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Background Brief on...

# Indian Tribes

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## Background

Indian affairs were originally governed by the Continental Congress, which created a Committee on Indian Affairs in 1775. In an effort to incorporate the American Indian tribes and their peoples into federal policies, the committee was replaced with the Bureau of Indian Affairs (**BIA**) in 1824. During the past 178 years, the BIA has been a key player in the evolution of federal-tribal relations. Since its inception, the BIA has continued to evolve, and is currently located in the Department of Interior and is responsible for the administration and management of 56 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. BIA provides federal services to approximately 1.2 million American Indians and Alaska Natives who are members of more than 558 federally-recognized Indian tribes.

The U.S. Constitution contains a number of provisions which outline the role of the federal government's relations with Indian tribes. The Treaty clause, the Indian Commerce clause, numerous federal statutes, and court decisions provide support for the governmental status of Indian Tribes and the trust relationship between the U.S. government and the "domestic, dependent nations."

Tribal to government components include:

**Federally-recognized tribes** – Federally-recognized tribes are those tribes and groups that have a special, legal relationship with the U.S. Government. This relationship is treated as a government-to-government relationship. In addition, federally-recognized tribes or nations are considered self-governing sovereign nations by Congress. Each recognized tribe has the right to shape its own government, determine membership, administer justice, raise taxes, establish businesses, and exclude individuals from reservations.

**Sovereignty** – Indian tribes existed as sovereign governments before European settlers arrived in North America. Treaties were signed with European nations and later the United States, guaranteeing their continued recognition and acknowledgement as sovereign. In the past, some state governments have been resistant to the classification of tribes as sovereign governmental

entities. The U.S. Supreme Court has repeatedly recognized tribal sovereignty in court decisions for more than 160 years.

**Reservations** – Indian reservations are lands reserved for a tribe by the federal government as permanent tribal homelands. These lands were reserved when the tribes relinquished other land areas to the U.S. through treaties, Congressional Acts, Executive Orders, or administrative acts. Much of the 56 million acres of trust lands are reservation land; however, not all reservation land is trust land.

**Trust land** – Trust lands are lands held by the U.S. for the use or benefit of American Indian tribes. A percentage of the trust land is located in or near reservations and the tribes possesses the authority to purchase land and to petition the federal government to hold it in trust, which protects the land from encroachment and seizure. Currently, there are approximately 275 Indian land areas in the U.S. administered as Indian reservations. The states in which reservations are located have limited powers over them, and the powers that exist are provided by federal law. Each reservation has a local governing authority, which is the tribal government.

**Indian Country** – Court decisions define Indian country as reservation and trust land in the lower forty-eight states.

**Ceded Lands** – During the treaty-making period, Indian Tribes gave (or ceded) millions of acres of land to the U.S. In Oregon the Warm Springs gave 10 million acres, 6 million in the case of the Umatilla, and 20 million in the case of the Klamath Tribes, in exchange for a guaranteed area (a reservation) where the tribes could continue to live and govern their members. The Supreme Court has ruled (along with other courts) that certain Oregon Tribes retain the right to hunt, fish, gather roots and berries, and co-manage the cultural and natural resources in the ceded areas.

**Application of Laws** – As U.S. citizens, and as citizens of the state in which they reside, Indians are generally subject to federal, state, and local laws. On Indian reservations, however, only federal and tribal laws apply to members of the tribes unless Congress provides otherwise. The federal Assimilative Crimes Act created the law that any violation of state

criminal law on a reservation is treated as a federal offense. Most tribes have a tribal court system and facilities to detain tribal members convicted of specific offenses that have been committed within the reservation.

**Taxes** – Similar to state and local governments, tribal governments do not pay taxes. Individual Indians pay federal income tax, with a small exception for some income that is derived from treaty resources. As Oregonians, individual Indians pay state and local taxes. The one exception for paying state income tax is for those Indians who live and make their income on a reservation. State property tax does not apply on reservation or trust lands. Tribes that hold a portion of property “in fee” (not the same as “in trust”) are subject to state property tax laws with a limited exemption for property being placed into trust.

**Indian Gaming Regulations** – In 1988 Congress enacted the National Indian Gaming Regulatory Act (**NIGRA**). The act permits bingo, pull tabs, lotto, punch boards, tip jars, traditional Indian gaming, and certain card games on tribal land. For a gaming center to offer slot machines and other forms of cards, a tribal-state gaming compact must exist. The general rule is that gaming that is legal in a particular state is available to a tribe. The U.S. government recognizes that gaming offers tribes an economic opportunity to generate jobs and revenue to fund tribal governments and social services. Congress established the National Indian Gaming Commission to develop regulations for the Indian gaming industry.

## **Tribes in Oregon**

Currently, Oregon has nine federally recognized Indian tribes:

- the Burns Paiute Tribe
- the Confederated Tribes of Coos; Lower Umpqua and Siuslaw Indians
- the Confederated Tribes of Grand Ronde
- the Confederated Tribes of Siletz
- the Confederated Tribes of Warm Springs
- the Confederated Tribes of Umatilla Indian Reservation
- the Cow Creek Band of Umpqua Indians
- the Klamath Tribes
- the Coquille Tribe

Note – Ft. McDermitt is technically a tenth Oregon tribe; however, its reservation occupies both Oregon and Nevada. The population of the Tribe resides in the Nevada portion and maintains its primary relationship with Nevada.

In the 1950's the U.S. government 'terminated' approximately three percent of the country's Indian population. Termination was the process whereby the government ended the federal trusteeship with the tribes. This termination was an effort to assimilate Indians into mainstream America. Although the intent of this action was emancipation, the net effect to the terminated tribes was cultural, political and economic damage. Of the 109 tribes and bands terminated, 62 were native to Oregon. During the past thirty years, terminated tribes have actively and vigorously sought to restore the trust relationship. In 1977, the Confederated Tribes of Siletz won restoration, and other tribes followed. The Confederated Tribes of Warm Springs, the Confederated Tribes of Umatilla and the Burns Paiute were never terminated.

On May 22, 1996 Governor John A. Kitzhaber signed Executive Order EO-96-30, officially recognizing state-tribal government-to-government relations. During the 2001 Legislative Session Senate Bill 770 was enacted (ORS 182.162-168), codifying key elements of EO-96-30. These provisions are the Legislative Assembly's instructions to state agencies on government-to-government communication and cooperation with Oregon Tribes. Only designated representatives of an Oregon Tribal government can be a part of the government-to-government process in Oregon.

As of March 2002, the total enrolled membership of all Oregon tribes was 21,306 and the 2000 census indicates that the total Oregon Indian population is

45,211. Many Native Americans, who are not members of an Oregon Tribe, may reside in the state. Native Americans in Oregon can be classified according to three categories: as urban or rural, as reservation or non-reservation, and as members of either recognized or unrecognized tribes.

In addition to the state-tribal government-to-government relations, Oregon Indians share some common interests and may be a part of non-governmental or joint organizations and associations. For example, to address regional issues the Columbia River Intertribal Fish Commission represents one tribe in Washington (Yakima), two in Oregon (Warm Springs and Umatilla), and one in Idaho (Nez Perce) on Columbia River fish management issues. To address statewide issues, many intertribal organizations have been developed to deal with such issues as education, health, legal matters, aging, alcoholism, and adoption.

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