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Tribal Lands: An Overview

Tribal lands can have a complicated and intermingled mix of land ownership and designation statuses. For instance, some federally recognized Indian tribes (hereinafter referred to as *tribes*) have reservations, whereas other tribes do not. Tribes may have land held in trust by the federal government or tribes may own restricted fee lands. Still other tribes may be landless. Because tribal lands may have different ownership statuses, tribes and tribal members may have different rights to manage and develop their lands and resources. Further, the federal government has varying levels of responsibility to tribes and their members depending on the types of land holdings.

The following are common tribal land holdings: trust land, restricted fee land, and fee land. Other types of land designations, while not considered property holdings, can influence tribal land policy and may include trust, restricted fee, and fee lands within their scope. Such designations include allotted land, federal Indian reservations, and the term *Indian Country* (see “A Note on Indian Country, below”). The various types of tribal land holdings and land designations are summarized below and in **Table 1**. This In Focus also considers selected issues for Congress, including the fractionation of allotted lands and the land-into-trust process.

For more information on tribal lands, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Tana Fitzpatrick.

Common Tribal Land Holdings

Trust 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. The United States holds in trust approximately 55 million surface acres and 59 million acres of subsurface mineral estate for tribes and individual tribal members. Lands typically are brought into trust through the *land-into-trust process*. Under this process, land can be taken into trust through either mandatory acquisitions or discretionary acquisitions. *Mandatory acquisitions* occur when Congress directs the Secretary of the Interior (Secretary) to take land into trust on behalf of a tribe. The Secretary also may be mandated by court order to take land into trust. *Discretionary trust acquisitions* occur when the Secretary uses authority under the Indian Reorganization Act (IRA; 25 U.S.C. §§5101 et seq.) to approve bringing land into trust on behalf of a tribe.

Restricted Fee Lands

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., liens, leases, rights-of-way,

etc.) by operation of law. For some purposes, Congress has defined tribal lands to include trust and restricted fee lands, such as for leasing Indian agricultural lands (25 U.S.C. §3703) and rights-of-way (25 U.S.C. §323).

Fee Lands

In the context of tribal lands, *fee lands* are lands owned by a person who can freely alienate or encumber land without federal approval. The General Allotment Act, also known as the Dawes Act (Act of February 8, 1887, Ch. 119, 24 Stat. 388), authorized the conveyance of tribal and individual tribal member ownership of land to non-Indians. Many fee lands were created when land passed out of tribal or tribal member ownership under the General Allotment Act. Although the IRA explicitly ended the conveyance, or allotment, of tribal reservations in 1934, today trust or restricted fee lands can still be converted to fee lands. For example, individual tribal members can request that the Secretary remove the restriction against alienation on trust or restricted fee lands, making the parcel freely alienable. The federal government typically does not have a role in land management activities that include fee interests.

Other Land Designations

Allotted Lands

Allotted lands are lands held in trust or restricted fee status by individual tribal members, sometimes referred to as *allottees* or *landowners*. Allotted lands do not include fee lands. Allotted lands stem from treaties and statutes, including the General Allotment Act, which divided land communally held by tribes and allotted parcels of it to individual tribal members. Allotment led to *fractionation* of the land, which occurred when the undivided interest from the original allottees was passed down to multiple heirs, increasing with each generation. Many landowners—at times hundreds—can be on one parcel of land. Further, when some allotments passed into fee, the result was a pattern of land ownership where fee parcels are interspersed with trust or restricted fee parcels—often referred to as *checkerboarding*. Checkerboarding and fractionation can contribute to jurisdictional and management challenges.

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, and administrative actions. Not all tribes have a reservation; however, tribes without a reservation could still have lands held in trust or restricted fee. Trust, restricted fee, and fee lands may exist within a tribe’s reservation boundaries. Tribes also may have trust, restricted fee, or fee lands outside of reservation boundaries.

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

Name	Description or Definition
Trust	The U.S. government holds legal title to <i>trust land</i> for the benefit of federally recognized Indian tribes (tribes) or individual tribal members. The United States holds in trust approximately 55 million surface acres and 59 million acres of subsurface mineral estate for tribes and tribal members. ^a
Restricted Fee	<i>Restricted fee land</i> 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 or encumbrance. ^b
Fee or Fee Simple	<i>Fee lands</i> or <i>fee simple lands</i> are lands previously conveyed out of tribal ownership that are freely alienable or can be encumbered without federal approval. ^c Fee lands may be owned by non-Indians or may be repurchased and owned by a tribe or individual tribal members.
Allotted	<i>Allotted lands</i> 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	<i>Federal Indian reservation</i> 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, trust, restricted fee, and fee lands can be included within reservation boundaries.
Indian Country	For criminal jurisdictional purposes, the term <i>Indian Country</i> 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. Surface and subsurface acreage numbers obtained via personal communication between CRS and the Bureau of Indian Affairs (BIA) on June 17, 2021. Acreage amounts are current as of May 2021.
- b. 25 C.F.R. §§151.2(e), 152.1(c).
- c. Department of the Interior (DOI), BIA, *Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook)*, June 28, 2016.
- 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.

A Note on Indian Country

Indian Country is a legal term that, for purposes of determining criminal jurisdiction, generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all tribal member allotments (18 U.S.C. §1151). This definition assists in determining which entity—state, tribal, or federal—can exercise jurisdiction when matters involve tribes, tribal members, and non-Indians. Although an in-depth look at this definition is outside the scope of this In Focus, it is noted here to assist in distinguishing the differences and interdependencies between jurisdiction and tribal land holdings.

Land-into-Trust Process

One issue for Congress could be the administrative process for bringing land into trust. In 2017 and 2018, the Department of the Interior (DOI) held consultations with tribes about amending the land-into-trust regulations addressing off-reservation parcels and creating a separate process for acquisitions for the purposes of gaming. Some tribes opposed the proposed changes, stating the revisions would make bringing land into trust more difficult for tribes. State and local governments also commented, stating their governments would like more opportunities to provide input throughout the land-into-trust process.

Another issue relates to the Secretary's determination of whether a tribe qualifies to petition to bring land into trust. A 2009 Supreme Court case, *Carcieri v. Salazar* (555 U.S. 379 (2009)), decided that only tribes that were federally

recognized under the IRA prior to 1934 could petition to reserve land in trust. If Congress chooses to address issues raised by the *Carcieri* decision or the administrative land-into-trust process, legislative options and oversight could involve potential amendments to the Secretary's authority to bring land into trust.

Reducing Fractionation

In 2009, the settlement agreement in *Cobell v. Salazar*, 573 F.3d 808 (D.C. Cir. 2009), established a program to buy back fractionated land interests. The DOI Land Buy-Back Program (LBBP) uses the \$1.9 billion settlement to purchase fractionated interests from willing sellers, consolidate those interests, and restore the land to tribal ownership. The LBBP expires in November 2022. In its FY2022 budget request, DOI proposed a new appropriations account—Indian Land Consolidation—with \$150.0 million to reestablish the Indian Land Consolidation Program (ILCP). DOI indicated the ILCP would be a modified version of the land consolidation program that existed prior to the LBBP. DOI stated the ILCP would continue to consolidate fractionated interests. The House considered this proposal favorably in passing an FY2022 "minibus" appropriations bill (H.R. 4502) but would fund the account at \$75.0 million. The bill is currently pending in the Senate.

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