

A bald eagle is shown in flight, its wings spread wide, flying over a calm lake. The lake reflects the sky and the surrounding landscape. In the background, there are green, rolling hills and mountains under a blue sky with some clouds. The overall scene is peaceful and natural.

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The Federal Trust Relationship, Tribal Sovereignty, and Self-Determination

Prepared by

Jack F. Trope, Executive Director, AAIA

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Tribal Sovereignty

- Indian tribes – have inherent sovereignty that pre-exists the United States
- Sovereignty over members and territory
- Certain limits on exercise of sovereignty exist



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Powers of Tribal Governments

- Right to decide membership
- Administration of justice (law enforcement, courts)
- Regulation of domestic and family relations
- Determination of property rights (e.g. inheritance)
- Tribal control of land – acquisition, assignment and leasing, exclusion, zoning)
- Conservation and environmental protection



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Powers of Tribal Governments (cont.)

- Protection of traditional cultural, historic and sacred properties
- Regulating hunting and fishing (even off-reservation if a treaty)
- Business regulation and development – license, tax, zone, establish businesses, regulate or license businesses, resource development (or not)



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Powers of Tribal Governments (cont.)

- Agreements – with businesses or other governments
- Relations with other governments
- Providing social services – education, health care, housing
- Providing, regulating or taxing utilities



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Jurisdiction

Civil Jurisdiction:

Tribes exercise jurisdiction over Indians located on Indian lands. States generally do not.

Exception: Public Law 280 states have civil adjudicatory jurisdiction, but not civil regulatory jurisdiction.



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Jurisdiction (cont.)

Tribal civil jurisdiction over non-Indians is dependent upon whether it implicates tribal self-government or is necessary for tribe's ability to control internal relations

Factors to consider include:

Whether the non-Indian has entered into a consensual relationship with the tribe or is engaging in an activity that impacts the tribe's political integrity, economic security or health and welfare



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Jurisdiction (cont.)

Criminal Jurisdiction

Tribes have jurisdiction over crimes committed by American Indian/Alaska Natives on Indian land

Punishments that may be imposed limited by Indian Civil Rights Act; recent amendments in Tribal Law and Order Act modify ICRA restrictions.

Federal government has concurrent jurisdiction over certain crimes.

P.L. 280 States have concurrent jurisdiction in place of the federal government.



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Jurisdiction (cont.)

Tribes have not had criminal jurisdiction over non-Indians committing crimes in Indian country since Supreme Court decision in 1978.

Violence Against Women Act (VAWA) changes this in limited circumstances involving dating violence, domestic violence and criminal violations of protection orders.

General Jurisdictional Framework
 (Grid has not been changed to reflect VAWA which has not yet been implemented.)

TABLE 4. CRIMINAL JURISDICTION OVER CRIMES COMMITTED BY INDIAN PEOPLE

	Crimes on Indian Country		Crimes on Indian Country – PL 280 States	Crimes on State land
	Major Crimes*	Other Crimes		
Non-Indian victim	Federal & Tribal	Federal & Tribal	State & Tribal	State
Indian victim	Federal & Tribal	Tribal	State & Tribal	State
Victimless crime	Tribal	Tribal	State & Tribal	State



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Trust Relationship

- Federal government has trust relationship with Indian tribes and Indian people
- Applies to all federal agencies and federal actions outside Indian reservations
- For the federal government to be liable for breach of trust, must be specific statute or regulations
- Moral obligation of the highest responsibility



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Executive Order 13,175

Recognizes:

Unique relationship (government-to-government) relationship between federal government and Indian tribes.

Federal trust relationship

Inherent tribal sovereignty and right to self-determination



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Executive Order 13,175 (cont.)

Requires agencies to:

- Grant tribal governments maximum administrative discretion possible.
- Defer to tribally-developed policies when possible
- Consult with tribes how to limit the scope of federal policies and protect tribal prerogatives.



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Executive Order 13,175 (cont.)

When a regulation has tribal implications, agencies should:

- Provide tribes funding for implementation costs
- Consult with tribes early in the process
- Prepare a tribal impact statement



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Executive Order 13,175 (cont.)

If tribal self-government, treaties, trust resources implicated, consensual mechanisms should be explored.

Where legally permitted, waivers for tribes to promote flexible policy approaches encouraged.

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Presidential Memorandum

2009 Memorandum signed by
President Obama mandating that
agencies develop detailed plans to
comply with Executive Order 13,175



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Presidential Memorandum (cont.)

Pursuant to memorandum, numerous agencies have revised their consultation policies.

Example: Department of Interior

Requires government-to-government consultation which includes decision-makers

Goal: Collaboration, informed federal decision-making

30 days notice generally required of actions affecting tribes with specific information about topics and outcomes



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Presidential Memorandum (cont.)

Department of Interior (cont.)

Appointment of agency-wide tribal governance officer and tribal liaison officer in each bureau or office of the department

Types of consultations specified include negotiated rulemaking, tribal leader task force, tribal meetings

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Principles of consultation

- Seeking, discussing and considering the view of others and seeking agreement where feasible; an exchange of ideas, not simply providing information.
- Government-to-government consultation
- Traditional Native cultural and religious practitioners



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Principles of consultation (cont.)

- Becoming informed about the Tribes and Native organizations
- Build on-going Consultative Relationships
- Fully engage tribes and (where applicable) traditional practitioners in planning processes



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Principles of consultation (cont.)

- Help tribes understand the agency
- Institutionalize consultation procedures
- Contact tribes early and often
- Provide financial assistance if possible
- Treat sensitive information confidentially



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Principles of consultation (cont.)

- Maintain honesty and integrity
- Establish training programs on consultation
- View consultation as integral to the agency's mission



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Indian Self-Determination and Educational Assistance Act

638 Contracts:

Applies to all Snyder Act and IRA funding as well as other money appropriate for benefit of Indians

Applies to Departments of Interior and Health and Human Services



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Indian Self-Determination and Educational Assistance Act (cont.)

638 Contracts:

Must approve unless unsatisfactory services would result, trust resources jeopardized, tribe cannot fulfill contract, costs are more than permitted or activities cannot legally be contracted.

Right to appeal denial with burden on the Secretary.



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Indian Self-Determination and Educational Assistance Act (cont.)

638 Contracts:

Entitled to full amount of contract support costs

United States Supreme Court ruled that obligation to pay contract support costs in full exists even if inadequate Congressional appropriations



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Indian Self-Determination and Educational Assistance Act (cont.)

Self-Governance Compacts:

Single annual funding agreement – self-governance compacts

Applies to Interior and HHS

Up to 50/year per agency permitted

Terms are negotiated; tribes can reallocate funds and redesign or consolidate programs.