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Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress

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SUMMARY

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Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress

Tribal lands can have a complicated and intermingled mix of land ownership statuses. The history between federally recognized Indian tribes (hereinafter, *Indian tribes* or *tribes*) and the United States—dating back centuries—continues to affect current land issues for tribes. Three early 19th century Supreme Court cases, known as the *Marshall Trilogy*, established a basic framework for federal Indian law and the roots of the federal-tribal trust relationship. These cases determined that tribes have the right to reside on lands reserved for them, but the United States has ultimate title; tribes are "domestic dependent nations"; and states cannot impose their policies within Indian territories.

Centuries of shifting federal policymaking also profoundly affected the treatment of tribal lands. In the 1800s, policymaking focused on renegotiating treaties with tribes, leading to the formation of reservations and often resulting in tribes ceding to the United States larger tracts of land for smaller parcels. In the late 1800s and early 1900s, in an effort to assimilate tribes and their members into mainstream American culture, Congress authorized lands communally held by tribes to be *allotted* to tribal members, leading to millions of acres passing out of trust and into different ownership statuses. In the 1930s and 1940s, Congress ended the allotment policy and granted more administrative control to tribes with the passage of the Indian Reorganization Act of 1934 (IRA). Among other actions, the IRA allowed the Secretary of the Interior (Secretary) to bring land into trust on behalf of tribes. But, in the 1950s and 1960s, Congress again shifted to ending the federal-tribal relationship and terminated the status of several tribes in an effort to integrate tribes and their members into the general population. Beginning in the 1970s, policymaking focused on self-determination and self-governance—reestablishing the federal-tribal trust relationship and increasing tribal decisionmaking.

Today, tribal lands may have different ownership statuses. Common land holdings include trust lands, restricted fee lands, and fee lands. *Trust lands* are lands owned by the federal government and held in trust for the benefit of the tribe communally or tribal members individually. Today, lands typically are brought into trust through the *land-into-trust process*, either when Congress directs the Secretary to bring land into trust or when the Secretary administratively brings land into trust. *Restricted fee lands* are owned by a tribe or tribal member but are subject to a restriction against alienation (i.e., sale or transfer) or encumbrance (i.e., lien, leases, etc.) by operation of law. *Fee lands*, sometimes referred to as *fee simple lands*, are lands owned by a person who can freely alienate or encumber the land without federal approval. The federal government has varying levels of responsibility to tribes and their members depending on the land holding.

Other types of land designations, while not considered property holdings, can include trust, restricted fee, and fee lands within their scope. *Allotted lands* are trust or restricted fee parcels of land held by a tribal member. Allotments can be highly fractionated, meaning there could be many landowners—at times hundreds—on one parcel of land, making it difficult to manage or use the land. *Federal Indian reservations* are areas reserved for a tribe, or multiple tribes, as permanent homelands through treaties, executive orders, acts of Congress, and administrative actions. *Indian Country* is a legal term that, for criminal jurisdictional purposes, generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all tribal member allotments.

Congress may consider various issues regarding the land-into-trust process, as well as requirements for encumbering trust and restricted fee lands and the fractionation of allotted lands. Policy considerations for Congress include (1) the Secretary's authority to process off-reservation land into trust, (2) the Secretary's authority to determine whether a tribe qualifies to bring land into trust, (3) the costs and timeliness of bringing land into trust, (4) when the Secretary's approval is required to encumber trust or restricted parcels of land, and (5) options for addressing allotment fractionation.

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Introduction

Tribal lands can have a complicated and intermingled mix of land ownership statuses. For instance, some federally recognized Indian tribes (hereinafter, *Indian tribes* or *tribes*) have reservations, whereas other tribes do not. Tribes may have land held in trust by the federal government for their benefit, or tribes may own lands that require the federal government's approval to sell or encumber. Still other tribes may be landless. Tribes and tribal members may have different rights to manage and develop their lands and resources, even on neighboring parcels.

This report provides a brief overview of the history between tribes and the United States, beginning with an overview of three early 19th century Supreme Court decisions known collectively as the *Marshall Trilogy*. The Marshall Trilogy established a basic framework for federal Indian law and the roots of the federal-tribal trust relationship. It also established the treatment of tribal property and resources. These cases determined that tribes have the right to reside on lands reserved for them, but the United States has ultimate title; tribes are "domestic dependent nations"; and states cannot impose their policies within Indian territories.

This report also provides a brief overview of five federal Indian policymaking eras, from the 1800s to present.[1] All of these policymaking eras impacted the status and management of tribal lands.

- In the "Removal and Treaty-Making Era (1830-1887)," the federal government's policy was to renegotiate treaties with tribes in exchange for tribal lands west of the Mississippi River, which led to tribes ceding to the United States their lands for smaller tracts and to the formation of the first reservations.
- During the "Allotment Period (1887-1934)," in an effort to promote assimilation of tribes and tribal members, the federal government divided up tribes' communal land holdings to individual tribal members in the form of allotments. This policy led to millions of acres passing out of trust. It also led to multiple owners on—or *fractionation* of—allotted parcels.
- In the "Reorganization Period (1934-1940s)," federal policy shifted toward granting more authority and autonomy to tribal governments and ended the Allotment Period.
- During the "Termination Era (1950s-1960s)," federal policy focused on ending reservations and dissolving the recognition of tribes having sovereign authority, again to promote assimilation.

[1] The indicated time frames for the five federal Indian policymaking eras are approximate and may have other names. These time periods are generally agreed upon by scholars, though some may expand the years covered in the "Removal and Treaty-Making Era," and others may describe it as separate periods. See, for example, Robert J. Miller, *The History of Federal Indian Policies*, March 2010, pp. 10-13, at https://ssrn.com/abstract=1573670; and U.S. Army Corps of Engineers, "Consulting with Tribal Nation, Guidelines for Effective Collaboration with Tribal Partners," 2013, p. 4, at https://www.usace.army.mil/Missions/Civil-Works/Tribal-Nations/tribalcop/. Some may also describe the "Self-Determination and Self-Governance Era" as two separate periods. For example, the National Congress of American Indians (NCAI) suggests that the Nation-to-Nation period is from 2000 to the present. NCAI, *Tribal Nations and the United States: An Introduction*, pp.15, 49, at http://www.ncai.org/about-tribes (hereinafter, NCAI, *Tribal Nations*). For more information on federal policymaking eras involving tribes, see Nell Jessup Newton, ed., *Cohen's Handbook of Federal Indian Law, 2012 Edition*, 2017, §§1.01-1.07 (hereinafter, Newton, *Cohen's Handbook*).

- Since the 1970s, federal policy in the "Self-Determination and Self-Governance Era (1970s-Present)" has emphasized increasing tribal decisionmaking authorities.

The complex history between tribes and the United States is reflected in the multiple different types of land ownership statuses on tribal land. This report focuses on three common types of land holdings on tribal lands—trust land, restricted fee land, and fee land—and discusses the characteristics of each type of land status. *Trust lands* are lands owned by the United States (i.e., lands to which the United States holds title) for the benefit of tribes and tribal members. Today, lands typically are brought into trust through the *land-into-trust process*, either when Congress directs the Secretary of the Interior (Secretary) to bring land into trust or when the Secretary administratively brings land into trust. *Restricted fee lands* are lands owned by a tribe or tribal member that are subject to a restriction against alienation (i.e., sale or transfer) or encumbrance (i.e., a lien, lease, right-of-way, etc.) by operation of law. *Fee lands* are lands that are freely alienable (i.e., salable or transferable) and do not require the federal government's approval to alienate or encumber.

This report also discusses allotted land, federal Indian reservations, and the term *Indian Country*. These terms are not considered property holdings and can include trust, restricted fee, or fee lands within the scope of their definitions. *Allotments*, or allotted land, are trust or restricted fee parcels of land held by a tribal member. A product of the allotment era, allotments can be highly fractionated, meaning there could be many landowners—at times hundreds—on one parcel of land, making it difficult to manage or use the land. *Federal Indian reservations* are areas reserved for a tribe, or multiple tribes, as permanent homelands through treaties, executive orders, acts of Congress, and administrative actions. *Indian Country* is a legal term that, for criminal jurisdictional purposes, generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all tribal member allotments.[2]

Land ownership statuses and the federal-tribal trust relationship can pose unique challenges for Congress to consider when deliberating tribal land and resource management policies. Some of these issues involve the discretionary authority Congress provided to the Secretary in bringing land into trust on behalf of tribes under the Indian Reorganization Act of 1934 (IRA).[3] Other issues relate to the Secretary's approval authority to encumber trust or restricted fee parcels and to efforts to reduce fractionation under the Land Buy-Back Program of Tribal Nations (LBBP) by the Department of the Interior (DOI) under the Claims Resolution Act of 2010.[4] Thus, issues for Congress include the following:

- The Secretary's authority to process off-reservation land into trust,
- The Secretary's authority to determine whether a tribe qualifies to bring land into trust,
- The costs and timeliness of bringing land into trust,
- The requirement for the Secretary's approval to encumber trust or restricted parcels of land, and
- The role of the LBBP to further reduce fractionation.

Matters involving tribal land often are complex and can involve a consideration of treaties, executive orders, case law, acts of Congress, statutes, regulations, and deeds or other land title

[2] 18 U.S.C. §1151.

[3] P.L. 73-383, 25 U.S.C. §§5101 et seq. (formerly 25 U.S.C. §§461 et seq.).

[4] P.L. 111-291.

documents. Given these complexities, this report will not review in detail any specific tribe's land status and history other than for illustrative purposes. Tribes also may have other interests in properties, including subsurface estates, historic and culturally significant properties, hunting and fishing rights, and ceded treaty lands, among others; these interests are outside the scope of this report.

The status of land—whether trust, restricted fee, or fee—is closely tied to the ability of a tribe, state, or federal jurisdiction to exercise its criminal or civil jurisdiction. However, the ownership of land and the ability to exercise jurisdiction are not the same. At times, this report highlights how jurisdictional questions might depend on the status of the land. Questions as to which governmental entity can exercise jurisdiction are often fact intensive and may require a legal analysis; thus, the exercise of jurisdiction will not be discussed in detail in this report.

A Note on Terminology

The following terms are defined as such for the purposes of this report:

- *Tribal land* generally refers to land or an interest in land that is owned by a tribe or tribal member or by the U.S. government on behalf of a tribe or tribal member.[5]
- *Indian tribe* or *tribe* refers to a tribal entity made up of American Indians or Alaska Natives and recognized as having a government-to-government relationship with the federal government—a relationship that includes eligibility for funding and services from federal agencies, including the Bureau of Indian Affairs (BIA).[6]
- *Tribal member* generally refers to an American Indian or Alaska Native who is a member of an Indian tribe.[7]

The Federal Trust Responsibility and Tribal Lands

Indian tribes are "domestic dependent nations" that exercise "inherent sovereign authority."[8] Indian tribes have a unique relationship with the federal government. One aspect of this special

[5] Statutory and regulatory text may use another term instead of *tribal land*, such as the term *Indian land*. Often, statutory or regulatory text will specifically define what constitutes *tribal land* or *Indian land* for its purposes; thus, it is important to consult the particular statute or regulation. Further, at times this report discusses *fee* or *fee simple land*, which is land that can be freely alienated (i.e., sold or transferred) without the federal government's approval. As discussed in this report, tribes, tribal members, and non-Indians can own fee land. However, this report does not discuss at length the rights or characteristics of non-Indian owned fee land.

[6] See U.S. Department of the Interior (DOI), Bureau of Indian Affairs (BIA), "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions. As of January 2020, 574 Indian tribes and Alaska Native villages are federally recognized (see BIA, "Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs," 85 *Federal Register* 20, January 30, 2020, at https://www.federalregister.gov/documents/2020/01/30/2020-01707/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of). Often, statutory or regulatory text will specifically define what constitutes an *Indian tribe* for its purposes.

[7] Whether an individual is considered a *tribal member* may be a factor for purposes of determining who can inherit or legally hold trust or restricted interests in land. Statutory and regulatory text may use another term, such as the term *Indian*, for its purposes. Often, statutory or regulatory text will specifically define what constitutes a *tribal member* or an *Indian* for its purposes. For more information on who is an American Indian or an Alaska Native, see DOI, BIA, "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions.

[8] Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla., 498 U.S. 505, 509 (1991) (quoting Cherokee Nation v. Georgia, 5 Pet. 1, 17 (1831)).

relationship is the doctrine of the *federal trust responsibility*: a legal obligation under which the United States, through treaties, acts of Congress, and court decisions, "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes, and this responsibility can include certain fiduciary obligations on the part of the United States.[9] According to the BIA, "in several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and Indian tribes."[10] The federal trust responsibility can include a duty on the part of the United States to protect treaty rights, lands, assets, and resources on behalf of tribes and tribal members.[11]

The federal trust responsibility plays a significant role in the federal government's management of tribal lands and natural resources. For example, the BIA is the lead agency responsible for the administration and management of 55 million surface acres and 57 million acres of subsurface mineral estates held in trust by the United States for Indian tribes and individual tribal members.[12] At times, this report will highlight the federal-tribal trust relationship with respect to the management of tribal lands.

Historical Framework

The history between tribes and the United States—dating back centuries—plays a role in current land issues for tribes. For some tribes, the relationship between tribes and the United States predates the U.S. Constitution and also can include relationships with other sovereigns.[13] Tribes are mentioned in the Constitution in a clause known as the Indian Commerce Clause.[14]

Three early 19th century Supreme Court cases, known collectively as the Marshall Trilogy, established a basic framework for federal Indian law and the federal-tribal trust relationship. Additionally, centuries of federal policymaking with respect to tribes and individual tribal members had profound effects on the treatment of tribal lands—effects that continue to impact the management of tribal lands and resources. This section provides an overview of the Marshall Trilogy and highlights federal policymaking eras involving tribes from the early 1800s to the present.

Marshall Trilogy

From 1823 to 1832, Supreme Court Chief Justice John Marshall authored the Marshall Trilogy, which laid the foundation for federal Indian law. The cases discussed the tenets of tribal

[9] Seminole Nation v. U.S., 316 U.S. 286, 296-297 (1942). For a general overview of the trust relationship, see U.S. v. Jicarilla Apache Nation, 564 U.S. 162 (2011).

[10] DOI, BIA, "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions.

[11] DOI, BIA, "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions.

[12] DOI, BIA, "About Us," at https://www.bia.gov/about-us.

[13] NCAI, *Tribal Nations*, p. 14. See also Newton, *Cohen's Handbook*, §15.03(3)(c) (stating that the United States has recognized other sovereign land titles granted to tribes that predate the establishment of the United States). For more information on tribal relationships with other sovereigns and in the formulation of the United States, see Newton, *Cohen's Handbook*, §1.02 (discussing post-contact and pre-constitutional development).

[14] U.S. Constitution, Article I, Section 8, clause 3. ("To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ... ").

sovereignty, established the roots of the federal-tribal trust relationship, and established the ownership status of tribal property.[15]

- In *Johnson v. M'Intosh*, decided in 1823, the Court established that the United States acquired absolute title to all lands formerly held by the British Empire. The Court determined that tribes have the right of occupancy of, or to reside on, their lands. However, the Court determined that the United States has ultimate title to the land.[16]
- In *Cherokee Nation v. Georgia*, decided in 1831, the Court established that tribes are "domestic, dependent nations" and stated that the relationship between tribes and the United States "resembles that of a ward to his guardian."[17] The Court held that the United States is bound to protect tribes and their right to occupy their lands.[18]
- In *Worcester v. Georgia*, decided in 1832, the Court defined the interactions between tribes and states. The Court held that states could not impose their laws or policies within Indian territories absent consent from the tribe or in conformity with treaties or acts of Congress.[19]

Although these three cases are known as the foundation of federal Indian law, many cases have impacted tribal lands since the Marshall Trilogy. An overview of the broader case law is outside the scope of this report.

Federal Policymaking Eras with Tribes

Congressional action also defined the federal-tribal trust relationship and the extent and management of tribal lands and resources. Federal policy toward ownership and management of tribal lands has evolved over time as the federal government's approaches to tribal relationships have shifted. These shifts have led to removal, assignment, and restoration of certain ownership rights at different times. The following sections summarize five eras of development in federal Indian policy that influenced the ownership and management of tribal lands. The indicated time frames are approximate.

Removal and Treaty-Making Era (1830-1887)

Under the Indian Removal Act of 1830, Congress directed the President to renegotiate treaties and exchange existing tribal lands located in the southeastern United States for lands west of the Mississippi River.[20] This direction led to the formation of the first reservations and resulted in tribes—often forcefully—ceding to the United States larger tracts of land for smaller parcels of land, sometimes in different parts of the country. On reservations, tribes had sole and continued right of self-governance, although they were under the federal government's protection.[21]

[15] For more on tribal sovereignty, see DOI, BIA, "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions.

[16] Johnson v. M'Intosh, 21 U.S. 543 (1823).

[17] Cherokee Nation v. Georgia, 30 U.S. 1, 2 (1831).

[18] Cherokee Nation v. Georgia, 30 U.S. 1, 74.

[19] Worcester v. Georgia, 31 U.S. 515 (1832).

[20] Act of May 28, 1830, 4 Stat. 411.

[21] NCAI, *Tribal Nations*, p.14.

Thereafter, Congress passed a series of Trade and Intercourse Acts—typically known as the *Nonintercourse Acts*—that sought to regulate trade with Indians and prohibited the sale of tribal lands except at proceedings held under the authority of the United States.[22] The Trade and Intercourse Act of 1834, for example, included a provision prohibiting conveyances, leases, or encumbrances of land from Indian tribes to non-Indians, unless conducted in the presence of a U.S. commissioner and ratified by treaty.[23]

At the end of this era, Congress revoked the President's authority to enter into treaties with tribes in the Indian Appropriations Act of 1871.[24] Prior to that time, the President had exercised the authority under the Constitution to enter into treaties with tribes, which included creating reservations for tribes.[25] Treaties ratified by Congress remain in full force, although Congress can revoke or modify their terms.[26]

Allotment Period (1887-1934)

During the Allotment Period, federal Indian policy and congressional legislation focused on efforts to assimilate tribes and their members into mainstream American culture.[27] In 1887, Congress authorized the President to survey specific reservations and divide the land among individual tribal members. These parcels of land are known as *allotments*. The General Allotment Act of 1887—also known as the Dawes Act—specified the lands were to be divided into 80- or 160-acre sections for agricultural or grazing purposes and then allotted to individual tribal members. Surplus land remaining after the distribution of allotments was sold and homesteaded to non-tribal members.[28]

Once a parcel was allotted, it would be held in trust by the federal government for up to 25 years and would be exempt from state or county taxation. After 25 years, the tribal member would have *fee ownership*, meaning he or she would own the title to the parcel free of any encumbrances, if the Secretary deemed the individual to be competent.[29] Once the allotted parcel was transferred out of trust status, it would be subject to state jurisdiction.[30] By the end of the Allotment Period, nearly two-thirds of the trust allotments passed into non-Indian ownership.[31]

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[22] There were a series of six Nonintercourse Acts from 1790 to 1834. See Act of July 22, 1790, 1 Stat. 137; Act of March 1, 1793, 1 Stat. 329; Act of May 19, 1976, 1 Stat. 469; Act of March 3, 1799, 1 Stat. 743; Act of March 30, 1802, 2 Stat. 139; Act of June 30, 1834, 4 Stat. 729. For more information on the Nonintercourse Acts, see Newton, *Cohen's Handbook*, §§1.03(20), 15.06(1), 15.08(1).

[23] Act of June 30, 1834, 4 Stat. 729 §12 (codified at 25 U.S.C. §177).

[24] 25 U.S.C. §71, Act of March 3, 1871, Ch. 120 §1, 16 Stat. 566.

[25] Article II, Section 2, clause 2, of the U.S. Constitution grants the President, with the advice and consent of the Senate, the power to enter into treaties.

[26] 25 U.S.C. §71, Act of March 3, 1871, Ch. 120 §1, 16 Stat. 566; Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).

[27] Newton, *Cohen's Handbook*, §1.04; see also, Rennard Strickland, "Friends and Enemies of the American Indian: An Essay Review on Native American Law and Public Policy," *American Indian Law Review*, vol. 3, no. 2 (1975), pp. 313-331.

[28] Act of February 8, 1887, Ch. 119, 24 Stat. 388. Individual tribal members included heads of households, single adults, minor orphans, and other single minors. Some of the treaties between the United States and specific tribes contained similar allotting provisions. Other reservation-specific allotment acts had different requirements. See Act of May 30, 1908, P.L. 177, 35 Stat. 558.

[29] Act of February 8, 1887, Ch. 119, §5, 24 Stat. 388; Act of May 8, 1906, Ch. 2348, 34 Stat. 182.

[30] Act of February 8, 1887, Ch. 119, §6, 24 Stat. 388.

[31] Newton, *Cohen's Handbook*, §16.03(2)(b).

When an Indian allottee died, the interest in the allotment was divided among his or her heirs but the land itself was not divided.[32] This situation resulted in numerous individuals owning an interest in the same parcel of land, and that interest continued to divide—potentially exponentially—across generations. This is known as *fractionation.* The situation also fractionated the ability to use or derive income from the land among many owners, and owners often sought to sell their interests.[33] Combined with the ability of non-Indians to homestead surplus lands, the result of this policy has been a checkerboard pattern of land ownership within the boundaries of allotted reservations, creating complicated questions of ownership and tribal authority.[34]

Reorganization Period (1934-1940s)

In 1934, federal Indian policy shifted toward granting more administrative control to tribal governments with the IRA. This shift was partly due to the findings of a 1928 report commissioned by the Secretary to examine the social and economic conditions of American Indians.[35] The report, known as the *Meriam Report,* concluded that allotment policies contributed to economic hardships for tribes and tribal members.

The IRA explicitly ended the allotment of tribal reservations and authorized the Secretary to purchase previously allotted lands, acquire additional lands, restore any remaining surplus allotment lands, and place those lands into trust status. The IRA and other laws during this era authorized the Secretary to establish new reservations, among other things.[36]

Termination Era (1950s-1960s)

Federal Indian policy shifted again when its emphasis turned to ending the federal-tribal relationship. In 1947, Congress authorized a commission to examine and make recommendations to improve government efficiency.[37] The 1949 findings of this Hoover Commission—a series of reports and recommendations to Congress on the reorganization of the federal government—included several proposals intending to integrate tribes and tribal members into the general population.[38]

In 1953, Congress declared that certain tribes residing in specific states "be freed from Federal supervision."[39] During this era, Congress terminated federal recognition of a number of tribes, eliminating the tribes' trust status and access to many tribal-specific federal services.[40] Congress

[32] See Act of June 25, 1910, 36 Stat. 855, as amended (authorizing an Indian allottee to bequest the allotments in a will, if the Secretary of the Interior approved the will prior to the expiration of the 25-year trust period).

[33] Kevin Gover, "An Indian Trust for the Twenty-First Century," *Natural Resources Journal,* vol. 46, no 2 (Spring 2006), p. 328.

[34] See, generally, Indian Land Tenure Foundation, "Land Tenure Issues," at https://iltf.org/land-issues/issues/.

[35] Lewis Meriam, *The Problem of Indian Administration*, Institute for Government Research, February 21, 1928; Monte Mills, "Why Indian Country? An Introduction to the Indian Law Landscape," in *Indian Law and Natural and Natural Resources: The Basics and Beyond* (Rocky Mt. Min. L. Fdn., 2017), p.10, at https://ssrn.com/abstract=3100251.

[36] See, generally, P.L. 73-383, 25 U.S.C. §§5101 et seq.

[37] Act of July 7, 1947, P.L. 162.

[38] Herbert Hoover et al., *The Hoover Commission Report, Commission on Organization of the Executive Branch of the Government* (McGraw-Hill Book Company, Inc., 1949), p. 463; "Summary of Reports of the Hoover Commission," *Public Administration Review,* vol. 9, no. 2 (1949), p. 95.

[39] H.Con.Res. 108, 83rd Cong., 67 Stat. B132 (1953).

[40] See, for example, the Menominee Termination Act of June 17, 1954 (P.L. 83-399, 68 Stat. 250).

also transferred some civil and criminal jurisdiction over certain areas of Indian Country to specific states.[41]

Self-Determination and Self-Governance Era (1970s-Present)

In the 1970s, the United States began to reestablish the federal-tribal trust relationship and focused on increasing tribal decisionmaking authorities. During this time, Congress reinstated federal recognition for some tribes and, in some cases, reestablished their reservation boundaries or took land into trust for the tribe.[42]

A notable example of congressional legislation emphasizing tribal self-determination and self-governance is the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA).[43] Title I of ISDEAA authorized federally recognized tribes to *contract* with the BIA and the Indian Health Service to plan and administer some federal services and programs with federal funding, known as *638 contracts* or *self-determination contracts*.[44] In 1994, the Tribal Self-Governance Act (TSGA) amended ISDEAA and added a new Title V;[45] Title V authorized federally recognized tribes to enter into *compacts* with DOI to assume full funding and control over programs, services, functions, or activities that otherwise would be provided by DOI, including the allocation of appropriations.[46]

ISDEAA gave tribes the opportunity to assume responsibility in several areas, including law enforcement, tribal courts, health care, social services, and natural resources management. The TSGA expanded tribal authority to manage certain off-reservation programs that have "special geographic, historical, or cultural significance" to a tribe.[47] The TSGA also made DOI program funds available to tribes to manage eligible programs and services other than from the BIA.[48]

Overview of Tribal Land and Ownership Statuses

Tribal land may have different designations and ownership statuses. Lands may be owned by the federal government and held in trust for the benefit of the tribe communally or tribal members individually. Some land ownership statuses restrict the ability of the tribe or individual to alienate and encumber the land, despite owning the land, without federal approval. Others have no restrictions against alienation.

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[41] P.L. 83-280.

[42] See, for example, the Menominee Restoration Act of 1973 (P.L. 93-197), the Siletz Indian Tribe Restoration Act of 1977 (P.L. 95-195), and the Paiute Indian Tribe of Utah Restoration Act (P.L. 96-227).

[43] P.L. 93-638, 88 Stat. 2293, 25 U.S.C §§5301 et seq. (formerly 25 U.S.C. §450 et seq.). Regulations promulgated at 25 C.F.R. §§900 et seq.

[44] See, generally, 25 U.S.C. §5321 (formerly 25 U.S.C. §450f).

[45] P.L. 103-413.

[46] 25 U.S.C. §§5361 et seq. (formerly 25 U.S.C. §§458aa et seq.). Regulations promulgated at 42 C.F.R. Part 137. Tribes operating under a compact have more autonomy to make program and spending decisions than tribes operating under a contract, but a tribe may use a combination of both compact and contract. Participating tribes are subject to oversight, audits, and federal spending restrictions. See Brett Kenney, "Tribes as Managers of Federal Natural Resources," *Natural Resources & Environment*, vol. 27, no. 1 (Summer 2012), p. 48.

[47] 25 U.S.C. §5363(c) (formerly 25 U.S.C. §458cc).

[48] See, for example, Brian Upton, "Returning to a Tribal Self-Governance Partnership at the National Bison Range Complex: Historical, Legal, and Global Perspectives," *Public Land and Resources Law Review*, vol. 35 (2017), pp. 52-145, at https://scholarship.law.umt.edu/plrlr/vol35/iss1/5/ (discussing the management of the National Bison Range Complex, a unit of the National Wildlife Refuge System, between the Confederate Salish and Kootenai Tribes and DOI's Fish and Wildlife Services under a tribal self-governance agreement).

The following sections provide an overview of the types and characteristics of land holdings on tribal lands, focusing on trust lands, restricted fee lands, and fee lands. The following sections also include a short description of other land designations involving tribal lands, namely allotted lands, federal Indian reservations, and a note on *Indian Country*. For a list of the types of land holdings on tribal lands and other land designations, see **Table 1**.

Table 1. Types of Tribal Land Holdings and Other Land Designations

Name	Description or Definition
Trust	The U.S. government holds legal title to *trust land* for the benefit of federally recognized Indian tribes (*Indian tribes*, or *tribes*) or individual tribal members. The United States holds in trust approximately 55 million surface acres and 57 million acres of subsurface mineral estates for tribes and individual tribal members.[a]
Restricted Fee	*Restricted fee land* refers to land to which a tribe or individual tribal member holds legal title, but the title is subject to restrictions by the United States against alienation (sale or transfer) or encumbrance.[b]
Fee or Fee Simple	*Fee lands* or *fee simple lands* are lands previously conveyed out of tribal ownership that are freely alienable or can be encumbered without federal approval.[c] These lands may be owned by non-Indians and may be purchased and owned by a tribe or individual tribal members.
Allotted	*Allotted lands*, or *allotments*, can be held in trust or restricted fee status. These lands stem from the treaties and allotment statutes that divided land communally held by tribes and allotted parcels of it to individual tribal members.[d]
Federal Indian Reservation	*Federal Indian reservation land* is land reserved for a tribe (or multiple tribes) under treaty, statute, or other agreement with the United States that establishes permanent tribal homelands. Reservations are distinguishable from tribal property holdings.[e] For example, a reservations can include within its boundaries trust, restricted fee, and fee lands.
Indian Country	For criminal jurisdictional purposes, the term *Indian Country* generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all tribal member allotments.[f]

Source: Compiled by CRS.

a. 25 C.F.R. §151.2(d), 25 C.F.R. §169.2; Department of the Interior (DOI), Bureau of Indian Affairs (BIA), "About Us," at https://www.bia.gov/about-us.

b. 25 C.F.R. §§151.2(e), 152.1(c).

c. DOI, BIA, *Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)*, June 28, 2016, at https://www.bia.gov/sites/bia.gov/files/assets/public/raca/handbook/pdf/Acquisition_of_Title_to_Land_Held_in_Fee_or_Restricted_Fee_Status_50_OIMT.pdf.

d. Nell Jessup Newton, ed., *Cohen's Handbook of Federal Indian Law*, 2012 Edition, 2017, §§16.03, 1.03(6)(b) (Newton, *Cohen's Handbook*).

e. DOI, BIA, "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions; Newton, *Cohen's Handbook*, §15.02.

f. 18 U.S.C. §1151.

Trust Lands

Trust lands are lands to which the United States holds title for the benefit of a tribe or an individual tribal member.[49] Trust land held for a tribe's benefit may be referred to as *tribal trust*

[49] 25 C.F.R. §151.2(d), 25 C.F.R. §169.2; see also Newton, *Cohen's Handbook*, §15.03.

land. Trust land held for an individual tribal member may be referred to as an *individual trust allotment*. Trust land may be held within or outside reservation boundaries.[50]

Stemming from the Trade and Intercourse Act of 1834, Congress codified broad restrictions against alienation (sale or transfer) of lands involving tribes, including trust lands.[51] Similarly, individual trust allotments may not be alienated absent federal authority.[52] The approval of the Secretary is required to alienate trust lands, unless Congress provides otherwise.[53]

Tribal trust lands can be encumbered, and depending on the length and type of encumbrance, the Secretary's approval may be required. For instance, certain contracts or agreements that encumber tribal trust lands for more than seven years without the Secretary's approval are void.[54] Common encumbrances include leases and rights-of-way.[55] Individual trust allotments may be encumbered with the Secretary's consent.[56]

Congress has broad authority to manage trust lands. For example, under the General Allotment Act, Congress broke up communally held land holdings on reservations and distributed the land to individual tribal members in the form of *allotments*.[57] In other examples, Congress has the authority to grant leases and rights-of-way over tribal lands and to modify or remove the restriction against alienation of trust property.[58]

The concept of property being held in trust for a tribe or tribal member arose over the long course of interactions between tribes and the federal government. The Marshall Trilogy established a framework for the trust relationship between the federal government and tribes and the treatment of tribal land. Treaties and acts of Congress also considered tribal property being held in trust.[59]

Today, land can be taken into trust through a process known as the *land into trust* (or *fee-to-trust*) *process*, which is carried out by the Secretary or the Secretary's designee.[60] Under this process, land can be taken into trust through either mandatory acquisitions or discretionary acquisitions.[61] *Mandatory acquisitions* occur when Congress directs the Secretary to take land into trust on behalf of a tribe. For example, in December 2019, Congress recognized the Little Shell Band of Chippewa Indians as a federally recognized Indian tribe. At the same time, Congress directed the

[50] Newton, *Cohen's Handbook*, §15.03.

[51] 25 U.S.C. §177; see generally Newton, *Cohen's Handbook*, §15.06.

[52] 25 U.S.C. §348; see Newton, *Cohen's Handbook*, §§16.03(3)(b), (4)(a).

[53] 25 C.F.R. §152.22.

[54] 25 U.S.C. §81; 25 C.F.R. Part 84. The regulations define *encumber* to mean "a claim, lien, charge, right of entry or liability" attaching to real property. 25 C.F.R. §84.002.

[55] For example, see 25 C.F.R. Part 162 (leases and permits); 25 C.F.R. Part 169 (rights-of-way).

[56] For example, see 25 C.F.R. §§162.013, 169.108. For more information about encumbering allotments, see Newton, Cohen's Handbook, §16.03(4)(f).

[57] Act of February 8, 1887, Ch. 119, 24 Stat. 388, as amended.

[58] Newton, *Cohen's Handbook*, §5.02(4).

[59] Newton, *Cohen's Handbook*, §15.03.

[60] See, generally, 25 C.F.R. Part 151—Land Acquisitions.

[61] For more information on how the BIA processes mandatory and discretionary trust acquisitions, see DOI, BIA, *Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)*, June 28, 2016, p. 4, at https://www.bia.gov/sites/bia.gov/files/assets/public/raca/handbook/pdf/Acquisition_of_Title_to_Land_Held_in_Fee_or_Restricted_Fee_Status_50_OIMT.pdf. Hereinafter, BIA, *Fee-to-Trust Handbook*.

Secretary to acquire 200 acres of land in trust for the benefit of the tribe.[62] The Secretary also may be mandated by court order to take land into trust.[63]

Benefits to Tribes When Land Is Held in Trust

The Bureau of Indian Affairs (BIA) reports that land held in trust provides many benefits to Indian tribes. Some of these benefits include housing opportunities, energy development, and the protection of cultural resources. Further, certain federal programs and services may be available only on reservations or trust lands.

The Office of Indian Energy and Economic Development in the Office of the Assistant Secretary-Indian Affairs also identifies potential economic benefits of bringing land into trust. These benefits include the possibility of taking advantage of certain tax credits and tax-exempt financing, among others.

Sources: Department of the Interior (DOI), Land Buy-Back Program for Tribal Nations, "Land Buy-Back Program for Tribal Nations," at https://www.bia.gov/bia/ots/fee-to-trust. See DOI, BIA, "Fee to Trust," at https://www.bia.gov/bia/ots/fee-to-trust; and DOI, BIA, *Converting Fee Land into Trust Land and the Associated Economic Benefits*, pp. 7-10, at https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/pdf/Fee_to_Trust.pdf.

With the exception of certain mandatory acquisitions, discretionary trust acquisitions require the Secretary's approval to bring the land into trust.[64] The Secretary has the authority under the IRA to take land into trust on behalf of tribes.[65] DOI's policy toward trust land acquisitions for tribes is to acquire lands when the property is located within or adjacent to reservation boundaries; a tribe already owns an interest in the land; or the acquisition facilitates tribal self-determination, economic development, or Indian housing. For tribal members, DOI also may acquire land in trust when the land is within the boundaries of or adjacent to the reservation or when the land is already in trust or restricted status, such as a fractionated interest in land.[66] Acquisitions for off-reservation parcels require additional processes compared with on-reservation acquisitions.[67] Further, a 2009 Supreme Court case, *Carcieri v. Salazar,* decided that only tribes that were federally recognized under the IRA prior to 1934 (the year in which the IRA was enacted) could petition to reserve land in trust.[68]

Restricted Fee Lands

Restricted fee lands are lands owned by a tribe or a tribal member that are subject to a restriction against alienation or encumbrance. Such restriction is contained in the conveyance instrument, pursuant to federal law, or because federal law imposes it.[69] Restricted fee land owned by a tribe may be referred to as *restricted fee*

[62] P.L. 116-92 , §2870.

[63] BIA, *Fee-to-Trust Handbook*, p.5.

[64] BIA, *Fee-to-Trust Handbook*, p.4; but see G. William "Bill" Rice, "Section 5: Indian Trust Land Acquisitions, and Secretarial Authority," *Arizona State Law Journal*, vol. 52, no. 2 (2020), at https://arizonastatelawjournal.org/2020/08/12/section-5-indian-trust-land-acquisitions-and-secretarial-authority/ (asserting the Secretary of the Interior's approval may not be required to bring land into trust for tribes that purchase land to be placed into trust).

[65] 25 U.S.C. §5108.

[66] 25 C.F.R. §§151.3, 151.7.

[67] 25 C.F.R. §151.10 (on-reservation acquisitions); 25 C.F.R. §151.11 (off-reservation acquisitions); see, generally, BIA, *Fee-to-Trust Handbook*; see also DOI, BIA, "Chapter 15: Off Reservation Fee-to-Trust Decision," in "Part 52: Real Estate Services," in *Indian Affairs Manual*, at https://www.bia.gov/policy-forms/manual.

[68] Carcieri v. Salazar, 555 U.S. 379 (2009). For more information on this court case, see CRS Report RL34521, *Carcieri v. Salazar: The Secretary of the Interior May Not Acquire Trust Land for the Narragansett Indian Tribe Under 25 U.S.C. Section 465 Because That Statute Applies to Tribes "Under Federal Jurisdiction" in 1934*, by M. Maureen Murphy.

[69] 25 C.F.R. §§151.2(e), 152.1(c); see also DOI, Solicitor's Opinion M-37023, "Applicability of 25 U.S.C. § 2719 to Restricted Fee Lands," January 18, 2009, at https://www.doi.gov/solicitor/opinions. Hereinafter, M-Opinion 37023.

tribal land. Restricted fee land owned by an individual tribal member may be referred to as a *restricted allotment*. Like trust lands, Congress's broad restriction against alienation of lands involving tribes includes restricted fee lands.[70] The approval of the Secretary is required to alienate restricted fee lands, unless Congress provides otherwise.[71] Also like tribal trust lands, restricted fee tribal lands can be encumbered; depending on the length and type of encumbrance, the Secretary's approval may be required.[72] Restricted allotments may be encumbered with the Secretary's consent.[73]

Some lands are considered restricted fee lands as a result of historical negotiations between a tribe and the federal government, such as through treaties.[74] Congress also can direct that land be placed into restricted fee status. For example, Seneca Nation Settlement Act of 1990 authorized the Secretary to acquire land near the Seneca Nation's former reservation lands and to hold the lands in "restricted fee status by the Seneca Nation."[75] The federal government also may promulgate regulations pertaining to specific restricted fee parcels, such as requiring the Secretary's approval for exchange of restricted fee parcels on the Osage reservation.[76]

For some purposes, Congress has defined tribal lands to include both trust and restricted fee lands, such as for leasing Indian agricultural lands, rights-of-way, and Indian energy.[77] For practical purposes, trust and restricted fee lands often are treated the same. For example, with a few exceptions, trust and restricted fee properties are treated the same for purposes of probate.[78] However, Congress does not often enact statutes that impose specific duties on DOI with respect to restricted fee lands. Thus, DOI may have certain land management responsibilities to trust lands, due to the federal-tribal trust relationship, but those responsibilities do not pertain to restricted fee lands.[79]

Fee Lands

Fee lands, sometimes referred to as *fee simple lands*, are lands owned by a person who can freely alienate or encumber the land without federal approval.[80] Many fee lands were conveyed out of tribal and individual tribal member ownership during the Allotment Period (for more information see "Allotment Period (1887-1934)"). Thus, fee lands within reservation boundaries can be owned by non-Indians, which may be referred to as *non-Indian-owned fee lands*.

Even after the Allotment Period, trust or restricted fee lands can be converted to fee lands. For instance, if an individual tribal member mortgages his or her trust or restricted fee property and defaults on the loan, the property may pass into fee status if the property is sold to satisfy the

[70] 25 U.S.C. §177.

[71] 25 C.F.R. §152.22.

[72] See, for example, 25 U.S.C. §81; 25 C.F.R. Part 84; 25 C.F.R. Part 162; 25 C.F.R. Part 169.

[73] For example, see 25 C.F.R. §§162.013, 169.108.

[74] See, for example, Treaty with the Seneca and Shawnee, 1832, 7 Stat. 411; see also M-Opinion 37023.

[75] P.L. 101-503, §8(c).

[76] 25 C.F.R. §158.54.

[77] For leasing of Indian agricultural lands, see 25 U.S.C. §3703. For rights-of-way, see 25 U.S.C. §323. For Indian energy, see 25 U.S.C. §3501.

[78] 25 C.F.R. §15.2, "restricted property."

[79] M-Opinion 37023, pp. 3-4, 6.

[80] BIA, *Fee-to-Trust Handbook*, p. 5.

debt.[81] In another example, individual tribal members can request the Secretary to remove the restriction against alienation on trust or restricted fee lands, making the parcel freely alienable.[82]

Tribes or individual tribal members also can purchase and own fee land and may request that these lands be placed into trust status (for more about the land-into-trust process, see "Trust Lands," above).[83] Fee lands owned by tribes may be referred to as *tribal fee lands*, and fee lands owned in fee by tribal members may be referred to as *individually owned fee lands*. Non-Indian-owned fee land purchased by a tribe or individual tribal member may not be freely alienable due to the broad language in the Nonintercourse Act and its implementing regulations.[84] Some courts have held that the Nonintercourse Act applies to such lands, while others have held that it does not.[85] In some instances, Congress has enacted legislation approving the alienation of tribal fee land.[86]

Although the BIA is the primary agency responsible for oversight of tribal lands, the BIA does not have a role in land management activities that include fee interests, such as for leases or rights-of-way.[87] However, the BIA may have limited responsibilities regarding fee land held by tribes, such as recording land title documents.[88]

Allotted Land

Allotted lands, or *allotments*, are lands held in trust or restricted fee status by individual tribal members.[89] Allotted lands stem from treaties and allotment statutes that divided parcels of land held communally by tribes among individual tribal members.[90] The term *allotted lands* does not necessarily signify a land status, since most allotted lands are held in trust or restricted fee, but some statutes directly reference the term *allotted lands*.[91] (For more information on the allotment era, see "Allotment Period (1887-1934).")

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[81] 25 U.S.C. §5135 (formerly 25 U.S.C. §483a); 25 C.F.R. §152.34. For more information on how the BIA reviews and processes mortgage loan requests, see DOI, BIA, *Indian Affairs Mortgage Handbook 51 IAM 4-H*, July 15, 2019, p. 4, at https://www.bia.gov/node/14587/handbook/attachment/newest/.

[82] 25 U.S.C. §5134 (formerly 25 U.S.C. §483); see, generally, 25 C.F.R. Part 152.

[83] 25 C.F.R. Part 151; Newton, *Cohen's Handbook*, §15.04(5).

[84] Nonintercourse Act, 25 U.S.C. §177; 25 C.F.R. §152.22(b). See Newton, *Cohen's Handbook*, §15.06(4); see also Mark A. Jarboe and Daniel B. Watts, "Can Indian Tribes Sell or Encumber Their Fee Lands Without Federal Approval?," *American Indian Law Journal*, vol. 0, issue 1, article 2 (2012), at https://digitalcommons.law.seattleu.edu/ailj/vol0/iss1/2/ (hereinafter, Jarboe, "Can Tribes Sell Fee Lands Without Federal Approval?").

[85] Compare Tonkawa Tribe of Oklahoma v. Richards, 75 F.3d 1039, 1045 (5th Cir. 1996) ("The Nonintercourse Act protects a tribe's interest in land whether that interest is based on aboriginal right, purchase, or transfer from a state.") with Lummi Indian Tribe v. Whatcom County, 5 F.3d 1355, 1359 (9th Cir. 1993) (holding that the Nonintercourse Act does not apply to lands reacquired by a tribe in which the federal government previously removed the restraint against alienation); see also Newton, *Cohen's Handbook*, §15.06(4); Jarboe, "Can Tribes Sell Fee Lands Without Federal Approval?"

[86] For example, see P.L. 108-204, §126 (authorizing unrestricted sale or transfer of non-trust land held by the Shakopee Mdewakanton Sioux Community).

[87] 25 C.F.R. §162.004 (leases that include fee interests); 25 C.F.R. §169.3 (regarding rights-of-way over fee lands).

[88] DOI, BIA, "Chapter 2: Recording and Custody of Land Title Documents," in "Part 51: Land Titles and Records," in *Indian Affairs Manual*, p. 3, at https://www.indianaffairs.gov/policy-forms/manual.

[89] Newton, *Cohen's Handbook*, §16.03.

[90] Newton, *Cohen's Handbook*, §1.03(6)(b).

[91] See, for example, 25 U.S.C. §396 (leasing of allotted lands for mineral purposes).

Allotments can pose challenges for tribes and for federal agencies managing lands for tribes. Allotted land led to *fractionation* of the land, which occurred when the undivided interest from the original allottees was passed down to multiple heirs. The number of heirs inheriting undivided interests in the same allotments increases with each generation. The DOI Land Buy-Back Program (LBBP) reported that nearly 100,000 tracts of land held in trust or restricted status had multiple owners with fractional interests.[92] Nearly 2.5 million fractionated interests are owned by almost 243,000 landowners, and nearly 98% of these landowners have less than 25% ownership interest.[93] Each of these inheritors owns an undivided interest in the entire allotment, meaning none of the heirs has a right to any specific parcel of land or "piece" of the allotment.

Additionally, when some allotted lands passed into fee, the result created a pattern of land ownership, commonly referred to as *checkerboarding*—where fee parcels are interspersed with trust or restricted fee parcels.[94] (For example, see **Figure 1**.) Checkerboarding, combined with tracts that have multiple co-owners—sometimes hundreds—can cause jurisdictional challenges. This can complicate pursuing projects such as economic development or infrastructure projects that cross parcels of different ownership statuses in checkerboard areas on a reservation. In addition, fractionated ownership also can make it difficult to obtain access to cultural sites.[95]

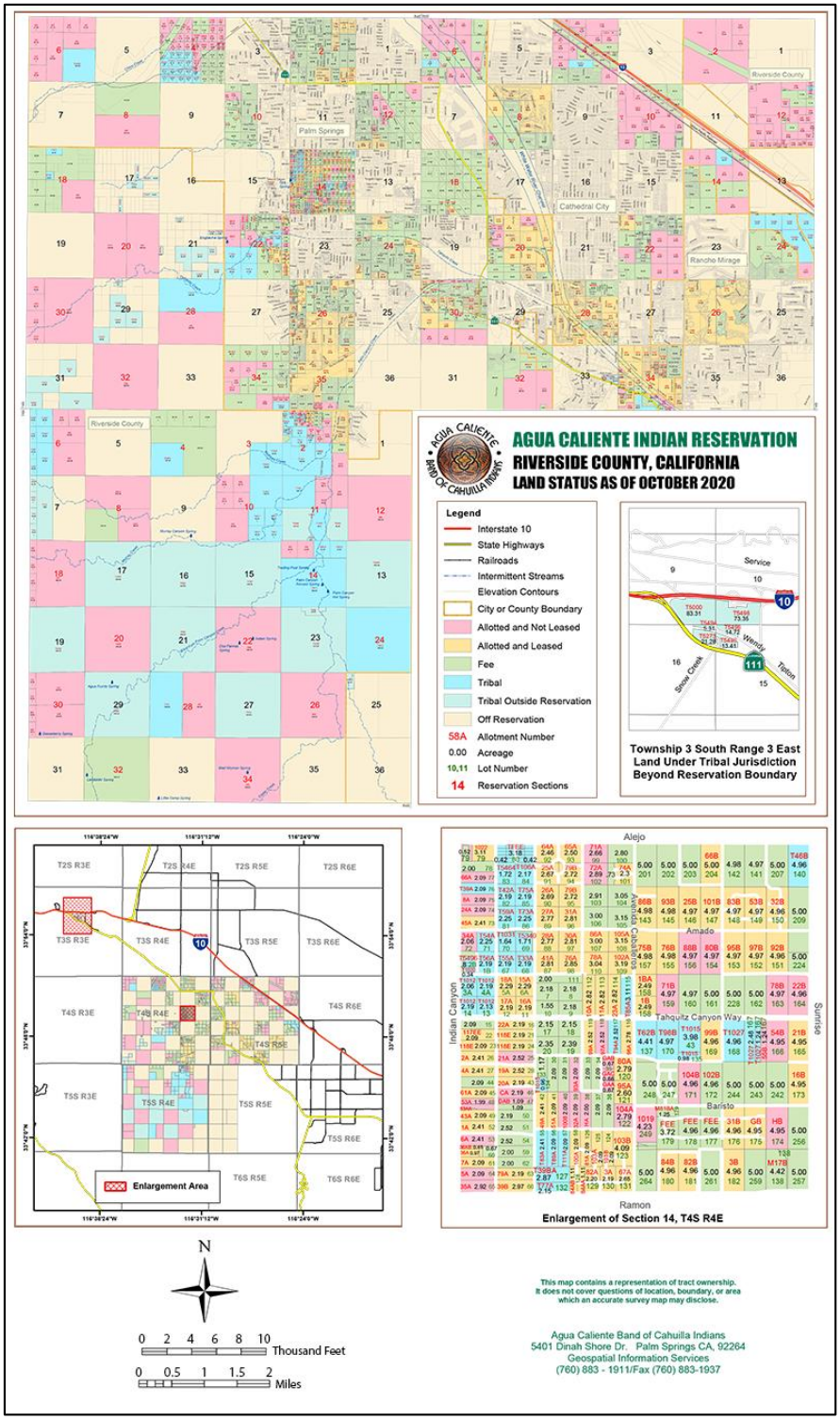
[92] For more information on DOI's Land Buy-Back Program for Tribal Nations (LBBP), see https://www.doi.gov/buybackprogram.

[93] DOI, LBBP, "Fractionation," at https://www.doi.gov/buybackprogram/fractionation.

[94] Indian Land Tenure Foundation, "Land Tenure Issues," at https://iltf.org/land-issues/issues/.

[95] DOI, LBBP, "Fractionation," at https://www.doi.gov/buybackprogram/fractionation.

Figure 1. Selected Lands of the Agua Caliente Band of Cahuilla Indians



Source: Used with permission from the Agua Caliente Band of Cahuilla Indians ("Band"). Modified by CRS.

Notes: For illustrative purposes, this map demonstrates the variation and complexity of tribal land holdings and other land designations, including trust lands, allotted lands, fee lands, and lands that are on- and off-reservation.

The Band indicates that "Tribal" and "Tribal Outside Reservation" refers to tribal trust and tribal fee land. The scale bar refers to sections in the overall figure.

The federal government also may require majority consent of individual landowners to develop land. For example, the BIA will approve leases only with the approval of a majority percentage of landowners and will not grant a right-of-way over an individually owned parcel without the majority consent of the landowners.[96] Because some parcels have many landowners, obtaining consent of the landowners can be costly and time consuming.[97] As a result, many highly fractionated tracts are underutilized, unoccupied, or unavailable for any purpose. Leasing and other income received for use of fractionated land is divided among the owners, such that each owner often receives only a nominal amount depending on the person's undivided ownership interest.[98]

In the 1980s, Congress addressed fractionation with the Indian Land Consolidation Act (ILCA).[99] One of ILCA's provisions authorized an *escheat*—or transfer—of a deceased tribal member's undivided fractional interests of 2% or less of trust or restricted properties and earning less than $100 over a one-year period to the tribe with jurisdiction.[100] However, in 1987, the Supreme Court found these provisions to be an unconstitutional taking under the Fifth Amendment.[101] In the interim, Congress amended ILCA to extend the one-year period to a five-year period and to provide that tribal members could *devise*—or pass through a will—their interests to another owner of undivided factional interests, among other things.[102] In 1997, the Supreme Court also found the amended provisions to be an unconstitutional taking under the Fifth Amendment.[103]

In November 2000, Congress passed the Indian Land Consolidation Act Amendments of 2000,[104] which included revisions to the escheatment process and intended to reduce fractionation, consolidate land ownerships, and reverse the effects of allotment on tribes.[105] Before those provisions could become effective, however, Congress amended ILCA again through the American Indian Probate Reform Act of 2004 (AIPRA).[106] AIPRA revised how a deceased tribal member's trust or restricted property is devised to heirs, also in an effort to reduce fractionation. For small fractionated interests, AIPRA created the *single heir rule*, which allows interests less than 5% to go to a single heir (rather than multiple heirs) in the absence of a will. If there are no eligible heirs, the interest will pass to the tribe with jurisdiction.[107]

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[96] 25 U.S.C. §2218; 25 U.S.C. §324 (providing that for numerous landowners, the Secretary of the Interior can determine that obtaining consent is impracticable if he or she also determines that the right-of-way grant would not cause substantial injury to the land or landowner).

[97] See, for example, Government Accountability Office (GAO), *Indian Issues: Observations on Some Unique Factors That May Affect Economic Activity on Tribal Lands*, GAO-11-543T, April 7, 2011, p. 10, at https://www.gao.gov/products/GAO-11-543T.

[98] DOI, LBBP, "Fractionation."

[99] P.L. 97-459.

[100] P.L. 97-459, §207.

[101] Hodel v. Irving, 481 U.S. 704 (1987).

[102] P.L. 98-608, §4.

[103] Babbitt v. Youpee, 519 U.S. 234 (1997).

[104] P.L. 106-462.

[105] P.L. 106-462.

[106] P.L. 108-374.

[107] P.L. 108-374. For more information on Indian probate, see DOI, BIA, "Your Land Your Decision – What Is a Probate?," at https://www.bia.gov/bia/ots/dop/your-land; DOI, BIA, "Estate Planning," at

One approach to addressing fractionation evolved from a settlement over the federal government's ability to execute its fiduciary trust responsibility over trust lands and associated resources. In 1996, Eloise Cobell sued DOI, alleging mismanagement of trust assets of individual tribal members.[108] After more than a decade of litigation, in 2009 the U.S. government agreed to a negotiated settlement, which was contingent upon the enactment of legislation.[109] In 2010, Congress passed the Claims Resolution Act of 2010, authorizing the settlement agreement.[110] In addition to payments to individual tribal members, the settlement authorized up to $1.9 billion for a program to acquire fractionated lands and return them to tribal ownership within 10 years. The LBBP carries out this responsibility.[111]

Federal Indian Reservations

Federal Indian reservations are areas reserved for a tribe, or multiple tribes, as permanent homelands through treaties, executive orders, acts of Congress, or by administrative action. According to the BIA, the federal government administers approximately 326 land areas as Indian reservations. Not all Indian reservations may be called *reservations*; some may be referred to as *pueblos*, *rancherias*, *missions*, *villages*, or *communities*. Notably, not all tribes have a reservation; some of these tribes could still have lands held in trust or restricted fee, and some tribes may be landless.[112]

The term Indian reservation is distinguishable from tribal property holdings.[113] For example, within a tribe's reservation boundaries, there can be trust, restricted fee, and fee lands. Tribes also may have trust parcels and may own lands in fee simple outside of reservation boundaries. For example, see **Figure 1**.

https://www.indianaffairs.gov/bia/ots/dres/estate-planning. See also Newton, *Cohen's Handbook*, §16.05.

[108] Cobell v. Salazar, 573 F.3d 808 (D.C. Cir. 2009).

[109] Class Action Settlement Agreement, Cobell v. Salazar, No. 1:96CV01285-JR, at 2 (December 7, 2009).

[110] Also known as the Claims Resettlement Act of 2010, P.L. 111-291.

[111] DOI, "Land Buy-Back Program for Tribal Nations," at https://www.doi.gov/buybackprogram.

[112] DOI, BIA, "Frequently Asked Questions," at https://www.bia.gov/frequently-asked-questions.

[113] See Newton, *Cohen's Handbook*, §15.02.

Congress can create and add to existing reservations. For example, the 116th Congress took lands into trust for the Lytton Rancheria of California and stated that the lands would be made a part of the tribe's reservation.[114] Additionally, reservations can be established administratively.[115]

Understanding whether and where a tribe has reservation boundaries can be important for jurisdictional purposes. Questions on the exercise of jurisdiction are often complex and can involve a variety of factors, such as laws and fact-intensive inquiries, including the status of the land in question (i.e., trust, restricted fee, or fee land). Additionally, the existence of some tribes' reservation boundaries may be unsettled. (See "Settling Reservation Boundaries in *McGirt v. Oklahoma*" text box.) The exercise of jurisdiction and the existence of reservation boundaries are outside the scope of this report but serve to demonstrate the complexities tribes and federal land management agencies face when determining how tribal lands and natural resources can be managed.

Settling Reservation Boundaries in *McGirt v. Oklahoma*

On July 9, 2020, in a 5-4 ruling, the Supreme Court held that land reserved for the Muscogee (Creek) Nation (tribe) in the 19th century remained "Indian Country" for criminal jurisdiction purposes. In an opinion authored by Justice Neil Gorsuch, the Court held that Congress had established a reservation for the tribe. Despite creating the State of Oklahoma and limiting tribal sovereignty within that area in the intervening years, the Court further held that Congress had never disestablished the Creek reservation in eastern Oklahoma. According to the dissenting opinion, the tribe's reservation boundaries span 3 million acres.

Sources: McGirt v. Oklahoma, 140 S. Ct. 2452 (2020); CRS Legal Sidebar LSB10527, *This Land Is Whose Land? The McGirt v. Oklahoma Decision and Considerations for Congress*, by Mainon A. Schwartz.

A Note on Indian Country

For purposes of criminal jurisdiction, the term *Indian Country*, as statutorily defined, generally refers to all lands within an Indian reservation, all dependent Indian communities, and all tribal member allotments.[116] Other statutes define Indian Country in manners similar to the criminal jurisdiction definition.[117]

The term Indian Country is not a land status and is distinguishable from tribal property holdings. The definition of Indian Country can assist in determining which entity—state, tribal, or federal—can exercise jurisdiction when matters involve tribes, tribal members, and non-Indians.[118] The term considers reservation boundaries and the status of lands, such as trust, restricted fee, or fee lands, including allotments.[119]

The components of the definition of Indian Country have been litigated often. An in-depth look at the exercise of state, tribal, or federal jurisdiction, which can include complexities involving the definition of Indian Country, is outside the scope of this report. Indian Country is noted here to assist in distinguishing the differences and interdependencies between the exercise of jurisdiction and tribal land holdings.

[114] P.L. 116-92, §2869(c).

[115] 25 U.S.C. §5110 (formerly 25 U.S.C. §467); see, generally, BIA, *Fee-to-Trust Handbook* (establishing the process in which the BIA can simultaneously process a reservation proclamation request with a land-into-trust application).

[116] 18 U.S.C. §1151.

[117] See, for example, 33 U.S.C. §1377; 23 U.S.C. §402.

[118] For example, see McGirt v. Oklahoma, 140 S. Ct. 2452 (2020).

[119] See generally, Newton, *Cohen's Handbook*, §3.04.

Issues and Options for Congress

The following sections identify potential issues for Congress regarding the status of trust or restricted fee lands owned by tribes and tribal members. Several issues for Congress relate to the land-into-trust process, including considerations related to off-reservation parcels, the Supreme Court's *Carcieri* decision, and the cost and timeliness of the process. Other issues for Congress include requirements for the Secretary's approval to encumber trust or restricted fee parcels and the status of the LBBP.

Processing Off-Reservation Land into Trust

An issue for Congress could be the administrative process for trust acquisitions of land located off of a reservation. The majority of trust acquisitions are not controversial,[120] but some decisions to take lands into trust can be contentious. For instance, decisions to take off-reservation land into trust for gaming purposes can be controversial and may be contested by states, local governments, and sometimes other tribes.[121] In June 2017, the acting DOI Deputy Secretary testified before the House Subcommittee on Indian, Insular, and Alaska Native Affairs that taking off-reservation land into trust also has the potential to cause jurisdictional uncertainties and can have tax and economic consequences for non-Indian communities.[122]

In 2017 and 2018, DOI held listening sessions and consultations with tribes in an effort to update the land-into-trust regulations.[123] DOI issued proposed draft regulations focusing on the process for off-reservation acquisitions and on creating separate processes for gaming acquisitions and acquisitions for other purposes.[124] The scheduled consultations concluded in 2018, and the regulations were not updated.

During the consultation period, DOI received over 120 written comments from tribes, tribal organizations, state and local governments, and other interested stakeholders.[125] Some tribes opposed the proposed revisions to the regulations, citing various reasons. For example, some stated that the proposed revisions would make bringing land into trust more difficult for tribes. Others opposed more deference to state and local governments. Still others opposed any diminishment of the Secretary's authority to bring land into trust. The State of Wyoming and the California State Association of Counties (CSAC) also provided comments, stating that their governments would like more inclusion and opportunities to provide input throughout the land-

[120] Testimony of NCAI Secretary Ron Allen, in U.S. Congress, Senate Committee on Indian Affairs, *Examining Executive Branch Authority to Acquire Trust Lands for Indian Tribes*, hearings, 111th Cong., 1st sess., May 21, 2009, S.Hrg. 111-136 (Washington, DC: GPO, 2010).

[121] See, for example, Heidi McNeil Staudenmaier and Brian Daluiso, "Current Battles and the Future of Off-Reservation Indian Gaming," *Indian Gaming Lawyer* (Spring 2017), pp. 13-15, at https://www.swlaw.com/assets/pdf/news/2017/05/01/IGL%20Spring%202017.pdf.

[122] U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular, and Alaska Native Affairs, *Comparing 21st Century Trust Land Acquisitions with the Intent of the 73rd Congress in Section 5 of the Indian Reorganization Act*, oversight hearing, 115th Cong., 1st sess., July 13, 2017.

[123] 25 C.F.R. Part 151.

[124] DOI, RACA, "Consultation Draft Part 151 Land Acquisitions §§151.11-151.122," at https://www.bia.gov/sites/bia.gov/files/assets/as-ia/raca/pdf/Consultation%20Draft%20-%20Trust%20Acquisition%20Revisions.pdf.

[125] DOI, Office of Regulatory Affairs and Collaborative Action (RACA), "Fee-to-Trust Regulations (25 CFR 151)," at https://www.bia.gov/as-ia/raca/archived-regulatory-efforts/fee-trust-regulations-25-cfr-151. Hereinafter, RACA, "Fee-to-Trust Regulations."

into-trust process, among other suggestions.[126] CSAC asserted its belief that Congress should amend the IRA to provide for a statutory process that establishes objective standards for bringing land into trust.[127]

An issue for Congress is whether to consider oversight or legislative options to address concerns related to the administration of the land-into-trust process. Legislative options could include, for example, establishing a statutory scheme for the land-into-trust process. In 2015 and in 2017, Congress held two oversight hearings on the adequacy of the standards for trust land acquisitions under the IRA.[128] Alternatively, Congress might decide that issues related to the land-into-trust process are best addressed through administrative processes.

Establishing a statutory framework for the land-into-trust process could have several implications. These could include the potential resolution of jurisdiction and taxation matters, for example. Another implication could be the potential for addressing concerns related to administrative burdens the BIA and tribes have in bringing land into trust, such as funding or timing concerns.

Establishing a statutory process could also address issues related to the role of state and local governments in the land-to-trust process. Although state and local government stakeholders may welcome the opportunity to provide more input, some tribes may disagree with providing state and local governments with greater input opportunities. For example, some tribes may assert that the United States' federal trust responsibility to tribes, as well as the IRA's policy to restore homelands to tribes, would further preclude or limit state and local government input into the land-into-trust process. Further, DOI has previously testified against a statutory amendment to the IRA, stating that the Secretary's discretion under the IRA and land-into-trust standards are adequate.[129]

The Land-into-Trust Process After *Carcieri*

Another issue is related to the Secretary's determination of whether a tribe qualifies to petition to bring land into trust. *Carcieri v. Salazar,* a 2009 Supreme Court case, narrowed the scope of tribes eligible to do so by deciding that only tribes that were federally recognized under the IRA prior to 1934 could petition to reserve land in trust.[130] After the *Carcieri* decision, the DOI Solicitor's Office created different processes for evaluating whether a tribe is considered to be "under federal jurisdiction." Initially, the Solicitor created a two-part test.[131] However, in March 2020, the DOI Assistant Secretary-Indian Affairs, at the recommendation of the Solicitor's Office, replaced the

[126] See, generally, RACA, "Fee-to-Trust Regulations."

[127] RACA, "Fee-to-Trust Regulations."

[128] U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular, and Alaska Native Affairs, *Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act (IRA) of 1934*, oversight hearing, 114th Cong., 1st sess., May 14, 2015; U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular, and Alaska Native Affairs, *Comparing 21st Century Trust Land Acquisitions with the Intent of the 73rd Congress in Section 5 of the Indian Reorganization Act*, oversight hearing, 115th Cong., 1st sess., July 13, 2017.

[129] Testimony of Kevin Washburn, Assistant Secretary-Indian Affairs, Department of the Interior, in U.S. Congress, House Natural Resources Committee, *Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act (IRA) of 1934*, oversight hearing, 114th Cong., 1st sess., May 14, 2015.

[130] Carcieri v. Salazar, 555 U.S. 379 (2009). For more information on this court case, see CRS Report RL34521, *Carcieri v. Salazar: The Secretary of the Interior May Not Acquire Trust Land for the Narragansett Indian Tribe Under 25 U.S.C. Section 465 Because That Statute Applies to Tribes "Under Federal Jurisdiction" in 1934*, by M. Maureen Murphy.

[131] DOI, Solicitor's Opinion M-37029, "The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act," March 12, 2014, at https://www.doi.gov/solicitor/opinions.

two-part test with a four-step process.[132] Both processes have been at the center of litigation for the Mashpee Wampanoag Tribe, which had land taken into trust and then out of trust by DOI.[133]

Congress may choose to address issues raised by the *Carcieri* decision. Congress may prefer to allow the process to proceed with no changes. Alternatively, Congress may consider oversight and legislative options, such as amending the IRA to address the Secretary's authority to bring land into trust since the 2009 *Carcieri* decision. For example, legislation introduced in the 116th Congress would amend the IRA and the Secretary's authority to bring land into trust to apply to all tribes, regardless of date of recognition.[134] In 2017, Congress held an oversight hearing on the Secretary's authority to bring land into trust in light of *Carcieri*.[135]

Cost and Timeliness of the Land-into-Trust Process

The process of bringing land into trust can be expensive and time consuming for tribes to pursue. Some tribes have commented on the length of time for the BIA to process trust acquisitions and the cost for tribes in purchasing fee lands prior to converting the land into trust.[136] Some tribes have participated in alternative structures to facilitate the land-into-trust application process. For instance, some tribes in California participate in the California Fee-to-Trust Consortium, which allocates tribal government funding to the BIA to assist in processing trust acquisitions, aiming to reduce the time it takes to bring land into trust.[137]

An issue for Congress could be whether current BIA funding is sufficient for the agency to process, and for tribes to pursue, bringing land into trust. Congress may consider DOI's processing times of applications from each BIA region and the approximate costs for the BIA and tribes of bringing land into trust.

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[132] DOI Solicitor's Opinion M-37055, "Withdrawal of Solicitor's Opinion, 'The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act,'" March 9, 2020, at https://www.doi.gov/solicitor/opinions; see also DOI Solicitor's Memorandum, "Procedure for Determining Eligibility for Land into Trust Under the First Definition of 'Indian' in Section 19 of the Indian Reorganization Act," March 10, 2020, at https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/pdf/Solicitors_Procedures_for_Determining_Eligibility_for_Land_into_Trust_under_Category_1.pdf. For more information on the four-step process, see CRS Legal Sidebar LSB10460, *BIA's New Take on Taking Land into Trust for Indians*, by M. Maureen Murphy.

[133] For more information this litigation, see CRS Legal Sidebar LSB10533, *Mashpee Wampanoag v. Bernhardt: A Tale of Two Definitions of "Indian"*, by M. Maureen Murphy.

[134] S. 2808, H.R. 375. A similar bill—H.R. 130—was introduced in the 115th Congress. All three bills also would extend the Secretary of the Interior's authority to take land into trust in Alaska.

[135] U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular, and Alaska Native Affairs, *Comparing 21st Century Trust Land Acquisition with the Intent of the 73rd Congress in Section 5 of the Indian Reorganization Act*, oversight hearing, 115th Cong., 1st sess., July 13, 2017.

[136] See generally, GAO, *BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*, GAO-06-781, July 28, 2006, at https://www.gao.gov/products/GAO-06-781; see also *Indian Country Today*, "Oklahoma Indians Guiding the Way for Land-into-Trust," at https://indiancountrytoday.com/archive/oklahoma-indians-guiding-the-way-for-land-into-trust-RuuaAu3iW0-loJFuUbfNeQ; Harvard Project on American Indian Economic Development, "California Fee-to-Trust Consortium," September 14, 2011, at https://hpaied.org/publications/california-fee-trust-consortium.

[137] For an overview and background of the California Fee-to-Trust Consortium, see Harvard Project on American Indian Economic Development, "California Fee-to-Trust Consortium," September 14, 2011, at https://hpaied.org/publications/california-fee-trust-consortium.

Secretarial Approval to Encumber Trust or Restricted Fee Lands

Situations when the Secretary's approval is required to encumber trust or restricted lands may be an issue for Congress. Tribes obtain benefits when their land is held in trust or restricted fee status, but one potential disadvantage could be that the Secretary's approval is required, with some exceptions, to encumber lands held in trust or restricted fee status, such as for leasing and rights-of-way.[138] For example, with respect to energy resource development, some of the BIA's actions and decisions include reviewing and approving surface and subsurface leases, drilling permits, rights-of-way, cultural resources surveys, and environmental studies and surveys.[139] Energy and natural resource projects also may require approval from various other federal agencies.[140] Individual tribal members or tribes that own their land in fee simple status are not subject to these statutory and regulatory requirements to the same extent.

Congress has passed legislation that, if certain conditions are met, removes the requirement for the Secretary's approval for certain leasing, business agreements, and rights-of-ways on trust and restricted fee lands. For example, in 2012, Congress passed the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act).[141] The HEARTH Act amended the Indian Long-Term Leasing Act of 1955 and authorized the Secretary to approve tribal leasing regulations for certain activities.[142] Upon approval, leases executed under approved tribal leasing regulations do not require the Secretary's approval.

Similarly, Congress removed the requirement for the Secretary's approval for certain leases, business agreements, and rights-of-way for Indian energy projects. The Indian Tribal Energy Development and Self-Determination Act of 2005 (ITESDA) authorized the Secretary to enter into tribal energy resource agreements (TERAs) with tribes the Secretary had deemed to have sufficient capacity to regulate their energy development.[143] Once a tribe enters into a TERA with the Secretary, it is able to enter into energy-related mineral leases and associated transactions without additional approval by the Secretary. In 2015, after the Governmental Accountability Office reported that no tribe had entered into a TERA with the Secretary, Congress passed the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017,[144] which amended the TERA approval process, among other things.[145]

Congress also has considered legislation that would authorize tribes to request to transfer tribal trust lands into restricted fee tribal lands.[146] Under the proposals, the restricted fee land would

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[138] For example, see 25 C.F.R. Part 162 (leases and permits), 25 C.F.R. Part 169 (rights-of-way).

[139] GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, GAO-15-502, June 8, 2015, p. 4, at https://www.gao.gov/products/GAO-15-502.

[140] For example, within DOI, the Bureau of Land Management, Office of Natural Resources Revenue, and—depending on the energy resource—Office of Surface Mining also play key roles in energy development on tribal lands. See DOI, BIA, Office of Indian Energy and Economic Development, "Working on Indian Lands," at https://www.indianaffairs.gov/as-ia/ieed/division-energy-and-mineral-development/working-indian-lands. Depending on the circumstances, the involvement of other federal agencies or offices also may be required.

[141] P.L. 112-151.

[142] P.L. 112-151 (exempting leases for exploration, development, or extraction of a mineral resource). Indian Long-Term Leasing Act of 1955, 25 U.S.C. §415(h).

[143] P.L. 109-58, Title V.

[144] P.L. 115-325.

[145] For more information, see CRS Report R46446, *Tribal Energy Resource Agreements (TERAs): Approval Process and Selected Issues for Congress*, by Tana Fitzpatrick.

[146] See, for example, the American Indian Empowerment Act of 2017 (H.R. 215) in the 115th Congress. Similar versions of this bill were introduced in earlier Congresses.

remain communally owned by the tribe and would continue to have restrictions on alienation and taxation. However, tribes would be able to develop and lease the lands without U.S. government approval.

Congress may wish to consider whether to increase, decrease, or continue the same level of secretarial authority to encumber trust or restricted fee lands in general or for specific uses. Congress has provided the option for tribes to seek removal of the Secretary's approval requirement for leasing under the HEARTH Act and for Indian energy projects under ITESDA and its amendments. Congress also has considered a similar option for restricted fee lands. Congress may consider the time and additional resources needed for tribes to pursue removing the Secretary's authority under existing authorities, such as under a TERA.

The Land Buy-Back Program and Reducing Fractionation

Allotted lands can have management constraints when parcels of lands are highly fractionated. In 2009, the settlement agreement for the *Cobell v. Salazar* case established a program to buy-back fractionated land interests. The settlement agreement was contingent on the enactment of legislation that would establish a Trust Land Consolidation Fund and authorize the acquisitions.[147] In 2010, Congress passed the Claims Resolution Act of 2010 (CRA) authorizing the fund and associated provisions.[148] Administered by DOI, the LBBP uses $1.9 billion set aside in the CRA for the Trust Land Consolidation Fund to purchase fractionated interests from willing sellers at fair market value, consolidate those interests, and restore the land to tribal ownership.[149] The settlement and the law allows the Secretary to make payments from the fund for a 10-year period, which is scheduled to expire in November 2022.[150]

The LBBP reports that nearly 3 million fractionated interests were available for purchase when the program began in 2012.[151] As of December 2019, the program had acquired and restored to tribal control nearly 2.6 million acres of fractionated land interests.[152] The LBBP has reported difficulties with locating all owners of the fractionated interests. Among other concerns, some stakeholders have raised issues with the program. These include some tribes' distrust that DOI will ensure adequate appraisal and management of the land, some tribes' desire to avoid placing land back into trust status, the federal government's maintenance of land in trust and under government control, and the plan for the remaining funding after the program ends.[153]

Options for Congress include taking no action and allowing the program to expire; extending the program, temporarily or indefinitely; and modifying the existing program. For example, the 113th Congress considered extending the program and would have amended the CRA to extend the Trust Land Consolidation Fund from 10 to 15 years.[154] Extending the program for any length

[147] Class Action Settlement Agreement, Cobell v. Salazar, No. 1:96CV01285-JR, at 2 (December 7, 2009).

[148] Also known as the Claims Resettlement Act of 2010, P.L. 111-291.

[149] Rebekah Martin, "Defending the Cobell Buy-Back Program," *American Indian Law Review*, vol. 41, no. 1 (2016), p. 105, at https://www.jstor.org/stable/26492255. Hereinafter, Martin, "Defending the Buy-Back Program."

[150] P.L. 111-291, §101(e); DOI, LBBP, "Program History, Land Buy-Back Program for Tribal Nations," at https://www.doi.gov/buybackprogram/program-history-land-buy-back-program-tribal-nations.

[151] DOI, LBBP, "Land Buy-Back Program for Tribal Nations: Frequently Asked Questions," at https://www.doi.gov/buybackprogram/FAQ#Background.

[152] DOI, LBBP, "Interior's Land Buy-Back Program Adds Locations to Its Implementation Schedule and Makes Changes for Final Years," at https://www.doi.gov/buybackprogram/interiors-land-buy-back-program-adds-locations-its-implementation-schedule-and-makes.

[153] Martin, "Defending the Buy-Back Program," pp.107-208.

[154] H.R. 5020, 113th Congress.

would potentially require other congressional actions, such as considering additional funding to assist with acquisitions, among others.

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