

Tribal Lands: Overview and Issues for Congress

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Tribal Lands: Overview and Issues for Congress

Throughout history, the United States has established or changed the status of lands associated with federally recognized Tribes (*Tribes*). Many Tribes have associated lands (*tribal lands*), including trust, restricted fee, and fee lands, on or off (outside) tribal reservations. *Trust lands* are lands or interests in land that are held in trust by the federal government for the benefit of a Tribe or tribal citizen. Trust lands generally may not be alienated or encumbered (sold, gifted, leased, etc.) without federal approval. In the case of *restricted fee lands*, the Tribe holds title to the land, but the land generally may not be alienated or encumbered without federal approval. This restriction on alienation attaches to certain tribal lands by law—such as by the operation of certain treaties and some Tribe-specific statutes. Tribes or individual tribal citizens also may own *fee lands*, meaning they hold title to the land and the land is under their control (private property). Finally, *allotments* or *allotted lands* were created by the General Allotment Act of 1887 and include trust or restricted fee parcels of land held by tribal citizens.

Through various laws, Congress has implemented 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 Tribes and tribal citizens. The federal trust responsibility can include a duty to protect lands and other assets on behalf of Tribes and tribal citizens. Today, the U.S. Department of the Interior (DOI) (delegating to the Bureau of Indian Affairs, or BIA) administers the *land-into-trust (fee-to-trust) process* either when (1) Congress requires it (*mandatory acquisition*) or (2) DOI approves a tribal request (*discretionary acquisition*). Depending on the history of a Tribe and applicable statutory authority, Tribes may also have the option to put land into restricted fee or fee status.

Many Tribes support the establishment of additional trust or restricted fee lands for various reasons, including the potential to restore historic tribal land bases and promote tribal economic development. If Congress wanted to encourage DOI to take more land into trust, it could reform DOI’s land-into-trust process. For example, many Tribes have asked Congress to overturn judicially imposed limits on their ability to request putting land into trust in light of the Supreme Court’s *Carcieri v. Salazar* decision. Another issue is whether Alaska Native Tribes may apply to DOI to put land into trust.

Congress may also be interested in examining potential additional uses of and economic development on tribal lands. Options include increasing, decreasing, or continuing the level of federal approval required to encumber trust or restricted fee lands for general or specific uses, such as energy development. Another issue affecting tribal land use and economic development is the fractionation of some tribal lands. *Fractionation*, as created by the General Allotment Act of 1887 (“allotments”), means that many landowners (sometimes hundreds) may have claims to a single parcel of land, making that property difficult to manage, use, or transfer. Congress may continue to examine the options it has previously used to address fractionation: reforming DOI’s probate process, supporting tribal estate planning, and authorizing the purchase and consolidation of fractionated interests.

As Congress considers whether and how to address these issues, it may be challenging to balance tribal interests with other statutory mandates and priorities. Tribal interests may differ from those of the surrounding local, county, or state governments. For example, there may be questions about overlapping jurisdiction among federal, state, and tribal governments. In addition, state and local governments sometimes oppose land-into-trust or restricted fee acquisitions because of potential impacts to state and local taxation and zoning, and also because of opposition to tribal gaming. Some nontribal stakeholders have called for Congress to require DOI to give greater weight to potentially negative local impacts of land acquisitions in its land-into-trust process. In addition, as it balances the needs and interests of Tribes and neighboring communities, Congress may continue to debate legislation that restricts gaming on newly acquired trust lands or increases oversight over lands acquired for a gaming purpose.

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Introduction¹

Congress has broad legislative authority over issues relating to federally recognized Tribes (hereinafter *Tribes*), including concerns related to tribal lands.² By enacting various laws, Congress has implemented 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 Tribes and tribal citizens.³ The federal trust responsibility includes a duty to protect lands and other assets on behalf of Tribes and tribal citizens.⁴

Congress’ approach to tribal land and resource management has fluctuated over time.⁵ From the 1700s to 1887, Congress ratified treaties with Tribes, whereby Tribes often ceded lands to the United States and were removed to different areas, including reservations.⁶ In the late 1800s and early 1900s, laws often focused on assimilating Tribes into mainstream American culture, including by dividing tribal lands into individual allotments.⁷ 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; 25 U.S.C. §5108). In the 1950s and 1960s, Congress began terminating the federal recognition of some Tribes in an effort to integrate them into the general population. With passage of the Indian Self-Determination Act (25 U.S.C. §§5301 et seq.), Congress established a policy of tribal self-determination, which grants Tribes more autonomy to manage their own affairs.⁸ See **Figure 1** for an illustration of the federal-tribal relationship timeline.

¹ This report supersedes CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Mariel J. Murray, which was originally written by Tana Fitzpatrick, who is no longer with CRS.

² *United States v. Lara*, 541 U.S. 193, 200 (2004). A federally recognized Tribe (*Tribe*) is an entity that is formally recognized as having a government-to-government relationship with the United States, entailing special rights, immunities, and privileges as well as eligibility for certain federal programs and services (25 C.F.R. §83.2).

³ *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). See also CRS Report R47414, *The 574 Federally Recognized Indian Tribes in the United States*, by Mainon A. Schwartz.

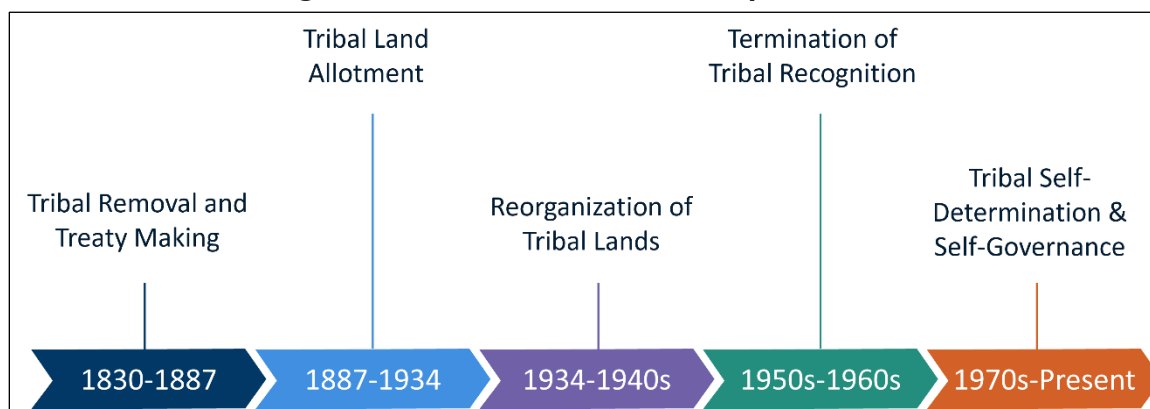
⁴ See §5.05, “Enforcement of the Federal-Indian Trust Against the Executive,” in Nell Jessup Newton, *Cohen’s Handbook of Federal Indian Law* (Washington, DC: LexisNexis, 2023) (hereinafter Newton, *Cohen’s Handbook*).

⁵ Statutory and regulatory text may use another term instead of *tribal land*, such as *Indian land*. Often, statutory or regulatory text will specifically define what constitutes *tribal land* or *Indian land* for its purposes.

⁶ The governments of the 13 original colonies and the United States negotiated treaties with Indigenous peoples until about 1871, when Congress ended this practice through the Indian Appropriations Act of 1871 (25 U.S.C. §71, Act of March 3, 1871, ch. 120, §1, 16 Stat. 566). See also National Archives, “Native American Heritage: American Indian Treaties,” at <https://www.archives.gov/research/native-americans/treaties>.

⁷ See, e.g., General Allotment Act of 1887 (Dawes Act), ch. 119, 24 Stat. 388; and Lewis Meriam et al., *The Problem of Indian Administration*, Brookings Institution, February 21, 1928, p. 15.

⁸ For background on tribal self-determination authorities such as the Indian Self-Determination and Education Assistance Act, see CRS Report R48256, *Tribal Self-Determination Authorities: Overview and Issues for Congress*, coordinated by Mariel J. Murray.

Figure I. Federal-Tribal Relationship Timeline

Source: CRS.

Notes: The indicated time frames for the five federal Indian policymaking eras are approximate and may have other names.

This history of federal-tribal policy, along with each Tribe's specific history with the United States, impacts current tribal land types and statuses. Many Tribes have associated lands both on and off (outside) their reservations.⁹ Some Tribes own land but lack reservations.¹⁰ Other Tribes are landless.

This report provides an overview of the types of tribal lands and federal processes needed to establish or change the status of tribal lands. It then discusses some of the unique issues associated with tribal lands, including (1) the Department of the Interior's (DOI's) land-into-trust process, (2) tribal land use and economic development, and (3) potential impacts of tribal land acquisitions on other communities.

Types of Tribal Lands

The complex history between Tribes and the United States is reflected in the multiple types of tribal lands. In many ways, tribal lands are a unique form of property in the American legal system. *Trust lands* are lands or interests in land that are held in trust by the federal government (within DOI, the Bureau of Indian Affairs [BIA] holds title to the land) for the benefit of a Tribe or tribal citizen.¹¹ Trust lands generally may not be alienated or encumbered (sold, gifted, leased, etc.) without federal approval. In the case of *restricted fee lands*, the Tribe holds title to the land, but the land generally may not be alienated or encumbered without federal approval. This

⁹ *Reservations* include lands reserved for a Tribe (or multiple Tribes) by treaty, statute, or other agreement (25 C.F.R. §151.2). Reservations may overlap state, county, or county subdivision boundaries. Not all tribal reservations may be called *reservations*; some may be referred to as *pueblos*, *rancherias*, *missions*, *villages*, or *communities*.

¹⁰ In Alaska, Alaska Native Corporations (ANCs) own and manage fee lands distributed under the Alaska Native Claims Settlement Act (ANCSA; 43 U.S.C. §§1601 et seq.). Tribes are often located within ANC boundaries. The Metlakatla Indian Community of the Annette Island Reserve was excluded from ANCSA, making the Annette Island Reserve the only reservation (with trust lands) in Alaska. For more information about Alaska Native land management under ANCSA, see CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Mariel J. Murray.

¹¹ 25 C.F.R. §151.2. See also 25 C.F.R. §84.003. The Bureau of Indian Affairs (BIA), within the Department of the Interior (DOI), is the lead agency responsible for the administration and management of land and resources the United States holds in trust for the 574 federally recognized Tribes and individual tribal citizens. BIA, "Budget Justifications and Performance Information Fiscal Year 2025," p. IA-TNR-3, at https://www.bia.gov/sites/default/files/media_document/fy2025-508-bia-greenbook.pdf (hereinafter BIA, "FY2025 Budget Justifications").

restriction on alienation attaches to certain tribal lands by law—such as by the operation of certain treaties and some Tribe-specific statutes.¹² Tribes or individual tribal citizens also may own *fee lands*, meaning they hold title to the land and the land is under their control (private property). Finally, *allotments* or *allotted lands* were created by the General Allotment Act of 1887 and include trust or restricted fee parcels of land held by individual tribal citizens.¹³

Each type of tribal land offers different advantages and disadvantages to a Tribe or tribal citizen. For example, putting land into trust may help restore a historic tribal land base and provide connections to cultural and natural resources.¹⁴ Further, putting land into trust may provide economic benefits. For example, there is a legal presumption against state taxation in Indian country.¹⁵ In addition, trust lands enable Tribes to take advantage of certain tax credits and tax-exempt financing.¹⁶ Finally, certain federal programs and services may be available only on reservations or trust lands.¹⁷

On the other hand, tribal lands also have restrictions that may limit tribal economic development. In particular, the Non-Intercourse Act (25 U.S.C. §177) restricts the alienation or encumbrance of tribal lands without DOI approval. Therefore, although trust and restricted fee lands have different owners (federal vs. tribal), many federal statutes treat them the same way, prohibiting certain actions on those lands without DOI approval.¹⁸ 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 because of the federal-tribal trust relationship, but those responsibilities may not pertain to restricted fee lands.¹⁹ Even tribally owned fee lands may not be freely alienable because of the broad language in the Non-Intercourse Act and its implementing regulations, although courts disagree on this issue.²⁰ In some instances, Congress has enacted legislation approving the alienation of tribal fee land.²¹

Table 1 summarizes different types of tribal lands and some of their characteristics.

¹² 25 C.F.R. §§151.2 and 151.22. See, for example, Treaty with the Seneca and Shawnee, 1832, 7 Stat. 411; see also DOI, “Applicability of 25 U.S.C. § 2719 to Restricted Fee Lands,” Solicitor’s Opinion M-37023, January 18, 2009, at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37023.pdf> (hereinafter M-Opinion 37023).

¹³ The terms *allotment* and *allotted lands* do not necessarily signify land status, since most allotted lands are held in trust or restricted fee, but some statutes directly reference the term. See, e.g., 25 U.S.C. §396 (leasing of allotted lands for mineral purposes).

¹⁴ BIA, “Benefits of Trust Land Acquisition (Fee to Trust),” at <https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition> (hereinafter BIA, “Benefits”).

¹⁵ *Indian country* generally refers to lands within a tribal reservation, “dependent Indian communities,” and tribal allotments (18 U.S.C. §1151). For information about the federal taxation of Tribes, see Internal Revenue Service, “FAQs for Indian Tribal Governments Regarding Status of Tribes (Taxable Vs. Nontaxable Vs. Not Subject to Tax),” at <https://www.irs.gov/government-entities/indian-tribal-governments/faqs-for-indian-tribal-governments-regarding-status-of-tribes-taxable-vs-nontaxable-vs-not-subject-to-tax>. See also *Oklahoma Tax Comm’n v. Chickasaw Nation*, 115 S. Ct. 2217 (1995).

¹⁶ 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.

¹⁷ BIA, “Benefits.”

¹⁸ See, e.g., 25 U.S.C. §§3703 and 3715 (leasing of tribal agricultural lands); 25 U.S.C. §323 (rights-of-way); and 25 U.S.C. §81 (contracts and agreements with Tribes that encumber tribal lands).

¹⁹ M-Opinion 37023, pp. 3-4, 6.

²⁰ See Newton, *Cohen’s Handbook*, §15.06(4).

²¹ For example, see P.L. 108-204, §126 (authorizing unrestricted sale or transfer of nontrust land held by the Shakopee Mdewakanton Sioux Community of Minnesota).

Table 1. Types of Tribal Lands and Selected Characteristics

Type of Tribal Land	Title/Ownership	Restrictions on Alienation (Sale or Encumbrance)	State and Local Taxation
Trust	Held by the U.S. government for the benefit of federally recognized Tribes (<i>Tribes</i>) or individual tribal citizens	Land cannot be alienated without approval from the Secretary of the Interior.	Exempt
Restricted Fee	Held by a Tribe or individual tribal citizen	Land cannot be alienated without approval from the Secretary of the Interior.	Exempt
Fee	Held by a person or an entity such as a Tribe	If land is owned by a Tribe or tribal citizen, courts are split on whether alienation restriction applies.	Exempt if owned by a Tribe or tribal citizen within the Tribe's jurisdiction
		If land is owned by a nontribal person, there are no restrictions on alienation.	Not exempt if owned by a nontribal person

Source: Compiled by CRS based on 25 C.F.R. §151.2 and Department of the Interior (DOI), Bureau of Indian Affairs (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.

Note: This table does not list allotments because they are held either in trust or in restricted fee status. Even tribally owned fee lands may not be freely alienable because of the broad language restricting alienation in the Non-Intercourse Act and its implementing regulations, although courts disagree on this issue. See Nell Jessup Newton, *Cohen's Handbook of Federal Indian Law* (Washington, DC: LexisNexis, 2023), §15.06(4).

Processes to Establish or Change the Status of Tribal Lands

Throughout history, the United States has established or changed the status of tribal lands through treaties and other laws. For example, various treaties between the U.S. government and Tribes established reservations containing tribal lands.²² Congress has also created and added to existing reservations.²³ Today, Congress may direct the Secretary of the Interior to bring land into trust, or the Secretary may administratively bring land into trust.²⁴ Depending on the history of a given Tribe and applicable statutory authority, Tribes may also have the option to request that land be put into restricted fee or fee status. These processes and authorities are outlined below.

Converting Fee Land to Trust Land

Under the Constitution, Congress has broad power over tribal issues, including the power to determine whether to take land into trust.²⁵ Congress may require the Secretary of the Interior to

²² For example, in the 1868 Treaty of Fort Laramie, the United States recognized the Black Hills as part of the Sioux Reservation and set it aside for the Sioux's exclusive use (National Archives, "Treaty of Fort Laramie (1868)," at <https://www.archives.gov/milestone-documents/fort-laramie-treaty>).

²³ 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 (P.L. 116-92, §2869(c)).

²⁴ For a trust land legislative example, see P.L. 116-92, §2870. For a restricted fee legislative example, see the Act of March 3, 1921, 41 Stat. 1355 (Fort Belknap Reservation), §6.

²⁵ U.S. Constitution, Article I, Section 8, clause 3 (Indian Commerce Clause), and Article IV, Section 3, clause 2 (Property Clause).

accept fee land into trust for a Tribe or an individual tribal citizen (*mandatory acquisition*).²⁶ Another type of mandatory acquisition is when a judicial order requires the Secretary of the Interior to accept land into trust or hold title to certain lands in trust.²⁷ In 1934, Congress enacted the IRA, which authorizes the Secretary of the Interior to use his or her discretion to acquire land and place it into trust for the benefit of a Tribe or tribal citizen (*discretionary acquisition*). In all of these cases, DOI takes land into trust through its land-into-trust (fee-to-trust) process.²⁸

DOI (delegating its authority to BIA) follows different procedures to take land into trust depending on the nature of the acquisition. For mandatory acquisitions, a Tribe or an individual tribal citizen must submit a written request to BIA to commence the acquisition process unless the statute or judicial order directing BIA to accept the land requires the Secretary of the Interior to proceed without a request.²⁹ For discretionary acquisitions, a Tribe or an individual tribal citizen must submit a written request to the BIA office that has jurisdiction over the lands identified in the application.³⁰ BIA evaluates proposed discretionary trust acquisitions using the criteria in 25 C.F.R. Part 151, as summarized in **Table 2**. Either separately or as part of their discretionary trust land acquisition application, Tribes may also request a *reservation proclamation*, whereby the Secretary of the Interior formally proclaims that certain trust lands are a new reservation or an addition to an existing reservation.³¹

²⁶ For example, in December 2019, Congress recognized the Little Shell Band of Chippewa Indians as a federally recognized Tribe and directed the Secretary of the Interior to acquire 200 acres of land in trust for Tribe's benefit (P.L. 116-92, §2870).

²⁷ BIA, "Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)," p. 5, at https://www.bia.gov/sites/default/files/dup/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").

²⁸ See, generally, 25 C.F.R. Part 151.

²⁹ BIA, "Fee-to-Trust Handbook," p. 33.

³⁰ DOI, BIA, "25 C.F.R. Part 151 Land Acquisitions: Final Rule," 88 *Federal Register* 86222, December 12, 2023.

³¹ 25 U.S.C. §5110. BIA can process a Tribe's reservation proclamation request for lands already in trust or simultaneously process a reservation proclamation request with a land-into-trust application (BIA, "Fee-to-Trust Handbook," p. 40).

Table 2. Summary of the Department of the Interior's Land-into-Trust Regulations (25 C.F.R. Part 151)

Factor	Criteria
Applicants Able to Request Putting Land into Trust	<p>An individual Indian is</p> <ul style="list-style-type: none"> • an enrolled member of a Tribe; • a descendent of an enrolled member who was, on June 1, 1934, physically residing on a tribal reservation; or • anyone possessing a total of one-half or more degree of "Indian blood" of a Tribe. <p>A <i>Tribe</i> is any entity listed under the Federally Recognized Indian Tribe List Act of 1994 (P.L. 103-454).</p> <p>In line with the Supreme Court's decision in <i>Carcieri v. Salazar</i> (555 U.S. 379 (2009)), absent specific authority, a Tribe must use specified types of evidence to prove that it was under federal jurisdiction as of 1934 (the year in which the Indian Reorganization Act was enacted).</p>
Land Eligible to Be Put into Trust	<p>For an individual Indian, land must currently be</p> <ul style="list-style-type: none"> • off reservation; • contiguous to (i.e., sharing a common boundary with) a reservation; or • already in trust or restricted status. <p>For a Tribe, land must currently be</p> <ul style="list-style-type: none"> • on reservation; • contiguous to a reservation; • off reservation; or • part of an "initial Indian acquisition" (put into trust for the benefit of a Tribe that currently has no trust land).
Consideration of Potential Impacts on Communities	<p>For on-reservation, contiguous, and initial acquisitions, the Secretary of the Interior will presume that adverse impacts to local governments' regulatory jurisdiction, real property taxes, and special assessments will be minimal, and therefore the application should be approved. State and local governments may rebut this presumption during a 30-day comment period.</p> <p>For initial acquisitions, the Secretary of the Interior will consider the location of the land and potential conflicts of land use.</p> <p>For off-reservation acquisitions, there is no presumption of minimal adverse impacts. State and local governments may submit comments about potential adverse impacts during a 30-day comment period. The Secretary of the Interior will consider the location of the land and potential conflicts of land use.</p>
Deadline	The Secretary of the Interior has 120 days to issue a decision about taking the land into trust once DOI receives a complete application package.

Source: Compiled by CRS based on 25 C.F.R. Part 151 and DOI, BIA, "25 C.F.R. Part 151 Land Acquisitions: Final Rule," 88 *Federal Register* 86222-86255, December 12, 2023.

Notes: These regulations govern discretionary land-into-trust acquisitions, not mandatory acquisitions. See "Tribal Land Acquisitions for Gaming Purposes" for information about the additional legal framework for taking land into trust for gaming purposes.

Converting Lands Held in Restricted Fee or Fee Status

The federal government has established restricted fee lands through treaties and statutes and has, at times, allowed Tribes to put lands into restricted fee status.³² For example, the Seneca Nation Settlement Act of 1990 authorized the Secretary of the Interior to acquire land near the Seneca Nation's former reservation lands and to hold the lands in restricted fee status.³³ In addition, the National Defense Authorization Act for Fiscal Year 2017 (P.L. 114-328, §2829F) transferred U.S. Army lands to DOI to be held in trust for the Zuni and Navajo Tribes unless the Tribes asked to put the land into restricted fee status. BIA would generally not use its regulatory land-into-trust process for these transfers of land into restricted fee status unless required to by federal law.³⁴ The federal government also may promulgate regulations pertaining to specific restricted fee parcels, such as the one requiring the Secretary of the Interior's approval for the exchange of restricted fee parcels.³⁵

Individually owned restricted fee lands may also be converted to fee lands in certain circumstances. For example, landholders can request that the Secretary of the Interior remove the restriction against alienation, making the parcel freely alienable.³⁶ In addition, if an individual tribal citizen 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 debt.³⁷

Issues and Options for Congress

Members of Congress, Tribes, federal agencies, and others have identified various issues related to tribal lands, including the following:

1. DOI's land-into-trust process,
2. tribal land use and economic development, and
3. potential impacts of tribal land acquisitions on other communities.

These issues are discussed in the sections below.

DOI's Land-into-Trust Process

Ability of Tribes to Request Putting Land into Trust

Many Tribes have asked Congress to overturn or amend judicially imposed limits on their ability to request putting land into trust.³⁸ The Supreme Court decision *Carcieri v. Salazar*, 555 U.S. 379

³² See, e.g., Treaty with the Omaha, 1854, Article 6, March 16, 1854, 10 Stat. 1043.

³³ P.L. 101-503, §8(c).

³⁴ 25 C.F.R. §151.1. Sometimes acts authorizing land to be put into restricted fee status include criteria and timelines for taking land into restricted fee (see, e.g., P.L. 101-503, §8(c)).

³⁵ 25 C.F.R. §158.54.

³⁶ 25 U.S.C. §5134; see, generally, 25 C.F.R. Part 152.

³⁷ 25 U.S.C. §5135; 25 C.F.R. §152.34.

³⁸ See, e.g., Testimony of Kathryn Isom-Clause, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, at https://naturalresources.house.gov/uploadedfiles/testimony_isom-clause062624.pdf (hereinafter Isom-Clause testimony); and Testimony of Marshall Pierite, Chairman, Tunica-Biloxi Tribe of Louisiana at https://naturalresources.house.gov/uploadedfiles/testimony_pierite062624.pdf (hereinafter Pierite testimony), in U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian and Insular Affairs, *Legislative Hearing on H.R. 1208 & H.R. 6180*, June 26, 2024 (hereinafter H.R. 1208 hearing).

(2009), stated that Tribes not federally recognized prior to the enactment of the IRA in 1934 are ineligible to petition for land to be taken into trust. Absent other specific authority, a Tribe must now prove that it was under federal jurisdiction as of 1934 to be able to request putting land into trust. DOI (through BIA) evaluates tribal claims of federal jurisdiction using regulatory criteria on a Tribe-by-Tribe basis, even for those Tribes whose historical status is established.³⁹ DOI has testified that this analysis may be time consuming and costly both for itself and for Tribes.⁴⁰ The *Carcieri* decision has also led to litigation over whether a Tribe was under federal jurisdiction in 1934.⁴¹ Because of these impacts, many Tribes have called on Congress to enact a “*Carcieri* fix” to overturn the court’s decision.⁴² On the other hand, stakeholders such as the National Association of Counties have opposed administrative action or a narrow legislative fix to the *Carcieri* issue because they want Congress to address it as part of a “comprehensive examination and congressionally enacted reform” of the whole land-into-trust process.⁴³

In response to issues raised by the *Carcieri* decision, Congress may continue to defer to BIA on how to interpret the *Carcieri* decision as part of its regulatory land-into-trust process. This process requires Tribes to submit different types of evidence to demonstrate that they were under federal jurisdiction as of 1934 for each land-into-trust application. Congress may also continue to conduct oversight of DOI’s response to the *Carcieri* decision. For example, in the 118th Congress, the House Committee on Natural Resources expressed interest in examining DOI’s land-into-trust policy and processes, including the effect of the *Carcieri* decision on Tribes seeking to take land into trust.⁴⁴ The committee noted that DOI’s failure to provide information related to which Tribes and lands would be affected by the *Carcieri* decision “obstructed potential bipartisan legislative action” to amend the land-into-trust process.⁴⁵

Alternatively, Congress may consider legislative options, such as amending the IRA to address the Secretary of the Interior’s authority to bring land into trust since the *Carcieri* decision. For example, “*Carcieri* fix” legislation introduced in the last several congresses would have applied the IRA to all federally recognized Tribes and reaffirmed the Secretary’s authority to take land into trust for all Tribes, regardless of the date of the Tribe’s federal recognition.⁴⁶ Legislation has also been introduced to make specific Tribes eligible to take land into trust under the IRA, although some Tribes have opposed this as an incomplete solution.⁴⁷

³⁹ 25 C.F.R. §151.4.

⁴⁰ Isom-Clause testimony, p. 2, in H.R. 1208 hearing.

⁴¹ See, e.g., *Morrison County, Minnesota et al. v. United States Department of the Interior et al.*, Case No. 24-cv-23, D. Minn., Complaint, January 4, 2024, p. 2, at https://www.law360.com/dockets/download/65974f0f2a37320090cc794b?doc_url=https%3A%2F%2Fecf.mnd.uscourts.gov%2Fdoc1%2F101110181505&label=Case+Filing.

⁴² See, e.g., National Congress of American Indians (NCAI), “Resolution #REN-19-017: Support for Federal Legislation to Address Supreme Court’s Misguided *Carcieri* Decision and Protect Existing Tribal Trust Lands,” at https://archive.ncai.org/attachments/Resolution_YNMbyZZNDxVEmJzhVKwQTFXmdfXOjIRwOxSYzeAWKpZXLnVvghz_REN-19-017.pdf (hereinafter NCAI, “*Carcieri* Resolution”).

⁴³ National Association of Counties (NACo), “U.S. Bureau of Indian Affairs Unveils New Final Rule for Tribal Land-in-Trust Process,” January 2024, at <https://www.naco.org/news/us-bureau-indian-affairs-unveils-new-final-rule-tribal-land-trust-process>.

⁴⁴ U.S. Congress, House Oversight and Accountability Committee, *Authorization and Oversight Plans for All House Committees* (required by House Rule X, Clause 2), 118th Cong., 1st sess., H.Rept. 118-36 (Washington, DC: U.S. Government Publishing Office [GPO], 2023), p. 146 (hereinafter House, *Authorization and Oversight Plans*).

⁴⁵ Ibid.

⁴⁶ See, e.g., H.R. 4352 in the 117th Congress, and H.R. 1208 in the 118th Congress.

⁴⁷ See, e.g., H.R. 6180 from the 118th Congress. See also United Indian Nations of Oklahoma, “Resolution No. 2024-02,” at <https://www.congress.gov/118/meeting/house/117352/documents/HHRG-118-II24-20240626-SD017.pdf>.

Trust Lands in Alaska

The Alaska Native Claims Settlement Act (ANCSA; 43 U.S.C. §§1601 et seq.) divided the state into 12 geographic regions and authorized the formation of for-profit Alaska Native Corporations (ANCs) for each region. These regional ANCs own and manage fee lands distributed under ANCSA and provide other economic benefits to their Alaska Native shareholders. The Metlakatla Indian Community of the Annette Island Reserve was excluded from ANCSA, making the Annette Island Reserve the only reservation with trust lands in Alaska.⁴⁸

Congress may consider whether DOI may take land into trust for Alaska Natives under the IRA, which has been a contentious issue. From 1980 to 2015, DOI's land-into-trust regulations at 25 C.F.R. Part 151 effectively prohibited DOI from acquiring land in trust in Alaska, except for the Metlakatla Indian Community.⁴⁹ The regulations as amended in 2015, however, removed this prohibition.⁵⁰ Subsequently, as presidential administrations changed, DOI issued conflicting Solicitor's Opinions about DOI's ability to take land into trust for Alaska Natives.⁵¹ In 2022, DOI issued a Solicitor's Opinion that confirmed its authority to take land into trust in Alaska, and since then, DOI has done so with several parcels.⁵² Some nontribal stakeholders continue to oppose DOI taking land into trust in Alaska. For example, in 2023, the State of Alaska sued DOI for relying on the 2022 Solicitor's Opinion when it took land into trust for certain Alaska Tribes.⁵³ Among other reasons, the state argued that taking land into trust would limit the state's sovereign jurisdiction in Alaska and undermine key terms of ANCSA.⁵⁴ In 2024, a federal judge ruled that while DOI had the authority to place land into trust in Alaska, part of the reasoning DOI used when doing so for the Tlingit and Haida Tribes was flawed ("arbitrary and capricious") and should be redone.⁵⁵

Timeliness of DOI's Land-into-Trust Process

Since DOI (through BIA) first established a regulatory process for taking land into trust in 1980, some Tribes have advocated for changes because the process can be time consuming.⁵⁶ As of 2024, it took over 700 days (on average) for BIA to process a land-into-trust application.⁵⁷ In

⁴⁸ 43 U.S.C. §1618.

⁴⁹ DOI, "The Secretary's Land into Trust Authority for Alaska Natives and Alaska Tribes Under the Indian Reorganization Act and the Alaska Indian Reorganization Act," Solicitor's Opinion M-37076, November 16, 2022, p. 11, at <https://www.doi.gov/sites/doi.gov/files/m-37076-alaska-trust-lands-m-opinion-11.16.2022.pdf>.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 14.

⁵² *Ibid.* See also DOI, BIA, "Indian Affairs to Accept Land into Trust for Tlingit and Haida Indian Tribes of Alaska," press release, November 17, 2022, at <https://www.bia.gov/news/indian-affairs-accept-land-trust-tingit-and-haida-indian-tribes-alaska>.

⁵³ *State of Alaska v. Newland* (3:23-cv-00007), D. Alaska, Complaint, at <https://www.courtlistener.com/docket/66735107/1/state-of-alaska-v-newland/>.

⁵⁴ *Ibid.*, p. 2.

⁵⁵ James Brooke, "Federal Judge Says Alaska Tribes May Put Land into Trust, a Step Toward 'Indian Country' Here," *Alaska Beacon*, June 26, 2024, at <https://alaskabeacon.com/2024/06/26/federal-judge-says-alaska-tribes-may-put-land-into-trust-a-step-toward-indian-country-here/>.

⁵⁶ See, generally, Government Accountability Office (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> (hereinafter GAO, "BIA time frames").

⁵⁷ DOI, "Agency Priority Goal, Action Plan, FY2024-Quarter 3, Improve Tribal Land into Trust Processing," p. 2, at https://assets.performance.gov/APG/files/FY2024/Q3/FY2024_Q3_DOI_Progress_Improve_Tribal_Land_into_Trust_Processing.pdf (hereinafter DOI, "APG-FY2024 Q3").

addition, there were 969 pending applications, most of which (638) were pending BIA final decisions.⁵⁸ BIA's updated land-into-trust regulations set a 120-day deadline for BIA to make a decision once it receives a complete land-into-trust application.⁵⁹

The Government Accountability Office (GAO) and BIA have raised staff shortages as one obstacle to increasing the timeliness of BIA's land-into-trust process. When BIA is considering the acquisition of real property (such as a discretionary trust land acquisition), it must complete real estate services such as environmental site assessments and environmental reviews under the National Environmental Policy Act (42 U.S.C. §§4321 et seq.).⁶⁰ In a 2024 GAO report, BIA officials stated that staff shortages affected the agency's processing times for real estate services needed for land-into-trust applications.⁶¹ As of 2024, there were 81 vacancies for BIA realty staff working on land-into-trust applications. In 2021, BIA set up a team to help process cases and supplement staff capacity while BIA was hiring full-time staff.⁶² BIA has also been attempting to build capacity and consistent procedures internally by, for example, setting up trainings for realty staff, drafting guidance, and creating a land-into-trust portal.⁶³ The goal of the portal is to enable the agency and tribal applicants to track land-into-trust applications.⁶⁴

If improving the timeliness of BIA's land-into-trust process is a priority, there are various legislative options. For example, Congress could establish statutory timelines for taking land into trust just as it has considered timelines for other BIA realty processes, such as reviewing and approving mortgages on tribal lands.⁶⁵ It could establish a Realty Ombudsman position within BIA's Division of Real Estate Services to oversee land-into-trust processing, among other matters.⁶⁶ Another option would be to appropriate funding specifically for realty staff or training. In addition, Congress could legislatively streamline the required environmental site assessments and reviews.

Tribal Land Use and Economic Development

Tribes may be able to obtain benefits when their land is held in trust or in restricted fee status, but one disadvantage of either status could be that the Secretary of the Interior's approval is required, with some exceptions, to develop those lands.⁶⁷ For example, with respect to energy resource development, some of 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.⁶⁸ Energy and natural resource projects also may require approval from other

⁵⁸ Ibid., p.7.

⁵⁹ 25 C.F.R. §151.8.

⁶⁰ See 25 C.F.R. §151.15 and DOI, "Real Property Pre-Acquisition Environmental Site Assessments (602 DM 2)," in *DOI Departmental Manual*, p. 3, at https://www.doi.gov/sites/doi.gov/files/elips/documents/602-dm-2_0.pdf (hereinafter DOI, "602 DM 2").

⁶¹ GAO, *Bureau of Indian Affairs Should Take Additional Steps to Improve Timely Delivery of Real Estate Services*, GAO-24-105875, October 2023, p. 23, at <https://www.gao.gov/assets/gao-24-105875.pdf> (hereinafter GAO, "BIA Real Estate Services"). See also DOI, "APG-FY2024 Q3," p. 5.

⁶² GAO, "BIA Real Estate Services," p. 7.

⁶³ Ibid.

⁶⁴ Ibid., p. 8.

⁶⁵ See, e.g., S. 70, §3, from the 118th Congress.

⁶⁶ See, e.g., S. 70, §4, from the 118th Congress.

⁶⁷ For example, see 25 C.F.R. Part 162 (leases and permits) and 25 C.F.R. Part 169 (rights-of-way).

⁶⁸ 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>.

federal agencies.⁶⁹ Tribes and individual tribal citizens that own their land in fee simple status are not subject to these statutory and regulatory requirements to the same extent.

Congress may consider whether to increase, decrease, or continue the current level of DOI approval required to encumber trust or restricted fee lands for general or specific uses, such as energy development. Congress has passed legislation that, if certain conditions are met, removes the requirement for the Secretary of the Interior's approval for certain leasing, business agreements, and rights-of-way on trust and restricted fee lands. For example, the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) amended the Indian Long-Term Leasing Act of 1955 (LTLA) and authorized the Secretary of the Interior to approve tribal leasing regulations for certain activities.⁷⁰ Subsequently, individual leases executed under approved tribal leasing regulations do not require the Secretary's reapproval. The 118th Congress also considered S. 1322, which, among other things, would have amended the LTLA to authorize tribal owners of restricted fee lands to issue leases of up to 99 years with a few exceptions.

Similarly, Congress has removed the requirement for the Secretary of the Interior'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 (as amended) authorized DOI to enter into tribal energy resource agreements (TERAs) with Tribes that DOI had deemed to have sufficient capacity to regulate their energy development.⁷¹ 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.⁷² As of 2024, no Tribe had entered into a TERA, and in the 118th Congress, the House Committee on Natural Resources committed to reviewing implementation of the authority to "ensure [T]ribes are able to develop their resources on their lands should they choose to do so."⁷³

Congress also has considered legislation that would authorize Tribes to convert tribal trust lands into restricted fee lands.⁷⁴ Under these proposals, the restricted fee land would remain communally owned by the Tribe and would continue to have restrictions on alienation and taxation. However, because the Tribes would hold title to these lands after the transfer, they may be able to more efficiently manage processes related to real estate transactions, such as title status reports.

Fractionation of Tribal Lands

Another issue affecting potential land use and economic development on tribal lands is fractionation. When a tribal citizen dies, DOI determines the estate distribution through its

⁶⁹ 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. For background on energy development on tribal lands, see CRS Report R47640, *Energy Leasing and Agreement Authorities on Tribal Lands: In Brief*, by Mariel J. Murray.

⁷⁰ P.L. 112-151 (exempting leases for exploration, development, or extraction of a mineral resource) and Indian Long-Term Leasing Act of 1955, 25 U.S.C. §415(h).

⁷¹ P.L. 109-58, Title V, and P.L. 115-325.

⁷² For more information, see CRS Report R46446, *Tribal Energy Resource Agreements (TERAs): Approval Process and Selected Issues for Congress*, by Mariel J. Murray.

⁷³ House, *Authorization and Oversight Plans*, p. 146.

⁷⁴ 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.

probate process.⁷⁵ If the citizen dies with a will, DOI will verify whether the deceased tribal citizen has chosen to transfer any trust or restricted fee land (including allotments) to an heir or heirs. Without a will, DOI determines which heirs, devisees, or other persons or entities are entitled by law to inherit interests in any trust or restricted lands. Multiple individuals could own interests in the same parcel of land, and that interest could continue to divide—potentially exponentially—across generations. This effect is known as *fractionation*. As of 2024, BIA reported that more than 100,000 fractionated tracts of trust or restricted tribal land had a combined 2.4 million interests.⁷⁶ For an illustration of how fractionated interests can multiply exponentially over generations, see **Figure 2**.

Figure 2. Example of How Fractionation Multiplies Over Generations



Source: CRS based on Department of the Interior, *Ten Years of Restoring Land and Building Trust, 2012-2022: Land Buy-Back Program for Tribal Nations*, December 2023, p. 6, at <https://www.doi.gov/sites/default/files/documents/2024-08/doilbbfullreportforwebfinal.pdf>.

Fractionation of tribal lands means that many landowners (sometimes hundreds) may have claims to a single parcel of land, making it difficult to manage, use, or transfer that land. For example, BIA will approve leases and rights-of-way on individually owned allotments only with the approval of a majority of landowners.⁷⁷ Obtaining consent from many owners can be costly and time consuming.⁷⁸ In addition, leasing and other income received from the 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.⁷⁹ Mixed land ownership, combined with tracts that have multiple co-owners can also cause jurisdictional challenges. This can complicate

⁷⁵ For more information about this process, see CRS Report R47908, *The Department of the Interior's Tribal Probate Process: In Brief*, coordinated by Mariel J. Murray.

⁷⁶ DOI, "What Is Fractionation?," at <https://www.doi.gov/buybackprogram/fractionation>.

⁷⁷ 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).

⁷⁸ See, for example, 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>.

⁷⁹ DOI, "What Is Fractionation?," at <https://www.doi.gov/buybackprogram/fractionation>.

economic development, energy, or infrastructure projects that cross parcels with mixed ownership statuses.⁸⁰

As outlined below, Congress has sought to address fractionation through reforming DOI's probate process, supporting tribal estate planning, and authorizing the purchase and consolidation of fractionated interests in tribal lands. For more detailed legislative history, see the **Appendix**.

DOI's Probate Process and Estate Planning

Congress has attempted to reduce fractionation of tribal lands by enacting laws governing DOI's probate process for tribal lands and assets.⁸¹ For example, the Indian Land Consolidation Act of 1983 (ILCA; P.L. 97-459) first established some inheritance rules to limit fractionation during the probate process for property whose owner dies without a will—for example, by preventing tiny, fractionated interests in land from passing to heirs upon an individual tribal landowner's death.⁸² ILCA was amended several times to refine these rules until the American Indian Probate Reform Act of 2004 (AIPRA; P.L. 108-374) established that federal law governs the tribal probate process for tribal lands and trust assets.⁸³ Through AIPRA, Congress created a new federal probate code applicable to tribal lands that aimed to reduce fractionation and encourage the development of tribal probate codes, among other goals.⁸⁴

Congress continues to express interest in reducing fractionation, potentially through improving DOI's probate process. Since AIPRA was enacted in 2004, bills have been introduced and enacted to improve the federal probate process in various ways. For example, Congress has sought to clarify terms and definitions or to make amendments promoting land consolidation in the federal probate process (P.L. 118-42).⁸⁵ Congress has also held oversight hearings on AIPRA implementation in which tribal citizens have urged the federal government to improve the timeliness of the federal probate process, particularly as it affects fractionation.⁸⁶

Congress could consider whether to reduce, maintain, or expand federal estate planning services. Many stakeholders have recommended more support for tribal estate planning as key to reducing fractionation.⁸⁷ To reduce fractionation and avoid the probate process, AIPRA provided for

⁸⁰ See Christian Dippel, Dustin Frye, and Bryan Leonard, "Property Rights Without Transfer Rights: A Study of Indian Land Allotment," July 2020, p. 38, at <https://www.nber.org/papers/w27479>.

⁸¹ For example, the American Indian Probate Reform Act of 2004 (AIPRA; P.L. 108-374) was enacted "to address the ever-worsening administrative and economic problems associated with the phenomenon of fractionated ownership of Indian lands" (U.S. Congress, Senate Committee on Indian Affairs, *American Indian Probate Reform Act of 2004*, report to accompany S. 1721, 108th Cong., 2nd sess., S.Rept. 108-264, 2004, p. 1).

⁸² P.L. 97-459, §207 provides that any interests representing 2% or less of a tract would escheat to the Tribe instead of being inherited unless such an interest had earned its owner at least \$100 in the preceding year.

⁸³ See, for example, Indian Land Consolidation Act (ILCA) Technical Amendments (P.L. 98-608) and ILCA Amendments of 2000 (P.L. 106-462).

⁸⁴ AIPRA, §2(4).

⁸⁵ See, for example, P.L. 109-157, Indian Land Probate Reform Technical Corrections Act of 2005; and P.L. 109-221, Native American Technical Corrections Act of 2006.

⁸⁶ Testimony of David Gipp, Vice President, Great Plains Region, NCAI, in U.S. Congress, Senate Committee on Indian Affairs, "The American Indian Probate Reform Act: Empowering Indian Land Owners," 112th Cong., 1st sess., August 4, 2011, S.Hrg. 112-431 (Washington, DC: GPO, 2012), p. 11.

⁸⁷ House Committee on Natural Resources, Subcommittee on Indian and Insular Affairs, "Oversight Hearing: Examining the Opportunities and Challenges of Land Consolidation in Indian Country," hearing memo, January 30, 2024, p. 8, at https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_sub_on_iiia_ov_hrg_on_land_fractionation_01.30.24.pdf (hereinafter House, "Land Consolidation Hearing Memo"). See also Testimony of Cris Stainbrook, President of the Indian Land Tenure Foundation, in U.S. Congress, House (continued...)

federal assistance with tribal estate planning.⁸⁸ AIPRA also authorized DOI to provide noncompetitive grants to Tribes and organizations that provide legal assistance and estate planning services for Tribes.⁸⁹ In 2005, BIA awarded funding to the Indian Land Tenure Foundation to establish an Estate Planning Services Pilot Project, which was intended to provide community education and legal training on the AIPRA as well as direct estate planning legal services to tribal landowners in selected regions.⁹⁰ The pilot project was meant to help BIA determine whether there was a need for estate planning services and whether such services would reduce fractionation. According to the foundation, 83.5% of the wills drafted in the program reduced tribal land fractionation.⁹¹

Consolidating Fractionated Tribal Lands

Several of these laws reforming DOI's probate process also authorized DOI to acquire fractional interests in trust or restricted land from willing sellers and consolidate them.⁹² Some of these laws also authorized appropriations for this purpose.⁹³ From its creation as a pilot program, the Indian Land Consolidation Program (ILCP) led voluntary land acquisition efforts for over a decade. According to BIA, although it received appropriations of only about 20% of the \$750 million authorized by Congress in 2004, the ILCP acquired a total of 427,313 fractional interests under tribal ownership.⁹⁴

In 2010, Congress also authorized funding for tribal land consolidation as part of a legal settlement over the federal government's ability to execute its fiduciary trust responsibility over trust lands.⁹⁵ In addition to payments to individual tribal citizens, the Claims Resolution Act of 2010 authorized up to \$1.9 billion for a DOI program to acquire fractionated lands and return them to tribal ownership within a 10-year period that ended in November 2022.⁹⁶ In December 2012, the Secretary of the Interior established the Land Buy-Back Program (LBBP) to implement the land consolidation aspects of the settlement.⁹⁷ Over the course of the program, the LBBP

Committee on Natural Resources, Subcommittee on Indian and Insular Affairs, "Oversight Hearing: Examining the Opportunities and Challenges of Land Consolidation in Indian Country," January 30, 2024, at https://naturalresources.house.gov/uploadedfiles/testimony_stainbrook.pdf.

⁸⁸ 22 U.S.C. §2206(f)(2)(c) states that this estate planning is designed to "substantially reduce the quantity and complexity of Indian estates that pass intestate through the probate process, while protecting the rights and interests of Indian landowners." DOI's Bureau of Trust Funds Administration (BTFA) states that fiduciary trust officers may answer questions about estate planning (BTFA, "Planning for the Future," at <https://www.doi.gov/ost/planning-future>).

⁸⁹ 22 U.S.C. §2206(f)(3).

⁹⁰ Indian Land Tenure Foundation, "Final Report: Estate Planning Services Pilot of the American Indian Probate Reform Act Implementation Project," January 2007, pp. 1 and 4, at https://iltf.org/wp-content/uploads/2016/11/DOI_estate_planning_services_pilot_project_2007.pdf.

⁹¹ Testimony of Douglas Nash, Institute for Indian Estate Planning and Probate, in U.S. Congress, Senate Committee on Indian Affairs, "The American Indian Probate Reform Act: Empowering Indian Land Owners," 112th Cong., 1st sess., August 4, 2011, S.Hrg. 112-431 (Washington, DC: GPO, 2012), p. 6, at <https://www.indian.senate.gov/wp-content/uploads/upload/files/Douglas-Nash-testimony.pdf>.

⁹² See, e.g., 25 U.S.C. §2212.

⁹³ See, e.g., 25 U.S.C. §2201 note and 25 U.S.C. §2212(d).

⁹⁴ BIA, "History of Indian Land Consolidation," at <https://www.bia.gov/guide/history-indian-land-consolidation>.

⁹⁵ Class Action Settlement Agreement, *Cobell v. Salazar*, No. 1:96CV01285-JR, at 2 (December 7, 2009). Claims Resolution Act of 2010 (P.L. 111-291).

⁹⁶ CRA, P.L. 111-291, §101.

⁹⁷ DOI, *Ten Years of Restoring Land and Building Trust, 2012-2022: Land Buy-Back Program for Tribal Nations*, December 2023, p. 1, at <https://www.doi.gov/sites/default/files/documents/2024-08/doilbbfullreportforwebfinal.pdf> (hereinafter DOI, "Land Buy-Back Report").

bought out about 1 million fractional interests to consolidate into (return to tribal trust) 85,068 fractionated tracts at 53 unique locations.⁹⁸

The LBBP ended in 2022, but Congress authorized a new ILCP account in the Consolidated Appropriations Act, 2022, and appropriated funding in FY2022-FY2024.⁹⁹ DOI reported that purchase offers with a total value of \$6.7 million were made at three initial locations in 2023, with 177 fractional interests acquired.¹⁰⁰ DOI has asserted that its current tribal land consolidation efforts are efficient and cost-effective because they are building on lessons learned from the LBBP, including using automated processes for acquiring fractional land interests.¹⁰¹

Nevertheless, DOI has asserted that more funding is needed to address fractionation.¹⁰² For example, DOI says that because of time and resource constraints, the LBBP was unable to implement land purchases at 63% of the 150 unique locations with fractionated land.¹⁰³ As of 2023, there are an estimated 2.4 million remaining fractionated interests worth several billion dollars.¹⁰⁴ In addition, fractionated land continues to divide with every generation, exacerbating the scale of the issue. DOI has reported that without further investment, by 2038, purchasable fractional interests would be greater than the number of interests at the beginning of the LBBP.¹⁰⁵

Congress could address tribal land consolidation in several ways, if it so chooses. One option would be to continue to support and conduct oversight over the newly reestablished ILCP.¹⁰⁶ Congress has directed BIA to submit administrative expense estimates and performance metrics, including the proposed number of fractionated interests to be purchased and acreage consolidated, in its annual budget justification.¹⁰⁷ However, some congressional committees have expressed concern that fractionated lands continue to exist and multiply despite DOI's efforts and that new approaches are therefore needed.¹⁰⁸ Alternative proposals have included establishing revolving funds for land consolidation efforts, prioritizing land acquisitions that are being consolidated for the purpose of economic development, and setting timelines for fractionated land acquisitions.¹⁰⁹

Another issue Congress may address is how to specifically reduce fractionation of restricted fee lands. Acquisition of fractional interests held in restricted fee status, as opposed to trust status, presented challenges to LBBP implementation because DOI did not have a policy regarding environmental site assessments and environmental reviews of restricted-fee-to-trust applications. Instead, LBBP staff assessed the status of restricted fee tracts at each location and evaluated whether resources were available to conduct environmental site assessments and reviews. The

⁹⁸ Ibid., p. 2

⁹⁹ P.L. 117-103, Consolidated Appropriations Act, 2022, Division G, Title I, BIA; P.L. 117-328, Consolidated Appropriations Act, 2023, Division G, Title I, BIA; and P.L. 118-42, Consolidated Appropriations Act, 2024, Division E, Title I, BIA.

¹⁰⁰ BIA, "FY2025 Budget Justifications," p. IA-ILC-5.

¹⁰¹ Ibid., p. IA-ILC-4.

¹⁰² Ibid., p. IA-ILC-3.

¹⁰³ DOI, "Land Buy-Back Report," p. 2.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., p. 50.

¹⁰⁶ In the 118th Congress, Members continued to express interest in overseeing these activities, including ensuring that associated federal expenditures are "efficient and effective" (House, *Authorization and Oversight Plans*, p. 146).

¹⁰⁷ See, e.g., U.S. Congress, House Committee on Appropriations, Consolidated Appropriations Act, 2022, Committee Print of the Committee on Appropriations U.S. House of Representatives, on H.R. 2471/P.L. 117-103, committee print, 117th Cong., 2nd sess., April 2022, H.Prt. 47-048 (Washington, DC: GPO, 2022), p. 1449.

¹⁰⁸ See House, "Land Consolidation Hearing Memo," p. 1.

¹⁰⁹ Ibid., pp. 7-8.

process required additional coordination, time, and resources. Restricted fee interests in tracts identified as having potential environmental concerns were excluded from offers.¹¹⁰ One way to address this issue might be to limit or waive DOI's responsibility or liability when it acquires restricted fee properties for consolidation purposes.

Congress could also consider expanding the types of tribal lands that are eligible for acquisition under the ILCP. For example, in 2000, ILCA amendments made fractionated interests in Alaska restricted property ineligible for acquisition.¹¹¹ Although Congress noted that "there has not been a[n] ... effort to analyze the problem, if any, of fractionated ownership in Alaska," it could consider making these tracts eligible for DOI land acquisition and consolidation.¹¹² Another option would be to allow DOI to purchase fractionated interests in off-reservation lands, which have historically been excluded.¹¹³

Potential Impacts of Tribal Land Acquisitions on Other Communities

Many Tribes have successfully petitioned DOI to put land into trust and continue to advocate for putting more land into trust.¹¹⁴ Doing so may help restore a historic tribal land base and provide connections to cultural and natural resources. It may also promote tribal sovereignty and support economic development for Tribes.¹¹⁵ Successful tribal economies, in turn, can create positive economic spillover effects on surrounding communities.¹¹⁶ In addition, some tribal leaders assert that the majority of proposed acquisitions are not controversial.¹¹⁷

Certain state, local, and tribal groups have opposed proposed trust (and restricted fee) land acquisitions for various reasons. For example, state and local governments sometimes oppose land into trust or restricted fee acquisitions because of potential impacts to state and local

¹¹⁰ DOI, "Land Buy-Back Report," p. 21.

¹¹¹ 25 U.S.C. §2219. *Restricted property* is generally defined as either Native Allotments issued under the Alaska Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended by the act of August 2, 1956 (70 Stat. 954), or restricted townsite lots issued under the Native Townsite Act of May 25, 1926 (44 Stat. 629), as amended. See BIA, "Real Estate Services," at <https://www.bia.gov/regional-offices/alaska/real-estate-services>.

¹¹² 25 U.S.C. §2219.

¹¹³ DOI, "Land Buy-Back Report," p. 38.

¹¹⁴ As of 2024, BIA held 56 million acres of land in trust on behalf of Tribes (BIA, "FY2025 Budget Justifications," p. IA-TNR-3). See also NCAI, "Carcieri Resolution."

¹¹⁵ See, e.g., Pierite testimony, p. 1, in H.R. 1208 hearing. See also 25 C.F.R. §151.10.

¹¹⁶ Federal Reserve Bank of Minneapolis, "The Economic Ripple Effects of Tribal Gaming and Federal Contracting," October 1, 2024, at <https://www.minneapolisfed.org/article/2024/the-economic-ripple-effects-of-tribal-gaming-and-federal-contracting>.

¹¹⁷ 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).

taxation, zoning, and other laws.¹¹⁸ State and local governments have argued that the potential loss of local tax revenues may cause budget shortfalls.¹¹⁹

In addition, taking land into trust may raise complex jurisdictional questions that often involve a variety of factors, including the status and location of the land in question. For purposes of criminal jurisdiction, the term *Indian country* generally refers collectively to lands within a tribal reservation, dependent Indian communities, and tribal allotments.¹²⁰ This definition may assist in determining which entity—state, tribal, or federal—can exercise jurisdiction when matters involve Tribes, tribal citizens, and nontribal citizens.¹²¹ Some nontribal leaders have opposed the acquisition of trust lands and subsequent development that may be “inconsistent with local land use and environmental laws,” because state and local governments lack enforcement powers on trust lands.¹²² Other nontribal stakeholders have pointed out that states retain jurisdiction over newly acquired restricted fee lands within the state.¹²³

DOI has publicly acknowledged that taking land into trust, especially off-reservation land, may cause jurisdictional uncertainties or have tax and economic consequences for nontribal communities.¹²⁴ Prior to 2023, DOI’s land-into-trust regulations required DOI to consider various factors for both on- and off-reservation land-into-trust applications, such as the purpose of the acquisition, the impact on state and local government tax rolls, and jurisdictional problems or conflicts.¹²⁵ Per its 2023 regulations, DOI now presumes that a proposed on-reservation, contiguous, and initial trust acquisition’s adverse impacts on local governments’ regulatory jurisdiction, real property taxes, and special assessments will be minimal, and the burden is on state and local governments to rebut this presumption during a 30-day comment period.¹²⁶ For initial acquisitions, the Secretary of the Interior will also consider the location of the land and potential conflicts of land use.¹²⁷ For off-reservation acquisitions, there is no presumption of minimal adverse impacts.¹²⁸ State and local governments may submit comments about potential

¹¹⁸ See, e.g., *Morrison County, Minnesota et al. v. United States Department of the Interior et al.*, Case No. 24-cv-23, D. Minn., Complaint, January 4, 2024, at https://www.law360.com/dockets/download/65974f0f2a37320090cc794b?doc_url=https%3A%2F%2Fecf.mnd.uscourts.gov%2Fdoc1%2F101110181505&label=Case+Filing, where the Morrison County, MN, government and others sued BIA for accepting land into trust for the Mille Lacs Band of Ojibwe Indians. Among other reasons, the county cited BIA’s “failure to consider the cumulative effects of all tax revenue losses within the County and Townships as a result of removal of the Parcels from the County’s and Townships’ tax rolls” (p. 3).

¹¹⁹ Testimony of Fred Allyn III, Mayor of the Town of Ledyard, CT, in U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs, Oversight Hearing on: Comparing 21st Century Trust Land Acquisition with the Intent of the 73rd Congress in Section 5 of the Indian Reorganization Act, July 13, 2017, p. 6, at https://naturalresources.house.gov/uploadedfiles/testimony_allyn.pdf.

¹²⁰ For a discussion of the term *dependent Indian communities*, see page 427 in Paul W. Shagen, “Indian Country: The Dependent Indian Community Concept and Tribal/Tribal Member Immunity from State Taxation,” *New Mexico Law Review*, vol. 421, no. 2 (1997), pp. 421-453, at <https://digitalrepository.unm.edu/nmlr/vol27/iss2/5>.

¹²¹ Other statutes define *Indian country* similarly to the criminal jurisdiction definition. See, e.g., 33 U.S.C. §1377 and 23 U.S.C. §402.

¹²² *Ibid.*, p. 2. See also 25 C.F.R. §1.4(a).

¹²³ Testimony of Alan J. Titus, “Testimony for the Record,” p. 2, at <https://www.congress.gov/118/meeting/house/117352/documents/HHRG-118-II24-20240626-SD008.pdf>.

¹²⁴ 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.

¹²⁵ DOI, BIA, “25 C.F.R. Part 151 Land Acquisitions: Final Rule,” 88 *Federal Register* 86226, December 12, 2023.

¹²⁶ 25 C.F.R. §§151.9, 151.10, and 151.12.

¹²⁷ 25 C.F.R. §151.12.

¹²⁸ 25 C.F.R. §151.11.

adverse impacts during a 30-day comment period. The Secretary of the Interior will consider the location of the land and potential conflicts of land use.

Some state and local stakeholders have called for DOI to place greater weight on potentially negative local impacts of trust or restricted fee land acquisitions.¹²⁹ The National Association of Counties and other state and local stakeholders have asked Congress to establish land-into-trust standards that “meaningfully include legitimate interests.”¹³⁰ This could include requiring DOI or Tribes to obtain state and local consent for acquisitions or entering into intergovernmental agreements to ensure that state and local impacts are mitigated.¹³¹ In addition, some state and local governments have asserted that 30 days is not enough time to provide comments on proposed trust acquisitions.¹³² Finally, some have criticized DOI’s land-into-trust regulations because they do not specify the types of jurisdictional and land use concerns that might lead to DOI’s denial of an off-reservation or initial land-into-trust application.¹³³

Congress may continue to consider establishing statutory standards for DOI’s land-into-trust process.¹³⁴ Congress could require more state and local input, or intergovernmental agreements, during the land acquisition process, although some Tribes may disagree with this approach. For example, some Tribes may assert that the federal trust responsibility to Tribes, as well as the IRA’s policy to restore homelands to Tribes, would or should 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 of the Interior’s discretion under the IRA and land-into-trust standards are adequate.¹³⁵

Some Tribes and nontribal stakeholders have suggested that the federal government compensate state and local communities when land is put into trust or restricted fee status.¹³⁶ For example, some Tribes and tribal groups have suggested the inclusion of tribal trust lands in the Payments in Lieu of Taxes (PILT) program, which helps local governments offset losses in property taxes due to the existence of nontaxable federal lands within their jurisdictions.¹³⁷ These groups state that

¹²⁹ See, e.g., Letter from Gavin Newsom, Governor of California, to Bryan Newland, DOI Assistant Secretary for Indian Affairs, August 16, 2024, at https://tribalbusinessnews.com/images/2023/Gov_Newsom_letter_-_Shiloh_and_Scotts_Valley_projects_circ_8-16-2024.pdf. Shiloh_and_Scotts_Valley_projects_circ_8-16-2024.pdf.

¹³⁰ Testimony of David Rabbitt, Supervisor, Sonoma County, California (on behalf of NACo), in H.R. 1208 hearing, p. 3, at https://naturalresources.house.gov/uploadedfiles/testimony_rabbitt062624.pdf (hereinafter Rabbitt testimony).

¹³¹ NACo, “U.S. Bureau of Indian Affairs Unveils New Final Rule for Tribal Land-in-Trust Process,” January 2024, at <https://www.naco.org/news/us-bureau-indian-affairs-unveils-new-final-rule-tribal-land-trust-process>. See also Rabbitt testimony, H.R. 1208 hearing, pp. 3-4.

¹³² GAO, “BIA time frames,” p. 7.

¹³³ *Ibid.*, p. 5.

¹³⁴ In 2015 and in 2017, Congress held two oversight hearings on the adequacy of the standards for trust land acquisitions under the Indian Reorganization Act. 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; and 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.

¹³⁵ Testimony of Kevin Washburn, Assistant Secretary-Indian Affairs, DOI, 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.

¹³⁶ See, e.g., NACo, “The American County Platform and Resolutions, 2023-2024,” p. 103, at <https://naco.sharefile.com/share/view/s23bfec846e3645f1bb533e4a0eb367ff>.

¹³⁷ See, e.g., Poarch Band of Creek Indians, “Questions for the Record Responses,” H.R. 1208 hearing, pp. 1-2, at <https://www.congress.gov/118/meeting/house/117352/documents/HHRG-118-II24-20240626-SD020.pdf>. For (continued...)

PILT for lands put into trust “could remove barriers to the restoration of Tribal homelands while also easing the perceived burdens of and impacts to local government as a result of lost tax revenue.”¹³⁸ Additional appropriations would likely be needed to add trust lands to PILT. Past congresses have debated PILT for tribal lands but have not passed legislation, and the 119th Congress could continue to consider whether adding tribal lands to PILT would meet congressional goals.¹³⁹

Tribal Land Acquisitions for Gaming Purposes

The Indian Gaming Regulatory Act (IGRA; 25 U.S.C. §§2701-2721) governs gaming on tribal lands.¹⁴⁰ IGRA generally prohibits gaming activities on lands taken into trust after October 17, 1988, unless the proposed lands meet conditions under one of IGRA’s statutory exceptions.¹⁴¹ Under all of the exceptions, gaming can occur only on tribal lands, which includes (1) “all lands within the limits of any Indian reservation” and (2) trust or restricted fee lands over which a Tribe “exercises governmental power.”¹⁴² According to the National Indian Gaming Commission (NIGC), which regulates gaming on tribal lands, as of 2024, over 200 Tribes owned, operated, or licensed more than 500 gaming establishments across 29 states.¹⁴³

Where a land-into-trust application is submitted for gaming purposes, BIA will first determine whether the land may be taken into trust according to 25 C.F.R. Part 151, and then DOI’s Office of Indian Gaming will make a separate determination regarding whether the land is eligible for gaming under IGRA and its implementing regulations at 25 C.F.R. Part 292.¹⁴⁴ These determinations may occur concurrently.¹⁴⁵ Both 25 C.F.R. Part 151 and Part 292 require compliance with the National Environmental Policy Act.¹⁴⁶ When the proposed gaming lands are already in trust status, DOI regulations instruct the applicant to contact the NIGC.¹⁴⁷

Trust land acquisitions for gaming purposes seem to be relatively rare. For example, as of June 2024, out of the 961 total pending land-into-trust applications, 26 were for gaming purposes (2.7%). Furthermore, of the 4,349 approved applications from 2009 to 2023, 48 were for gaming

information about the Payments in Lieu of Taxes program, see CRS Report R46260, *The Payments in Lieu of Taxes (PILT) Program: An Overview*, by Carol Hardy Vincent.

¹³⁸ United South and Eastern Tribes, “USET SPF Resolution No. 2020 SPF:004, Supporting Payments in Lieu of Taxes for Trust Land Acquisition,” at https://www.usetinc.org/wp-content/uploads/2019/11/USET-SPF-2020_004-Supporting-PILT-for-Trust-Land-Acquisition-FINAL.pdf.

¹³⁹ See, e.g., H.R. 7251 in the 110th Congress.

¹⁴⁰ The Indian Gaming Regulatory Act (IGRA) defines three classes of gaming—class I: social gaming with minimal prizes and traditional Indian gaming, class II: bingo and “non-banking card games,” and class III: all other games, including casino games (25 U.S.C. §2703). For an overview of IGRA, see CRS In Focus IF12527, *Indian Gaming Regulatory Act: Gaming on Indian Lands*, by Mariel J. Murray and Madeline W. Donley.

¹⁴¹ 25 U.S.C. §2719.

¹⁴² 25 U.S.C. §2703.

¹⁴³ National Indian Gaming Commission (NIGC), “NIGC FY2023 Gross Gaming Revenue Report,” p. 4, at https://www.nigc.gov/images/uploads/reports/GGR23_Final.pdf.

¹⁴⁴ DOI, BIA, Office of Indian Gaming, at <https://www.bia.gov/as-ia/oig>.

¹⁴⁵ See, e.g., Letter from Bryan Newland, Assistant Secretary-Indian Affairs, to Tim Walz, Governor of Minnesota, November 8, 2024, at https://www.bia.gov/sites/default/files/media_document/508_compliant_two-part_determination_for_prairie_island.pdf.

¹⁴⁶ 25 C.F.R. §151.8 and §292.18.

¹⁴⁷ 25 C.F.R. Part 292. Tribes may send requests for opinions on whether a particular newly acquired trust parcel meets one of the IGRA exceptions to DOI’s Office of Indian Gaming (BIA, “Fee-to-Trust Handbook,” p. 7).

purposes (1.1%).¹⁴⁸ However, these statistics track only those applications that explicitly mention gaming as the stated purpose of the acquisition. DOI's Office of Inspector General has reported that some Tribes change the purpose from nongaming to gaming after the trust land acquisition has been approved.¹⁴⁹ To prevent this situation, some federal officials have suggested amending the land-into-trust regulations to require all Tribes that have taken land into trust since IGRA's enactment to certify either that no gaming is occurring or that gaming has been approved.¹⁵⁰ Some advocates also suggest that DOI should have clear authority to remove land from trust if the proposed land use later changes to a land use (such as gaming) that was not considered in the original decision or to stop the new land use from occurring until a new review is conducted.¹⁵¹

Some Members of Congress view IGRA as representing a delicate balance between many interests in the conduct of gaming. On one hand, gaming is viewed "as a means of generating needed tribal revenues and employment," while on the other hand, it raises concerns for federal, state, and tribal governments about issues such as preventing criminal activity.¹⁵² Tribal and nontribal stakeholders often oppose proposed trust land acquisitions for gaming purposes because of potential impacts on their nearby communities.¹⁵³ During the 118th Congress, the House Committee on Natural Resources stated that tribal gaming is "inextricably linked" with putting land into trust.¹⁵⁴ Therefore, the committee stated that it must consider gaming as part of its continued oversight of land-into-trust issues.¹⁵⁵ Options include explicitly addressing gaming concerns as part of a land-into-trust statutory scheme or amending IGRA to address land-into-trust concerns.

If Congress were interested in restricting tribal gaming, it could amend IGRA. For example, under IGRA, Tribes in Oklahoma may conduct gaming activities on lands within the boundaries of their former reservation, as defined by the Secretary of the Interior, or land contiguous to other land held in trust or restricted fee status for the Tribe in Oklahoma.¹⁵⁶ Amending IGRA, following the Supreme Court decision in *McGirt v. Oklahoma*, to either encourage or restrict the ability of Oklahoma Tribes to request putting land into trust for gaming purposes could shape the future of gaming for these Tribes. In *McGirt*, the Court held that land reserved for the Muscogee (Creek) Nation in the 19th century remained Indian country for criminal jurisdiction purposes because the

¹⁴⁸ Rep. Tom Cole testimony, H.R. 1208 hearing, p. 3, at <https://www.congress.gov/118/meeting/house/117352/documents/HHRG-118-II24-20240626-SD009.pdf>.

¹⁴⁹ For example, a 2005 DOI Inspector General report noted 10 instances where Tribes had converted lands acquired for nongaming purposes to gaming without first getting the necessary federal approvals pursuant to IGRA (DOI, Office of Inspector General, *Process Used to Assess Applications to Take Land into Trust for Gaming Purposes*, E-EV-BIA-0063-2003, September 1, 2005, pp. 18-19, at <https://www.govinfo.gov/content/pkg/GPO-DOI-IGREPORTS-2005-g-0030/pdf/GPO-DOI-IGREPORTS-2005-g-0030.pdf>).

¹⁵⁰ *Ibid.*, p. 8.

¹⁵¹ Rabbitt testimony, H.R. 1208 hearing, p. 6.

¹⁵² U.S. Congress, Senate Indian Affairs Committee, *To Prohibit Gaming Activities on Certain Indian Land in Arizona Until the Expiration of Certain Gaming Compacts*, report to accompany S. 152, 114th Cong., 1st sess., December 18, 2015, S.Rept. 114-199 (Washington, DC: GPO, 2015), p. 3.

¹⁵³ See 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>. See also Julian Mark, "Tribes Battle Over Ancestral Land—and a Casino in California Wine Country," *Washington Post*, November 3, 2024, at <https://www.washingtonpost.com/business/2024/11/03/native-american-casino-california-koi-dispute-biden/>.

¹⁵⁴ House, *Authorization and Oversight Plans*, p. 147.

¹⁵⁵ *Ibid.*

¹⁵⁶ 25 U.S.C. §2719(a)(2)(A) and (B).

reservations were never disestablished.¹⁵⁷ Because the Tribes' lands may now legally be considered reservations, some observers have raised the possibility that Oklahoma Tribes might more successfully request that DOI place land into trust and more easily qualify for gaming licenses under IGRA.¹⁵⁸

In addition, Congress may consider clarifying requirements that Tribes need to meet to qualify for the IGRA exceptions. For example, the IGRA restored lands exception (25 C.F.R. §§292.7-292.12) allows gaming on newly acquired trust land under certain circumstances.¹⁵⁹ One way for a Tribe to qualify for this exception is to demonstrate (1) an in-state and modern connection to the newly acquired site, (2) a significant historical connection to the site, and (3) a temporal connection to the site.¹⁶⁰ These criteria have been interpreted in various ways by both DOI and the courts.¹⁶¹ Controversies have arisen in light of these varied interpretations, and Members of Congress have, at times, introduced legislation to clarify that a specific Tribe qualifies for this exception.¹⁶² Congress may also consider clarifying the IGRA statutory criteria to avoid future controversies for all Tribes.

Alternatively, Congress may continue to include gaming prohibitions in bills taking land into trust for specific Tribes. For example, the Pala Band of Mission Indians Land Transfer Act of 2023 (P.L. 118-11) prohibited gaming on lands transferred into trust for the Tribe by the act. Several Members spoke in favor of the gaming prohibition, for example, arguing that it allowed Tribes to continue traditional practices on their sacred land.¹⁶³

¹⁵⁷ *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). For information on this case, see CRS Legal Sidebar LSB10527, *This Land Is Whose Land? The McGirt v. Oklahoma Decision and Considerations for Congress*, by Mainon A. Schwartz.

¹⁵⁸ Mike McBride, "Reservation Ruling Shows Gorsuch's Tribal Rights Support," *Law360*, July 17, 2020, at <https://www.law360.com/articles/1292799>.

¹⁵⁹ In general, to qualify for the IGRA restored lands exception, the land must have been acquired as part of the process of restoring a Tribe to federal recognition that it had previously lost. As explained in the "Introduction," during the 1950s and 1960s, federal policy focused on "terminating" the status of Tribes by disestablishing reservations, diminishing tribal sovereign authority, and ending the federal recognition of Tribes.

¹⁶⁰ 25 C.F.R. §§292.11-292.12.

¹⁶¹ See, e.g., Letter from Larry Echo-Hawk, Assistant Secretary-Indian Affairs, to Ron Sparkman, Chairman, Shawnee Tribe, November 10, 2010, at <https://www.nigc.gov/images/uploads/indianlands/TribeSparkman.pdf>, where DOI determined that the Tribe did not meet the requirements for the IGRA restored lands exception. See also *In County of Amador, California v. United States Dep't. of the Interior*, 136 F. Supp. 3d 1193, 1222 (E.D. Cal. 2015), where the court upheld an acquisition for the Ione Band of Miwok Indians as "restored lands" although it did not satisfy any of the criteria in 25 C.F.R. §292.7.

¹⁶² See, e.g., *E. Band of Cherokee Indians v. U.S. Dep't of Interior*, 534 F. Supp. 3d 86 (D.D.C. 2021). See also H.R. 1619 in the 117th Congress.

¹⁶³ Rep. Jackson Lee, "Pala Band of Mission Indians Land Transfer Act of 2023," remarks in the House, *Congressional Record*, vol. 169 (February 6, 2023), p. H694, at <https://www.congress.gov/118/crec/2023/02/06/169/24/CREC-2023-02-06.pdf>.

Appendix. Chronology of Selected Legislation Addressing Tribal Land Fractionation

Table A-1. Selected Legislation Addressing Tribal Land Fractionation

Year	Legislation	Summary of Key Provisions
1983	Indian Land Consolidation Act (ILCA) (P.L. 97-459)	<ul style="list-style-type: none"> • Authorizes any Tribe to purchase, at not less than the fair market value, all of the interest in any tract of trust or restricted fee land within its jurisdiction with the consent of (1) the owners of more than 50% of the undivided interests in such tract or (2) more than 50% of the owners of such a tract. • Authorizes any Tribe, with the approval of the Secretary of the Interior, to exchange or sell any tribal lands or interests to eliminate undivided fractional interests in trust or restricted fee lands or to consolidate its tribal landholdings. • Prohibits small land interests from passing to heirs upon an individual tribal landowner's death. Instead, small land interests would revert, or escheat, to tribal ownership.
1984	ILCA Technical Amendments (Joint Resolution) (P.L. 98-608)	<ul style="list-style-type: none"> • Terminates the requirement that tribal purchases of certain land tract interests need the consent of more than 50% of the owners of such a tract. (Retains the requirement of consent of the owners of more than 50% of the undivided interests in such a tract.) • States that certain undivided interests in trust or restricted lands shall escheat to the Tribe if such interest cannot earn at least \$100 to the respective heirs in any one of the five years following the decedent's death.
1991	Technical Amendments to Various Indian Laws Act of 1991 (P.L. 102-238)	<ul style="list-style-type: none"> • Authorized the Secretary of the Interior to execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on the date of the enactment, by the United States in trust for the Cherokee Nation of Oklahoma.
2000	ILCA Amendments of 2000 (P.L. 106-462)	<ul style="list-style-type: none"> • Requires approval by the Secretary of the Interior within 180 days of any adopted tribal probate code governing descent and distribution of trust or restricted lands. • In the absence of a tribal code, set forth uniform rules for descent and distribution of interests in Indian lands. The rules were applicable to both testate (with a will) and intestate (no will) tribal estates. • Authorized a three-year pilot program of voluntary federal acquisition of fractional land interests for consolidation under tribal trust ownership. • Directed the Secretary of the Interior to establish an Acquisition Fund to carry out the pilot program and authorized up to \$8 million to be appropriated for FY2001 and each subsequent fiscal year.

Year	Legislation	Summary of Key Provisions
2004	American Indian Probate Reform Act of 2004 (AIPRA) (P.L. 108-374)	<ul style="list-style-type: none"> Amended the ILCA to create a federal probate code applicable to most individually owned trust and restricted fee lands. Established the single-heir rule: when a tribal interest holder dies without a will, the interest passes to only one child and is not further fractionated. Made permanent the pilot program of voluntary federal acquisition and authorized the appropriation of \$750 million for voluntary acquisitions over the next 6 years.
2010	Claims Resolution Act of 2010 (CRA) (P.L. 111-291)	<ul style="list-style-type: none"> In 2009, the settlement agreement for the <i>Cobell v. Salazar</i> case established a program to buy back fractionated land interests. Established a Trust Land Consolidation Fund, authorizing \$1.9 billion for the Department of the Interior to purchase fractionated interests in accordance with the ILCA, as amended. The settlement and the law allowed the Secretary of the Interior to make payments from the fund for a 10-year period, which expired in November 2022.
2022	Consolidated Appropriations Act, 2022 (P.L. 117-103)	<ul style="list-style-type: none"> Established a new Indian Land Consolidation appropriations account to continue funding land consolidation. The Joint Explanatory Statement directs the Bureau of Indian Affairs to submit administrative expense estimates and metrics, including the proposed number of fractionated interests to be purchased and acreage consolidated, in the annual budget justification. The bill also states that any provision of the Indian Land Consolidation Act Amendments of 2000 (P.L. 106-462) that requires or otherwise relates to application of a lien shall not apply to the acquisitions funded herein.

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