

FEE TO TRUST AND ACQUISITION FOR ECONOMIC DEVELOPMENT
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History and Current Strategies

In the Beginning

- Pre-Contact, Tribes used all of the land, but few Tribes had individual ownership.
- My experience is in the Northwest so I can't opine about other examples for other Tribes.
- In the Northwest there was one example of a Tribe which had privately owned shellfish beds, but virtually all other tribes had communally owned Tribal areas.
- Some areas were considered homeland, particularly in terms of resources and not available to other tribes
- Some areas with abundance were viewed by Tribes as shared with overlapping interests and rights
- Particularly in the Northwest, Tribes were generally small and practiced exogamy – marrying out particularly for higher status families
- Visiting relatives in other locations included permissive use of resources, but did not imply use by right

The Treaty Era

- Treaty and Executive Orders
 - US Policy was to treat with the Tribes / Indians
 - Caused the Tribes to cede the land and establish Reservations
 - Negotiated Treaties (the same as other foreign sovereigns) still required Senate approval
 - Some Treaties were negotiated, but never approved and, therefore were not Treaties. *See Dart Treaties in Oregon Territory. Tansey Point Treaties 1851.*
 - In the Northwest, the Chehalis River Treaty Council ends with Governor Stevens tearing up the Treaty and, therefore, the Chehalis were not a Treaty Tribe
 - Treaties not only ceded lands, but moved tribes to designated Reservation.
 - Tribes that didn't have a Treaty for one or more reasons, might receive the Reservations via Executive Orders in order to close out land title claims by Tribes.
 - Reservations created by Treaty and / or Executive Order had legal metes and bounds or other descriptors to identify the area of the Reservation
 - Reservations also created a legal system for Tribes recognized by US Courts and differentiated from other Territorial and then State laws (the *Indian Commerce Clause of the Constitution Article I, Section 8, Clause 3*)
 - Between 1855 and 1919, 23 million acres of land were set aside from the public domain by Executive Order for Indian Reservations. (*Cohen: Handbook, 982*)
 - Even though the Treaty and Executive Order Era came to an end before 1919, there continued to be adjustments to Reservation size and / or in the nature of allotments by Executive Order
 - Treatment of Tribes by Treaty or Executive Order in the US different than treatment of First Nations in Canada
 - Cession of lands by conquest and not until the late 20th Century do First Nations achieve certain rights. *Identified at Section 35 of the Canadian Constitution Act of 1982*

The Allotment Era

- There was a theory extant in the mid-Nineteenth Century that Reservations would only last 25 years --long enough to assimilate the Tribal populations into the American mainstream
- The US also lost its appetite for negotiating Treaties with Tribes as the white population moved West
- US Treaty activity lasted from 1774 until about 1871 (change in Executive and Congressional view of tribes).
- By the 1870-1880, the US moved away from Treaty negotiations and Executive Orders and moved to the Allotment Era.
- Before 1887, several Congressional attempts to create an allotment process fail in Congress
- 1887, Congress passes the Dawes Act, also known as the General Allotment Act.
 - Takes communally owned Reservations and divides them up for individual tribal member ownership.
 - Restricts alienation for a period of time, but given limited resources, many Indian individuals deemed competent sold their allotments in order to live
 - US maintains a trust relationship until the trust lands are alienated.
 - By 1934, the end of the Allotment Era, individual Indian ownership plummets from 138 million acres to 48 million acres
 - Section 1 of the General Allotment Act confirmed existing Executive Order and Treaty Reservations (*See, In re Wilson, 140 US 575 (1891), 29 Op. A.G. 239 (1911).*)

The New Deal and the Indian Reorganization Act (1934)

- Felix Cohen, the father of modern Indian jurisprudence drafts the Indian Reorganization Act (1934) and later writes the Handbook of Federal Indian Law (first published in 1942 and updated thereafter).
- Adoption of the IRA was tied to a vote of each Tribe 25 U.S.C. §461 et seq,
 - The IRA provided for the adoption of IRA Constitutions.
 - Section 5 of the IRA provides that at the Secretary's (Interior) discretion, the US can acquire any interest in lands, water rights, or surface rights to lands within or without existing Indian reservation by purchase, gift, or exchange for the purpose of providing land for Indians.
 - This, along with other subsequent statutory authorities, forms the basis for current fee to trust transactions.
 - Some Tribes adopted the IRA and passed approved IRA Constitutions
 - Some Tribes voted down the IRA but later passed IRA Constitutions
 - Some Tribes voted for the IRA but didn't adopt IRA Constitutions until much later.

The Termination ERA Discussion and then Action (1943 – circa 1964)

- During and after WWII the discussion with respect to Tribes turns again to assimilation
- This constitutes a direct attack on the IRA
- In 1950, Dillon S. Myer is appointed Commissioner of Indian Affairs
- Myer was responsible during WWII for administering the US policy of Japanese detention in camps
- In 1953, Congress adopts the policy of termination
- In 1954, Congress terminates 70 tribes including the Klamath of Oregon and the Menominee of Wisconsin.
- Between 1953 and 1964, Congress terminates a total of 109 tribes (see the list of terminated tribes and tribes under discussion for termination <https://www.aaanativearts.com/terminated-tribes>)

Indian Self-Determination and Education and Assistant Act (ISDEAA), the IRA and Indian Land Consolidation Act

- ISDEAA Adopted in 1975
- Ends the Termination Era (although US moving in that direction before the Act).
- New US direction affecting fee to trust and relying on the IRA and subsequent Acts.
- Tribes which adopted the IRA, even if didn't adopt an IRA Constitution at that time could use Section 5 for fee to trust.
- Tribes which did not adopt the IRA still could use Section 5 for Fee to Trust
- Congress passes an additional Act which Tribes can use to authorize fee to trust – The Indian Land Consolidation Act of 1983 (ILCA)
- Designate a Land Consolidation Area outside of the Reservation to provide additional authority for fee to trust transactions.
- Later amendment to ILCA give tribes the ability to purchase small percentage trust ownership created by the Heirship problem. The amendments of 2000 made Indian Land Consolidation Program a pilot program. The 2004 amendments made the Program permanent. The Amendments authorized the Secretary of the Interior to acquire from willing sellers, and at fair market value, any fractional interest in trust or restricted land, to: Prevent further fractionation; Consolidate fractional interests and ownership into usable parcels in the name of the Tribe/Band; in a manner that enhances tribal sovereignty; promote tribal self-sufficiency and self-determination; and to reverse the effects of the allotment policy on Indian Tribe

Fee to Trust Regulations

- Regulations which apply to fee to trust transactions and for fee to trust for economic development
 - 25 CFR Part 151 (Fee to Trust)
 - Provisions:
- [§ 151.1 Purpose and scope.](#)
- [§ 151.2 Definitions.](#)
- [§ 151.3 Land acquisition policy.](#)
- [§ 151.4 Acquisitions in trust of lands owned in fee by an Indian.](#)
- [§ 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.](#)
- [§ 151.6 Exchanges.](#)
- [§ 151.7 Acquisition of fractional interests.](#)
- [§ 151.8 Tribal consent for nonmember acquisitions.](#)
- [§ 151.9 Requests for approval of acquisitions.](#)
- [§ 151.10 On-reservation acquisitions.](#)
- [§ 151.11 Off-reservation acquisitions.](#)
- [§ 151.12 Action on requests.](#)
- [§ 151.13 Title review.](#)
- [§ 151.14 Formalization of acceptance.](#)
- [§ 151.15 Information collection.](#)

Fee to Trust

- 25 CFR Part 162 (Leasing Regulations) One mechanism in conjunction with fee to trust to move economic development
- Subpart D, Business Leases
- Provisions:
 - **BUSINESS LEASING GENERAL PROVISIONS (§§ 162.401 - 162.402)**
 - [§ 162.401 What types of leases does this subpart cover?](#)
 - [§ 162.402 Is there a model business lease form?](#)
 - **LEASE REQUIREMENTS (§§ 162.411 - 162.419)**
 - [§ 162.411 How long may the term of a business lease run?](#)
 - [§ 162.412 What must the lease include if it contains an option to renew?](#)
 - [§ 162.413 Are there mandatory provisions that a business lease must contain?](#)
 - [§ 162.414 May permanent improvements be made under a business lease?](#)
 - [§ 162.415 How must a business lease address ownership of permanent improvements?](#)
 - [§ 162.416 How will BIA enforce removal requirements in a business lease?](#)
 - [§ 162.417 What requirements for due diligence must a business lease include?](#)
 - [§ 162.418 How must a business lease describe the land?](#)
 - [§ 162.419 May a business lease allow compatible uses?](#)
 - **MONETARY COMPENSATION REQUIREMENTS (§§ 162.420 - 162.429)**
 - [§ 162.420 How much monetary compensation must be paid under a business lease of tribal land?](#)
 - [§ 162.421 How much monetary compensation must be paid under a business lease of individually owned Indian land?](#)
 - [§ 162.422 How will BIA determine fair market rental for a business lease?](#)

Leasing Regulations Subpart D continued

- [§ 162.423 When are monetary compensation payments due under a business lease?](#)
- [§ 162.424 Must a business lease specify who receives monetary compensation payments?](#)
- [§ 162.425 What form of monetary compensation payment is acceptable under a business lease?](#)
- [§ 162.426 May the business lease provide for non-monetary or varying types of compensation?](#)
- [§ 162.427 Will BIA notify a lessee when a payment is due under a business lease?](#)
- [§ 162.428 Must a business lease provide for compensation reviews or adjustments?](#)
- [§ 162.429 What other types of payments are required under a business lease?](#)
- **BONDING AND INSURANCE (§§ 162.434 - 162.437)**
- [§ 162.434 Must a lessee provide a performance bond for a business lease?](#)
- [§ 162.435 What forms of security are acceptable under a business lease?](#)
- [§ 162.436 What is the release process for a performance bond or alternative form of security under a business lease?](#)
- [§ 162.437 Must a lessee provide insurance for a business lease?](#)
- **APPROVAL (§§ 162.438 - 162.444)**
- [§ 162.438 What documents are required for BIA approval of a business lease?](#)
- [§ 162.439 Will BIA review a proposed business lease before or during preparation of the NEPA review documentation?](#)
- [§ 162.440 What is the approval process for a business lease?](#)
- [§ 162.441 How will BIA decide whether to approve a business lease?](#)
- [§ 162.442 When will a business lease be effective?](#)
- [§ 162.443 Must a business lease document be recorded?](#)
- [§ 162.444 Will BIA require an appeal bond for an appeal of a decision on a business lease document?](#)

Leasing Regs continued

- **AMENDMENTS (§§ 162.445 - 162.448)**
- [§ 162.445 May the parties amend a business lease?](#)
- [§ 162.446 What are the consent requirements for an amendment to a business lease?](#)
- [§ 162.447 What is the approval process for an amendment to a business lease?](#)
- [§ 162.448 How will BIA decide whether to approve an amendment to a business lease?](#)
- **ASSIGNMENTS (§§ 162.449 - 162.452)**
- [§ 162.449 May a lessee assign a business lease?](#)
- [§ 162.450 What are the consent requirements for an assignment of a business lease?](#)
- [§ 162.451 What is the approval process for an assignment of a business lease?](#)
- [§ 162.452 How will BIA decide whether to approve an assignment of a business lease?](#)
- **SUBLEASES (§§ 162.453 - 162.456)**
- [§ 162.453 May a lessee sublease a business lease?](#)
- [§ 162.454 What are the consent requirements for a sublease of a business lease?](#)
- [§ 162.455 What is the approval process for a sublease of a business lease?](#)
- [§ 162.456 How will BIA decide whether to approve a sublease of a business lease?](#)
- **LEASEHOLD MORTGAGES (§§ 162.457 - 162.460)**
- [§ 162.457 May a lessee mortgage a business lease?](#)
- [§ 162.458 What are the consent requirements for a leasehold mortgage of a business lease?](#)
- [§ 162.459 What is the approval process for a leasehold mortgage of a business lease?](#)
- [§ 162.460 How will BIA decide whether to approve a leasehold mortgage of a business lease?](#)

Leasing Regulations continued

- **EFFECTIVENESS, COMPLIANCE, AND ENFORCEMENT (§§ 162.461 - 162.474)**
- [§ 162.461 When will an amendment, assignment, sublease, or leasehold mortgage of a business lease be effective?](#)
- [§ 162.462 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage of a business lease?](#)
- [§ 162.463 What happens if BIA does not meet a deadline for issuing a decision on a lease document?](#)
- [§ 162.464 May BIA investigate compliance with a business lease?](#)
- [§ 162.465 May a business lease provide for negotiated remedies if there is a violation?](#)
- [§ 162.466 What will BIA do about a violation of a business lease?](#)
- [§ 162.467 What will BIA do if the lessee does not cure a violation of a business lease on time?](#)
- [§ 162.468 Will late payment charges or special fees apply to delinquent payments due under a business lease?](#)
- [§ 162.469 How will payment rights relating to a business lease be allocated?](#)
- [§ 162.470 When will a cancellation of a business lease be effective?](#)
- [§ 162.471 What will BIA do if a lessee remains in possession after a business lease expires or is terminated or cancelled?](#)
- [§ 162.472 Will BIA appeal bond regulations apply to cancellation decisions involving business leases?](#)
- [§ 162.473 When will BIA issue a decision on an appeal from a business leasing decision?](#)
- [§ 162.474 What happens if the lessee abandons the leased premises?](#)

Leasing Regs cont.

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Carcieri v. Salazar, 555 US 579 (2009)

- The Governor of Rhode Island lawsuit against the Secretary of the Interior concerning a fee to trust determination for the Narragansett Tribe
- Supreme Court decides that the Secretary's authority under the IRA required a tribe to be under federal jurisdiction in 1934 at the time of the passage of the IRA
- Adds a new layer of inquiry when a tribe seeks a fee to trust determination by the Secretary of the Interior
- Prompts BIA / Interior to engage in a one time Carcieri analysis for each tribe as it applies for a fee to trust transaction.
- Relatively straightforward for tribes with Treaties or Executive Orders that predate 1934
- More difficult for tribes that went through the Federal Acknowledgement process post 1934.
- "We hold that the term "now under Federal jurisdiction" in [§ 479](#) unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934." Carcieri decision
- "Under federal jurisdiction" is an undefined term and subject to the review of the Secretary.
- There have been repeated Congressional attempts at a "Carcieri Fix", but so far unsuccessful.
- There have been several Solicitor's Opinions on how to determine Under Federal Jurisdiction
- The Biden Administration has returned to a formula which first appeared immediately following the Carcieri decision
- Interior will fill the ambiguity about "Under Jurisdiction" for after 1934 Tribes and then utilize the Court rules about agency deference to support its decisions.
[*Chevron v. Natural Resources Defense Council, Inc.*, 467 US 837 (1984)]

Tribes Eligible for Fee to Trust Transactions

- Tribes may have different status concerning Federal Recognition
- Some groups that claim the status of tribes are unrecognized
- In order to become recognized would have to go through the Federal Acknowledgement procedures or have Congressional legislation.
- Some Tribes only have a State recognition status
- In order to become recognized would have to go through the Federal Acknowledgement procedures or have Congressional legislation.
- There are 63 state-recognized tribes in 11 states—Alabama, Connecticut, Georgia, Louisiana, Maryland, Massachusetts, New York, North Carolina, South Carolina, Vermont and Virginia.
- As of January 28, 2022 there were 574 Federal Recognized Tribes
- Find the list of Federally Recognized Tribes on the Federal Register each year
- List created pursuant to the List of Federally Recognized Indian Tribe List Act of 1994
- Before 1994 there were lists of Federally Recognized Tribes, but the list and process was not formal
- List Act affirmed the validity of the list and required publication in the Federal Register each year of “all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”
- Alaska Tribes – Alaska Native Claims Settlement Act (1971) (ANCSA) settled land claims in Alaska, but didn’t address status of tribes and, therefore, didn’t address fee to trust.
- In 1993, the Clinton Administration (Ada Deer, Secretary of the Interior) adds Alaska Villages and Regional Villages to the list of Federally Recognized Tribes eligible for government to government services.

Reservation Proclamations

- There are no regulations with respect to Reservation Proclamations
- There are guidelines but they essentially require the same information as was required for a fee to trust transaction
- Previously, a Tribe could not apply for both a fee to trust transaction and a Reservation Proclamation at the same time
- Now the BIA / Interior allows a Tribe to elect whether to apply for both actions separately or together.
- Section 7 of the IRA permits addition of parcel(s) to the existing Reservation as Reservation
- Need a Tribal Resolution and copy of the document transferring the property into Trust
- Survey
- Copies of the 30 day notice letter(s)
- Address any comments received by the BIA
- Brief description of the Tribe's governmental organization
- Origin of the current Reservation
- Description of how acquired in trust
- Description of the rationale for Reservation status
- Proof of NEPA compliance
- Recommendation from Regional Director and publication in the Federal Register

Who is making the Fee to Trust Determination

- Gaming: It is always at the Central Office
- Gaming fee to trust property location prompted greater scrutiny of the distance from the Reservation for properties to be acquired.
- Non-gaming fee to trust for properties deemed adjacent (contiguous) to the Reservation has changed over time. No longer required to be contiguous
- That scrutiny resulted in Regulation 25 CFR 151.11(b) with respect to non-gaming fee to trust which provides The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.
- Prior to the Trump Administration, off- Reservation non-gaming fee to trust was delegated to the Regional Office
- The Trump Administration pulled all off-Reservation fee to trust back to the Central Office
- In 2021, the Biden Administration a) restored the ability of Alaska Tribes to take land into trust (which had been previously withdrawn) and b) returned / delegated the authority to approve off-Reservation non-gaming fee to trust transactions to the Regional Offices.
- Thought: Given the TAAMS (Trust Asset and Accounting Management System) it is harder to do, but with fee to trust returned to the Region, especially for economic development, the squeaky wheel has increased importance. Visit your Regional Director enhance the prospects of earlier decisions.

The 16 Step Fee to Trust (TAAMS) process

- This process is now digitized whereas before the Tribe put a full paper package together for submission
- Process to be entered into the system and completed one at a time
- 1. Encode to the Fee to Trust System of Record
- 2. Make a written request to initiate the process – request will be reviewed by the BIA
- 3. Respond to any incomplete information
- 4. Obtain and submit Phase 1 site inspection and Certificate of Inspection and Possession
- 5. Preliminary Title Opinion
- 6. Notice of Application
- 7. Environmental Compliance Review
- 8. Comments to Notice of Application
- 9. Satisfy Preliminary Title Objections
- 10. Prepare Analysis and Notice of Decision
- 11. Provide Notice of Decision
- 12. Prepare Final Certificate of Inspection
- 13. Acceptance of Conveyance
- 14. Recording at Land Titles and Records Office

16 steps continued

- 15. Final Title Opinion and Recordation in the County
- 16. Completed Application Packet

Non- Gaming Economic Development Projects for employment, revenue and taxes

- The fee to trust and Reservation Proclamation strategy for checkerboarding for economic development, particularly for smaller sized Reservations.
- Building the Reservation parcels off-Reservation incrementally for economic development.
- Working with the Regional Director to see how far from the Reservation the Tribe can acquire land and take it into Reservation and still fall in the BIA's comfort zone
- Then repeat the process around the new Reservation parcel.
- Identify the economic development parcel or identify the project and find the parcel as a second step
- Sometimes, depending on the size and location of the parcel, a developer will bring a project to the Tribe
- Identify the project – consider doing a feasibility study
- A feasibility study will help with the presentation to the BIA for the fee to trust, the Reservation Proclamation and, if there is a lease, then the business lease as well.
- The write-up and / or feasibility should emphasize that it is a non-gaming project. This keeps the consideration at the Region level and not Central Office.
- While legislation involving land acquisition of a mandatory nature often includes a prohibition against gaming, straight forward economic development usually doesn't contain such a prohibition. Subject to the Indian Gaming Regulatory Act provisions (two part determination) concerning after acquired post 1988 lands, in the future, after the contemplated development, a Tribal Government could decide to add a gaming component to the parcel.
- In dealing with the BIA, discuss employment (and unemployment data – Tribal and non-Indian for the area) and receipt of revenue for essential government services and General Welfare Act purposes.

Some popular economic development projects depending on location and accessibility

- Hotel
- Gas Station / Convenience Store
- Truck Stop
- Retail cigarette outlets
- Marijuana stores (depending on State)
- Warehouse(s) / Distribution Centers for larger assemblages
- Rental properties (apartments for tribal members or non-tribal members)
- Storage facilities (issue of taking existing properties off the tax rolls)
- Railroad spurs and storage (also warehouses)
- Brewery / Distillery
- Restaurants
- Buy Indian Act, Buy Indian Act, 25 U.S.C. § 47
- 8A certification for Government Contracts
- Electric power generation
- Electronic Advertising signs (Lady Bird Johnson Highway Beautification Act) P.L. 89-285 (1965)

Legal Structure of Projects

- Department of the Tribe – sovereign immunity
- Section 17 Corporations – IRA
 - Sue and be sued provision
 - Time to create
- Tribal Corporations
 - Formed under Tribal law
 - If going off-Reservation, then registering as a foreign corporation
- State Corporations
 - Issue of sovereign immunity and whether it applies in your state
- Tribal Limited Liability Companies
 - Formed under Tribal law
 - If going off-Reservation , then register as a foreign LLC
- State LLC's
 - Issue of sovereign immunity and whether it applies in your state

Financing Mechanisms

- Will the Tribe's cash reserves or its balance sheet support the financing of the project without third party business assistance
- Does the Tribe have the expertise to run the project itself or does it need to bring in a third party for that purpose and under what terms: financing, management, minority ownership?
- Third party lender financing.
 - What is the collateral and what does it cost
 - Can't use trust land, so looking at revenue streams
 - Banks have grown to love Casino revenues
- Joint Venture
 - Does the project lend itself to a third party with expertise
 - Is there a third party with both expertise and interest
 - How to structure a joint venture relationship
 - 100% Tribal ownership and a management contract
 - Majority ownership and third party participation
 - Allocation of depreciation as an enticement
- Leasing
 - Master Lease and sublease(s)
 - BIA Business Lease form
 - Simply leasing to third parties for their standalone businesses

Financing Mechanisms cont.

- Management Contracts
 - Can be used to accomplish use of a third parties expertise and compensate them without inviting them into a partnership / joint venture / corporate relationship.
 - Can be used to avoid having to enter into a leasing arrangement or subleasing arrangement
 - Management Company doesn't have sovereign immunity
- Opportunity Zones
- Free Trade Zones

Taxation Strategies

- Tribal / State relations when it comes to taxation
 - Tribal retail sales tax
 - Tribal cigarette tax [*Washington v. Confederated Tribes of the Colville Reservation*, 447 US 134 (1980)]
 - Tribal liquor tax [*Rice v. Rehner*, 463 US 713 (1983)]
 - Tribal marijuana tax
 - Tribal fuel tax
 - Ad valorem tax in lieu of a property tax provision in leases
 - Import / Export Tax
 - Animal Head Tax
 - Gross Receipts tax
- Where the legal incidence of a state tax falls. [*Oklahoma Tax Commission v. Chickasaw Nation*, 515 US 450 (1995)]
- Avoidance of Double Taxation
- The preemption argument for tribal taxation. [See *White Mountain Apache v. Bracker*, 448 US 136 (1980)]
- Can't tax trust land and per *Chehalis Tribe v. Thurston County Bd*, 724 F3d 1153 (9th Cir) (2013) can't tax permanent improvements on trust land. 25 USC §465
- Note 25 CFR 162.429 about payment of taxes as required in BIA approved Business Lease – bootstrap to Federal Policy and preemption
- Cigarette taxes and issue of how State can collect and fuel tax and the incidence of the tax on the Tribe

Tax Strategies cont.

- Taxing non-Indians on non-Indian owned fee land in Indian Country– Supreme Court rules against Tribes. [*Atkinson Trading Co. v. Shirley*, 532 US 645 (2001)]
- There are two exceptions to this rule [*Montana v. US*, 450 US 544 (1981)] :
 - A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements; or
 - A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.