

The Special Relationship Between the Federal Government and Indian Tribes



Executive Branch Policy and Guidance

- ◆ 1994 Presidential Memorandum on Government-to-Government Relations With Native American Tribal Governments
 - ◆ 2000 Exec. Order 13175 on Consultation and Coordination With Indian Tribal Governments
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Basic Principles of Indian Sovereignty and the Trust Responsibility

- ◆ The Constitution vests Congress with plenary power over Indian affairs
- ◆ Indian tribes retain important sovereign powers over their members and their territory, subject to the plenary power of Congress
- ◆ The U.S. has a trust responsibility to Indian tribes, which guides and limits the Federal Gov't in dealings with Indian tribes

The Sovereignty of Indian Tribes

- ◆ Tribal powers over their members and territory are inherent and not derived from the federal gov't
 - ◆ Indian tribes are “domestic dependent nations”
 - ◆ Congress has the authority to limit sovereignty
 - ◆ Court decisions have limited tribal sovereignty
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Self-Determination and Self-Governance

- ◆ Since late 1960s, Federal policy urging a program of legislation to permit tribes to manage their affairs with a maximum degree of autonomy
- ◆ **Federally Recognized Indian Tribes:** an Indian or Alaska Native tribe, band nation pueblo, village or community that Sec. of Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994

Gov't-to-Gov't Relationships

- ◆ Federal Agencies shall:
 - Consult with tribal governments prior to taking actions that affect fed. recognized tribes
 - Assess the impact of plans, projects, etc. on tribal trust resources and assure that tribal rights and concerns are considered

- Take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments
- Work cooperatively with other Federal agencies to enlist their interest and support where appropriate

Trust Responsibility

- ◆ The federal trust responsibility arises from treaties, statutes, executive orders, and the historical relations between the U.S. and Indian tribes.
 - ◆ In a broad sense, it refers to the unique legal and political duties and moral obligations with Indian tribes.
 - ◆ In a narrower sense, it refers to the precise legal duties of the U.S. in managing property and resources of Indian tribes.
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- ◆ Congress has delineated aspects of trust responsibility in statutes.
- ◆ Courts have interpreted the scope and enforceability of the federal trust relationship.