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TECHNICAL HANDBOOK FOR ENVIRONMENTAL HEALTH AND ENGINEERING  
VOLUME IV - REAL PROPERTY MANAGEMENT  
PART 32 - REAL PROPERTY ACQUISITION

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**CHAPTER 32-4 GIFTS OF REAL PROPERTY**

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**32-4.1 INTRODUCTION**

It is Indian Health Service (IHS) policy to use statutory and delegated authorities to accept gifts that support the mission and goals of the IHS. The IHS Manual, Part 5, Chapter 22, Section 3, "Gifts Administration" details the IHS policy and procedures for the offer, acceptance, and administration of gifts. This Technical Handbook chapter compliments the "Gifts Administration" section of the IHS Manual, which does not address real property, by establishing the procedures for the acceptance of gifts of real property as promulgated by the Department of Health and Human Services.

**32-4.2 AUTHORITY**

Pursuant to Section 231 of the Public Health Service Act (42 U.S.C. § 238 and 25 U.S.C § 451<sup>1</sup>), the Secretary of Health and Human Services is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. The Secretary of Health and Human Services delegated authority to accept gifts of real property under Section 231 of the Public Health Act to the Assistant Secretary for Administration and Management (ASAM)<sup>2</sup> and 25 U.S.C. § 451.

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<sup>1</sup> The Authority for implementation of 25 U.S.C § 451 was assigned to DHHS as part of the "Transfer Act."

<sup>2</sup> Secretary of Health and Human Services Memorandum of Oct 11, 2005; SUBJECT: Delegation of Authority to Accept Gifts of Real Property pursuant to Section 231 of the Public Health Service Act (42 U.S.C. § 238) and 25 U.S.C. § 451.

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The ASAM redelegated this authority to the Deputy Assistant Secretary for Facilities Management and Policy<sup>3</sup>.

### **32-4.3 TYPES OF GIFTS OF REAL PROPERTY**

A gift of real property may consist of:

- A building that will be constructed on Federal or Trust land;
- Adding new space to or renovating/modifying space in an existing Federal building;
- Constructing additional space as part of a construction project for a new Federal building;
- Land which may also include existing buildings and structures.

### **32-4.4 PROCEDURES**

#### **A. Offers of Gifts of Real Property**

The IHS requires specific authority from the Department of Health and Human Services (HHS) to accept a gift of real property. When first considering offers of gifts of real property under this authority, IHS must ensure that:

- The space is required to support IHS-approved health care services;
- There is no adequate existing IHS or tribal facility and no facility currently being constructed or designed nearby that can house these services;
- The proposed space complies with IHS planning standards and guidelines set forth in the Health Systems Planning (HSP) process and other guidelines and policies;
- Acceptance of the gift does not obligate the IHS to provide additional staff or services;
- Title to the real property is debt free and the deed contains no restrictive covenants;

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<sup>3</sup> Assistant Secretary for Administration and Management Memorandum of Oct 21, 2005; SUBJECT: Delegation of Authority to Accept Gifts of Real Property pursuant to Section 231 of the Public Health Service Act (42 U.S.C. § 238) and 25 U.S.C. § 451.

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- The property will comply with all applicable codes, standards, and federal laws and regulations;
- If the proposed gift of real property consists of land and/or existing buildings, then the properties must be assessed using formal investigatory criteria; and
- No hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of on the property or stored for one year or more on the property.

Tribes and Tribal Organizations (T/TO) interested in making a gift of real property should submit a written proposal to IHS before beginning the design process to ensure that the IHS will be able to accept the proposed facility. The proposal must address each of the bulleted items above. If IHS needs the space, it will request the tribe to provide a Project Summary Document (PSD) or Program Justification Document (PJD)/Program of Requirements (POR), and a Facility Project Approval Agreement (FPAA). Part of the decision to accept a gift of real property will be based on whether the location of the proposed gift will meet the needs of all using the programs. IHS will evaluate proposed gifts of existing real property on a case-by-case basis to ensure compliance with design standards, regulations, and statutory requirements.

The documentation, PJD/POR/PSD, should follow the guidelines in the Office of Environmental Health and Engineering (OEHE) Technical Handbooks, and cite the source(s) and amount(s) of funds to be used and include an environmental compliance and National Environmental Policy Act (NEPA) review, documentation, and determination.

**B. Office of Facilities Management and Policy (OFMP) Delegated Authority**

The HHS OFMP has established the following steps to ensure a timely and efficient process for the handling of offers of gifts of real property and issuance of a specific delegation of authority.

1. IHS must submit the offering organization's formal written proposal of gift of real property and the agency's program analysis to OFMP for review. The program analysis must contain supporting documentation that the gift is mission related, mission dependant, and the offer does not constitute a conflict of interest. Any conditions regarding Departmental acceptance or use must also be clearly identified.
2. If the IHS program analysis supports and recommends acceptance, and OFMP is in agreement, the OFMP will transmit the written offer and program analysis document to the Office of General Counsel (OGC)

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for a legal opinion of the offer and circulate to other HHS offices if needed.

3. If HHS offices concur, and the gift has a value of \$10 million or more, or involves land acquisition, the proposal is presented to the Capital Investment Review Board for approval. If the Board approves, the delegation procedure noted below will be implemented by OFMP.
4. If HHS offices concur and the gift is valued at less than \$10 million and land acquisition is not part of the gift, the OFMP will issue a specific delegation of authority to IHS to accept the gift of real property in accordance with all Departmental policies, procedures, and requirements; and Federal regulations and statutes.

**C. Design and Construction of New Buildings and Space**

Upon receipt of the HHS specific delegation of authority to accept the gift of real property, the tribe and IHS will conduct negotiations regarding the details of construction. These include specific program standards (e.g., room sizes per templates), general construction standards (e.g., National Electric Code, National Fire Protection Association (NFPA) Standards, use of environmentally-friendly materials, etc.), safety and Occupational Health and Safety Administration (OSHA) compliance, inspection processes, right of entry for construction, tort claims and hold harmless provisions, financial reporting requirements for construction in progress, and preparation of the real property report. Since the constructed facility will be Federally-owned, metric construction is required unless waived by the Director, OEHE, or precluded by statute or regulation.

**D. Gifts of Land and/or Existing Buildings**

If the proposed gift of real property consists of land and/or existing buildings, then the properties must be assessed using formal investigatory criteria to determine if hazardous substances and/or petroleum products or their derivatives were released or disposed of on the property or were stored for one year or more on the property. Further, existing buildings, structures, utilities, etc. on the land must be evaluated to determine their condition, compliance with general construction standards and codes, potential hazards, etc. Identification of major deficiencies or inappropriate hazardous substance or petroleum products disposal or storage would be justification to decline the gift of real property. Assessments to determine property value may also be required.

The actual acquisition will be handled the same way as other HHS acquisitions. The property must be surveyed by a registered surveyor and appraised by a qualified Member Appraisal Institute (MAI) appraiser. The IHS will prepare the necessary transfer documents, including all contracts, deeds, and title policy commitments. For land acquisitions, these documents must then be submitted to the Department of Justice for an opinion on title. Transfer of the property is made only after the Department of Justice has advised that the site acquisition documents are complete.

**E. Title to Gifts of Real Property**

Actual title to lands and buildings used by the IHS is held by the United States of America. Acquiring Federal title to real property requires specific or appropriate general Congressional authorization, a justification to demonstrate that the space is needed, adherence to appropriated Federal design and construction standards, and detailed cost accounting of capitalizable activities.

**F. Real Property Gifting Checklist for Buildings**

Key steps and milestones in the gifting process for buildings are outlined in Figure 1 - Real Property Gifting Checklist. This checklist should be used as a guide and tailored to the specific details of the offer. Additional actions may also be required depending on the circumstances.

**G. Federal Real Property Accounting**

Following the transfer of the gifted property, the IHS Real Property Inventory will be updated to include the newly acquired property in the same way as any other real property acquisition. Property values entered into the real property inventory are the assessed values, not cost to IHS.

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**Figure 1 - Real Property Gifting Checklist for Buildings**

Offer Stage	1	Formal written proposal of the gift offer submitted by Tribe/Tribal Organization (T/TO) to IHS, which may include a Tribal Resolution if offering Tribally-owned property.
	2	IHS issues receipt acknowledgement letters including estimated time frame for formal response.
	3	IHS completes and processes gift Pre-Acceptance checklist per <u>IHS Manual</u> , Part 5, Chapter 22, Section 3, "Gifts Administration" as applicable.
	4	IHS completes and processes gift Conflict of Interest form (as applicable).
	5	T/TO drafts Project Summary Document (PSD) or Project Justification Document/Program of Requirements (PJD/POR) that includes a proposed schedule and work plan.
	6	T/TO performs other program analysis as appropriate and submits to IHS.
	7	IHS reviews program analysis and issues agreement to accept the property if it meets IHS requirements per completed planning and design documents (PJD/POR and PSD).
	8	T/TO prepares a HHS Facility Project Approval Agreement (FPAA) as applicable.
	9	IHS drafts Memorandum of Understanding (MOU).
	10	Both parties review draft PSD (or PJD/POR) and draft MOU.
Approval Stage	11	IHS requests specific delegation of authority to accept the T/TO gift of real property from the Department of Health and Human Services (HHS).
	12	HHS issues delegation of authority to IHS Director with list of requirements to be fulfilled before final gift acceptance can take place.
	13	IHS issues letter to tribe with list of requirements to be fulfilled before final gift acceptance.
Design Stage	14	Final versions of PSD/PJD and MOU are processed and signed and final schedule/work plan concurred.
	15	IHS and T/TO designate project representatives.
	16	T/TO obtains Architectural/Engineering (A/E) services. The T/TO will ensure their A/E contract provides the IHS/HHS with a royalty free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, for Federal Government purposes, the copyright in any work developed under the T/TO contract with their A/E.
	17	T/TO submits conceptual design statement to IHS.
	18	Site review scheduled by T/TO.
	19	Site review held (e.g., project representatives, A/E, Realty Management Officer (RMO), others).
	20	T/TO initiates Environmental Assessment - discuss strategy with IHS Area Environmental Officer.

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Design Stage (Cont.)	21	T/TO submits NEPA documentation and environmental compliance requirements to Area Environmental Officer.
	22	T/TO arranges and performs archeological survey if required.
	23	T/TO arranges and performs historic property analysis if required.
	24	T/TO arranges and performs full environmental site investigation if required.
	25	IHS issues NEPA and environmental compliance documentations and determinations.
	26	T/TO commences design in conformance with agreed upon concept and the gift acceptance guidelines.
	27	T/TO requests Right of Entry permit to apply to entire construction period.
	28	IHS issues Right of Entry permit per MOU.
	29	T/TO submits preliminary design documents (e.g., concepts, 35% schematics, etc.) to IHS for review and comment.
	30	IHS performs review; checks for code, standard, guideline compliance and overall concept - submits comments to T/TO.
	31	T/TO incorporates comments into design effort after dialog with IHS.
	32	T/TO submits 100% plans and specifications to IHS for review and comment.
	33	IHS performs final technical review, checks for code and standard compliance, metrification, submittal requirements, and completeness.
	34	All parties satisfy the HHS requirements specific to this project.
	35	IHS reviews and determines if the proposed space is Maintenance and Improvement-Equipment (M&I-E) eligible; and if so includes it in the appropriate M&I-E budget year as a "Projected (P) Building".
Construction Stage	36	IHS notifies tribe that it can proceed with the bidding process for the project construction.
	37	T/TO assembles the construction solicitation package and provides one hard and one electronic copy to IHS.
	38	T/TO review to ensure that bonding, schedule of values, contractor certification for payment, submittal, and warranty requirements are included; advises the IHS if otherwise.
	39	T/TO reviews site security for coverage during construction.
	40	T/TO reviews background of apparent successful offeror before award.
	41	T/TO schedules and conducts pre-construction conference with copy of meeting record to IHS. T/TO invites IHS to attend meeting; IHS responds in writing as to accept or decline.
	42	T/TO to review and comment on all project submittals.

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Construction Stage (Cont.)	43	T/TO performs regular ongoing construction inspection and maintains an organized comprehensive project log and documentation system. IHS is provided the option of site visits/inspections during the construction phase at a maximum frequency of once per month. The T/TO shall be notified at a reasonable period in advance by IHS when a site visit is requested.
	44	T/TO confers with IHS regarding any proposed changes or modifications that change the project cost and/or significantly alters the agreed upon scope of work or could alter environmental determinations.
	45	T/TO processes all approved payments promptly, issues a notarized cover letter, requires the contractor certification for each, maintains all records, and completes and submits to the IHS RPO construction in progress asset management documentation.
	46	T/TO schedules a formal final inspection when project is deemed essentially complete. IHS is advised prior to the date and invited to attend. T/TO needs to provide IHS with information including commissioning and TAB results, quality control records, special testing results, construction inspection records, submittal records, as-built, O&M info, etc., prior to final inspection to provide verification to the Government the facility was constructed in accordance to the approved plans and specifications.
	47	T/TO ensures completion of final inspection punch list and makes final acceptance determination and informing the IHS.
	48	If the T/TO elects early occupancy before the gift transfer process is completed the IHS is informed prior to move in.
	49	T/TO processes a Release of Claims with the contractor.
Acceptance and Acquisition Stage	50	T/TO prepares and submits final report.
	51	T/TO submits all final real property asset documentation required that includes the survey, MAI appraisal, etc.
	52	IHS will prepare the necessary transfer documents, including all contracts, deeds, and title policy commitments. For land acquisitions, these documents are then submitted to the Department of Justice for an opinion on title. Transfer of the property will be made only after the Department of Justice has advised that the site acquisition documents are complete.
	53	IHS compiles a gift transfer agreement; reviewed by both parties.
	54	Gift Transfer Agreement is signed by both parties resulting in IHS acceptance of the real property improvement gift.
	55	IHS incorporates the new facility/space into the Real Property Inventory after the T/TO satisfies all asset management reporting requirements.
Warranty Stage	56	T/TO manages the warranty program and schedules a warranty inspection one month before expiration.
	57	T/TO ensures all warranty items are completed.