Native American Tribes, Law, and Planning

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PLANNING WEBCAST SERIES
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JUNE 22, 2018
Do you work for a Native American tribe or indigenous people?
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
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?

<table>
<thead>
<tr>
<th>Race</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>74.8</td>
</tr>
<tr>
<td>Black or African American</td>
<td>13.6</td>
</tr>
<tr>
<td>American Indian and Alaska Native</td>
<td>1.7</td>
</tr>
<tr>
<td>Asian</td>
<td>5.6</td>
</tr>
<tr>
<td>Native Hawaiian and Other Pacific Islander</td>
<td>0.4</td>
</tr>
<tr>
<td>Some Other Race</td>
<td>7</td>
</tr>
</tbody>
</table>
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%
## ALAN 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/p194-171.pdf](http://www.census.gov/prod/cen2010/doc/p194-171.pdf)

<table>
<thead>
<tr>
<th>Place</th>
<th>Total Population</th>
<th>Rank</th>
<th>Percentage of Total Population</th>
<th>Rank</th>
<th>Percentage of Total Population</th>
<th>Rank</th>
<th>Percentage of Total Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anchorage, AK</td>
<td>291,826</td>
<td>1</td>
<td>12.4</td>
<td>1</td>
<td>7.9</td>
<td>1</td>
<td>4.4</td>
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<tr>
<td>Tulsa, OK</td>
<td>391,906</td>
<td>2</td>
<td>9.2</td>
<td>2</td>
<td>5.3</td>
<td>2</td>
<td>3.9</td>
</tr>
<tr>
<td>Norman, OK</td>
<td>110,925</td>
<td>3</td>
<td>8.1</td>
<td>3</td>
<td>4.7</td>
<td>3</td>
<td>3.3</td>
</tr>
<tr>
<td>Oklahoma City, OK</td>
<td>579,998</td>
<td>4</td>
<td>6.3</td>
<td>7</td>
<td>3.5</td>
<td>4</td>
<td>2.8</td>
</tr>
<tr>
<td>Billings, MT</td>
<td>104,170</td>
<td>5</td>
<td>6.0</td>
<td>5</td>
<td>4.4</td>
<td>14</td>
<td>1.5</td>
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<tr>
<td>Albuquerque, NM</td>
<td>545,852</td>
<td>6</td>
<td>6.0</td>
<td>4</td>
<td>4.6</td>
<td>28</td>
<td>1.4</td>
</tr>
<tr>
<td>Green Bay, WI</td>
<td>104,057</td>
<td>7</td>
<td>5.4</td>
<td>6</td>
<td>4.1</td>
<td>36</td>
<td>1.3</td>
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<tr>
<td>Tacoma, WA</td>
<td>198,397</td>
<td>8</td>
<td>4.0</td>
<td>16</td>
<td>1.8</td>
<td>5</td>
<td>2.1</td>
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<tr>
<td>Tempe, AZ</td>
<td>161,719</td>
<td>9</td>
<td>3.9</td>
<td>8</td>
<td>2.9</td>
<td>73</td>
<td>1.0</td>
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<tr>
<td>Tucson, AZ</td>
<td>520,116</td>
<td>10</td>
<td>3.8</td>
<td>9</td>
<td>2.7</td>
<td>52</td>
<td>1.1</td>
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<tr>
<td>Sioux Falls, SD</td>
<td>153,888</td>
<td>13</td>
<td>3.6</td>
<td>10</td>
<td>2.7</td>
<td>79</td>
<td>0.9</td>
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<tr>
<td>Spokane, WA</td>
<td>208,916</td>
<td>11</td>
<td>3.8</td>
<td>15</td>
<td>2.0</td>
<td>6</td>
<td>1.8</td>
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<tr>
<td>Eugene, OR</td>
<td>156,185</td>
<td>24</td>
<td>2.8</td>
<td>55</td>
<td>1.0</td>
<td>7</td>
<td>1.8</td>
</tr>
<tr>
<td>Topeka, KS</td>
<td>127,473</td>
<td>17</td>
<td>3.1</td>
<td>27</td>
<td>1.4</td>
<td>8</td>
<td>1.7</td>
</tr>
<tr>
<td>Sacramento, CA</td>
<td>466,488</td>
<td>23</td>
<td>2.8</td>
<td>46</td>
<td>1.1</td>
<td>9</td>
<td>1.7</td>
</tr>
<tr>
<td>Santa Rosa, CA</td>
<td>167,815</td>
<td>15</td>
<td>3.3</td>
<td>18</td>
<td>1.7</td>
<td>10</td>
<td>1.6</td>
</tr>
</tbody>
</table>

1 Place(s) 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.

### 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/p194-171.pdf](http://www.census.gov/prod/cen2010/doc/p194-171.pdf))

<table>
<thead>
<tr>
<th>Place</th>
<th>Total population</th>
<th>Rank</th>
<th>Number</th>
<th>Rank</th>
<th>Number</th>
<th>Rank</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York, NY</td>
<td>8,175,133</td>
<td>1</td>
<td>111,749</td>
<td>1</td>
<td>57,512</td>
<td>1</td>
<td>54,237</td>
</tr>
<tr>
<td>Los Angeles, CA</td>
<td>3,792,621</td>
<td>2</td>
<td>54,236</td>
<td>3</td>
<td>28,215</td>
<td>2</td>
<td>26,021</td>
</tr>
<tr>
<td>Phoenix, AZ</td>
<td>1,445,632</td>
<td>3</td>
<td>43,724</td>
<td>2</td>
<td>32,366</td>
<td>7</td>
<td>11,358</td>
</tr>
<tr>
<td>Oklahoma City, OK</td>
<td>579,999</td>
<td>4</td>
<td>36,572</td>
<td>7</td>
<td>20,533</td>
<td>3</td>
<td>16,039</td>
</tr>
<tr>
<td>Anchorage, AK</td>
<td>281,826</td>
<td>5</td>
<td>36,082</td>
<td>5</td>
<td>23,130</td>
<td>6</td>
<td>12,932</td>
</tr>
<tr>
<td>Tulsa, OK</td>
<td>381,906</td>
<td>6</td>
<td>35,990</td>
<td>6</td>
<td>20,817</td>
<td>4</td>
<td>15,173</td>
</tr>
<tr>
<td>Albuquerque, NM</td>
<td>545,852</td>
<td>7</td>
<td>32,571</td>
<td>4</td>
<td>25,087</td>
<td>16</td>
<td>7,484</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>2,695,598</td>
<td>8</td>
<td>26,933</td>
<td>10</td>
<td>13,337</td>
<td>5</td>
<td>13,596</td>
</tr>
<tr>
<td>Houston, TX</td>
<td>2,099,451</td>
<td>9</td>
<td>25,521</td>
<td>8</td>
<td>14,997</td>
<td>8</td>
<td>10,524</td>
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<tr>
<td>San Antonio, TX</td>
<td>1,327,407</td>
<td>10</td>
<td>20,137</td>
<td>11</td>
<td>11,800</td>
<td>11</td>
<td>8,337</td>
</tr>
<tr>
<td>Tucson, AZ</td>
<td>520,116</td>
<td>11</td>
<td>19,903</td>
<td>9</td>
<td>14,154</td>
<td>24</td>
<td>5,749</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>1,526,006</td>
<td>13</td>
<td>17,495</td>
<td>25</td>
<td>6,996</td>
<td>9</td>
<td>10,499</td>
</tr>
<tr>
<td>San Diego, CA</td>
<td>1,307,402</td>
<td>12</td>
<td>17,865</td>
<td>23</td>
<td>7,966</td>
<td>10</td>
<td>10,169</td>
</tr>
</tbody>
</table>

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

Planners and Social Justice

A: Principles to Which We Aspire

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 Land Loss
Tribal Economic Indicators

Per Capita Income

- White alone, not Hispanic or Latino: $36,938
- Asian alone: $36,350
- Native Hawaiian or other Pacific Islander alone: $21,637
- Black or African American alone: $21,452
- American Indian or Alaska Native alone: $18,961

Percent Unemployment

- White alone: 1.9%
- Asian alone: 4.5%
- Native Hawaiian or other Pacific Islander alone: 7.1%
- Black or African American alone: 10.1%
- American Indian or Alaska Native alone: 12%

American Community Survey, 2016 1-year data
Legal Framework

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?”
(William Brennan, J., dissenting)
Sovereignty

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

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.
Sovereignty - U.S. Constitution

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”
Government

Sovereignty is a most valued asset to the people of the Tulalip 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 Tulalip Tribes, a sovereign entity. With the passage of the Indian Gaming Regulatory Act of 1988, The Tulalip 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 Tulalip 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 Tulalip Tribes has been the first and only to establish a federally recognized city. The Quill 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 Tulalip Tribes has set a precedent for native peoples everywhere.

By asserting their inalienable rights, The Tulalip 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.
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 tracts 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.
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)
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)
Supreme Court Cases – Summary of the “Marshall Trilogy”

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

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

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

“Ward to guardian”

“Highest fiduciary 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, USDOI
- Environmental Protection – EPA

“Government-to-Government” relationship

Consultation
- Executive Order 13715, 2000
Tribal Government Authority

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

Crow Reservation

Figure 5
Reservation Surface Ownership
Crow Reservation and Off-Reservation Trust Lands

Total Population: 6,863
AIAN (one race): 77.5%
White (one race): 20.4%
Navajo Public Domain Allotments

from Correll and Dehiya, 1978
Land Jurisdiction


- 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


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

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

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

| Outcome | No tribal authority to zone (6) | Tribe has authority to zone. (5) |

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Court Splits Over Tribal Control of Land

By LINDA GREENHOUSE and SPECIAL TO THE NEW YORK TIMES

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

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***

- **Encumbrances**
- **Routing**
- **ROW**
- **Environmental**
- **Survey**
- **Routing**
- **ROW**
- **Encumbrances**
- **Routing**

**The applicant** meets with the Lease Compliance Officer to determine an appropriate homeste.

**The applicant** meets with a BIA Realty Specialist to request and review an uncertified TSR for any encumbrances on the selected homeste. If clear, the applicant completes a Homeste Lease Application. If more information is needed, the BIA Realty Specialist contacts the appropriate individuals.

**The BIA Realty Specialist** routes the pending Homeste Lease to the Tribal Land Authority for approval and requests approval of rights-of-way for access and utilities.

**The BIA Realty Specialist** routes the Environmental Assessment (BIA-EA, see Chapter 6) form to the necessary agency representatives.*

**The applicant** must submit a certified land survey to BIA Realty.

**The BIA Realty Specialist** prepares the homeste lease and requests the signature of the applicant and Land Committee Chairman.

**The BIA Realty Specialist** prepares the right-of-way documents for utilities and access.*

**The local BIA Superintendent** reviews the lease and BIA-EA. If satisfied, s/he requests a certified Title Status Report (TSR) from the BIA Land Titles and Records Office (LTRO) in Billings.

**The local BIA Superintendent** approves the lease and BIA-EA. A copy of the lease is mailed to the applicant.

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*Note: If the applicant plans to hand carry the Environmental Assessment (BIA-EA), it may expedite the process to route the BIA-EA with the utility and access ROWs. This will expedite the process if the certified survey is already performed or can be completed within 30 days of Tribal Land Authority approval.

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Environmental Protection

Treatment as a State
- **Safe Drinking Water Act** – section 1451
- **Clean Water Act** – section 518
- **Clean Air Act** – section 301(d)


(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


- 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

Tribally-owned businesses: Indian Reorganization Act, Section 17

Tribal gaming

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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New Mexico History

Spanish colonization

Mexican government

U.S. Territory
- Treaty of Guadalupe Hidalgo, 1848
- Territory 1850
- Statehood 1912
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

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

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

*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.”

Native American Tribes, Law, and Planning. Sharon Hausam, Ph.D., AICP. Planning Webcast, APA Divisions & Chapters. June 22, 2018
Pueblo Sovereignty Under the New Mexico Territorial Government

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

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

Alaska Native Claims Settlement Act of 1971 (ANCSA)

- 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”

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