# LEASING & MORTGAGES ON TRIBAL LAND

An General Overview Prepared for the 2016 CDIC

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### PRESENTATION ROAD MAP

- What Brings the BIA Here Today
- BIA's Administration of Leasing on Tribal Land
- Steps Taken at the BIA to Achieve An Approved Residential Lease and Mortgage
- Locating Your Contacts at the BIA
- Other Resources

#### PRESENTATION ROAD MAP

- Overview of BIA
- Overview of OTS
- History
  - Cobell Litigation
  - Trust Reform
  - Land Buy Back
- Today's Environment
  - Regulations
  - Special Project Group
- HEARTH Act

### WHAT BRINGS THE BIA HERE TODAY?

(Why is the BIA involved in "our" lending process?)

The long-standing legal and political relationship between Indian tribes and the federal government.

- Demonstrated through treaties, federal court decisions, statutes and implementing regulations.
- Resulting in the Federal Government's responsibility for land and natural resources held in trust for the beneficial use of Tribes and Individual Indians in the United States.
- The Bureau of Indian Affairs oversees and administers the functions necessary to uphold the trust.
- BIA's role in the lending process arises from its administration and oversight of leasing functions (i.e., leases, amendments, assignments, subleases, and mortgages) for tribal and individually owned trust or restricted lands.

## BIA'S ADMINISTRATION OF LEASING ON INDIAN LAND

- Federally-Recognized Tribes can negotiate long-term leases of tribal trust and restricted lands, for business, residential, agricultural, and other purposes under 25 U.S.C. § 415 (The Indian Long Term Leasing Act) and the BIA's implementing regulations at 25 CFR Part 162 including:
  - Subpart B: Agricultural Leases
  - Subpart C: Residential Leases
  - Subpart D: Business Leases
  - Subpart E: Wind and Solar Resource Leases
- Leases entered into by tribes under 25 CFR Part 162 require approval by the Secretary of the Interior. The Secretary's approval authority for leases is generally delegated to BIA Regional Directors and/or Agency Superintendents.
- The HEARTH Act provides a process where Federally Recognized Tribes can develop their own leasing regulations and execute leases without Secretarial approval of leach lease we will discuss this in more detail later in the presentation.

## BIA's ADMINISTRATION OF LEASING ON INDIAN LAND, CONT.

The BIA addresses many issues associated with administration of the leasing function including, but not limited to:

- Reviewing and approving leases, amendments, assignments, subleases, and mortgages.
- Encoding accurate contract/lease information into the BIA's system of record, the Trust Asset and Accounting Management System ("TAAMS").
- Keeping in mind that BIA's
   responsibility is to the tribe or Indian
   landowner, respond to inquiries
   from lessees or the general public
   regarding leases on trust lands.
- Cooperate with other government agencies, as authorized, that are undertaking actions that overlap, intersect, are dependent upon, or are affected by the BIA's trust responsibilities regarding Indian lands.

# STEPS TAKEN AT BIA TO THE APPROVED RESIDENTIAL LEASE & MORTGAGE (25 CFR §§ 162.301- 162.374

- With an approved lease contract, Tribes (and Individual Indian owners of allotted trust land), can enter into mortgages of their leasehold interest.
  - 25 CFR § 162.003: Leasehold mortgage means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee
- The BIA follows the provisions of 25 CFR §§ 162.301- 162.374 to review, process, and approve a residential lease and §§ 162.359 -162.360 address the approval process for a residential leasehold mortgage.
- As with leases, amendments, assignments, and subleasees, the BIA must approve leasehold mortgages unless it finds a compelling reason not to do so, based on certain specified findings (see §§ 162.359 -162.360).
- Although ultimately each Region or Agency processing a Residential lease fulfills the requirements of the CFR, the internal steps taken to meet those requirements can differ.
- If you are a lender that wants to submit a proposed mortgage to the BIA for approval, it is critical that you contact the Region/Agency having jurisdiction over the land.

### LOCATING YOUR CONTACTS AT THE BIA

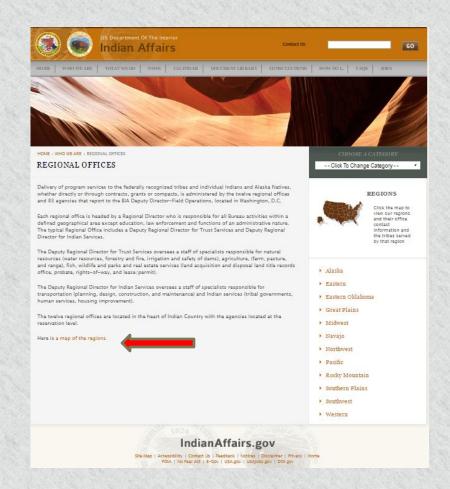
- ➤ The first step is determine which of BIA's 12 Region's has jurisdiction over the land in question.
- Generally easily determined by which State the land is located, however, in some cases more than one Region may have oversight of the same State.
- It is also helpful to know the Land Title and Records codes associated with the land

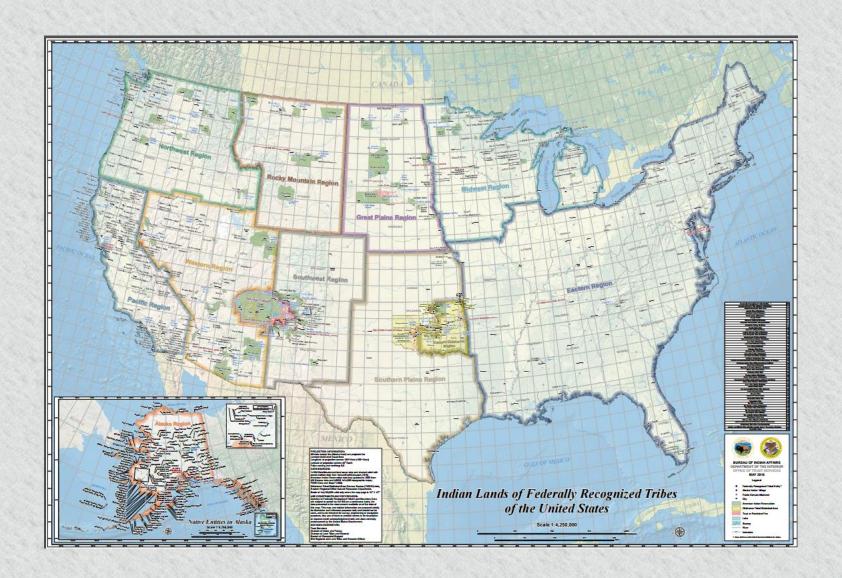
### LOCATING YOUR CONTACTS AT THE BIA

#### http://www.bia.gov/

#### http://www.bia.gov/WhoWeAre/RegionalOffices/index.htm









### QUESTIONS??

### THANK YOU!