

Partitioning Tribal Land

Definitions

Allotment: tribal lands divided into small tracts held in trust by the United States for individual Indian owners.

Partition: when two or more owners want to separate their interests in land they own together. Partition generally applies to "highly fractionated interests."

"Highly fractionated interest:" means more than 50 but less than 100 owners and no individual share is more than 10% of the parcel (also means land having 100 or more owners).

Undivided Interest: when an interest in land is divided on paper into fractions, i.e., 1/5. However, the land remains physically undivided and is usually leased. The rental income is divided among the allottees according to their fractionated interest.

Variance: an authorization for the construction or maintenance of a building or structure, or a use of land, which is prohibited by a zoning code.

How much land do I need to build a home on the Umatilla Indian Reservation?

ZONES	ACRES NEEDED FOR A HOME
AG-1 Exclusive Farm Use	159 acre minimum
AG-2 Farm Pasture Zone	79 acre minimum
AG-3 Small Farm Zone	9 acre minimum
AG-4 Agri-Business Zone	5 acre minimum
R-1 Rural Residential Zone	2 acre minimum
R-2 General Rural Zone	19 acre minimum
I-D Industrial Development Zone	dwelling units not mentioned
C-D Commercial Development Zone	dwelling units not mentioned

How do I know if I have enough land to build a home within a particular zone?¹

1. Determine what your interest amounts to within the allotment, i.e., 1/5 interest of 80 acres, 1 divided by 5 = .20 or 20% of the allotment
2. Is the acreage enough to build a house? 80 acres x 20% = 16 acres
3. Does the acreage meet the minimum amount of acres for a home within a tribal zone? In this particular example, 16 acres works for AG-3, AG-4, and R-1.

¹ The BIA Realty office can identify all of your interests in each allotment. For each allotment that you have an interest in the BIA will give you, upon request, an individual tribal interests report listing your interest in a fractional amount, i.e., 1/5.

from 2005 Tribal Housing Team Notes

You must also make sure that you have legal access into the development site.

What if I do not have enough acres to build a home in a certain zone?

You may petition the Natural Resources Commission (NRC) through the CTUIR Planning Department for a variance from the zoning requirements. If a variance is granted, the NRC often attaches conditions that will protect the interests of the surrounding property or vicinity.

If I have enough acres to build a home, what do I do about water and sewer?

You can file an application with the Environmental Health Officer for an A1- Site Evaluation. The land will be tested for a septic system and well support (unless the land is on the Mission water & sewer line). The septic test costs \$380 for the first test and if other tests are needed each additional test cost \$205.

THE PARTITION PROCESS

How do I start the partition process?

Go to the BIA Realty and fill out their Form 5-5414 "Petition for Partition of Inherited Indian Land." You will need to determine what part of the allotment you want set aside and what you plan to do with any current leases on the allotment.

What is required in order to "consent to partition?"

You need the notarized consent of:

- The tribe if it is a co-owner.
- A co-owner if, for three years, he/she has occupied the parcel as a residence or operated it as a bona fide farm, ranch or business.
- The owners of at least 50% interest in the parcel if any one owner's interest (excluding the tribe or partitioning party) is valued over \$1,500. Parents must consent for minors and guardians for incompetents.
- The Secretary if consenting to missing for undetermined heirs after a diligent search has been made for them.

Consent forms will be approved absent fraud or undue influence.

How do I go about getting the required signatures?

You need to find or locate the majority of owners and try to convince them to sign the consent form. You can let the other allottees know that they will not lose leasing income and that their children will inherit the same amount of land.

If they agree to the partition, ask them to sign the BIA form 5-5414 in front of a notary so each signature must have a "Certificate of Notary." If allottees live outside the area, you

can send them each an exact copy of the petition for partition and ask them to sign and have it notarized before returning to you.

Once the signatures are obtained, you must obtain an appraisal to establish fair market value of the subject parcel. The BIA will not request an appraisal until all of the signatures are collected.

Why do I need an appraisal?

The portion of the allotment that you choose to partition as yours may not be of equal value per acre as the other parts of the allotment. For example, if range land is worth \$50 per acre and land near a creek (where you want to build) is worth \$400 per acre and you own 25% of the acreage you will get 25% of the total value of the acreage.

If 15 acres of a 20 acre allotment is range land and worth \$50 an acre, the 15 acres would be appraised at \$750. If the 5 remaining acres is worth \$400 per acre this would equal \$2,000. The total value of the allotment would be \$2,750. Your 25% of \$2,750 is \$687.50 which would entitle you to approximately one and a half acres of the land near the creek for building your house.

How do I get an appraisal started?

After you get the required signatures for the partition, you can file BIA form 5-5213 "Request for Real Estate Appraisal."

What happens after I file the "Request for Real Estate Appraisal?"

The BIA Realty office will begin a file that has your appraisal request a Title Status Report ("TSR"), current leases, the past three (3) years of crop yields (if any), a Timber Cruise Report if there is marketable timber on the allotment, any improvements made on the land since the last appraisal, map, information of zoning conditions, and the legal description. The information is then sent to the Portland Area Office.

The Portland Area Office is supposed to have 60 days to make an appraisal once they receive the appraisal request but there is a huge backlog in BIA appraisals. There are currently two CTUIR employees who are undergoing appraiser training.

The BIA Realty office will determine the exact amount of acreage you are entitled to based on the value of the allotment as a whole.

What happens after the appraisal is completed?

A **notice** of the partition and appraisal must be given when the appraisal is finished. There are three types of notice: 1) personally served, 2) published, and 3) posted.

The notice must include:

1. That there is a request for a partition,
2. the land's legal description
3. the size of the individual's share according to existing records,
4. the appraiser's results,
5. that there is a right to comment or object to the partition and/or the appraisal
6. a deadline for receipt of responses
7. an address where responses are to be sent
8. a contact number for further information

Service must be by certified mail to the last known address of the other allottees.

- A diligent search must be made for current addresses for an owner if mail is returned undelivered (by examining federal, tribal and state records).
- If a current address is found the notice must be re-mailed.

Notice by publication must be given to owners not personally served.

- Publish twice in newspapers of general circulation in the county where the property is located or
- Publish once in a tribal newspaper and once in a newspaper of general circulation.

Notice of the partition must also be posted conspicuously in tribal facilities.

What happens with the comments received?

Upon review of the comments, the secretary may order a new appraisal or approve the existing one.

If there is a new appraisal, notice must be provided by publication if the value is higher or by certified mail if the value is lower.

Notice of Approved Appraisal and Notice of Right to Appeal: Only those who submitted written comments or objected by certified mail will be sent a notice of the approved appraisal and notice of a right to appeal.

The notice must include:

- Appraisal results
- Notice of a right to a copy of the appraisal
- the right to an "administrative appeal" from the decision to partition or the value assigned to the interest
- the appeal deadline
- if the value of an interest in any tract is over \$1,500, the secretary can give consent for undetermined heirs or those of unknown whereabouts

If the appraisal is approved, then there needs to be a survey completed.

Where do I get a survey done?

You will need to hire a private surveyor to survey the new partitioned plot's boundaries. The BIA Realty office requires certain very specific information on the survey so you will need to make sure that the surveyor meets the BIA requirements.

What do I do after the survey is completed?

The BIA issues you a deed to the partition. You have now successfully partitioned your piece of land and are no longer a part of the larger allotment.

Is the partitioning process over?

No, if you plan to build a home then you must submit an application and five (5) copies of the documents listed below and a tentative plan for the partition with the Natural Resources Committee (there is a filing fee).

Taken from the Tribes' Subdivision Manual

1. Vicinity map locating the proposed partitioning in relation to adjacent subdivisions, roadways and adjoining land use and ownership patterns with names of all existing roadways.
2. A plan of the proposed partitioning showing tract boundaries and dimensions, easements, right-of-way widths and improvement standards of existing roads.
3. Names and addresses of the landowner, mortgagee if applicable, the engineer or surveyor who made the survey and prepared the legal descriptions of each parcel and the owners of the land contiguous to the proposed partition.
4. A statement on the water supply, sewage disposal, solid waste disposal, fire protection and access.
5. North point, scale and date of map, and property identification by tax lot, section, township and range.
6. Statement on past, present and intended use of the parcels to be created or the use for which the parcels are to be offered.
7. If the land has water rights, the application shall include a water rights diversion plan approved the CTUIR.
8. Location of all existing buildings, canals, ditches, septic tanks and drain fields.
9. Location of any topographical feature which may impact the partition such as canyons, bluffs, rock outcroppings, natural springs and flood plains.
10. Location, width, name, curve ratio and approximate grade of all proposed rights-of-ways.

The proposal for partition must comply with the Comprehensive Plan, Cultural Resources Regulations, applicable zoning and Title 25, Indians, Code of Federal Regulations (proposed partitions on trust lands) and include the following:

- Proposal should not conflict with acquired public access easements.
- Each parcel must be suited for the use intended and offered.

- Proposal is compatible with adjoining and area land uses.
- All required public services and facilities are available and adequate or are proposed to be provided by the petitioner.
- Proposal will not have any undue adverse impacts on adjoining or area land uses, public services and facilities, and natural resource carrying capacities.

If the tentative plan for a partition is approved, then you must prepare and submit to the Tribal Planning Office the final map or drawing for the subject partitioning within six (6) months.

* An original final map or drawing and two (2) copies of how you met the following requirements must be submitted to the Tribal Planning Office for the Natural Resources Committee.

1. Map shall be drawn to a scale of one inch per 100 feet.
2. Name of the owner, developer, engineer or surveyor will be shown on the map or drawing.
3. Date, scale, north point, legal description of boundaries, and a tie by actual survey to a section or donation land claim corner.
4. Parcel boundary lines with dimensions and bearings; bearings shall be to the nearest 30 seconds, and distances to the nearest 0.01 feet. The area of each parcel shall be shown.
5. An affidavit by the engineer or surveyor who surveyed the land in the major partitioning.
6. A certification of acceptance of any public dedication.
7. A guarantee of approved or required improvements, including identification of maintenance responsibilities for proposed or existing roads and streets.
8. A certification of approval for execution by the Land Development Code Administrator.
9. Water rights to be assigned to each parcel needs to be shown on the map/drawing with a certification of approval.

Application Review

Within 30 days after receiving an application for a land partitioning, the Natural Resources Commission will deny or recommend approval of the application.