

State–Tribal Collaboration: Types of Tribal Lands

Tribal land designations vary widely in governance and legal structure, which has implications for Tribal sovereignty and who has jurisdiction over decisions that impact the land. Most energy siting and planning issues stem from federally recognized Tribes' land structures, including checkerboarding, being served by multiple utilities, and non-Tribal ownership of some allotments.

Regardless of the land type, all interactions with Tribes should be conducted with Tribal sovereignty in mind and be treated as a government-to-government relationship. Land is central to Tribal sovereignty—control of land determines the ability to exercise jurisdiction; protect culture, artifacts, and sacred spaces; and build governance capacity. This affirms that land status isn't just technical, it's foundational to self-determination.

Brief History on Tribal Land Rights

Tribal lands have a long and complicated history. Much of the current Tribal land designations stem from key federal and congressional acts spanning from around 1778 through 1934.¹ This period began with various treaties between the federal government and Tribes that began land division. Three crucial cases under Chief Justice John Marshall (1823, 1830, 1832 respectively), known as the Marshall Trilogy, affirmed Tribal sovereignty and established the domestic dependent nation framework. Concurrently, Congress passed the Indian Removal Act of 1830 which displaced Native Americans and moved them west of the Mississippi River.² In the late 1800s, the federal government sought to continue expanding and assimilating Native Americans by restricting them to reservations. This only included federally recognized Tribes, and those without this designation were impacted even further. During the "allotment era," loss of culturally significant and fertile land was further cemented through the passage of the Dawes Act and other similar laws which transferred many Tribal lands out of Tribal control and created largely reduced land allotments for Native American families.³ This era ended communal ownership of large portions of land by Tribes and opened up lands for settlement by non-natives through the sale of "surplus" lands to non-natives and corporations, leading to land fractionation and the checkerboarding of Tribal lands.

¹ <https://library.law.howard.edu/civilrightshistory/indigenous>

² Ibid

³ <https://www.eba-net.org/wp-content/uploads/2023/02/10-Schaff261-283Final.pdf>

Main Types of Tribal Land and Implications

Trust Land

Trust land is land that the federal government holds title to in trust for the benefit of a Tribe or individual Tribal member. The United States holds around 55 million surface acres and 59 million acres of subsurface mineral areas in Tribal trust.⁴ A key implication of this legal status is that this land is typically exempt from state and local taxes, but Tribes may, and often do, impose taxes on this land for their services. Tribes can work with the Bureau of Indian Affairs to place land into trust, which is an important way for Tribes to strengthen jurisdiction and sovereignty.⁵ However, there are often regulatory burdens and delays in this process, which have been used to limit sovereignty. Trust lands cannot be sold or encumbered (leases, rights-of-way) without the consent of the federal government.

Restricted Fee Lands

Restricted fee land titles are held by a Tribe or an individual Tribal member, but federal law restricts the sale, transfer, or encumbrance of this land. Like trust land, this land carries protections that limit taxation.⁶

Why this matters: Compared to trust land, Tribes exercise less jurisdiction over restricted fee lands.

Fee Lands

Fee lands are lands owned by an individual and are not subject to federal oversight. Owners can be Tribal members, non-Tribal members, or Tribal governments. Owners can freely sell or encumber land without federal approval.⁷

Why this matters: Fee lands within reservation boundaries can fragment jurisdiction and limit Tribal authority over zoning, taxation, and enforcement.

Other Key Land Concepts

Allotted Lands

Allotted lands are land parcels assigned to individual Tribal members during the allotment era. These lands are either held in trust or restricted fee status. Allotments led to fractionation, resulting in land ownership being split among hundreds of heirs.

Why this matters: Fractioned lands often result in administrative gridlock, which limits Tribal authority and development.

Reservations

Reservations are areas reserved for a Tribe, or multiple Tribes, to serve as a permanent Tribal homeland and are established through treaties, acts of Congress, and executive orders. Not all federally recognized Tribes have a reservation, and Tribes without a reservation may still hold trust, restricted fee, or fee lands. These three main land types may exist within or outside of a Tribe's reservation boundaries.⁸ Non-federally recognized Tribes are not able to hold trust, restricted fee, or fee lands; cannot have a reservation; and do not enjoy sovereign powers.⁹

They also can be referred to as pueblos, rancherias, missions, and villages. There are approximately 326 federally administered Indian reservations. Reservations vary in size greatly, with The Navajo Nation, the largest reservation, encompassing about 16 million acres of land and the Pit River Tribe's cemetery, the smallest reservation, encompassing 1.32 acres.¹⁰

Checkerboarding

Checkerboarding refers to the patchwork pattern of ownership (Trust, Fee, Non-Tribal) within reservations due to land loss and allotment. Like the consequences of fractionation, checkerboarding severely inhibits Tribal jurisdiction and the ability for Tribal nations or individual Tribal members to carry out important development activities that require large, contiguous sections of lands. It also complicates infrastructure deployment, taxation, and environmental protection.¹¹ Checkerboarding highlights how land status and allotment were weaponized against sovereignty, and why land-back and land restoration efforts are crucial for Tribes.

Why this matters: Checkerboarding severely complicates energy development for Tribes. Tribes must manage multiple jurisdictions, owners, and sometimes utilities, as well as make do with limited land areas for project development.

Treaty Rights on Ancestral Lands

As mentioned in the brief history above, the federal government signed many treaties with Tribes in the 1700s and 1800s. These treaties often granted land and other natural resources to the government, but any right that was not expressly granted was reserved to the Tribe, known as

⁴ <https://www.congress.gov/crs-product/IF11944>

⁵ <https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition>

⁶ Ibid

⁷ Ibid

⁸ <https://www.congress.gov/crs-product/IF11944>

⁹ <https://www.mpm.edu/index.php/educators/wirp/nations/tribe/federal-acknowledgement>

¹⁰ <https://www.bia.gov/faqs/what-federal-indian-reservation#:~:text=Approximately%2056.2%20million%20acres%20are,Congress%20specifically%20authorizes%20such%20jurisdiction.>

¹¹ <https://iltf.org/land-issues/issues/#:~:text=Indian%20lands%20that%20were%20alienated,large%2C%20contiguous%20sections%20of%20land.>

“reserved rights.”¹² These treaty rights are a key component for Tribal sovereignty, as they often grant Tribes key historical and cultural access, such as hunting, fishing, and water rights on their ancestral land.

Conclusion

Complicated Tribal land designations have a myriad of impacts, including the loss of control of sacred places, changes in stewardship opportunities, overlapping state, local, and federal jurisdictions, and impediments to exercise Tribal sovereignty and development opportunities, such as large energy sector projects. It requires extensive effort for Tribes to reacquire land, but Tribal Land Back13 efforts are often crucial for coherent governance, and more importantly, restoring and healing Tribal governance over ancestral lands. Tribes can also express sovereignty through the development of their own land-use codes and zoning ordinances, although this does require resources and expertise to do so. There are also various examples of Tribal co-management or co-stewardship agreements that reflect inter-Tribal cooperation and Tribal sovereignty through the rejection of fixed Western boundaries.

Resources

1. Native Land Information System:
 - Map of Reservation Land Cover¹³
 - Data on Tribal Land designations¹⁴
2. Native Land Digital Map¹⁵
3. Indian Land Tenure Foundation (ILTF) Educational Resources¹⁶

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¹² <https://www.achp.gov/native-american/information-papers/tribal-treaty-rights>

¹³ <https://nativeland.info/maps/national-land-cover-database-tribal-lands-viewer/>

¹⁴ <https://nativeland.info/dashboard/land-area-totals-for-us-native-lands/>

¹⁵ <https://native-land.ca>

¹⁶ <https://iltf.org/resources/other-resources/>

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