

Indian Country Guidance

Guidance for MnDOT's work in Indian Country

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DISCLAIMER:

The information presented in this Guidance Document is not a substitute for legal advice. If you need advice on a particular situation or issue, please contact either the Office of Tribal Affairs or the Office of Chief Counsel, above.

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INTRODUCTION

This document is a resource for MnDOT employees whose work responsibilities involve actual or potential actions that may affect tribes or tribal interests. It offers guidance and information to MnDOT staff on MnDOT policy, procedures, and requirements for work that impacts Indian Country. The purpose of this manual is to ensure that MnDOT employees conduct their work in a consistent and uniform manner that follows [MnDOT's Tribal Nations policy](#) (discussed in more detail below).

This guidance document is divided into four sections:

1. Introduction
2. Policy and Key Terms
3. History and Identity of Minnesota Indian Tribes; and
4. Specific Issues by Topic

Please Note: this guidance document uses the term “Indian” rather than “Native American.” “Indian” is generally accepted term used in the law. Use of the term “Indian” is also common on Minnesota’s reservations. Generally, you can feel comfortable using either the term “Indian,” “American Indian,” or “Native American.” If an individual expresses a preference for one term over the other, you should respect that preference.

Contacts and Resources

MnDOT Contacts

Tribal Affairs

[Levi Brown](#)

MnDOT Director of Tribal Affairs
Office of Tribal Affairs
(651) 236-7048

Contact for coordination with a tribe on a current or ongoing project, specific concerns on projects, or for consultation matters.

Office of Chief Counsel

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Contact for legal questions.

Tribal Transportation Contacts

Working with tribes requires knowing the appropriate tribal transportation contact for each tribe. Refer to each tribal government’s websites (linked below in [Table 4](#)) to find contact information. Additionally, you can find information at [MnDOT's Tribes and Transportation website](#).

PART I: Policy and Key Terms

This section discusses Minnesota's tribal nations policy as well as a variety of terms you may encounter working with Indian Country and Indian Law. Before delving into specific topics, it's important to understand Minnesota's Tribal Nations Policy and how it influences the state government's working relationships with the Tribes of Minnesota.

Minnesota Tribal Nations Policy

Pursuant to [Minnesota Statute section 10.65](#), all agencies of the State must recognize the unique legal relationship between the State and the Tribal Nations of Minnesota and implement policies to develop, improve, and maintain collaborative relationships between governments.

MnDOT employees are responsible for integrating the [Tribal Nations policy](#) into their programs, projects and planning as it relates to their work. MnDOT's Tribal Nations Policy defines three important terms for purposes of working with tribes: "consultation," "collaboration," and "coordination."

- "Consultation" means "Government-to-government communication in a timely manner by all parties, about a proposed or contemplated decision in order to: secure meaningful tribal input and involvement in the decision-making process; and advise the tribe of the final decision and provide an explanation."
- "Collaboration" means "All parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective."
- "Coordination" means "Each party: shares and compares in a timely manner its transportation plans, programs, projects and schedules with related plans, programs, projects, and schedules of the other parties; and adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services."

For day-to-day activities, collaborating and coordinating with a tribe is often as simple as making a phone call to discuss something with your counterpart in a tribal government. Larger or more complex issues may involve consultation between MnDOT's Commissioner and the elected officials of a tribe. **Please Note:** if coordination is needed with the Ho-Chunk Nation, you should contact MnDOT's Director of Tribal Affairs.

[Table 1](#) below offers guidance on how to start the coordination and/or consultation process. If you still aren't sure how to proceed in working with a tribe, or who to contact within the tribe, you can contact MnDOT's Director of Tribal Affairs for guidance.

Table 1: Coordination/Consultation Guidance

	COORDINATION AND COLLABORATION	CONSULTATION
WORK TOPIC	Routine matters on or near Indian Country which may involve work such as mowing, haying, right-of-way, permits, signs, cultural resources, pesticide use, and billboards.	Urgent matters, e.g. governor or legislative inquiry
ACTION	<ol style="list-style-type: none"> Contact tribal staff who work in the relevant area. If you're not sure who that is, contact the tribe's ACTT (Advocacy Council for Tribal Transportation) representative. If concerns arise, contact MnDOT's Director of Tribal Affairs. <p><i>NOTE: When coordinating with tribes, please work with the MnDOT subject matter expert as necessary.</i></p>	<ol style="list-style-type: none"> Contact District Engineer Contact MnDOT's Director of Tribal Affairs

Key Terms

To understand Minnesota's Tribal Nations policy, its requirements and implementation, it is important to understand certain terms used in American Indian law, which will be discussed here. Additional terminology and relevant legal concepts are defined and discussed in [Appendix A](#).

Most importantly, the term "Indian" describes a legal and political status, not merely a racial designation. Tribes are sovereign nations; meaning they have the inherent authority to govern their own peoples, economy, and culture, and the applicability of state laws on Indians and in Indian Country is heavily restricted. Thus, this document does not describe different rules for people based on membership in a particular racial group; rather, it describes how laws apply differently to Indians and/or tribal members based on the tribe's political status as a sovereign nation and the legal status of being Indian and/or a tribal member.

"Indian" Is A Legal Status, Not Just a Racial Classification

People might think of "Indian" as a racial classification. It is true that individuals can self-identify as belonging to the race "American Indian" on Census Bureau surveys; however, "Indian" is also a legal status. Statutes and case law (decisions made by courts) define "Indian" in different ways for different purposes. For example, the Indian Child Welfare Act defines "Indian Child" as someone who is (1) unmarried, (2) under 18, and (3) a tribal member, or eligible for tribal membership and the biological child of a tribal member. If a person meets this definition of "Indian Child," then the Indian Child Welfare Act law applies to that person. An individual might meet the definition of "Indian" in some laws, but not others.

Some Indians are eligible for membership in a tribe. This is called being a "tribal member", "being enrolled", or "being an enrollee." All these terms mean the same thing. Each tribe determines their own requirements for

membership. Common requirements for tribal membership include being a descendant of a tribal member or having a certain tribal blood quantum. Tribal members have tribal ID cards that look similar to state ID cards. Not all Indians are a member of a tribe. Simply because an Indian lives on a reservation does not mean that they are a member of a tribe. Tribal members live on reservations and outside of reservations.

Just like whether an individual meets the legal definition of “Indian” changes how that law applies to that individual, being a tribal member is a legal status that changes how state law, federal law, and tribal code apply to an individual.

Indian Country Defined

The simplified definition of “Indian Country” includes reservations, allotments, and “dependent Indian communities.”¹ State and federal law do not always apply in Indian Country; it depends on how the land is owned. The following table illustrates the different types of land ownership in Indian Country.

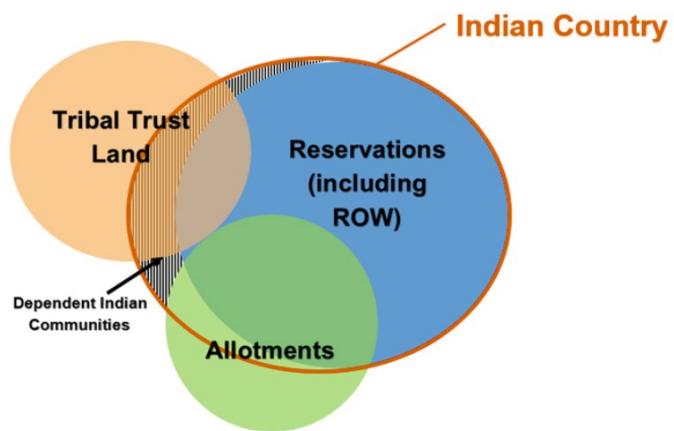
Table 2: Types of Land Ownership in Indian Country

Type of Land Ownership	Definition
Reservation	Land managed by a tribal government that was “reserved” by the tribe when other lands were ceded to the state or federal government by treaty, federal statute, or executive order. See additional discussion below regarding reservation boundaries.
Trust Land	A trust exists when one party (“trustee”) has legal ownership of something of value (land in this case) for the benefit of another party (“beneficiary”). The trustee has certain responsibilities to the beneficiary, including acting in the beneficiary’s interest. The federal government has legal title over trust land and carries out its responsibilities as trustee through the Bureau of Indian Affairs (BIA). Trust Land includes: <ul style="list-style-type: none">• Allotted Trust Land - Land held in trust for an individual Indian; and• Tribal Trust Land – Land held in trust for a tribe. As beneficiaries, any profits or advantages that come from ownership of the land belong to either the individual Indian or the Tribe, respectively. Trust land can be located both within a reservation and outside reservation boundaries.
Restricted Fee Land	Land that is not held in trust by the federal government, but that the BIA may restrict (e.g., by placing a lien or easement on it, or prohibiting the sale of it). Includes: <ul style="list-style-type: none">• Restricted Allotment - Restricted fee land owned by an individual Indian; and• Tribal Restricted Fee Land - Restricted fee land owned by a tribe. Most restricted fee land is inside reservation boundaries but can also be found outside of reservations.
Unrestricted Fee Land	This is the most common type of land ownership in the United States. It may be freely sold and transferred and passed down to heirs. The BIA has no influence over this type of land ownership. Only unrestricted fee land within a reservation is Indian Country.

¹ You can find the complete – more nuanced – definition of Indian Country at [18 U.S.C. § 1151](https://www.law.cornell.edu/uscode/text/18/1151).

Type of Land Ownership	Definition
Dependent Indian Communities	This is land that is not a reservation or allotment but is federally supervised and set aside for the use of Indians. When a court decides whether land is a dependent Indian community, it considers factors such as: whether the land is in trust, whether government agencies treat the land as Indian Country when making and enforcing laws, and whether the area is cohesive (e.g., there are common economic pursuits in the area, common interests, or common needs of the people who live there). Most dependent Indian communities are found on tribal trust land.

The following image illustrates the intersection of the various types of land ownership included in the definition of Indian Country:



Tribal Sovereignty

Among the earliest founding legal principles of the United States, is that tribes are self-governing, sovereign nations. Sovereignty is the authority of a political entity to govern itself and the people it represents. While the establishment of the United States subjected tribes to federal laws and powers, it did not eliminate their internal sovereignty or subordinate them state government powers.

A tribe determines its own government structures and laws. Most tribes in Minnesota have two branches of government, a legislative branch that enacts the tribal code (law) – often led by an executive who might be called a chairperson, chief, or executive director – and a judicial branch called tribal court. The Mille Lacs Band of Ojibwe additionally has a third branch of government, an executive branch. It is important to remember that there are 12 tribes in Minnesota and no two are exactly the same; tribes may share common characteristics and/or language, but each tribe is an independent sovereign government. You can learn more about a particular tribe's government structure by visiting the tribe's website. See the [Indian Tribes in Minnesota](#) section of this document for more information and links to these websites.

Jurisdiction

“Jurisdiction” is the legal terms for the power and authority of a government or court to make or enforce law and can also describe the physical area over which such governmental authority extends. The federal government, state government, and tribal governments all have different jurisdiction (i.e., different powers to make and enforce laws). Because MnDOT is a government agency in the State of Minnesota’s executive branch, its employees are responsible for carrying out applicable laws. Maybe you don’t think of your authority to do your everyday job as coming from the law, but all executive branch agencies’ authority – and thus their employees’ authority - always stems from the law. When you are in Minnesota, the laws of the State of Minnesota apply – rather than those of Wisconsin –because of where you are; in Minnesota’s jurisdiction.

When we consider whether a tribe or the State has the jurisdiction to make or enforce a particular law, the location where the law is being made or enforced - on a reservation, outside a reservation boundary but in Indian Country, or outside Indian Country – is the first question that must be addressed. If your work is in Indian Country, then you must next ask: which law(s) give MnDOT authority to do this Work? And: Do these law(s) apply in Indian Country? Contact MnDOT’s Director of Tribal Affairs or Office of Chief Counsel to help you make these determinations.

State laws do not always apply in Indian Country to the same extent they apply outside Indian Country. However, there are some State laws that do apply in Indian Country. On most reservations, the State of Minnesota has much broader power to enforce criminal-prohibitory laws (laws that prohibit certain conduct altogether) than it does to enforce civil-regulatory laws (laws that regulate conduct, indicating how you should do something if you are going to do it). For example, Minnesota has laws that tell you that if you drive you must have a license and you must wear your seat belt. These are civil-regulatory laws. Minnesota also has laws that tell you that you can’t assault someone. These laws do not tell you what rules to follow if you are going to assault someone; instead, they prohibit you from assaulting someone at all. So, they are criminal-prohibitory laws.

Determining when and how state laws are applicable in and enforceable in Indian Country is discussed in more detail in the [Jurisdiction](#) section of Part III below.

PART II: History and Identity of Minnesota Indian Tribes

This section covers the history of the federal government's Indian policy, and Indian tribes in Minnesota. This information provides context that will help you understand Part III of this Guidance. It might also prompt questions. Contact MnDOT's Director of Tribal Affairs and Office of Chief Counsel about any question you have.

History of Federal Indian Policy

The federal government's overall policy towards Indian tribes has shifted frequently and dramatically since European settlers first came to what is now the United States. This section provides a broad outline of these policy changes. Knowing a little bit about this history makes it easier to understand land ownership and jurisdiction in Indian Country today. [Appendix B](#) to this Guidance provides a list of comprehensive resources for more in-depth recitations, discussions, and analysis of native history in the United States and federal Indian policy.

Pre-1789

When European settlers came to what is now the United States, Indian tribes were already present and had been for thousands of years. These tribes were sovereign nations, each with their own social and governmental systems.

Treaties Between Sovereign Nations (c. 1789-1871)

When the United States was founded, Indians were not considered citizens of the United States. Rather, the United States interacted with tribes as foreign nations, reaching agreements with tribes by making hundreds of treaties that are still federal law today.

Visit the online exhibit [Why Treaties Matter](#) to learn more about treaties in Minnesota.



Dakota/Ojibwe Land Cession Treaties

(affecting present-day Minnesota)

- 1805: Dakota
- 1825 & 1830: Multinational
- 1837: Ojibwe; Dakota
- 1847: Ojibwe
- 1851: Dakota
- 1854: Ojibwe
- 1855: Ojibwe
- 1858: Dakota
- 1863 & 1864: Ojibwe (Mississippi)
- 1863 & 1864: Ojibwe (Red Lake)
- 1866: Ojibwe (Bois Forte)
- 1867: Ojibwe

Removal and Relocation (c. 1828-1887)

As the number of settlers increased and settlement expanded westward, the federal government implemented a policy of removing and relocating Indian tribes. A major driver of this policy was The Indian Removal Act (1830). This Act gave the President authority to give unsettled lands West of the Mississippi River to tribes in exchange for land further East that had already been settled by non-Indians. The federal government entered into many treaties with tribes during this time to accomplish its goal of removal and relocation. The areas that Indians “reserved” in treaties for their habitation and sovereignty came to be known as reservations. Some tribes agreed to move West, but others were unwillingly removed and many of their peoples perished in the process. The federal government also broke numerous treaties during this era; as a result, many tribes were moved several times. The [Trail of Tears](#) is a well-known example of forced removal.

In 1862, war broke out in Minnesota between the newly formed state government and the Dakota people, then numbering approximately 6,500 living on reservation land.² After 6 weeks of brutal attacks by each side against both armed forces and civilian populations, the Dakota surrendered, and 392 prisoners were held by the State pending trial for participating in the war. All 392 trials took place in the six weeks following the Dakota’s surrender (though the defendants were not allowed legal counsel, and almost no evidence, other than the

² Population estimate provided by the [Minnesota Historical Society \(www.usdakotawar.org/history/war/during-war\)](http://www.usdakotawar.org/history/war/during-war).

defendants' own testimony, was taken or offered to support the convictions); 323 men were convicted, and 303 were sentenced to death. President Abraham Lincoln, in an attempt to quell further violence between the parties, undertook a review of each case for conviction and ultimately overturned the death penalty for 265 of the prisoners, but approved the execution of 38 Dakota men. On December 26, 1862, in the center of Mankato, Minnesota, 38 Dakota men were hung in the largest mass execution in United States history.

Allotment and Assimilation (c. 1887-1934)

The federal government's policy towards Indians began to change in the late 1800s from removal and relocation to allotment and assimilation. Congress passed the General Allotment Act (GAA) – also known as the Dawes Act – in 1887. Prior to the GAA, land on reservations was owned collectively by the tribe rather than individual Indians. The GAA authorized the federal government to divide tribal land into "allotments" (parcels of land) for individual Indians. Any "leftover" land was then offered up for settlement by non-Indians. The GAA specified that land allotted to individual Indians was held "in trust" (meaning the federal government owned the land and managed it for individual Indians) for 25 years, after which the individual Indian was promised a deed to the land. The end result was that – in addition to the loss of many millions of acres of "leftover" land – many tribes lost even more land after the 25-year time period when, instead of being deeded to individual Indians as promised, it was sold to non-Indians or lost to tax forfeiture (meaning the government claimed the land as its own when individual Indians could not pay the taxes levied against the land). The Nelson Act of 1889 is an allotment-era policy specific to Minnesota. The federal Nelson Act relocated Anishinaabe (Ojibwe/Chippewa) tribes in Minnesota to the White Earth Reservation so that additional Indian lands could be given to settlers. In 1924, Congress passed the Indian citizenship Act, declaring all Indians to be citizens of the United States.

Reorganization (c. 1934-1953)

In 1934, the federal government's Indian policy changed again with the passage of the Indian Reorganization Act (IRA). The IRA stopped the allotment process, returned unsold "leftover" land to tribes, extended the 25-year trust period for allotted land to be indefinite, authorized the addition of land to reservations, and created reservations for tribes that had lost all their land during the era of allotment and assimilation.

Termination (c. 1953-1968)

In 1953, the federal government began adopting a policy of termination toward Indian tribes. Congress ended its trust relationship with over one-hundred tribes; these tribes were told to stop exercising sovereign powers and to give tribal land to individual members. Many reservations were eliminated completely, and the federal government took full ownership over the trust lands. During this time, Congress also passed [Public Law 280](#) which gave some states – including Minnesota – criminal jurisdiction and jurisdiction over civil court cases involving Indians on some reservations. (The two exceptions to Public Law 280 in Minnesota are the Red Lake and Bois Forte Nations). During the era of termination, the federal government also encouraged Indians to move off reservations and to urban areas with offers of job training and housing assistance.

Self-determination (c. 1968-Present)

From the late 1960s to the present day, the federal government's Indian policy has shifted away from termination and towards tribal self-determination and affirmation of tribal sovereignty. The policy of tribal self-determination has been recognized by numerous Republican and Democratic Presidents. In 1968, the federal government began requiring states to get consent from tribes if the state wanted to get additional jurisdiction over reservations under Public Law 280. The federal government has restored the federal recognition of most tribes that were terminated during the previous era. Since this time, Congress has also passed numerous laws recognizing and affirming tribal self-determination. One well-known example of this is the Indian Child Welfare Act (1978) which – in most situations – requires a state to transfer a foster care placement or adoption case involving an Indian child to the tribe upon request of the tribe or parent.

Today, there are 574 federally recognized Indian Tribes in the United States. In 2018, the U.S. Commission on Civil Rights published a report indicating that American Indians are amongst the lowest ranked in the Country in terms of health, education and employment due to a variety of reasons including historical discrimination policies, insufficient resources, and inefficient federal program delivery.³

Indian Tribes in Minnesota



There are 12 federally recognized tribes with 11 reservations in Minnesota. Chippewa tribes, also called Ojibwe or Anishinaabe tribes, are located in the northern part of the State and include the Bois Forte, Fond du Lac, Grand Portage, Leech Lake Mille Lacs, and White Earth tribal nations. The Minnesota Chippewa Tribe (MCT) is the federally recognized tribal government for its member tribes. Minnesota's Dakota Sioux tribes are located in the southern portion of the State, and include the Prairie Island, Lower Sioux, Upper Sioux, and Shakopee Mdewakanton tribes. In addition, Minnesota contains lands owned by the Ho-Chunk Nation which does not have a reservation. The Ho-Chunk Nation's lands are primarily located in Wisconsin.

³ [Tribal and Native American Issues](#), U.S. Government Accountability Office, published 2018

As Table 3 below illustrates, all of MnDOT's districts contain tribal lands, with the exception of District 7. However, the [Dakota 38 Memorial Ride](#) occurs in District 7 during December of each year and in an important event for MnDOT as it involves horseback riders crossing Highway 169. The annual ride is a memorial for the 38 Dakota people executed as a result of the Dakota War of 1862. The event is organized to bring Dakota people together, raise awareness of this period in Minnesota's history, and to encourage reconciliation.

Table 3: Tribal Land Locations by District

MnDOT District	Reservations/Tribal Lands
1	Bois Forte, Leech Lake, Fond du Lac, Grand Portage, Mille Lacs
2	Leech Lake, Red Lake, White Earth
3	Leech Lake, Mille Lacs
4	White Earth
6	Prairie Island, Ho-Chunk
7	None (however, note that the annual Dakota 38 Memorial Ride occurs in District 7)
8	Lower Sioux, Upper Sioux
Metro	Shakopee Mdewakanton

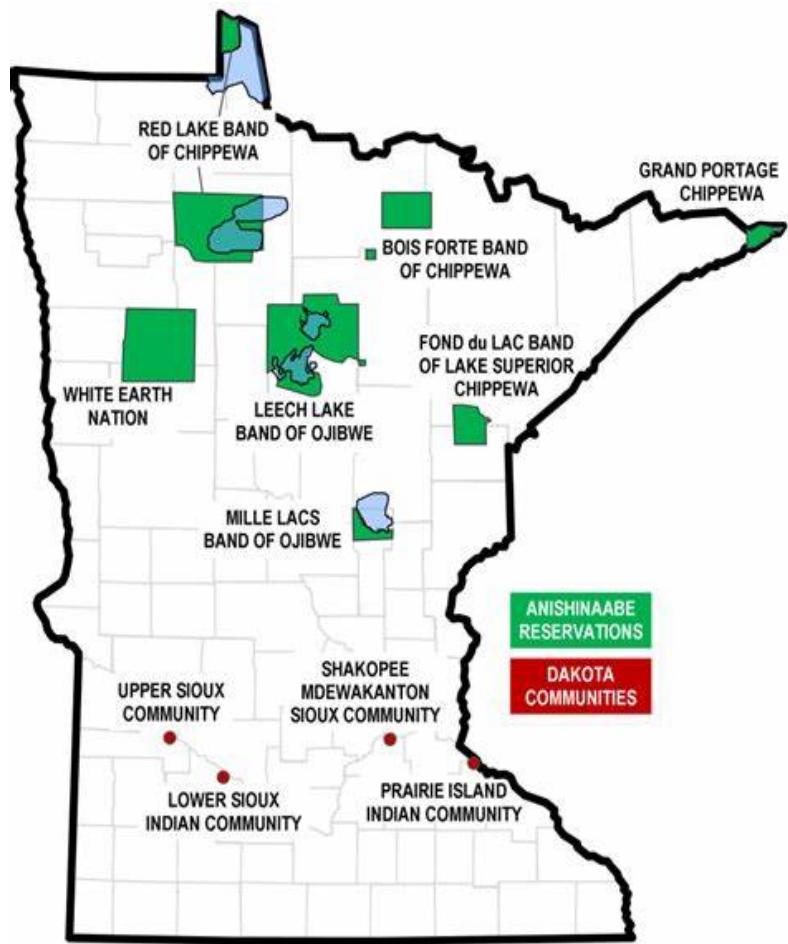


Table 4 below lists each tribe in Minnesota and the counties adjacent to each reservation. This information is by no means exhaustive; links to each tribe's website are also provided (by clicking the tribe's name below) to allow the tribal governments to share their stories in their own words.

Table 4: Tribes in Minnesota

Tribe	Adjacent County(ies)
<u>Bois Forte Band of Chippewa</u>	Koochiching and St. Louis counties
<u>Fond du Lac Band of Lake Superior Chippewa</u>	Carlton and St. Louis Counties
<u>Grand Portage Band of Chippewa</u>	Cook County
<u>Ho-Chunk Nation</u>	While the Ho-Chunk Nation has tribal lands in District 6, it does not have a reservation, and its tribal lands are primarily located in Wisconsin
<u>Leech Lake Band of Ojibwe</u>	Cass, Itasca, Beltrami, and Hubbard Counties
<u>Lower Sioux Community</u>	Redwood County
<u>Mille Lacs Band of Ojibwe</u>	Mille Lacs County
<u>Prairie Island Indian Community</u>	Goodhue County
<u>Red Lake Nation</u>	Beltrami and Clearwater Counties
<u>Shakopee Mdewakanton Sioux Community</u>	Scott County
<u>Upper Sioux Community</u>	Yellow Medicine County
<u>White Earth Nation</u>	All of Mahnomen County, portions of Becker and Clearwater Counties

PART III: Issues by Topic

The information in this section is organized alphabetically by topic and reflects specific policy decisions made by MnDOT's leadership. Information, policies, and laws may change over time and new information will be added as it becomes available. Please refer to the [Contacts and Resources](#) section of this document for any unanswered questions and/or further detail.

Jurisdiction in Indian Country

State Jurisdiction in Indian Country

This section discusses some aspects of the State's jurisdiction in Indian Country. **Please Note:** This information should not be used to determine whether a specific law or program you work with applies or doesn't apply in Indian Country. This area of Indian law is very nuanced and complicated. If you are unclear about whether or not a particular law or program applies in Indian Country, you must bring it to the attention of MnDOT's Director of Tribal Affairs and/or Office of Chief Counsel for specific research, analysis, and guidance.

In 1953, the U.S. Congress enacted [Public Law 280](#), requiring certain states to assume criminal jurisdiction and civil jurisdiction in certain civil court cases (not including civil-regulatory jurisdiction) over Indians on reservations. Minnesota was among the 6 states to which PL 280 applied; however, PL 280's extension of state jurisdiction does not include Red Lake Reservation (with respect to either criminal or civil court case jurisdiction) or the Bois Forte Reservation (with respect to criminal jurisdiction). The law does not specifically address whether the jurisdiction it grants extends to Indians living in non-reservation Indian Country, and so we must rely on court decisions (of which there are only a few) interpreting PL 280 for guidance on that topic.

The following table provides some examples of criminal-prohibitory laws and civil-regulatory laws; how each category of law generally applies in Indian Country will be discussed in more detail below:

Table 5: Examples of Criminal-Prohibitory and Civil-Regulatory Laws

Criminal-Prohibitory	Civil-Regulatory
Obstruction of legal process	Driving after suspension (suspended for failure to pay child support)
Driving after cancellation as inimical to public safety (cancelled due to multiple DWI offenses)	No proof of insurance/no insurance
Driving after revocation (revoked because of DWI)	Driving after revocation (revoked for failure to provide proof of insurance)
Fifth-degree assault	Expired registration
Disorderly conduct	No driver's license/expired driver's license
Underage drinking	Speeding (petty misdemeanor)

Criminal-Prohibitory	Civil-Regulatory
Predatory offender registration	Failure to wear seatbelt
Possession of cannabis over the legally allowable amount	No child restraint seat
	Failure to yield to an emergency vehicle

Table reproduced from MN House Research Department, [Indians, Indian Tribes, and State Government](#) (February 2023).

Civil-Regulatory Laws

Most laws that impact MnDOT's work are civil-regulatory laws. State civil-regulatory laws only apply within Indian Country boundaries where:

- The U.S. Congress has specifically given the state(s) authority to make and enforce that law, or that type of law, within reservation boundaries; or
- The State law in question:
 - Is not "**federally preempted**;" and
 - Does not "**unlawfully infringe**" on the rights of Indians living on reservations to make their own laws and be governed by them.

Federal Preemption is a legal concept that allows a federal law, under certain circumstances, to supersede any state or local laws that conflict with it, making the federal law the ultimate authority on the subject and universally enforceable across states. A state civil-regulatory law can be federally preempted in three ways:

1. When the federal law expressly says the state law is preempted;
2. When the federal government so heavily regulates a particular topic that there is no room for the state law; or
3. Where the state law conflicts with federal policies or Congress's purpose in making a specific law as determined by the courts.

When a court decides whether preemption exists because of conflict with federal policies or congressional purpose, it compares the federal government's and tribe's interests to the state's interest and decides which set of interests is stronger. The tribes and the federal government both have a shared interest in promoting tribal sovereignty, self-sufficiency, and economic development that the court will consider. If the federal and tribal interests are stronger than the state's interests, then the state law will be federally preempted. If the State's interests are consistent with, or outweigh, federal and tribal interests, then the state law is applicable and enforceable in Indian Country.

Unlawful Infringement is a legal concept that prevents state laws from applying on reservations when the law infringes on the rights of those living there to make their own laws and be governed by them. Whether or not a state law infringes on a tribe's or tribal member's rights is decided by the courts based on the specific facts of a given case. Generally, the courts' decisions have provided some practical guidance regarding when a law will

unlawfully infringe on tribal rights based on the political or membership status of the person(s) against whom the state is attempting to enforce the law, and what category of Indian Country is involved:

- **On Reservations:**
 - **Indians vs. Non-Indians:** depending on the circumstances involved, civil-regulatory laws that the State attempts to enforce against Indians living on-reservation are sometimes found to unlawfully infringe on the tribe's rights. The same laws, however, are often enforceable against non-Indians living on reservations.
 - **Member vs. Non-Member Indians:** it is more likely that civil-regulatory laws will not be considered infringing and be enforceable against Indians not enrolled with a tribe.
- **On Non-Reservation Indian Country (allotments and dependent Indian communities):** the courts have not provided much guidance on infringement determinations off-reservation, but following the logic of the courts' on-reservation decisions, there are likely limits to a state's civil-regulatory jurisdiction over Indians living in off-reservation Indian Country. Whether or not that jurisdiction extends to non-Indians living in off-reservation Indian Country has yet to be decided by Minnesota courts.
- **Outside Indian Country:** state civil-regulatory laws fully apply to Indians with very few exceptions, relating to off-reservation hunting and fishing rights that were reserved by some tribes through treaties with the federal government.

As this discussion reveals, the legal analysis involved in determining whether a state has civil-regulatory jurisdiction in Indian Country is a multi-faceted and complicated. Please contact the Offices of Tribal Affairs and Chief Counsel for assistance if these questions arise in the course of your work at MnDOT.

Criminal-Prohibitory Laws

Discussion of criminal-prohibitory law application in Indian Country has been excluded from this Guidance Document since your role as a MnDOT employee will not involve the application of state criminal-prohibitory laws. If you are interested in learning more about the State's criminal jurisdiction under PL 280, please consult the resources provided in [Appendix B](#).

Federal Jurisdiction in Indian Country

The supremacy clause of the U.S. Constitution (Article VI, Clause 2) gives Congress broad power to apply any federal law in Indian Country, provided the law does not violate the Constitution and is "rationally related" to Congress's trust obligations to tribes. Therefore, in determining whether a federal regulatory law applies in Indian Country, the question is not "CAN Congress apply this federal law in Indian Country?" Rather, the question is, "HAS Congress chosen to apply this federal law in Indian Country?" While most federal laws apply on reservations and in Indian Country generally, there are some limited exceptions, all of which involve complex analysis. If a question on this topic arises, please contact MnDOT's Offices of Tribal Affairs and Chief Counsel.

Tribal Jurisdiction in Indian Country

Each tribe has its own government structure and its own set of laws. It is possible for both the tribe and the state and/or federal government to have jurisdiction over the same thing. This is called concurrent jurisdiction.

Generally, a tribe has jurisdiction over its tribal members on its reservation except on those issues that Congress expressly retains jurisdiction (like certain major crimes such as murder, arson, etc.)

Regarding the conduct of non-Indians on reservation lands, a tribe generally only has jurisdiction when Congress expressly says it does. For example, in the Clean Air Act, Congress gives tribes the authority to regulate air quality on reservations. There are two exceptions to this general rule allowing tribes to assert jurisdiction over non-Indians:⁴

- If a non-Indian establishes a “**consensual relationship**” with the tribe or tribal members, then the tribe may regulate certain conduct of the non-Indian. A **consensual relationship** exists when the non-Indian engages in commercial dealings, contracts, leases, or other similar arrangements with a tribe or tribal members, such as a property lease for mineral production. In order to subject the non-Indian party to tribal jurisdiction, the consensual relationship must be between private persons or entities; meaning government agencies such as MnDOT cannot be subject to tribal jurisdiction on the basis of a consensual relationship. Additionally, the conduct of the non-Indian that the tribe wishes to regulate must be connected to the consensual relationship. For example, if a non-Indian rents a house on a reservation from a tribe, the non-Indian may be subject to the tribe’s landlord-tenant laws, but not necessarily the tribe’s other, non-property laws.
- When a non-Indian’s conduct **threatens or otherwise has some direct effect** on the political integrity, economic security, or health or welfare of the tribe, then the tribe has jurisdiction over the non-Indian. The U.S. Supreme Court, however, has held that this exception is very narrow and rarely applicable; only in cases where the tribe’s very survival is threatened by the actions of a non-Indian.

If either of these exceptional circumstances exist, then the tribe has jurisdiction over the non-Indian and at least some of the tribe’s regulatory laws will be enforceable against the non-Indian in Indian Country.

Outside of Indian Country, tribes have virtually no authority to make or enforce their own laws. The singular exception to this rule is the tribe’s jurisdiction over tribal members exercising treaty-based hunting and fishing rights outside Indian Country.

⁴ In legal circles, these exceptions are referred to as the “*Montana* exceptions” after the case that introduced them: *Montana v. United States*, 450 U.S. 544 (1981).

Summary of Jurisdiction in Indian Country

Here are the key points to remember about jurisdiction in Indian Country:

- Minnesota's civil-regulatory laws very rarely apply to tribal members on the reservation of the tribe in which they are enrolled.
- Minnesota's civil-regulatory laws often apply to non-Indians on reservations.
- Federal laws usually apply to Indians and non-Indians on reservations, but there are some limited exceptions.
- Sometimes both a state law and a tribal code on the same issue may apply at the same time.
- Tribal code sometimes, but rarely, applies to a non-Indian on a reservation. Tribal code primarily applies to tribal members on reservations.
- There are some limits on the application of state civil-regulatory law in Indian Country outside reservations (restricted allotments and allotted trust land, and dependent Indian communities which are usually found on trust land).
- Figuring out whether a state or federal law applies on reservations and in Indian Country is complicated. This makes coordinating with tribes very important as it helps avoid confusion and costly, time-consuming litigation. MnDOT's Director of Tribal Affairs is an important resource for coordinating with tribes.
- Do not use this manual or summary to decide whether or not a particular law applies on a reservation or in Indian Country generally. Questions about how a particular law applies in Indian Country should be addressed with MnDOT's Office of Chief Counsel.

Permits

Outdoor Advertising and Event Permits

Whether or not an outdoor advertising permit or event permit can be issued depends on the type of land the permit for which the permit is being sought. Use the table below to help determine if a permit may or may not be issued and what process steps should be taken.

Table 6: Permit Issuance by Type of Land Ownership in Indian Country

Type of Land	How to locate this type of land	Outdoor Advertising Permit	Event Permit
Reservation	Use the tri-party map 	Do not issue	Issue upon request by, and coordination with, tribe; contact Director of Tribal Affairs if coordination unsuccessful.
Tribal Trust Land outside a reservation	Use the tri-party map 	Do not issue	Issue upon request by, and coordination with, tribe; contact Director of Tribal

Type of Land	How to locate this type of land	Outdoor Advertising Permit	Event Permit
			Affairs if coordination unsuccessful.
Fee land owned by a tribe outside a reservation	Does not appear on tri-party map. Location identification will require title search	Issue	Process permit using normal procedures
Tribal Restricted Fee Land outside a reservation	Does not appear on tri-party map. Location identification will require title search.	Do not issue; contact Director of Tribal Affairs and/or Office of Chief Counsel	Issue upon request by, and coordination with, tribe; contact Director of Tribal Affairs if coordination unsuccessful.
Restricted Allotment outside a reservation	Does not appear on tri-party map. Location identification will require title search.	Do not issue; contact Tribal Liaison and/or Office of Chief Counsel	Issue upon request by, and coordination with, tribe; contact Director of Tribal Affairs if coordination unsuccessful.
Allotted Trust Land outside a reservation	Does not appear on tri-party map. Location identification will require title search.	Do not issue; contact Director of Tribal Affairs and/or Office of Chief Counsel	Issue upon request by, and coordination with, tribe; contact Director of Tribal Affairs if coordination unsuccessful.

Campaign Signage Permits

Please coordinate with the tribe prior to the election cycle to discuss how campaign signage in the right-of-way will be handled. If coordination is unsuccessful please contact MnDOT's Director of Tribal Affairs.

Junkyard Act Enforcement

Minnesota Statute section 161.242, (the “Junkyard Act”) is a set of regulations whose purpose is allow for the control of junkyards in areas adjacent to state trunk highways. Enforcement of the Junkyard Act is complex and dependent on particular facts and circumstances. If you encounter a Junkyard Act issue within reservation boundaries, on an off-reservation allotment, or on off-reservation trust land, contact MnDOT's Director of Tribal Affairs and Office of Chief Counsel before taking any enforcement actions.

Reservation Boundaries

Identifying a reservation's boundaries is very important when engaging in work in Indian Country. Reservations can include any of the multiple types of land ownership defined in [Table 2](#) above.

It is important to know where the boundaries of a reservation are. The State and tribes have different powers to make and enforce law inside reservation boundaries and outside reservation boundaries. Additionally, the federal government, state government, and tribal governments sometimes have different beliefs about where the boundaries of a reservation are. These differing beliefs sometimes complicate MnDOT's work.

Maps

MnDOT has a [tri-party map](#) that can show you where reservation boundaries and some off-reservation tribal trust lands are located, but does not show off-reservation restricted allotments or allotted trust land even though this type of land is Indian Country. You may use other maps to get information. If you become aware that you are working on an off-reservation restricted allotment or allotted trust land, then *you are in Indian Country* and you should contact MnDOT's Director of Tribal Affairs and Office of Chief Counsel with any questions.

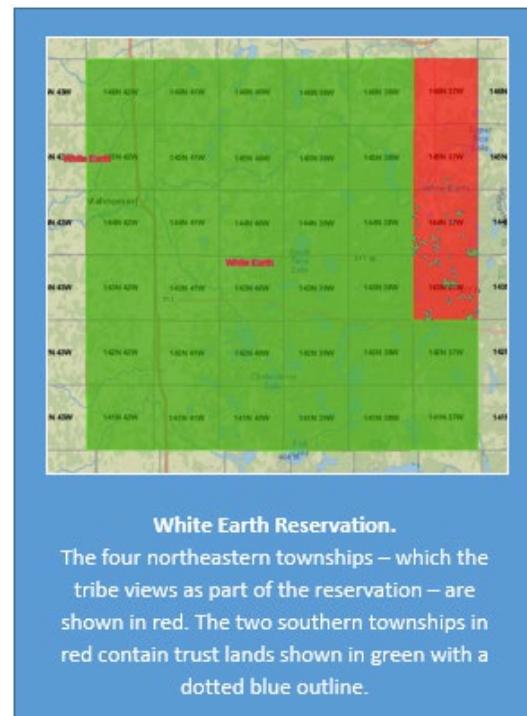
Please Note: The tri-party map is a planning level document and not a substitute for title work. It illustrates the data set that we have currently available; the only way to know for sure what type of land your project involves is to do title work. The [Office of Land Management](#) does title work for MnDOT.

Contested Boundaries

With the exception of the White Earth Reservation, there are very few differences between the federal, state, and tribal boundaries; most of the differences are a result of minor mismatching mapping data. The Mille Lacs Reservation boundaries have been contested by Mille Lacs County; however, the State, federal government and tribe all recognize and accept the same boundaries for the Mille Lacs Reservation.

When coordinating with either the White Earth or Mille Lacs tribes, the largest of all reservation boundaries should be used. If you have a question about which boundaries to use for a particular purpose, please contact MnDOT's Director of Tribal Affairs or Office of Chief Counsel.

White Earth Reservation: MnDOT staff in District 2 should be aware that there are different views about the boundaries of the White Earth Reservation. The tribe views the reservation as including four northeastern townships (indicated in Red on the image below); the state and federal governments' view is that, except for trust land in this area, the four northeastern townships are not part of the reservation. If any issues arise in this area, please contact MnDOT's Director of Tribal Affairs



Mille Lacs Reservation: MnDOT staff in Districts 1 and 3 should be aware that there is a disagreement between Mille Lacs County and the tribe about the Mille Lacs Reservation boundaries. The County's position is contrary to the state and federal governments' boundary analysis. The map below indicates the boundaries accepted by the State, the federal government, and the tribe. If any issues arise in this area, or if you have questions, please contact MnDOT's Director of Tribal Affairs



Mille Lacs Reservation

State and federally accepted reservation area shown in green.

Tribal Employment Rights Ordinance/Office (TERO)

Tribal Employment Rights Ordinances (TERO), are tribal programs that address 3 related topics: 1) Indian employment preference (requiring certain employers doing work or operating businesses on reservations to give preference to qualified Indians for employment, contracting and other business activities); 2) fees for service (negotiated fees paid to the tribe for its services in assisting employers with implementing employment preferences); and 3) taxes paid to the tribe for work done on reservation. Because TERO taxes may be imposed by the tribe only where it has the jurisdiction to do so, they may only apply when the project is being completed directly on reservation land.

TERO Offices are units of tribal governments that enforce the TERO requirements in order to ensure that Indians benefit from economic opportunities that arise in Indian Country. Not all tribes have TEROs; contact the Director of Tribal Affairs or search Tribal websites (linked in [Table 4](#) above) to determine if your project will need to accommodate TERO requirements.

Federal law expressly allows (but does not require) state DOTs to implement laws accommodating TERO application “on or near a reservation” (23 U.S.C. section 140(d)). [MnDOT’s American Indian Employment Policy](#) defines “near” as “within a reasonable commuting distance from the reservation,” which in most cases MnDOT defines as a 60-mile radius from the reservation boundaries. This distance may be greater under certain circumstances; coordination and consultation with impacted tribes is necessary for making this determination.

APPENDICES

Appendix A: Additional Terminology and Legal Concepts

Term	Definition
Advocacy Council for Tribal Transportation (ACTT)	A state government entity that discusses policies and issues involving roadways on or near reservations. MnDOT is a member of this council along with Minnesota tribes, the Bureau of Indian Affairs, FHWA, MIAC, and a representative from one county and city.
Allotment	Land that is restricted fee land or trust land that is owned by an individual Indian.
Allotted Trust Land	Land outside reservation boundaries that the BIA holds title to for the benefit of an individual Indian.
Anishinaabe	Anishinaabe is the Ojibwe/Chippewa's name for themselves. It means "the people." This word can also be correctly spelled as Anishinaabe. The terms Anishinaabe, Ojibwe, and Chippewa are generally used interchangeably to refer to the same people group.
Bureau of Indian Affairs (BIA)	The Bureau of Indian Affairs is the agency within the U.S. Department of the Interior responsible for the majority of the federal government's Indian programs. The BIA is the agency that carries out the federal government's trust responsibilities for tribal trust land and allotted trust land. The BIA regulates the sale and lease of trust land and restricted fee land.
Chippewa	The terms Anishinaabe, Ojibwe, and Chippewa are generally used interchangeably to refer to the same people group.
Civil-regulatory law	A civil-regulatory law permits, but regulates conduct, while a criminal-prohibitory law prohibits conduct. A criminal-prohibitory law tells you that you can't do something, while a civil-regulatory law tells you that if you do something you must do it a certain way.
Closed reservation	The Red Lake Reservation is called a closed reservation because all of the land on the reservation is tribal trust land. The Red Lake Reservation is a rare exception to the typical "checkboard" pattern of land ownership on reservations.
Collaboration	"All parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective."
Community	The Dakota tribes in Minnesota use the word "community" in the same way that the word tribe, nation, or band is used. Today these words mean the same thing. The word "community" comes from the original Dakota community which was created by an 1851 treaty.

Term	Definition
Consultation	“Government-to-government communication in a timely manner by all parties, about a proposed or contemplated decision in order to: secure meaningful tribal input and involvement in the decision-making process; and advise the tribe of the final decision and provide an explanation.”
Dakota	Dakota is the largest dialect group within the Sioux tribes. Dakota means “ally” in the Dakota language.
Dependent Indian Communities	Dependent Indian communities are part of Indian Country. A dependent Indian community is land that is not a reservation or allotment but that is federally supervised and set aside for the use of Indians. When deciding whether land is a dependent Indian community courts look at a number of factors including: whether the land is trust land, whether government agencies treat the area like Indian Country for jurisdictional purposes, and whether the area is cohesive (e.g., there are common economic pursuits in the area, common interests, or common needs of the people who live there).
Enrolled (or Enrolled Member)	See definition for tribal member.
Federal Recognition	When a tribe is federally recognized it means that the federal government recognizes the sovereignty of the tribe and has a government-to-government relationship with the tribe. Most federally recognized tribes have that status because of treaties, laws passed by Congress, executive orders, or court decisions. Today there are laws and federal regulations that explain when a tribe can be federally recognized and how the process for seeking federal recognition works.
Indian	Depending on the context, “Indian” can have different meanings. The term may refer to a person’s: 1) ethnological status or ancestry, 2) federal legal definition, or 3) Tribal membership.
Indian Tribe	Group of Indians recognized by the Federal Government as eligible for programs and services from the Bureau of Indian Affairs.
Minnesota Indian Affairs Council (MIAC)	A state government entity whose purpose is to protect the sovereignty of Minnesota Tribes and to ensure the wellbeing of Indian citizens throughout the State. It advises state policy makers such as the Governor and legislature, and also protects Indian gravesites, burial mounds, and other cultural resources in the State; the official liaison between Minnesota’s State Government and Minnesota’s eleven federally recognized tribes. MIAC Website
Ojibwe	The terms Anishinaabe, Ojibwe, and Chippewa are generally used interchangeably to refer to the same people. Ojibway, Ojibwe, and Ojibwa are different spellings that refer to the same people group.

Term	Definition
Public Law 280	<p>Public Law 280 is a federal law that gives some states, including Minnesota, criminal jurisdiction and jurisdiction over civil court cases in Indian Country. Public Law 280 did not take away jurisdiction from tribes, so the State of Minnesota and tribes both have criminal jurisdiction and jurisdiction over civil court cases on most of Minnesota's reservations. This is called concurrent jurisdiction. Public Law 280 does not give Minnesota any jurisdiction on the Red Lake Reservation and no longer gives Minnesota criminal jurisdiction on the Bois Forte Reservation. Public Law 280 only gives Minnesota – and other states – criminal jurisdiction and jurisdiction over civil court cases in Indian Country. Most of the laws you apply and use as a MnDOT employee are civil-regulatory laws and Public Law 280 doesn't have anything to do with civil-regulatory laws. Public Law 280 does not give the State of Minnesota civil-regulatory jurisdiction on reservations or Indian Country.</p>
Reservation	<p>Area managed by a tribal government; land that was "reserved" by a tribe when other lands were ceded to the federal or state governments by treaty.</p>
Restricted Allotment	<p>Land outside reservation boundaries owned by an individual Indian, but on which the federal government places certain restrictions (such as restrictions against encumbrance, sale, easements, etc.)</p>
Sioux	<p>The Sioux are a group of tribes in North America. Within the Sioux tribes are three main groups, the Dakota, Lakota, and Nakota.</p>
Sovereign Immunity	<p>A legal principle that prohibits a person or entity from bringing a lawsuit against sovereign government unless immunity is specifically waived.</p>
TERO	<p>The acronym TERO stands for Tribal Employment Rights Ordinance or Tribal Employment Rights Office. A Tribal Employment Rights Ordinance is a law that is passed by a tribal government to ensure that employers operating on a reservation have a hiring preference for Indians qualified for employment. The Tribal Employment Rights Ordinance can also impose a fee for its services assisting employers in implementing reemployment preferences, as well as a tax on entities doing business on a reservation. A Tribal Employment Rights Office is a division of a tribal government that monitors and enforces the tribe's Tribal Employment Rights Ordinance.</p>
Tribal Fee Land	<p>Land outside of reservation boundaries owned by a tribe without the federal government's involvement; the most common type of land ownership in the United States.</p>
Tribal member	<p>Some Indians are eligible for membership in a tribe. This is called being a tribal member, being enrolled, or being an enrollee. Each tribe decides what the requirements for membership are. Common requirements for membership include being a descendant of a tribal member or having a certain tribal blood quantum (a certain percentage of ancestors who belong to the tribe). Tribal members have a tribal ID card. These cards look similar to state ID cards. Not all Indians are members of a tribe. Some tribal members live on reservations, and some live off of reservations. Not</p>

Term	Definition
	all Indians who are members of a tribe live on a reservation. Being a tribal member is a legal status that changes how state laws and tribal code apply to an individual.
Tribal Restricted Fee Land	Land outside reservation boundaries owned by a tribe, but on which the federal government places certain restrictions on (such as restrictions against encumbrances, sale, easements, etc.)
Tribal Sovereignty	The inherent authority of tribes to self-govern; each tribe is a government entity whose sovereignty pre-dates the sovereignty of the United States. Each Tribe has the inherent right to: 1) govern its own community, 2) preserve its culture, and 3) control its own economies. The U.S. Constitution gives Congress authority over Tribes as “domestic dependent nations,” but does not subject them to state authorities.
Tribal Trust Land	Land outside reservation boundaries that the BIA holds title to for the benefit of the tribe.
Trust	A trust exists when one party – the trustee – has legal ownership of something of value (like land) for the benefit of another party (the beneficiary). The trustee has certain responsibilities to the beneficiary, including acting in the beneficiary's interest.
Trust Land	A trust exists when one party – the trustee – has legal ownership of something of value (like land) for the benefit of another party (the beneficiary). The trustee has certain responsibilities to the beneficiary, including acting in the beneficiary's interest. The federal government has legal title over trust land, and it carries out its responsibilities as trustee through the Bureau of Indian Affairs (BIA). Individual Indians or tribes are the beneficiaries in this trust relationship. Trust land includes the following: (1) land held in trust for an individual Indian (also called allotted trust land), which is land the federal government holds title to for an individual Indian while the beneficial interest -- any profits or advantages that come from ownership of the land -- belongs to the individual Indian; and (2) land held in trust for a tribe, which is land the federal government holds title to for a tribe while the beneficial interest -- any profits or advantages that come from ownership of the land -- belongs to the tribe. Trust land can also be found on reservations and outside reservation boundaries.
Tribal Blood Quantum	A measurement (typically a fraction or percentage) of the amount of Native American ancestry a person has. Often used to determine eligibility for tribal membership and certain benefits.

Appendix B: Additional Resources

- Minn. H.R. Research Dep't, [American Indians, Indian Tribes, and State Government](#), (Feb. 2023), <https://www.house.mn.gov/hrd/pubs/indiangb.pdf>.
- [MnDOT Tribal Affairs](#), <https://interchange.dot.state.mn.us/office/tribal-affairs> (last visited Mar. 19, 2025)
- National Academies of Sciences, Engineering, and Medicine, [Update of Selected Studies in Transportation Law, Volume 8, Section 3: Indian Transportation Law](#). Washington, DC: The National Academies Press, <https://doi.org/10.17226/25514>.
- Jane M. Smith, [Tribal Jurisdiction over Nonmembers: A Legal Overview](#), Cong. Research Serv., (Nov. 26, 2013), <https://sgp.fas.org/crs/misc/R43324.pdf>.
- Colette Routel, [Civil Jurisdiction in Indian Country](#), Minn. Law Library (Jun. 22, 2022), https://mn.gov/law-library/assets/Civil%20Jurisdiction%20Basics_tcm1041-531782.pdf.
- Council for Tribal Employment Rights National TERO Organization, [Most Frequently Asked Questions about TERO](#), <https://cter-tero.org/tero-faq/#1>.
- Leech Lake Band of Ojibwe, [TERO Quick Reference Guide](#), <https://www.llojibwe.org/td/terodocs/TERO%20QuickRefGuide.pdf>.