at the time of our review.

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## BIA Generally Followed the Regulations for Taking Land in Trust

BIA generally followed its regulations for the 87 land in trust applications with decisions in fiscal year 2005. Specifically, BIA

- notified affected state and local governments and provided a 30-day comment period for them to submit information on potential tax and jurisdictional impacts;
- obtained a preliminary title opinion from Interior's Office of the Solicitor;
- usually issued a decision letter to the applicant and interested parties based on an evaluation of the criteria in the regulations, including determining compliance with NEPA requirements,
- provided 30 days for the applicant or interested parties to appeal the decision and an explanation of the appeals process in its decision letter; and,
- published a notice of its decision in the *Federal Register* or local newspaper providing at least 30 days for interested parties to seek judicial review.

Of these 87 decisions, 80 were approvals, and 7 were denials. The Superintendent of the Wewoka Agency, Eastern Oklahoma Region, denied one application because the applicant failed to meet the criteria. The Superintendent of the Horton Agency, Southern Plains Region, officially withdrew six applications, in effect denying them, because the tribe did not submit additional necessary information for several years.

Applicants and state and local governments can file appeals and judicial challenges if they believe that BIA failed to properly follow the regulations. Eight of the 87 decisions in fiscal year 2005 had been appealed as of September 30, 2005. Three of the appeals were not filed within the required 30-day appeal period; therefore, they were dismissed as untimely. The remaining five appeals were pending as of September 30, 2005. The appellants generally asserted that BIA did not adequately consider tax and jurisdictional impacts. While these most recent appeals were pending at the end of the fiscal year 2005, some other appeals of decisions from fiscal year

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2004 are illustrative in demonstrating how the appeal process works. For example, the local government of Union Township, in the state of Michigan, appealed three land in trust applications to the Midwest Regional Director, asserting that BIA had not addressed, among other things, the township's jurisdictional and land use concerns in its decision. The township argued that the proposed acquisition would create "an island (of trust land) in the middle of the township in a prime commercial corridor" that might be subject to different zoning and building regulations and that this might create "serious difficulties for rational land use planning." BIA's decision stated only that primary law enforcement and fire protection would be provided by the tribe and that the tribal council has good relations with local planning officials and made no mention of the township's concerns. The Midwest Regional Director agreed that the decision had not adequately addressed the issues raised by Union Township and returned the applications to the Superintendent of the Michigan Agency to better address those concerns. In addition, the Midwest Regional Director determined that the Michigan Agency had not provided sufficient information on environmental compliance.

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**Criteria in the Regulations Provide BIA Wide Discretion Because They Are Not Specific and Do Not Include Guidelines for How BIA Should Apply Them**

In general, we found that the criteria in the regulations provide BIA with wide discretion in deciding to take land in trust, primarily because they are not specific, and BIA has not provided clear guidelines for applying them. For example, one criterion requires BIA to consider the impact of lost tax revenues on state and local governments. However, the criterion does not indicate a threshold for what might constitute an unacceptable level of lost tax revenue and, therefore, a denial of an application. Furthermore, BIA does not provide guidance on how to evaluate lost tax revenue, such as comparing lost revenue with a county's total budget or evaluating the lost revenue's impact on particular tax-based services, such as police and fire services. In addition, the criterion does not require deciding officials to consider the cumulative impact of tax losses resulting from multiple parcels taken in trust over time—a practice some state and local governments would like to see instituted.<sup>19</sup> Table 1 shows our analysis of the criteria.

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<sup>19</sup>Land may also be converted from trust to nontrust status through a variety of means, such as at the owner's request or through the sale of the property to a non-Indian. Any comprehensive analysis of the cumulative tax impact should consider this aspect.

**Table 1: Analysis of the Eight Criteria BIA Considers in Making Its Decision for On-Reservation Land in Trust Applications**

Criteria	GAO's analysis of the criteria
The existence of statutory authority for the acquisition and any limitations contained in such authority.	Criterion is clear; BIA must have statutory authority for taking the land in trust. In most cases, the statutory authority is the general authority in Section 5 of the Indian Reorganization Act.
The need of the individual Indian or the tribe for additional land.	For tribal applications, 25 C.F.R. §151.3(a)(3) provides some additional clarification on need and purpose by stating that Secretary must determine that the acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing. However, the regulations do not define or provide guidance on the type of need to be considered and how the level of need should be evaluated.
The purposes for which the land will be used.	Of the three categories mentioned in 25 C.F.R. §151.3(a)(3) for tribal applications, Indian housing is clear, but self-determination and economic development are broad categories and open to interpretation. The regulations do not provide any guidance on how the criterion applies to applications from individual Indians.
If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which the individual needs assistance in handling business matters. <sup>a</sup>	No guidance in the regulations on how the amount of land owned by an individual Indian should be weighted against their need for assistance in handling their business matters.
If the land to be acquired is in unrestricted fee status, <sup>b</sup> the impact on the state and its political subdivisions resulting from the removal of the land from the tax rolls.	No guidance in the regulations on what constitutes an acceptable level of tax loss or how to evaluate the tax loss for approving an application.
Jurisdictional problems and potential conflicts of land use that may arise.	No guidance in the regulations on what types of jurisdictional and land use concerns might warrant denial of the application.
If the land to be acquired is in fee status, whether BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust.	No guidance in the regulations on how BIA should evaluate its ability to discharge additional duties.
The extent to which the applicant has provided information that allows the Secretary to comply with environmental requirements, particularly NEPA.	No guidance provided on the amount or type of information needed by BIA to make the required environmental determinations.

Source: GAO analysis of the criteria in 25 C.F.R. § 151.10.

<sup>a</sup>Under BIA's current regulations, restricted status refers to land held in title by an individual Indian or tribe that can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior.

<sup>b</sup>Under BIA's regulation revisions under consideration, fee (or "fee simple") land is defined as meaning that the owner has unconditional power of disposition over the land.

In addition, the criteria are not pass/fail questions and, therefore, the responses to the criteria do not necessarily result in an approval or denial of an application. For example, should BIA decide that an application has "failed" to meet one or more of the criteria, the BIA deciding official still has discretionary authority under the regulations to approve the application. However, we found no instances in which an official decided

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that an applicant did not meet one or more criteria but still approved the application.

Revisions to the regulations under consideration make it clearer that, because it is difficult to develop specific thresholds for most criteria, BIA intends to assume that most on-reservation applications will eventually receive approval unless a major failing is evident, such as an environmental hazard on a property that would leave the federal government liable to environmental clean-up costs. Conversely, the draft changes make it more difficult to approve off-reservation applications.<sup>20</sup>

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### One BIA Office Did Not Properly Document Its Decisions and Two Other Offices Have Entered Into Agreements with Tribes That Have Raised Concerns

While we found that BIA procedurally followed the regulations for the 87 applications with decisions in fiscal year 2005, there were two areas not specifically addressed in the regulations that raised concerns.

- First, BIA's Fort Peck Agency, in the Rocky Mountain Region, did not document its decision-making process for two applications decided in fiscal year 2005, including the consideration of the criteria in the regulations. Although not in the regulations, BIA policy calls for offices to include an analysis of each of the criteria in their decision letters for approving or denying applications. This policy stems from a 1999 IBIA statement that failure to provide an analysis of the criteria to interested parties would potentially lead to the IBIA vacating future decisions.<sup>21</sup> BIA realty staff at the Fort Peck Agency were unable to provide us with documentation showing they considered the criteria for two applications approved in fiscal year 2005. The Fort Peck Agency reported it also has some pending applications as of the end of fiscal year 2005. By not documenting its consideration of the applicable

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<sup>20</sup>The current regulations include eight criteria for on-reservation applications and additional criteria for off-reservation applications. The revisions to the regulations under consideration include four criteria for on-reservation applications and eight criteria for off-reservation applications. In addition, the revisions state that BIA will approve on-reservation applications if (1) the trust acquisition does not create a significant additional administrative burden on Interior and (2) it facilitates either tribal self-determination, economic development, Indian housing, land consolidation, cultural resources protection, or natural resources protection, unless the record shows by clear and demonstrable evidence that the trust acquisition will result in significant negative impact to the environment or to the local government.

<sup>21</sup>*Town of Ignacio, Colorado v. Albuquerque Area Director, BIA*, 34 IBIA 37, 42 (1999).

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criteria, the Fort Peck Agency is not fully disclosing its rationale for its decisions and is, therefore, making the process less transparent.

- Two separate agreements between groups of tribes and two BIA regional offices designed to expedite the processing of certain applications were under investigation by Interior's Office of Inspector General at the time of our review. Specifically, agreements signed by tribes and BIA regional offices in the Pacific and Midwest regions created land in trust consortiums. In both cases, consortium tribes agreed to use a portion of their budget to pay for additional staff positions at BIA dedicated to processing consortium members' land in trust applications.<sup>22</sup> According to staff with the Inspector General's office, the Pacific Region's land in trust consortium agreement was not reviewed or approved by Interior's Office of the Solicitor before BIA entered into it. The staff further stated that the Midwest Region's agreement, created several years after the Pacific Region's agreement, did undergo review and approval by the Solicitor's Office. Interior's Office of Inspector General was conducting an investigation of these consortium arrangements to determine whether the tribes' allocation of money to fund the consortiums was legally authorized and whether BIA was favoring land in trust applications from those tribes.

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## Many Land in Trust Applications Have Not Been Processed in a Timely Manner

While BIA's current regulations do not set a specific time frame for making an initial decision on an application, BIA is considering revisions to the regulations that would impose a time frame of 120-business days, or about 6 months, for making a decision for both on- and off-reservation applications once an application is complete. According to our analysis of three categories of land in trust applications, BIA did not decide most applications within the proposed time frames the agency is now considering, or within existing time frames for appeals. First, for the 87 applications with decisions in fiscal year 2005, the median length of time from submission of an application to a BIA decision was a little over 1 year. Second, the 28 complete off-reservation applications currently awaiting review have been at the BIA Central Office for an average of 1.4 years, as of the end of fiscal year 2005. Finally, for applications on appeal, current federal regulations call for regional directors to rule on an appeal within 60

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<sup>22</sup>These tribes use a portion of their Tribal Priority Allocations from BIA to fund these positions. These are federal funds provided through BIA to the tribes, which the tribes use, in part, to fund staff positions at BIA.



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days after all time for pleadings has expired. For the 34 appealed applications awaiting a BIA decision that we reviewed, the average time pending from the BIA decision to the end of fiscal year 2005 was almost 3 years.

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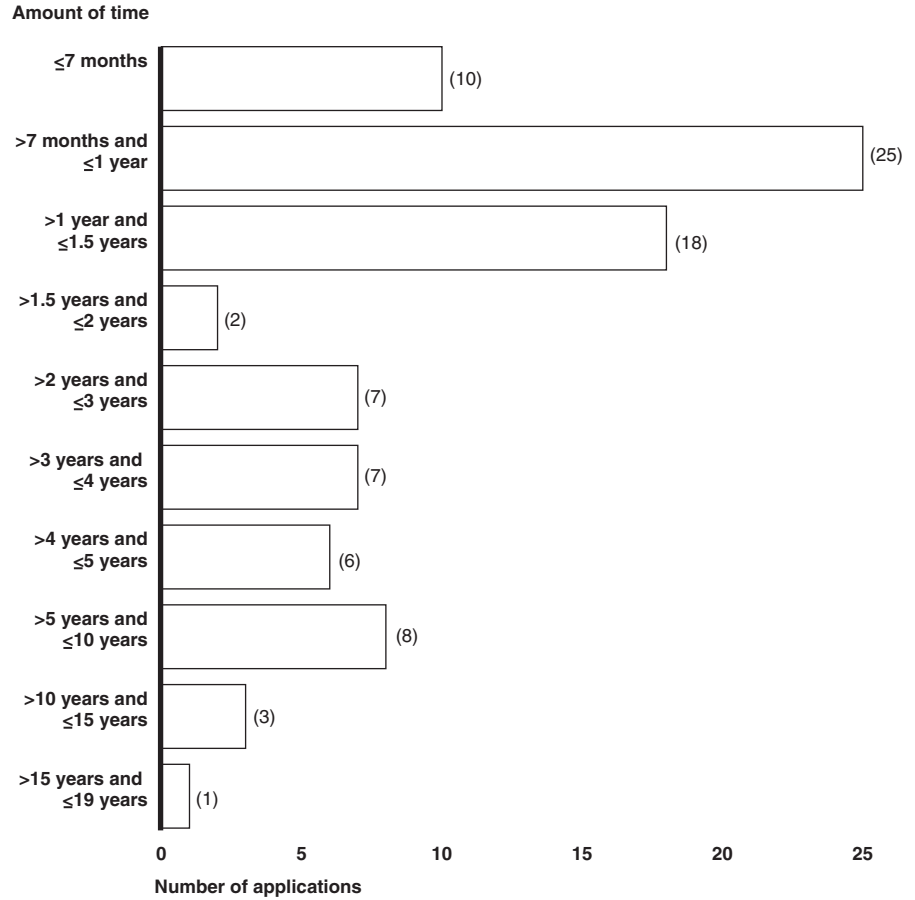
**Some Applications with Decisions in Fiscal Year 2005 Were Decided in a Timely Manner, While Others Took an Exceedingly Long Time**

While the current land in trust regulations do not provide a time frame for BIA's review of land in trust applications, BIA is considering revisions to the regulations that would establish a time frame of 120 business days, or about 6 months, for BIA to issue a decision once a complete application has been assembled. For the 87 applications with decisions in fiscal year 2005, the median length of time from submission of an application to a BIA decision was 1.2 years, twice as long as the proposed time frame.<sup>23</sup> Using the time frame under consideration as a guide, and allowing 30 days for state and local governments to provide comments, we determined that at least 10 of the 87 applications we reviewed were processed in a timely manner. Additional applications may have been decided in a timely manner, but the files we reviewed did not clearly document the date when an application was complete. Figure 2 shows the amount of time BIA took to process applications with decisions in fiscal year 2005.

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<sup>23</sup>Median length of time is used in this instance due to a substantially wide range of processing times that skew the average. For the 87 applications with decisions in fiscal year 2005, 86 were on-reservation applications, and 1 was an off-reservation application. The off-reservation application was cleared by BIA Central Office on September 20, 2002.

**Figure 2: Processing Times for Land in Trust Applications with Decisions in Fiscal Year 2005**



Source: GAO analysis of BIA land in trust applications decided in fiscal year 2005.

Table 2 shows the processing times for the 87 applications we reviewed by region. As the table shows, the shortest processing time—58 days—occurred in the Midwest Region, while the longest processing time—almost 19 years—occurred in the Pacific Region. (App. III provides additional details on the 87 land in trust applications with decisions in fiscal year 2005.)

**Table 2: Processing Times for Land in Trust Applications with Decisions in Fiscal Year 2005 by BIA Region**

Processing time in years				
Region	Number of applications processed	Shortest application processing time	Longest application processing time	Median processing time
Eastern Oklahoma	14	0.5	2.8	1.0
Eastern	7	1.2	1.5	1.2
Midwest	16	0.2	12.8	3.4
Northwest	11	0.4	8.2	6.1
Pacific	9	0.6	18.7	1.5
Rocky Mountain	20	0.6	1.3	1.0
Southern Plains	10	1.3	14.0	3.5
<b>Total</b>	<b>87</b>	<b>0.2</b>	<b>18.7</b>	<b>1.2</b>

Source: GAO analysis of land in trust applications with decisions in fiscal year 2005.

According to our analysis of BIA files, processing times for applications with decisions in fiscal year 2005 were lengthened by inaction on the part of either the applicant or BIA. For example, according to BIA files, the Pacific Region application that took almost 19 years to process was submitted in 1986 by an individual tribal member to place 5.42 acres of land in trust. BIA found that the application lacked required documents and, therefore, could not process the application until it received these documents. The applicant did not provide the necessary documents until 1991. While the application was deemed complete in 1991, according to our file review, the regional office did not issue a notice to interested parties of the proposed trust acquisition until 2002. However, in the same year, the BIA Pacific Regional Director ordered processing stopped on the application because the applicant's tribal affiliation was uncertain. BIA and the applicant worked to resolve this issue, and BIA approved the application on February 25, 2005, almost 19 years after its submission. While the BIA file stated clearly that processing on the file was halted initially due to inaction on the part of the applicant, it did not provide an explanation regarding why the application was not acted upon by the BIA from 1991 to 2002. In other cases processed at the Horton Agency Office in Kansas, our file review showed several applications were closed by the agency in 2005 because of inaction on the part of the tribe; one of these applications had been submitted in 1991. BIA officials also noted that

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access to the Internet would increase their ability to process land in trust applications in a timely manner.<sup>24</sup>

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## Off-Reservation Applications Have Not Been Processed in a Timely Manner

Off-reservation applications awaiting review by BIA's Central Office have not been processed in a timely manner. Again, BIA is considering imposing a 120-business day time frame, or about 6 months, for issuing a decision on off-reservation applications once an application is complete. According to BIA Central Office staff, there was nearly a 2-year period between December 2003 and November 2005 when no off-reservation land in trust applications were cleared by the Assistant Secretary.<sup>25</sup> On average, the 28 off-reservation applications we reviewed had been pending in the Central Office for 1.4 years by the end of fiscal year 2005—almost three times longer than the 6-month time frame under consideration. Using the time frame under consideration as a guide, and allowing 30 days for state and local comments, we found that at least 22 of the 28 off-reservation applications pending at the Central Office were not processed in a timely manner. The most recent application forwarded to the Central Office had been pending for about 1 month, while the oldest application had been pending for over 3 years.

This analysis is based solely on the time the applications were pending at the BIA Central Office and does not include the time the applications spent at a BIA agency or regional office before they were forwarded to the Central Office. In total, from the time of their initial submission at a BIA agency or regional office until the end of fiscal year 2005, these applications had been pending an average of 4.6 years. These applications originated from 17 tribes covering 1,832 acres of land in 11 states, primarily in BIA's Northwest and Southern Plains Regions. (See app. IV for more detailed information on these 28 applications.)

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<sup>24</sup>On December 5, 2001, the effect of accumulated information technology security weaknesses resulted in a Temporary Restraining Order that required that Interior immediately disconnect from the Internet all information technology systems that house or provide access to individual trust data. While most of Interior had regained Internet access by the time of our review, BIA had not. The Temporary Restraining Order was vacated by the Court of Appeals for the D.C. Circuit on July 11, 2006. See *Cobell v. Kempthorne*, No. 05-5388 (D.C. Cir. July 11, 2006).

<sup>25</sup>From November 2005 until June 2006, two applications were cleared by the Central Office.

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Turnover in the position of the Assistant Secretary for Indian Affairs may have contributed to the length of time involved in processing off-reservation applications. The current Central Office review process was instituted in February 2002. According to the February 2002 memorandum instituting this process, “[e]very effort will be made to complete the overview within one week.” The Assistant Secretary who instituted this process held the position for about 1-1/2 years before retiring in December 2002. Since then, the position of Assistant Secretary of Indian Affairs has been held by three different people: an acting Assistant Secretary; a permanent Assistant Secretary; and, since February 2005, an Associate Deputy Secretary at Interior has served as the Acting Assistant Secretary.

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### It Appears that Appeals Have Not Been Resolved in a Timely Manner by BIA Regional Directors

Federal regulations require regional directors to “render written decisions in all cases appealed to them within 60 days after all time for pleadings (including all extensions granted) have expired.”<sup>26</sup> According to our review of 34 appealed decisions awaiting resolution by a BIA regional director, the average time pending from the time of the decision to the end of fiscal year 2005 was 2.8 years. While our file review did not allow us to determine at what point “all time for pleadings” had expired in each case, it appears, based on the lengthy time period, that none of the 34 appealed decisions awaiting a regional director’s ruling were resolved in a timely manner. However, in cases in which a ruling has not been rendered by a regional director within the required time frame, the regulations provide a process to appeal the inaction of the regional director to the IBIA.<sup>27</sup> Under these circumstances, the IBIA has stated that it could use its authority to order a Regional Director to issue a final decision on a tribe’s trust acquisition request.<sup>28</sup> Typically, however, the IBIA has instead ordered the regional director to provide a status report on the requested action. If satisfied that the matter is being addressed or has already been resolved by the regional director, the IBIA has dismissed the appeal.<sup>29</sup> Most of the appealed decisions we reviewed originated from BIA’s Southern Plains Region. (App. V provides additional details on these applications.)

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<sup>26</sup>25 C.F.R. § 2.19.

<sup>27</sup>25 C.F.R. § 2.8.

<sup>28</sup>*Paiute Indian Tribe of Utah v. Western Regional Director*, BIA, 38 IBIA 128, 129 (2002).

<sup>29</sup>*Paiute Indian Tribe of Utah v. Western Regional Director*, BIA, 40 IBIA 163, 164 (2004); *Paiute Indian Tribe of Utah v. Western Regional Director*, BIA, 40 IBIA 141, 142 (2004).

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When applications are not processed in a timely manner because of delays by BIA or the applicant, information in the applications can become outdated, particularly environmental assessments, comments from state and local governments, and tax data. When this happens, BIA must devote additional resources to obtain updated information and reprocess the applications—an inefficient and time-consuming process for BIA, Indian applicants, and state and local governments. The applicants also bear a direct financial cost because they continue to pay property taxes on the land while BIA is processing their applications. The applicant may face additional financial burdens due to processing delays, such as the opportunity costs associated with delayed economic development activities.

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## **Citing Taxes and Jurisdictional Issues, State and Local Governments Opposed Applications in Fiscal Year 2005**

When opposing land in trust applications or appealing decisions, state and local governments principally cited concerns about lost tax revenues and jurisdictional issues. In commenting on applications prior to decisions made in fiscal year 2005, state and local governments opposed 12 of 87 applications, or about 14 percent, mainly citing concerns about lost tax revenues and jurisdictional issues. State and local governments have also opposed some applications through administrative appeals, again primarily citing lost tax revenues and jurisdictional issues. As of the end of fiscal year 2005, a total of 45 decisions were pending review on appeal, including 5 decisions from fiscal year 2005. Although we found little opposition to the applications with decisions in fiscal year 2005, some state and local governments we contacted said (1) they did not have access to sufficient information about the land in trust applications and (2) the 30-day comment period was not sufficient time in which to comment.

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## **Citing Primarily Taxes and Jurisdictional Issues, State and Local Governments Opposed Only a Small Percentage of the Applications with Decisions in Fiscal Year 2005**

For the 87 land in trust applications with decisions in fiscal year 2005, state and local governments opposed or raised concerns—primarily involving taxes and jurisdictional issues—on 12 applications prior to BIA’s decision. For example, the state of Kansas opposed the Kickapoo tribe’s application for placing about 75 acres in trust because trust status would cause a loss of tax revenue, which amounted to \$172 for the county in 2000. Despite the tax loss, Kansas said its local government would still bear the cost of continuing to provide services, such as road maintenance and fire protection. The county of jurisdiction—Brown County, Kansas—opposed trust status, saying “...further erosion of the real estate base is always a concern.” The tribe responded in a letter to BIA in 2001, saying it disagreed

with the state's arguments. In April 2005, the Superintendent of BIA's Horton Agency in the Southern Plains Region closed the application because the tribe did not respond to BIA's requests for additional information for several years.

BIA generally reviewed the comments it received on pending applications and considered them in its decision-making process. Table 3 describes the Indian tribe, the acreage, proposed use of land to be taken in trust, and the tax losses state and local governments expressed concern about prior to BIA's decision on 12 applications.

**Table 3: Applications with State or Local Government Opposition Prior to BIA's Decision in Fiscal Year 2005**

Current year dollars

<b>Applicant</b>	<b>County and state</b>	<b>Acreage and proposed use</b>	<b>Date comments provided</b>	<b>Annual tax amount</b>
<b>Approved and not appealed</b>				
Confederated Tribes of the Colville Reservation, Washington	Okanogan County, Washington	40 acres for undeveloped land	Nov. 2004	\$221
Misccosukee Tribe of Indians, Florida	Miami-Dade County, Florida	180 acres to increase land base	Feb. 2004	7,958
Upper Sioux Community, Minnesota	Yellow Medicine County, Minnesota	2 acres for housing and governmental or institutional use	June 2002	104
<b>Approved but subsequently appealed</b>				
Picayune Rancheria of the Chukchansi Indians <sup>a</sup>	Madera County, California	111.7 acres for parking lot, road, and undeveloped land	Dec. 2001	\$11,743
Prairie Band of Potawatomi Nation, Kansas <sup>b</sup>	Jackson County, Kansas	40 acres for agriculture	Oct. 2001	63
Prairie Band of Potawatomi Nation, Kansas <sup>b</sup>	Jackson County, Kansas	80 acres for agriculture	Sept. 2000	161
Prairie Band of Potawatomi Nation, Kansas <sup>a</sup>	Jackson County, Kansas	160 acres for agriculture	Dec. 2002	312
Prairie Band of Potawatomi Nation, Kansas <sup>b</sup>	Jackson County, Kansas	160 acres for agriculture	Oct. 2001	909
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California <sup>a, c</sup>	Santa Barbara County, California	6.9 acres for a cultural center, museum, park, and retail building	June 2001	43,240
Stockbridge Munsee Community, Wisconsin <sup>a</sup>	Shawano County, Wisconsin	404 acres for government facilities, housing, forestry and restoration of land base	Mar. 2003	11,387

(Continued From Previous Page)

Current year dollars

Applicant	County and state	Acreage and proposed use	Date comments provided	Annual tax amount
<b>Denied (closed due to inactivity)</b>				
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Brown County, Kansas	160 acres for agriculture	May 2001	\$793
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Brown County, Kansas	75.6 acres for agriculture	May 2001	172

Source: GAO analysis of land in trust applications with decisions in fiscal year 2005.

Note: The county, the state, or both entities were opposed. Also, two additional land in trust applications from the Ho-Chunk Nation involving land in Jackson County, Wisconsin, had initial opposition, but when the BIA Superintendent made a decision he believed there were no jurisdictional and potential conflicts of the land use that would arise. These two applications are not included in the table because the opposition was eliminated prior to BIA's decision.

<sup>a</sup>The appeals of four decisions were awaiting resolution as of September 30, 2005. Two of the decisions were appealed to BIA regional directors, and the other two decisions on applications by the Picayune Rancheria of the Chukchansi Indians of California and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation were appealed to the IBIA.

<sup>b</sup>BIA officials continued to process three applications after Jackson County appealed the decisions of the Horton Superintendent. An agency official said BIA continued to process the approved applications because the county incorrectly filed the appeals with the Horton Agency rather than the Southern Plains Region.

<sup>c</sup>The decision on the application by the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation was appealed by citizen groups. The IBIA ruled that the groups did not have standing to appeal the decision. *Santa Ynez Valley Concerned Citizens v. Pacific Regional Director, BIA*, 42 IBIA 189 (2006).

As table 3 shows, while most lost annual tax revenue was less than \$1,000, Santa Barbara County, California, opposed the Santa Ynez Band of Chumash Mission Indians' application for 6.9 acres to be placed in trust because of a tax loss of about \$43,000 per year. Before the decision, the county held a public hearing in June 2004 on the environmental assessment for the proposed trust acquisition. More than 50 speakers commented, mostly in opposition to the application. BIA and county officials held a joint meeting to discuss the issues the county raised. BIA ultimately approved the trust application in January 2005, and the county did not oppose the decision at that time. However, several citizen groups appealed the decision, and in August 2005 the county filed a motion to intervene or alternatively file an amicus brief. The IBIA dismissed the motion for



intervention as untimely and dismissed the citizens' appeals for lack of jurisdiction in February 2006.<sup>30</sup>

**State or Local Governments Have Also Cited Primarily Tax and Jurisdictional Issues When Opposing BIA Land in Trust Decisions through Administrative Appeals**

As of September 30, 2005, 45 appeals were pending either before BIA regional directors or the IBIA. All but two appeals involved decisions approving land in trust applications, and all but three appeals were filed by state or local governments.<sup>31</sup> These appeals echo the tax, jurisdiction, and other types of issues that were raised before BIA's decision. Most of the pending appeals were made by a state or local government that frequently or routinely appeal BIA's decisions on land in trust applications. BIA's Southern Plains Region had the highest number of appeals that were pending as of September 30, 2005. (See table 4.) The appeals in the Southern Plains Region generally involve the state of Kansas and Jackson County, Kansas.

**Table 4: Number of Appeals Pending, by Region, as of September 30, 2005**

<b>BIA region</b>	<b>Appeals awaiting rulings by BIA regional directors</b>	<b>Appeals awaiting rulings by the IBIA</b>	<b>Total</b>
Eastern Oklahoma	0	1	<b>1</b>
Midwest	6	4 <sup>a</sup>	<b>10</b>
Northwest	0	1	<b>1</b>
Pacific	0	2 <sup>b</sup>	<b>2</b>
Southern Plains	28 <sup>c</sup>	1	<b>29</b>
Western	0	2	<b>2</b>
<b>Total</b>	<b>34</b>	<b>11</b>	<b>45</b>

Source: GAO analysis of appeals pending at the end of fiscal year 2005.

Note: The Eastern, Great Plains, Navajo, Rocky Mountain, and Southwest Regions did not have appeals pending as of September 30, 2005.

<sup>30</sup>42 IBIA 189, 205 (2006).

<sup>31</sup>The Kickapoo Tribe of Indians appealed to the IBIA the Southern Plains Regional Director's decision to consider their application discretionary rather than mandatory. One individual appealed to the IBIA when the Eastern Oklahoma Regional Director denied his application. In addition to these two appeals that were not generated by state or local governments, a third appeal was filed by citizen groups regarding an approval by the Pacific Regional Director.

<sup>a</sup>In March 2006, the IBIA affirmed the Midwest Regional Director's decision to take the land in trust in three of these cases. *Cass County, Minnesota v. Midwest Regional Director, BIA*, 42 IBIA 243 (2006). The IBIA consolidated five appeals on three decisions into one ruling.

<sup>b</sup>In February 2006, the IBIA dismissed the appeal of citizen groups seeking a review of the Pacific Regional Director's decision to take land in trust in one case. 42 IBIA 189 (2006).

<sup>c</sup>The appeals in the Southern Plains Region generally involve the state of Kansas and Jackson County, Kansas.

See appendix V for detailed information on the 34 appeals awaiting resolution by a BIA regional director and table 5 for detailed information on the 11 appeals awaiting resolution by the IBIA.

**Table 5: Administrative Appeals of BIA Land in Trust Decisions Awaiting Resolution by the IBIA as of September 30, 2005**

Original land in trust applicant	Appellant(s)	Acres and proposed use	IBIA docket number(s)
Ho-Chunk Nation of Wisconsin	Sauk County, Wisconsin	5 acres for continued use as housing and community center	IBIA 05-053-A
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	74.81 acres for agriculture and economic development	IBIA 04-098-A
Individual member of the Seminole Nation of Oklahoma	The applicant, an individual Indian	139.73 acres; use not indicated	IBIA 06-002-A
Minnesota Chippewa Tribe (Leech Lake Band), Minnesota <sup>a</sup>	Cass County and City of Cass Lake, Minnesota	0.016 acres for housing	IBIA 04-120-A IBIA 04-128-A
Minnesota Chippewa Tribe (Leech Lake Band), Minnesota <sup>a</sup>	Cass County, Minnesota	0.96 acres for an office for reservation women's services	IBIA 04-121-A
Minnesota Chippewa Tribe (Leech Lake Band), Minnesota <sup>a</sup>	Cass County and City of Cass Lake, Minnesota	0.02 acres for a tribal health office	IBIA 04-122-A IBIA 04-125-A
Pascua Yaqui Tribe of Arizona	Arizona State Land Department	436.18 acres for a government offices, health services, education complex, and a park	IBIA 03-067-A
Picayune Rancheria of Chukchansi Indians of California	Madera County Board of Supervisors and the Madera County Tax Assessor, California	111.7 acres for parking lot, road, and undeveloped land	IBIA 05-029-A
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California <sup>b</sup>	Santa Ynez Concerned Citizens, Preservation of Los Olivos, Preservation of Santa Ynez, and Women's Environmental Watch of the Santa Ynez Valley	6.9 acres for a cultural center, museum, park and retail building	IBIA 05-50-A
Swinomish Indians of the Swinomish Reservation, Washington	Skagit County, Washington	350 acres for a marina and mixed use commercial activity	IBIA 02-102-A
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona	Arizona State Land Department, Arizona Department of Water Resources, Salt River Project, and Eric Eberhard, Arizona	1,168.9 acres for agriculture, housing, and commercial use	IBIA 04-133-A IBIA 04-136-A IBIA 04-134-A IBIA 04-135-A

Source: GAO analysis of appeals of BIA land in trust decisions.

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<sup>a</sup>The decisions on the three applications by the Minnesota Chippewa Tribe (Leech Lake Band) resulted in five appeals, which were consolidated by the IBIA. The IBIA affirmed the Midwest Regional Director's approval of the applications. 42 IBIA 243 (2006).

<sup>b</sup>The decision on the application by the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation was appealed by citizen groups. The IBIA ruled that the groups did not have standing to appeal the decision. 42 IBIA 189 (2006).

The following example illustrates the types of concerns raised on appeal. In 2002, the state of Kansas appealed a decision by the Horton Agency Superintendent to allow 7.85 acres in trust on the Sac & Fox reservation. The state argued that BIA's decision (1) reduces the tax rolls by \$492; (2) violates the Tenth Amendment to the Constitution, since states surrendered many powers to the federal government but retained residual sovereignty; and (3) violates the Act for Admission of Kansas into the United States because it would compel the state to relinquish its sovereign jurisdiction over the land.<sup>32</sup> The tribe stated that (1) Brown County, the recipient of the \$492 per year in taxes, did not file an appeal and the amount is insubstantial; (2) the Regional Director, like the IBIA, lacked jurisdiction to declare federal statutes unconstitutional, and this issue has been addressed in several other appeals to the IBIA; and (3) Kansas had accepted admission into the United States on the condition that the federal government retained its power to regulate Indian affairs; therefore, BIA did not infringe on the state's sovereignty. The Southern Plains Regional Director was still considering the appeal as of June 8, 2006.

Similar arguments about loss of tax revenues and jurisdictional issues have been made in appeals before the IBIA. For example, Cass County and the City of Cass Lake, Minnesota, appealed three decisions of the Minnesota Agency Superintendent to place 1.28 acres of land of the Minnesota Chippewa Tribe (Leech Lake Band) in trust in 2001. The land was to be used for residential housing, women's services programs, and a tribal health office. The county and the city said the loss of the land would have a

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<sup>32</sup>Federal courts have regularly upheld Interior's implementation of the land in trust process in the face of constitutional challenges. For instance, the First Circuit recently rejected the contention that land in trust authority under the Indian Reorganization Act is an unconstitutional delegation of congressional power, that it violates state sovereignty under the Tenth Amendment, the Enclave Clause, and the Admissions Clause, and that it exceeds congressional authority under the Indian Commerce Clause. *Carciari v. Norton*, 423 F.3d 45 (1<sup>st</sup> Cir. 2005). The Eighth Circuit reached a contrary conclusion in a 1995 decision which found that the Indian Reorganization Act land in trust provision was an unconstitutional delegation, but that decision was vacated by the Supreme Court. *South Dakota v. United States Dep't of the Interior*, 69 F.3d 878, 881-85 (8<sup>th</sup> Cir. 1995), vacated by 519 U.S. 919 (1996). Ten years later, the Eighth Circuit explicitly rejected the rationale of its 1995 decision. *South Dakota v. U.S. Dep't of the Interior*, 423 F.3d 790 (8<sup>th</sup> Cir. 2005).

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negative impact on the tax rolls and that the land might not be within the reservation boundaries; consequently, the applications would be subject to additional criteria. When the matter was appealed to the Regional Director, he concluded that the tax loss of about \$5,000 annually was not significant and that the tribe's services to the entire community, including non-Indians, reduced the financial burden on local governments.<sup>33</sup>

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### State and Local Governments Want More Information about Applications as Early as Possible and More Time to Comment

Some state and local government officials want more information about applications early in the process, and they want more time to comment. In a July 2005 paper, the National Governors Association stated that any new regulations should include, among other things, a requirement that states and local governments be able to review tribal submissions and evidence, just as tribes are able to review state submissions.<sup>34</sup> The governors also said that language in the regulations should ensure that states have the right to provide data challenging assertions made in the proposals to take land in trust. According to some state and county officials, the current process does not work well in providing them with information and an opportunity to comment. During a meeting with staff of various state governors, arranged by the National Governors Association, an attorney with the South Dakota Office of the Attorney General told us that while the governor's office receives notification of land in trust applications, the state does not have access to a tribe's application except through a Freedom of Information Act request, which often takes too long. He said BIA does not consistently allow for extensions in these cases. In a meeting with county officials arranged by the National Association of Counties, a representative from a New York county said that BIA's process was unfamiliar, so the state, the two counties involved, and other local governments paid for extra legal, economic, and environmental consultants. However, he said it was not possible for these government entities to respond adequately to the initial BIA notice within 30 days. BIA provided an extension of time for the county to respond.

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<sup>33</sup>These three appeals were pending as of September 30, 2005. In March 2006, the IBIA ruled that the Regional Director did not abuse his discretion in arriving at this conclusion. Further, the IBIA concluded that the Regional Director's position that these were on-reservation acquisitions was a sufficient response. 42 IBIA 243 (2006).

<sup>34</sup>National Governors Association, *The Role of States, the Federal Government, and Indian Tribal Governments with Respect to Indian Gaming and Taxation Issues*, EDC-06 (Washington, D.C.: July 20, 2005).

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Similarly, some state and local governments raised the following access and timing issues in comments on the applications that we reviewed:

- In 1999, Cass County told the Minnesota Agency Superintendent that further documentation on the application from the Minnesota Chippewa Tribe (Leech Lake Band) was needed for the county to provide specific comments other than the amount of taxes. The county asked for more documents under the Freedom of Information Act and for an additional 60 days to comment following receipt of the documents. BIA provided the documents and more time.
- In June 2001, Santa Barbara County, California, responded to a notice of an application that, without information regarding how the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation intended to regulate activity on trust land, the county could only speculate that jurisdictional and land use conflicts would arise.
- In December 2002, an assistant legal counsel to the governor of Kansas wrote to the BIA representative in the Horton, Kansas, field office that to effectively represent the state, it was necessary to have each tribe's resolution plan that accompanies the initial application for land to be taken into trust.
- Also, in a January 2005 letter, the General Counsel to the Governor of Minnesota told BIA that it could not fully comment on an application by the Minnesota Chippewa Tribe (Grand Portage Band) without an opportunity to review the proposed purpose for conversion and potential uses.

In the revisions to the regulations, Interior is considering providing some additional information to state and local governments and lengthening the period for comments. One provision under consideration would require that a tribe complete a form called a "request for trust acquisition." BIA would provide the form, along with a description of the land and the proposed use of the land, to the state and local governments having jurisdiction. Another provision would lengthen the time period for state and local governments to comment after BIA provided notice of an application. The time periods would change from 30 days to 60 days for on-reservation applications and to 90 days for off-reservation applications.

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## BIA's Land in Trust Database Is Incomplete and Inaccurate, and BIA is Planning to Redesign It

During the course of our review, we found the data in BIA's land in trust database, which was implemented agencywide in August 2004, were frequently incomplete and inaccurate.<sup>35</sup> As a result, the data are of questionable value to Interior and BIA management, and we did not rely on it. BIA has already recognized some shortcomings and initiated an effort to re-evaluate and redesign the database, as necessary. The database was hastily developed and deployed without defining and documenting user requirements throughout the agency and clearly defining data fields. Staff with Interior's Office of Information Development said a contractor developed the database in about a month to address the information needs of the Deputy Assistant Secretary for Indian Affairs in the summer of 2004. In a June 2005 memo, almost a year after the system was put in place, BIA's Deputy Director for Trust Services noted that only 4 of the possible 11 regions had entered any data into the database, and the memo directed each BIA regional and agency office to enter all of its land in trust applications into the database within 5 days. By the end of fiscal year 2005, the database contained more than 1,000 applications.

We found that not all of the applications had been entered into the database, and the status of an application, as either approved, denied, or pending, was frequently incorrect in the database. Specifically, we found the following issues:

- *Not all of the applications had been entered into the database.* Twenty-nine of the 87 applications with decisions in fiscal year 2005, or 33 percent, were not in the database. About half of these applications not in the database, 13, were from the Eastern Oklahoma Region's Chickasaw Agency. No one at the office had access to the database when we initially inquired and, therefore, they could not enter information. Also 9 applications at the Pacific Region were not in the database, and no one there had access when we inquired. We also found instances at the Midwest and Southwest Regions where some pending applications had not been entered into the database. The high rate of applications that had not been entered into the database is one of the factors that led us to conclude that database information was unreliable.
- *Status of applications was frequently incorrect.* During the course of our review, we found that 30 of the 41 applications identified as denied

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<sup>35</sup>Interior refers to the database as the Fee to Trust Electronic Checklist.

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in the database were miscoded, an error rate of almost 75 percent. Most of the remaining “denied” applications were applications that were closed by realty staff with the Southern Plains Region’s Horton Agency because the tribal applicants had not responded for more than a year to BIA’s requests for the additional information needed to process the applications. The applications were not processed and denied based on the criteria in the regulations; rather, they were closed due to inactivity. However, as currently designed, there is no category in the database to show this type of resolution other than denied. In addition, we found that some offices interpreted “approved” differently. For example, two agency offices in BIA’s Rocky Mountain Region used an application form that required the agency superintendent to approve the application for filing and processing. As defined by these offices, some applications being processed had been “approved,” but they were actually pending applications. Other BIA offices considered an application approved when the superintendent actually approved taking the land in trust. While some of the problems we encountered with the status of the applications in the database were simply data entry errors, others were the result of systematic problems, such as the lack of common definitions for key terms.

Furthermore, at the time of our review, regional and agency realty staff did not use the new database as the primary tool for managing their applications. According to BIA regional and agency realty staff, they do not use or do not like to use the database because it is cumbersome, slow, and does not meet their needs. They continue to use their office-specific spreadsheets to manage and track their applications. These office spreadsheets were one of the tools we used to try and verify the information in the database. However, trying to reconcile the office spreadsheets with the database was difficult because the office spreadsheets usually identified applications only by parcel name, whereas the database identified applications with different unique identification numbers by region, agency, and tribe.

We believe that data need to be accurate, valid, complete, consistent, and timely enough to document performance, support decision making, and respond to the needs of internal and external stakeholders. According to Interior officials, the database has been used to respond to questions about the program from various levels of management and from Congress. Further, data quality depends on how readily users can access data, aided by clear data definitions and user-friendly software. When significant data limitations exist, it is important to make stakeholders and Congress aware

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of the limitations so they can judge the credibility of the data for their use. During the course of our review, BIA recognized that the database has limitations, and it asked Interior's Office of Information Development to improve the database. In April 2006, the Deputy Director for Information Development conducted a 3-day workshop for program managers on BIA's land in trust database. The session served as a basis for making improvements and, in May 2006, the office was preparing a plan to (1) involve regional and headquarters officials in changing the database, (2) better define terms and fields, and (3) increase the number of fields in the database. A properly designed and implemented database with accurate data would provide BIA with important information to help better manage the land in trust process.

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## Conclusions

The land in trust regulations were intended to provide a clear, uniform, and objective approach for Interior to evaluate land in trust applications. However, the regulations provide wide discretion to the decision maker because the criteria are not specific, and BIA has not provided clear guidelines for applying them. Given the wide discretion that exists and the increased scrutiny that the land in trust process has come under with the growth of Indian gaming, it is important that the process be as open and transparent as possible. Clearly documenting each decision and providing that information to state and local governments is a critical component of having an open and transparent process. However, contrary to BIA policy and admonishments from the IBIA, we found one BIA office that did not document its consideration of the criteria in the regulations. While this office only accounted for 2 of the 87 decisions in fiscal year 2005, it omitted documentation of the most important part of the process. State and local governments need information on how BIA reaches its decisions to effectively execute their role in the process, including holding the federal government accountable for its decisions and having adequate information to decide whether or not to appeal a decision if it believes that the federal government did not adequately follow the process.

A lack of specific time frames for BIA to make decisions on land in trust applications results in a lack of predictability about the process and contributes to the perception, on the part of Indian applicants and state and local governments, that the process is not open and transparent. Lengthy application processing times can place a burden on BIA, Indian applicants, and state and local governments. If applications are not processed in a timely manner because of delays by BIA or the applicant, information in the applications can become outdated, particularly environmental



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assessments, comments from state and local governments, and tax data. When this happens, BIA must devote additional resources to obtaining updated information and reprocessing the applications—an inefficient and time-consuming process for BIA, Indian applicants, and state and local governments. To the extent that BIA is the cause of some of these delays, imposing specific time frames on the decision-making process should improve the processing of the land in trust applications. In addition, some state and local governments have been unable to adequately participate in the process because they did not have enough information on the pending applications or the necessary length of time to provide substantive comments. Interior is considering changes to the regulations that would address these issues.

Finally, federal agencies need data that are accurate, valid, complete, consistent, and timely enough to document performance, support decision making, and respond to the needs of internal and external stakeholders. During the course of our review, BIA recognized the shortcomings with the data in its land in trust database and initiated a process to improve the database. A properly designed and implemented database with accurate data would provide important information to (1) BIA to help it better manage the land in trust process and (2) other stakeholders, particularly Congress, to help carry out oversight of the land in trust process.

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## Recommendations for Executive Action

To improve timeliness and transparency and ensure better management of BIA's land in trust process, we recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to take the following three actions:

- reinforce the requirement that all decisions be fully documented;
- move forward with adopting revisions to the land in trust regulations that include (1) specific time frames for BIA to make a decision once an application is complete and (2) guidelines for providing state and local governments more information on the applications and a longer period of time to provide meaningful comments on the applications; and
- institute internal controls to help ensure the accuracy and reliability of the data in the land in trust database, as part of the redesign of the existing system.

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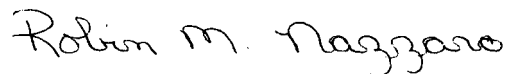
## Agency Comments

Interior's Associate Deputy Secretary commented on a draft of this report in a letter dated July 12, 2006 (see app. VI). In general, Interior agreed with our findings, conclusions, and recommendations. The Associate Deputy Secretary commented that BIA is working to address the recommendations and that a corrective action plan will be developed and implemented in response to the report. Specifically, BIA is taking steps to finalize the regulations under consideration. After the regulations are completed, BIA will develop a handbook to ensure consistent application of the regulations. The handbook will also include specific internal control procedures to ensure all decisions are properly and completely documented, as well as entered into the land in trust database accurately and in a timely manner.

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We are sending copies of this report to interested congressional committees, the Secretary of the Interior, the Assistant Secretary for Indian Affairs, BIA regional and agency offices we visited, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [nazzaror@gao.gov](mailto:nazzaror@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VII.



Robin M. Nazzaro  
Director, Natural Resources and Environment

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# Objectives, Scope, and Methodology

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The fiscal year 2006 House Appropriations Committee Report for the Department of the Interior's (Interior) appropriation bill directed GAO to study the Bureau of Indian Affairs (BIA) procedures and practices in implementing the land in trust regulations.<sup>1</sup> In response to this direction and subsequent discussions with congressional staff, we (1) assessed the extent to which BIA's processing of land in trust applications followed its regulations, (2) determined the extent to which applications were processed in a timely manner, and (3) identified any state and local government concerns about land in trust applications and how they were addressed in BIA's decision-making process.

For all of the objectives, we reviewed applicable laws, regulations, and land in trust applications. We reviewed applications at six BIA regional offices—Eastern, Midwest, Northwest, Pacific, Southern Plains, and Southwest—and eight BIA agency offices—Blackfeet (Browning, Montana), Chickasaw (Ada, Oklahoma), Great Lakes (Ashland, Wisconsin), Horton (Horton, Kansas), Minnesota (Bemidji, Minnesota), Siletz (Siletz, Oregon), Warm Springs (Warm Springs, Oregon), and Wind River (Fort Washakie, Wyoming). We selected those offices because our general intent was to visit all BIA offices with 10 or more land in trust applications described as approved or denied in BIA's land in trust database. However, interviews with realty officials at these offices and at the Western, Great Plains, Navajo, and Rocky Mountain Regions and our examination of documents they provided led us to conclude that the database was frequently incomplete and inaccurate. During the course of our work, we found many examples of inaccuracies in the database that showed data were missing, incorrectly described, or inconsistently reported. Therefore, our scope was limited to the groups of applications in which we had greater confidence that we had obtained all of the applications. We examined (1) 87 discretionary nongaming land in trust applications with decisions in fiscal year 2005, (2) 28 off-reservation applications awaiting comments from the Office of the Assistant Secretary for Indian Affairs, (3) 34 appealed decisions pending before BIA regional directors at the end of fiscal year 2005, and (4) 11 appealed decisions pending before the Interior Board of Indian Appeals (IBIA) at the end of fiscal year 2005. In an effort to collect all of the applications in these categories, we relied on interviews with BIA realty officials in the relevant offices, examination of their localized spreadsheets for tracking applications, and some comparisons with other BIA databases. To identify the pending appeals at the IBIA, we relied on

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<sup>1</sup>H. R. Rep. No. 109-80, at 68 (2005).

these methods and the selections provided by the Chief Judge and an examination of the IBIA's informal log.

We collected 67 of the 87 discretionary nongaming land in trust applications with decisions in fiscal year 2005, or 77 percent, during our site visits. From telephone discussions with realty staff, we identified the remaining relevant applications at five agencies—Colville (Colville, Washington), Fort Peck (Fort Peck, Montana), Michigan (Sault Ste. Marie, Michigan), Southern California (Riverside, California), and Puget Sound (Everett, Washington). Staff at locations we did not visit made copies of an additional 18 applications and mailed them to us. We contacted realty officials at the Navajo Region and the Great Plains Region, including its agencies—Rosebud (Rosebud, South Dakota), Lower Brule (Lower Brule, South Dakota) and Pine Ridge (Pine Ridge, South Dakota) and verified that they had no applications with decisions in fiscal year 2005. In addition, we obtained applications that were appealed to BIA regional directors and pending in fiscal year 2005 based on discussions with realty officials in the various field offices and regions and from examining their files. We used a similar method to identify and collect applications appealed to the IBIA that were pending at the end of fiscal year 2005. Also, we interviewed the Chief Judge of the IBIA to identify pending applications; he provided copies of relevant applications. In doing so, we obtained information on the two remaining applications with BIA decisions in fiscal year 2005.

Besides interviews with BIA and Interior officials, we obtained views from various interested parties including representatives of the National Governors Association, the National Association of Counties, National Congress of American Indians, and several individual tribes. The National Governors Association invited their members to meet with us, and they hosted a teleconference, which included representatives from 12 states—Arkansas, California, Colorado, Connecticut, Kentucky, New Mexico, New York, Ohio, Oklahoma, South Carolina, South Dakota, and Washington. The National Association of Counties included a panel session with GAO at their annual meeting in March 2006. The six participants were from the California State Association of Counties; Kitsap County, Washington; Madison County, New York; Navajo County, Arizona; Seneca County, New York; and Ziebach County, South Dakota.

For discussions with tribal leaders, we used a nonprobability sample to select tribes that submitted applications in recent years to BIA locations we visited. We met with representatives of the 13 tribes listed in table 6.

**Table 6: Representatives of Tribes and Bands Interviewed By GAO**

<b>Tribe</b>	<b>State</b>	<b>BIA region</b>
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Montana	Rocky Mountain
Chickasaw Nation, Oklahoma	Oklahoma	Eastern Oklahoma
Ho-Chunk Nation of Wisconsin	Wisconsin	Midwest
Iowa Tribe of Kansas and Nebraska	Kansas	Southern Plains
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Kansas	Southern Plains
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin	Wisconsin	Midwest
Minnesota Chippewa Tribe, Mille Lacs Band	Minnesota	Midwest
Prairie Band of Potawatomi Nation, Kansas	Kansas	Southern Plains
Sac & Fox Nation of Missouri in Kansas and Nebraska	Kansas	Southern Plains
St. Croix Chippewa Indians of Wisconsin	Wisconsin	Midwest
Confederated Tribes of the Siletz Reservation, Oregon	Oregon	Northwest
Confederated Tribes of the Warm Springs Reservation of Oregon	Oregon	Northwest
Arapaho Tribe of the Wind River Reservation, Wyoming	Wyoming	Rocky Mountain

Source: GAO.

In addition, we obtained Interior’s and Indians’ views on the land in trust process by participating in a panel session on the subject at the Self-Governance Tribes’ Fall Conference in 2005.

For each of the objectives we took the following specific actions:

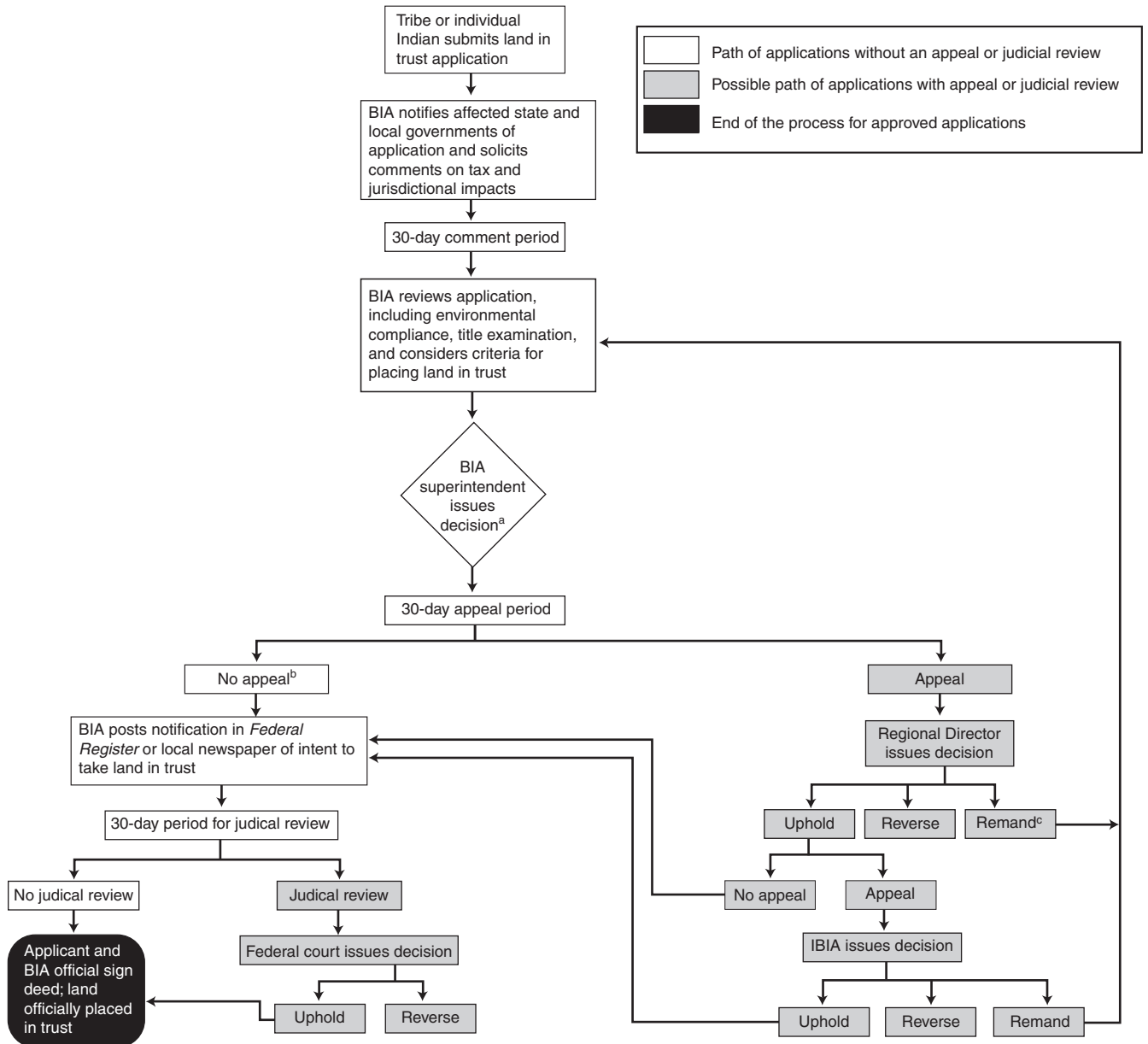
- To determine how BIA processed land in trust applications, we reviewed the 87 applications with decisions in fiscal year 2005 and compared how the applications were processed with the requirements in the regulations and departmental guidance. In addition, we interviewed Interior’s field solicitors in Minnesota and Oregon to obtain their perspectives on how BIA followed procedures during their reviews of applications.
- To determine whether applications were processed in a timely manner, we compared the processing times for (1) 87 applications with decisions in fiscal year 2005 and (2) 28 complete off-reservation applications awaiting comments from the Office of the Assistant Secretary for Indian Affairs to the 120-business days, or about 6 months, time frame BIA is considering imposing for making decisions on on- and off-reservation land in trust applications. The reported minimum, median, and

maximum processing times are for fiscal year 2005 only and might not be indicative of other years. For each of the applications with decisions in fiscal year 2005, we tried to use the date of the application as the initial point to calculate the processing time. For the few applications where we could not determine the date of the application, we used either the date of the tribal resolution requesting that the land be placed in trust or the date BIA notified state and local governments about an application. We used the decision date as the end date for calculating the processing time of these applications. For off-reservation applications, we calculated the time from the date of the draft decision to the end of fiscal year 2005. In addition, we compared the length of time that 34 appealed decisions had been awaiting resolution by BIA regional directors with the current 60-day time frame set forth in the regulations on appeals. For the appealed decisions, we calculated the time from the date of the decision to the end of fiscal year 2005. We also interviewed BIA officials and tribal representatives involved in the process to obtain their views on the time taken for processing applications.

- To determine whether state and local governments had concerns, we analyzed the content of comments made by these governments for the 87 applications with decisions in fiscal year 2005 and 45 appeals pending at the end of fiscal year 2005. Moreover, we reviewed the National Governors Association 2005 position paper on revisions to the regulations for processing land in trust, and we obtained draft revisions to the regulations from a Counselor to the Assistant Secretary for Indian Affairs at Interior.
- As described above, we decided that the BIA database was not reliable for our purposes. To determine the accuracy and reliability of the database, we compared the information in the database with other data sources, including spreadsheets used by a number of the BIA offices we visited to track land in trust applications, BIA realty reports under the Government Performance and Results Act, and BIA annual acreage reports. We also discussed the development of the current database and the proposed redesign of the database with staff in the Office of the Chief Information Officer within the Office of the Assistant Secretary for Indian Affairs.

We performed our work between August 2005 and June 2006 in accordance with generally accepted government auditing standards.

# BIA's Process for Placing Land in Trust



Source: GAO analysis of BIA Land in Trust Process.

Note: This flowchart represents BIA's land in trust process for on-reservation acquisitions. Off-reservation and gaming-related applications follow slightly different processes. The flowchart also shows some of the possible scenarios for an appeal and judicial review.

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**Appendix II**  
**BIA's Process for Placing Land in Trust**

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<sup>a</sup>This flowchart assumes that the BIA superintendent is the initial decision maker. The initial decision maker can also be the regional director or the Assistant Secretary for Indian Affairs.

<sup>b</sup>In the case of a denial by the superintendent and no appeal, the process would end here.

<sup>c</sup>This flowchart assumes all application remands are directed back to the BIA superintendent. Remands could also be directed to other decision makers, such as the regional director or Assistant Secretary for Indian Affairs.



# Processing Times for 87 Land in Trust Applications with Decisions in Fiscal Year 2005

Applicant	Parcel name	Proposed use	Acreage	Days between application date and decision date
Minnesota Chippewa Tribe, Fond du Lac Band	Zacher	Protection of cultural/historical sites, hunting, and housing	6.85	58
Minnesota Chippewa Tribe, Grand Portage Band	Schwebel	Water treatment plant	0.03	73
Minnesota Chippewa Tribe, Grand Portage Band	Kozlowski	Water treatment plant	1.70	73
Minnesota Chippewa Tribe, Grand Portage Band	Hollow Rock Resort	Water treatment plant	11.86	98
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	Auburn School	Tribal school	38.23	130
Chickasaw Nation, Oklahoma	T080	Chickasaw Nation Division of Aging expansion	0.16	186
Confederated Tribes of the Grand Ronde Community of Oregon	Eastman-Meyer	Forestry, light recreational, and cultural	9.99	192
Chickasaw Nation, Oklahoma	T075	Tribal government offices	0.44	205
Individual member of the Puyallup Tribe of the Puyallup Reservation, Washington	David Turnipseed	Housing	0.20	209
Elk Valley Rancheria, California	Elk Valley Rancheria	Tribal headquarters	3.64	210
Individual member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana	Helmer	Agriculture	800.00	224
Chickasaw Nation, Oklahoma	T079	Community center	n/a	251
Chickasaw Nation, Oklahoma	T076	Community center	0.61	254
Chickasaw Nation, Oklahoma	Ben's TV and Dee's Trim Shop	Tribal government offices	1.29	283
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana	Powell	Homestead, farmland, and pasture land	40.00	303
Chickasaw Nation, Oklahoma	T073	Tribal government offices	4.66	315
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California	Ahadpour Parcel 1 and 2	Grazing and water source	715.56	327 <sup>a</sup>
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 1	Agriculture, grazing	0.28	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 2	Agriculture, grazing	22.20	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 3	Agriculture, grazing	8.00	357

**Appendix III  
Processing Times for 87 Land in Trust  
Applications with Decisions in Fiscal Year  
2005**

*(Continued From Previous Page)*

<b>Applicant</b>	<b>Parcel name</b>	<b>Proposed use</b>	<b>Acreage</b>	<b>Days between application date and decision date</b>
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 4	Agriculture, grazing	8.50	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 5	Agriculture, grazing	30.00	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 6	Agriculture, grazing	15.60	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 7	Agriculture, grazing	19.80	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 8	Agriculture, grazing	36.43	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 9	Agriculture, grazing	10.80	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 10	Agriculture, grazing	6.90	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 11	Agriculture, grazing	2.00	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 12	Agriculture, grazing	2.00	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 13	Agriculture, grazing	2.20	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 14	Agriculture, grazing	0.70	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 15	Agriculture, grazing	23.06	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 16	Agriculture, grazing	6.00	357
Arapaho and Shoshone Tribes of the Wind River Reservation, Wyoming	Twitchell Parcel 17	Agriculture, grazing	41.80	357
Individual member of the Seminole Nation of Oklahoma	King	Housing	139.73	361
Stillaguamish Tribe of Washington	Barlond-Bank Savers	Storing seasonal plants, fisheries, and cultural uses	13.84	380
Chickasaw Nation, Oklahoma	T067	Expansion of chocolate factory	5.00	392
Chicken Ranch Rancheria of Me-Wuk Indians of California	Chicken Ranch Rancheria	Housing	1.00	409
Mashantucket Pequot Tribe of Connecticut	38 Indiantown Road	Housing	127.00	426
Mashantucket Pequot Tribe of Connecticut	28 Coachman Pike	Housing	12.23	426
Mashantucket Pequot Tribe of Connecticut	61 Route 2	Wetlands and housing	1.95	426

**Appendix III  
Processing Times for 87 Land in Trust  
Applications with Decisions in Fiscal Year  
2005**

(Continued From Previous Page)

<b>Applicant</b>	<b>Parcel name</b>	<b>Proposed use</b>	<b>Acreage</b>	<b>Days between application date and decision date</b>
Mashantucket Pequot Tribe of Connecticut	55 Coachman Pike	Housing	0.08	426
Mashantucket Pequot Tribe of Connecticut	906 Shewville Road	Housing	0.92	426
Chickasaw Nation, Oklahoma	T069	Tribal government offices	0.52	444
Chickasaw Nation, Oklahoma	T070	Tribal government offices	1.17	448
Individual member of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Merchant	Housing	n/a	475
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Hartman/Ricklefs	Agriculture	160.00	475
Miccosukee Tribe of Indians of Florida	Shopyland	Increase land base	180.00	479
Saginaw Chippewa Indian Tribe of Michigan	Van Orden	Tribal school	75.00	496
Individual member of the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California	Robert St. Marie	Housing	0.64	513
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	S. Finger	Agriculture	160.00	519
Individual member of the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California	Mathews	Housing and grazing	5.04	531
Sault Ste. Marie Tribe of Chippewa Indians of Michigan	Hesser	Increase land base	79.50	547
Mohegan Indian Tribe of Connecticut	24 Tracts in New London, Connecticut	Housing, burial, and undeveloped tracts	73.40	561 <sup>a</sup>
Chickasaw Nation, Oklahoma	T065	Convenience store, gas station, restaurant, video arcade, and 300 parking spots	9.04	580
Individual member of the Puyallup Tribe of the Puyallup Reservation, Washington	Pernelle Turnipseed	Retail	1.36	756
Chickasaw Nation, Oklahoma	T063	Expansion of chocolate factory	5.00	783
Chickasaw Nation, Oklahoma	T060	Parking lot	n/a	834
Upper Sioux Community, Minnesota	Hildahl	Housing, governmental, or institutional	2.12	942
Prairie Band of Potawatomi Nation, Kansas	Slattery	Agriculture	160.00	1,013
Chickasaw Nation, Oklahoma	Love County	Sand and gravel processing plant	83.43	1,030
Prairie Band of Potawatomi Nation, Kansas	Jungman	Agriculture	40.00	1,074

**Appendix III  
Processing Times for 87 Land in Trust  
Applications with Decisions in Fiscal Year  
2005**

*(Continued From Previous Page)*

<b>Applicant</b>	<b>Parcel name</b>	<b>Proposed use</b>	<b>Acreage</b>	<b>Days between application date and decision date</b>
Prairie Band of Potawatomi Nation, Kansas	Bausch	Agriculture	160.00	1,143 <sup>a</sup>
Picayune Rancheria of Chukchansi Indians of California	Picayune Rancheria	Parking lot, road, and undeveloped land	111.70	1,203
Saginaw Chippewa Indian Tribe of Michigan	DNR	Increase land base	2.00	1,247
Saginaw Chippewa Indian Tribe of Michigan	Froncek	Increase land base	2.00	1,247
Stockbridge Munsee Community, Wisconsin	Bartelme Township	Government facilities, housing, forestry	404.03	1,387
Sault Ste. Marie Tribe of Chippewa Indians of Michigan	Roy	Recreational	20.00	1,441
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	B. Finger	Agriculture	75.60	1,445
Ho-Chunk Nation of Wisconsin	Haga—Sand Pillow/Ballfield/100'	Housing, potential commercial development, community recreation, and green space	65.00	1,476
Ho-Chunk Nation of Wisconsin	Haga—King of Thunder/Garvin	Housing	40.00	1,476
Santa Ynez Band of Chumash Indians of the Santa Ynez Reservation, California	Santa Ynez Valley	Cultural center, museum, park, retail building	6.90	1,528
Sault Ste. Marie Tribe of Chippewa Indians of Michigan	McCann	Education and elder program facility, housing	4.16	1,532 <sup>b</sup>
Prairie Band of Potawatomi Nation, Kansas	CN Cattle Company	Agriculture	80.00	1,582
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California	Berger	Multiple rural use	1.87	1,588
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Powhattan	Unknown	150.00	1,949
Confederated Tribes of the Colville Reservation, Washington	Gustafson	Undeveloped	40.00	2,213 <sup>a</sup>
Confederated Tribes of the Colville Reservation, Washington	Terrain Tamers	Forested environment	380.00	2,363 <sup>a</sup>
Confederated Tribes of the Colville Reservation, Washington	Weitman	Meadowland environment	40.00	2,390 <sup>c</sup>
Confederated Tribes of the Colville Reservation, Washington	Thompson	Forested environment	40.00	2,514 <sup>a</sup>
Confederated Tribes of the Colville Reservation, Washington	Nespelem Bend	Fish and wildlife	516.36	2,702 <sup>c</sup>

**Appendix III  
Processing Times for 87 Land in Trust  
Applications with Decisions in Fiscal Year  
2005**

*(Continued From Previous Page)*

<b>Applicant</b>	<b>Parcel name</b>	<b>Proposed use</b>	<b>Acreage</b>	<b>Days between application date and decision date</b>
Individual member of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin	Salawater	Housing	6.92	2,995
Confederated Tribes of the Colville Reservation, Washington	Hammon	Housing	0.33	3,008 <sup>a</sup>
St. Croix Chippewa Indians of Wisconsin	Palmer	Housing	78.00	4,666
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Bechtold	Agriculture	230.00	5,036 <sup>a</sup>
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Schmidt	Unknown	199.95	5,119 <sup>a</sup>
Individual member of the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California	Rodriguez	Housing	5.42	6,808

Source: GAO analysis of BIA land in trust applications with decisions in fiscal year 2005.

<sup>a</sup>BIA's file did not contain information on the date of the application. In these cases, the date of the tribal resolution was used for calculating processing times.

<sup>b</sup>Off-reservation land in trust application processed under 25 C.F.R. §151.11.

<sup>c</sup>BIA's file did not contain information on either the date of the application or the date of the tribal resolution. In these cases, the date of the BIA's letter seeking comments from state and local governments was used for calculating processing times.

# Processing Times for 28 Off-Reservation Land in Trust Applications Awaiting Consideration by BIA Central Office

Applicant	Parcel name	Proposed use	Acreage	Number of days awaiting review at BIA Central Office as of Sept. 30, 2005
Bay Mills Indian Community, Michigan	Dafter M28	Commercial and housing	110.73	36
Karuk Tribe of California	Oak Knoll	Present: vacant lot; future: men's treatment, rehabilitation, shelter transitional facility	2.64	86
Karuk Tribe of California	Ishi Pishi, Elliott Creek, Upper Katamin	Cultural/ceremonial/burial grounds	20.70	114
Lac Court Oreillas Band of Lake Superior Chippewa Indians of Wisconsin	LCO Herman's Landing	Recreational/fishing	26.05	129
Confederated Tribes of Chehalis Reservation, Washington	Grand Mound	Present: undeveloped; future: hotel and convention center	42.99	190
Kaw Nation, Oklahoma	B-07-810-100486	Health, Wellness, and Community Center	95.39	204
Cabazon Band of Mission Indians, California	Commercial storage	Commercial storage	3.98	233
Confederated Tribes of the Siletz Reservation, Oregon	Coop	Cultural and natural resources	299.33	287
Delaware Nation of Oklahoma	Chesapeake Terrace	Present: depleted sand and gravel operation; future: rubble landfill	454.00	310
Miccosukee Tribe of Indians of Florida	Kendale Lakes Golf Course Tracts A and B	Golf course and club house	229.30	353
Koosharem Band of Paiute Indians of Utah	Richfield	Tribal housing and community center	1.72	406
Individual member of the Kootenai Tribe of Idaho (fractional interest)	183-C	Timber production	20.00	408
Kootenai Tribe of Idaho	Undivided 2/3 interest in 183.12	Agriculture	86.97	413
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California	Shingle Springs/Lower 50	Present: undeveloped; future: health clinic and housing	77.03	457
Confederated Tribes of the Siletz Reservation, Oregon	Otis Cemetery	Cemetery	0.12	458
Tulalip Tribes of the Tulalip Reservation, Washington	Faris	Traditional harvesting of shellfish	1.25	541
Tulalip Tribes of the Tulalip Reservation, Washington	Rasmussen	Natural resource habitat enhancement	10.15	561

**Appendix IV**  
**Processing Times for 28 Off-Reservation**  
**Land in Trust Applications Awaiting**  
**Consideration by BIA Central Office**

*(Continued From Previous Page)*

<b>Applicant</b>	<b>Parcel name</b>	<b>Proposed use</b>	<b>Acreage</b>	<b>Number of days awaiting review at BIA Central Office as of Sept. 30, 2005</b>
Puyallup Tribe of the Puyallup Reservation, Washington	Wilkeson Creek A	Steel head fish hatchery	12.27	564
Puyallup Tribe of the Puyallup Reservation, Washington	Wilkeson Creek B	Steel head fish hatchery	4.31	564
Tulalip Tribes of the Tulalip Reservation, Washington	Baby Island	Shellfish harvesting and canoe landing	1.00	578
Tulalip Tribes of the Tulalip Reservation, Washington	Camano Head	Shellfish harvesting and canoe landing	20.78	676
Cow Creek Band of Umpqua Indians of Oregon	Cullet	Vacant property, storage space	78.42	809
Cow Creek Band of Umpqua Indians of Oregon	DC Coop	Commercial rental leasing	2.48	816
Sac & Fox Nation of Missouri in Kansas and Nebraska	Block 11	Present: vacant housing; future: fire station and EMT Community Service Center	unknown	840
Prairie Band of Potawatomi Nation, Kansas	Prairie Land	Agriculture	26.37	960
Prairie Band of Potawatomi Nation, Kansas	Bohannon	Agriculture	101.00	1,044
Prairie Band of Potawatomi Nation, Kansas	Bernasek	Agriculture	33.00	1,171
Prairie Band of Potawatomi Nation, Kansas	Chesney-Green	Agriculture and housing	70.00	1,173

Source: GAO analysis of BIA pending off-reservation land in trust applications.

# Processing Times for 34 Appealed Land in Trust Decisions Awaiting Resolution by a BIA Regional Director

Applicant	Parcel name	Proposed use	Acreage	Number of days between decision and Sept. 30, 2005
Stockbridge Munsee Community, Wisconsin	Bartelme Township	Government facilities, housing, forestry	404.03	290
Prairie Band of Potawatomi Nation, Kansas	Slattery	Agriculture	160.00	311
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Bowhay	Agriculture	150.00	406
Prairie Band of Potawatomi Nation, Kansas	Reamer	Agriculture	80.00	428
Sac & Fox Nation of Missouri in Kansas and Nebraska	Becker	Agriculture	80.00	428
Prairie Band of Potawatomi Nation, Kansas	Plants PT 95/58	Agriculture	120.00	437
Prairie Band of Potawatomi Nation, Kansas	Crow	Agriculture	40.00	437
Prairie Band of Potawatomi Nation, Kansas	HD Zibell PT-83	Agriculture	80.00	445
Prairie Band of Potawatomi Nation, Kansas	HD Zibell PT-85	Agriculture	80.00	445
Prairie Band of Potawatomi Nation, Kansas	HD Zibell PT-87	Agriculture	40.00	445
Minnesota Chippewa Tribe, Mille Lacs Band	Kareen	Assisted living center	40.00	451
Prairie Band of Potawatomi Nation, Kansas	Bernasek 1	Agriculture	80.00	493
Prairie Band of Potawatomi Nation, Kansas	HD Zibell #86	Agriculture	80.00	548
Prairie Band of Potawatomi Nation, Kansas	HD Zibell #84	Agriculture	40.00	549
Saginaw Chippewa Indian Tribe of Michigan	Ervin	Governmental offices, businesses, housing	0.25	696
Saginaw Chippewa Indian Tribe of Michigan	Weckesser	Governmental offices, businesses, housing	4.44	708
Saginaw Chippewa Indian Tribe of Michigan	Bielski	Economic development	9.00	816
Prairie Band of Potawatomi Nation, Kansas	Brunner	Agriculture	75.00	1,050
Prairie Band of Potawatomi Nation, Kansas	Stalker 2001	Agriculture	622.00	1,235



**Appendix V**  
**Processing Times for 34 Appealed Land in**  
**Trust Decisions Awaiting Resolution by a BIA**  
**Regional Director**

*(Continued From Previous Page)*

<b>Applicant</b>	<b>Parcel name</b>	<b>Proposed use</b>	<b>Acreage</b>	<b>Number of days between decision and Sept. 30, 2005</b>
Prairie Band of Potawatomi Nation, Kansas	Parr 1999	Agriculture	48.97	1,239
Prairie Band of Potawatomi Nation, Kansas	Calderwood 2	Agriculture	160.00	1,325
Sac & Fox Nation of Missouri in Kansas and Nebraska	Deroin	Agriculture	7.85	1,331
Prairie Band of Potawatomi Nation, Kansas	Beckwith	Agriculture, housing	160.00	1,361
Prairie Band of Potawatomi Nation, Kansas	Bailey/Zibell	Agriculture	600.00	1,438
Minnesota Chippewa Tribe, Leech Lake Band	Walker	Day care center	5.76	1,512
Prairie Band of Potawatomi Nation, Kansas	ABC Exteriors	Agriculture	40.00	1,591
Prairie Band of Potawatomi Nation, Kansas	Parr	Agriculture, housing	79.00	1,626
Prairie Band of Potawatomi Nation, Kansas	Buck	Agriculture	1.18	1,627
Prairie Band of Potawatomi Nation, Kansas	Haag	Agriculture	80.00	1,663
Sac & Fox Nation of Missouri in Kansas and Nebraska	Blocks 4 and 5	Community center	unknown	1,715
Prairie Band of Potawatomi Nation, Kansas	Ribelin	Agriculture	unknown	1,771
Prairie Band of Potawatomi Nation, Kansas	Bailey 1999	Agriculture	80.00	1,778
Prairie Band of Potawatomi Nation, Kansas	Walder	Agriculture	120.00	1,800
Prairie Band of Potawatomi Nation, Kansas	Daugherty	Agriculture	55.00	1,801

Source: GAO analysis of pending appeals of BIA land in trust decisions.

# Comments from the Department of the Interior



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

**JUL 12 2006**

Ms. Robin M. Nazzaro  
Director, Natural Resources and Environment  
Government Accountability Office  
Washington, D.C. 20548

Dear Ms. Nazzaro:

The Bureau of Indian Affairs (BIA) appreciates the opportunity to formally comment on the Government Accountability Office's (GAO) audit report titled *Indian Issues: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of "Land in Trust" Applications* (GAO6-781) (Report).

In general, the BIA agrees with the findings, conclusions, and recommendations presented in the Report that some changes are required to more timely and effectively process the Fee to Trust applications. BIA will submit a Corrective Action Plan to implement the Report recommendations in response to the final report.

### **Recommendations for Executive Action:**

The GAO recommended the following three actions to improve timeliness, transparency and ensure better management of BIA's land in trust process:

- reinforce the requirement that all decisions be fully documented;
- move forward with adopting revisions to the land in trust regulations that include (1) specific time frames for BIA to make a decision once an application is complete and (2) guidelines for providing state and local government more information on the applications and more time to comment; and
- institute internal controls to help ensure the accuracy and reliability of the data in the land in trust database, as part of the redesign of the existing system.

The BIA is working to address these recommendations as we continue our efforts to improve trust management. The BIA has drafted new regulations impacting the land in trust program. These draft regulations were sent to tribal leaders on December 27, 2005, to initiate consultation. Initial comments were received and consultation meetings are scheduled for the last quarter of calendar year 2006, with proposal of the regulations in the Federal Register to follow, which will begin the required public notice and comment period for new or revised regulations.

Upon issuance of the regulations, the BIA will develop a handbook to ensure consistent application of regulations. The handbook will also include specific internal control procedures to ensure all decisions are properly and completely documented, as well as accurately and timely entered into the land in trust database.

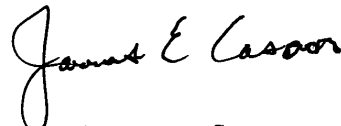
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**Appendix VI**  
**Comments from the Department of the**  
**Interior**

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Thank you for the opportunity to respond to the draft Report. If you have any questions related to our response, please contact Arch Wells, Deputy Bureau Director - Trust Services, at (202) 208-5831.

Sincerely,



Associate Deputy Secretary

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# GAO Contact and Staff Acknowledgments

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## GAO Contact

Robin M. Nazzaro, (202) 512-3841, [nazzaror@gao.gov](mailto:nazzaror@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Jeffery D. Malcolm, Assistant Director; Jean Cook; Mark Keenan; Daniel J. Semick; Carol Herrstadt Shulman; and Susan Swearingen made key contributions to this report. Also contributing to the report were Jennifer DuBord, Susanna Kuebler, Greg Marchand, Justin Monroe, George Quinn, Anne Rhodes-Kline, Jena Y. Sinkfield, Ashanta Williams, and Greg Wilmoth.

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