

# Native American Tribes, Law, and Planning

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PLANNING WEBCAST SERIES

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JUNE 22, 2018



# Planners' Employers

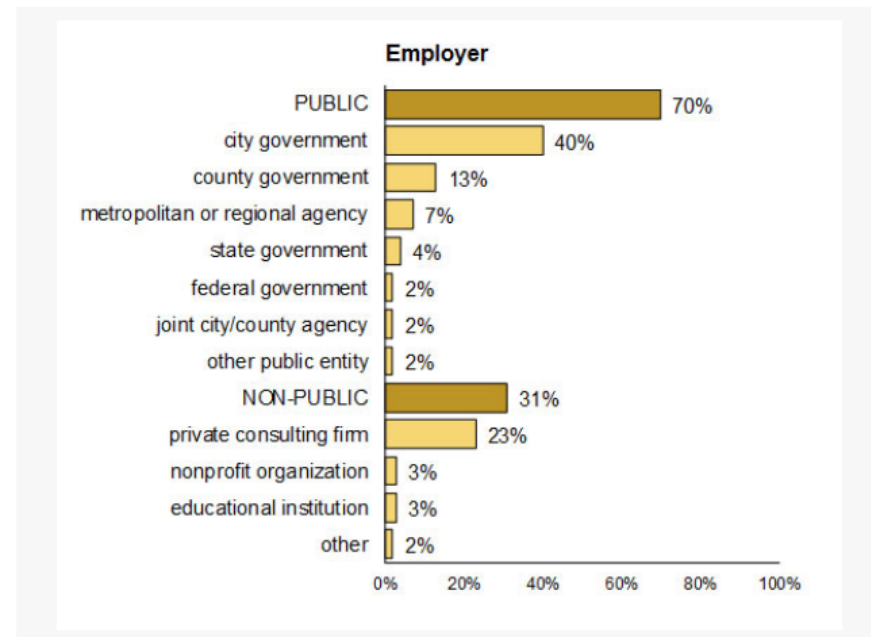
## APA/AICP Planners Salary Survey Employment Characteristics



Bookmark This

Do you work for a Native American tribe or indigenous people?

The strong majority of planners work in public agencies (70%). Within the public sphere, city and county planning agencies account for the majority of planner employment (at 40% and 13%, respectively).



# Tribal Governments and Lands



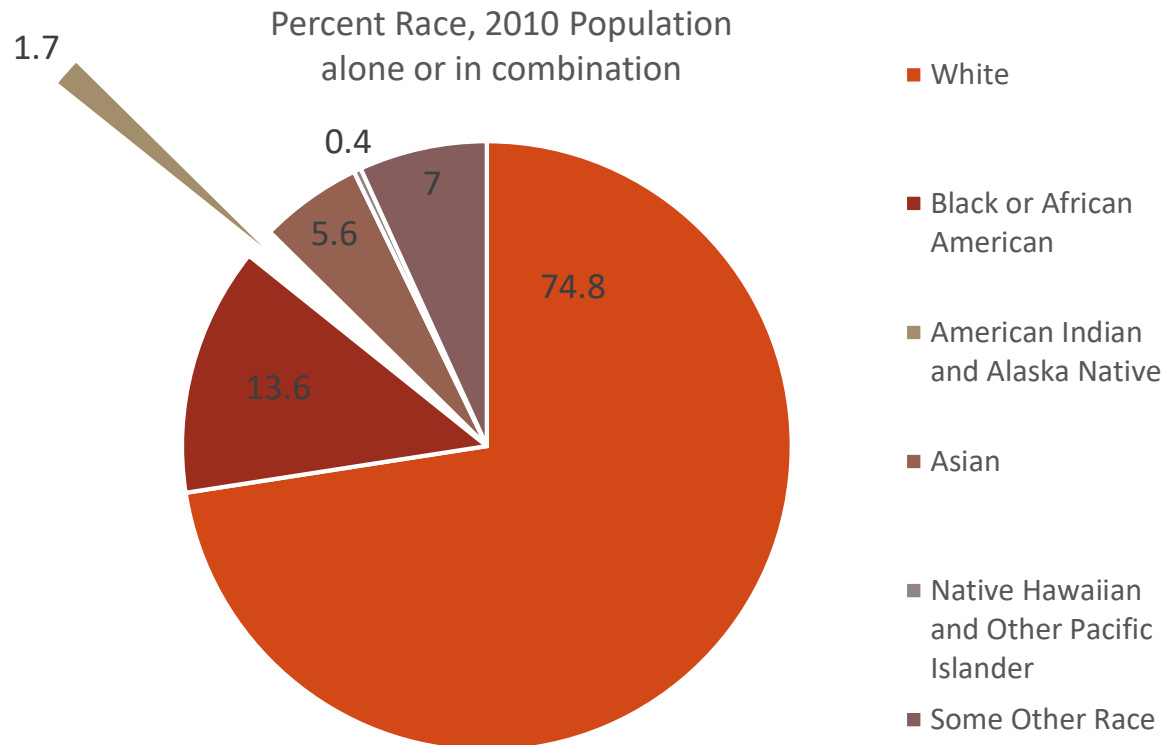
As of January 2016, according to the Federal Register, how many federally-recognized tribes were there in the United States?

- a) 142
- b) 366
- c) 566**
- d) 708

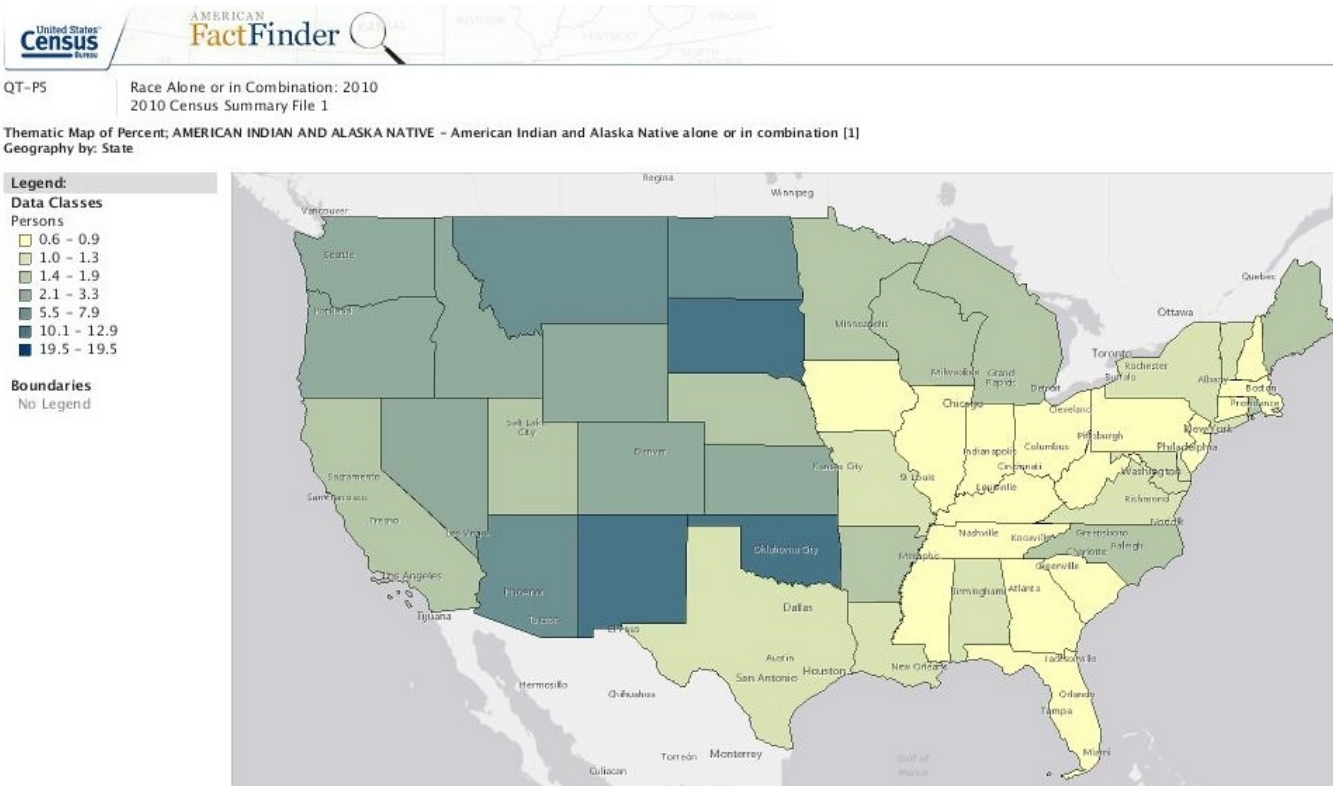
# American Indian and Alaska Native (AIAN) Population

As of the 2010 U.S. Census, what percentage of the United States' population was American Indian or Alaska Native, alone or in combination with other races?

White	74.8
Black or African American	13.6
American Indian and Alaska Native	1.7
Asian	5.6
Native Hawaiian and Other Pacific Islander	0.4
Some Other Race	7



# AIAN Population by State



Alaska 19.5%  
Oklahoma 12.9%  
New Mexico 10.7%  
South Dakota 10.1%  
Montana 7.9%  
North Dakota 6.4%  
Arizona 5.5%

# AIAN Population in Cities

Table 4.

## Ten Places With the Highest Percentage of American Indians and Alaska Natives: 2010

(For information on confidentiality protection, nonsampling error, and definitions, see [www.census.gov/prod/cen2010/doc/pl94-171.pdf](http://www.census.gov/prod/cen2010/doc/pl94-171.pdf))

Place <sup>1</sup>	Total population	American Indian and Alaska Native					
		Alone or in combination		Alone		In combination	
		Rank	Percentage of total population	Rank	Percentage of total population	Rank	Percentage of total population
Anchorage, AK . . . . .	291,826	1	12.4	1	7.9	1	4.4
Tulsa, OK . . . . .	391,906	2	9.2	2	5.3	2	3.9
Norman, OK . . . . .	110,925	3	8.1	3	4.7	3	3.3
Oklahoma City, OK . . . . .	579,999	4	6.3	7	3.5	4	2.8
Billings, MT . . . . .	104,170	5	6.0	5	4.4	14	1.5
Albuquerque, NM . . . . .	545,852	6	6.0	4	4.6	28	1.4
Green Bay, WI . . . . .	104,057	7	5.4	6	4.1	36	1.3
Tacoma, WA . . . . .	198,397	8	4.0	16	1.8	5	2.1
Tempe, AZ . . . . .	161,719	9	3.9	8	2.9	73	1.0
Tucson, AZ . . . . .	520,116	10	3.8	9	2.7	52	1.1
Sioux Falls, SD . . . . .	153,888	13	3.6	10	2.7	79	0.9
Spokane, WA . . . . .	208,916	11	3.8	15	2.0	6	1.8
Eugene, OR . . . . .	156,185	24	2.8	55	1.0	7	1.8
Topeka, KS . . . . .	127,473	17	3.1	27	1.4	8	1.7
Sacramento, CA . . . . .	466,488	23	2.8	46	1.1	9	1.7
Santa Rosa, CA . . . . .	167,815	15	3.3	18	1.7	10	1.6

<sup>1</sup> Places of 100,000 or more total population. The 2010 Census showed 282 places in the United States with 100,000 or more population. They included 273 incorporated places (including 5 city-county consolidations) and 9 census designated places that were not legally incorporated.

Source: U.S. Census Bureau, *2010 Census Redistricting Data (Public Law 94-171) Summary File*, Table P1.

Norris, Tina, Paula L. Vines, and Elizabeth M. Hoeffel. 2012. *The American Indian and Alaska Native Population: 2010*. (2010 Census Briefs, C2010BR-10). U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau





# AIAN Population in Cities

Table 3.

## Ten Places With the Largest Number of American Indians and Alaska Natives: 2010

(For information on confidentiality protection, nonsampling error, and definitions, see [www.census.gov/prod/cen2010/doc/pl94-171.pdf](http://www.census.gov/prod/cen2010/doc/pl94-171.pdf))

Place	Total population	American Indian and Alaska Native					
		Alone or in combination		Alone		In combination	
		Rank	Number	Rank	Number	Rank	Number
New York, NY . . . . .	8,175,133	1	111,749	1	57,512	1	54,237
Los Angeles, CA . . . . .	3,792,621	2	54,236	3	28,215	2	26,021
Phoenix, AZ . . . . .	1,445,632	3	43,724	2	32,366	7	11,358
Oklahoma City, OK . . . . .	579,999	4	36,572	7	20,533	3	16,039
Anchorage, AK . . . . .	291,826	5	36,062	5	23,130	6	12,932
Tulsa, OK . . . . .	391,906	6	35,990	6	20,817	4	15,173
Albuquerque, NM . . . . .	545,852	7	32,571	4	25,087	16	7,484
Chicago, IL . . . . .	2,695,598	8	26,933	10	13,337	5	13,596
Houston, TX . . . . .	2,099,451	9	25,521	8	14,997	8	10,524
San Antonio, TX . . . . .	1,327,407	10	20,137	11	11,800	11	8,337
Tucson, AZ . . . . .	520,116	11	19,903	9	14,154	24	5,749
Philadelphia, PA . . . . .	1,526,006	13	17,495	25	6,996	9	10,499
San Diego, CA . . . . .	1,307,402	12	17,865	23	7,696	10	10,169

Source: U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File, Table P1.

Norris, Tina, Paula L. Vines, and Elizabeth M. Hoeffel. 2012. The American Indian and Alaska Native Population: 2010. (2010 Census Briefs, C2010BR-10). U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau



# Planners and Social Justice

## A: Principles to Which We Aspire

## AICP Code of Ethics and Professional Conduct

Adopted March 19, 2005  
Effective June 1, 2005  
Revised April 1, 2016

### 1. Our Overall Responsibility to the Public

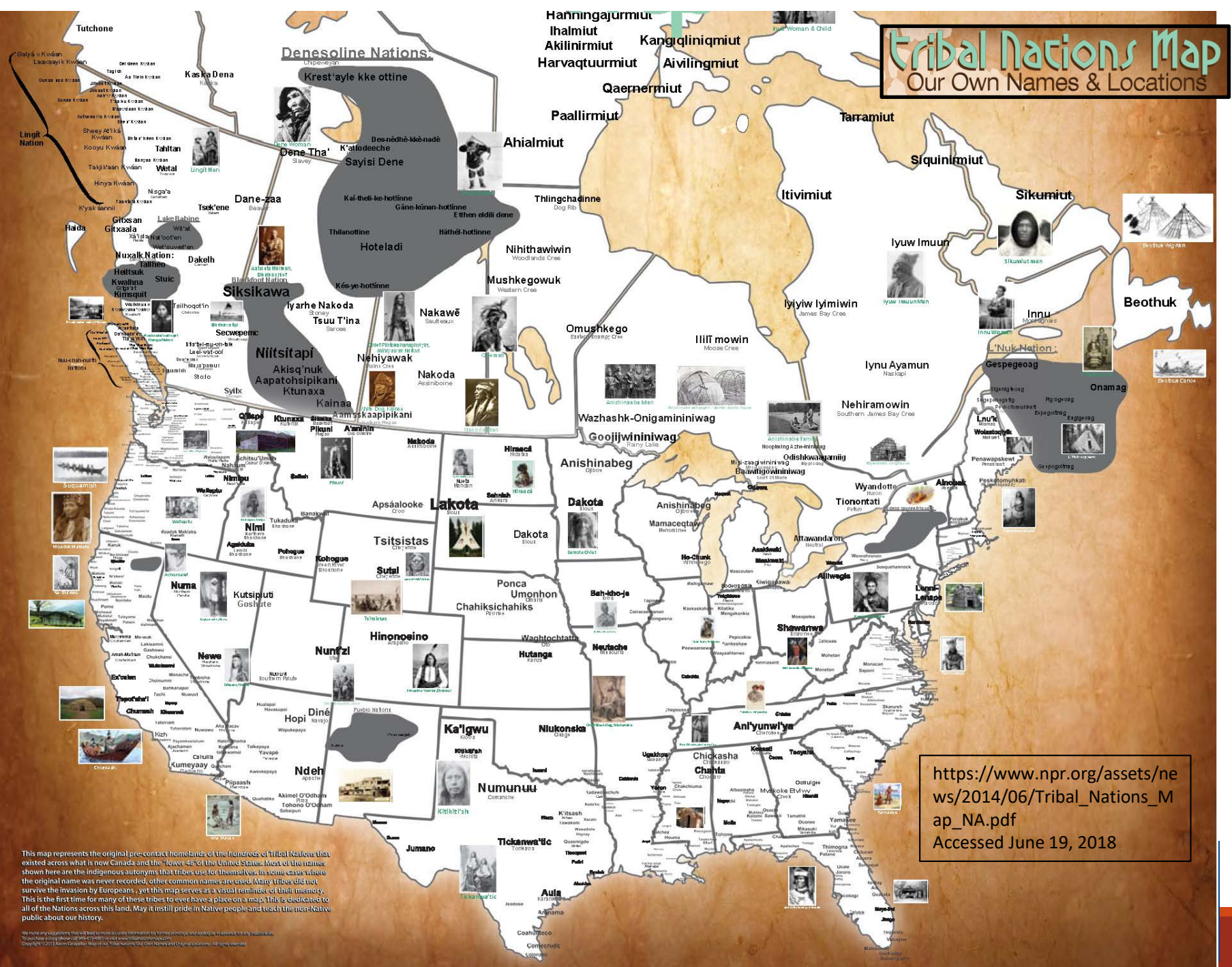
Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

- a) We shall always be conscious of the rights of others.
- b) We shall have special concern for the long-range consequences of present actions.
- c) We shall pay special attention to the interrelatedness of decisions.
- d) We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- e) We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
- f) We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- g) We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- h) We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.



# Tribal Nations Map

Our Own Names & Locations

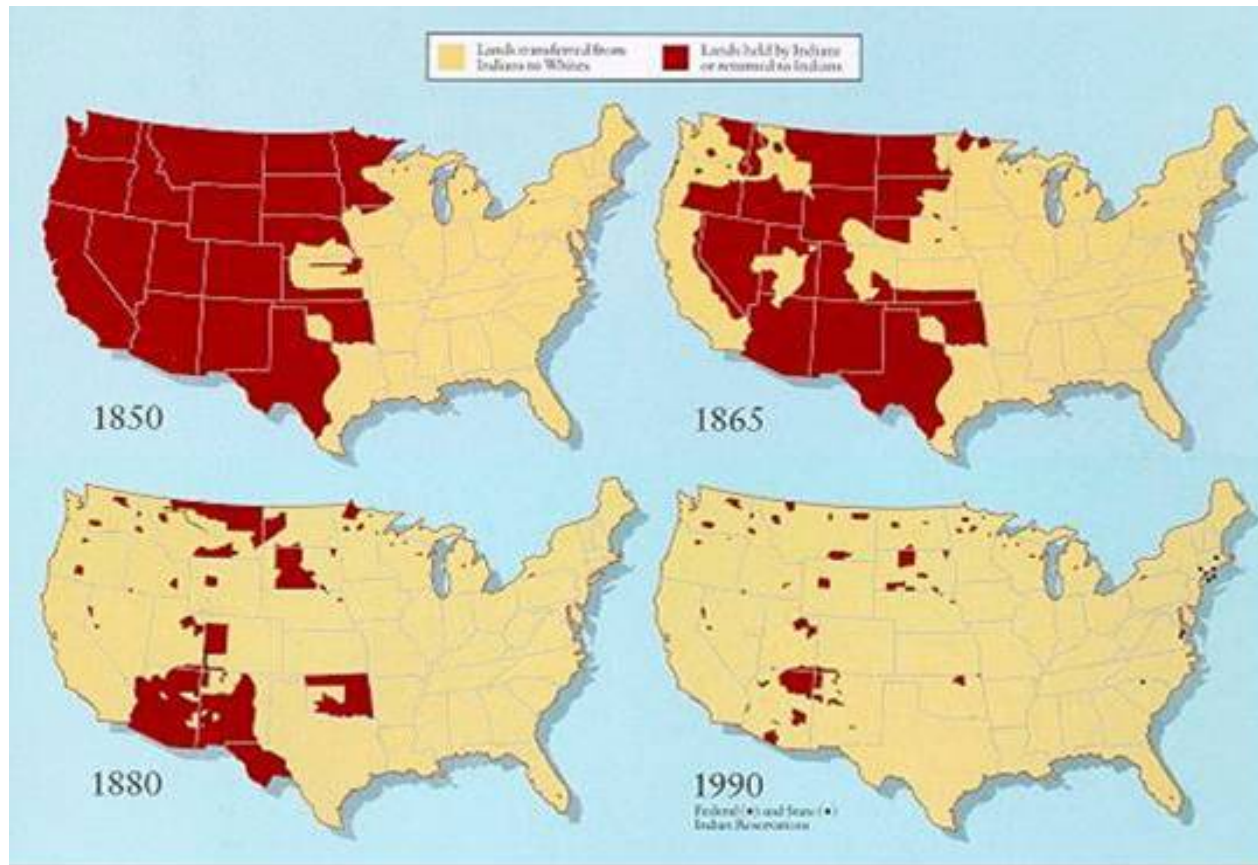


This map represents the original pre-contact homelands of the hundreds of tribal Nations that existed across what is now Canada and the lower 48 of the United States. Most of the names shown here are the indigenous autonyms that tribes use to identify themselves. In some cases where the original name was never recorded, other common names are used. Many tribes did not survive the invasion by Europeans, yet this map serves as a visual reminder of their memory. This is the first time for many of these tribes to ever have a place on a map. This is dedicated to all of the Nations across this land. May it instill pride in Native people and teach the non-Native public about our history.

[https://www.npr.org/assets/news/2014/06/Tribal\\_Nations\\_Map\\_NA.pdf](https://www.npr.org/assets/news/2014/06/Tribal_Nations_Map_NA.pdf)  
 Accessed June 19, 2018

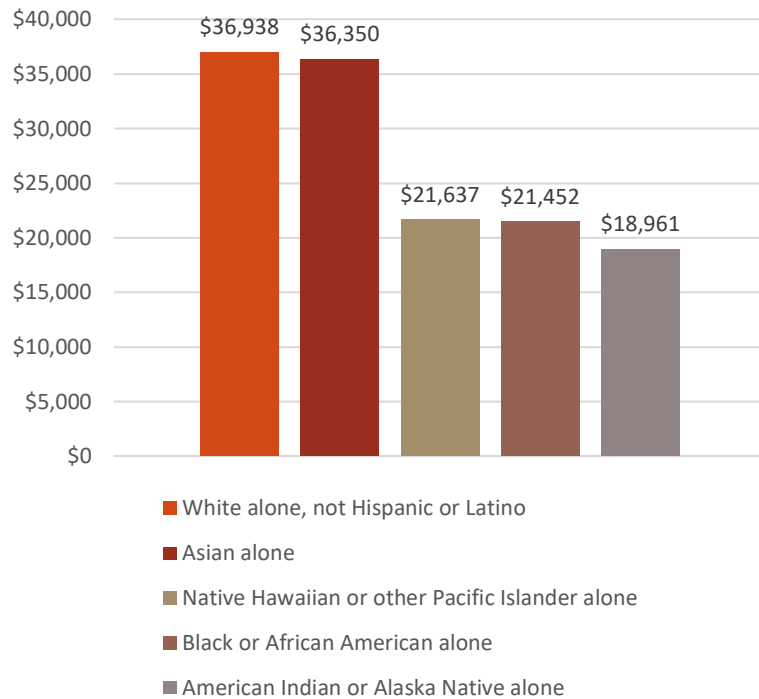
We thank any organizations that will help fund accurate information for Native Nations and Alaska Natives. We are grateful to the following organizations for their support: National Geographic Society, National Endowment for the Humanities, National Archives, National Library of Medicine, National Science Foundation, National Geographic Society, National Endowment for the Humanities, National Archives, National Library of Medicine, National Science Foundation, National Geographic Society, National Endowment for the Humanities, National Archives, National Library of Medicine, National Science Foundation.

# Tribal Land Loss

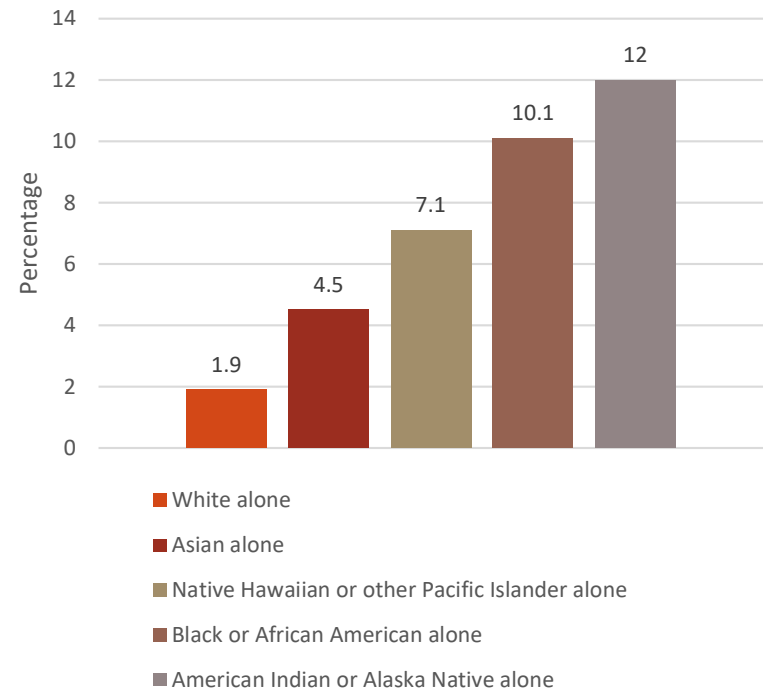


# Tribal Economic Indicators

### Per Capita Income



### Percent Unemployment



American Community Survey, 2016 1-year data





# Legal Framework

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## Native American Tribes

- Sovereignty
- Land Jurisdiction
- Demographics

## Planning

- Land Use and Zoning
- Housing
- Environmental Protection
- Historic Preservation
- Economic Development

*“After all, if a policeman must know the Constitution, then why not a planner?”*

San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621, 661, n. 26 (1981)  
(William Brennan, J., dissenting)

# Sovereignty

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The authority of an independent political entity

## Inherent

- Unless relinquished
- NOT “Tribal sovereignty means just that, it’s sovereign. You’re a – you’ve been given sovereignty, and you’re viewed as a sovereign entity” (George W. Bush, 2004)

# Sovereignty - Treaties

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Only made with foreign, sovereign nations

1778-1871

U.S Constitution, Article VI (2) – Treaties

- This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all **treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land**; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.



© Can Stock Photo - csp5801026



# Sovereignty - U.S. Constitution

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## Article I (2) – Representation and Taxation

- “Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding **Indians not taxed**, three fifths of all other Persons”

## Article I (8) – Powers of Congress

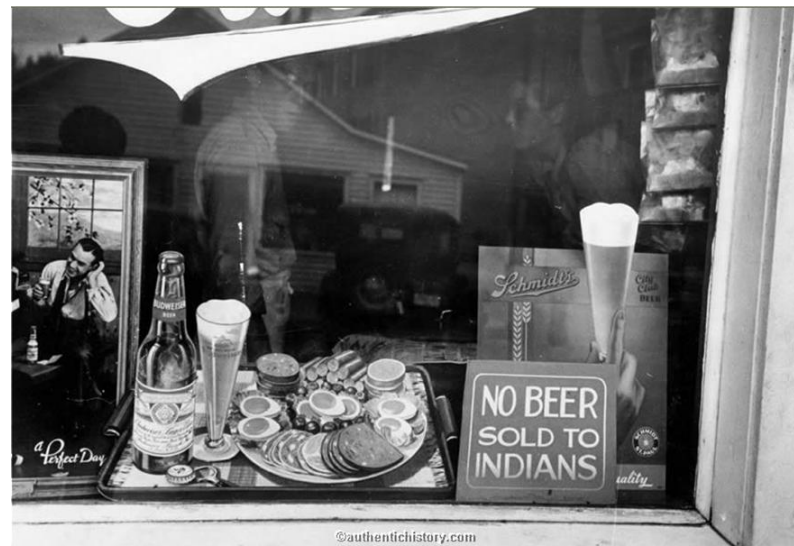
- “The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the **Indian Tribes**”
- Plenary Power



# Sovereignty - Intercourse Acts

## 1834 Intercourse Act – final act

- Reinforcement of treaties
  - Entry onto Indian lands is restricted
  - Private individuals and local governments cannot acquire Indian land
- Regulates Indian trade
- Prohibits liquor sales
- Addresses crime
- Promoted “civilization and education”



No Beer Sold To Indians, 1938 photograph in Sisseton, South Dakota by John Vachon

CLOSE X



**Navigation**

**Government**

- Board of Directors
- General Manager
- Departments
- Quil Ceda Village Consolidated Borough
- Internal Forms

**Tulip Tribes in the News**

- Tribal Family's Land a Treasure
- Tulips Thin Their Forest
- Super Kid: Heritage High Student Edward Wayne is a Leader
- Rich Native American Heritage on Display at Local Casino Resorts
- Tribes Use Precision Methods to Rejuvenate Local Forests

**Tulip Tribes News Archive**

- Tulip Tribes gives back to the community.
- Charitable Fund

**Tulip Tribes Employment**

## Government

Sovereignty is a most valued asset to the people of the Tulip Tribes of Washington State. Though the concept of sovereignty is complex and undoubtedly open to interpretation, the principles of tribal sovereignty are very fundamentally solid. A sovereign nation exists either by means of divine allocation or federal government recognition. We believe these factors are mutually exclusive. Sovereignty entities are free from state imposed laws, and are only regulated by the federally imposed statutes.

On January 22, 1855, Washington State Governor Isaac Stevens and several local tribes of this region, signed the Point Elliot Treaty. As a result, the combined peoples became known as the Tulip Tribes, a sovereign entity. With the passage of the Indian Gaming Regulatory Act of 1988, The Tulip Tribes expanded their tribal rights through the gaming industry. This standing has allowed for increasing growth and progress on many levels, and has subsequently opened many doors for the Tulip people. The Tribes operates two large casinos, which in turn have helped fund a new health clinic, new departmental buildings, and myriad of new and expanded community programs.

Of more that 500 federally recognized tribes in the United States, the Tulip Tribes has been the first and only to establish a federally recognized city. The Quil Ceda Village's city status was a hard fought victory in the battle of tribal sovereignty and the recognition of inherent rights. By being a forerunner in the advancement of Native Americans' rights, the Tulip Tribes has set a precedent for native peoples everywhere.

By asserting their inalienable rights, The Tulip Tribes have been able to increase their standing within the area, as well as support funding for several varied community projects. Profits made today, will be reinvested in expanding the potential of tomorrow's youth. It is this mentality that will lead to a strong, prosperous native community for generations to come.

< September 2008 >						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

### Mission Statement



As the longest running board member, Veteran Stan... [read more](#)





- Home
- History
- Anishinabeg
- Genealogy
- Unit Map
- Tribal Code
- Board of Directors
- Government Docs
- Sault Tribe News
- News Archive
- Human Resources
- Enrollment
- Judicial
- Legal
- Law Enforcement
- Enterprises
- Membership Q & A
- Committees
- Downloads
- Web Links
- Contact Us
- Directory
- Merchandise
- Web site support

## Sault Tribe History



Written by Cultural Division

Friday, 11 February 2005

### A rich history, a proud people

The Sault Ste. Marie Tribe of Chippewa Indians is a modern expression of the Anishinabeg who lived in this region of the Great Lakes for more than 500 years. The roots of the Tribe's modern government extend to the 1940s, when a group of Sugar Island residents gathered to talk about their common history. At first, these gatherings were small — no more than two or three residents sharing thoughts over coffee in the kitchen of a neighbor's home. Over time, as discussions turned to action plans, the meetings grew larger and more formal.

These Sugar Island residents were descendants of the Anishinabeg who for hundreds of years had made their homes near the rapids of the St. Mary's River, which they called Bawating — the Gathering Place. This area would later become the City of Sault Ste. Marie. In 1665, their ancestors greeted the French who traveled from Montreal to the Sault to obtain beaver pelts for the growing fur trade. When French sovereignty ended a century later in 1763, the English moved into the area and took over the wealthy fur trade. By 1820, the British had been replaced by Americans, and the Anishinabeg ceded 16 square miles of land along the St. Mary's River to the United States to build Fort Brady. In 1836, a second treaty was signed that ceded northern lower Michigan and the eastern portion of the Upper Peninsula to the United States. In return, the Anishinabeg received cash payments and ownership to about 250,000 acres of land. But over the next 20 years, the Anishinabeg watched as the terms of the treaty were violated by white settlers moving into northern Michigan. So in 1855, the chiefs signed another treaty with the Americans that allotted lands to Anishinabeg families.

The Sugar Island residents came to understand that while the treaties granted large tracks of land to the federal government, the documents did not end their sovereignty, or terminate their ancestral right to hunt and fish on the ceded lands and waters of the Anishinabeg.







*Confederated Tribes of the  
Umatilla Indian Reservation*

Our Government

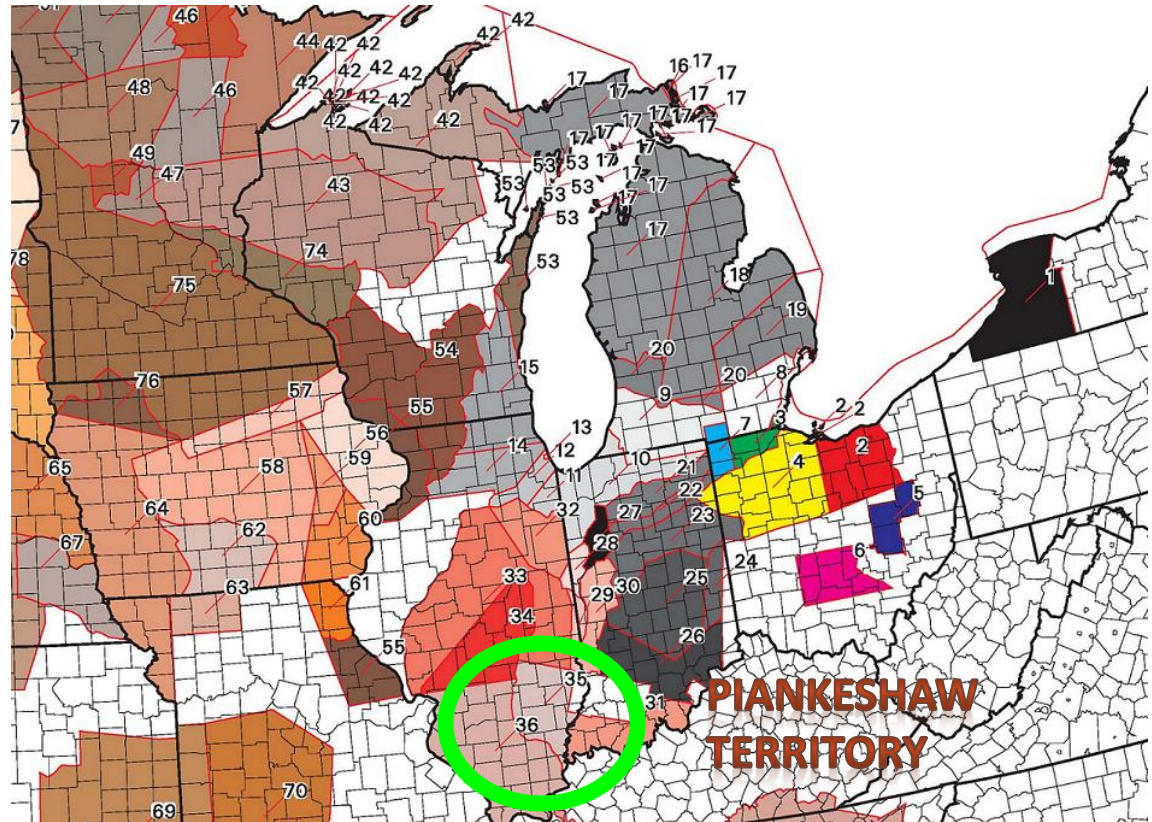
## Our Mission:

"In the best interests of the Confederated Tribes of the Umatilla Indian Reservation, the Board of Trustees shall exert the Tribes' sovereign authority to protect the rights reserved by the Treaty of 1855 and to promote the interests of the members and residents of the Umatilla Indian Reservation. The Board of Trustees shall exercise the authority of the Confederated Tribes so as to promote, enhance, and achieve the maximum degree of self-government, self-sufficiency, and self-determination in all Tribal affairs. Doing so objectively and ably is the abiding mission of the Board of Trustees of the Umatilla Indian Reservation."

# Supreme Court Cases – Effects on Sovereignty

## Johnson v. M'Intosh

21 U.S. (8 Wheat.) 543,  
5 L.Ed. 681 (1823)



Data Sources:  
This map was digitized from the 1993 USGS map  
"Indian Land Areas Judicially Established 1978"  
(original 1:4000000 scale ; Albers Projection).

Map Information:  
Lambert Azimuthal Equal Area ; Scale 1:5845860  
The numbers on the map represent the lands of original tribal  
occupancy that were judicially established through the U.S.  
Indian Claims Commission or the U.S. Court of Claims in 1978.  
Please reference these numbers with the accompanying sheets  
entitled "Indian Lands Judicially Established- CAST 7/97".



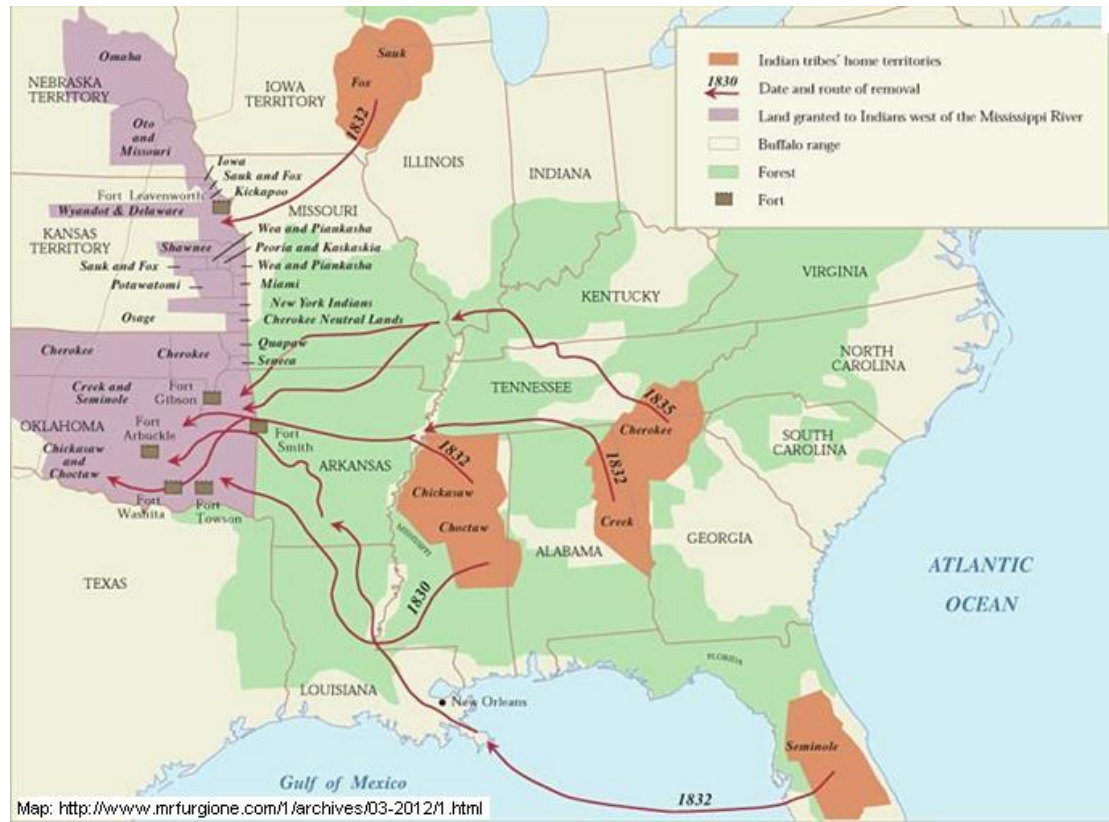
# Supreme Court Cases – Effects on Sovereignty

## Cherokee Nation v. Georgia

30 U.S. (5 Pet.) 1 (1831)

## Worcester v. Georgia

31 U.S. (6 Pet.) 515,  
8 L.Ed. 483 (1832)



Source: <http://www.mrfurgione.com/archives/03-2012/1.html>

# Supreme Court Cases – Summary of the “Marshall Trilogy”

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## Johnson v. M’Intosh

- The federal government owns tribal land, and tribes have the right of occupancy

## Cherokee Nation v. Georgia

- Tribes are described as "domestic dependent nations" with a relationship to the federal government as "that of a ward to a guardian"

## Worcester v. Georgia

- Tribes have the right of self-governance
- State laws do not apply on tribal lands

# Sovereignty under the United States

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## Indian Reorganization Act (Wheeler-Howard Act), 1934

- P.L. 73-383, 48 Stat. 984
- Framework for tribal governments, constitutions

## “P.L. 280,” 1953

- P.L. 83-280, 67 Stat. 588
- State authority over criminal jurisdiction (also civil)
- California, Minnesota, Nebraska, Oregon, Wisconsin, Alaska
- Indian Civil Rights Act, 1968, returned jurisdiction to federal government and required tribal consent

## House Concurrent Resolution 108, 1953

- Menominee
  - Menominee Termination Act, P.L. 83-399, 1954
  - Menominee Restoration Act, 1973

# Self-Determination

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Indian Self-Determination & Education Assistance Act – P.L. 93-638 (1975)

Tribal Self-Governance Act of 1994 (amendments to ISDEAA) – P.L. 103-413

Taking control of federal programs

- Direct services
- Contract (“638-contract”)
- Compact (“self-governance compact”)

# Federal Trust Responsibility

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“Ward to guardian”

“Highest fidiuciary responsibility”

Land management – “trust status” of land

All branches of federal government, e.g.:

- Land – lease review and approval, BIA
- Community Development and Housing – HUD, USDA
- Health – Indian Health Service (HHS)
- Transportation – BIA, USDOT (FHWA)
- Natural Resources – USDA, USDOl
- Environmental Protection – EPA

“Government-to-Government” relationship

Consultation

- Executive Order 13715, 2000

# Tribal Government Authority

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Choose and operate a form of government

Set conditions for membership

Regulate property

Regulate business and use of property on tribal lands

Taxation

Regulate non-members within the reservation (limited)

Control conduct of tribal members

Domestic relations

Rules of inheritance

(Marchand, 1994)



# Demographics - Enrollment

Official recognition by tribe

Not the same as residency (as in US Census)

History with federal government

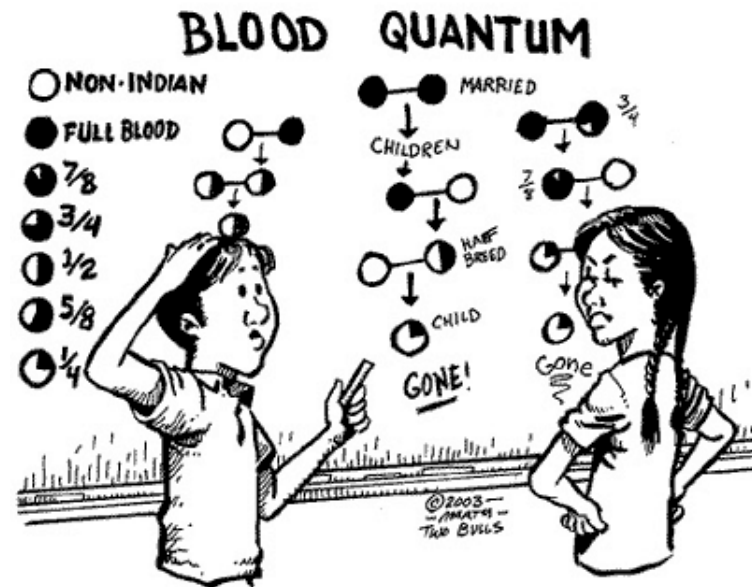
- Dawes/General Allotment Act of 1887 (24 Stat. 388)
- Burke Act of 1906 and blood quantum (34 Stat. 182)

Santa Clara v. Martinez

- Tribe's right to set requirements
- 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978)

Affects eligibility for housing, services

- Challenges with population projections



Hey wait a minute, we're disappearing!

# Land Loss

## British model

- Conquest and treaties
- Relocation

## Spanish model

- Royal ownership with land grants, missions

## Western expansion

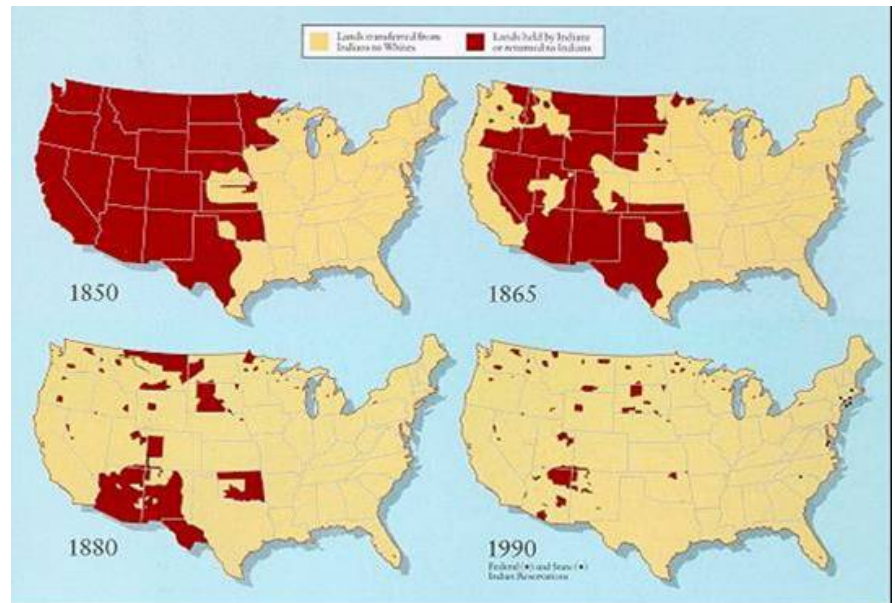
- Homestead Act
- Boundary surveys
- Railroad

## Federal lands

## Alaska Native Claims Settlement Act

## Annexation of Hawai'i

## Termination



# Land Loss – Allotment

Dawes/General Allotment Act of 1887 (24 Stat. 388)

- Plus specific acts for tribes

Homestead Acts

- Oklahoma tribes

Burke Act of 1906 (34 Stat. 182)

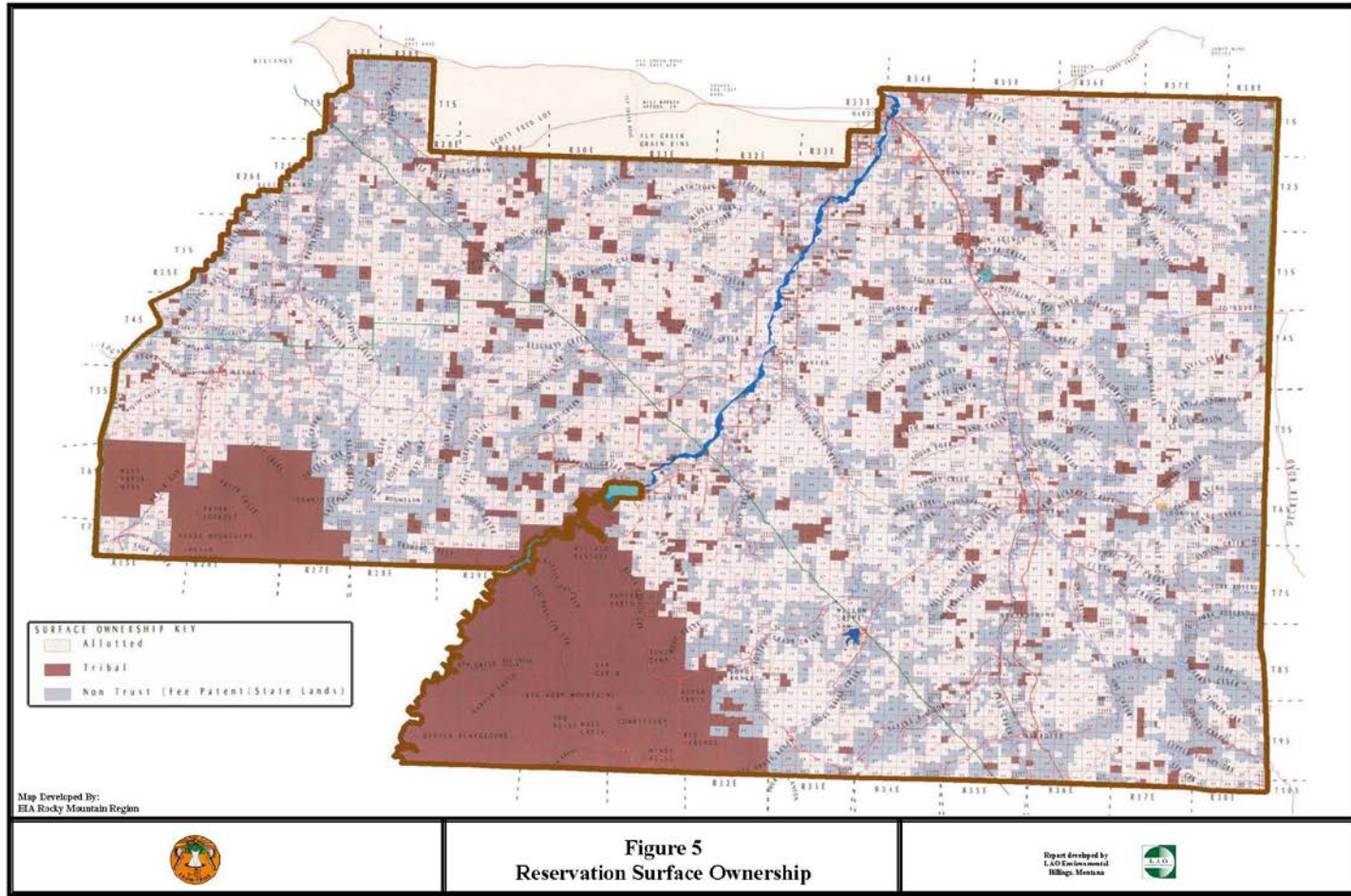
Losses due to:

- Sale, fraud
- Taxation

Indian Reorganization Act,  
(Wheeler-Howard Act), 1934 (P.L.  
73-383, 48 Stat. 984)

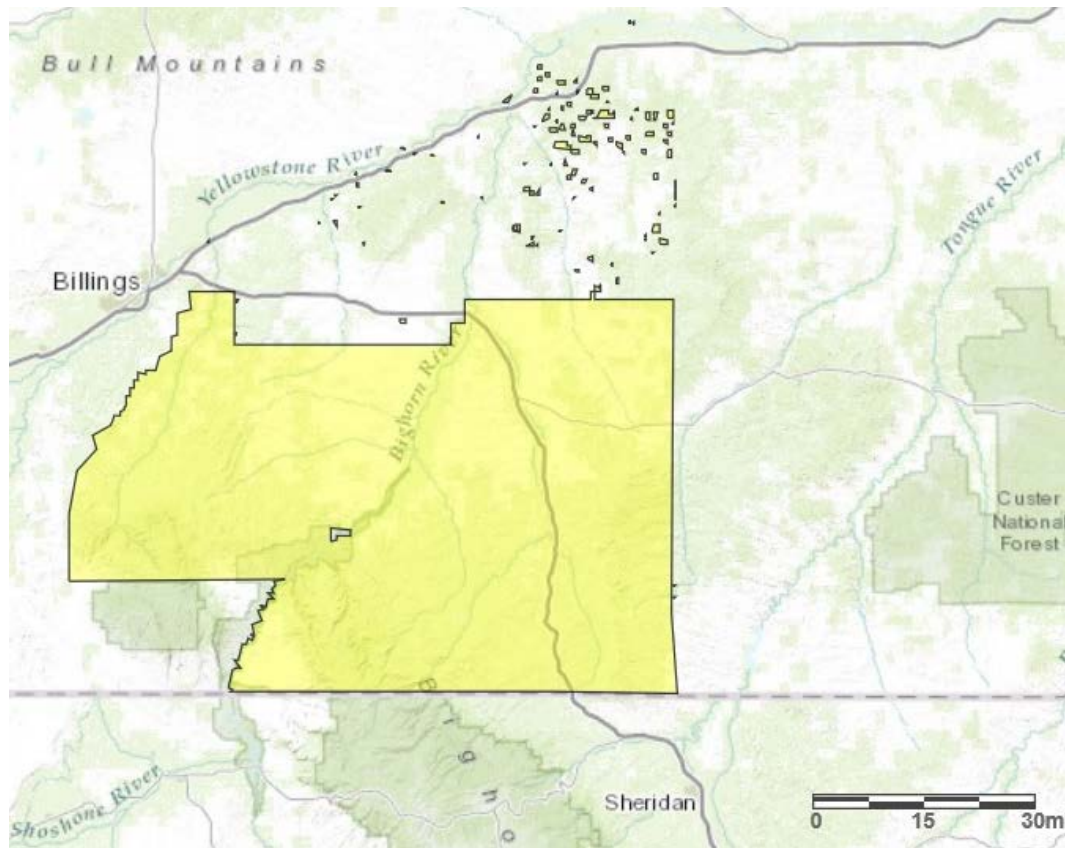


# Crow Reservation





# Crow Reservation and Off-Reservation Trust Lands



Total Population:  
6,863  
AIAN(one race):  
77.5%  
White (one race):  
20.4%





# Land Jurisdiction

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*Montana v. United States*, 1981 (450 US 544 (1981), revg 604 F.2d 1162 (1979), 457 F.Supp. 599 (D. Mont. 1978))

- Crow Tribe's hunting and fishing regulations
- Authority over fee land was lost under the Dawes Act (allotment)
- Tribe's sovereignty was limited to what was necessary to govern itself or its internal relations
- Two exceptions:
  - 1) if a non-member entered into a consensual relationship with the tribe
  - 2) "when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe"

# Zoning

## *Brendale v. Confederated Tribes & Bands of Yakima Indian Nation* 492 U.S. 408 (1989)

	"Open"	"Closed"
<b>Parcel owner</b>	Wilkinson	Brendale
<b>Surrounding area</b>	80% non-tribal	Majority tribal
<b>Proposed use</b>	Subdivide 32 acres into 20 parcels	Subdivide 160 acres, with two parcels for trailer sites and recreational cabins
<b>County zoning</b>	Conformed	Conformed "Forested watershed" – residential development, campgrounds, lodging, restaurants, general stores
<b>Tribal zoning</b>	Did not conform Agriculture Minimum lot size 5 acres	Did not conform Restricted to harvesting wild crops, grazing, hunting and fishing, and camping. Construction limited to tribe and BIA, for natural resource management activities

Native American Tribes, Law, and Planning. Sharon Hausam, Ph.D., AICP. Planning Webcast, APA Divisions & Chapters. June 22, 2018

# Zoning

## *Brendale v. Confederated Tribes & Bands of Yakima Indian Nation* 492 U.S. 408 (1989)

	“Open”	“Closed”
<b>Parcel owner</b>	Wilkinson	Brendale
<b>White, Rehnquist, Scalia, Kennedy opinion (4)</b>	Any inherent tribal authority lost under Dawes Act, zoning is not tribal “internal affairs” – following principle from <i>Montana</i> case	
	No tribal authority to zone	No tribal authority to zone, but if there is a threat, might be able to sue.
<b>Stevens and O’Connor opinion (2)</b>	Land was lost under Dawes Act, but there may still an “equitable servitude” of “power to exclude” and determination of “essential character”	
	The power to exclude and determine essential character was lost. No tribal authority to zone	The power to exclude and determine essential character are retained. Tribe has authority to zone and sue.
<b>Blackmun, Brennan, and Marshall opinion (dissent) (3)</b>	Exterior reservation boundaries are still intact despite Dawes Act. <i>Montana</i> principle applies. (And “equitable servitude” principle is too vague.)	
	Tribe has authority to zone.	Tribe has authority to zone.
<b>Outcome</b>	<b>No tribal authority to zone (6)</b>	<b>Tribe has authority to zone. (5)</b>

Native American Tribes, Law, and Planning. Sharon Hausam, Ph.D., AICP. Planning Webcast, APA Divisions & Chapters. June 22, 2018

# Court Splits Over Tribal Control of Land

By LINDA GREENHOUSE and SPECIAL TO THE NEW YORK TIMES

# The New York Times



, Page 00008  
The New York Times Archives

The Supreme Court ruled today in a splintered decision that the extent of tribal control over development within reservation boundaries should be defined by how much development had already occurred.

The Court said a tribe retained the right to veto development proposals by non-Indians in portions of a reservation that had been preserved almost exclusively for tribal use, with little private ownership of land.

But in other areas, where extensive development has already taken place and a significant portion of the land is owned by non-Indians, the zoning regulations of the outside civil government may prevail, the Court said.



# Housing and Development

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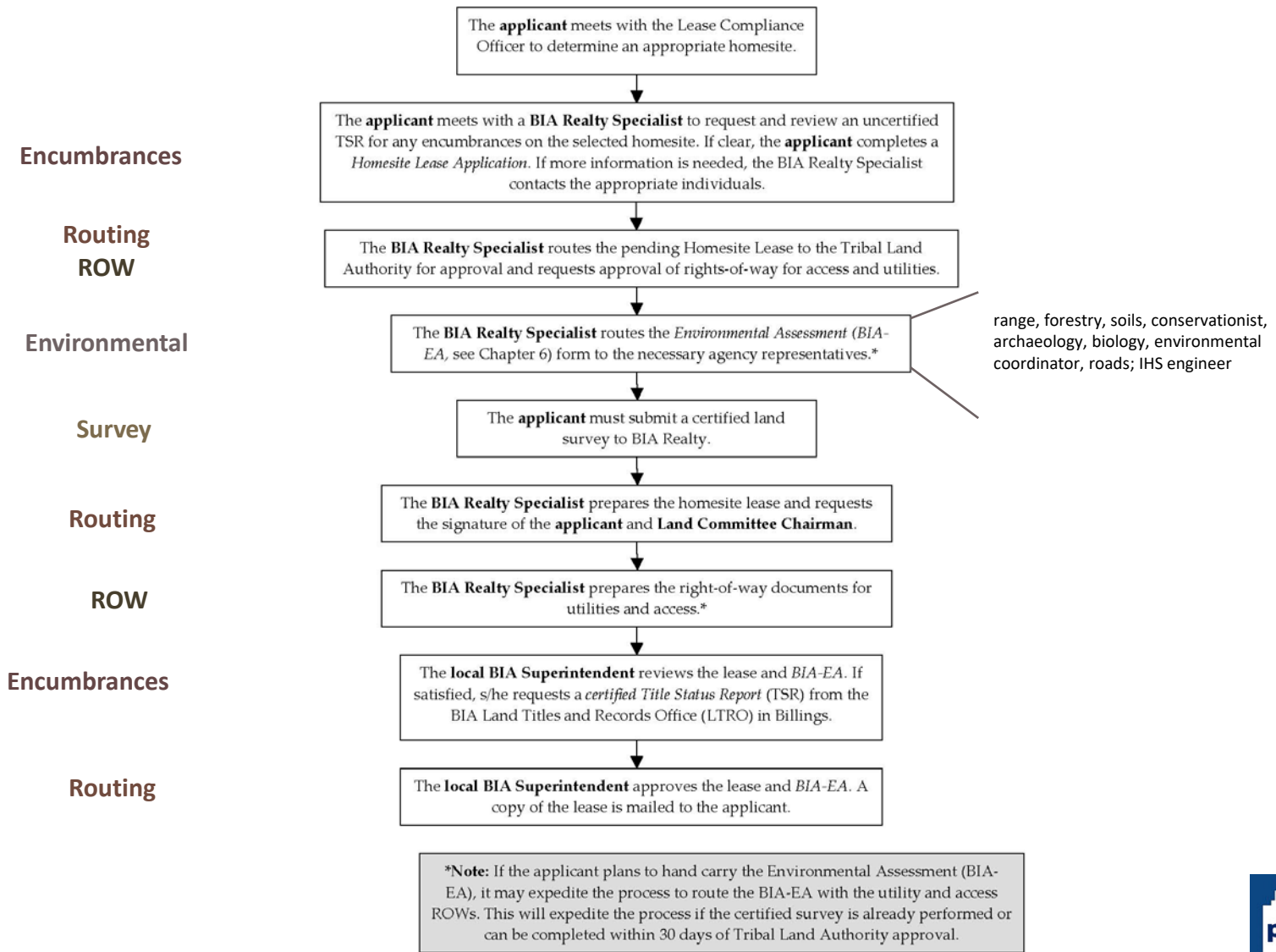
Trust land is not private property.

- Requires approval of tribal government for land uses
  - Varying processes for approval
- Land cannot be sold
- Leases require approval of the Bureau of Indian Affairs
  - Environmental and cultural clearances
  - HEARTH Act allows tribes the option of managing their own leasing

Affects all forms of development:

- Housing and residential development
- Commercial
- Industrial
- Institutional – schools, government, etc.  
Environmental and cultural clearances

**HOMESITE LEASE FLOW CHART**  
**\*\*\*FOR TRIBAL TRUST LAND\*\*\***



\*flow chart adapted from Red Feather Development Group's Handbook for New Home Construction on the Northern Cheyenne Reservation.



# Environmental Protection

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## Treatment as a State

- Safe Drinking Water Act – section 1451
- Clean Water Act – section 518
  - City of Albuquerque v. Browner, 865 F. Supp. 733 (D.N.M. 1993).
- Clean Air Act – section 301(d)

## National Environmental Policy Act, PL 91-190, 83 Stat. 852, 42 USC 4321 (1969)

(4) The Responsible Official will, to the greatest extent possible, give notice to any state or local government, or **federally-recognized Indian tribe** that, in the Official's judgment, may be affected by an action for which EPA plans to prepare an EA or an EIS.

(5) The Responsible Official must use appropriate communication procedures to ensure meaningful public participation throughout the NEPA process. The Responsible Official must make reasonable efforts to involve the potentially affected communities where the proposed action is expected to have environmental impacts or where the proposed action may have human health or environmental effects in any communities, including minority communities, low-income communities, or **federally-recognized Indian tribal communities**.

*40 CFR Part 6, subpart B, sec. 6.203*



# Historic Preservation

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National Historic Preservation Act – P.L. 89-665, 80 Stat. 915, 16 U.S.C. 470 (1966)

- Section 106 consultation, includes tribes
- Traditional Cultural Properties -- places "eligible for inclusion in the National Register because of [their] ... association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community."



Mt. Taylor, New Mexico  
<http://www.sacred-sites.org/threatened-sacred-sites/mount-taylor/>  
Accessed June 21, 2018

# Economic Development

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Tribally-owned businesses: Indian Reorganization Act, Section 17

Tribal gaming

- California v. Cabezon Band of Mission Indians, 480 U.S. 202 (1987)
- Indian Gaming Regulatory Act – P.L. 100-497 (1988)

Taxation

- No property tax
- Sales tax depends on: where the sale takes place, who is making the purchase, what is being sold, who else has a regulatory role

# Questions?

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shausam@lagunapueblo-nsn.gov  
shausam@unm.edu

# New Mexico History

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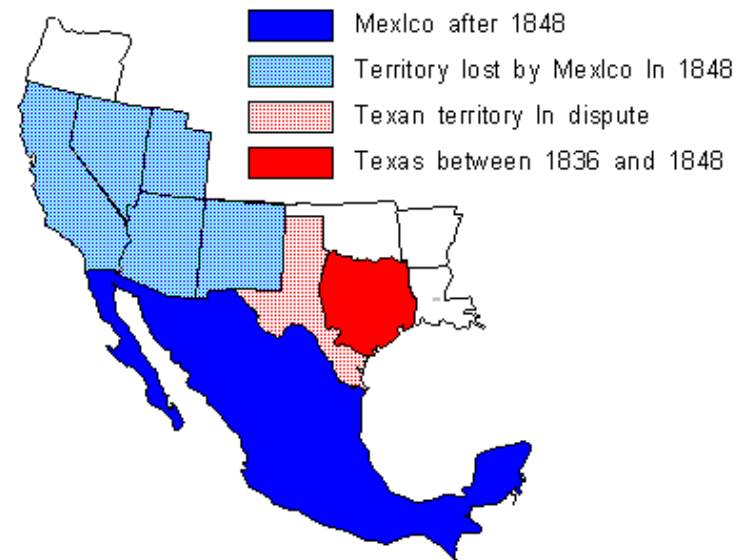
Spanish colonization

Mexican government

U.S. Territory

- Treaty of Guadalupe Hidalgo, 1848
- Territory 1850
- Statehood 1912

MEXICAN WAR, 1846-48: Causes and Results



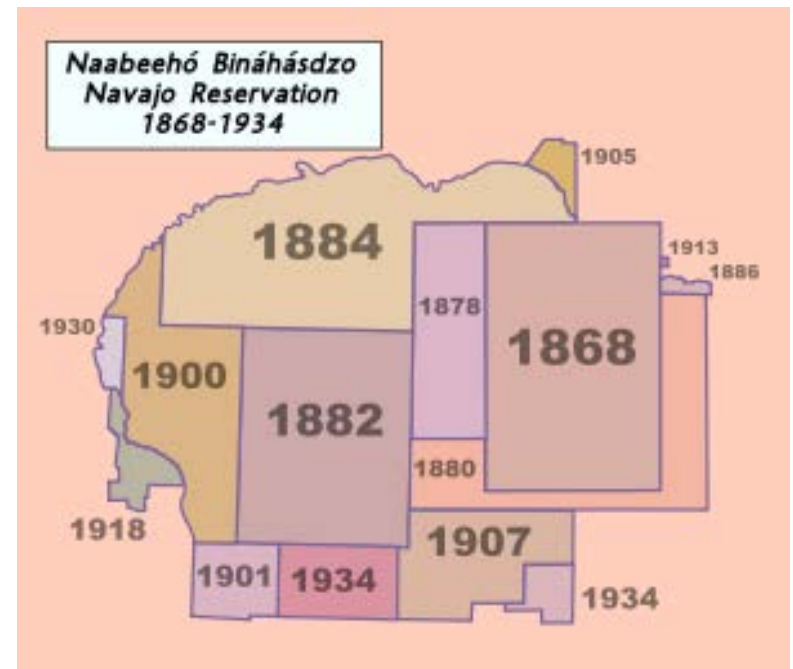
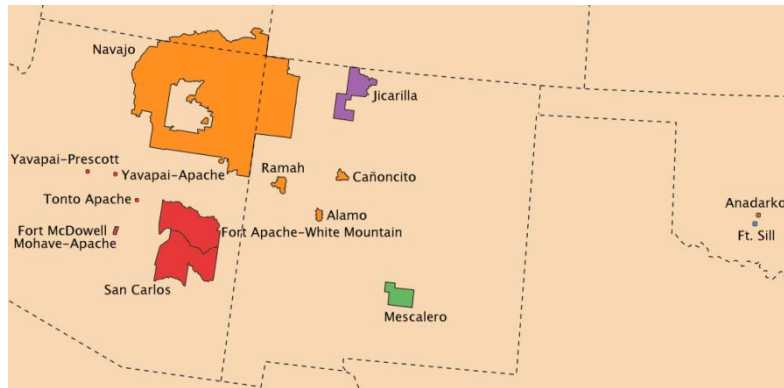
# New Mexico Treaty Tribes

## Navajo

- 1868 treaty

## Mescalero Apache

- 1853 treaty – not ratified



Jicarilla Apache – U.S. did not ratify treaty



# New Mexico Pueblos



# Pueblo Sovereignty Under Spain and Mexico

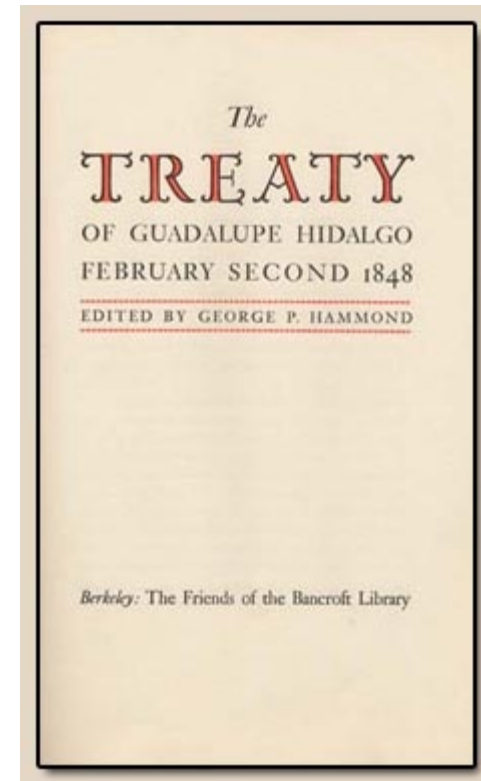
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## Spain:

- Land grants
- Canes of authority

## Mexico:

- “Plan of Iguala”: Indians as citizens
- Treaty of Guadalupe Hidalgo, 1848



# Pueblo Sovereignty Under the New Mexico Territorial Government

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## Initially not designated “Indians”

- 1853 territorial law prohibiting sale of liquor to Indians did not include “pueblo Indians”
- Pueblo Indian and other pueblo lands surveyed and patented in 1850’s-60’s; held as private land



# Pueblo Sovereignty Under the New Mexico Territorial Government

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*United States v. Lucero* 1 N.M. 422 (1869)

- United States invoked Indian Intercourse Act, which made unauthorized settlement of tribal lands a federal offense
- Territorial court dismissed case, noting that there was no Indian agent and Pueblos were not “Indians”

“This court . . . does not consider it proper to assent to the withdrawal of eight thousand citizens of New Mexico from the operation of the laws made to secure and maintain them in their liberty and property, and consign their liberty and property to a system of laws and trade made for wandering savages and administered by the agents of the Indian department. If such a destiny is in store for a large number of the most law-abiding, sober, and industrious people of New Mexico, it must be the result of the direct legislation of congress or the mandate of the supreme court”

“. . . we say, without the fear of successful contradiction, that you may pick out one thousand of the best Americans in New Mexico, and one thousand of the best Mexicans in New Mexico, and one thousand of the worst pueblo Indians, and there will be found less, vastly less, murder, robbery, theft, or other crimes among the thousand of the worst pueblo Indians than among the thousand of the best Mexicans or Americans in New Mexico.”

# Pueblo Sovereignty Under the New Mexico Territorial Government

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Supreme Court affirmed *Lucero* in *United States v. Joseph* 94 U.S. 614 (1876)

- Cited fixed communities, government, agriculture, Catholicism, law-abiding character

“The tribes for whom the act of 1834 was made were those semi-independent tribes whom our government has always recognized as exempt from our laws, . . . and, in regard to their domestic government, left to their own rules and traditions; in whom we have recognized the capacity to make treaties . . .”

“If the pueblo Indians differ from the other inhabitants of New Mexico in holding lands in common, and in a certain patriarchal form of domestic life, they only resemble in this regard the Shakers and other communistic societies in this country, and cannot for that reason be classified with the Indian tribes of whom we have been speaking.”



# Pueblo Sovereignty Under the United States

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New Mexico Enabling Act explicitly stated that the term “Indian” included Pueblos

*United States v. Sandoval* 231 U.S. 28 (1931)

- Confirmed federal guardianship over Pueblo Indians
- Established federal land status

“The people of the pueblos, although sedentary rather than nomadic in their inclinations, and disposed to peace and industry, are nevertheless Indians in race, customs, and domestic government. Always living in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and fetichism, and chiefly governed according to the crude customs inherited from their ancestors, they are essentially a simple, uninformed, and inferior people. . . . Be this as it may, they have been regarded and treated by the United States as requiring special consideration and protection, like other Indian communities.”

# Alaska Native Entities

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## Alaska Native Claims Settlement Act of 1971 (ANCSA)

- P.L. 92-303, 43 U.S.C. 1601 et seq.
- Corporations
  - 225 village
  - 12 regional
- State regulatory jurisdiction
- Federal recognition



<https://www.eenews.net/stories/1060058240>  
Accessed June 21, 2018

# Hawaiian Natives

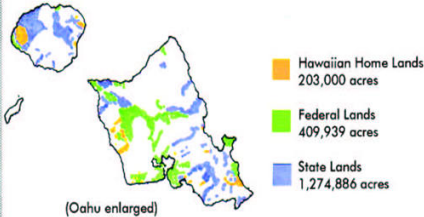
Not recognized as sovereign by the federal government

Office of Hawaiian Affairs

Native Hawaiian Government Reorganization Act – “Akaka Bill”

**IF THE AKAKA BILL BECOMES LAW:**

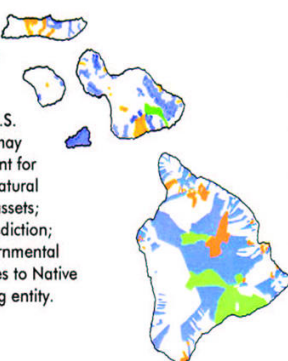
**Q: WHAT LANDS ARE ON THE TABLE FOR TRANSFER TO THE NEW GOVERNMENT?**



(Oahu enlarged)

**Akaka Bill §8(b)(1):**

Native Hawaiian governing entity, U.S. & State of Hawaii may negotiate agreement for transfer of lands, natural resources & other assets; civil & criminal jurisdiction; delegation of governmental powers & authorities to Native Hawaiian governing entity.



**A: ALL THE LANDS IN COLOR ARE UP FOR NEGOTIATION.**

An educational project of Grassroot Institute of Hawaii  
Telephone (808) 864-1776 • Email: [grassroot@hawaii.rr.com](mailto:grassroot@hawaii.rr.com)  
[www.grassrootinstitute.com](http://www.grassrootinstitute.com)  
Nurturing the rights and responsibilities of the individual in a civil society...

<https://aloha4all.org/wordpress/basic-issues/land-map/>  
Accessed June 21, 2018