

Land into Trust Frequently Asked Questions (FAQ)

Introduction: The Bureau of Indian Affairs (BIA) has proposed a rule that would finally give Alaska Native individual and tribal land owners the option of asking the federal government to place their lands into federal “trust” status. There have been many questions about what this means and the issue is very complicated. The purpose of this FAQ sheet is to give general information and background regarding the proposed rule.¹

What does “fee land” or “fee simple land” mean? Land owned in “fee” or “fee simple” means that the landowner owns the land completely. This is the usual way that people own land and the land can be freely sold or gifted. The land owner can do what he or she pleases with the land in accordance with state and federal laws unless there are restrictions placed on the deed. (A “deed” is the piece of paper that contains a person or tribe’s name that is proof of ownership of the land.)

What does Tribal “land in trust” mean? “Land in trust” means that the United States Government holds legal title to the land for the benefit, use, and occupancy of an Alaska Native individual or tribe. The U.S. Government’s name is on the deed as the owner of the property.

What types of land would the proposed rule apply to? There are many types of land that the proposed rule could apply to. It could apply to (1) land owned by a tribe that was transferred by an ANCSA or village corporation; (2) land transferred to a tribe by a municipality, (2) townsite lots that were deeded to a tribe,² (3) Native Allotments (4) lands donated or gifted to a tribe or individual such as cemeteries, mission lands, or various other lands, and (5) lands purchased by a tribe.

What type of lands would the proposed rule *NOT* apply to? Lands owned by Alaska Native individuals in cities like Fairbanks, Anchorage, and Juneau would not be eligible to be placed into “trust.” Lands owned by ANCSA corporations would *NOT* be eligible to be placed into trust status.

How is land owned in “fee” placed into “trust”? An individual or tribe would have to submit a written application to the BIA requesting that land be placed into trust status. The BIA then reviews each application prior to deciding whether to take land into trust.

Will the land into trust applications be automatically approved? No. The BIA will look at each application and make a determination whether to take land into trust on a case by case basis. The BIA is not required to take land into trust and may do so at its discretion.

How long does it take for the BIA to process a land into trust application? It can take several years, depending upon the issues that come up in each application.

What are the benefits of land into trust? The main benefit of placing land into trust is to permanently protect the land. Only an Act of Congress can authorize the transfer of land owned in trust by the United States for the benefit of a tribe. The same level of protection does not apply

¹ This FAQ is general information and is not legal advice. Please consult an attorney for detailed questions.

² There may be language in townsite lot deeds that prohibit the transfer of townsite lots into trust.

to land owned in “fee.” Also, the BIA is responsible for assuring that the land is protected for the tribe's exclusive use. Trust lands are completely protected from state and local taxation and exempt from eminent domain (the power to take private land by a federal or state government for public use).

What are the consequences of placing land into trust? A major consequence of placing land into trust status is BIA oversight and management. A tribe or individual who owns trust land must have permission from the BIA to develop, mortgage, or sell the land.

Would the State of Alaska still retain jurisdiction over criminal matters on trust land? Yes. Trust land is generally considered “Indian country” under federal law. However, even in Indian country the State of Alaska retains criminal jurisdiction. (This is the case because in 1958, Congress extended Public Law 83-280 to Alaska. This law gave six states, including Alaska, the power to enforce their regular criminal laws inside Indian country.) However, the formation of Indian country in Alaska may give tribes concurrent jurisdiction in criminal matters over its members who engage in criminal activity on trust land.

Would State of Alaska have jurisdiction over civil matters on trust land? The State can have jurisdiction over civil disputes that arise within Indian country. However, the State’s jurisdiction does not deprive tribes of the right to exercise concurrent jurisdiction if they choose to exercise it. (Example: ICWA cases in tribal court). Also, the State does not have jurisdiction to decide ownership or rights in restricted or trust property such as trust lands, restricted townsites, Native Allotments, and Native shares in ANCSA corporations.

Does this proposed rule change repeal the Alaska Native Claims Settlement Act (ANCSA)? No. This proposed rule does not repeal ANCSA.

What happens next with the proposed rule? After the public comment period closes on Wednesday, July 31, 2014, the BIA is required to analyze, respond, and publish its response to the public’s comments. After it has done this, the proposed rule may be changed before it becomes become final. Only after it is finalized would it become law. It is also possible the proposed rule will be withdrawn and not finalized. Even if the rule is finalized, it is possible that the State of Alaska will file a lawsuit alleging that the new rule is illegal. All this could delay the rule from taking effect for several years.

Does TCC support land into trust? TCC supports the proposed rule change. TCC strongly believes that our people and tribes should have the choice whether to place their land into trust.

Should my tribe ask the BIA to accept our land into trust now? No, because the rule has not been finalized. If the proposed rule is finalized, this decision should be left up to your tribe. Placing land into trust will affect each tribe differently depending on many different significant factors such as the amount, location and type of land owned, ownership of the subsurface rights to the land, and tribal resources. Each tribe should also consider (1) How the land would be better protected? (2) How would the jurisdiction and responsibilities of your tribe change? (3) How would trust status effect your economic development? (4) How would trust land affect your services? (5) How much federal oversight will there be and how will it affect your tribe?