

Indian Country Guidance

Guidance for MnDOT's work in Indian country

Last revised February 24, 2020

Version 3.0

Tribal Affairs

[Levi Brown](#)

MnDOT Director of Tribal Affairs

Office of Tribal Affairs

(651) 236-7048

Chief Counsel

[Lindsey Hanson](#)

MnDOT Associate Legal Counsel

Office of Chief Counsel

(651) 366-3144

Table of Contents

Indian Country Guidance *Guidance for MnDOT’s work in Indian country*1

Introduction4

Technical Guidance (Section I)4

 Maps5

 How do I know when I’m working in Indian country?.....5

 Which map do I use?5

 How do I know for certain that land is tribal land?5

 Which boundaries (federal, state, tribal) do I use?.....5

 Permits5

 When should outdoor advertising permits be issued in Indian country?5

 When should event permits be issued in Indian country?6

 How does MnDOT handle the Junkyard Act in Indian country?7

 How does MnDOT handle campaign signage in the right-of-way in Indian country?.....8

 Working with the Tribes8

 Contacts and Resources.....9

 MnDOT Contacts9

 Tribal Transportation Contacts.....9

Jurisdiction in Indian Country (Section II)9

 Concepts necessary to understand jurisdiction in Indian country 10

 Tribes are sovereign nations 10

 “Indian” is a legal status, not simply a race..... 10

 What is jurisdiction?..... 11

 What is Indian country? 11

 Reservation Boundaries..... 12

 Where does MnDOT fit into all this? 13

 State jurisdiction in Indian country..... 14

 Federal jurisdiction in Indian country 15

 Tribal jurisdiction in Indian country 16

Summary: Jurisdiction in Indian country	16
History and Identity of Minnesota Indian Tribes (Section III)	17
History of the federal government’s Indian policy	17
Pre-1789	18
Treaties between sovereign nations (c. 1789-1828).....	18
Removal and relocation (c. 1828-1887)	18
Allotment and assimilation (c. 1887-1934)	19
Reorganization (c. 1934-1953)	19
Termination (c. 1953-1968).....	19
Self-determination (c. 1968-Present).....	19
Indian tribes in Minnesota	20
Bois Forte Band of Chippewa	21
Fond du Lac Band of Lake Superior Chippewa	21
Grand Portage Band of Chippewa	21
Ho-Chunk Nation (of Wisconsin)	21
Leech Lake Band of Ojibwe.....	21
Lower Sioux Community.....	21
Mille Lacs Band of Ojibwe	22
Prairie Island Indian Community	22
Red Lake Nation.....	22
Shakopee Mdewakanton Sioux Community	22
Upper Sioux Community.....	22
White Earth Nation.....	22
Glossary.....	23

Introduction

This guidance is a resource for MnDOT employees whose work responsibilities involve actual or potential actions that may affect tribes or tribal interests. This document offers technical 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](#).

This guidance document is divided into four sections: 1) Technical Guidance, 2) Jurisdiction in Indian country, 3) History and Identity of Minnesota Indian Tribes, and 4) Glossary.

Technical Guidance	Jurisdiction in Indian Country	History and Identity of Minnesota Indian Tribes
The Technical section provides guidance for day-to-day work impacting Indian country, information on how to coordinate with tribes, and contacts and resources to help with questions. If the document doesn’t provide guidance in a particular area, contact MnDOT’s Director of Tribal Affairs or Office of Chief Counsel for assistance.	This section provides background information about jurisdiction in Indian country (i.e., which government entities have the power to make and enforce law in Indian country). This section also covers terms for land ownership in Indian country.	This section covers the following topics: the history of the federal government’s Indian policy; Indian Tribes in Minnesota; State of Minnesota and MnDOT policies, trainings, and coordination efforts with tribes.

We encourage you to review the History and Identity of Minnesota Indian Tribes section as it provides context to the Technical and Jurisdiction Guidance sections.

Note that this guidance document uses the term “Indian” rather than “Native American.” “Indian” is generally the 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.

Technical Guidance (Section I)

The information in this section is technical in nature and reflects specific policy decisions made by MnDOT’s leadership. Technical guidance 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 specifics.

Maps

How do I know when I'm working in Indian country?

MnDOT has a tri-party map that can show you where reservation boundaries and some off-reservation tribal trust land is located. The map is a planning level document. It is not a substitute for title work.

The map does *not* show off-reservation restricted allotments or allotted trust land even though this type of land is Indian country. This is the data set that we have available right now, but if you become aware that you are working on an off-reservation restricted allotment or allotted trust land you are in Indian country and you should contact MnDOT's Director of Tribal Affairs and Office of Chief Counsel with any questions.

Which map do I use?

You can use MnDOT's [map on iHUB](#), but it is also okay to use other maps to get information. Remember that a map is never a substitute for title work; the only way to know for sure what type of land you are looking at is to do title work. MnDOT's Office of Land Management does title work for MnDOT.

How do I know for certain that land is tribal land?

Only title work tell you for sure how land is owned. MnDOT's Office of Land Management does title work for MnDOT. Be aware that different laws define "tribal lands" differently for different purposes; some laws may use words such "Indian country" or "Indian lands" rather than the word "tribal lands."


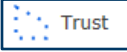
Which boundaries (federal, state, tribal) do I use?

There are very few differences between the federal, state, and tribal boundaries; most of the differences are a result of minor mismatching mapping data. With the exception of White Earth, there are no substantial differences between the three sets of boundaries. The largest of all the boundaries is used for purposes of coordinating with the tribe. If you have a question about which boundaries to use for a particular purpose please ask MnDOT's Director of Tribal Affairs and Office of Chief Counsel.


Permits

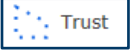
When should outdoor advertising permits be issued in Indian country?

Use the table below to help determine if a permit may or may not be issued.

Type of Land	Description of Land	What to do	How to locate this type of land
Reservation	Areas managed by tribal governments; land that was “reserved” for a tribe when other land was given away by treaty.	Do not issue outdoor advertising permits	Use the map on iHUB. 
Tribal Trust Land outside a reservation	The federal government through the Bureau of Indian Affairs holds title to the land for the benefit of the tribe.	Do not issue outdoor advertising permits	Use the map on iHUB. 
Fee land owned by a tribe outside a reservation	Land can be freely sold and transferred. The federal government is not involved. This is the most common type of land ownership in the United States.	Issue outdoor advertising permits	Does not appear on iHUB map . Location would require title search.
Tribal Restricted Fee Land outside a reservation	Tribe owns the land, but the federal government places certain restrictions on the land (restrictions against alienation and encumbrance – sale, easements, etc.).	Do not issue outdoor advertising permit. Contact Director of Tribal Affairs and/or Office of Chief Counsel	Does not appear on iHUB map . Location would require title search.
Restricted Allotment outside a reservation	An individual Indian owns the land, but the federal government places certain restrictions on the land (restrictions against alienation and encumbrance – sale, easements, etc.).	Do not issue outdoor advertising permit. Contact Tribal Liaison and/or Office of Chief Counsel	Does not appear on iHUB map . Location would require title search.
Allotted Trust Land outside a reservation	The federal government through the Bureau of Indian Affairs holds title to the land for the benefit of an individual Indian.	Do not issue outdoor advertising permit. Contact Director of Tribal Affairs and/or Office of Chief Counsel	Does not appear on iHUB map . Location would require title search.

When should event permits be issued in Indian country?

Type of Land	Description of Land	What to do	How to locate this type of land
Reservation	Areas managed by tribal governments; land that was “reserved” for a tribe when other land was given away by treaty.	First coordinate with tribe. Okay to issue permit when requested by tribe. Director of Tribal Affairs if coordination not successful.	Use the map on iHUB. 

Type of Land	Description of Land	What to do	How to locate this type of land
Tribal Trust Land outside a reservation	The federal government through the Bureau of Indian Affairs holds title to the land for the benefit of the tribe.	First coordinate with tribe. Okay to issue permit when requested by tribe. Contact Director of Tribal Affairs if coordination not successful.	Use the map on iHUB. 
Fee land owned by a tribe outside a reservation	Land can be freely sold and transferred. The federal government is not involved. This is the most common type of land ownership in the United States.	Process permit using normal procedures.	Does not appear on iHUB map . Location would require title search.
Tribal Restricted Fee Land outside a reservation	Tribe owns the land, but the federal government places certain restrictions on the land (restrictions against alienation and encumbrance – sale, easements, etc.).	First coordinate with tribe. Okay to issue permit when requested by tribe. Director of Tribal Affairs if coordination not successful.	Does not appear on iHUB map . Location would require title search.
Restricted Allotment outside a reservation	An individual Indian owns the land, but the federal government places certain restrictions on the land (restrictions against alienation and encumbrance – sale, easements, etc.).	First coordinate with tribe. Okay to issue permit when requested by tribe. Contact Director of Tribal Affairs if coordination not successful.	Does not appear on iHUB map . Location would require title search.
Allotted Trust Land outside a reservation	The federal government through the Bureau of Indian Affairs holds title to the land for the benefit of an individual Indian.	First coordinate with tribe. Okay to issue permit when requested by tribe. Contact Director of Tribal Affairs if coordination not successful.	Does not appear on iHUB map . Location would require title search.

How does MnDOT handle the Junkyard Act in Indian country?

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, before taking any action to enforce the Junkyard Act contact MnDOT’s Director of Tribal Affairs and Office of Chief Counsel.

How does MnDOT handle campaign signage in the right-of-way in Indian country?

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.

Working with the Tribes

MnDOT employees are responsible for integrating the [Tribal Nations policy](#) into their programs, projects and planning as it relates to their work. The purpose of the policy is to develop, improve, and maintain collaborative relationships between MnDOT and Tribal Nations. 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 elected officials of a tribe.

The table below offers guidance on how to start the coordination or consultation process. If you still aren't sure how to proceed in working with a tribe, or who to contact at a tribe, you can contact MnDOT's Director of Tribal Affairs for guidance.

	COORDINATION ON OR NEAR TRIBAL LANDS	CONSULTATION
WORK TOPIC	Routine matters 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, then 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

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.

Chief Counsel's Office

[Lindsey Hanson](#)

MnDOT Associate Legal Counsel

(651) 366-3144

Contact for legal questions.

Tribal Transportation Contacts

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

If you need to coordinate with the Ho-Chunk Nation you should contact MnDOT's Director of Tribal Affairs.

Jurisdiction in Indian Country (Section II)

This section provides background information about what kinds of laws apply on reservations and in Indian country outside of reservations. This section should not be used to make a determination about how a specific

law or program that you work with applies or doesn't apply on a reservation or in Indian country generally. If your question is not addressed in the Technical Guidance section of this document, then these types of specific questions need to be brought to the attention of MnDOT's Director of Tribal Affairs and/or Office of Chief Counsel for specific research, analysis, and guidance.

Concepts necessary to understand jurisdiction in Indian country

To understand jurisdiction in Indian country, there are a few basic concepts that you need to know about first. To that end, this section will explain that tribes are sovereign nations and that "Indian" is a legal status, not just a race. This section will also explore the definitions of the terms "jurisdiction" and "Indian country," as well as how jurisdiction in Indian country impacts MnDOT's work.

This background information is necessary to understand that this guidance 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.

Tribes are sovereign nations

Tribes are sovereign nations. Sovereignty is the authority of a political entity to govern itself. 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 also has an executive branch, so the Mille Lacs Band has three branches of government. It is important to remember that there are 12 tribes in Minnesota and no two are exactly the same; tribes may share common characteristics 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.

"Indian" is a legal status, not simply a race

You might think of "Indian" as a race. 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 decides what the requirements for membership are. Common requirements for tribal 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 which looks similar to a state ID card. 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 meeting the definition of “Indian” in a law changes how that law applies to an individual, being a tribal member is a legal status that changes how state law, federal law, and tribal code apply to an individual.

What is jurisdiction?

Jurisdiction is the power and authority of a government or court to make or enforce law. The federal government, state government, and tribal governments all have different jurisdiction (i.e., different powers to make and enforce law). When determining what kind of jurisdiction a government has, where you are located geographically is important. This concept is already familiar to you. For example, you know that when you are in Minnesota the laws of the State of Minnesota – rather than the laws of Wisconsin – apply because of where you are. In a similar manner, when we talk about a tribe or a state’s authority to make or enforce law (jurisdiction) it is important to consider whether you are on a reservation, outside a reservation boundary in Indian country, or outside Indian country.

What is Indian country?

State and federal law do not always apply in Indian country. Indian country includes reservations, but it also extends beyond reservation boundaries.

Here is a simplified version of the most commonly used definition of Indian country: reservations, allotments, and “dependent Indian communities.”¹

To understand this definition of Indian country, you need to know a little bit about different types of land ownership in Indian country.

- *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 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 can be held in trust for an individual Indian (this is called allotted trust land), or it can be held in trust for a tribe (this is called tribal trust land). Most trust land is inside reservation boundaries, but it can also be found outside of reservations.
- *Restricted fee land*: Restricted fee land is not held in trust by the federal government, but the BIA still has to give permission to encumber (e.g., place a lien or easement on it) or alienate (sell or transfer) the

¹ You can find the complete – more nuanced – definition of Indian country at 18 U.S.C. § 1151.

land. Restricted fee land owned by an individual Indian is called a restricted allotment. Restricted fee land can also be owned by a tribe. Most restricted fee land is inside reservation boundaries, but it can also be found outside of reservations.

- *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 looks at things like whether the land is trust land, whether government agencies treat the area like Indian country when making and enforcing law, 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.
- *Unrestricted fee land:* This is the most common type of land ownership in the United States. This land can be freely sold and transferred and passed down to heirs. No permission is needed from the BIA. Individual Indians and tribes can own unrestricted fee land. Non-Indian can also own unrestricted fee land. Unrestricted fee land outside a reservation is not Indian country. Unrestricted fee land inside a reservation is Indian country.

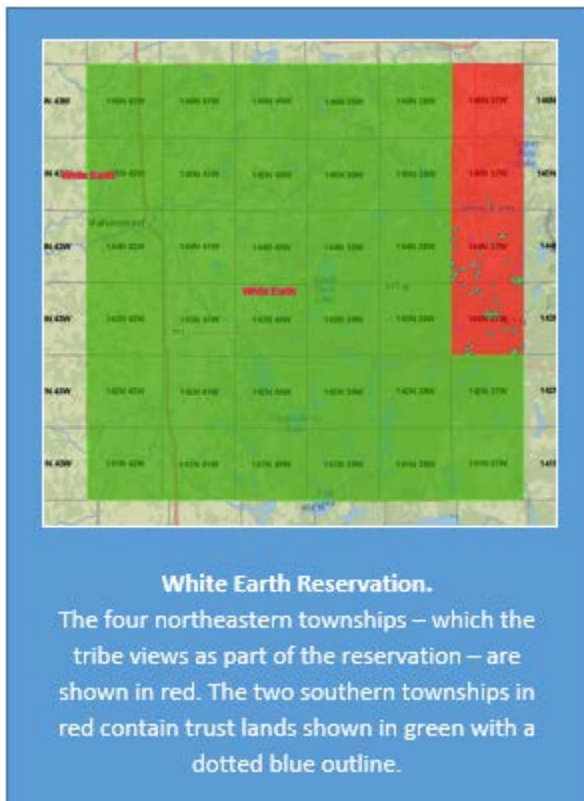
In summary, when you are working on a reservation and when you are working outside a reservation on any trust land or restricted fee land, you should have questions about whether or not State law applies. MnDOT's Director of Tribal Affairs and Office of Chief Counsel are resources to help you answer these questions.

Reservation Boundaries

A reservation is land that is managed by a tribe. Reservations can have a "checkerboard" of land ownership that can include all of the types of land discussed above. The term "reservation" comes from tribes "reserving" land for themselves after larger portions of land were ceded (given) to the federal government through treaties; although modern usage of the word is broader. Some reservations were created by treaties, while others were created by federal statutes or federal executive orders.

It is important to know where the boundaries of a reservation are because – as this document discusses in the coming sections – the state and tribe have different powers to make and enforce law inside reservation boundaries and outside reservation boundaries. 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.

MnDOT staff in District 2 should be aware that there are different views about the boundaries of the White Earth Reservation. The tribe's position is that the reservation includes four northeastern townships. The State of Minnesota and federal government take the position that– with the exception of trust land in this area – the four northeastern townships are not part of the reservation. If any issues arises in this area, please contact MnDOT's Director of Tribal Affairs.



MnDOT staff in District 3 and 1 should be aware that there is a disagreement about boundaries between Mille Lacs County and the tribe. If you have questions about this, or if an issue arises, please contact MnDOT’s Director of Tribal Affairs.

Where does MnDOT fit into all this?

MnDOT is a government agency in the State of Minnesota’s executive branch. As a government agency, MnDOT carries out the laws of the State of Minnesota. MnDOT’s authority to do its work only extends as far as the State of Minnesota’s authority to make and enforce laws. As a MnDOT employee you would not want to act outside MnDOT’s legal authority and try to enforce Minnesota laws in Wisconsin. In a similar way you would not want to act outside MnDOT’s legal authority to try to enforce a Minnesota law in Indian country if that Minnesota law does not apply in Indian country. Maybe you don’t think of your authority to do your everyday job as coming from the law, but the authority of executive branch agencies, like MnDOT, always stems from the law. So chances are that – at least in some ways – the authority you need to do your job also comes from the law. Therefore, when you are doing work in Indian country it is important for you to ask: Which law(s) give MnDOT authority to do this work? Do these law(s) apply in Indian country? These are questions that MnDOT’s Office of Chief Counsel can help you answer.

With this background understanding we can now begin to discuss jurisdiction in Indian country

State jurisdiction in Indian country

State laws do not 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 than it does to enforce civil-regulatory laws.

- Civil-regulatory laws are laws that regulate conduct; these laws tell you that if you are going to do something you have to do it a certain way.
- Criminal-prohibitory laws tell you that you can't do something at all.

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 – they tell you that you cannot assault someone – so they are criminal-prohibitory laws.

The table below provides some examples of criminal-prohibitory laws and civil-regulatory laws.

Criminal-Prohibitory	Civil-Regulatory
Marijuana possession (more than a small amount)	Driving after suspension (suspended for failure to pay child support)
Obstruction of legal process	No proof of insurance/no insurance
Driving after cancellation as inimical to public safety (cancelled due to multiple DWI offenses)	Driving after revocation (revoked for failure to provide proof of insurance)
Driving after revocation (revoked because of DWI)	Expired registration
Fifth-degree assault	No driver's license/expired driver's license
Disorderly conduct	Speeding (petty misdemeanor)
Underage drinking	Failure to wear seatbelt
Predatory offender registration	No child restraint seat
	Failure to yield to an emergency vehicle

Table reproduced from MN House Research Department, [Indians, Indian Tribes, and State Government](#) (January 2017).

Most laws that impact MnDOT's work are civil-regulatory laws. State civil-regulatory laws only apply within reservation boundaries in two circumstances:

1. 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
2. Where the state law in question is **not federally preempted** and where the state law in question **does not unlawfully infringe** on the right of Indians living on reservations to make their own laws and be ruled by them.

- A state civil-regulatory law can be **federally preempted** in three ways:
 - (1) When a 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. When a court decides whether this type of preemption exists the court compares the federal government and tribal interests to the state's interest and decides which set of interests is stronger. Both tribes and the federal government have a shared interest in promoting tribal sovereignty, self-sufficiency, and economic development that the court will consider. If the federal government and tribal interests are stronger than the state's interests, then the law is federally preempted.

- Even if a state law is not federally preempted it still cannot be applied on a reservation if it **unlawfully infringes** on the right of Indians living on reservations to make their own laws and be ruled by them. Courts decide what laws do or do not "unlawfully infringe" in this way. If a civil-regulatory law is being enforced against a tribal member on their reservation then there is a good chance that it unlawfully infringes.

In summary, the available set of court cases gives us some general practical guidance about this:

- Minnesota's civil-regulatory laws can almost never be enforced against a tribal member on their reservation, but these laws are often enforceable against non-Indians on reservations.
- There are not many court decisions that tell us how civil-regulatory laws apply to non-member Indians on reservations, but state civil-regulatory laws are more likely to apply to non-member Indians on reservations than tribal members on the reservation in which they are enrolled.

But what about Indian country that goes beyond reservation boundaries? Remember, our definition of Indian country includes not just reservations but also allotments and dependent Indian communities. The law is not as clear about what limits there are on a state's civil-regulatory jurisdiction in Indian country outside reservation boundaries, but there are likely some limits to state civil-regulatory jurisdiction in off-reservation Indian country.

Outside Indian country, state civil-regulatory laws fully apply to Indians with very few exceptions. The few exceptions relate to off-reservation hunting and fishing rights that come from treaties (treaties are federal law).

Federal jurisdiction in Indian country

The U.S. Congress has the power to apply any law in Indian country. In enacting laws that apply to Indian country Congress must not violate the Constitution and the laws it enacts must be rationally related to its unique trust obligations to tribes, but these are the only limits on Congress's power over Indian affairs.

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. This topic is complex. If a question on this topic arises, please contact MnDOT’s Office of Chief Counsel.

Tribal jurisdiction in Indian country

Each tribe has 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. A tribe has jurisdiction over its tribal members on its reservation except in areas where Congress specifically says otherwise.

A tribe has jurisdiction over non-Indians on a reservation when Congress says it does. For example, in the Clean Air Act, Congress gives authority to tribes to regulate air quality on reservations. A tribe also has jurisdiction over non-Indians in both of the following instances:

- (1) If the non-Indian has entered a **consensual relationship with the tribe or tribal members**, then the tribe can regulate some 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. For example, one federal appeals court said that a non-Indian company entered a consensual relationship with a tribe when it entered a contract with the tribe to lease land for mineral production. The consensual relationship must be private; this might mean that a state agency like MnDOT is not legally capable of having this kind of consensual relationship with a tribe. Additionally, the conduct of the non-Indian that the tribe regulates 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 laws.
- (2) When the non-Indian’s **conduct threatens or has some direct effect** on the political integrity, the economic security, or the health or welfare of the tribe, then the tribe has jurisdiction over the non-Indian. Based on the U.S. Supreme Court’s decisions so far, this exception is narrow, meaning that it will rarely exist.

If either one of these instances exists, then the tribe has jurisdiction over the non-Indian which means that at least some of the tribe’s regulatory laws apply to the non-Indian. For the most part, tribes cannot make and enforce law outside Indian country. One exception to this general rule is that tribes may regulate tribal members exercising treaty-based hunting and fishing rights outside Indian country.

Summary: Jurisdiction in Indian country

Here are some key points to take away:

- Minnesota’s civil-regulatory laws (laws that regulate, but do not prohibit conduct) very rarely apply to a tribal member when the tribal member is on the reservation in which they are enrolled.
- Minnesota’s civil-regulatory laws often apply to non-Indians on reservations.
- In some circumstances local governments and tribal governments may have agreed to govern in a certain manner as to their role in jurisdiction in their common geographical areas.
- Federal laws usually apply to Indians and non-Indians on reservations, but there are some exceptions.
- Sometimes both state law and tribal code on the same issue apply at the same time.
- Tribal code sometimes, but rarely, applies to a non-Indian on a reservation. Tribal code 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. Coordinating with tribes 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 law applies in Indian country should be addressed with MnDOT’s Office of Chief Counsel.

History and Identity of Minnesota Indian Tribes (Section III)

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 the first two sections of the guidance document. It might also prompt questions. Ask MnDOT’s Director of Tribal Affairs and Office of Chief Counsel about any question you have.

History of the federal government’s Indian policy

The federal government’s overall policy towards Indian tribes has shifted numerous times 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.

Pre-1789

When European settlers came to what is now the United States, Indian tribes were already present. These tribes were sovereign nations.

Treaties between sovereign nations (c. 1789-1828)

When the United States was founded, Indians were not citizens of the United States. Therefore, the United States interacted with tribes as foreign nations and reached agreements with tribes by making treaties. Treaties 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 were “reserved” for Indians in treaties came to be known as reservations. Some tribes agreed to move west, but others were unwillingly removed. The federal government also broke numerous treaties; as a result, many tribes were moved several times. The Trail of Tears is a well-known example of forced removal.

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 by the tribe rather than individual Indians. The GAA authorized the President to divide tribal land into “allotments” (parcels of land) for individual Indians. Any “leftover” land was then opened up for settlement by non-Indians. The GAA specified that land allotted to individual Indians was held in trust (i.e., the federal government owned the land and managed it for individual Indians) for 25 years, and then the individual Indian was given a deed to the land. The end result was that – in addition to the loss of the “leftover” land – many tribes lost land after the 25 year time period when it was sold to non-Indians or lost to tax forfeiture. The Nelson Act of 1889 is an allotment era policy specific to Minnesota. The federal Nelson Act relocated Anishinabe (Ojibwe/Chippewa) tribes in Minnesota to the White Earth Reservation so that additional Indian lands could be given to settlers. In 1924 by an act of Congress all Indians became 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 indefinitely, authorized the addition of land to reservations, and created reservations for tribes that had lost all of 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 got full power over the land. During this time Congress also passed [Public Law 280](#) which gave some states – including Minnesota – criminal jurisdiction on some reservations and jurisdiction over civil court cases involving Indians on some reservations. (Note that Public Law 280 never gave Minnesota any jurisdiction on the Red Lake Reservation. Public Law 280 also does not give the State of Minnesota criminal jurisdiction on the Bois Forte Reservation.) Public Law 280 also gave additional states the option to get this jurisdiction by passing a state law. During the era of termination, the federal government also encouraged Indians to move off of 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 the federal government's Indian policy has shifted away from termination and towards tribal self-determination and an 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 termination era. Congress has also passed numerous laws recognizing

tribal self-determination. One well-known example of this is the Indian Child Welfare Act (1978) which – in most cases – requires a state to transfer a foster care placement or adoption case involving an Indian child to the tribe when the tribe or a parent requests the case transfer.

Indian tribes in Minnesota

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

There are twelve federally recognized tribes with eleven reservations in Minnesota. Chippewa tribes, also called Ojibwe or Anishinabe tribes, are located in the northern part of the State. Minnesota’s Dakota Sioux tribes are located in the southern portion of the State. Minnesota is also home to the Minnesota Chippewa Tribe (MCT). The Minnesota Chippewa tribe is a federally recognized tribal government for its member tribes (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth). 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.

The table above illustrates that 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. The annual ride is a memorial for a mass hanging of 38 Dakota that took place in Mankato on December 26, 1862. The event is organized to raise awareness of the hangings, bring Dakota people together, and encourage reconciliation. This impacts MnDOT because the annual event involves horseback riders crossing Highway 169.

The following sections provide some information on Indian tribes in Minnesota. The information in this section is by no means exhaustive, so links to each tribe’s website – where available – are also provided to allow each tribal government to share its story in its own words.



Bois Forte Band of Chippewa

The Bois Forte Reservation is located in MnDOT District 1 in Koochiching and St. Louis counties. To learn more, you can visit the [tribe's website](#).

Fond du Lac Band of Lake Superior Chippewa

The Fond du Lac Reservation is located in MnDOT District 1 in Carlton and St. Louis Counties. To learn more, you can visit the [tribe's website](#).

Grand Portage Band of Chippewa

The Grand Portage Reservation is located in MnDOT District 1 in Cook County. To learn more, you can visit the [tribe's website](#).

Ho-Chunk Nation (of Wisconsin)

The Ho-Chunk Nation has tribal lands located in MnDOT District 6. The Ho-Chunk Nation does not have a reservation. Its tribal lands are primarily located in Wisconsin. If you need to coordinate with the Ho-Chunk nation you should [contact MnDOT's tribal liason](#). To learn more, you can visit the [tribe's website](#).

Leech Lake Band of Ojibwe

The Leech Lake Reservation is located in MnDOT Districts 1, 2, and 3. To learn more, you can visit the [tribe's website](#).

Lower Sioux Community

The Lower Sioux Community is located in MnDOT District 8 in Redwood County. To learn more, you can visit the [tribe's website](#).

Mille Lacs Band of Ojibwe

The Mille Lacs Reservation is located in Mille Lacs County mostly in MnDOT District 3 with a small portion of the reservation in MnDOT District 1. To learn more, you can visit the [tribe's website](#).

Prairie Island Indian Community

The Prairie Island Indian Community is located in MnDOT District 6 in Goodhue County. To learn more, you can visit the [tribe's website](#).

Red Lake Nation

The Red Lake Reservation is located in MnDOT District 2 and is primarily located in Beltrami County with a small portion in Clearwater County. In addition to the Reservation, the tribe owns the majority of the land in the Northwest angle and additional land scattered between the reservation and the Northwest angle (Lake of the Woods County, Roseau County, Koochiching County, Marshall County, and Pennington County). To learn more, you can visit the [tribe's website](#).

Shakopee Mdewakanton Sioux Community

The Shakopee Mdewakanton Sioux Community (SMSC) is located in MnDOT's Metro District in Scott County. To learn more, you can visit the [tribe's website](#).

Upper Sioux Community

The Upper Sioux Community is located in MnDOT District 8 in Yellow Medicine County. To learn more, you can visit the [tribe's website](#).

White Earth Nation

The White Earth Reservation is located in MnDOT Districts 2 and 4. The Reservation covers all of Mahnomen County and portions of Becker and Clearwater Counties. To learn more, you can visit the [tribe's website](#)

Glossary

This glossary provides basic definitions for some of the terms in this manual that might be unfamiliar to you. Many of these terms are also defined in slightly different ways in various laws and court cases.

Advocacy Council for Tribal Transportation (ACTT): This council 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: The federal government holds title to the land for an individual Indian. The beneficial interest (any profits or advantages that come from ownership of the land) belongs to the individual Indian. See also, definition of “trust.”

Anishinabe: Anishinabe is the Ojibwe/Chippewa’s name for themselves. It means “the people.” This word can also be correctly spelled as Anishinaabe. The terms Anishinabe, 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 an agency within the U.S. Department of the Interior. It is 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 Anishinabe, 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.

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.

Collaboration: “All parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective.”

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.”

Coordination: “Each party shares and compares in a timely manner its transportation plans, programs, projects and schedules with the 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.”

Criminal-prohibitory law: A criminal-prohibitory law prohibits conduct, while a civil-regulatory law permits, but regulates 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.

Dakota: The Dakota are 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: See definition for tribal member.

Enrolled member: See definition for tribal member.

Fee land: Fee land is land that is not held in trust by the federal government. There are two broad categories of fee land, restricted and unrestricted.

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 Affairs Council: The Minnesota Indian Affairs Council (MIAC) is the official liaison between Minnesota’s State Government and Minnesota’s eleven federally recognized tribes. [MIAC Website](#).

Indian country: The most commonly used definition of Indian country comes from federal criminal law, but courts often use the same definition in civil (non-criminal) court cases. Indian country includes more than just reservations. Here is a simplified version of the most commonly used definition of Indian country: reservations; allotments; and “dependent Indian communities” (i.e., land that is federally supervised and set aside for the use of Indians, this is usually found on trust land). You can find the complete – more nuanced – definition of Indian country at 18 U.S.C. § 1151.

Jurisdiction: The power and authority of a government or court to make or enforce law.

Ojibwe: The terms Anishinabe, 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.

Public Law 280: 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.

Reservation: A reservation is land that is managed by tribes. The term “reservation” comes from tribes “reserving” land for themselves after larger portions of land were ceded (given) to the federal government through treaties. There are eleven federal reservations in Minnesota.

Restricted allotment: Restricted fee land owned by an individual Indian, meaning that the individual Indian has legal title to the land, but there are legal restrictions against encumbrance (e.g., liens, easements) and alienation (selling or transferring land). The Bureau of Indian Affairs (BIA) has to give its approval for this type of land to be encumbered or alienated.

Restricted fee land: Restricted fee land is owned by an individual Indian or a tribe, it can be found on reservations and outside reservations. Restricted fee land owned by an individual Indian is called a restricted allotment; in this type of land ownership an individual Indian has title to the land, but there are legal restrictions against encumbrance (e.g., liens, easements) and alienation (selling or transferring land). The Bureau of Indian Affairs (BIA) has to give approval for this type of land to be encumbered or alienated. Restricted fee land can also be owned by a tribe; in this type of land ownership the tribe holds title, but there are legal restrictions against encumbrance (e.g., liens, easements) or alienation (selling or transferring land). The BIA has to give approval for this type of land to be encumbered or alienated.

Sioux: The Sioux are a group of tribes in North America. Within the Sioux tribes are three main groups, the Dakota, Lakota, and Nakota.

Sovereign: The authority of a political entity (such as a tribe, state, or nation) to govern itself.

TERO: 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 tax (sometimes called a “fee”) on entities doing business on a reservation to finance the cost of running a Tribal Employment Rights Office. A Tribal Employment Rights Office is a division of a tribal government that monitors and enforces the tribe's Tribal Employment Rights Ordinance.

Tribal member: 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 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 trust land: The federal government holds title to the land for a tribe. The beneficial interest (any profits or advantages that come from ownership of the land) belongs to the tribe. See also, definition of “trust.”

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.

Unrestricted fee land: This is the most common type of land ownership in the United States. Individual Indians and non-Indians can own unrestricted fee land on reservations. Tribes can own unrestricted fee land. Unrestricted fee land on a reservation is Indian country. Unrestricted fee land outside a reservation is not Indian country.