

Native American Law Watch



Assistant Secretary-Indian Affairs Issues Final Rule for Fee-to-Trust Procedures

On November 13, 2013, Assistant Secretary of the Department of the Interior-Indian Affairs, Kevin Washburn, issued a final rule which modifies the process for challenging the Secretary's decision to take fee lands into trust. [78 Fed. Reg. 67928](#) (Nov. 13, 2013). We reported on the draft rule in our [Summer 2013](#) Native American Law Watch. According to a [press release](#) issued by Washburn, the final rule "demonstrates the Obama Administration's continuing commitment to restoring tribal homelands and further economic development on Indian reservations."

The final rule provides clarification regarding the Department of the Interior's process for issuing decisions, ensures that the official rendering a decision on a fee-to-trust application provides notice to interested parties, which includes notice by publication in a newspaper of general circulation, and repeals the 30-day waiting period in the prior rule, while at the same time making exhaustion of administrative remedies explicitly required. See Preamble, 78 Fed. Reg. 67928, 67929. The final rule clarifies that a decision by the Assistant Secretary-Indian Affairs is a final agency decision for purposes of judicial review under the Administrative Procedures Act. If the decision is issued by a Department official, the decision is subject to the administrative exhaustion requirements of 25 C.F.R. Part 2. See Preamble, 78 Fed. Reg. 67928, 67929. While acknowledging that certain claims may be barred by the Quiet Title Act, *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012), the Department nevertheless relied on the lengthy title examination process in the regulations to conclude that "the likelihood that a person with a valid competing interest in the property will not be identified is too low to justify delaying implementation of every final decision." See Preamble, 78 Fed. Reg. 67928, 67934.

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