

# ADOT Tribal

TRANSPORTATION CONSULTATION

Online Training Course for ADOT Personnel

# HANDBOOK

*“Building strong state-tribal transportation relationships”*

Prepared for:

**ADOT**



MAY 2020

THIS PAGE WAS INTENTIONALLY LEFT BLANK



TRIBAL TRANSPORTATION CONSULTATION  
Online Training Course for ADOT Personnel



PREPARED BY:

Kimley »» Horn



THIS PAGE WAS INTENTIONALLY LEFT BLANK



## Disclaimer

This training course and accompanying handbook was funded in part through grants from the Federal Highway Administration, U.S. Department of Transportation. The contents of this training course and accompanying handbook reflect the views of the authors, who are responsible for the facts and the accuracy of the data, and for the use or adaptation of previously published material, presented herein. The contents do not necessarily reflect the official views or policies of the Arizona Department of Transportation or the Federal Highway Administration, U.S. Department of Transportation. This training course or accompanying handbook does not constitute a standard, specification, or regulation. Trade or manufacturers' names that may appear herein are cited only because they are considered essential to the objectives of the training course and handbook. The U.S. government and the State of Arizona do not endorse products or manufacturers.

The training course and accompanying handbook were developed for the purpose of training Arizona Department of Transportation personnel to assist them in working with tribal governments in the State of Arizona as they perform state transportation activities, and carry out functions of ADOT's programs and processes. Use of the training materials by another entity other than the Arizona Department of Transportation requires the written permission of the State. Some material in the handbook was obtained from copyrighted sources. In accordance with the provisions of the Fair Use Doctrine, provided for in Section 107, Title 17 of the United States Code, the handbook and any of its contents may not be used for purposes other than non-profit teaching and research.

This training course and accompanying handbook deals with some complex matters and may reflect legislation, policies and practices that are subject to change. The material in this training course and accompanying handbook should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter. The material in this training course and accompanying handbook should not be construed as legal advice and the user is solely responsible for any use or application of the material in this document.

The authors and the Arizona Department of Transportation accepts no liability for correctness, reliability, pertinence or completeness of the training content. The authors and Arizona Department of Transportation assumes no responsibility for any direct or indirect loss suffered by users in connection with this training course and accompanying handbook.

THIS PAGE WAS INTENTIONALLY LEFT BLANK



## Preface

The *Arizona Department of Transportation (ADOT) Tribal Transportation Consultation Handbook* is a product of the ADOT Multimodal Planning Division. This Handbook provides information that supplements the modular ADOT Online Training Course on Tribal Consultation for ADOT Personnel. The Handbook stands alone and can be used as a reference guide by ADOT management and staff.

This Handbook includes a brief introduction on the importance of effective consultation with tribal governments and some of the state and federal requirements for consultation. The purpose and objectives of the training course are discussed and the organization of the Handbook is presented. The Handbook is comprised of five modules corresponding to the online training modules, in addition to a reference section, glossary and dictionary of acronyms. The Handbook contains a substantial number of graphics, including tables, charts, maps, and photographs.

Module 1 documents the demographics of the 22 tribes in Arizona and the transportation mission of ADOT on tribal lands. Modules 2 and 3 provide a historical perspective of the relationships between tribes and the federal and Arizona governments. Module 4 presents effective consultation and coordination approaches. Module 5 provides information about several existing tribal-focused organizations in Arizona. A reference section is provided for readers interested in learning more about tribes, the history of tribal relationships, and methods of consultation and coordination. The terms “Native,” “Native American,” and “American Indian” are used in lieu of “Indian” unless referring to the title of a law or policy.

The subject of tribal relationships is very broad and complex. This Handbook does not address the subject exhaustively, but rather provides the reader a firm starting point in developing the knowledge and skills required for working effectively with tribal governments. This Handbook continues to be updated<sup>1</sup>, so input on improving its content is welcome. Comments and suggestions should be sent to:

### ARIZONA DEPARTMENT OF TRANSPORTATION

Multimodal Planning Division  
206 South 17th Avenue  
Mail Drop 310B  
Phoenix, Arizona 85007

---

<sup>1</sup> The Handbook was originally published in July, 2013, and was updated in July, 2014, and March 2020.

THIS PAGE WAS INTENTIONALLY LEFT BLANK



# Table of Contents

**Disclaimer** ..... i

**Preface**..... iii

**Abbreviations and Acronyms**..... xiii

**Course Introduction** ..... 1

    Purpose and Objectives of the Training Course and Handbook ..... 3

    Organization of Handbook Modules ..... 4

    Corresponding Terms Frequently Used in Handbook ..... 5

**Module 1: Overview of National and State Tribal Demographics** ..... 7

**Tribes Currently Resident in Arizona** ..... 7

        Demographic Summaries for Each Tribe Resident in Arizona ..... 9

        Who Counts as American Indian or Alaska Native? ..... 11

        Tribal Enrollment – Who is Considered a Member of a Tribe? ..... 11

**Tribal Census** ..... 13

**Non-Arizona Resident Tribes with Ancestral/Aboriginal Land Interests in Arizona** ..... 37

**Section 106 of the National Historic Preservation Act Mandatory Consultation Tribes** ..... 37

**Other Tribes with Aboriginal or Traditional Interests in Arizona** ..... 45

**ADOT’s Interest in the Transportation System on Tribal Lands** ..... 45

        Arizona Airport System ..... 47

        Public Transportation on Tribal Lands ..... 50

        Bicycles and Pedestrians on Tribal Lands ..... 54

        Railroad System in Arizona ..... 54

        State Highway System on Tribal Lands ..... 57

        ADOT Motor Vehicle Division (MVD) ..... 61

        ADOT Enforcement and Compliance Division (ECD) ..... 63

TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>Module 2: Setting the Foundation for Understanding Intergovernmental Relations with Native Nations/Tribal Governments – Federal Level</b> .....          | <b>65</b> |
| <b>Pre-Columbian or Prior to Contact Era</b> .....  | <b>66</b> |
| Traditional Land-Based Economies and Land Tenure .....  | 66        |
| Contact with Europeans.....   | 66        |
| <b>Colonial and Treaty Making Era (1492-1828)</b> .....   | <b>67</b> |
| Doctrine of Discovery.....  | 67        |
| Land as Real Property.....  | 68        |
| Early Treaties between Tribes, Colonial Powers, and the U.S. Prior to the War of 1812 .....   | 69        |
| <b>Removal, Treaty and Reservation Era (1828-1871)</b> .....  | <b>71</b> |
| The Marshall Trilogy .....  | 72        |
| Removal .....   | 73        |
| End of Treaty Making.....   | 75        |
| <b>Allotment and Assimilation Era (1871-1928)</b> .....   | <b>76</b> |
| Assimilation.....   | 76        |
| United States Citizenship.....  | 78        |
| Loss of Tribal Lands.....   | 79        |
| <b>Indian Reorganization Act (IRA) Era (1928-1942)</b> .....  | <b>80</b> |
| <b>Termination Era (1942-1968)</b> .....  | <b>81</b> |
| <b>Self-Determination Era (1968-present)</b> .....  | <b>82</b> |
| <br>  |           |
| <b>Module 3: Setting the Foundation for Understanding Intergovernmental Relations with Native Nations/Tribal Governments – Tribal-State Relations</b> ..... | <b>85</b> |
| <b>Federal, Tribal, and State Relations after World War II</b> .....  | <b>85</b> |
| Arizona Tribal Citizen’s Right to Vote.....   | 85        |
| State Jurisdiction in Indian Country .....  | 86        |
| Education and Public Laws 81-874 and 81-815 .....   | 87        |
| Arizona Commission of Indian Affairs (ACIA) (1953 - 2015).....  | 88        |
| <b>Federal, Tribal and State Relations in the Period of Self-Determination - 1968 to the Present</b> .....  | <b>89</b> |
| State Pass-Through of Federal Funds to Tribes.....  | 89        |
| <b>Characteristics of Tribes</b> .....  | <b>90</b> |
| What Is a Tribe?.....   | 90        |
| American Indian (AI) Tribes Today.....  | 91        |
| <b>Tribal Sovereignty and Trust Status</b> .....  | <b>93</b> |
| Indian Country .....  | 95        |
| Tribal Regulation .....   | 96        |

**Tribal Structure, Governance and Authority ..... 97**

- Sovereignty Immunity ..... 97
- Tribal Governments Functions ..... 99
- Leasing, Rights-of-Way and Allotted Lands ..... 100
- Taxation - Tribal, State and Federal ..... 101
- Law Enforcement and Tribal Courts ..... 102
- Major Crimes ..... 103
- Civil Jurisdiction ..... 104
- Tribal Courts ..... 104

**Tribal Transportation Program (TTP) Roads ..... 105**

**Issue Resolution: Implementation of Government-to-Government Approaches with Tribal Governments Increases the Ability to Resolve Issues ..... 107**

**Module 4: Effective Tribal Consultation and Coordination ..... 109**

- Good Communications – The Path to Building Trusting and Successful Relationships with Tribal Governments ..... 110**
- Definitions of Tribal Consultation and Coordination ..... 110**
  - Difference between Consultation and Coordination ..... 111
- Guiding Principles for Consulting with Tribes ..... 113**
  - Identify Consultation Issues and Participants Early ..... 113
  - Respect Tribal Sovereignty and Individuality ..... 114
  - Cultural Knowledge – Every Tribe Is Unique ..... 115
  - Historical Knowledge – Tribal Perspectives of History Are Shaped by Their Experiences ..... 115
  - Intergovernmental Relations ..... 115
  - Openness to Change ..... 115
  - Respect for Points of View, Listen and Act Patiently ..... 116
  - Spirit of Cooperation ..... 116
  - Meeting Basics ..... 116
- Critical Elements in Consultation and Coordination with Tribes ..... 116**
- ADOT Procedures for Consulting with Tribes ..... 117**
  - ADOT Initiated Tribal Consultation General Procedure ..... 118
  - ADOT Historic Preservation and Cultural Resources Section 106 Specific Tribal Consultation Procedure... 118
- ADOT Interacts with Tribes at Both the Organizational and Personal Levels ..... 122**
  - Organizational Level Interaction ..... 122
  - Personal Level Interaction ..... 123
  - Language Differences ..... 124

|  |            |
|--|------------|
| <b>Earning Tribal Trust is a Key to Successful ADOT/Tribal Relationships.....</b>                                | <b>125</b> |
| Cultural and Traditional Considerations – Building Trust through Mutual Respect and Understanding ....           | 126        |
| <b>What Tribes/Nations Need to Know When Working With ADOT .....</b>   | <b>129</b> |
| <b>What ADOT Personnel Need to Know about Working with Tribes .....</b>  | <b>133</b> |
| Tribal Employment Rights Office (TERO) and Business License Requirements .....                                   | 133        |
| Right-of Way Agreements.....   | 133        |
| Permitting and Other Considerations.....   | 133        |
| ADOT Tribal Certifications of Road Maintenance .....   | 133        |
| <b>ADOT Project Process from Planning to Maintenance.....</b>  | <b>134</b> |
| Long-Range Transportation Plan (LRTP) .....  | 135        |
| Corridor Studies.....  | 135        |
| Pre-Design and Environmental Study .....   | 135        |
| State Transportation Improvement Program (STIP).....   | 135        |
| ADOT’s Planning to Programming (P2P) Process .....   | 135        |
| Five-Year Program.....   | 136        |
| Final Design and Right-of-Way Acquisition.....   | 136        |
| Construction.....  | 137        |
| Maintenance and Operation .....  | 137        |
| Sharing Information on Available Funding Programs, Guidelines, and Application Deadlines.....                    | 141        |
| Technical Clearance Assistance including Right-of-Way, Environmental, and Utilities.....                         | 141        |
| Sharing Training Opportunities .....   | 142        |
| Arizona Traffic and Criminal Software (AzTraCS) .....  | 143        |
| ADOT’s Planning and Programming Processes.....   | 143        |
| Tribal TIP inclusion in the STIP.....  | 144        |
| ADOT Research Study – “The Role of Arizona Tribes in Transportation Decision Making” (2012 - 2015) ...           | 144        |
| Transportation Planning Process.....   | 145        |
| Transportation Programming Process .....   | 145        |
| <b>ADOT Tribal Consultation Guidance .....</b>   | <b>146</b> |
| MGT-16.01 ADOT Department Wide Native Nation/Tribal Government Consultation Policy .....                         | 146        |
| ADOT Tribal Consultation Annual Report .....   | 147        |
| United States Department of Transportation (USDOT) Order DOT 5301.1 and<br>Tribal Consultation Action Plan ..... | 147        |
| Arizona Revised Statute 41-2051 .....  | 148        |
| ADOT Transportation Planning and Programming Guidebook for Tribal Governments Manual .....                       | 149        |
| Integrating Statewide and Tribal Planning Workshop .....   | 149        |

What ADOT Employees Should Know about the Tribal Transportation Program (TTP)..... 150

    Tribal Transportation Program Funding Delivery Options ..... 150

    Proposed Tribal Transportation Self-Governance Program..... 152

**Module 5: ADOT Tribal Coordination with Tribal-focused Organizations ..... 153**

**Bureau of Indian Affairs (BIA) ..... 154**

        Office of Self Governance..... 156

        Office of Indian Services..... 156

        Office of Trust Services..... 156

        Delivery Options for Funding Projects ..... 157

        BIA Transportation Related Services ..... 158

**Councils of Governments and Metropolitan Planning Organizations..... 159**

        What Do COGs and MPOs Do? ..... 160

        COG and MPO Transportation Funding ..... 163

        Tribal Participation in the COGs and MPOs Programs and Processes..... 164

        Advantages of COG and MPO Membership..... 165

**Tribal Technical Assistance Program (TTAP)..... 168**

**Governor’s Office on Tribal Relations (2016 - present) ..... 169**

**Inter Tribal Council of Arizona, Inc. (ITCA) ..... 171**

        ITCA Transportation Working Group (ITWG)..... 171

**Federal-State-Tribal Transportation Partnerships ..... 173**

        Partnership Missions ..... 175

        Partnership Charters ..... 175

**Contact Information for ADOT Tribal Liaisons and Coordinators ..... 177**

    ADOT Department-Wide Tribal Liaisons ..... 178

    Arizona Tribal Transportation Website ..... 180

**Glossary ..... 181**

**Reference Section ..... 182**

    Tribal Consultation References..... 182

    History and Culture of American Indians and Alaska Natives ..... 182

    Tribal-focused Organizations ..... 182

    Metropolitan Planning Organizations and Councils of Governments Websites ..... 183

    Manuals/guidebooks ..... 184

    Policies ..... 184

Laws and Regulations..... 185  
 Information Links to Tribes in Arizona ..... 185  
 Other Helpful Materials ..... 186  
 ADOT Websites Referenced in this Handbook (valid January 2020)..... 187

**Tables**

Table 1 – 1: Tribes Residing in Arizona .....9  
 Table 1 – 2: Tribal Enrollment by Tribe .....12  
 Table 1 – 3: Reservation Lands in Arizona Census Data .....14  
 Table 1 – 4: Mandatory Section 106 Consultation Tribes .....37  
 Table 1 – 5: 2012 Reservation Land Area and State Highway  
 Road Mileage on Tribal Lands.....58  
 Table 3 – 1: Tribes with Allotted Lands in Arizona .....101  
 Table 3 – 2: Tribal Transportation Program System Road Mileage by Ownership.....105  
 Table 4 – 1: ADOT Major Organization Units / Responsibility  
 Assignments of Potential Tribal Interest.....131  
 Table 5 – 1: ADOT Tribal Liasons and Coordinators (May 2020).....177

## Charts

Chart 4 – 1: ADOT Organization Chart (November 5, 2019) .....130

Chart 4 – 2: ADOT Internal Project Process For a Major State Highway Project .....134

Chart 4 – 3: Integrated Project Process with Consultation Points .....139

Chart 4 – 3: Integrated Project Process with Consultation Points (CONTINUED) .....140

## Maps

Map 1 – 1: American Indian Reservations.....8

Map 1 – 2: Arizona System of Airports .....48

Map 1 – 3: American Indian Reservations and Rural Public Transit Services.....52

Map 1 – 4: American Indian Reservations and Transit Services  
for Enhanced Mobility of Seniors and Individuals with Disabilities ..... 53

Map 1 – 5: American Indian Reservations and Statewide Pedestrian  
Demand Index Map.....55

Map 1 – 6: American Indian Reservations and Arizona Railroads.....56

Map 1 – 7: American Indian Reservations and Arizona State Highway System.....60

Map 1 – 8: Motor Vehicle Division Offices on or Serving Tribal Lands .....62

Map 4 – 1: ADOT Engineering District Boundaries .....138

Map 5 – 1: BIA Navajo, Southwest, and Western Region Boundaries.....155

Map 5 – 2: Arizona COGs and MPOs .....162

Map 5 – 3 Areas of Responsibility for Adot MPD Tribal Liaisons .....179

THIS PAGE WAS INTENTIONALLY LEFT BLANK



## Abbreviations and Acronyms

|              |  |
|--------------|--|
| <b>ACA</b>   | Arizona Commerce Authority   |
| <b>ADOT</b>  | Arizona Department of Transportation                                   |
| <b>AG</b>    | Attorney General   |
| <b>AGOTR</b> | Arizona Governor's Office on Tribal Relations                          |
| <b>AI</b>    | American Indian (s)  |
| <b>ALRIS</b> | Arizona State Land Department Arizona Land Resource Information System |
| <b>AIDA</b>  | Arizona International Development Authority                            |
| <b>AN</b>    | Alaska Native  |
| <b>ARS</b>   | Arizona Revised Statutes   |
| <b>ASD</b>   | Administrative Services Division (ADOT)                                |
| <b>ATSPT</b> | Arizona Tribal Strategic Partnering Team (ADOT)                        |
| <b>AzAA</b>  | Arizona Airport Association  |
| <b>BIA</b>   | Bureau of Indian Affairs   |
| <b>CFR</b>   | Code of Federal Regulations  |
| <b>COG</b>   | Council of Government (s)  |
| <b>ECD</b>   | Enforcement and Compliance Division (ADOT)                             |
| <b>FHWA</b>  | Federal Highway Administration   |
| <b>FLH</b>   | The Office of Federal Lands Highway                                    |
| <b>FLHP</b>  | Federal Lands Highway Program  |
| <b>FTA</b>   | Federal Transit Administration   |
| <b>HPT</b>   | Historic Preservation Team (ADOT)                                      |
| <b>HSIP</b>  | Highway Safety Improvement Program                                     |
| <b>IRA</b>   | Indian Reorganization Act  |
| <b>IRR</b>   | Indian Reservation Roads   |
| <b>ITCA</b>  | Inter Tribal Council of Arizona, Inc.                                  |
| <b>ITD</b>   | Intermodal Transportation Division (ADOT)                              |
| <b>ITWG</b>  | ITCA Transportation Working Group                                      |



## Abbreviations and Acronyms

|               |   |
|---------------|---|
| <b>LTAP</b>   | Local Technical Assistance Program (ADOT)                       |
| <b>MAG</b>    | Maricopa Association of Governments                             |
| <b>MAP-21</b> | Moving Ahead for Progress in the 21 <sup>st</sup> Century       |
| <b>MPD</b>    | Multimodal Planning Division (ADOT)                             |
| <b>MPO</b>    | Metropolitan Planning Organization (s)                          |
| <b>MVD</b>    | Motor Vehicle Division (ADOT)                                   |
| <b>NA</b>     | Native American (s)   |
| <b>NTTFI</b>  | National Tribal Transportation Facility Inventory               |
| <b>PAG</b>    | Pima Association of Governments                                 |
| <b>PARA</b>   | Planning Assistance for Rural Areas (Program)                   |
| <b>P.L.</b>   | Public Law  |
| <b>STB</b>    | State Transportation Board                                      |
| <b>STBGP</b>  | Surface Transportation Block Grant Program                      |
| <b>SHS</b>    | State Highway System  |
| <b>SRTS</b>   | Safe Routes to School (Program)                                 |
| <b>STIP</b>   | State Transportation Improvement Program                        |
| <b>SWAAAE</b> | Southwest Chapter of American Association of Airport Executives |
| <b>TE</b>     | Transportation Enhancements (Program)                           |
| <b>TERO</b>   | Tribal Employment Rights Ordinance/Office                       |
| <b>THPO</b>   | Tribal Historic Preservation Office                             |
| <b>TIP</b>    | Transportation Improvement Program (s)                          |
| <b>TraCS</b>  | Traffic and Criminal Software                                   |
| <b>TMA</b>    | Transportation Management Agency                                |
| <b>TTAP</b>   | Tribal Technical Assistance Program                             |
| <b>TTP</b>    | Tribal Transportation Program                                   |
| <b>USC</b>    | United States Code  |
| <b>USDOT</b>  | United States Department of Transportation                      |



## Course Introduction

### BACKGROUND

Arizona Department of Transportation (ADOT) employees work with American Indian (AI) tribes and tribal staff on a daily basis. Tribes are recognized as sovereign nations with their reservation lands held in trust by the United States government for the use of a tribe. The United States holds the legal title to the land, and the tribe holds the beneficial interest. Tribal trust land is held communally by the tribe and is managed by the tribal government. The tribe may not convey or sell trust land without the consent of the federal government.<sup>2</sup>



ADOT & Kaibab Paiute Tribe  
Employees Consulting during SR  
389 Road Safety Assessment

As a result of these facts, state government activities involving tribal lands require excellent communication and coordination with the affected tribe(s). The requirements for communication, coordination, and consultation between the federal government and state governments with tribal governments have changed considerably over the last 200 years. These changes have come through the guidance provided by statutes, court actions, regulations, executive orders, and management policies and actions, many of which will be traced in this Handbook. This direction helps guide how ADOT and its employees are expected and required to work with tribal governments and their staff. Following are some examples of guidance on tribal consultation that are particularly relevant to ADOT.

Title 23, Chapter 1, §135(e)(2) of the United States Code (USC) requires each state that is conducting statewide transportation planning to consider the concerns of tribal governments that have jurisdiction over land within the boundaries of the state.

Additionally, paragraphs 135(f) and 135(g) require that in each area of the state under the jurisdiction of a tribal government, the ADOT Statewide Long-Range Transportation Plan (LRTP) and the Statewide Transportation Improvement Program

<sup>2</sup> <http://www.ncai.org/policy-issues/tribal-governance>

(STIP) shall be developed in **consultation** with the tribal government and the Secretary of the Interior. To implement these requirements, the Code of Federal Regulations (CFR) 23, § 450.210(c) requires that for each area of the state under the jurisdiction of a tribal government, the state shall develop the LRTP and STIP in **consultation** with the tribal government and the Secretary of Interior. States shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for **consulting** with tribal governments and federal land management agencies in the development of the LRTP and the STIP.

The federal government's responsibilities for consulting with tribal governments were recognized in United States Department of Transportation (USDOT) Order 5301.1 issued on November 16, 1999; and re-enforced by Executive Order 13175 issued on November 6, 2000 and Presidential Memorandum issued on November 5, 2009.

In 1999, ADOT implemented the Arizona Tribal Strategic Partnering Team (ATSPT) as a tribal coordination effort. The purpose of ATSPT was to bring together representatives from state, tribal, federal, and local governments and tribal organizations to discuss state-tribal-related transportation issues and to develop inter-agency forums through which those issues could be addressed. The ATSPT is no longer active, however ADOT continues tribal coordination through the Inter Tribal Council of Arizona Transportation Working Group, current Federal-State-Tribal transportation partnerships, and its designated tribal liaisons who work on a variety of issues. This work is discussed further in Module 5.



ADOT's Collaborative Long-Range Transportation Planning Process

Recognizing the importance of consultation and cooperation between the State of Arizona and the 22 sovereign tribes in Arizona, Governor's Executive Order 2006-14 was issued on September 14, 2006. The Order required all Executive Branch agencies to develop and implement tribal consultation policies, and to the extent possible, integrate the input generated from tribal consultation into their decision making.

This Executive Order language was then codified into law effective July 1, 2016, through Arizona Revised Statute (ARS) 41-2051, Governor's Office on Tribal Relations; director; responsibilities of state agencies; report. An excerpt from this statute is provided as follows.

“ Each state agency shall:

1. Develop and implement tribal consultation policies to guide the agency’s work and interaction with the tribal nations of this state.
2. To the extent practicable and permitted by law, seek input from appropriate elected or appointed tribal officials before undertaking any action or policy that will, or is reasonably believed to, have the potential to affect a tribal community or its members.
3. To the fullest extent possible and to the best of the agency’s ability, integrate the input generated from tribal consultation into the agency’s decision-making processes to achieve mutually acceptable solutions.
4. Designate a state member to assume responsibility for the agency’s implementation of the tribal consultation policies and to act as the principal point of contact for tribal affairs.
5. On or before October 1 of each year, review the agency’s tribal consultation policies and submit an electronic progress report with performance measures to the office. The office shall make the reports available to tribal leaders and legislators.

”

ADOT implemented on November 19, 2008 and updated on July 23, 2019 *MGT-16.01, Department-wide Native Nation/Tribal Government Consultation Policy*, in support of Governor’s Executive Order 2006-14 and ARS 41-2051, in compliance with the requirements of USC 23 and CFR 23, and in support of the USDOT and Presidential orders. ADOT has developed a *Planning and Programming Guidebook for Tribal Governments* that is intended to provide tribes assistance in understanding the ADOT planning and programming processes and associated funding sources. Another resource is the Tribal Transportation Planning Workshop Package, which is a guide to transportation improvement project phases of planning, funding, programming, development and maintenance.

## PURPOSE AND OBJECTIVES OF THE TRAINING COURSE AND HANDBOOK

The **purpose of the training course** is to equip ADOT personnel with the knowledge and tools necessary to carry out effective consultation and coordination with tribal governments and tribal personnel. Its objectives are to provide:

- ☑ A clear understanding of the importance of effective consultation and coordination.
- ☑ An appreciation of American Indian history as a people and the establishment of tribal reservations.
- ☑ A clear understanding of current statutory and policy requirements related to government-to-government relations and consultation and coordination with tribes.
- ☑ An understanding of tribal sovereignty and its implications for working with tribes.
- ☑ An understanding of the federal Tribal Transportation Program (TTP) and other tribal transportation programs and how they interrelate with ADOT programs.
- ☑ Introduction of the tribes and tribal organizations in Arizona and their relationships with other governmental agencies, including the Bureau of Indian Affairs (BIA), Federal Highway Administration (FHWA), local governments, and regional associations.
- ☑ A clear understanding regarding differences among tribes and the need to take those differences into consideration during the consultation and coordination processes.
- ☑ The necessary guidance to carry out an effective consultation and coordination program with a tribe.

The **purposes of this Handbook** are to expand on and supplement information provided in the training course and to serve as a reference source on tribal consultation and coordination for ADOT personnel practicing tribal consultation and coordination.

## ORGANIZATION OF HANDBOOK MODULES

The Handbook is organized to follow the training course with the five modules presented in the same order. A reference section lists sources that provide supplemental information on tribal consultation. Internet links are provided for sources when available.

### MODULES

- ✦ **MODULE 1** is an overview of national and Arizona tribal demographics, including descriptive data on each tribe currently located within Arizona and those tribes with aboriginal bases in the state. Maps show the locations of reservation lands and state highways and other transportation facilities and services on reservation lands. A table is provided showing the mileage of state highways on each reservation and the area of each reservation.
- ✦ **MODULE 2** sets the foundation for understanding federal level intergovernmental relations with native nations/tribal governments. A historical perspective is provided on government-to-government relations, as well as changes in federal AI policies.
- ✦ **MODULE 3** sets the foundation for understanding intergovernmental relations with native nations/tribal governments at the state level. State-tribal relations are traced since the mid-20th century, including the issue of tribal sovereignty. Federal-state-tribal common interest areas are discussed as a reminder that government agencies at all levels work to benefit their people. Governments must work together to ensure the benefits occur, including those for the traveling public.
- ✦ **MODULE 4** addresses the factors involved in effective ADOT-tribal consultation and coordination. These include understanding cultural and traditional considerations, and adherence to the guiding principles and critical elements of consultation and to ADOT consultation procedures. ADOT processes, programs, and organizational structure that impact tribes are described. The importance for ADOT employees to be able to assist tribal contacts with finding more information about ADOT is addressed, as well as information ADOT employees need to know about working with tribes. Documented ADOT tribal consultation guidance is also identified and described. A brief introduction to the TTP is provided.
- ✦ **MODULE 5** identifies and describes several tribal-focused organizations with which ADOT coordinates to assist in improving tribal consultation. ADOT initiatives to improve tribal consultation are also described.
- ✦ **REFERENCE SECTION** provides website links to tribal-focused organizations, manuals, guidebooks, statutes, regulations, policies, and sources of other reading materials that may be helpful in implementing effective tribal consultation.

## HANDBOOK MODULES AT A GLANCE

1. Overview of National and State Tribal Demographics
2. Setting the Foundation for Understanding Intergovernmental Relations with Native Nations/Tribal Governments – **Federal Level**
3. Setting the Foundation for Understanding Intergovernmental Relations with Native Nations/Tribal Governments – **State Level**
4. Effective Tribal Consultation and Coordination
5. ADOT Tribal Coordination with Tribal-focused organizations

## CORRESPONDING TERMS FREQUENTLY USED IN HANDBOOK

There are several corresponding terms used throughout the Handbook that are associated with tribal lands, tribes, and Native Americans. The term used at any point is chosen in the context of the topic under discussion. For example, Indian would be used for Native American when legislation or regulation specifies its use; and Tohono O'odham Nation would be used in place of tribe when addressing the Tohono O'odham Nation specifically. Following are the corresponding terms with the most commonly used term listed first.

- **TRIBAL LANDS** – reservations, trust lands, aboriginal lands, and ancestral lands
- **TRIBE** – tribal government, band, nation, community, and tribal government name
- **NATIVE AMERICAN (NA)** – American Indian (AI), Alaska Native (AN), and Indian



THIS PAGE WAS INTENTIONALLY LEFT BLANK



## Module 1: Overview of National and State Tribal Demographics



### LEARNING OBJECTIVES

This module includes the following learning objectives:

- ⌚ Provide information about tribes resident in Arizona and those with ancestral interests in the state.
- ⌚ Show the impacts of tribal demographics on the state transportation system and ADOT work.
- ⌚ Explain how ADOT works with tribal governments on activities ranging from planning multimodal transportation improvements to design, construction, maintenance, and operation of the state highway system.
- ⌚ Show how ADOT provides services to tribal governments and members on a broad range of activities, including motor vehicle and driver licensing, training, and guidance in securing transportation funding.

### MODULE SUMMARY

This module presents an overview of American Indian (AI) tribes with current presence in Arizona and tribes that have ancestral /aboriginal land interests. Tribal reservations account for about 28 percent of Arizona's 114,000 square miles. There are 1,237 miles or about 18 percent of the entire state highway system on tribal lands. These substantial numbers



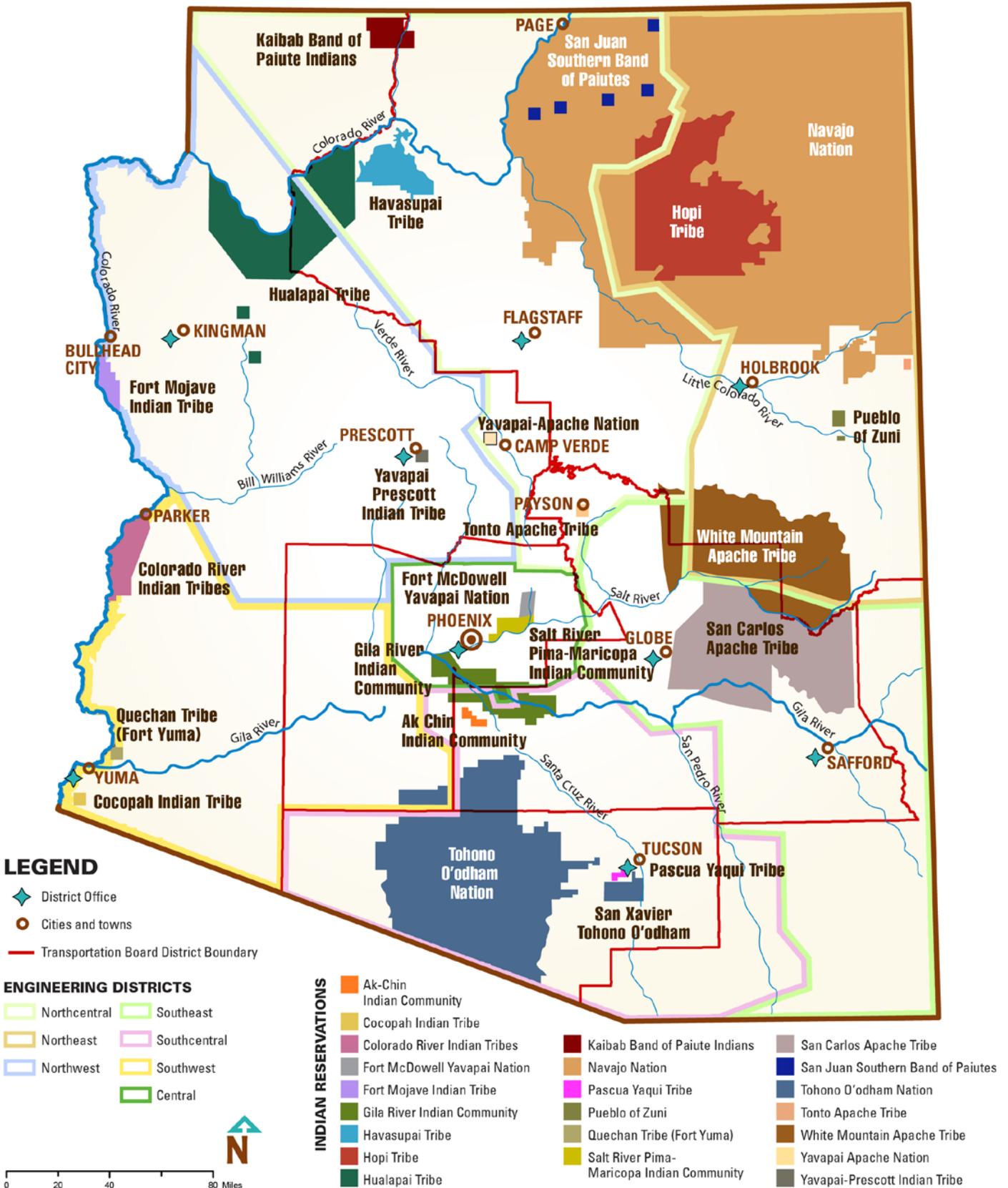
are strong indicators of the importance of ADOT personnel consulting and coordinating effectively with tribal governments when working on issues affecting specific tribal governments or on mutual issues impacting numerous tribal governments. Consultation and coordination with tribes goes beyond just highways. It is required for any transportation interests shared by both ADOT and tribal governments in Arizona.



### TRIBES CURRENTLY RESIDENT IN ARIZONA

There are 22 federally recognized tribes currently resident in Arizona. Twenty-one of these tribes have reservation lands. The remaining tribe, San Juan Southern Band of Paiute Indians, is currently working toward establishing a land base, which would be located within the northern boundaries of Navajo Nation. Some reservation-based tribes, such as Hopi and Salt River Pima-Maricopa Indian Community, have cultural and religious interests that extend beyond reservation boundaries. **Map 1-1** on the next page shows the location of the 21 American Indian (AI) reservations.

MAP 1 – 1: AMERICAN INDIAN RESERVATIONS



Demographic Summaries for Each Tribe Resident in Arizona

Table 1-1 lists the 22 resident tribes, nations, communities, and bands currently residing in Arizona. Summaries of important demographic characteristics for each of the 22 tribes start on Page 15.

TABLE 1 – 1: TRIBES RESIDING IN ARIZONA

| NAME OF FEDERALLY RECOGNIZED TRIBE |   |
|------------------------------------|---|
| ▶ Ak-Chin Indian Community         | ▶ Navajo Nation                             |
| ▶ Cocopah Indian Tribe             | ▶ Pascua Yaqui Tribe                        |
| ▶ Colorado River Indian Tribes     | ▶ Pueblo of Zuni                            |
| ▶ Fort McDowell Yavapai Nation     | ▶ Salt River Pima-Maricopa Indian Community |
| ▶ Fort Mojave Indian Tribe         | ▶ San Carlos Apache Tribe                   |
| ▶ Quechan Tribe (Fort Yuma)        | ▶ San Juan Southern Band of Paiute Indians  |
| ▶ Gila River Indian Community      | ▶ Tohono O’odham Nation                     |
| ▶ Havasupai Tribe                  | ▶ Tonto Apache Tribe                        |
| ▶ Hopi Tribe                       | ▶ White Mountain Apache Tribe               |
| ▶ Hualapai Tribe                   | ▶ Yavapai-Apache Nation                     |
| ▶ Kaibab Band of Paiute Indians    | ▶ Yavapai-Prescott Indian Tribe             |

Information for the summaries of tribal demographic characteristics was extracted from the sources listed on Page 10. The information in the summaries was current as of October 2019, except population data was typically from the 2013-2017 American Community Survey 5-Year Estimates, and tribal enrollment data, the date which varied by tribe. All tribes have unique characteristics in regards to culture, history, location, language, and arts and crafts. Many of the tribal websites have information about the tribe’s history and culture and serve as a good starting point for understanding tribal traditions and values. Certain information, such as general time periods for special tribal events and frequency of tribal council meetings and election terms, is helpful when working with tribes. The Tribal Employment Rights Ordinance/Office (TERO) information is important to determine employment goals and tax requirements when working with tribes. For example, when an ADOT staff member is expecting concurrence on a project, it may require a tribal resolution and personnel should be cognizant of realistic time frames for a response. ADOT personnel that are working with a specific tribe, nation, community, or band should prepare themselves by becoming familiar with the information, summarized in the tables, that follow as well as individual tribal websites.

- **LOCATION:** Individual tribal websites
- **POPULATION:** U.S.Census American Community Survey, 2013-2017 5-Year Estimates, unless otherwise noted
- **ENROLLED TRIBAL MEMBERS:** Tribal websites, communications with Tribal Enrollment offices, or ITCA
- **PRONUNCIATION:** Phonetic pronunciations where needed
- **OVERVIEW:** Individual tribal websites, Inter Tribal Council of Arizona (ITCA)<sup>3</sup>, and Arizona Department of Commerce Community Profiles
- **CONTACT INFORMATION:** Individual tribal websites, and Tribal Transportation Consultation Process Reference Manual
- **WEBSITE:** Individual tribal websites
- **GOVERNANCE:** Individual tribal websites
- **FREQUENCY OF TRIBAL MEETINGS:** Per information given over the phone to main government phone number. Tribal constitutions were referenced when necessary
- **TRIBAL TRANSPORTATION CAPACITY:** Information provided by Tribal websites, ADOT Tribal Liaisons, Bureau of Indian Affairs (Western Region), and ITCA
- **SPECIAL TRIBAL EVENTS:** Individual tribal websites and ITCA
- **TRIBAL EMPLOYMENT RIGHTS ORDINANCE/OFFICE (TERO):** Individual tribal websites, responses to information request

The tribal transportation capacity description provided in the summary of important demographic characteristics for each tribe provides an overview of the tribe's level of transportation involvement and commitment, particularly as it relates to road projects. Administration capacity indicates that the tribe provides oversight for the functions described and indicates substantial staff involvement in administering transportation activities. Planning and engineering capacity addresses how a tribe handles the technical aspects of transportation planning and engineering. Some tribes have large transportation planning and engineering staffs. Other tribes have some technical staff, often assigned to transportation part time, but also use consultants for added expertise. Finally, some tribes rely on the Bureau of Indian Affairs for technical services. A few tribes have formed transportation oversight committees that bring a broad tribal perspective to transportation issues and direction.

The TERO information listed in the tribal summaries provides contact information for TERO offices, or if there is not a TERO Office, then contacts are provided for Human Resources, Finance Departments, or Contract and Grants Departments, for information about labor requirements, contracting, and taxation. Another potential source of TERO information is the BIA Branch of Real Estate Services for either the BIA Western Region, BIA Southwest Region, or the BIA Navajo Region. The website for the BIA Western Region is <https://www.bia.gov/regional-offices/western/agencies>. This website provides web links to BIA Arizona agencies, many of which have their own real estate services. The website for the BIA Southwest Region is <https://www.bia.gov/regional-offices/southwest/zuni-agency>. The Zuni agency provides services to the Pueblo of Zuni Tribe. The website for the BIA Navajo Region is <https://www.bia.gov/regional-offices/navajo/agencies>. This website provides web links to the five Navajo Region agencies, which each have Real Estate services.

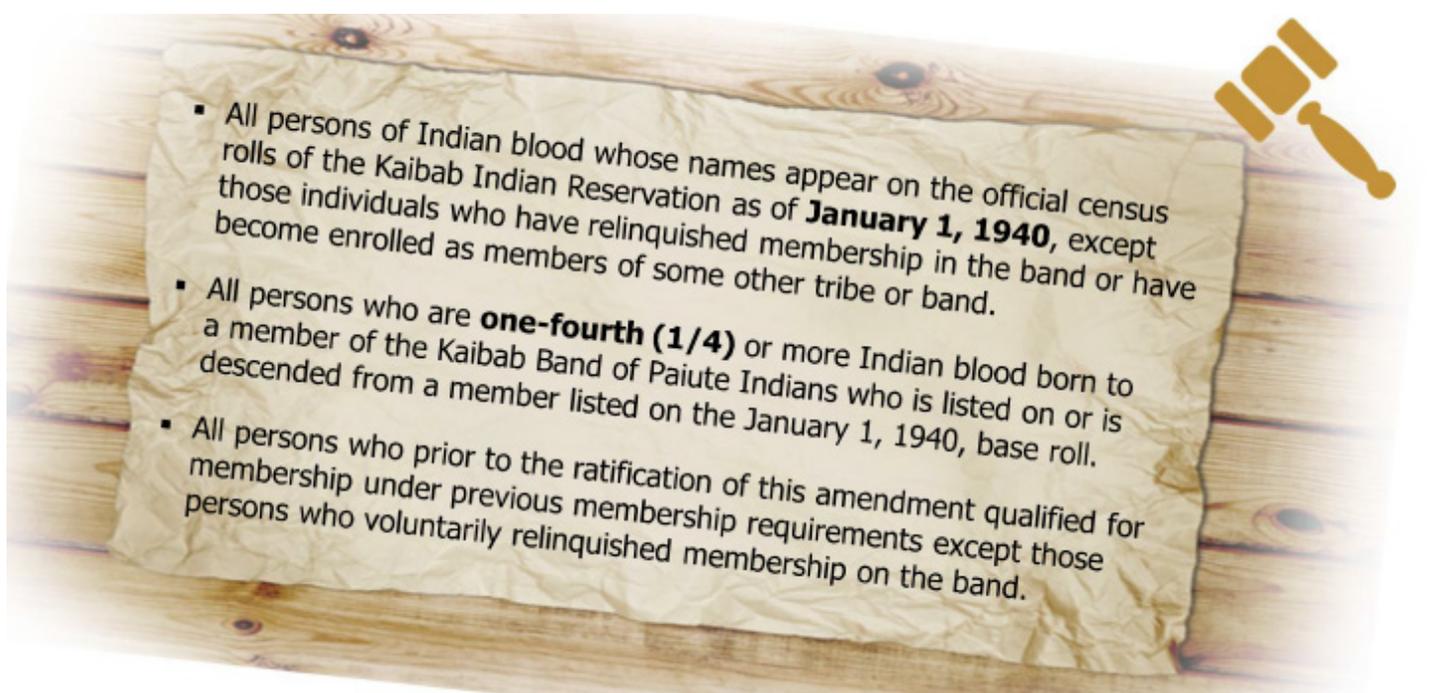
<sup>3</sup> Inter Tribal Council of Arizona, <https://itcaonline.com/>

## Who Counts as American Indian or Alaska Native?

Population can be counted in several ways as the following discussion shows. The population is presented in two major categories. The first is tribal enrollment, which is the number of official members of a tribe regardless of whether they live on the reservation. The second category is the tribal census, which represents the number of people living on the reservation, regardless of whether they are members of the tribe or even American Indians (AI) or Alaska Natives (AN).

## Tribal Enrollment – Who is Considered a Member of a Tribe?

The basic law establishing federal Indian policy has a different standard of who is Indian. It is a political standard rather than a racial or genealogical standard. It requires that a person be an official member of a federally-recognized Indian tribe, and legally each Indian tribal government has the sole right to decide who is a member of that tribe. That is a very different matter than permitting each person to say whether they consider themselves to be Indian or Alaska Native [as in the U. S. Census]<sup>4</sup>. An example of the membership requirements of the Kaibab Band of Paiute Indians membership requirements, as contained in their constitution, is shown below.

- 
- All persons of Indian blood whose names appear on the official census rolls of the Kaibab Indian Reservation as of **January 1, 1940**, except those individuals who have relinquished membership in the band or have become enrolled as members of some other tribe or band.
  - All persons who are **one-fourth (1/4)** or more Indian blood born to a member of the Kaibab Band of Paiute Indians who is listed on or is descended from a member listed on the January 1, 1940, base roll.
  - All persons who prior to the ratification of this amendment qualified for membership under previous membership requirements except those persons who voluntarily relinquished membership on the band.

4 DeWeaver, Norm. Understanding US Census Bureau Data. 2008

Table 1-2 below shows the tribal enrollment for the 22 tribes residing in Arizona.

**TABLE 1 – 2: TRIBAL ENROLLMENT BY TRIBE**

| TRIBE  | ENROLLMENT     |
|--|----------------|
| Ak-Chin Indian Community   | 1,094          |
| Cocopah Tribe  | 2,102          |
| Colorado River Indian Tribes   | 4,496          |
| Fort McDowell Yavapai Nation   | 890            |
| Fort Mojave Tribe  | 1,438          |
| Gila River Indian Community  | 20,717         |
| Havasupai Tribe  | 650            |
| Hopi Tribe   | 14,623         |
| Hualapai Tribe   | 2,411          |
| Kaibab Band of Paiute Indians  | 367            |
| Navajo Nation  | 309,800        |
| Pascua Yaqui Tribe   | 21,000         |
| Quechan Tribe (Fort Yuma)  | 3,950          |
| Salt River Pima-Maricopa Indian Community  | 9,504          |
| San Carlos Apache Tribe  | 14,873         |
| San Juan Southern Paiute   | 300            |
| Tohono O’odham Nation  | 33,643         |
| Tonto Apache Tribe   | 170            |
| White Mountain Apache Tribe  | 17,150         |
| Yavapai-Apache Nation  | 2,619          |
| Yavapai-Prescott Tribe   | 180            |
| Zuni Tribe   | 11,888         |
| <b>Approximate Total Enrollment Population for Tribes Residing in Arizona</b>                          | <b>473,865</b> |
| <b>Source: Tribal Governments communications, websites (data available October 2019), or ITCA data</b> |                |

Tribal enrollment population is generally higher than reservation population, indicating that some tribal members live off their tribe’s reservation. It is also different from U.S. Census data, where race is self declared. To be enrolled in a tribe a person must meet requirements set by the tribal government.

## TRIBAL CENSUS

Collection of race data originated with the United States (U.S.) 1790 Census, but American Indians were not counted as a separate race category until the 1860 Census and were enumerated throughout the entire country in the 1890 Census. Starting with the 1940 Census, Alaskan Natives were included under a separate race group from American Indians and by the 1980 Census, all states were enumerating Alaska Natives. Beginning with the 2000 Census, a combined race designation of American Indian/Alaska Native was employed.

The standards for categorizing race in the U.S. Census were modified in 1997 and implemented in the 2000 Census. For the first time, respondents had the option to identify with more than one race.

The implications of this revision have been significant to the American Indian/Alaska Native counts. The population data interpretations have been complicated and consequently, the results can be dissimilar tribal profiles and community characteristics, depending on which race categories are utilized – total reservation population all races; American Indian/Alaska Native population alone; American Indian/Alaska Native population in combination with another race; or American Indian/Alaska Native alone and combined.

The Census Bureau recognizes both the AI/AN alone and in combination race categories, but tribal enrollment remains the official record of tribal membership.

For the 2010 Census, Arizona is one of ten states with the largest AI/AN alone and combined populations. In fact, Arizona is home to 7 of the 25 largest reservation populations in the nation, according to the U.S. Census. Arizona along with two other states also has the largest share of AI/AN alone population. **Table 1-3** shows the population living on each of the 21 reservations in Arizona. Note that the tribal enrollment population is generally considerably higher than the reservation population, indicating that many tribal members live off their tribe’s reservation.<sup>5</sup>



5 Portions of Tribal Census was excerpted from Norris, Tina, Vines, Paula and Hoeffel, Elizabeth. The American Indian and Alaska Native Population 2010. Issued January 2012.

**TABLE 1 – 3: RESERVATION LANDS IN ARIZONA CENSUS DATA**

| RESERVATION (ARIZONA UNLESS OTHERWISE NOTED)                     | CENSUS POPULATION (2013-2017 AMERICAN COMMUNITY SURVEY ESTIMATES) |                |                |                   |
|--|---|----------------|----------------|-------------------|
|  | All Races   | AI/AN          | One Race       | Two or More Races |
| Maricopa (Ak Chin) Indian Reservation                            | 1,281   | 1,106          | 1,189          | 92                |
| Cocopah Reservation (AZ & CA)                                    | 1,341   | 714            | 1,311          | 30                |
| Colorado River Indian Reservation (AZ & CA)                      | 9,652   | 2,597          | 9,100          | 552               |
| Fort Apache Reservation (White Mountain Apache)                  | 15,313  | 14,109         | 14,736         | 577               |
| Fort McDowell Yavapai Nation Reservation                         | 1,141   | 877            | 1,037          | 104               |
| Fort Mojave Reservation and Off-Reservation Trust                | 1,707   | 780            | 1,623          | 84                |
| Fort Yuma Indian Reservation (AZ & CA)                           | 1,442   | 812            | 1,306          | 136               |
| Gila River Indian Reservation                                    | 12,196  | 9,986          | 11,255         | 941               |
| Havasupai Reservation*   | 465   | 436            | 455            | 10                |
| Hopi Reservation and Off-Reservation Trust Land                  | 9,268   | 8,797          | 9,168          | 100               |
| Hualapai Indian Reservation and Off-Reservation Trust            | 1,441   | 1,317          | 1,441          | -                 |
| Kaibab Band of Paiute Indians Reservation                        | 280   | 224            | 270            | 10                |
| Navajo Nation Reservation and Off-Reservation Trust (AZ, NM, UT) | 175,005   | 166,762        | 172,554        | 2,451             |
| Pascua Pueblo Yaqui Reservation                                  | 3,888   | 3,114          | 3,530          | 358               |
| Salt River Reservation   | 7,087   | 4,627          | 6,674          | 413               |
| San Carlos Reservation   | 10,611  | 9,576          | 9,912          | 699               |
| Tohono O’odham Nation Reservation and Off-Reservation            | 10,703  | 9,197          | 10,409         | 294               |
| Tonto Apache Reservation   | 139   | 94             | 132            | 7                 |
| Yavapai-Apache Nation Reservation                                | 902   | 782            | 864            | 38                |
| Yavapai-Prescott Reservation                                     | 376   | 191            | 333            | 43                |
| Zuni Reservation and Off-Reservation Trust Land                  | -   | -              | -              | -                 |
| <b>Totals</b>  | <b>264,238</b>  | <b>236,098</b> | <b>257,299</b> | <b>6,939</b>      |

Population Data Source: 2013-2017 American Community Survey 5-Year Estimates, <https://www.census.gov/tribal/>

\*Population data source for Havasupai Tribe is 2010 United States Census

# Ak-Chin Indian Community



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 58 miles south of Phoenix on Highway 347  |
| <b>Population</b>                     | 1,281   |
| <b>Enrolled Tribal members</b>        | 1,094   |
| <b>Land Area</b>                      | 34.1 square miles   |
| <b>Pronunciation (phonetic)</b>       | Auk-Chin  |
| <b>Overview</b>                       | The Ak-Chin Indian Community was created in May of 1912 by way of Executive Order from President Taft. The Community consists of both Tohono O’odham and Pima Indians, who live in the Sonoran Desert of south central Arizona. In 1984, a water rights settlement was approved by Congress, entitling the Ak-Chin Community access to 75,000 acre-feet of Colorado River water. Ak-Chin Farms, Harrah’s Casino, and the Ak-Chin Tribal Government are all major employers. |
| <b>Contact Information</b>            | 42057 W. Peters and Nall Road<br>Maricopa, AZ 85138<br>Phone: 520-568-1000  |
| <b>Website</b>                        | <a href="http://www.ak-chin.nsn.us/">http://www.ak-chin.nsn.us/</a>   |
| <b>Governance</b>                     | The Ak-Chin Indian Community is governed by a council made up of a chairperson, a vice-chairperson, an appointed secretary-treasurer, and three other members. The Community’s governmental structure also is composed of the following committees: Education, Health, Welfare, Housing, and a Farm Board.  |
| <b>Frequency of Tribal Meetings</b>   | Monthly, 1st and 3rd Wednesday of the month at 8:30 a.m.  |
| <b>Tribal Transportation Capacity</b> | Planning, engineering and construction administration.<br>Tribal and consultant planning and engineering capacity.  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ April (2nd Sat.) – Him-Dak Anniversary Celebration</li> <li>▶ July 4th – Picnic and Fireworks</li> <li>▶ September (last Sat.) – Native American Recognition Day</li> <li>▶ October – St. Francis Church Feast and Past Chairman’s Recognition Day</li> </ul>  |
| <b>TERO</b>                           | No Tribal Employment Rights Office/Ordinance, contact:<br>Contracts & Grants Department<br>Address: see above<br>Phone: 520-568-1064<br>Website: see above<br><br>Human Resources Department<br>Address: see above<br>Phone: 520-568-1050<br>Website: see above   |

# Cocopah Indian Tribe



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 13 miles south of Yuma on Highway 95  |
| <b>Population</b>                     | 1,341   |
| <b>Enrolled Tribal members</b>        | 2,102   |
| <b>Land Area</b>                      | 9.4 square miles  |
| <b>Pronunciation (phonetic)</b>       | coh-coh-pah   |
| <b>Overview</b>                       | The Cocopah Indian Reservation was established by an Executive Order from Woodrow Wilson in 1917. In 1985, the Cocopah Land Acquisition Bill extended the area of the Reservation, which is divided into three parcels (East, West, and North Cocopah). With its location adjacent to the Colorado River, agriculture plays an important factor in the community's economy. The Tribe also has a number of economic development enterprises, including the Cocopah Bend Recreational Vehicle Resort, a resort/ conference center, casino, speedway, golf course, and family entertainment center. |
| <b>Contact Information</b>            | Tribal Headquarters<br>14515 S. Veterans Drive Somerton, AZ 85350<br>Phone: (928) 627-2102   Fax: (928) 627-3173  |
| <b>Website</b>                        | <a href="http://www.cocopah.com/">http://www.cocopah.com/</a>   |
| <b>Governance</b>                     | The Cocopah Tribe is governed by a popularly-elected council consisting of a chairman, vice-chairman, and three council members. Members serve two-year terms.  |
| <b>Frequency of Tribal Meetings</b>   | Second Friday of each month at 9 a.m.   |
| <b>Tribal Transportation Capacity</b> | Business Development, Cocopah Indian Housing and Development (CIHAD), Planning Department, Public Works Department, Purchasing Department, BIA provides direct services.  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ February – Cocopah Annual “Miss Cocopah Pageant”</li> <li>▶ April – Land Acquisition Day, Annual Easter Egg Hunt</li> <li>▶ July – Annual Fourth of July Community Celebration, Annual Sports Day Event</li> <li>▶ November – Annual Veteran’s Day Parade and Pow, Annual Community Thanksgiving Dinner</li> <li>▶ December – Annual Children’s Christmas Party</li> </ul>   |
| <b>TERO</b>                           | No Tribal Employment Rights Office/Ordinance, contact:<br>Finance Department<br>Address: see above<br>Phone: 928-627-2102<br>Website: see above<br><br>Human Resources Department<br>Address: see above<br>Phone: 928-627-2102<br>Website: see above  |

# Colorado River Indian Tribes



|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 189 miles west of Phoenix on Highway 95  |
| <b>Population</b>                     | 9,652  |
| <b>Enrolled Tribal members</b>        | 4,496  |
| <b>Land Area</b>                      | 353 square miles in Arizona, 66.7 square miles in California   |
| <b>Pronunciation (phonetic)</b>       | Pronounced as written  |
| <b>Overview</b>                       | Established in March of 1865 for the “Indians of said river and its tributaries,” the Colorado River Indian Reservation straddles a part of the Arizona and California border, although over 80% of the Reservation is located within Arizona. The Reservation’s economy centers around agriculture, recreation, light industry, and government. The Colorado River Indian Tribes has senior water rights to 717,000 acre-feet of the Colorado River, which represents nearly a third of the allotment for the state of Arizona. |
| <b>Contact Information</b>            | 26600 Mohave Road<br>Parker, AZ 85344<br>Phone: 928-669-9211   |
| <b>Website</b>                        | <a href="http://www.crit-nsn.gov/index.shtml">http://www.crit-nsn.gov/index.shtml</a>  |
| <b>Governance</b>                     | The tribal administration is composed of a tribal chairperson, vice-chairperson, secretary, treasurer, and five council members—each position serves for a term of four years.   |
| <b>Frequency of Tribal Meetings</b>   | Unscheduled times  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal and consultant planning and engineering capacity.</li> <li>▶ Tribal Transportation Technical Advisory Committee.</li> </ul>  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ March – Mohave Days Celebration (Establishment of the Reservation)</li> <li>▶ July 4th – Annual 4th of July Celebration</li> <li>▶ September – National Indian Days Celebration – Little Miss, Junior Miss, and Miss CRIT Pageants – All Indian Rodeo (New Date)</li> <li>▶ November – Community Thanksgiving Dinner</li> <li>▶ December – Annual Christmas Program</li> </ul>  |
| <b>TERO</b>                           | CRIT Tribal Employment Rights Office<br>Address: see above<br>Phone 928-669-1380 or 1390<br>Website: <a href="http://www.crit-nsn.gov/crittero/">http://www.crit-nsn.gov/crittero/</a><br><a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>  |

# Fort McDowell Yavapai Nation



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 23 miles east of Phoenix on Highway 87  |
| <b>Population</b>                     | 1,141   |
| <b>Enrolled Tribal members</b>        | 890   |
| <b>Land Area</b>                      | 38.6 square miles   |
| <b>Pronunciation (phonetic)</b>       | Fort McDowell yav-a-pie   |
| <b>Overview</b>                       | The Fort McDowell Yavapai Nation was created by Executive Order in September of 1903. The Reservation is a small parcel of land that is a small portion of the ancestral territory of the Yavapai. The landscape of the area is marked by tree-lined bottom lands along the Verde River and cactus-filled rolling hills. The Fort McDowell Gaming Center, tribal farm, sand and gravel center, and a tribally-owned gas station serve as significant sources of economic activity on the reservation. |
| <b>Contact Information</b>            | PO Box 17779<br>Fountain Hills, AZ 85269<br>Phone: 480-789-7000   |
| <b>Website</b>                        | <a href="https://www.fmyn.org/">https://www.fmyn.org/</a>   |
| <b>Governance</b>                     | The Fort McDowell Yavapai Nation is governed by a popularly-elected tribal council. A president, vice-president, treasurer, secretary, and two members make up the council and each position serves for two years. The Nation's governmental structure includes a planning commission, a citizen's advisory committee, and a housing authority.   |
| <b>Frequency of Tribal Meetings</b>   | First Tuesday of each month at 9:00 a.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal and consultant planning and engineering capacity.</li> <li>▶ Community and Economic Development Division.</li> <li>▶ Planning Advisory Board.</li> </ul>  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ November (1st week) – Orme Dam Celebration</li> <li>▶ Cultural Festival Arts &amp; Crafts</li> </ul>   |
| <b>TERO</b>                           | No Tribal Employment Rights Office/Ordinance, contact:<br>Finance Department<br>Address: see above<br>Phone: 480-789-7000<br>Website: see above<br><br>Human Resources Department<br>Address: see above<br>Phone: 480-789-7148<br>Website: see above  |

# Fort Mojave Indian Tribe



|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 236 miles northwest of Phoenix   |
| <b>Population</b>                     | 1,707  |
| <b>Enrolled Tribal members</b>        | 1,438  |
| <b>Land Area</b>                      | 37 square miles in Arizona, 8.7 square miles in Nevada   |
| <b>Pronunciation (phonetic)</b>       | Fort mo-hah-vee  |
| <b>Overview</b>                       | The Fort Mojave Indian Tribe is spread across three states, with over two-thirds of the Reservation boundaries located in north-west Arizona. The Reservation stretches along the banks of the Colorado River, and the Mojave Indians are the Pipa Aha Macav - the people by the river. Approximately 25,000 acres of its land is used for agricultural development such as irrigated crop land. The two casinos are another notable part of the Fort Mojave Indian Tribe's economy. The 300-room hotel and casino in the Nevada portion of the Reservation was master planned by the Tribe. |
| <b>Contact Information</b>            | 500 Merriman Ave.<br>Needles, CA 92363<br>Phone: 760-629-4591  |
| <b>Website</b>                        | <a href="https://www.fortmojaveindiantribe.com/">https://www.fortmojaveindiantribe.com/</a>  |
| <b>Governance</b>                     | The Fort Mojave Indian Community administration is composed of a tribal chairperson, vice-chairperson, secretary, and four tribal council members. The Community also has a trial and appellate court, a police force, and a housing authority.  |
| <b>Frequency of Tribal Meetings</b>   | 2 <sup>nd</sup> Saturday at 9:00 a.m., and 4 <sup>th</sup> Tuesday at 5:00 p.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal and consultant planning and engineering capacity.</li> </ul>   |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ October – Annual Fort Mojave Indian Days</li> <li>▶ February – Avi Hotel &amp; Casino Anniversary Days and Pow Wow</li> </ul>   |
| <b>TERO</b>                           | TERO Department<br>Address: see above<br>Phone 760-629-4591<br>Website: <a href="https://www.fortmojaveindiantribe.com/tribal-departments/tero-tribal-employment-rights-ordinance/">https://www.fortmojaveindiantribe.com/tribal-departments/tero-tribal-employment-rights-ordinance/</a><br><a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>   |

# Gila River Indian Community



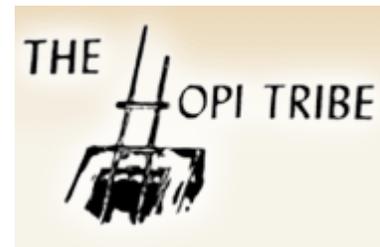
|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | The Gila River Indian Community is located approximately 34 miles south of the Sky Harbor International Airport in Phoenix, Arizona.  |
| <b>Population</b>                     | 12,196  |
| <b>Enrolled Tribal members</b>        | 20,717  |
| <b>Land Area</b>                      | 581.1 square miles  |
| <b>Pronunciation (phonetic)</b>       | hee-la  |
| <b>Overview</b>                       | The Gila River Indian Community traces its roots to the prehistoric Hohokam Indians, who lived and farmed the Gila River Basin. Today the Community is composed of two members of Tribes, the Pima and Maricopa. Established in 1859 by Act of Congress, the Gila River Indian Community is now divided into seven districts that can be found in peripheral areas of the Phoenix metropolitan area. The Community has a diverse economic base that includes Gila River farms, sand and gravel operations, a nationally acclaimed industrial park (Lone Butte), and two casino/resorts. |
| <b>Contact Information</b>            | PO Box 97<br>Sacaton, AZ 85247<br>Phone: 520-562-6000   |
| <b>Website</b>                        | <a href="http://www.gilariver.org/">http://www.gilariver.org/</a>   |
| <b>Governance</b>                     | The Gila River Indian Community administration consists of three branches of government: executive branch comprised of a governor and lieutenant governor; a legislative branch, comprising council members from 7 districts; and a judicial branch.  |
| <b>Frequency of Tribal Meetings</b>   | Council Members meet first and third Wednesdays at 9 a.m.   |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal planning and engineering capacity.</li> <li>▶ Transportation Department</li> <li>▶ Transportation Technical Team and Natural Resources Committee</li> <li>▶ Federal Highway Program Agreement</li> </ul>  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ March – Mul-Chu-Tha (Annual Tribal Fair and Rodeo)</li> <li>▶ February – Ira Hayes Memorial Day</li> <li>▶ March – St. John’s Festival</li> <li>▶ November – Pima Maricopa Arts Festival</li> </ul>  |
| <b>TERO</b>                           | TERO Department<br>Address: see above<br>Phone 520-562-3387/3388<br>Website: <a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>  |

# Havasupai Tribe



|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 310 miles northwest of Phoenix at the bottom of the Grand Canyon National Park. The best way to reach Havasupai is from Highway 66, six miles east of Peach Springs, onto Indian Route 18, a 64-mile road to Hualapai Hilltop. From the Hilltop parking lot there is an eight-mile trail to Supai Village.   |
| <b>Population (2010 Census)</b>       | 465 persons  |
| <b>Enrolled Tribal members</b>        | 650 persons  |
| <b>Land Area</b>                      | 293.8 square miles   |
| <b>Pronunciation (phonetic)</b>       | have-a-soup-pie  |
| <b>Overview</b>                       | For over 1,000 years, the Havasupai have lived in the Grand Canyon, practicing irrigated farming during the summer months and hunting on the plateaus during the winter. The Reservation was created in 1882 and enlarged for the Havasupai, which means “people of the blue-green waters.” Tourism is the primary economic staple for the reservation, bringing in more than 12,000 guests per year. The Tribe also operates a cafe, grocery store, museum, cultural center, and an art/silkscreen studio. The Havasupai Tribe Reservation is at the end of Indian Route 18 off of Historic Route 66. Residents live in Supai Village in 3,000-foot-deep Havasu Canyon. |
| <b>Contact Information</b>            | PO Box 10<br>Supai, AZ 86435<br>Phone: 928-448-2731  |
| <b>Website</b>                        | <a href="http://theofficialhavasupaitribe.com/">http://theofficialhavasupaitribe.com/</a>  |
| <b>Governance</b>                     | The tribe is governed by the Havasupai Tribal Council composed of a chairman, vice-chairman and five members.  |
| <b>Frequency of Tribal Meetings</b>   | Second Saturday of each month at 10 a.m.   |
| <b>Tribal Transportation Capacity</b> | Limited, BIA provides direct services.   |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ January – Land Day</li> <li>▶ August (2nd weekend) – Peach Festival</li> </ul>  |
| <b>TERO</b>                           | No Tribal Employment Rights Office/Ordinance,<br>contact: Controller<br>Phone: 928-433-8144  |

# Hopi Tribe



|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 250 miles northeast of Phoenix   |
| <b>Population</b>                     | 9,268  |
| <b>Enrolled Tribal members</b>        | 14,623   |
| <b>Land Area</b>                      | 2,438.6 square miles   |
| <b>Pronunciation (phonetic)</b>       | hope-pee   |
| <b>Overview</b>                       | The Hopi Reservation is located in the high deserts of northeastern Arizona and is surrounded by the Navajo Nation. The Hopi people trace their Arizona roots back to more than 2,000 years. There are 12 villages on three mesas. Throughout the Hopi Reservation, every village is an autonomous government, but the Hopi Tribal Council sets policy to oversee tribal business and law. Agriculture continues to have an important role in the Hopi economy. Old Oraibi is believed to be the oldest continuously inhabited village in the United States, established as early as 1150 A.D. Kykotsmovi is the site of the Hopi Tribal Headquarters. |
| <b>Contact Information</b>            | PO Box 123<br>Kykotsmovi, AZ 86039<br>Phone: 928-734-3000  |
| <b>Website</b>                        | <a href="http://www.hopi-nsn.gov/">http://www.hopi-nsn.gov/</a>  |
| <b>Governance</b>                     | Throughout the Hopi reservation, every village is an autonomous government, however the Hopi Tribal Council makes law for the tribe and sets policy to oversee tribal business. The current council consists of a chairman, vice-chairman, secretary, treasurer, sergeant-at-arms and 14 village representatives. Each representative serves a two-year term.  |
| <b>Frequency of Tribal Meetings</b>   | 1 <sup>st</sup> day of each quarter at 9 a.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal and consultant planning and engineering capacity.</li> <li>▶ Transportation Department</li> <li>▶ Transportation Task Team</li> </ul>  |
| <b>Special Tribal Events</b>          | There are no calendar dates for the Hopi, due to respect for each individual village. However, you may contact the community development offices (Monday – Friday) in each village for information on what ceremonies are open to the public and what is prohibited in that village. To inquire about receiving general information through the mail, you may contact the Hopi Cultural Preservation Office.   |
| <b>TERO</b>                           | Tribal Employment Rights Office<br>Address: see above<br>Phone: 928-734-3161<br>Website: <a href="https://www.hopi-nsn.gov/tribal-services/office-of-revenue-commission/">https://www.hopi-nsn.gov/tribal-services/office-of-revenue-commission/</a><br><a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>  |

# Hualapai Tribe



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 250 miles northwest of Phoenix on SR66  |
| <b>Population</b>                     | 1,441   |
| <b>Enrolled Tribal members</b>        | 2,411   |
| <b>Land Area</b>                      | 1,550.2 square miles  |
| <b>Pronunciation (phonetic)</b>       | Walapai   |
| <b>Overview</b>                       | Hualapai, meaning “People of the Tall Pines,” was established in 1883 by an Executive Order. The Reservation rests along 108 miles of the Colorado River and the Grand Canyon. The topography varies from rolling grassland to forest and the rugged canyons of the Colorado River. The Hualapai Tribe’s primary economic activities center around tourism, cattle ranching, timber sales, and arts and crafts. |
| <b>Contact Information</b>            | PO Box 179<br>Peach Springs, AZ 86434<br>Phone: 928-769-2216  |
| <b>Website</b>                        | <a href="http://hualapai-nsn.gov/">http://hualapai-nsn.gov/</a>   |
| <b>Governance</b>                     | Tribal government consists of a chairperson, vice-chairperson, and a seven-member tribal council. Council members serve three-year terms.   |
| <b>Frequency of Tribal Meetings</b>   | First Saturday of every month at 8 a.m.   |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal and consultant planning and engineering capacity.</li> </ul>  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ May – Route 66 Days</li> <li>▶ June – Sobriety Festival</li> <li>▶ August – Miss Hualapai</li> <li>▶ October – Indian Day</li> </ul>   |
| <b>TERO</b>                           | Tribal Employment Rights Office<br>Address: see above<br>Phone: 928-769-2216, ext. 108<br>Website: <a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>  |

# Kaibab Band of Paiute Indians



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 350 miles north of Phoenix  |
| <b>Population</b>                     | 280   |
| <b>Enrolled Tribal members</b>        | 367   |
| <b>Land Area</b>                      | 188.7 square miles  |
| <b>Pronunciation (phonetic)</b>       | KY-bab pie-ute  |
| <b>Overview</b>                       | The Kaibab-Paiute Reservation is located along Kanab Creek in the grasslands and plateaus of northern Arizona. The Kaibab-Paiute people are members of the Southern Paiute Nation. Three national parks, one national monument, and Glen Canyon National Recreation Area all rest within a two-hour drive of the Reservation. Arizona Highway 389 crosses the Kaibab-Paiute Reservation and is a main thoroughfare between Las Vegas and Lake Powell, making the Kaibab-Paiute economy focused on tourism and livestock. Additionally, the Tribe is involved in agriculture and owns a large fruit orchard. The Reservation contains five tribal villages. The non-Indian community of Moccasin, and Pipe Spring National Monument are also located entirely within the Reservation boundary. |
| <b>Contact Information</b>            | Kaibab Band of Paiute Indians<br>Tribal Admin Bldg#1<br>North Pipe Spring Rd.<br>Fredonia, AZ 86022   |
| <b>Website</b>                        | <a href="http://kaibabpaiute-nsn.gov/">http://kaibabpaiute-nsn.gov/</a>   |
| <b>Governance</b>                     | A chairperson, vice-chairperson, and five council members, all serving three-year terms, make up the Kaibab-Paiute tribal government.   |
| <b>Frequency of Tribal Meetings</b>   | Every third Thursday at 9 a.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Consultant planning and engineering capacity.</li> </ul>   |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ September – Kaibab Paiute Heritage Day Celebration</li> </ul>  |
| <b>TERO</b>                           | No Tribal Employment Rights Office/Ordinance, contact:<br>Finance Department<br>Address: see above<br>Phone: 928-643-7245<br>Website: see above<br><br>Human Resources Department<br>Address: see above<br>Phone: 928-643-8307<br>Website: see above  |

# Navajo Nation



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 260 miles northeast of Phoenix  |
| <b>Population</b>                     | 175,005 (Arizona)   |
| <b>Enrolled Tribal members</b>        | 309,800   |
| <b>Land Area</b>                      | 18,119.2 square miles (Arizona)   |
| <b>Pronunciation (phonetic)</b>       | Pronounced as written.  |
| <b>Overview</b>                       | The Navajo refer to themselves as the Diné, or “the People.” In 1868, a peace treaty was signed allowing the Navajo people to return to their homeland. Today, the Navajo Nation represents the largest Tribe in the U.S. and stretches across the high deserts and forests of the four corners region. Tourism has a significant role in the Navajo Nation’s economy, as it is home to natural wonders such as Canyon de Chelly and Rainbow Natural Bridge. The Navajo Nation is also home to Diné College, the first tribally controlled community college in the country. The college features a six- story, Hogan-shaped cultural center. |
| <b>Contact Information</b>            | PO Box 663<br>Window Rock, AZ 86515<br>Phone: 928-871-6544  |
| <b>Website</b>                        | <a href="http://www.navajo-nsn.gov/">http://www.navajo-nsn.gov/</a><br><a href="http://www.navajodot.org/">http://www.navajodot.org/</a>  |
| <b>Governance</b>                     | The Navajo Nation government consists of three branches: executive, legislative, and judicial. A president and vice-president are elected every four years. The Navajo Nation is also governed by a council composed of 24 delegates. The speaker of the council is chosen every two years. The judicial branch consists of a supreme court, seven district courts, seven family courts, and traditional peacemaker courts.   |
| <b>Frequency of Tribal Meetings</b>   | 1 meeting per week, meeting time varies.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal planning and engineering capacity.</li> <li>▶ Transportation Division</li> <li>▶ Resource Development Committee</li> <li>▶ Federal Highway Program Agreement</li> </ul>   |
| <b>Special Tribal Events</b>          | ▶ September - Navajo Nation Fair  |
| <b>TERO</b>                           | Office of Navajo Labor Relations<br>Address: P.O. Box 1943, Window Rock, AZ 86515<br>Phone: 928-871-6800<br>Website: <a href="https://www.onlr.navajo-nsn.gov/">https://www.onlr.navajo-nsn.gov/</a>  |

# Pascua Yaqui Tribe



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 15 miles west of Tucson   |
| <b>Population</b>                     | 3,888   |
| <b>Enrolled Tribal members</b>        | 21,000  |
| <b>Land Area</b>                      | 1.4 square miles  |
| <b>Pronunciation (phonetic)</b>       | Pask-wah yah-key  |
| <b>Overview</b>                       | The Pascua Yaqui are descendants of the ancient Toltecs from northern Mexico. Congress transferred 202 acres to the Pascua Yaqui Nation in 1964 and in 1982 the Reservation acquired another 690 acres. The Tribe's first constitution was approved in 1988. The Casino of the Sun and Casino del Sol are the Tribe's largest employers. Casino del Sol also features a large outdoor amphitheater and hotel. Other economic enterprises include a landscape nursery, a manufacturer of adobe blocks, and a bingo hall. |
| <b>Contact Information</b>            | 7474 S. Camino de Oeste<br>Tucson, AZ 85746<br>Phone: 520-883-5000  |
| <b>Website</b>                        | <a href="http://www.pascuayaqui-nsn.gov/">http://www.pascuayaqui-nsn.gov/</a>   |
| <b>Governance</b>                     | Pascua Yaqui tribal government is made up of a seven-member elected council including a chairperson, vice-chairperson, and nine council persons. Council members serve four-year terms  |
| <b>Frequency of Tribal Meetings</b>   | Generally the meetings are held every other Wednesday, two meetings per month. One meeting at 2:00 p.m., and one meeting is at 6:00 p.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Consultant planning and engineering capacity.</li> <li>▶ Bureau of Indian Affairs TTP Program Agreement.</li> </ul>  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ Easter Ceremonies (start on Ash Wednesday and continue every Friday night for 7 weeks).</li> <li>▶ September 18 – Tribal Recognition Day.</li> </ul>   |
| <b>TERO</b>                           | Tribal Employment Rights Ordinance Office<br>Address: see above<br>Phone: 520-879-5681<br>Website: <a href="https://www.pascuayaqui-nsn.gov/index.php/tero">https://www.pascuayaqui-nsn.gov/index.php/tero</a><br><a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>   |

# Quechan Tribe (Fort Yuma)



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | The reservation borders the states of Arizona, California, and Baja Mexico. It is located 185 miles southwest of Phoenix, adjacent to Yuma. The reservation is bisected on the south by I-8.  |
| <b>Population</b>                     | 1,442 (CA - AZ)   |
| <b>Enrolled Tribal members</b>        | 3,950   |
| <b>Land Area</b>                      | 70 square miles   |
| <b>Pronunciation (phonetic)</b>       | kwuh-tsan   |
| <b>Overview</b>                       | The Fort Yuma-Quechan Tribe is home to the Quechan Indians and is located on both sides of the Colorado River in Arizona and California. The Tribe is largely an agricultural community, but it also depends on tourism and a sand and gravel operation to help sustain its economy. The Tribe operates five trailer and recreational vehicle parks, a small grocery store, and a museum to help meet tourist demand.             |
| <b>Contact Information</b>            | PO Box 1899<br>Yuma, AZ 85366<br>Phone: 760-572-0213  |
| <b>Website</b>                        | <a href="https://www.quechantribe.com">https://www.quechantribe.com</a>   |
| <b>Governance</b>                     | The government consists of a President, Vice President, and five council members. The president and vice-president serve four-year terms and the council members serve two-year terms.  |
| <b>Frequency of Tribal Meetings</b>   | One meeting per month on the first Tuesday at 6:00 p.m.   |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal planning and engineering capacity.</li> </ul>   |
| <b>Special Tribal Events</b>          | Quechan Indian Days Celebration: Oct 10 - Oct 13  |
| <b>TERO</b>                           | Quechan TERO Office<br>Address: 350 Picacho Road, Winterhaven, CA 92283<br>Phone: 760-572-0213, ext. 276 / 928-919-1721<br>Website: <a href="https://www.quechantribe.com/departments-tero.html">https://www.quechantribe.com/departments-tero.html</a><br><a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a><br>Email: <a href="mailto:teroofficer@quechantribe.com">teroofficer@quechantribe.com</a> |

# Pueblo of Zuni



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 250 miles northeast of Phoenix  |
| <b>Population (2010 Census)</b>       | 0 (The Arizona portion of the Zuni Reservation does not contain a population base).   |
| <b>Enrolled Tribal members</b>        | 11,888  |
| <b>Land Area</b>                      | 19.5 square miles (Arizona)   |
| <b>Pronunciation (phonetic)</b>       | Zu-ni   |
| <b>Overview</b>                       | The ancient homelands of the Zunis are along the middle reaches of the Zuni River where their cultural ancestors lived for centuries. Near the settlements and villages left by the ancient people, the Zuni Indians built compact villages of multi-storied houses. For the last 300 years, most of the Zunis had lived in a single village, the Pueblo of Zuni. The main reservation is located in the McKinley and Cibola counties in the western part of New Mexico. The tribe has land holdings in Catron County, New Mexico and Apache County, Arizona, which are not adjoining to the main reservation. The Arizona portion of the Zuni Reservation is undergoing environmental restoration and is not open for tourist activities. The New Mexico portion of the Tribe provides numerous outdoor recreational activities including fishing, camping, hiking, and hunting. |
| <b>Contact Information</b>            | 1203B State Hwy 53,<br>PO Box 339<br>Zuni, NM 87327<br>Phone: (505) 782-7022  |
| <b>Website</b>                        | <a href="http://www.ashiwi.org/">http://www.ashiwi.org/</a>   |
| <b>Governance</b>                     | Zuni Pueblo government consists of a governor, lieutenant governor, and five council members.   |
| <b>Frequency of Tribal Meetings</b>   | Every 4th month. Meeting time varies and is usually held in the evenings.   |
| <b>Tribal Transportation Capacity</b> | None in Arizona.  |
| <b>Special Tribal Events</b>          | Contact the Pueblo of Zuni Tribe for more information.  |
| <b>TERO</b>                           | TERO / Taxation & Revenue<br>Address: see above<br>Phone: 505-782-7113<br>Website: <a href="http://www.ashiwi.org/Programs.html#iqiuwy">http://www.ashiwi.org/Programs.html#iqiuwy</a><br><a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>   |

# Salt River Pima – Maricopa Indian Community



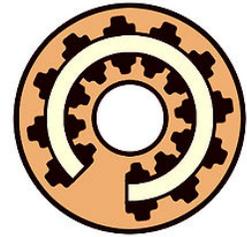
|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 10 miles east of Phoenix, located approximately 1.5 miles east of Pima Freeway (Loop 101) and 3.7 miles west of SR 87.   |
| <b>Population</b>                     | 7,087  |
| <b>Enrolled Tribal members</b>        | 9,504  |
| <b>Land Area</b>                      | 87.2 square miles  |
| <b>Pronunciation (phonetic)</b>       | Pee-ma mare-ee-coh-pah   |
| <b>Overview</b>                       | An Executive Order by President Hayes in June of 1879 established the Salt River Pima-Maricopa Indian Community. The Executive Order allowed the Pima and Maricopa people to occupy a stretch of fertile agricultural land together. Today, the Salt River Community has commercial development adjacent to the Phoenix metropolitan area, including a 140-acre retail commercial development called the Pavilions and a Wal-Mart retail center, and the Major League Baseball spring training facility. The Salt River Community also maintains a 19,000-acre natural preserve. Agriculture and gaming represent other important economic activities for the community. |
| <b>Contact Information</b>            | 10005 E. Osborn Rd.<br>Scottsdale, AZ 85256<br>Phone: 480-362-7740   |
| <b>Website</b>                        | <a href="http://www.srpmic-nsn.gov/">http://www.srpmic-nsn.gov/</a>  |
| <b>Governance</b>                     | The Salt River Pima-Maricopa Community is governed by a seven-member popularly-elected council which includes a president and vice-president.  |
| <b>Frequency of Tribal Meetings</b>   | Tribal Council meets every Wednesday at 5pm.   |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal planning and engineering capacity.</li> <li>▶ Engineering and Contract Services Department</li> <li>▶ Self Governance Agreement</li> </ul>   |
| <b>Special Tribal Events</b>          | ▶ Contact the Tribe directly.  |
| <b>TERO</b>                           | No Tribal Employment Rights Office/Ordinance, contact:<br>Economic Development<br>Address: see above<br>Phone: 480-362-7600<br>Website: <a href="https://www.srpmic-nsn.gov/economic/">https://www.srpmic-nsn.gov/economic/</a><br>Email: <a href="mailto:economicdevelopment@srpmic-nsn.gov">economicdevelopment@srpmic-nsn.gov</a>   |

# San Carlos Apache Tribe



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 115 miles east of Phoenix, located north of State Route 70  |
| <b>Population (2010 Census)</b>       | 10,611  |
| <b>Enrolled Tribal members</b>        | 14,873 persons  |
| <b>Land Area</b>                      | 2,853.1 square miles  |
| <b>Pronunciation (phonetic)</b>       | uh-pah-chee   |
| <b>Overview</b>                       | The San Carlos Apaches are descendants of the Athabascan family, who migrated to the Southwest around the 10th century. The San Carlos Apache Reservation was established in 1871 through an Executive Order by President Grant. Over one-third of San Carlos' land is forested or wooded. A portion of the Reservation is contiguous with the largest stand of ponderosa pines in the world. Gaming, lumbering, tourism, cattle ranching, and recreation are significant sources of economic activity for the San Carlos Apache, as well as a retail shopping complex. |
| <b>Contact Information</b>            | Apache Gem Rd. Marker 2, San Carlos, AZ 85550<br>928-475-7600   |
| <b>Website</b>                        | <a href="https://itcaonline.com/member-tribes/san-carlos-apache-tribe/">https://itcaonline.com/member-tribes/san-carlos-apache-tribe/</a>   |
| <b>Governance</b>                     | Tribal government consists of a chairperson, vice-chairperson, and nine elected council representatives. These elected officials serve four-year terms. Additionally, there are the appointed positions of treasurer and secretary.   |
| <b>Frequency of Tribal Meetings</b>   | First Tuesday in each month at nine a.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal planning and engineering capacity.</li> <li>▶ Transportation Department</li> <li>▶ Tribal Transportation Committee</li> </ul>   |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ February– Apache Gold Casino's Annual Pow-Wow</li> <li>▶ March – Indian festival at St. Charles School</li> <li>▶ April–Annual Mt. Turnbull rodeo</li> <li>▶ June 18 – Apache Independence Day</li> <li>▶ August – Indians in Sobriety Annual Campout</li> <li>▶ October– Holy Ground Blessing: People Helping People Gathering &amp; Youth Leadership Conference</li> <li>▶ November– All Indian Rodeo &amp; fair</li> <li>▶ September–Anniversary of opening of San Carlos Apache Tribe's Cultural Center</li> </ul>         |
| <b>TERO</b>                           | TERO Office<br>Address: P.O. Box 219, San Carlos, AZ 85550<br>Phone: 928-475-2803 / 928-200-9487<br>Website: <a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>  |

# San Juan Southern Band of Paiutes



|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 200 miles north of Phoenix   |
| <b>Population</b>                     | Unavailable  |
| <b>Enrolled Tribal members</b>        | 300 persons  |
| <b>Land Area</b>                      | In the process of establishing trust land  |
| <b>Pronunciation (phonetic)</b>       | pie-ute  |
| <b>Overview</b>                       | The San Juan Southern Band of Paiutes is a small Tribe that was federally recognized in 1980. For administrative reasons, it has long been regarded as part of the Navajo Tribe by the BIA. Tribal members primarily reside in Willow Springs, near Tuba City, at Navajo Mountain in Arizona, and at the Utah-Arizona border. The San Juan Paiutes are culturally distinct from their Navajo neighbors, having their own language and history. The Tribe is now involved in litigation to establish and secure their land base. Economic activities include raising livestock and subsistence farming. |
| <b>Contact Information</b>            | 50. S. Main Street, Tuba City<br>Suite 101, Arizona 86045<br>928-212-9794  |
| <b>Website</b>                        | <a href="https://www.sanjuanpaiute-nsn.gov/">https://www.sanjuanpaiute-nsn.gov/</a>  |
| <b>Governance</b>                     | The San Juan Southern Paiute Tribe is governed by a seven-person Tribal Council, including a president and vice-president.   |
| <b>Frequency of Tribal Meetings</b>   | Not available.   |
| <b>Tribal Transportation Capacity</b> | None   |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ Annual Powwow - second weekend of June</li> <li>▶ Family reunion- second week of August</li> </ul>  |
| <b>TERO</b>                           | Employment/Human Resources/TERO Office/Job Training Department (TERO Office is listed as “under development” on website)<br>Address: see above<br>Phone: see above<br>Website: <a href="https://www.sanjuanpaiute-nsn.gov/tribal-government/tribal-departments">https://www.sanjuanpaiute-nsn.gov/tribal-government/tribal-departments</a>   |

# Tohono O’odham Nation



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 58 miles west of Tucson   |
| <b>Population</b>                     | 10,703  |
| <b>Enrolled Tribal members</b>        | 33,643  |
| <b>Land Area</b>                      | 4,446.3 square miles  |
| <b>Pronunciation (phonetic)</b>       | tah-hoe-na aut-um   |
| <b>Overview</b>                       | The Tohono O’odham Nation is the second largest Native American Nation in the United States. The Nation is comprised of four non-contiguous segments, but the largest of the segments (the Tohono O’odham Reservation) represents over 90% of the land. The Tohono O’odham have been living in southwestern Arizona and northwestern Sonora for hundreds of years. The Nation shares 63 miles of border with Mexico. Principal economic activities include tourism (most notable the Mission San Xavier del Bac), an industrial park near Tucson, and a casino. |
| <b>Contact Information</b>            | PO Box 837<br>Sells, AZ 85634<br>Phone: 520-383-2028  |
| <b>Website</b>                        | <a href="http://www.tonation-nsn.gov/">http://www.tonation-nsn.gov/</a>   |
| <b>Governance</b>                     | The Tohono O’odham Nation is governed by an elected council representing 11 political districts. The council is headed by a chairperson, vice-chairperson, secretary, and treasurer and the council functions as the legislative and executive branches of the Nation.  |
| <b>Frequency of Tribal Meetings</b>   | First full week of each month 9 a.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal planning and engineering capacity.</li> </ul>   |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ February (1st weekend) – Annual Rodeo and Fair</li> </ul>  |
| <b>TERO</b>                           | TERO Office<br>Address: PO Box 40, Sells, Arizona, 85634<br>Phone: 520-383-3304 / 520-993-3462<br>Website: <a href="http://www.tonation-nsn.gov/wp-content/uploads/2019/05/TON-Community-Resource-Directory.pdf">http://www.tonation-nsn.gov/wp-content/uploads/2019/05/TON-Community-Resource-Directory.pdf</a><br>(Note: TERO contact information provided in the Community Resource Directory)<br><a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>  |

# Tonto Apache Tribe



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 93 miles northeast of Phoenix   |
| <b>Population</b>                     | 139   |
| <b>Enrolled Tribal members</b>        | 170   |
| <b>Land Area</b>                      | 0.13 square miles   |
| <b>Pronunciation (phonetic)</b>       | Pronounced as written   |
| <b>Overview</b>                       | Recognized by a Congressional Act in 1972, the Tonto Apache Tribe is home to the smallest land base Reservation in Arizona. The Reservation is located adjacent to Payson, and the casino represents one of the community's largest employers. The Tonto Apache are the direct descendants of the Tontos who lived in the Payson vicinity long before the advent of the Anglo. The large Rio Verde Reserve, near Camp Verde, was established in 1871 for the Tonto and Yavapai Indians. The Reserve was dissolved in 1875 when they were forcibly moved to the San Carlos Apache Reservation. Some Tontos gradually returned to Payson after 20 years of exile to find white settlers had taken much of their land. Today, legislation is pending which will provide them trust title to the land upon which they reside. |
| <b>Contact Information</b>            | 30 Tonto Apache Drive Reservation<br>Payson, AZ 85541<br>Phone: 928-474-5000  |
| <b>Website</b>                        | <a href="https://itcaonline.com/member-tribes/tonto-apache-tribe/">https://itcaonline.com/member-tribes/tonto-apache-tribe/</a>   |
| <b>Governance</b>                     | The elected council serves as the ruling body of the tribe. The council consists of a chairperson, vice-chairperson, and three other members.   |
| <b>Frequency of Tribal Meetings</b>   | Two meetings per month, all day meetings. The dates vary. The meetings typically start at 8:30 a.m.   |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning administration.</li> <li>▶ BIA provides direct services engineering and construction.</li> </ul>  |
| <b>Special Tribal Events</b>          | Contact the Tonto Apache Tribe for more information.  |
| <b>TERO</b>                           | <p>No Tribal Employment Rights Office/Ordinance, contact:<br/>Finance Department<br/>Address: see above<br/>Phone: see above<br/>Website: no tribal website</p> <p>Human Resources Department<br/>Address: see above<br/>Phone: see above<br/>Website: no tribal website</p>  |

# White Mountain Apache Tribe



|                                       |   |
|---------------------------------------|---|
| <b>Location</b>                       | 194 miles northeast of Phoenix  |
| <b>Population</b>                     | 15,313  |
| <b>Enrolled Tribal members</b>        | 17,150  |
| <b>Land Area</b>                      | 2,600.7 square miles  |
| <b>Pronunciation (phonetic)</b>       | Pronounced as written   |
| <b>Overview</b>                       | Established as the Fort Apache Indian Reservation in November 1891 by Executive Order, the area is now known as the White Mountain Apache Reservation. The tribal members are direct descendants of the original tribes that lived in this area. The White Mountain Apache live in a region that has an abundance of natural resources and scenic beauty, and the tribe has earned a national reputation for its network of enterprises, which include a timber company, lumber hardware retail center, ski resort, and casino. |
| <b>Contact Information</b>            | 201 E. Walnut Street<br>Whiteriver, AZ 85941<br>Phone: 928-338-4346   |
| <b>Website</b>                        | <a href="https://www.wmatdot.com/">https://www.wmatdot.com/</a>   |
| <b>Governance</b>                     | Tribal government consists of an elected council including a chairperson, vice-chairperson, and nine members at large. Council members serve four-year terms (they are elected from four districts).  |
| <b>Frequency of Tribal Meetings</b>   | First Wednesday of every month at 9 a.m.  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Transportation Department and engineering capacity.</li> <li>▶ Tribal Transportation Committee</li> </ul>  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ April – Canyon Day Open Show</li> <li>▶ May thru September – Sunrise Dance Ceremony</li> <li>▶ May – Junior Rodeo</li> <li>▶ May – Headstart Rodeo &amp; Parade</li> <li>▶ August – “Old Timers” Junior Rodeo</li> <li>▶ September – Tribal Fair &amp; Rodeo</li> </ul>  |
| <b>TERO</b>                           | TERO Office<br>Address: P.O. Box 208, Whiteriver, AZ 85941<br>Phone: 928-338-1012<br>Website: <a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>   |

# Yavapai-Apache Nation



|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 95 Miles north of Phoenix  |
| <b>Population</b>                     | 902  |
| <b>Enrolled Tribal members</b>        | 2,619  |
| <b>Land Area</b>                      | 1.02 square miles  |
| <b>Pronunciation (phonetic)</b>       | yav-a-pie  |
| <b>Overview</b>                       | The Yavapai-Apache Nation is the amalgamation of two distinct Tribes who historically occupied the Upper Verde Valley. A Reservation was initially established in 1871, but it was rescinded by Presidential Order in 1875 and all of the people, Yavapai and Apache alike, were forcibly marched to the San Carlos Agency east of Phoenix. In 1909, a Reservation was re-established and additional lands were acquired in 1915, 1967, and 1974. The Tribe once relied on agricultural activity as a primary means of economic sustenance. In recent years, economic activity has expanded and the Tribe now operates a convenience market, service station, recreational vehicle park, and a casino. |
| <b>Contact Information</b>            | 2400 W. Datsi St.<br>Camp Verde, AZ 86322<br>Phone: 928-567-3649   |
| <b>Website</b>                        | <a href="http://www.yavapai-apache.org">http://www.yavapai-apache.org</a>  |
| <b>Governance</b>                     | The governing body of the tribe is a nine-member council composed of a chairperson, vice-chairperson, and seven members. The term for each of these positions is four years.   |
| <b>Frequency of Tribal Meetings</b>   | Monthly, times vary  |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Consultant planning and engineering capacity.</li> </ul>  |
| <b>Special Tribal Events</b>          | <ul style="list-style-type: none"> <li>▶ February – Exodus Day</li> <li>▶ September – Indian Day</li> </ul>  |
| <b>TERO</b>                           | TERO Office<br>Address: 2400 W. Datsi Street, Camp Verde, AZ 86322<br>Phone: 928-567-1080<br>Website: <a href="https://www.swrtero.com/members">https://www.swrtero.com/members</a>  |

# Yavapai-Prescott Indian Tribe



|                                       |  |
|---------------------------------------|--|
| <b>Location</b>                       | 102 miles north of Phoenix, near SR69  |
| <b>Population</b>                     | 376  |
| <b>Enrolled Tribal members</b>        | 180  |
| <b>Land Area</b>                      | 2.2 square miles   |
| <b>Pronunciation (phonetic)</b>       | yav-uh-pie   |
| <b>Overview</b>                       | The Yavapai-Prescott Reservation is located in the rolling hills adjacent to Prescott. The Reservation was established in 1935, and additional area of land was acquired in 1956. At one time, the Tribe depended upon timber, mining, and agriculture for its economic base. The Yavapai-Prescott now have a more diversified economic structure that incorporates tourism, gaming, and retail activities. The Tribe owns a 162-room resort, two casinos, a business park, and a shopping center. |
| <b>Contact Information</b>            | 530 E. Merritt<br>Prescott, AZ 86301<br>Phone: 928-445-8790  |
| <b>Website</b>                        | <a href="http://www.ypit.com/">http://www.ypit.com/</a>  |
| <b>Governance</b>                     | A Board of Directors governs the tribe. It is composed of a president, vice president, and three additional members. These board members serve two-year terms.   |
| <b>Frequency of Tribal Meetings</b>   | The Board meets every Tuesday.   |
| <b>Tribal Transportation Capacity</b> | <ul style="list-style-type: none"> <li>▶ Planning, engineering and construction administration.</li> <li>▶ Tribal and consultant planning and engineering capacity.</li> </ul>   |
| <b>Special Tribal Events</b>          | Contact the Yavapai-Prescott Tribe for more information  |
| <b>TERO</b>                           | <p>No Tribal Employment Rights Office/Ordinance, contact:</p> <p>Finance Department<br/>Address: see above<br/>Phone: see above<br/>Website: see above</p> <p>Human Resources Department<br/>Address: see above<br/>Phone: see above<br/>Website: see above</p>  |

## NON-ARIZONA RESIDENT TRIBES WITH ANCESTRAL/ABORIGINAL LAND INTERESTS IN ARIZONA

There are several tribes that no longer reside in Arizona, but have ancestral/aboriginal land interests in the state. Consultation with these tribes on ADOT work that could have cultural and/or religious implications for the tribal governments falls into two categories:

- Tribes consulted on a mandatory basis under the provisions of Section 106 of the National Historic Preservation Act.
- Tribes consulted on a discretionary basis.

### SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT MANDATORY CONSULTATION TRIBES

Section 106 requires that tribes be consulted in any decisions affecting their historic and cultural legacy. This applies to all tribal governments resident in Arizona as well as tribes with aboriginal or ancestral interests in Arizona. **Table 1-4** lists the non-Arizona resident tribes with which consultation is required under Section 106 of the National Historic Preservation Act if it is expected that a project could impact the tribes' cultural and/or religious interests in Arizona. These tribes are shown on the Arizona State Museum records as having interests in Arizona for Section 106 consultation. Further information on these tribes is summarized in the tables starting on **Page 38**.

**TABLE 1 – 4: MANDATORY SECTION 106 CONSULTATION TRIBES**

| NATIVE NATION NAME                                 |
|--|
| ▶ Chemehuevi Tribe (California)                    |
| ▶ Fort Sill (Chiricahua) Apache Tribe (Oklahoma)   |
| ▶ Mescalero (Chiricahua) Apache Tribe (New Mexico) |
| ▶ Moapa Band of Paiute Indians (Nevada)            |
| ▶ Paiute Indian Tribe of Las Vegas (Nevada)        |
| ▶ Paiute Indian Tribe of Utah                      |
| ▶ Ute Mountain Ute Tribe (Colorado)                |

### SECTION 106 OF THE HISTORIC PRESERVATION ACT

Section 106 of the NHPA requires federal agencies to take into account the effects of their activities and programs on National Register eligible properties. ... These regulations define a process for responsible federal agencies to consult with the State Historic Preservation Officer (SHPO), Native American groups, other interested parties, and when necessary, the [Advisory Council on Historic Preservation](#) (ACHP) to ensure that historic properties are duly considered as federal projects are planned and implemented.

– Historic Preservation Handbook, ADOT Office of Environmental Planning Services, Environmental Planning Group, 2008, Appendix B2

The Arizona State Historic Preservation Office (SHPO) and Salt River Pima-Maricopa Indian Community have developed a Government-to-Government Consultation Toolkit (G2G Toolkit), which has been designed to facilitate the consultation process for the requirements of the National Historic Preservation Act or State Historic Preservation Act, as well as other state and federal statutes. The G2G Toolkit contains agency and tribal contact information, consultation protocol, tribal claims maps, and quick links to tribal and agency pages for additional information. The link to this website is provided here: <https://sites.google.com/view/az-consultation-toolkit/home>. ADOT HPT indicates that they work out their tribal consultation processes directly with each tribe.

# Chemehuevi Tribe (California)



|                                 |  |
|---------------------------------|--|
| <b>Location</b>                 | The Chemehuevi Reservation is located in San Bernardino County, California bordering Lake Havasu for 25 miles (40 km) and along the Colorado River.  |
| <b>Land Area</b>                | 32,000 acres   |
| <b>Pronunciation (phonetic)</b> | chem-uh-whay-vee   |
| <b>Overview</b>                 | <p>The Chemehuevi are the southernmost branch of Paiutes. As part of the Great Basin culture area, the Chemehuevi (a Mojave term meaning “those that play with fish”) have been persistent occupants of the Mojave Desert. Known to themselves as Nuwu (The People), they have been nomadic residents of the Mojave Desert’s mountains and canyons and the Colorado River shoreline for thousands of years. Their traditional ancestral territory has spanned three states: Arizona, California, and Nevada.</p> <p>The federal government established the Chemehuevi Valley Reservation in 1907, located in San Bernardino County, California, bordering Lake Havasu for 25 miles. The Reservation was originally 36,000 acres, but about 8,000 acres were taken away to construct Parker Dam. The Chemehuevi’s status as a tribe was taken away for several years. From the early 1940s, a persistent desire for recognition and self-determination fueled the struggle to achieve federal recognition. The Chemehuevi were formally reinstated as the Chemehuevi Tribe on June 5, 1970.</p> |
| <b>Contact Information</b>      | <p>Mailing Address:<br/>P. O. Box 1976, Havasu Lake, CA 92363</p> <p>Location:<br/>1990 Palo Verde Drive, Havasu Lake, CA 92363</p> <p>Phone: 760-858-4219<br/>Fax: 760-858-5400</p>   |
| <b>Website</b>                  | <a href="http://www.chemehuevi.net/">http://www.chemehuevi.net/</a>  |

# Fort Sill Apache Tribe (Oklahoma)



|                                 |   |
|---------------------------------|---|
| <b>Location</b>                 | Southwest area of Oklahoma  |
| <b>Land Area</b>                | Not available   |
| <b>Pronunciation (phonetic)</b> | Pronounced as written   |
| <b>Overview</b>                 | <p>Before the name “Fort Sill Apache” was applied, the Tribe was referred to as the Chiricahua Apache Tribe. The Fort Sill Apache Tribe is made up of the descendants of the Chiricahua Apache who were held as Prisoners of War by the United States from 1886 – 1914. The name “Fort Sill Apache” was applied to the group while imprisoned at Fort Sill and was retained by the portion of the tribe that received allotments of land in Oklahoma. The Chiricahua Apache were made up of four bands:</p> <ul style="list-style-type: none"> <li>▶ Chihende - also known as Warm Springs Apache Band</li> <li>▶ Chukunende – also known as the Chiricahua Band</li> <li>▶ Nde’ndai – sometimes known as Pinery Apache Band</li> <li>▶ Bidanku – sometimes known as Bronco Apache Band</li> </ul> <p>The ancestral land of the Chiricahua Apache included what is now known as Southeastern Arizona; Southwestern New Mexico; Northwestern Sonora, Mexico; and Northeastern Chihuahua. Homelands for the Chiricahua Band were southeastern of Arizona, in the areas of the Dos Cabezas, Chiricahua, and Dragoon mountains. The Treaties of Guadalupe-Hildago (1848), ending the Mexican-American War and the Gadsden Purchase (1855) brought the ancestral lands of the Chiricahua Band into the United States. In the 1970s, a land claim settlement allowed the Tribe to adopt a constitution and to acquire land that would be tribal trust land. The Fort Sill Apache Tribe has since acquired small parcels of land in Oklahoma, and in the Tribe’s home territory within New Mexico and Arizona.</p> |
| <b>Contact Information</b>      | <p>Fort Sill Apache Tribe<br/>                     Oklahoma Office: 43187 US Hwy 281,<br/>                     Apache, OK 73006<br/>                     Phone: 580-588-2298 or 877-826-0726<br/>                     Fax: 580-588-3133</p>   |
| <b>Website</b>                  | <a href="http://www.fortsillapache-nsn.gov/">http://www.fortsillapache-nsn.gov/</a>   |

# Mescalero Apache Tribe (New Mexico)



|                                 |   |
|---------------------------------|---|
| <b>Location</b>                 | South-central New Mexico  |
| <b>Land Area</b>                | 720 square miles  |
| <b>Pronunciation (phonetic)</b> | Mes-ca-ler-o  |
| <b>Overview</b>                 | <p>The Mescalero Apache Tribe was established by Executive Order of President Ulysses S. Grant on May 27, 1873. There are three bands that comprise the Tribe: the Mescalero Apache, the Chiricahua Apache, and the Lipan Apache. The people were given the name “Mescalero” because they gathered and ate the mescal plant. It was the staple of their diets and could sustain them in good times and bad. The Mescalero Apache Reservation is approximately 720 square miles located in south-central New Mexico. Elevation ranges from 5,400 to over 12,000 feet above sea level. The high mountains of the reservation are part of the Sacramento Mountain region. In August 1912, by an act of the U.S. Congress, the surviving members of the Chiricahua Band were released from their prisoner of war status. They were given the choice to remain at Fort Sill or to relocate to the Mescalero reservation. One hundred and eighty-three elected to go to New Mexico, while 78 remained in Oklahoma. Their descendants still reside in both places.</p> |
| <b>Contact Information</b>      | <p>108 Old Mescalero Blvd.<br/>Mescalero, New Mexico 88340<br/>Phone: (575) 464-4494</p>  |
| <b>Website</b>                  | <a href="http://www.mescaleroapachetribe.com">www.mescaleroapachetribe.com</a>  |

# Moapa Band of Paiute Indians (Nevada)



|                                 |  |
|---------------------------------|--|
| <b>Location</b>                 | Located northeast of Las Vegas, near Moapa   |
| <b>Land Area</b>                | 71,954 acres   |
| <b>Pronunciation (phonetic)</b> | Pronounced as written  |
| <b>Overview</b>                 | In 1874, two million acres (entire Moapa River watershed that drains into the Colorado River – now Lake Mead) were set aside for tribal lands by the federal government. In 1876, the reservation was reduced to 1,000 acres. In 1941 a Constitution and bylaws were created, and the Business Council was established as a governing body for the tribe. The Moapa Band of Paiute Indians resides on the Moapa River Reservation. It is a recognized Indian tribe organized under the Constitution approved by the Secretary of the Interior on April 17, 1942. In December 1980, an additional 70,000 acres were provided and the current total land base is 71,954 acres. |
| <b>Contact Information</b>      | 1 Lincoln St<br>P.O. Box 340<br>Moapa, NV 89025<br>Phone: 702-865-2787   |
| <b>Website</b>                  | <a href="http://www.moapabandofpaiutes.com/">http://www.moapabandofpaiutes.com/</a>  |

# Paiute Indian Tribe of Las Vegas (Nevada)



|                                 |  |
|---------------------------------|--|
| <b>Location</b>                 | Las Vegas, Nevada  |
| <b>Land Area</b>                | 3,850 acres  |
| <b>Pronunciation (phonetic)</b> | Pronounced as written  |
| <b>Overview</b>                 | <p>The Tudinu (or Desert People), ancestors of the Las Vegas Paiute Tribe, occupied the territory encompassing part of the Colorado River, most of Southeastern Nevada, and parts of both Southern California and Utah. Outsiders who came to the Paiutes' territory often described the land as harsh, arid, and barren; however the Paiutes developed a culture suited to the diverse land and its resources. A booming railroad town brought an end to the Paiutes' free movement and traditional way of life, depriving them of their own land. On December 30, 1911, ranch owner Helen J. Stewart deeded 10 acres in downtown Las Vegas to the Paiutes, establishing the Las Vegas Paiute Colony.</p> <p>The Indian Reorganization Act of June 18, 1934, in conjunction with the Las Vegas Paiute Tribal Constitution, approved on July 22, 1970, recognized the Tribe as a Sovereign Nation. Later through an Act of Congress of 1983, an additional 3,800 acres of land returned to Paiute possession at the Snow Mountain Reservation.</p> |
| <b>Contact Information</b>      | <p>1 Paiute Drive<br/>Las Vegas, NV, 89106<br/>Phone: 702-386-3926</p>   |
| <b>Website</b>                  | <a href="http://lvpaiutetribe.com/">http://lvpaiutetribe.com/</a>  |

# Paiute Indian Tribe of Utah (PITU) (Utah )



|                                 |   |
|---------------------------------|---|
| <b>Location</b>                 | Ten separate land parcels located in four southwestern Utah counties  |
| <b>Land Area</b>                | Not available   |
| <b>Pronunciation (phonetic)</b> | Pronounced as written   |
| <b>Overview</b>                 | The Paiute people have lived in an area that is presently known as southern Utah, southeastern California, northern Arizona, and southern Nevada for a thousand years. The first Paiute reservation was established in 1891 on the Santa Clara River west of St. George. The Virgin and Santa Clara Rivers had been the core of the Paiute homeland and its center of densest population. In 1916, President Woodrow Wilson issued an executive order, which expanded the size of the reservation to its current 26,880 acres. The federal government formally recognizes both the Paiute Indian Tribe of Utah and its five constituent bands as Indian Tribal entities located within the boundaries of the PITU Tribal Reservation. |
| <b>Contact Information</b>      | 440 N Paiute Drive<br>Cedar City, UT 84721<br>Phone: 435-586-1112   |
| <b>Website</b>                  | <a href="http://utahpaiutes.org/">http://utahpaiutes.org/</a>   |

# Ute Mountain Ute Tribe (Colorado)



|                                 |   |
|---------------------------------|---|
| <b>Location</b>                 | The Ute Mountain Ute Tribe's reservation lies in south-west Colorado, southeast Utah, and northern New Mexico. There are two communities on the Ute Reservation; the tribal headquarters in Towaoc, Colorado, and the small community at White Mesa, Utah.  |
| <b>Land Area</b>                | 597,000 acres in southwestern Colorado, southeastern Utah, and northern New Mexico.   |
| <b>Pronunciation (phonetic)</b> | Pronounced as written   |
| <b>Overview</b>                 | The Ute Mountain Ute Tribe are descendants of the Weemiu-nuche band who moved to the Southern Ute reservation in 1897. Two thousand years ago, the Utes lived and ranged in the mountains and desert over much of the Colorado Plateau that includes much of present day eastern Utah, western Colorado, northern Arizona, and northwestern New Mexico. The use of lands in the Four Corners area, where the Ute Mountain Ute Tribe now live, came later. Most anthropologists agree that Utes were established in the Four Corners area by 1500 A.D. In the late 1800's, treaties with the United States forced the three bands of Southern Utes into southwestern Colorado. The bands within the Ute Nation divided and today the homelands for the Ute Mountain Ute Tribe total about 597,000 acres. |
| <b>Contact Information</b>      | 332 Dry Creek Road<br>Towaoc, Colorado 81334<br>Phone: 970-565-9634   |
| <b>Website</b>                  | <a href="http://www.utemountainutetribe.com/">http://www.utemountainutetribe.com/</a>   |

## OTHER TRIBES WITH ABORIGINAL OR TRADITIONAL INTERESTS IN ARIZONA

ADOT works with several additional tribes even though, under the consultation requirements of Section 106 of the Historic Preservation Act, these tribes are not shown on the Arizona State Museum's records as having interests in Arizona for Section 106 consultation. The Laguna, Acoma, and Pueblos occupied lands in northeastern Arizona aboriginally. The Pueblo of Zuni was described above as being resident in Arizona, because it has a small parcel of trust land located in the State, but it has no government in Arizona. The Soboba Band, Southern Ute, and Jicarilla Apache tribes and many tribes in California have been consulted on ADOT projects.

## ADOT'S INTEREST IN THE TRANSPORTATION SYSTEM ON TRIBAL LANDS

ADOT has a strong interest in transportation on tribal lands in the State. There is the obvious interest in the **more than 1200 miles** of state highways on tribal lands, for which ADOT has ownership, construction, maintenance, and operations responsibilities. ADOT also has significant facilities and service interests in airports, public transportation, railroads, pedestrians, and bicycling that require working with tribal governments, particularly for planning, funding, and safety purposes. The importance of communication, coordination, and consultation with tribes regarding activities that could affect them was discussed in the Handbook's Introduction. Many ADOT organizational units work regularly with tribal governments. These units include:

☑ **ADMINISTRATIVE SERVICES DIVISION (ASD)** – Administrative Services Division consults and coordinates with tribes on issues associated with ADOT facilities on tribal lands and on environmental issues such as water quality, wildlife and vegetation management along State Highways on tribal lands.

☑ **ENFORCEMENT AND COMPLIANCE DIVISION (ECD)** – Enforcement and Compliance Division consults and coordinates with tribes to ensure commercial vehicles and commercial vehicle drivers operating on tribal lands are compliant with the safety, credential, size and weight laws of the State of Arizona.

☑ **INFRASTRUCTURE DELIVERY AND OPERATIONS DIVISION (IDO)** – This division consults, coordinates and enters into agreements with tribes on the project development, which include design, environmental and rights-of-way, as well as

construction, maintenance, and operation of the State Highway System on tribal lands. ITD also provides training, project development and traffic safety assistance to tribes.

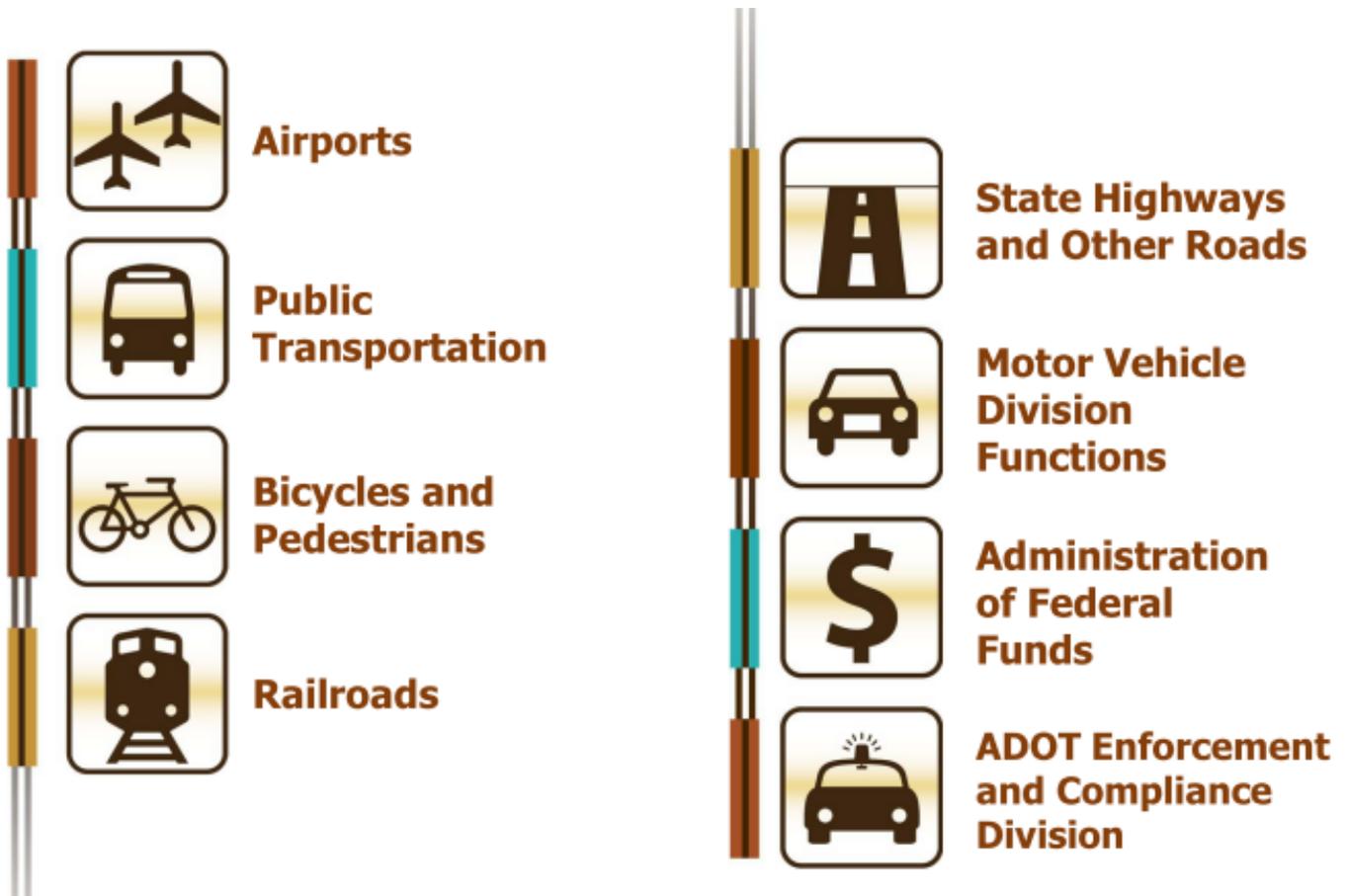
☑ **MOTOR VEHICLE DIVISION (MVD)** – Motor Vehicle Division consults and coordinates with tribes on issues involving drivers' and motor vehicles' licensing, collection of fuel taxes and fuel tax refund agreements.

☑ **MULTIMODAL PLANNING DIVISION (MPD)** – Multimodal Planning Division consults and coordinates with tribes on planning, programming, multimodal funding, research and data sharing.

☑ **OTHER TRANSPORTATION SERVICES THAT ADOT PROVIDES INCLUDE:** The Arizona Highways Magazine, P3 Initiatives and International Affairs, and Communications.

Although the Arizona Attorney General’s (AG) Office is not a part of ADOT, it provides ADOT legal guidance when needed. For example, its Transportation Section participates in consultation and coordination processes for the development of intergovernmental agreements and contracts between ADOT and tribal governments.

ADOT coordinates and consults with tribal governments on many types of transportation systems and services, which include airports, public transportation, bicycle and pedestrians, railroads, state highways, MVD functions, ECD functions, and administration of federal funding.



This section provides a brief overview of Arizona’s transportation system and the implications for tribal involvement.



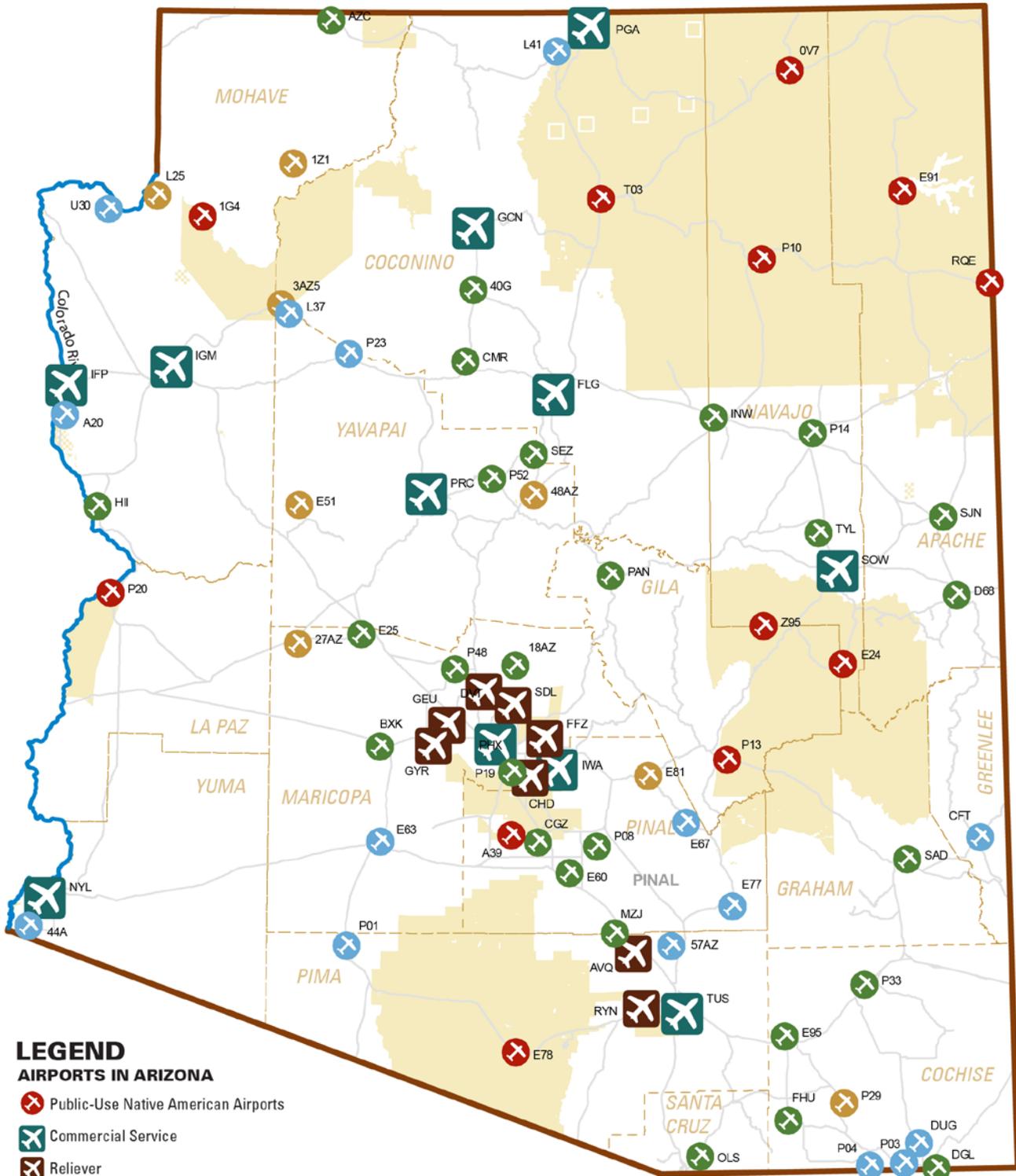
### Arizona Airport System

The 2018 Arizona State Aviation System Plan identifies 67 airports as the system of airports. Twelve (18 percent) of these airports are owned by tribes. These include one commercial service airport (Grand Canyon West), one general aviation - community airport, four general aviation – rural airports, and six general aviation – basic airports. ADOT staff coordinates and consults with tribal governments on the development and funding for these airports, which provide a critical role in serving aviation demand and safety throughout Arizona.

Tribal-owned airports are eligible for federal and state airport funding. Prior to 2013, tribal airports were not eligible for funding from State Aviation Funds. Senate Bill 1317, signed into law by the Governor on June 20, 2013, created that eligibility. Map 1-2 shows the system of airports in Arizona, which includes the primary airports owned by tribal governments. Tribal airports and airports on tribal lands are critically important to providing statewide airport system coverage. This is particularly significant in the northern and central eastern parts of the state. These airports are:

- Ak-Chin Regional Airport, on the Ak-Chin Indian Community
- Avi Suquilla on the Colorado River Indian Tribes' Reservation
- Chinle Municipal on the Navajo Nation
- Cibecue on the White Mountain Apache Tribe Reservation
- Grand Canyon West on the Hualapai Reservation
- Kayenta Airport, which is owned by the Navajo Nation but operated by Kayenta Township
- Polacca Airport on the Hopi Reservation
- San Carlos Apache Airport, on the San Carlos Apache Reservation
- Sells Airport on the Tohono O'odham Nation
- Tuba City Municipal Airport on the Navajo Nation
- Whiteriver Airport on the White Mountain Apache Tribe Reservation
- Window Rock Airport on the Navajo Nation

MAP 1 – 2: ARIZONA SYSTEM OF AIRPORTS



**LEGEND**

**AIRPORTS IN ARIZONA**

- Public-Use Native American Airports
- Commercial Service
- Reliever
- GA-Community
- GA-Rural
- GA-Basic

- State Highway System
- County Boundaries
- Indian Reservations



Prepared by:  
 Arizona Department of Transportation  
 Multimodal Planning Division  
 Transportation Analysis Section  
 (602) 712-7333  
 September 2011

0 20 40 80 Miles

## STATE AIRPORT DEVELOPMENT PROGRAMS

The ADOT Aeronautics Group, which resides in the Multimodal Planning Division, administers the Department’s five airport development programs funded from the State Aviation Fund.

- Federal State Local funded capital projects
- State Local funded capital projects
- Airport Pavement Management System (APMS)
- System Planning
- Airport Development Loans



ADOT owned airplane.

Revenues for the State Aviation Fund are derived from several sources including flight property tax, aircraft registration fees, aviation fuel tax, Grand Canyon Airport revenues and federal grants. Annual revenues are about \$20 million. State Aviation Funds are distributed for planning, design, development, acquisition of interests in land, construction and improvement of publicly owned and operated airport facilities in counties, incorporated cities and towns and Indian reservations. A publicly owned and operated airport facility includes those airports for which an Indian tribe or tribal government holds an interest in the land on which the airport is located. The land must be clear of reversionary encumbrances for a minimum of 20 years.

State Aviation Fund projects are programmed through the Airport Capital Improvement Program, which must be approved by the State Transportation Board. Requirements for applying for the State Aviation Funds are provided in the ADOT Airport Development website. The current website address can be found under ADOT WEBSITES on the last page of this Handbook.

## AIRPORT SUPPORT ORGANIZATIONS

In addition to ADOT Aeronautics Group staff, the Arizona Airport Association and the Southwest Chapter of American Association of Airport Executives provide support to the aviation community.



The Arizona Airport Association (AzAA) was formed in 1979 to bring together the representatives of public and private airports and others interested in the general benefit of aviation to provide information, expertise and support to all those in the State’s aviation industry. The Association works to foster public recognition of airports and the airport executive profession, and to assist in the future development of air transportation in Arizona.

AzAA offers assistance and support to its members through educational seminars, public outreach events and regular meetings. Members and others participate in spring and fall conferences to share information. Throughout its history, AzAA has been successful in educating and representing the aviation needs of its members. The Navajo Department of Transportation, and the

Ak-Chin Indian Community Airport Manager are members of AzAA. Other Navajo airports employees have attended the AzAA conferences.

Additional information about AzAA, including membership, can be found on its website:

<http://www.azairports.org/>



The Southwest Chapter of American Association of Airport Executives (SWAAAE) was formed in 1947 with the purpose of bringing together all persons representing public use airports as well as persons interested in and working for the benefit of aviation. Its mission is to advance excellence in airport management by creating a forum for education, advocacy and professional development. SWAAAE holds an annual conference. It supports members through scholarships, awards, accreditation, certification, and posting project and job advertisements. Airport, airport and aviation employee and student memberships are available. The Navajo Division of Transportation is a SWAAAE member.

Additional information about SWAAAE, including membership, can be found on its website:

<http://www.swaaae.org/>

## Public Transportation on Tribal Lands

ADOT administers two major Federal Transit Administration (FTA) programs—Enhanced Mobility of Seniors and Individuals with Disabilities Program (FTA Section 5310) and Rural Area Formula Grants (FTA Section 5311). These programs have been an important source of funding for providing transit services on tribal lands. ADOT personnel coordinate and consult with tribal governments to assist in securing federal funding for the transit services on tribal lands that provide important connectivity and mobility enhancement for Arizona residents.

### RURAL PUBLIC TRANSPORTATION

The Section 5311 “Formula Grants for Rural Areas Program” provides capital, planning, and operations assistance to states to support public transportation in rural areas. There is a tribal set-a-side of \$35 million nationally, but tribes would also likely be eligible for the portion of funding going to the state. **Map 1-3** shows the location of current rural public transportation services provided through the Section 5311 Program. As of 2019, participating transit programs are:

- Gila River Indian Community – Gila River Public Transit
- Navajo Nation – Navajo Transit System
- San Carlos Apache Tribe – San Carlos Apache Transit
- Hopi Tribe – Hopi Senom Transit System
- Salt River Pima-Maricopa Indian Community – Salt River Transit System
- White Mountain Apache Tribe – Fort Apache Connection Transit System
- Hualapai Tribe – Hualapai Transit

It should be noted that some tribes receive Tribal Transit funds (Section 5311(c)) funds, which are administered directly by the Federal Government. In fiscal year 2019, tribes in Arizona receiving these funds were:

- Cocopah Indian Tribe
- Kaibab Band of Paiute Indians
- San Carlos Apache Tribe
- Havasupai Tribe
- Navajo Nation
- White Mountain Apache Tribe
- Hopi Tribe
- Pascua Yaqui Tribe
- Yavapai-Apache Tribe
- Hualapai Indian Tribe
- Salt River Pima-Maricopa Indian Community

**RURAL TRANSIT ASSISTANCE PROGRAM**

It should be noted that the Rural Transit Assistance Program provides training, technical assistance, research assistance and support services to improve deliveries of transit services in rural areas. Training is provided through National RTAP and the Arizona Transit Association.

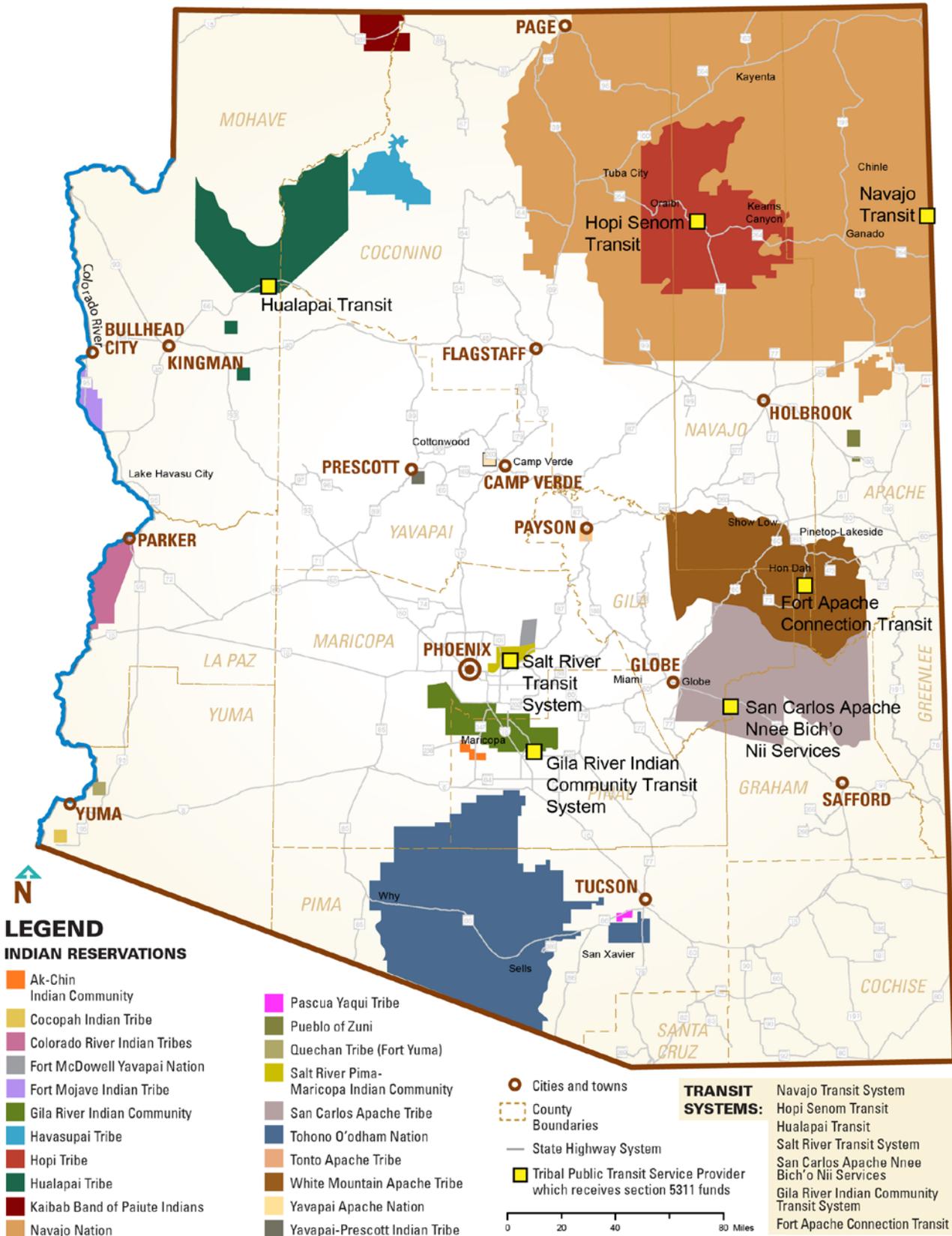
**TRANSIT SERVICES FOR ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAM**

The Section 5310 “Enhanced Mobility of Seniors and Individuals with Disabilities” Program provides capital and operations assistance to private non-profit and public agencies that provide transportation to the elderly and disabled. Tribal governments have been very active in this program. Tribes must compete with other governments and agencies for Section 5310 funding. **Map 1-4** shows the reservation areas that have ADOT administered enhanced mobility programs. The current ADOT Transit Programs and Grants website address can be found under ADOT WEBSITES on the last page of this Handbook.

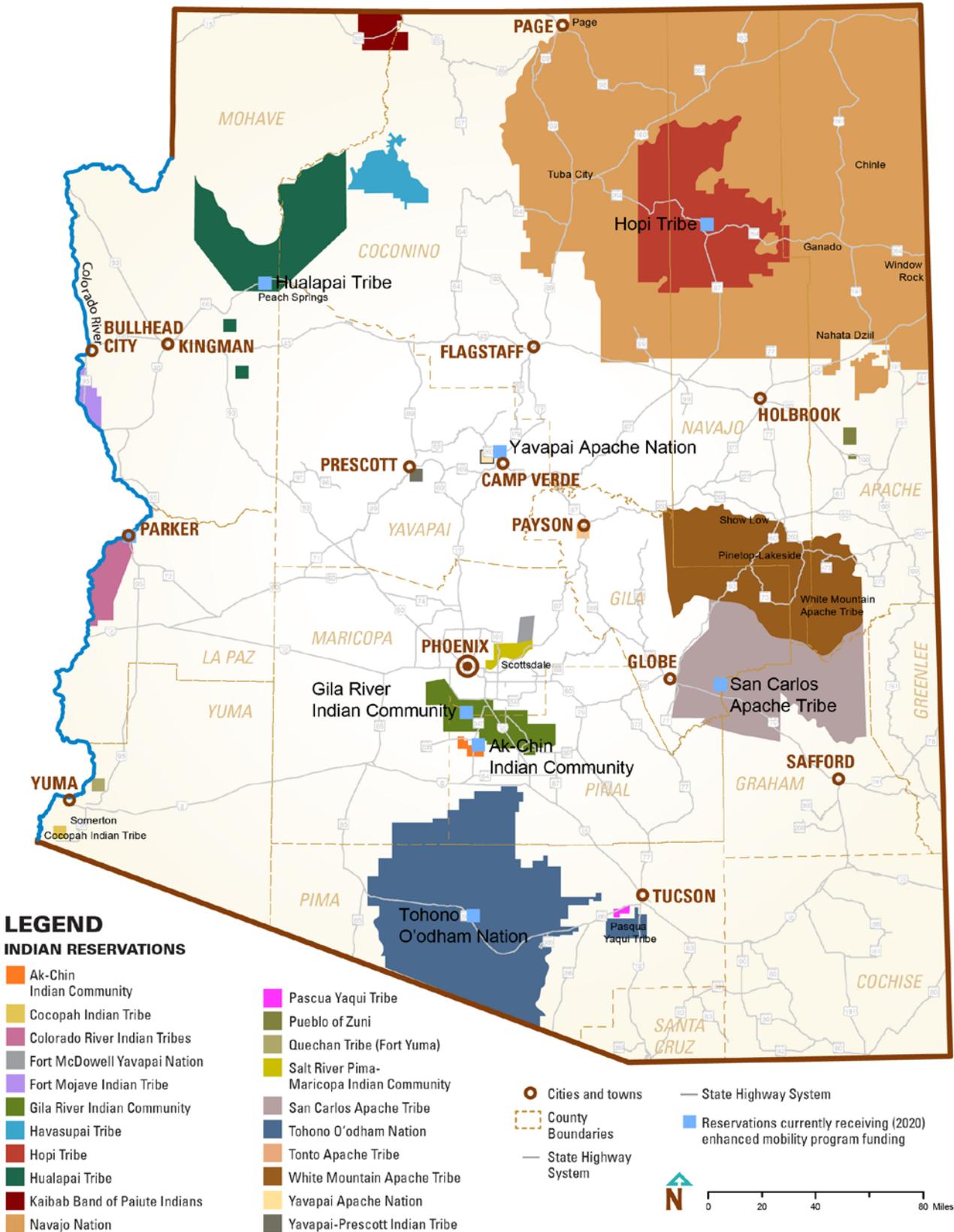
The ADOT RTAP program offers training and technical assistance to ADOT transit grant recipients.



MAP 1 – 3: AMERICAN INDIAN RESERVATIONS AND RURAL PUBLIC TRANSIT SERVICES



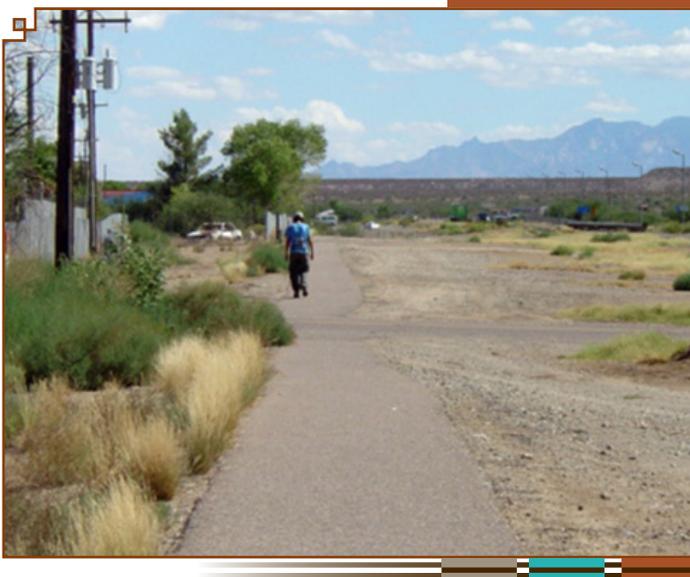
MAP 1 – 4: AMERICAN INDIAN RESERVATIONS AND TRANSIT SERVICES FOR ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES



## Bicycles and Pedestrians on Tribal Lands

Non-motorized transportation is common in tribal communities. Typically, state highways do not have designated bicycling or pedestrian facilities. Bicycle and pedestrian use is not precluded on state highways, except some freeways. It should be noted that pedestrians are prohibited on all controlled-access highways. Tribal governments have expressed interest in several ADOT administered programs that identify the needs for and provide for the development of bicycling and pedestrian facilities that meet ADOT guidelines. These programs include the Transportation Enhancement (TE) and Highway Safety Improvement Program (HSIP).

ADOT coordinates with tribal governments to plan and improve bicycle facilities along State Highways and other community roads. The *ADOT Bicycle Safety Action Plan* includes projects to address



Pedestrian path on the San Carlos Apache Reservation in Bylas

safety needs on state highways within Native American communities. **Map 1-5** shows there is moderate to high pedestrian demand along state highways on several Indian reservations in Arizona. Links to additional bicycle and pedestrian maps and information can be found at <http://www.azbikeped.org/>

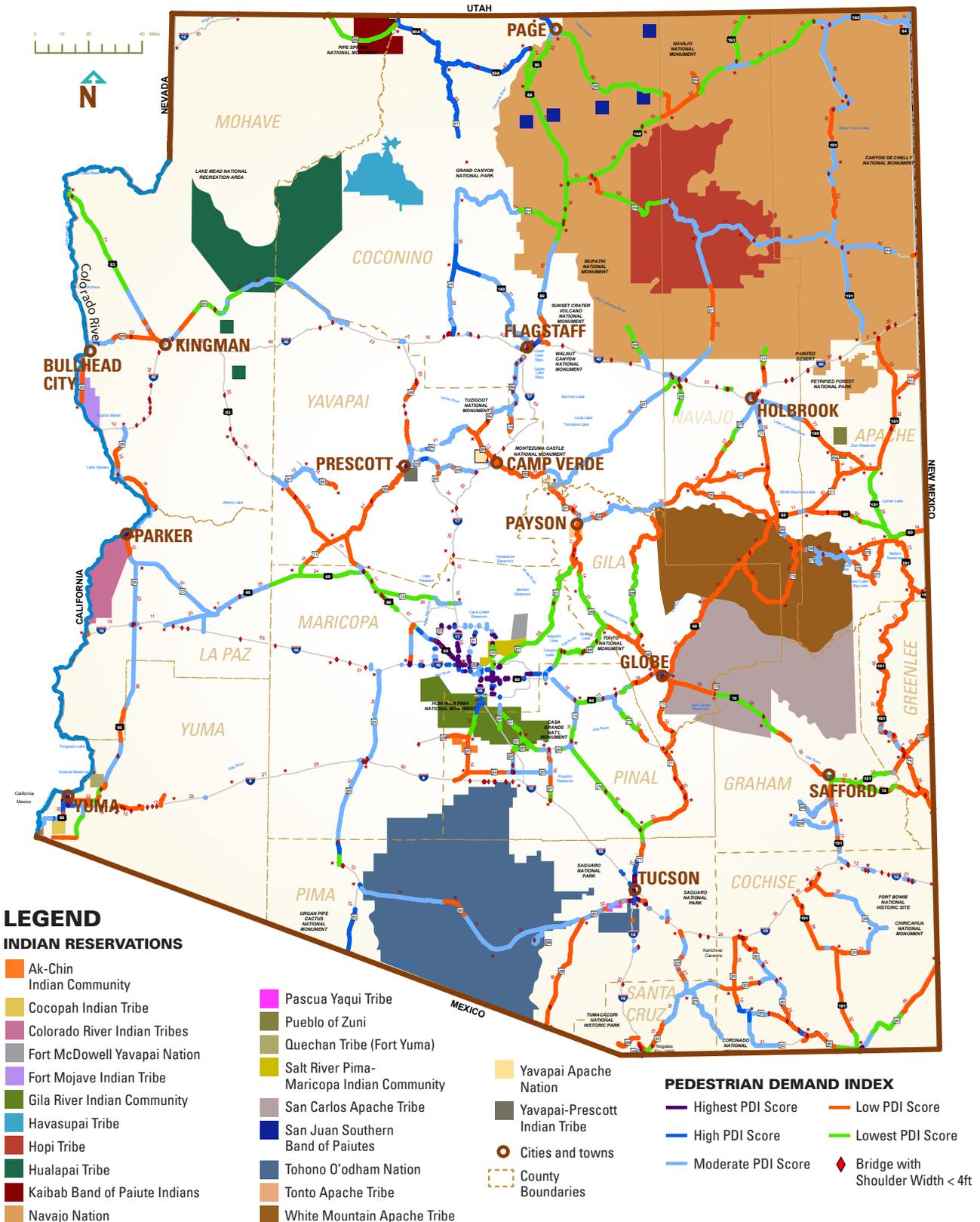


Railroad crossing on the Hualapai Reservation

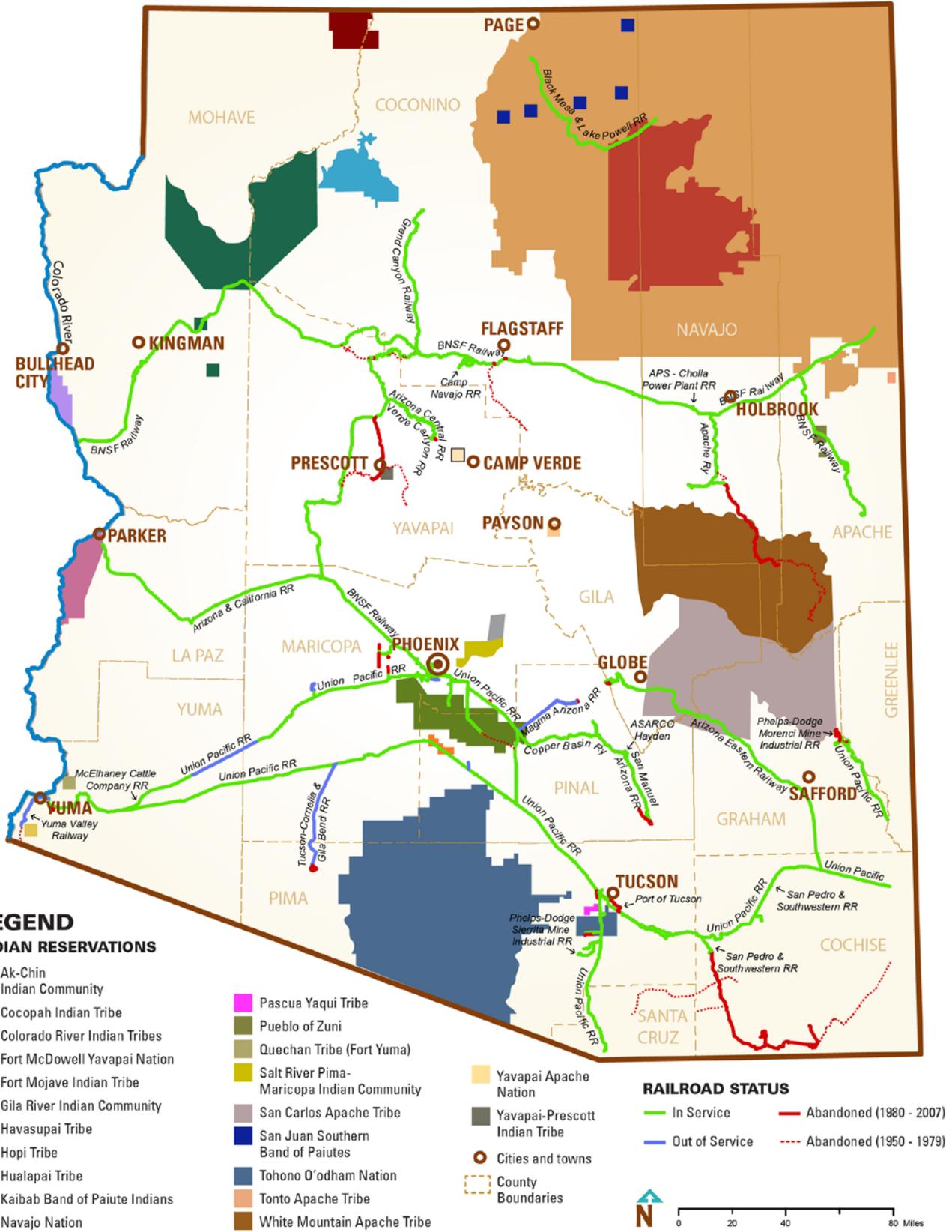
## Railroad System in Arizona

Although the rail system is operated privately, ADOT coordinates statewide planning efforts and is a resource for safety and inventory information on railroads. Existing railroads are located or encroach on tribal lands at several locations. ADOT completed a State Rail Plan in 2011, with tribal participation and input. ADOT personnel coordinate and consults with tribal governments on rail planning. **Map 1-6** shows the existing railroad system in Arizona. Several tribes are located on or near railroad lines, which are shown in green on the map, including the Ak-Chin Indian Community, the Gila River Indian Community, the Hualapai Tribe, the Hopi Tribe, the Navajo Nation, the San Carlos Apache Tribe, and Quechan Tribe (Fort Yuma).

MAP 1 – 5: AMERICAN INDIAN RESERVATIONS AND STATEWIDE PEDESTRIAN DEMAND INDEX MAP



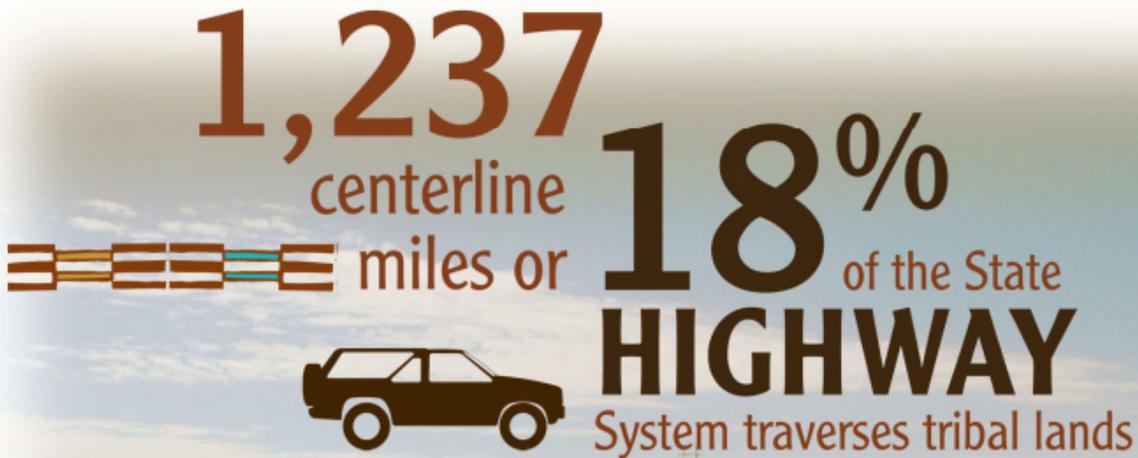
MAP 1 – 6: AMERICAN INDIAN RESERVATIONS AND ARIZONA RAILROADS



## State Highway System on Tribal Lands

The State Highway System (SHS) includes 6,785 centerline miles of roadway.<sup>6</sup> About 86% of the system's roadways are situated within rural areas. As shown in **Table 1-5**, 1,237 centerline miles or 18% of the SHS traverse tribal lands.

**Table 1-5** shows the centerline miles of state highways by reservation. There are state highways on 17 of the 21 reservations in Arizona.



6 [www.aztribaltransportation.org/about](http://www.aztribaltransportation.org/about)

**TABLE 1 – 5: 2012 RESERVATION LAND AREA AND STATE HIGHWAY ROAD MILEAGE ON TRIBAL LANDS**

| TRIBE/RESERVATION   | LAND SQ. MI.*    | MILES**         |
|---|------------------|-----------------|
| Ak-Chin Indian Community / Ak-Chin Indian Reservation                     | 33.53            | 6.04            |
| Cocopah Tribe / Cocopah Indian Reservation                                | 10.61            | 0.00            |
| Colorado River Indian Tribe / Colorado River Indian Reservation           | 387.51           | 13.86           |
| Fort McDowell Yavapai Nation / Fort McDowell Indian Reservation           | 38.88            | 4.34            |
| Fort Mojave Indian Tribe / Fort Mojave Indian Reservation                 | 36.75            | 8.52            |
| Quechan Tribe (Fort Yuma) / Fort Yuma Indian Reservation                  | 1.11             | 0.00            |
| Gila River Indian Community / Gila River Indian Reservation               | 582.56           | 77.85           |
| Havasupai Tribe / Havasupai Indian Reservation                            | 268.91           | 0.00            |
| Hopi Tribe / Hopi Indian Reservation                                      | 2,432.39         | 91.39           |
| Hualapai Tribe / Hualapai Indian Reservation                              | 1,601.45         | 17.87           |
| Kaibab Band of Paiute Indians / Kaibab-Paiute Indian Reservation          | 188.43           | 16.46           |
| Navajo Nation / Navajo Indian Reservation                                 | 15,813.95        | 683.90          |
| Pascua Yaqui / Pascua Yaqui Indian Reservation                            | 0.87             | 0.00            |
| Pueblo of Zuni / Zuni Indian Reservation                                  | 23.52            | 2.73            |
| Salt River Pima-Maricopa Indian Community / Salt River Indian Reservation | 83.97            | 21.26           |
| San Carlos Apache Tribe / San Carlos Indian Reservation                   | 2,891.22         | 52.58           |
| San Juan Southern Band of Paiute Indians                                  | 0.00             | 0.00            |
| Tohono O’odham Nation / Tohono O’odham Indian Reservation                 | 4,436.33         | 110.51          |
| Tonto Apache / Tonto Apache Indian Reservation                            | 0.13             | 0.00            |
| White Mountain Apache Tribe / Fort Apache Indian Reservation              | 2,634.45         | 127.96          |
| Yavapai-Apache Nation / Yavapai-Apache Indian Reservation                 | 0.97             | 0.21            |
| Yavapai-Prescott Indian Tribe / Yavapai-Prescott Indian Reservation       | 2.15             | 1.49            |
| <b>TOTALS</b>   | <b>31,469.69</b> | <b>1,236.99</b> |

\*Source: Arizona State Land Department Arizona Land Resource Information System (ALRIS) database, 2012.

\*\*Source: Arizona Transportation Information System (ATIS Roads), May 2012.

Notes: The mileage figures are for mainline cardinal direction highways only and do not include additional mileage for divided highways, ramps and frontage roads.

### PLANNING AND IMPROVING ROADS

ADOT works with tribal governments to plan and improve roads. ADOT consults and coordinates with tribal governments on the following activities:

- Long Range multimodal transportation planning, which includes motor vehicles, bicycles, pedestrian, transit, and equestrian planning.
- State Transportation Improvement Program
- Road Safety Planning
- Funding
- Local Government Assistance

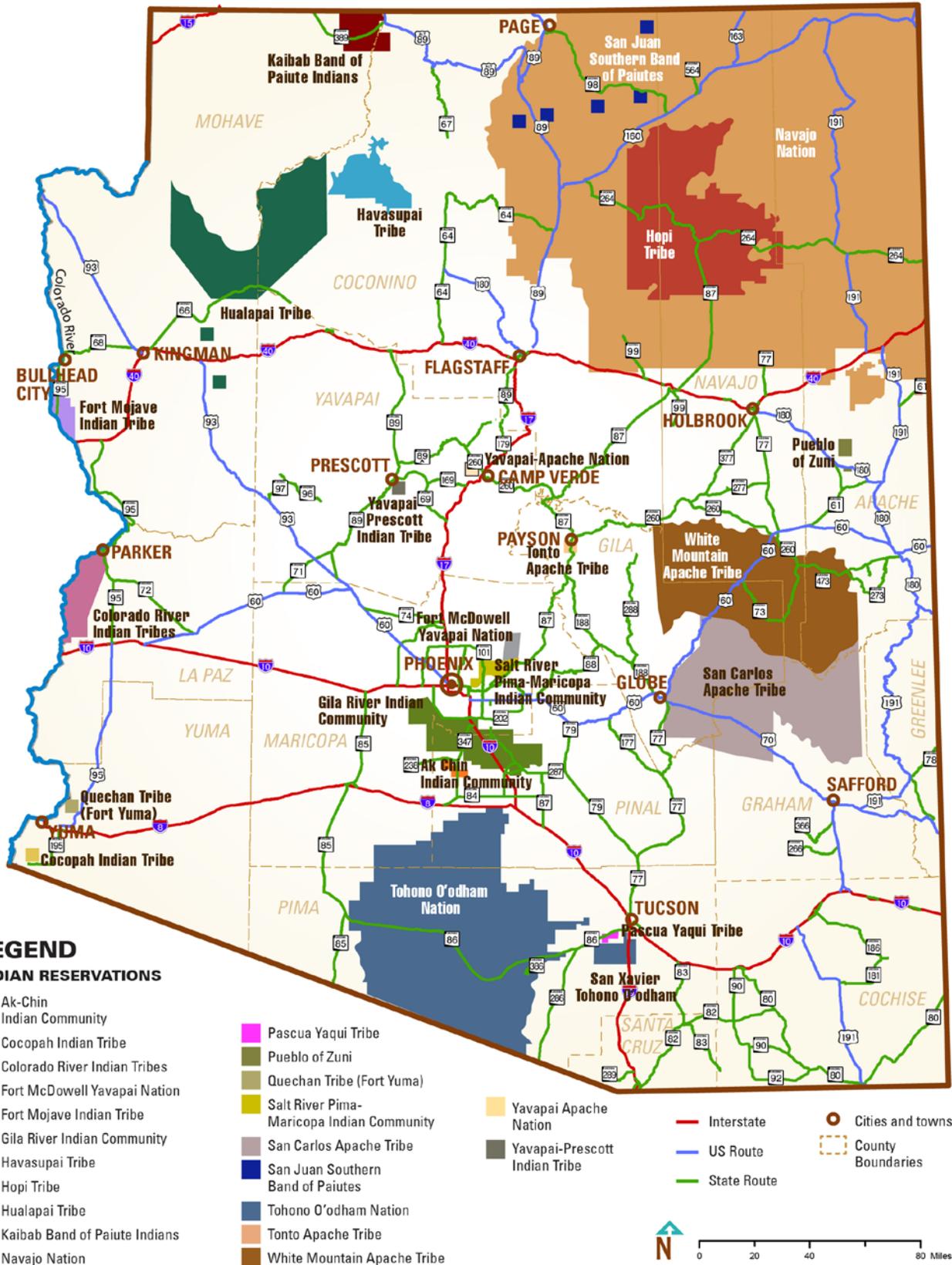


Map 1-7 shows the locations of state highways in Arizona, and which state highways traverse tribal lands.

State highways are typically on tribal lands by easement, i.e. ADOT does not own the land upon which the state highway is built. The easements specify the conditions under which ADOT is permitted

to construct, maintain, and operate the state highways on tribal lands. It is imperative that ADOT personnel maintain effective coordination and consultation processes with affected tribal governments to ensure the state highways can be constructed, maintained, and operated in an efficient and effective manner.

MAP 1 – 7: AMERICAN INDIAN RESERVATIONS AND ARIZONA STATE HIGHWAY SYSTEM



## ADOT Motor Vehicle Division (MVD)

The Motor Vehicle Division works with Tribal governments and residents in a number of ways:

- The MVD works with residents to obtain driver licenses, commercial driver licenses, and identification cards.
- Vehicle services provided by MVD include license plates and placards, title and registration of vehicles, and emission testing.
- Services to commercial customers include abandoned vehicle reporting, electronically accessing motor vehicle records for fleets, licensing information for vehicle dealers, and rental vehicle surcharges
- The MVD also issues commercial permits and international registrations, provides filing for fuel tax rebates, and conducts aircraft registration.

Motor Vehicle offices are located throughout the state. There are 37 MVD offices serving people living or working on reservations. The 37 offices include 12 offices in the Phoenix Metropolitan Area and three offices in the Tucson Metropolitan Area. The MVD office locations are shown on **Map 1-8**. Only a single symbol is used to show the multiple offices in the Phoenix and Tucson Metropolitan Areas. Additionally, many online services are provided at <https://servicearizona.com/>



Driver Services



Vehicle Services



Commercial Services



Motor Carrier Services

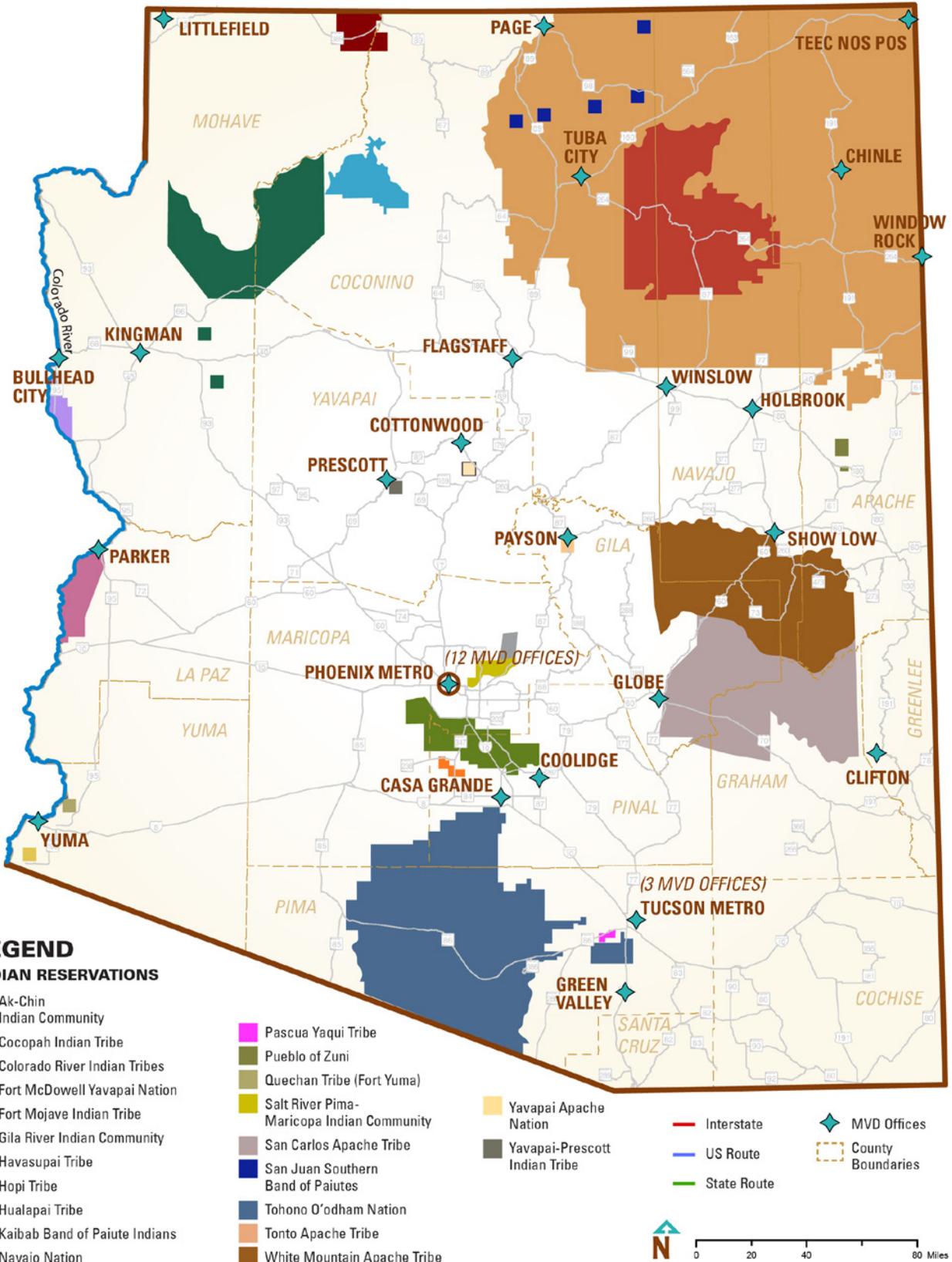


Fuel Tax Collection



Aircraft Registration

MAP 1 – 8: MOTOR VEHICLE DIVISION OFFICES ON OR SERVING TRIBAL LANDS



## ADOT Enforcement and Compliance Division (ECD)

The ECD operates the ports of entry and truck permitting. Issues can arise when trucks use tribal roads to avoid ports of entry stations and other commercial vehicle enforcement locations. Additional information on ADOT ECD, including port of entry locations, can be found at <https://azdot.gov/node/4906>



THIS PAGE WAS INTENTIONALLY LEFT BLANK



## Module 2: Setting the Foundation for Understanding Intergovernmental Relations with Native Nations/Tribal Governments – Federal Level



### Module Learning Objectives

This module includes the following learning objectives:

- 🕒 Understand the legal basis of tribal government status and authority.
- 🕒 Become familiar with the major eras of federal policy toward American Indians and the major impacts of each policy era.
- 🕒 Become familiar with the significant pieces of federal law directly concerning American Indian people and tribal governments.
- 🕒 Become familiar with the key legal cases that have shaped federal Indian law.
- 🕒 Understand the relationship between the federal government and tribal governments and the importance of a government-to-government relationship.

### Module Summary

Tribal Nations are not branches or political subdivisions of the federal government, because tribes pre-date the formation of the United States. Before the colonization of America, European Nations recognized the original peoples as independent political organizations and treated them as sovereign nations by making formal treaties with tribes. Through treaties, the newly created United States federal government also negotiated with tribes as sovereigns.

This overview module discusses the history of United States policy affecting federal-tribal relations. This history remains important because laws from each-historical era remain in force and determine tribal regulatory authorities and tribal land status. Federal

Indian Law includes cases decided in federal courts, which have created a common law for tribes and American Indians as well as statutes enacted by the United States Congress. Federal Indian law, perhaps more so than any other body of law, is reflective of the historical time period in which it came into being.

The policies and laws of the United States changed dramatically over the past 200 years, often swinging back and forth between approaches that recognized the sovereignty of tribes to those that terminated tribal government status and sought to assimilate American Indian people.<sup>7</sup> These eras, listed below, are usually identified and referred to by the dominant federal action of the time:

- Pre-Colombian, or Prior to Contact, Era (before 1492)
- Colonial and Early Treaty Era (1492-1828)
- Removal, Treaty and Reservation Era (1828-1871)
- Allotment and Assimilation Era (1871-1928)
- Indian Reorganization Act (IRA) Era (1928-1942)
- Termination Era (1942-1968)
- Self-Determination Era (1968-present).<sup>8</sup>

Some material for this module was extracted from the ADOT on-line training narration for this module provided by Anne Marie Bledsoe Downes, Director of the Indian Gaming and Tribal Self-Governance Program in the Sandra Day O'Connor College of Law at Arizona State University.

7 Some material for this Module was excerpted from "Property: Land and Natural Resources" in *Treaties with American Indians (Vol 1)* Donald Fixico (ed.), ABC-CLIO, Santa Barbara, CA. 2008 and Arizona State University "Tribal Financial Manager Certificate Program", copyright Arizona Board of Regents.

8 Cohen, F.S., 2005. Handbook of Federal Indian Law. Lexis-Nexis Ch. 1.

## PRE-COLUMBIAN OR PRIOR TO CONTACT ERA

### Traditional Land-Based Economies and Land Tenure



A metate (or mealing stone) is a mortar, a ground stone tool used for processing grain and seeds.

American Indian peoples had longstanding knowledge of the land on which they lived and from which they subsisted. As with most indigenous peoples throughout the world, American Indian cultural identity was closely associated with the specific ecosystems and landmarks of tribal homelands. The rich and varied ecosystems of the North American continent provided the basis for the traditional economies of the Native peoples. These systems for making a living included hunting and gathering, harvesting of fish (particularly salmon in the northwest coast), but primarily agricultural production throughout much of the temperate areas of the continent. These traditional economies varied in the amount of land and population required for subsistence.

Many Indian tribes within what is now Arizona practiced labor-intensive, irrigated agriculture that depended on diversion of surface water. These communities were associated with comparatively dense, sedentary populations. The key food crops grown by American Indians in the Southwest—primarily corn, beans and squash—provided a balanced and nutritional diet, particularly when supplemented with protein from meat obtained by hunting. American Indian (AI) innovation and experimentation throughout North, Central, and South America led to domestication of a wide range of crops and animals that are critical to economies and diets of people today. These include: maize (corn), beans (many varieties), squashes, potatoes, tomatoes, chili peppers, chocolate, tobacco, quinine, cotton, sunflowers, sweet potatoes, avocados, cranberries, peanuts, vanilla, turkeys, llamas, alpacas, and guinea pigs. Another resource widely used by the Tohono O’odham Tribe is the saguaro fruit.

Trade among tribes was common and many of today’s roads trace their paths from the old trading routes used by tribes during the pre-contact era.

### Contact with Europeans

Contact with Europeans resulted in major change in the lives for Native Americans (NA). One of the significant variables affecting Indian land use and land tenure was the effect of European diseases on the AI population. European populations had been exposed for centuries to bacterial and viral infections not yet found in the Americas, and had developed substantial immunity to these diseases. American Indians were assaulted by these new pathogens, which led to high mortality rates from disease as each new tribal population became exposed. As European settlers increased in



Four young Hopi women grinding grain, c. 1906, photo by Edward S. Curtis

numbers through both immigration and natural population growth, native populations were experiencing significant mortality from disease. The epidemics collapsed societies, depopulated numerous communities and weakened political structures and social and religious orders. Fewer survivors were available to rebuild the communities, to tend the agriculture and to maintain the societies. Those nomadic Indian peoples living in smaller units and away from major trade routes and Europeans were less exposed to small pox, malaria and other devastating diseases.<sup>9</sup>

**With the demise of the Mississippian civilizations, drastic changes were made to create meaningful worlds... These [clan] kin had held their literally exalted positions because of a special, age-old bond forged between their ancestors and the resident spirits of that place. With their death and virtual wipeout, this bond with the land was broken, and all spiritual relationships were thrown into disarray.**

Early agreements by tribal populations permitting small settlements of Europeans within their traditional territories in exchange for trade goods did not put unbearable pressures on the access and use of land. However, as more non-Indians took more and larger portions of land, conflicts increased.

Land, as well as the natural and biological resources associated with the land, were the AI assets of the greatest commercial value to non-Indians in North America, particularly along the east coast of what is now the United States. For tribes, the loss of land increasingly made traditional land-based economies

impossible, undermining tribal social and political structures that were consistent with these traditional ways of life and jeopardizing traditional cultural and religious practices that were deeply tied to tribal homelands.

**“ Discovery of lands in the new world, said the Court, gave the discovering European sovereign a title of good against all other Europeans, and along with it “the sole right of acquiring the soil from the natives. ”**

Johnson & Graham’s Lessee v. McIntosh, 21 U.S. 8 Wheat. 543 (1823) 21 U.S. at 573.

## COLONIAL AND TREATY MAKING ERA (1492-1828)

### Doctrine of Discovery

Approximately 50 years prior to Christopher Columbus voyage to the Americas in 1492, the Catholic Pope Nicholas V issued a religious doctrine to the Portugal King Alfonso V sanctioning the conquest of any newly discovered people and lands. The *Romanus Pontifex* authorized King Alfonso to



“Discovery of the Mississippi,” Hernando DeSoto, the first European to view the Mississippi River, in 1541.

<sup>9</sup> Thomas, David Hurst, Miller, Jay, White, Richard, Nabokov, Peter, Deloria, Philip J, 1993. *The Native Americans: An Illustrative History*. Atlanta, GA. Turner Publishing, Inc.

“invade, search out, capture, vanquish and subdue the Saracens, pagans whatsoever, and other enemies of Christ” and “to take all their possessions and property.”<sup>10</sup> This *Doctrine of Discovery* was adopted into the United States Constitution and eventually, the United States Supreme Court in an 1893 court case, *Johnson v. McIntosh*. According to Chief Justice John Marshall, upon independence from Britain in 1776, the United States gained “dominion” over the lands, and Indians retained a right of “occupancy” to their lands, which set the foundation for United States Indian policy. The “Marshall Trilogy” will be introduced later in this module under the section - Removal, Treaty and Reservation Era.<sup>11</sup>

## Land as Real Property

Both European and AI societies held ideals about how land, water, and natural resources were to be used and allocated. Although not the primary system of land tenure, communal land use was a part of European traditions. In European nations there were areas designated as commons, often used by the poor or commoners. Within tribal nations, communal land with use-rights was the dominant system of land tenure. Recognition of the tribal system of common land tenure is seen in the Congressional reaction to the initial Wyandot Treaty of 1817. The initial treaty provided for the land the Wyandot did not cede to be recorded as fee simple titles to individuals. The Senate Committee on Public Lands expressed concern that this process was unprecedented. They required that the treaty be re-negotiated and that

**American Indian societies generally viewed land as commonly-held, with recognition of use rights to extended families, lineages and clans that worked a particular field, hunted for game or harvested fish.**

the Wyandot land be held “as before,” that is, in common.<sup>12</sup>

However, by the 1600s, the European system of real property consisted almost exclusively of individual ownership of land with sole legal title. In the western legal tradition, valuables used in common and to which no individual can claim exclusive rights, such as the oceans or the air, are not considered property. Many AI populations also recognized family hunting and trapping territories. A Muscogee Creek Chief noted in the 1890s to federal officials that the Creek land tenure system in which land was held in common had proven successful throughout their tribal existence. He emphasized that the Creek did not have homelessness or lawsuits over land titles. In general, the native systems for use of land tended to be flexible to meet societal needs as some families and ancestral lines grew and others diminished. When AIs first entered into land agreements with Europeans, it was done from a different economic, social, political, and cultural context. It is likely that AI people intended to provide use rights, not perpetual sole ownership of a parcel of land when they were said by Europeans to be “selling” land.

These issues of differing contexts of understanding were exacerbated by basic challenges of communication; in many cases, agreements were reached between representatives who did not speak the same language and negotiations were conducted through interpreters. Furthermore, tribes generally used oral tradition to memorialize agreements and transactions. Europeans and then the federal government always used written documents as the final record. The opportunity for abuse, misrepresentations, and gross misunderstandings of legalistic terms was substantial.<sup>13</sup>

10 Newcomb, S. “Five Hundred Years of Injustice.” Shaman’s Drum. Fall 1992, p.18-20

11 Canby, W. C. Jr. 1988. American Indian Law in a Nutshell. West Publishing Company. p 13.

12 Prucha, F. P. 1994. American Indian Treaties. University of California Press, Berkeley.

13 Banner, S. 2005. How the Indians Lost their Land. Harvard University Press. Cambridge, MA

## WHO HAD THE RIGHT TO SELL TRIBAL LAND?

One of the key questions in AI land deals was who had legal authority to negotiate commonly held land? The United States constitution requires the consent of two-thirds of the Senate to ratify treaties and many federal treaties with tribes contained provisions that required approval by a majority or three-fourths of the adult male members of a tribe. However, tribes had varying political structures that ranged from informal individual leadership within small groups to large-scale political alliances among tribes who spoke different languages and had different cultural traditions.

**The Supreme Court developed rules, or “canons”, requiring that ambiguities in treaties be resolved in favor of Indian Tribes, that treaties be interpreted as American Indian people would have understood them at the time of signing and that treaties be construed liberally in favor of tribal interests.**

“[I]f you look at the US Constitution and in the Commerce Clause [of] the US Constitution, which is the very basis of American government, [it] says that Congress shall have the authority to enact commerce with the states and with the Indian tribes.

“How powerful the word “honor” is...reflecting back again to the Commerce Clause that Congress recognizes the tribes’ right to coexist with states is a point of honor... Honoring our boundaries. Honoring where the jurisdiction ends and where the jurisdiction of another nation begins is critical to the recognition and honor of the tribes as sovereign nations.”

- **Council Member Diane Enos**, Salt River Pima-Maricopa Indian Community  
Remarks made at the 2009 Indian Nations and Legislative Day



Misunderstandings occurred when non-Indians interpreted the political structure of AI societies and assumed that some leaders had more authority than they actually had. In recognition of the difficulties posed by cross-cultural communication and the standard of responsibility of the federal government as a tribal trustee, the Supreme Court developed rules of treaty interpretation in a series of cases in the 1930s. These rules, or “canons,” require that ambiguities in treaties be resolved in favor of Indian tribes, that treaties be interpreted as AI people would have understood them at the time of signing and that treaties be construed liberally in favor of tribal interests.

## Early Treaties between Tribes, Colonial Powers, and the U.S. Prior to the War of 1812

The first property negotiations between Europeans and AIs on the eastern coast of North America were by individual settlers to obtain small parcels of AI land, generally in return for trade goods. However, European governments, through their colonial administrations, quickly took control of the land acquisition process by claiming the sovereign right as sole purchaser of AI land. A major basis of this preemptive claim was that tribes were sovereigns and negotiations between sovereigns were conducted through treaties.



“We the People,” as it appears in a copy of the original Constitution.

Early treaty-making between tribes and European nations, and subsequently the United States, were mechanisms to secure alliances and peace between sovereigns. When the British relinquished their American colonies in the Treaty of Paris in 1783, all the land over which the Crown had claimed sovereignty east of the Mississippi River became part of the United States. Even the tribes who fought with the colonists were legally subsumed,

although the treaty said nothing specific about AI lands. The new nation was too weakened militarily and too poor from fighting the **Revolutionary War** to forcibly acquire AI lands. Instead the federal government set about acquiring title to AI lands through treaties, primarily in exchange for trade goods.

Once the Revolutionary War was concluded, the newly formed United States government attempted to deal with Indian affairs in the first constitution, the **Articles of Confederation**. In the Articles of Confederation, Indian affairs were not centrally managed. It left Indian affairs to the individual colonies. This program and process proved to be an utter failure. The Articles of Confederation were replaced by the United States Constitution, which is the basis for government-to-government relationships —the basic principle of contemporary federal policy in working with tribal governments.

Most discussions of law including federal Indian law begin with the United States Constitution. In relationship with Indian tribes, the United States Constitution authorized separate powers for Congress and the President. Congress was granted commerce control with tribes. The President, with Senate concurrence, was empowered to make treaties with tribes, which is the same constitutional authority for entering into treaties with foreign nations. The Commerce clause, Article I, Section 8, clause (3), provides: “The Congress shall have the power ... to regulate Commerce with foreign Nations, and among the several states, and with the Indian tribes.” The Treaty clause, Article II, Section 2, clause (2), vests the President, with the concurrence of two-thirds of the Senate, authority to enter into treaties with AI tribes. This is the same constitutional authority as entering into treaties with foreign nations. This constitutional language is a recognition of tribal sovereignty.

The commerce power is defined as a very broad

**The American Indian commerce clause, Article I, Section 8, clause (3), provides: “The Congress shall have the power ... to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”**

**The Treaty clause, Article II, Section 2, clause (2), vests the President, with the concurrence of two-thirds of the Senate, authority to enter into treaties with American Indian tribes; this is the same constitutional authority as entering into treaties with foreign nations.**

authority, not only in Indian affairs but in *all* affairs. It is the authority by which Congress enacts numerous acts that appear to be unrelated to commerce but in fact are tied to the commerce power. This is in part due to the fact that the Supreme Court has defined commerce very broadly. It does not include just economic affairs of the United States, but economic and political affairs of the United States. Through this power, Congress enacted the **Trade and Intercourse Acts**. The Trade and Intercourse Acts did several things:

They defined Indian country,

- They made trade with Indians a federally regulated issue,
- They regulated who could settle or live in Indian country, and
- Made issues between Indians and non-Indians a federally regulated topic.

It is important to know what they did not do: they did not regulate conduct within or among the tribes. Those internal affairs were left to the exclusive control of the tribes themselves.

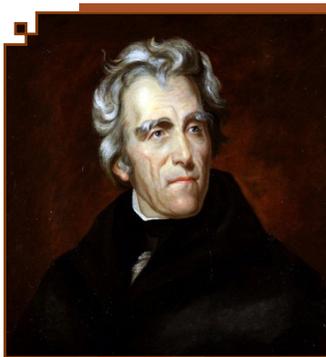
Much of federal Indian law is based on principles of international law, which are reflected in this provision of the Constitution. The Constitution’s Supremacy clause<sup>14</sup>, Article VI, clause 2, operates in conjunction

<sup>14</sup> United States Constitution, Art. VI, cl.2

with the Indian commerce clause to limit state authority in Indian Country. Title 25 of the United States Code and Title 25 of the Code of Federal Regulations are devoted to federal Indian law and contain most federal statutes (laws) and regulations affecting tribes, tribal lands, and the federal government-to-government relationships.

During this era the method of dealing with each other, between tribes and the federal government, was through treaties. Treaties were negotiations between two equals – two sovereigns. If you imagine for a moment what your definition of sovereignty is, and assuming it's a very broad, wide, all-encompassing kind of notion, that is exactly how these two governments dealt with one another...as true equals, parties who saw each other as having sovereignty over their own territory and their own internal relations, and would negotiate treaties to give and take things that each party wanted. So for example, if a treaty by the U.S. government wanted to include the ability to go over or traverse across certain Indian lands, they might offer in exchange certain economic or other kinds of incentives to a tribe in order to have that right to traverse those lands. This was extremely important during times of war because the U.S. government needed to access certain roads, certain rivers, and other things of that nature in order to be able to effectively fight the war. They did not assume they could simply do that because they saw the tribes as sovereign nations. Government personnel knew they needed permission and they negotiated that permission through treaties. The relationship between tribes and the federal government at the end of the treaty and colonial period was that of true negotiation between equals with a very wide, expansive view of tribal sovereignty – one that was even acknowledged in the U.S. constitution via the treaty making power and the commerce clause.

Following the same policies as the Europeans, the United States government continued to claim the sole right, superseding states and individuals, to acquire American Indian land parcels, which were then placed in the public domain, divided into smaller parcels, and subsequently sold to individual non-Indians. United States policy increasingly pushed American Indian peoples toward the most sedentary lifestyles that required the least amount of land. As Thomas Jefferson negotiated the Louisiana Purchase with France in 1803, nearly doubling the size of the United States, he wrote that tribal peoples would learn to use less land and that settlers would need more (Jennings 1975).



Andrew Jackson – 7th  
President of the United  
States (1829-1837)

## REMOVAL, TREATY AND RESERVATION ERA (1828-1871)

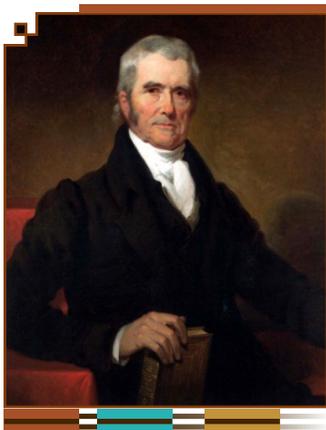
The very broad, expansive view of tribal sovereignty began to wane in the following years. Once the war of 1812 ended, the political position of the United States had increased and that of the tribes had decreased. There was animosity by the federal government against some of the tribes. This animosity was due in part to the fact that some tribes, as an assertion of their sovereignty, had aligned themselves and agreed to fight on behalf of British forces, especially during the war of 1812. Consequently, the tribal-federal relationship began to change. Andrew Jackson, who had fought for the United States during the war of 1812, eventually became elected president in 1828. He resented the fact that some tribal nations had fought on the side of the enemies of the United States and quietly encouraged state infractions into tribal lands. As a result, some states began to enact laws that

appropriated tribal land - actually took tribal land away from tribes themselves without any regard to treaty or negotiation or any kind of true sovereign to sovereign behavior. Once gold was found in the Cherokee territory in the southeast, the State of Georgia immediately began appropriating land from the Cherokee Nation.

### The Marshall Trilogy

Some of the earliest cases decided by the Supreme Court of the United States involved the relationship of the federal government and tribal nations, as well as the relative authorities of the federal and state governments in dealing with tribal nations.

Chief Justice of the U.S. Supreme Court, **John Marshall**, wrote the decisions for three of these famous cases that form the framework for much of federal Indian law. **Chief Justice Marshall** is often credited with forming the legal concept of the Discovery Doctrine that attempted to justify the claim by European nations to lands belonging to Native peoples.



John Marshall in 1831 by Henry Inman.

### JOHNSON V. MCINTOSH (1823)

One of the first cases in most property law textbooks is *Johnson v. McIntosh* in which the Supreme Court held that tribal nations had a right of occupancy of tribal lands, often referred to as aboriginal title or Indian title. This important case recognized tribal nations as legal entities, and prohibited states and other sovereigns from claims to American Indian lands. However, it also established the federal government of the United States as having the primary legal right to transfer American Indian land ownership.

### CHEROKEE NATION V. GEORGIA (1831)

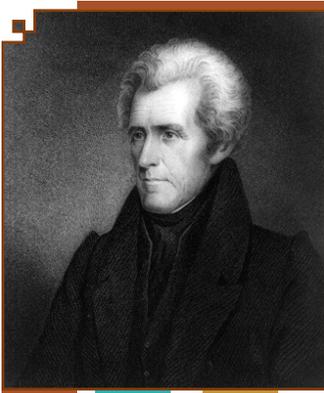
In this case, the Supreme Court overruled attempts by the State of Georgia to control affairs within the Cherokee Nation. Chief Justice John Marshall wrote his famous phrase that the tribal nations were 'domestic dependent nations', politically distinct and capable of managing their own affairs. However, the decision also determined that tribal nations were no longer to be considered foreign nations and that the federal government

had a responsibility, referred to as trust responsibility, toward tribal nations and their lands. Consequently, in 1824, the Indian Affairs office was moved from the U.S. War Department (which dealt with foreign nations), to the Department of the Interior where it remains today as the Bureau of Indian Affairs.

**Some of the earliest cases decided by the Supreme Court of the United States involved the relationship of the federal and state government and tribal nations.**

### WORCESTER V. GEORGIA (1832)

In this important case, the Supreme Court decided that states do not have authority on tribal lands and that tribal nations did not lose their sovereign powers by becoming subject to the federal government. This decision confirms that only Congress, not states, has the power to enact laws affecting AI lands and people.



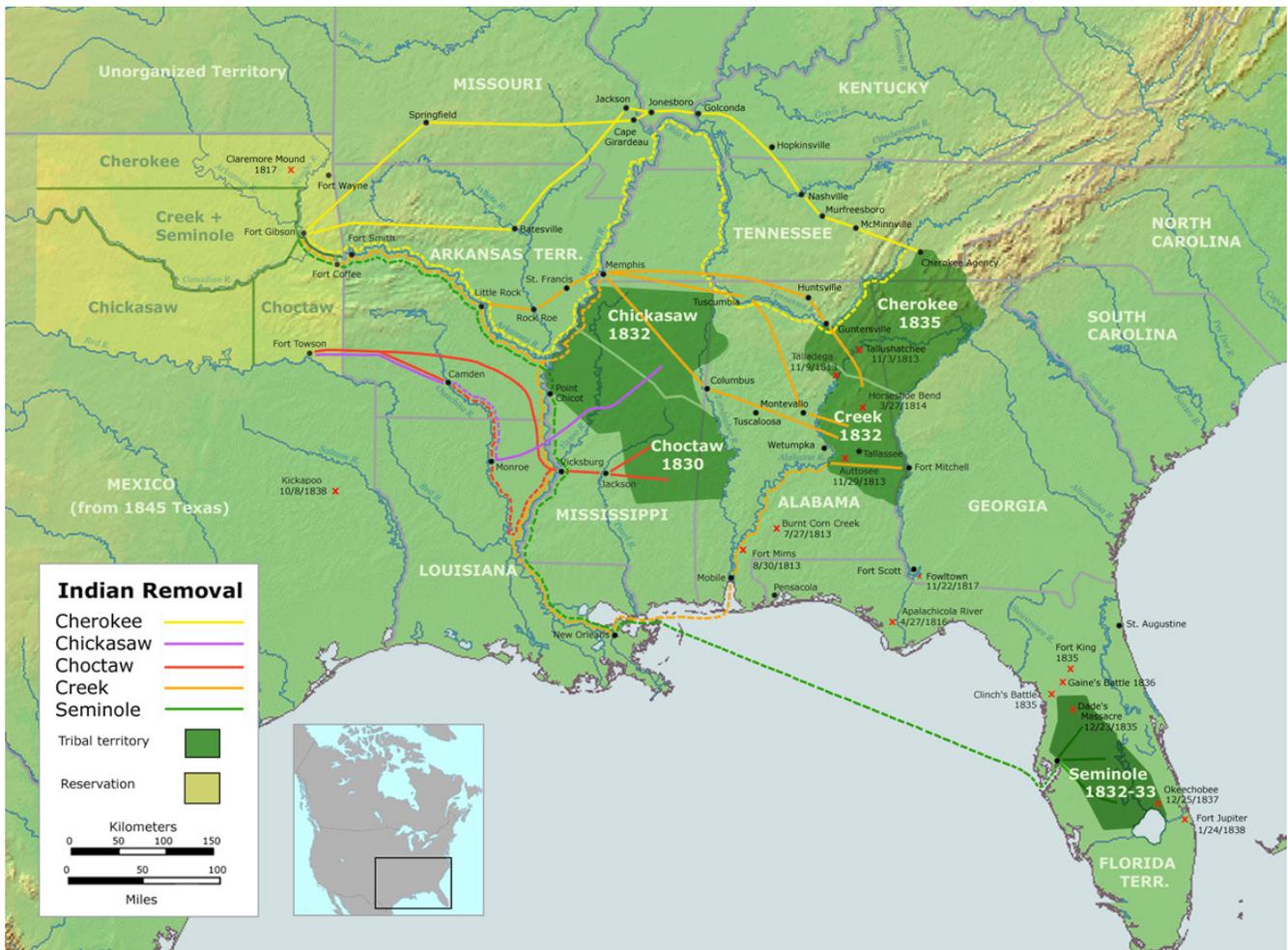
Andrew Jackson – 7th President of the United States (1829-1837)

## Removal

After the War of 1812 and the end of the British threat to the United States, alliances with AI tribes were no longer critical to the international balance of power on the continent. In a pattern that would happen repeatedly over the next 50 years, settlers on the frontier who were remote from the federal seat of power pushed into the lands of the Cherokee, Muscogee Creek, Chickasaw, Choctaw, and Seminole, the so-called Five Civilized Tribes. These settlers provoked conflict, and the federal government responded.

With the passage of the **Indian Removal Act of 1830**, the United States military forcibly removed the tribes east of the Mississippi to Indian Territory (what is now the State of Oklahoma). The tribes in the Southeast, all farming peoples, strongly opposed the removal, but lacked the military capacity to challenge the army and the political strength to fight the executive power of the **President, Andrew**

**Jackson**. The forcible removal of the tribes from the Southeast to Oklahoma is known as the Trail of Tears, not only because of the complete loss of tribal homelands, but also because of the number of deaths that resulted from the forced removal.



Map of the U.S. Indian Removal, 1830-1835. Oklahoma is depicted in light yellow-green.



## RESERVATIONS AND CEDED LANDS

During the next 50 years, through the end of the Civil War, the non-Indian population of the United States continued to grow along with the demand for

AI land. The federal government expected that the removal of tribes to Oklahoma Territory would isolate American Indians from conflicts with non-Indians in the east. However when Texas, Oregon, and the lands of the Mexican Cession of 1848 became part of the United States, the federal government entered again into treaty-making with the many tribes in these frontier territories. The lands that were retained or reserved by the federal government for tribal nations became known as reservations. Importantly, tribes were considered to retain their inherent authorities on the reservation lands that remained to them.

**The lands that were retained or reserved by the federal government for tribal nations became known as reservations. Importantly, tribes were considered to retain their inherent authorities on the reservation lands that remained to them.**

This treaty concept forms the basis for the doctrine of reserved rights established by the Supreme Court in *Winters v. United States* (1908). The Winters Doctrine, based on this case, recognizes and confirms tribal rights to the water associated with their lands. As the United States increased its military ability to force tribes onto small portions of their former territories, it continued to use formal treaties as the legal mechanism, despite the fact that these treaties were more and more coerced and the terms far less favorable to tribes.

Between 1853 and 1856, 52 treaties were negotiated, more than in any other period, and close to 174 million acres of AI land were taken and allocated

to non-Indian settlers and businesses. Reservation treaties listed the lands to be ceded to the United States in return for federal promises to provide goods and services. In addition, these treaties generally contained the federal government's assurance that AI people could live on their remaining, reserved lands in perpetuity or "as long as the water flows, the grass grows upon the earth or the sun rises". Despite the statements of permanence, many treaties were broken to obtain more American Indian land. By 1860, essentially no tribal lands remained east of the 98th meridian (bisects the U.S., running from the middle of North Dakota and south through Texas). In the next decade following the end of the Civil War, tribes also lost most of their lands in the interior of the continent.



Trail of Tears sign on U.S. Route 71 through Fayetteville, Arkansas.

Tribes in the western part of the United States generally retained parts of their traditional homelands, unlike the tribes in the Southeast that were forcibly removed from their traditional lands in the 1830s through the **Trail of Tears**. However, many tribal groups experienced forced removals, including tribes within Arizona. In 1878, the Yavapai were marched by U.S. soldiers in the middle of winter over the Mogollon Rim from Camp Verde to San Carlos. This forced relocation caused many deaths and is

remembered as a horrific experience. The Yavapai continued to press the United States government to allow them to return to their homelands and eventually, Yavapai groups returned to Fort McDowell, Prescott, and Camp Verde areas. These returnees were successful in getting reservations established within the once much larger Yavapai traditional lands that extended throughout almost a fifth of Arizona. In 1864, the Navajo people were also forcibly removed from their lands in Arizona to Bosque Redondo (Fort Sumner) in New Mexico. This deportation is known as the Long Walk and is also infamous for its devastating impact. Following the signing of the Treaty of Bosque Redondo in 1868, which established the Navajo Reservation, the United States government allowed Navajo to return to their homelands.

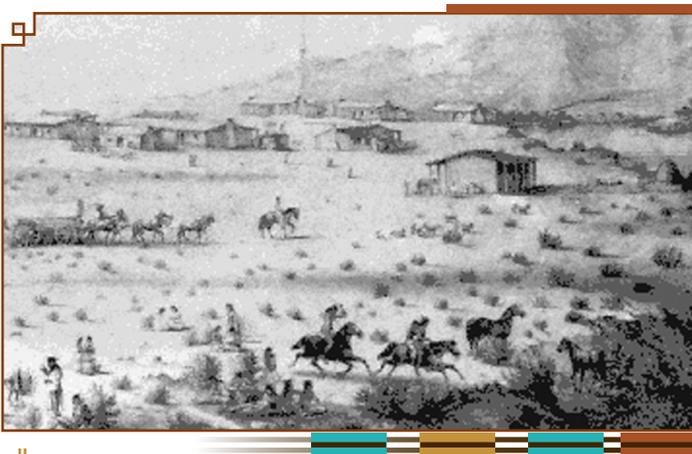
### End of Treaty Making

By 1871, the use of treaties to negotiate the creation of reservations ends. The end to treaty making had less to do with Indian Affairs, and more to do with politics. When we discuss the treaty making power in the first era of federal Indian policy as it was included in the U.S. constitution, we know that the President negotiates treaties and Congress ratifies that treaty. But it is only one house of Congress that ratifies treaties – it is the Senate. Over time, the House of Representatives, which handles all appropriation bills, became extremely upset with the Senate for ratifying all these treaties that the House then had to appropriate money. There was an agreement between the Senate and the House to stop treaty making with the Indians as a result of this political dispute. So even though it was a political decision to end treaty making, this information was probably not effectively communicated to tribes.



U.S. Marines searching for the Indians among the mangrove during the Seminole War. Marines battle Seminole Indians in the Florida War, 1835-1842.

Agreements for reservations continued after the end of treaty making and those agreements were negotiated the same way they had always been done in the past, but they were no longer called treaties but instead were called agreements that became law as Congress enacted legislation. This is why all of Indian law is located in the code of federal regulations at 25 Code of Federal Regulations (CFR). Ultimately, at the end of treaty making, all agreements between tribes and the federal government were codified at 25 CFR. Those agreements looked like treaties but instead were legislative actions that could unilaterally be changed by Congress. Unlike treaties which require a negotiation between the two equal parties to have changes like those that occurred during the Colonial and Treaty-Making Era, these new agreements could be changed unilaterally with little or any discussion with the other party. This is another large chunk of sovereignty that is taken out of that broad, expansive



Fort Mojave was originally named Camp Colorado when it was established in 1859 during the Mojave War.

view of sovereignty. Some tribes and tribal people were resistant to this reservation policy and this is the time of the Indian wars.

## ALLOTMENT AND ASSIMILATION ERA (1871-1928)

### Assimilation

With the formal end to treaty making, the United States entered into a new era of federal Indian policy, and that is the Allotment and Assimilation Era. By the 1880's most tribes and Indians were disarmed, and they were fenced in on reservations. There were two points of view behind assimilation. The first involved those who were sympathetic to all of the poverty on reservations and felt like something needed to change. The other represented those who resented the large tracks of land, which really were not so large, that Indians and tribes still owned. The government realized that reservations could be the way to civilize Indians and tribal people. Efforts were made to displace native governments and impose on tribal governance over these territories through Indian agents who were assigned to reservations to assist in assimilating Native Americans into western culture.



Male Carlisle School Students, 1879.

In **1878 boarding schools**, which took Indian children off reservations to be educated, were started. These

boarding schools assisted in the assimilation efforts because they would not allow Indian children to wear their traditional regalia, to speak their own language, or to practice any of their cultural activities. Instead they were required to cut their hair, wear clothing similar to that of a non-Indian student, and could no longer speak their language or pray in the traditional way. These students were then, after a few years of education, sent back to the reservation. One of the most popular of these off-reservation boarding schools was the Carlisle Indian School. Students would attend school there for a number of years and be sent back to the reservation no longer knowing or being able to practice their traditional religions and essentially were left to try and adapt to a tribal society with which they had no longer any connection.

In **1883 the Courts of Indian Offenses** came into place. The Courts of Indian Offenses were essentially courts that outlawed Indian culture. Judges were appointed by the Indian agents, and the laws of the Courts of Indian Offenses include things like outlawing polygamy, outlawing the giving of gifts in return for marriage, making it illegal to practice traditional religious or cultural dancing, and the practice of medicine men. So again, essentially the purpose of the Courts of Indian Offenses were to outlaw Indian culture. The penalty for violating one of the laws of the Courts of Indian Offenses was that there were no rations – there was no food provided to the individual who violated any of those offenses. The Courts of Indian Offenses was followed in 1885 by the Major Crimes Act enacted by Congress. This act was the first real encroachment on native governments sovereignty.

The **Major Crimes Act** assigned seven major crimes, if they were committed in Indian country, to federal jurisdiction. A tribe had no jurisdiction over that matter, even though it may have included a tribal member and it happened on tribal land. The Major Crimes Act continues to be the law of the land today and it includes more than seven major crimes. Because the

Major Crimes Act takes jurisdiction away from tribes and puts it in the hands of federal government, not only does it delete or deplete tribal sovereignty, but it also leaves tribes with a very complex jurisdictional maze over criminal behavior. If any one of these seven major crimes happens on a reservation, it is up to the U.S. Attorney's office to prosecute those crimes. In the modern era, the U.S. Attorney's office is dealing with numerous other issues and they are not in the course of business of regularly dealing with murders or aggravated assaults. Therefore, these crimes more often than not go unpunished and are not prosecuted in Indian country.

**During the allotment period, American Indian lands were reduced from approximately 138 million acres in 1887 to 48 million acres by 1930.**

After the Civil War, the United States adopted another major shift in federal Indian policy with the stated goal of assimilating American Indians through small-scale farming. This era is characterized by the **General Allotment Act of 1887 (also known as the Dawes Act)**. During the allotment period, the federal government divided tribal lands into relatively small, individual parcels that ranged from 40 to 160 acres, which then became privately owned (fee simple title) by individual American Indians after a transition period, often 25 years. In most cases, the allotment of a parcel eventually resulted in ending the federal trust status of the land. Without federal trust status, the lands could be sold, mortgaged, and taxed. In contrast, *reservation land* cannot be sold by tribes or individual AIs; only Congress can authorize the purchase or sale of reservation land, all of which is held in trust by the federal government.

The allotment process left a legacy of complicated land tenure on the reservations that underwent allotment. When allotments passed out of federal trust status, individual AI landowners then had to pay property taxes and much of the land was

sold to pay taxes and other debts. On some reservations, particularly in the Southwest where allotment occurred later (usually in the early 1900's), allotments remain in federal trust status and the lease and homesite rights are inherited. Over many generations, ownership of allotments has become highly fractionated, sometimes with over a 100 owners for a single acre, making it increasingly difficult for individual allottees and their descendants to make economic use of the allotment rights.

The historic sale of allotments also created so-called checkerboard land ownership patterns on a number of reservations in which parcels of AI land are separated by land owned by non-Indians – the idea being that the close proximity of AI and non-AI families would foster assimilation. These checkerboard patterns of land ownership on some reservations make it hard for those tribes to conduct regulatory and law enforcement activities as well as land use planning and economic development activities. The substantial challenges posed by fractionated land inheritance (multiple heirs) resulted in the 1982 Indian Land Consolidation Act in which tribes are given first right of refusal to buy fractionated and privately held land within reservation boundaries.

Some individual AI people made considerable income off of the royalty payments from leasing their allotted lands for economic development (e.g., leases or sale of land for oil wells in Oklahoma in the early 20th century), but the transition to the market economy was very difficult for most allottees who were often left without their land and with no money once federal trust status protections were removed. Without the experience and education to manage money, many individual American Indians were not able to create long-term financial security from land sales or lease income. Without tribally held lands, tribal social and political structures became less meaningful. In addition, small parcels of land are often inadequate to develop tribal projects that benefit the tribe as



## Loss of Tribal Lands

Tribal lands that were not allotted were termed 'excess' and sold by the United States government to non-Indian homesteaders. As a result, during the allotment period, American Indian lands were reduced from approximately 138 million acres in 1887 (the date of the General Allotment Act) to only 48 million acres by 1930, a loss of almost two-thirds of the remaining land. **See Maps for changes in tribal lands over time.**



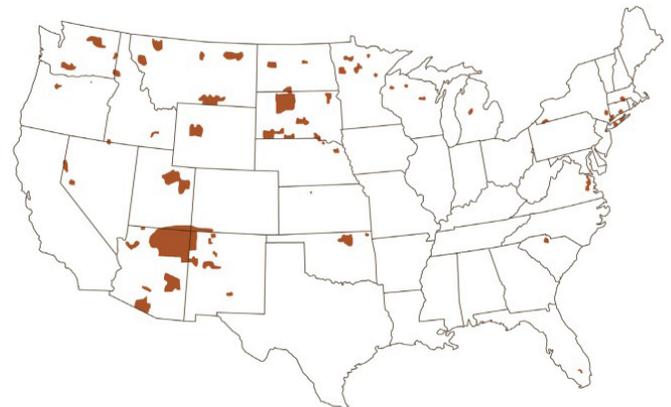
**1850**   
 □ Lands transferred from Native Americans to European Settlers  
 ■ Lands held by Native Americans or returned to Native Americans



**1865**   
 □ Lands transferred from Native Americans to European Settlers  
 ■ Lands held by Native Americans or returned to Native Americans



**1880**   
 □ Lands transferred from Native Americans to European Settlers  
 ■ Lands held by Native Americans or returned to Native Americans



**1990**   
 □ Lands transferred from Native Americans to European Settlers  
 ■ Lands held by Native Americans or returned to Native Americans

## INDIAN REORGANIZATION ACT (IRA) ERA (1928-1942)

Partly in recognition of the harm done to AI assets and tribal life by allotment, the federal government commissioned a study in the late 1920s that produced the Meriam Report.<sup>15</sup> This significant report documented the deplorable conditions under which most AIs lived at that time and laid the foundation for the IRA of 1934<sup>16</sup>

**Indian Reorganization Act of 1934 formally ended the policies of creating allotments and recognized that tribal governments are the appropriate authority to govern tribal lands.**

This major federal legislation formally ended the policies of creating allotments and recognized that tribal governments are the appropriate authority to govern tribal lands.

The IRA sanctioned tribal authority to establish tribal constitutions and to employ legal counsel. However, the recognition of tribal authority was tempered by requirements that many tribal actions be approved by the Secretary of Interior, prior to being implemented. Consequently, although the IRA once again recognized the importance of tribal self-determination, the Bureau of Indian Affairs (BIA) remained a significant institution within Indian Country during this time period, controlling much of the interactions between tribal governments, the federal government, and other entities. During this era, **John Collier** was appointed as the Indian Affairs Commissioner by President Roosevelt. Based on the Meriam Report and his own experience with the Pueblos, Collier announced a policy in which Indian tribal sovereignty should be encouraged and enhanced.



Secretary of the Interior Harold L. Ickes hands the first constitution issued under the Indian Reorganization Act to delegates of the Confederated Tribes of the Flathead Indian Reservation (Montana). 1935 (Library of Congress, Prints and Photographs Division)

Congress acted on this policy statement and enacted the IRA. The IRA has many provisions and is still in effect today. It created Indian preference in the BIA, and it formally ended the policy of Allotment. It extended the trust for those pieces of land that had been allotted in which the 25 years had not expired. It also included a provision that allowed for the repurchase of tribal lands to go back into tribal ownership. Approximately 2 million acres of land was given back to tribal ownership under the Collier administration. Money is no longer allocated to this provision and no additional land has been acquired since then. The IRA also promised economic development in Indian Country and started a number of loan programs that tribes could take advantage of. Most importantly the IRA included language that recognized the right of tribes to govern themselves and allowed them to vote whether or not they wanted to adopt a tribal constitution.

<sup>15</sup> The Problem with Indian Administration, Lewis Meriam ed. (1928) available at [http://www.alaskool.org/native\\_ed/research\\_reports/IndianAdmin/Indian\\_Admin\\_Problms.html](http://www.alaskool.org/native_ed/research_reports/IndianAdmin/Indian_Admin_Problms.html)

<sup>16</sup> 25 U.S.C. §461 et seq.

The approach provided by the IRA to develop and adopt tribal constitutions was not welcomed by all tribes. Some tribes determined that the requirements of the Secretary of Interior approval weakened their powers of self-determination. For these and other reasons, some tribes decided not to adopt constitutions as provided for in the IRA. For example, in Arizona, the Navajo Nation does not have a constitution and the Hopi Tribe did not adopt an IRA constitution. Over time, a number of tribal nations within Arizona have amended their original IRA constitutions and, in the process, have limited the role of Secretarial approval over their policy-making.

At the conclusion of the era in which the IRA occurred, pieces of tribal sovereignty were essentially put back into that large, expansive view – that square of sovereignty that we originally envisioned. So rather than this era taking away portions of tribal sovereignty, it actually replaced some of the depletions that had occurred previously as a result of federal policy, cases, and agreements.

## TERMINATION ERA (1942-1968)

Following World War II, the United States was confronted with huge debt incurred by the war and the Great Depression recovery; and Congress was challenged to rebuild the economy and reduce government services. In 1947, Congress established the Hoover Commission, led by former President Hoover whose Indian policies had been “repressive and disastrous, intending to destroy Indian cultures, while ignoring treaties, the constitution, and a number of Supreme Court rulings.” The Hoover Commission had been established as an effort to reduce federal expenditures and bureaucracy. One of the major findings of the Hoover Commission was that there



Herbert Hoover was the 31st President of the United States (1929 – 1933).

was a very large commitment to fund programs in Indian Country as a result of the IRA. Therefore, the Hoover Commission recommended in 1949 the complete integration of AIs into American society and termination of federal trust responsibilities toward tribes.<sup>17</sup>

Termination in this instance meant an official severing of the relationship - official breaking of ties between the federal government and tribes. Ultimately what had happened was that the policies of World War II weighed against the policies of the IRA. It cost money to fund the Indian Reorganization Act.

In 1953, the United States Congress passed legislation to end the long-standing federal trust responsibilities of the United States toward tribes. Tribal government status for 109 tribes was officially terminated and tribal lands and reservations were

removed from federal trust status including the requirement that Congress approve any sale of reservation land. The federal government’s treaty responsibilities to the terminated tribes were ended and the treaties were no longer recognized. Much of the reservation land and associated resources of terminated tribes, such as timber, was sold or otherwise disposed. Other tribal lands were taken for military installations and the reservations were reduced in size.

In addition to dissolving tribal governments and removing federal trust status from tribal lands, the United States government relocated many AI people off reservations to obtain education and training. To facilitate assimilation goals and to end government support programs, the BIA incentivized AIs for their migrations from rural reservations to metropolitan areas for employment. This diaspora of many AI people to urban areas as

<sup>17</sup> Utter, J. 2001. “American Indians: Answers to Today’s Questions”; University of Oklahoma Press,

part of the termination-era relocation program is considered by many social scientists as one of the major disruptions of the transmission of American Indian language and culture between generations. The effects of relocation left numerous families disenfranchised from traditional cultural support, which lead to a loss of tribal identify, and generations of traumatized individuals experiencing discrimination and unemployment.

With the passage of Public Law (P.L.) 83-280 in 1953, Congress also attempted to limit tribal jurisdiction over criminal and civil matters on reservations.<sup>18</sup> Often referred to as P.L. 280, it authorized states to assume jurisdiction over tribal lands. However, the impact was limited by the fact that only a few states took on jurisdictional responsibilities for tribal territory. Arizona is not a '280' state and does not have jurisdiction under P.L. 280 on tribal lands. This is the time in which we got the **AIM movement, or American Indian Movement**. Leaders of this effort organized a number of protests, including

the occupation of Alcatraz, the occupation of the BIA headquarters, and the Wounded Knee occupation.

**American Indian Movement**  
Grand Governing Council



Despite the policy of the federal government to begin to eliminate tribal sovereignty during this period, the Supreme Court continued to recognize tribal sovereignty on tribal lands and in *Williams v. Lee* (1959) decided that tribal, not state courts, had jurisdiction on reservation for a matter involving an Indian and non-Indian.

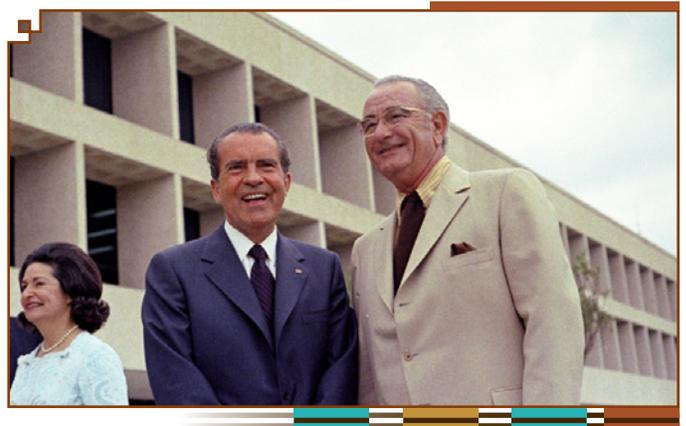
Although no tribes within Arizona were formally terminated, the termination era had adverse impacts throughout Indian Country. Governmental authorities were diminished and economic conditions deteriorated.

Tribal leaders organized to oppose and stop termination efforts and policies, often working with national and regional tribal organizations, such as the National Congress of American Indians and the Inter Tribal Council of Arizona, Inc. After more than two decades of struggle, in a number of the termination cases, including the Menominee of Wisconsin and the Klamath of Oregon, tribes were able to obtain restoration of their tribal status in the 1970s.

**Political advocacy, along with larger-scale social changes including the Civil Rights movement, led Congress to pass numerous pieces of legislation confirming tribal self-determination.**

## SELF-DETERMINATION ERA (1968-PRESENT)

Once again, federal Indian policy made a significant shift during the administration of President Kennedy, under Secretary of Interior Stewart Udall; termination policies ended and the era of Self-Determination began.<sup>19</sup> This era continues to this day.



President Richard Nixon and former President Lyndon B. Johnson at the dedication of the LBJ Library, 1971.

Political advocacy by tribes, tribal organizations, and their allies, along with larger-scale social changes including the Civil Rights movement, led Congress to

18 P.L. 83-280 codified at 18 U.S.C. §1162, 25 U.S.C. §§1321-1326 and 28 U.S.C. §1360.

19 Cohen 2005 §1.07 at 99.

pass numerous pieces of legislation confirming tribal self-determination, tribal sovereignty and government-to-government relationships.. Congress restored federal recognition of a number of tribes that were terminated during the Termination Era – for example the Menomonee Nation in 1973. There were a number of congressional acts that restored the tribes’ ability to govern themselves and have governing power.

Congress passed the **Indian Civil Rights Act**<sup>20</sup> in 1968. As tribes are sovereigns pre-dating the adoption of the United States Constitution, they are not bound by the United States Constitutional limits on government power, which protect individual liberties. The Indian Civil Rights Act confirms by federal statute that most of the individual liberties contained in the Bill of Rights apply within tribal lands.

Although the Indian Civil Rights Act limited tribal governmental authority, it was a recognition of the strength and viability of tribal governments themselves, and therefore was a huge benefit to the validity of tribal governments. The formal announcement of self-determination came from President Johnson in 1968. In 1970, President Nixon reinforced this policy and stressed the trust relationship. He encouraged legislation to permit tribes to manage their own affairs. This policy has been accepted and adopted by subsequent presidents. P.L. 93-638, titled the Indian Self Determination and Education Assistance Act of 1975 serves as the basis of federal policy today.<sup>21</sup>



It serves as the basis of federal Indian self-determination policy today and establishes the mechanism for tribal funding known as “638 contracts.” In P.L. 93-638, the BIA and **Indian Health Service** are authorized to pass federal funds through to tribes, so tribes may perform for themselves the services the federal government is obligated to provide. For example, appropriations for the operation of BIA schools may be passed to a tribe through a 638 contract and the tribe may operate its own school.<sup>22</sup> In 1994, Congress passed the Tribal Self-Governance Act,<sup>23</sup> which allows tribes to enter into compacts with the federal government to receive block grants giving tribes more control over their own budgets.<sup>24</sup>

A number of other acts have been brought into law during this era that reinforce and strengthen tribal sovereignty. The **Indian Child Welfare Act** in 1978 was a law enacted to address some of the problems created in Indian country as a result of the boarding school movement. The Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act – both are meant to protect tribal culture and tribal history. The **Indian Gaming Regulatory Act** is meant to encourage economic development through gaming enterprises. The tribally-controlled Community College Act provides an opportunity for tribes to fund



20 25 U.S.C. §1301.

21 25 U.S.C. §450 et seq.

22 The regulations for Self Determination Contracts are at 25 C.F.R. Chapter V.

23 25 U.S.C. 458aa et seq.

24 The regulations for tribal self-governance compacts are at 25 C.F.R. Chapter VI.

their own higher education institutions. The Tribal Justice Act of 1995, assists and authorizes the creation of tribal court systems. The environmental statutes, the Clean Water Act for example, include a full recognition of tribal sovereignty. In each of those federal laws, tribes are given the full authority to operate and set standards and rules for environmental protection. Those standards and rules are given the same force and effect as any federal law or state law.

Through the Self-determination Era, tribal governments are beginning to restore that traditional, very broad, expansive view of sovereignty, and the large chunks of sovereignty that were taken out through cases, congressional legislation, and policy are slowly being replaced and tribal governments are again determining for themselves how to rule and govern their tribal members.



## Module 3: Setting the Foundation for Understanding Intergovernmental Relations with Native Nations/Tribal Governments – Tribal-State Relations



### Module Learning Objectives

This module includes the following learning objectives:

-  Understand the legal and historical basis for tribal-state relations.
-  Understand the legal and historical basis for tribal sovereignty.
-  Become familiar with law enforcement and court systems in tribal nations within Arizona.
-  Learn that American Indians achieved the right to vote within Arizona after World War II.
-  Develop a basic understanding of taxation within Indian Country.

### Module Summary

Many federal judicial decisions regarding tribal jurisdiction arise from conflicts with states over taxation, regulation, or state court jurisdiction. The general principle of law is that state law does not apply in Indian Country<sup>25</sup> absent federal legislation granting such authority. Public Law (P.L.) 280, passed in 1953 during the Termination Era discussed in Module 2, is an example of a federal law that specifically laid out procedures and established authorities for states to assume certain types of

\*The Arizona Board of Regents holds copyright to some material in this module. No copies, reproductions or distribution without prior written permission is permitted. All other rights reserved.

25 “Indian country” is defined at 18 U.S.C. §1151 in connection with federal criminal jurisdiction. It is used more broadly to mean tribal trust lands or land within the jurisdiction of a tribe.

jurisdiction within Indian Country.

The principle of federal preemption over state law is based on the recognition both by the European nations that colonized North America and the United States that tribes have sovereignty over their lands. The United States Constitution also affirms that the federal government, not states, has the authority to manage relationships with tribal governments (i.e., the Commerce Clause). This principle of federal authority was also clearly articulated by Chief Justice John Marshall in the well-known Cherokee cases discussed in Module 2.<sup>26</sup> However, this principle has been modified by a series of federal statutes and Supreme Court cases over the last 60 years that are discussed in Module 3.

Some material for this module was extracted from the ADOT on-line training narration for this module provided by Anne Marie Downes, former Administrator and instructor with the Indian Legal Program in the Sandra Day O’Connor College of Law at Arizona State University.

## FEDERAL, TRIBAL, AND STATE RELATIONS AFTER WORLD WAR II

### Arizona Tribal Citizen’s Right to Vote

In 1924, Congress passed legislation declaring AIs to be citizens of the United States. However, in a number of states including Arizona and New Mexico, American Indians living on reservations were still prohibited from voting after 1924. States, under the mistaken concept that the federal trust responsibility made individual Indians “wards of the government,” prohibited AIs from voting because, wards were not competent to vote. In Arizona, a veteran of World War

26 e.g., *Worcester v. Georgia* 31 U.S. 515, 561-563 (1832).

Il from the Fort McDowell Yavapai Nation, Frank Harrison, returned home after completing his military service and attempted to register to vote at the Maricopa County recorder’s office. The recorder refused to register him to vote, and he filed and won a lawsuit that went to the Arizona Supreme Court.

**The case (*Harrison v. Laveen*), clarified that individual American Indians are eligible to vote if they meet the other requirements, including age and residence. The decision noted that the right to vote is the right that protects all our other rights and is, therefore, essential to citizenship.**

In 1948, the decision in the *Harrison v. Laveen*<sup>27</sup> case clarified that the trust responsibility of the federal government is to tribal governments (not individuals) and that individual AIs are eligible to vote if they meet the other requirements, including age and residence. The decision noted that the right to vote is the right that protects all our other rights and is, therefore,

essential to citizenship. Arizona was made subject to the federal Voting Rights Act in 1965 because of discriminations against American Indians, such as those that led to *Harrison v. Laveen*, as well as discriminations against Latino and Africa-American populations.

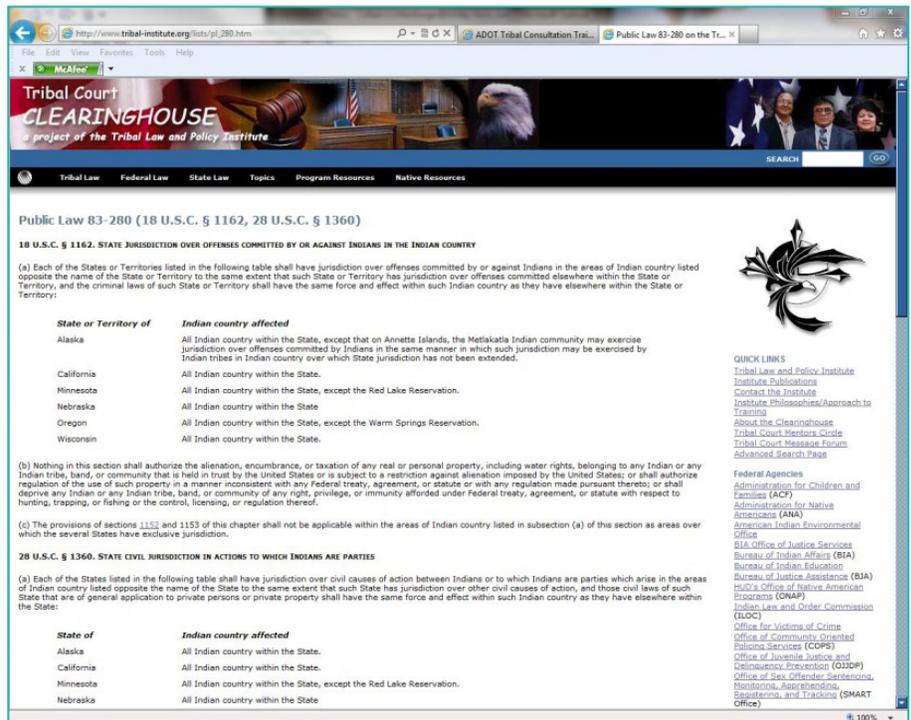
As a result, the federal Department of Justice oversees redistricting and other voting-related decisions made within the State of Arizona.

## State Jurisdiction in Indian Country

The ability of some states to exercise jurisdiction in Indian Country was greatly expanded in several states with the enactment of P. L. 83-280.

### ARIZONA DOES NOT HAVE PUBLIC LAW (P.L) 280 JURISDICTION

During the Termination period of the 1950’s, Congress attempted to limit tribal jurisdiction over criminal and civil matters with the passage of P.L. 83-280.<sup>28</sup> Generally referred to as P.L. 280, it authorized states to assume jurisdiction over tribal lands. However, the impact was limited by the fact that only a few states took on jurisdictional responsibilities for tribal territory. Importantly, Arizona is not a ‘280’ state and does not have jurisdiction under P.L. 280 on tribal lands. Shortly after the passage of



Tribal Court Clearinghouse Website, [http://www.tribal-institute.org/lists/pl\\_280.htm](http://www.tribal-institute.org/lists/pl_280.htm)

27 *Harrison v. Laveen*, 67 Ariz. 3337, 196 P.2d 456 (1948)

28 P.L. 83-280 codified at 18 U.S.C. §1162, 25 U.S.C. §§1321-1326 and 28 U.S.C. §1360.

P.L. 280, Arizona made a 280 claim over water and air quality, but did not take the follow-up steps required to actually assert 280 jurisdiction. In 1986, with the passage of the Arizona Environmental Quality Act, state law formally removed the original statutory language asserting 280 jurisdiction over water quality. In 2003, the Arizona legislature passed an amendment that removed the unenforceable 280 language concerning air quality.

### WILLIAMS VS. LEE REVISITED

In *Williams vs. Lee*,<sup>29</sup> an Arizona case, the United States Supreme Court held unanimously that state courts had no jurisdiction over a civil claim by a non-Indian against an Indian for a transaction on the Navajo Reservation. In the case, Lee operated a general store on the reservation where Williams and his wife purchased goods on credit. Lee was not Native American, Williams and his wife were Navajos living on the reservation. Lee brought suit against Williams for nonpayment in state court, Williams filed a motion to dismiss, arguing that the jurisdiction really existed in the tribal court. At the time of the dispute, the reservation had in place a sophisticated legal system and tribal court system. The Supreme Court opinion stated that absent Acts of Congress, the question is whether the state action infringed on the right of reservation Indians to make their own laws and be governed by them. This Williams “test” of infringement became and still is the test for whether or not tribes and tribal courts have jurisdiction over a particular matter.

The end result is that jurisdiction is a complex matter and is particular to a state and to the reservation in that state. Ultimately, states cannot exercise any type of jurisdiction over tribal affairs and even in P.L. 280 states this general proposition should be presumed to be true.

<sup>29</sup> *Williams v. Lee* 358 U.S. 217, 220 (1959).



Dine College in Tsaile, AZ, is the first tribally-controlled college in the United States.

### Education and Public Laws 81-874 and 81-815

Tribes began to exercise their jurisdiction fully during the era of Self Determination. In the realm of education, tribal authority is extremely important. Because the majority of reservation land is owned or held in trust by the Federal Government, property tax revenue is limited or non-existent and the traditional method to fund schools and education is not available. Public Laws 81-815 and 81-874<sup>30</sup> were enacted by Congress in 1950 to assist local school districts with the cost of public schools serving federal lands, particularly military bases. Often referred to as impact aid laws, they provide federal funds for the construction and maintenance of schools serving military bases. In the 1970's, with passage of Title IV of the Indian Education Act, American Indians were explicitly included in the impact aid programs. Impact aid is determined by complex formulas and generally passes through to states for public education purposes. In addition to impact aid, Johnson-O'Malley Act<sup>31</sup> (1934) funding is specifically designated to pay public schools for educating American Indian children, including children living on reservations whose land cannot be taxed by the federal or state government for educational purposes.

<sup>30</sup> 20 U.S.C. § 7708

<sup>31</sup> 25 U.S.C. § 452



## Arizona Commission of Indian Affairs (ACIA) (1953 - 2015)

The ACIA was created in 1953 by the 21st State Legislature to consider and study conditions among the Indians residing within the state.

Following World War II, in 1950, U. S. Indian Commissioner Dillon Myer was appointed. Commissioner Myer did not favor abolishing the BIA and assimilating Indians hastily. However, he promoted Indian relocation plans and used existing federal legislation to

advance cooperative agreements with states to assume BIA services for AIs. Commissioner Myers utilized connections with western congressional and state leadership to advance the federal withdrawal-termination policies. During his three-year tenure, the Governors' Interstate Indian Council was formed in May 1950 to address common state and Indian concerns. Throughout the 1950's, state governments began to further examine Indian affairs and now most states, including all western states, have a commission or agency with a focus on Indian affairs.<sup>32</sup>

Signed on August 1, 1953, the United States Congress enacted House Concurrent Resolution 108 that recommended ending federal responsibility and dramatically diminishing tribal sovereignty by ending all special tribal programs, and removing state tax exemptions. A companion bill, P.L. 280, imposed state civil and criminal jurisdiction on reservations in selected states.<sup>33</sup> "Within this national setting, the Arizona Legislature created the ACIA in 1953. The statute also directed the Commission to "confer with the officials of the Indian bureau of the federal government in order to secure co-operation between the federal and state governments in the promotion of the welfare of the Indian people".<sup>1</sup>

As federal Indian policy progressed from termination to self-determination in the 1960s, a joint Arizona legislative committee reexamined the Commission's purpose and proposed the Commission focus as a liaison between the State and the tribes. However, the Commission's enabling statutes remained unchanged.

States, including Arizona, recognized in the 1970s and 1980s that improved communication mechanisms were needed to support government-to-government interaction and the policy shift to tribal self-determination. "During those decades, the federal government implemented additional legislation intended to strengthen tribal governments and promote Native American self-determination. In fact, the U.S. Congress passed at least eight major federal Native American Acts during those years."<sup>34</sup>

In 1986, the Commission was charged to be the State's liaison with the federally recognized Indian tribes/nations. "The State has a complex relationship with the tribal governments residing in Arizona. Although the State has limited jurisdiction on reservations, the State must provide tribal members with services that they are entitled to as Arizona citizens, such as health, education, and transportation services."<sup>35</sup> State leaders believed

<sup>32</sup> National Conference of State Legislatures website.

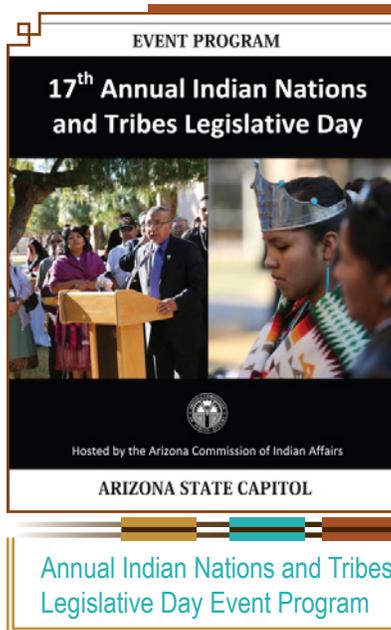
<sup>33</sup> P. L. 83-280 codified at 18 U.S.C. §1162, 25 U.S.C. §§1321-1326 and 28 U.S.C. §1360

<sup>34</sup> Norton, Douglas R. 1998. Performance Audit of the Arizona Commission on Indian Affairs.

<sup>35</sup> Parman, Donald L. 1994. Indians and the American West. Bloomington and Indianapolis: Indiana University Press. 136.

that the Commission's work would help promote and sustain state-tribal communication, and strategic relationships. "Such communication is essential to ensuring the State effectively provides important services to the reservation population...The Department of Transportation is responsible for building and maintaining state and federal roads on reservations. In fact, at least 16 state agencies provide services to tribes."<sup>36</sup>

More information on this office, which is now called the Governor's Office on Tribal Relations, is provided on Page 169.



## FEDERAL, TRIBAL AND STATE RELATIONS IN THE PERIOD OF SELF-DETERMINATION - 1968 TO THE PRESENT

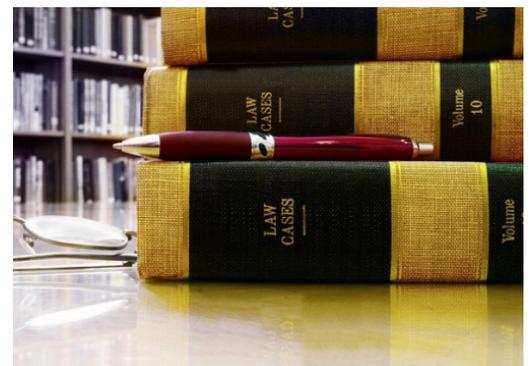
During the 1960s, it became clear that termination policies had adversely affected the economic status of AIs and had not resulted in assimilation into non-Indian society. Once again, the federal government changed course and turned to a policy of self-determination for tribal governments, enacting a series of laws and programs that support tribal self-determination and self-government, most notably the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638).<sup>37</sup>

In 1994, Congress passed the Tribal Self-Governance Act<sup>38</sup> which allows tribes to enter into compacts with the federal government to receive block grants, giving tribes more control over their own budgets than was possible with the earlier Self-Determination law and so-called '638' contracts.<sup>39</sup> These

laws and their impact are discussed in more detail in Module 2. A number of tribes in Arizona have entered into compacts with the federal government under Self-Governance legislation, including the Salt River Pima-Maricopa Indian Community.

### State Pass-Through of Federal Funds to Tribes

With experience in managing Self-Determination '638' contracts, as well as funds from a range of other federal agencies such as housing, social services, economic development, and transportation programs, tribal governments significantly increased their capacities to deliver services and manage grants. In the 1970s and 1980s, tribes in Arizona also looked at federal program funds that flowed to the State, based on formulas that included tribal lands and population, but did not provide program services to AIs living on reservations. In the 1980s, the Arizona Department of Economic Security, working



<sup>36</sup> <https://gotr.azgovernor.gov/>

<sup>37</sup> P.L. 93-638, enacted January 4, 1975, codified in 25 U.S.C. § 450.

<sup>38</sup> 25 U.S.C. 458aa et seq.

<sup>39</sup> The regulations for tribal self-governance compacts are at 25 C.F.R. Chapter VI.

with the Inter Tribal Council of Arizona and tribal governments, developed some of the first Intergovernmental Agreements to pass federal funds from the State to tribes, to provide services to their members directly. Some of the United States Department of Education funding under the Johnson O'Malley Act is passed through the states to the tribes and tribal-state cooperation is vital to making sure the goals and objectives of the program are met.



## CHARACTERISTICS OF TRIBES

Who are eligible for these programs and what parameters must be considered when working with tribes? Tribal definition, sovereignty and Indian Country are important factors in answering these questions.

### What Is a Tribe?

The definition of a tribe can be generally defined as a group with a common culture and history and ancestry. However, from the federal program perspective, the definition of a tribe can change from one act of Congress to another. A tribe could be eligible for a program or be impacted by legislation in one situation and not in another. It is important to check the definition of a particular program or legislation. Legislation might define a tribe recognized at a particular point in time but it may exclude from eligibility a tribe recognized before or after that point in time. Legislation might include a state recognized tribe but is not one that is federally recognized. In other instances it may exclude state recognized tribes from eligibility.



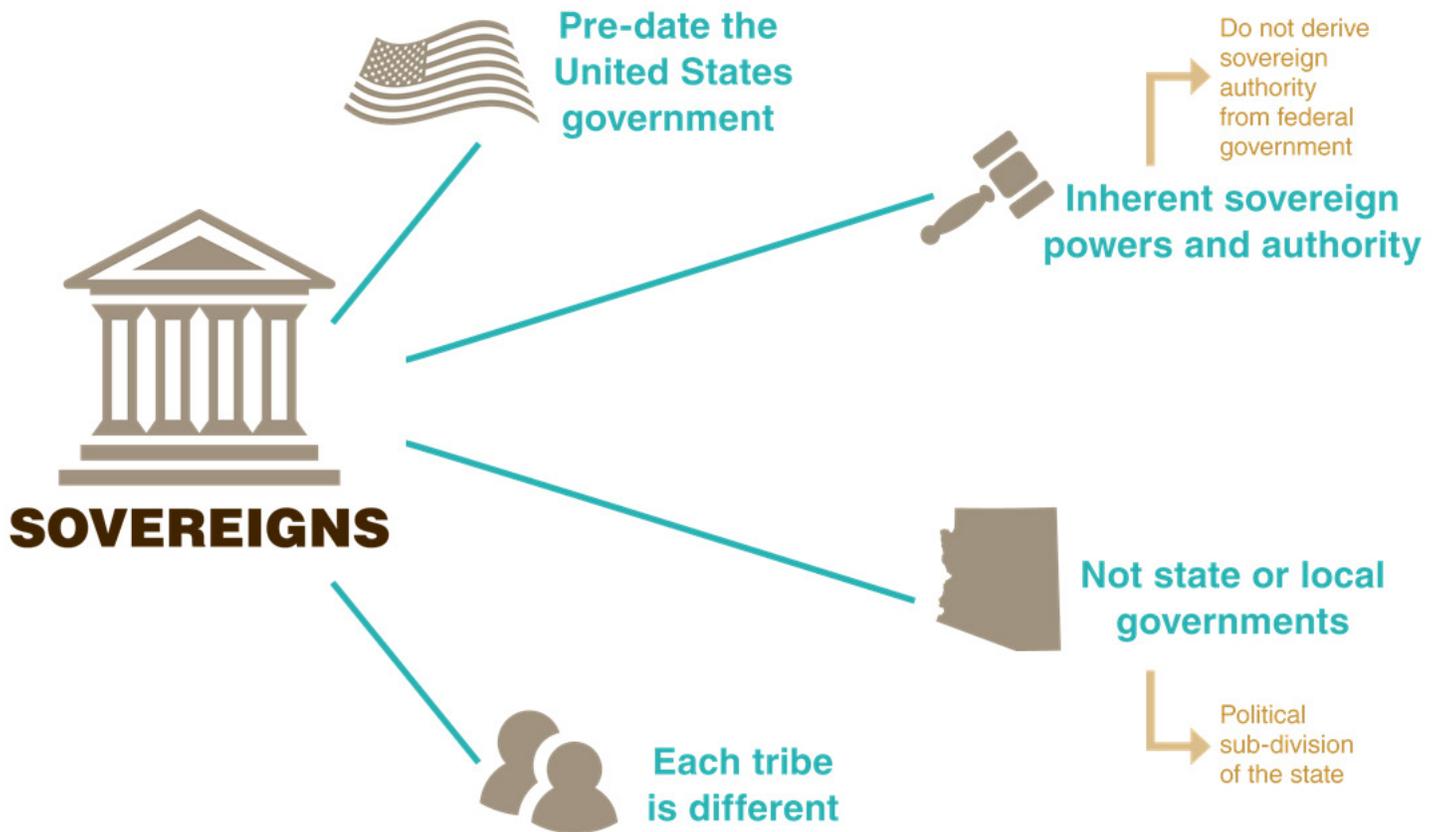
National Archives Website  
<http://www.archives.gov/federal-register/cfr/>

Federal recognition is a process whereby the Federal government certifies that a particular group meets a set of rigorous standards before being recognized. Tribes who meet this status are included on the Department of the Interior list of federally recognized Indian Tribes published annually in the Federal Register. There are 573 tribes currently on that list in 2019, at <https://www.federalregister.gov/documents/2019/02/01/2019-00897/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>. The recognition procedures are established in the Code of Federal Regulations at 25 CFR Part 83.

Tribal membership of individuals is determined only by the tribe itself. There is no federal role in determining whether or not an individual is a tribal member. Lineage, blood quantum or a combination of both are the standard for determining membership, and other tribes use a combination of both. In *Santa Clara Pueblo v. Martinez*<sup>40</sup> the Supreme Court held that they could not rule on the validity of a tribal membership ordinance because the tribe had sovereign immunity and could not be sued for such an action. Ultimately, this case left tribes with the ability to determine free from suit their own rules for membership.

### American Indian (AI) Tribes Today

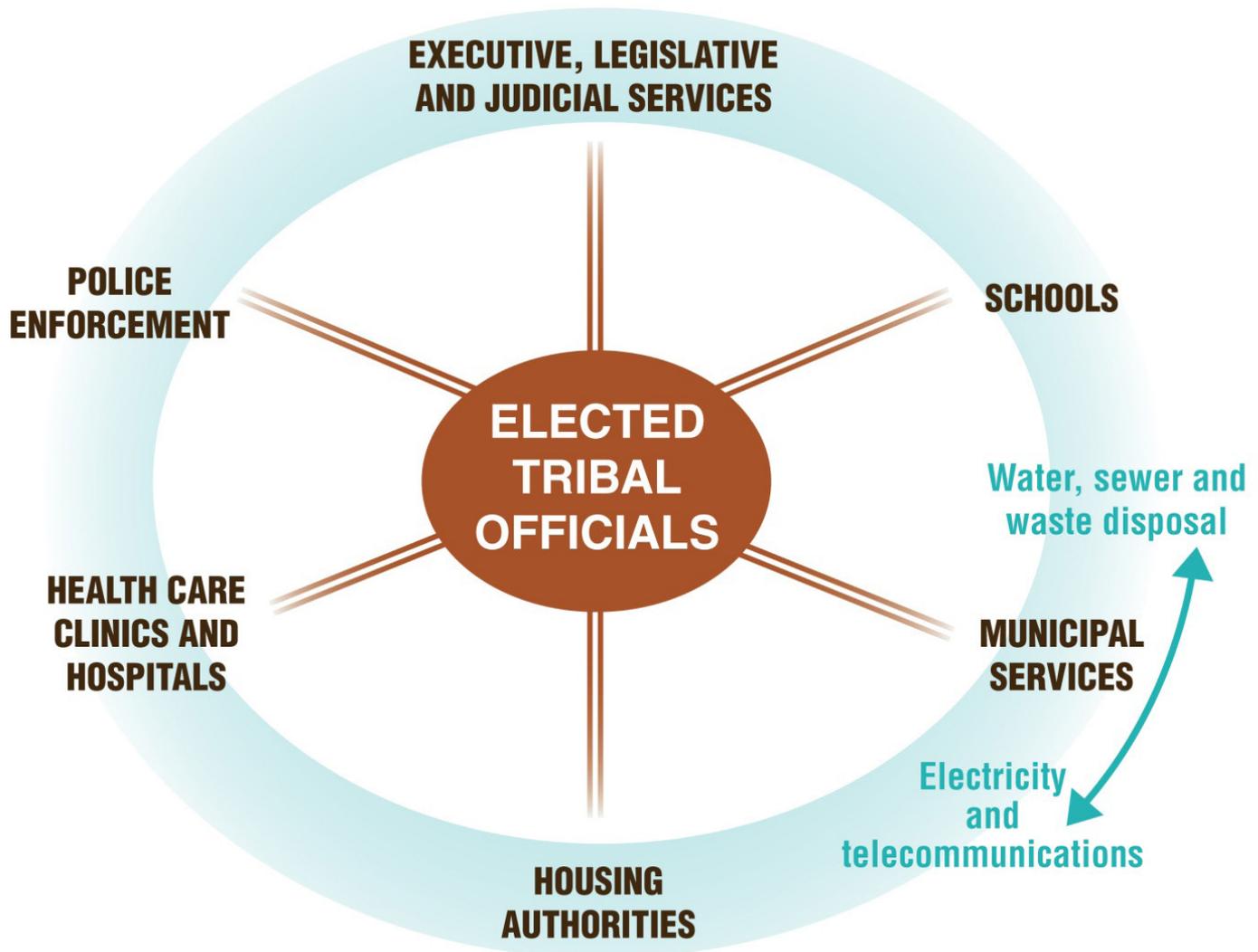
All tribes today carry out many functions. They are first and foremost, sovereigns, they operate their own governments, and they also serve as business owners. We know that these tribes pre-date the United States government. That their sovereign powers come inherently and are not delegated from the United States government. As reflected in the U.S. Constitution, tribes are not state or local governments. And we must keep in mind that each tribe has its own unique culture and structure and is different from one another.



40 436 U.S. 49 (1978).

Sovereignty is not a word that existed in traditional tribal language but some of the concepts clearly existed in culture. The ability to decide for themselves how they will live and operate and serve their people. Tribal definitions of sovereignty include the concept of a nation – that is, they are not just governments but are group of people with a common culture, a common language, history and common descent.

To the extent tribes are indeed governments, with governmental authority, they must serve all of the governmental functions and provide all services that people expect a typical government to do. The elected officials of any government including tribal governments ensure that services are provided that meet the community needs. They operate schools, medical hospitals and clinics, senior services, youth services, they provide law enforcement and police services, all municipal services, they establish court systems, operate environmental and regulatory services as well as road and transportation services. These services are provided not only to their tribal membership but often times to non-members who also live in the community.



In order to operate all of these governmental services, tribes need revenue and without a tax base they must operate businesses to support all these activities. Tribes have both passive and active business activities that they operate in order to generate revenue. Passive business activities include leasing operations that are entered into and monitored and overseen by the Federal Government through the BIA. However, some tribes take an active role and they themselves engage in business activities such as leases to companies or taking advantage of tourist opportunities. Both are popular ways to generate revenue by harnessing the natural resources on tribal lands. Recent activity in the Self Determination Era has allowed tribes to develop other businesses. The most recognized is Casino development but in reality only a couple hundred tribes have gaming facilities and very few of them are located in areas that allow them to generate large profits. Convenience stores also offer a way to generate revenue.

## TRIBAL SOVEREIGNTY AND TRUST STATUS

Tribal governmental activities and tribal business activities are ultimately meant to enhance and promote tribal sovereignty. Sovereignty is the backdrop against which all Indian law is viewed; many tribal leaders have eloquently stated that it is not possible to understand tribal nations without understanding sovereignty.<sup>41</sup> The fundamentals of the concept of tribal sovereignty were brought to light in the Marshall Trilogy as discussed in **Module 2.**

**Sovereignty is the fundamental underpinning of Indian Law.**



41 See, *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1973). "The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read." *Id.* at 172.

A sovereign government is the ultimate authority and power within a territory. Sovereignty is the recognition that a government is legitimate by other governments and private interests. Black's Law Dictionary defines sovereignty by describing its powers. "The supreme, absolute, and uncontrollable power by which any independent state is governed. 'Sovereignty' in its largest sense is meant supreme, absolute, uncontrollable power, the absolute right to govern."<sup>42</sup>

It is with this sovereign authority that tribes entered into treaties with the 'Crowns' of England and France and with the colonies prior to the formation of the United States. Any aspect of sovereignty not lost with the formation of the United States or taken away by the United States remains with the tribes. This was first explained by the United States Supreme Court in the famous 'Cherokee cases'<sup>43</sup> decided in the early 1800s and discussed in Module 2. In *Cherokee Nation v. Georgia*, the State of Georgia had passed laws attempting to regulate activities on lands of the Cherokee Nation and asserted the authority to enforce those laws. The Cherokee Nation challenged the State of Georgia in the courts of the United States.



The Cherokee Nation Historic Courthouse in Tahlequah, Oklahoma built in 1849.

Chief Justice Marshall's opinions established tribal sovereignty as the basis of tribal authority over land and people. However, in the same cases, his decisions established the stronger authority of the United States over tribal governments in federal law. He described the legal relationship between the United States and tribal nations as that of guardian and ward often referred to as a 'trust relationship.'<sup>44</sup> While Marshall's decisions acknowledged some aspects of sovereignty, they stated that other aspects, such as the right to conduct foreign affairs, no longer remained with the tribal nations. Justice Marshall described the situation:

**"[T]he settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self-government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state."**<sup>1</sup>

Marshall characterized tribes as being "Domestic Dependent Nations" in contrast to being considered foreign nations.

Felix Cohen was the first non-Indian legal scholar to describe modern tribal sovereignty as "internal sovereignty," meaning the authority of self-government.

<sup>42</sup> Black's Law Dictionary, 6th Ed. (1990) at 1396.

<sup>43</sup> *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), *Worcester v. Georgia*, 31 U.S. 515 (1832).

<sup>44</sup> 30 U.S. at 17.

**“[T]he most basic principle of all Indian law, supported by a host of decisions, is that those powers lawfully vested in an Indian nation are not, in general, delegated powers granted by express acts of Congress, but rather ‘inherent powers of a limited sovereignty which has never been extinguished’ (*United States v. Wheeler*, 435 U.S. 313, 322 (1978)). The Supreme Court has observed that ‘Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.’ (Id.) This principle guides determinations of the scope of tribal authority.”<sup>1</sup>**

Tribes enjoy inherent sovereignty. That is, they are sovereign because they existed as independent bodies before the United States was even formed. So, although the Federal government can take away powers from tribes – those that are not taken remain inherently possessed by the tribe. Or, to say it another way, tribal sovereignty is not a list of powers delegated by the Federal government but instead it is a supreme absolute and uncontrollable power that Congress or the Supreme Court has from time to time limited. Tribes retain those powers and the authority of self-government, which have not been taken by federal law and which have not been relinquished by the tribe. This same general concept, that inherent rights are not relinquished, also applies to tribal lands.

## Indian Country

Tribal sovereignty is exercised throughout Indian Country. Indian Country is a legally defined place. In 18 USC 1151 Indian Country is defined as:

- All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including any rights-of-way running through the reservation. This section is ultimately saying that Indian Country includes allotted lands, lands that were given to non-Indians, but within the reservation boundaries. Indian Country includes rights-of-way and easements. So if a railroad was given an easement to go through Indian Country that did not mean it lost its characterization as Indian Country.
- Indian Country also includes all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state. This section was meant to cover the pueblos of the southwest, which are not defined as Indian reservations.
- And finally, Indian Country includes all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the allotments. This section is meant to get at pieces of Indian land that are not a part of reservations but still under Indian control.



Salt River Pima Indian Community  
Monument near Loop 101.

**Tribal regulatory authority extends to all activities of Indians conducted on tribal lands. However, the activities of non-Indians on tribal lands require consideration of the impact on the tribe.**

### Tribal Regulation

The concept of federal pre-emption started with the *Williams v. Lee* case. The Supreme Court went further in that case and in subsequent cases, indicating that even if a state was not preempted, meaning that Congress had not already

spoken on the matter, that the state activity could not infringe on the right of tribal self-government. So, for example the State of Arizona cannot tax the income of an Indian earned on the Reservation. That was the holding in *McClanahan v Arizona State Tax Commission*<sup>45</sup> in 1973.

Tribal regulatory authority extends to all activities of Indians conducted on tribal lands. However, the activities of non-Indians on trust lands, or on lands within a reservation that are not held in trust, require consideration of the impact of the activity on the tribe.

The Montana test,<sup>46</sup> named after the Supreme Court case of 1981 in which it was first laid out, is used to determine tribal regulatory jurisdiction over non-Indians or non-trust lands within the reservation.



“A tribe may regulate, through taxation, licensing, or other means the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within the

reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.”<sup>47</sup>

There have been a number of lawsuits over the past three decades, some of which were decided in the United States Supreme Court, that further define (and generally further limit) tribal regulatory authority over non-Indians on reservations.

### FEDERAL DELEGATION OF AUTHORITY AND ENVIRONMENTAL REGULATION

Other federal laws not specific to Indian affairs authorize tribal self-government and tribal control over the operation of federal projects and programs. Many of these laws are in the area of environmental regulation, such as the Clean Water Act, Clean Air Act, and Safe Drinking Water Act. The original federal environmental laws provided for states to assume regulatory responsibility after meeting certain conditions developed by the United States Environmental Protection Agency (EPA). However, tribes were generally not mentioned in the major environmental statutes when initially passed by Congress. In the 1980s, when many environmental laws were being amended, Congress included language that tribes could be ‘treated as states’ for the purposes of assuming federal environmental regulatory authority. The tribe must demonstrate the administrative and programmatic capacity to run the regulatory program before the Environmental Protection Agency will approve a tribal regulatory program or delegate federal authorities.

For example, a tribe may enact water quality standards under the Clean Water Act, but may also adopt water quality standards, as a matter of tribal law using inherent tribal sovereignty. Any limitations contained in the federal legislation do not apply to the tribal laws, but the tribal law is only enforceable within the tribe’s jurisdiction. Therefore, many tribes adopt

45 411 U.S. 164, 93 (1973)

46 *Montana v. United States* 450 U.S. 544 (1981).

47 *Montana v. United States*, 450 U.S. 544, 565-566 (1981).

a set of standards under delegated authority from the federal government as well as under tribal law.

## TRIBAL STRUCTURE, GOVERNANCE AND AUTHORITY

**Each tribe is unique in its political structure.**

Each tribe is governed by its own organic documents. These include treaties with the

United States,<sup>48</sup> Executive Orders establishing or diminishing the reservation boundaries, and tribe-specific legislation. The organic documents may also include a constitution, by-laws, and a set of tribal codes, regulations, and procedures. While there may be similarities to many tribal organic documents, they also reflect and institutionalize a wide range of differences in governance among tribes.

Each tribe is unique in its political structure. Some tribes do not have constitutions but may be organized according to a government code or equivalent legislative document. Some tribes govern by tribal custom. Tribes organized under the Indian Reorganization Act (IRA) of 1934<sup>49</sup> have constitutions adopted by the members of the tribe and approved by the Secretary of the Interior. IRA constitutions often established a tribal council as a single body of government with executive and legislative authority. The executive officer of a tribe may be a member of the tribal council without independent powers; he/she may be an independently elected tribal official, or may be a traditional leader. The title of the executive officer of the tribe may be Chief, Chairperson, President, Governor, or other designation of leadership.

The governmental structure of a tribe generally results from a combination of cultural and historical factors. Many tribes with constitutions developed

<sup>48</sup> Some tribes on the east coast of the United States have treaties with the states in which they are located predating the formation of the United States.

<sup>49</sup> 25 USC §461 et seq.

under the IRA have a tribal council elected by the voting population. The tribal council may serve both the executive and legislative functions for the tribe, somewhat similar to city councils. In many tribal governments, organized under the IRA, the chief executive officer (e.g., Chairperson) serves an administrative function carrying out the actions authorized by the tribal council.

Some tribes may have governmental structures similar to those established by the constitution of the United States, with three independent branches (legislative; executive; judicial). Others may have general councils comprised of all adult members of the tribe that meet on a regular basis and act on the basis of consensus. The Navajo Nation, the largest tribe in the United States, operates under a government code (not a constitution), with a representative legislative body (Council), an executive (President) elected directly by the voters, and an independent judiciary.



## Sovereignty Immunity

One element of sovereignty is immunity from lawsuits, which is based on the historical concept that a King can do no wrong. Tribal governments, like the federal government,<sup>50</sup> are immune from suit unless that immunity has been waived.<sup>51</sup>

<sup>50</sup> States are not sovereigns and do not enjoy this immunity from suit. They are protected by the 11th Amendment to the United States Constitution.

<sup>51</sup> An example of federal waiver of immunity is the Federal Tort Claims Act, 28 U.S.C. §§2671 et seq.

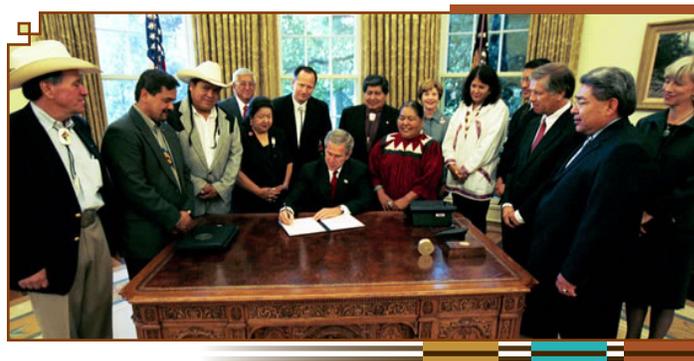


*Santa Clara Pueblo v. Martinez*<sup>52</sup> was a landmark decision in which the U.S. Supreme Court held, that the tribal government in that

case, could not be sued. The case involved a woman member of the Santa Clara Pueblo Tribe married to a Navajo and had seven children. The Santa Clara Pueblo denied membership to the woman’s children based on a tribal ordinance excluding the children of female, but not male, members who married outside the tribe. Excluded children could neither vote, hold secular office, remain on the reservation in event of the mother’s death, nor inherit their mother’s house or interest in communal lands. The mother asked the federal district court to enjoin enforcement of this gendered ordinance. The district court decided in favor of the mother, contending that the Indian Civil Rights Act granted it implied jurisdiction to do so. Congress passed the act in 1968 to apply certain provisions of the Bill of Rights in the U.S. Constitution to tribal governments in criminal cases. Santa Clara Pueblo appealed the federal court’s decision, arguing that the 1968 law did not authorize civil actions in federal court for relief against a tribe or its officials. The Supreme Court agreed, guaranteeing strong tribal autonomy except when Congress provided for federal judicial review. The court said, that as a Sovereign entity, the tribal government could not be sued, even on issues of tribal membership.

Congress may abrogate tribal immunity by statute or tribes may waive their immunity by tribal law or by agreement.<sup>53</sup> In general, any waiver must be explicit (clear and specifically stated) and must be narrowly construed in favor of retaining the immunity.

A waiver contained in a statute is limited to the types of claims anticipated under that particular statute. A waiver contained in an agreement is limited to the parties to the agreement and the provisions contained in it. Partial waivers of sovereign immunity are often requested for tribal business activities in order to resolve disputes through arbitration or a judicial process. Tribes have the authority to waive their sovereign immunity or give their consent to be sued, as does the federal government, and a number of tribes in Arizona have granted limited waivers of sovereignty in order to accomplish important long-range goals for their communities. The Arizona/Tribal Gaming Compact for example includes limited waivers of sovereign immunity for specific instances. In many business transactions, loan agreements and lease agreements include limited waivers of sovereign immunity. Individual departments do not have the power to waive sovereign immunity. Waivers must come from the tribal government themselves or unless they appoint through some formal action a designee who has the power to waive sovereign immunity. Tribes are sometimes reluctant to enter into agreements with ADOT because of requirements to waive immunity on issues such as access to financial records.



President Bush signs presidential memorandum on tribal sovereignty.

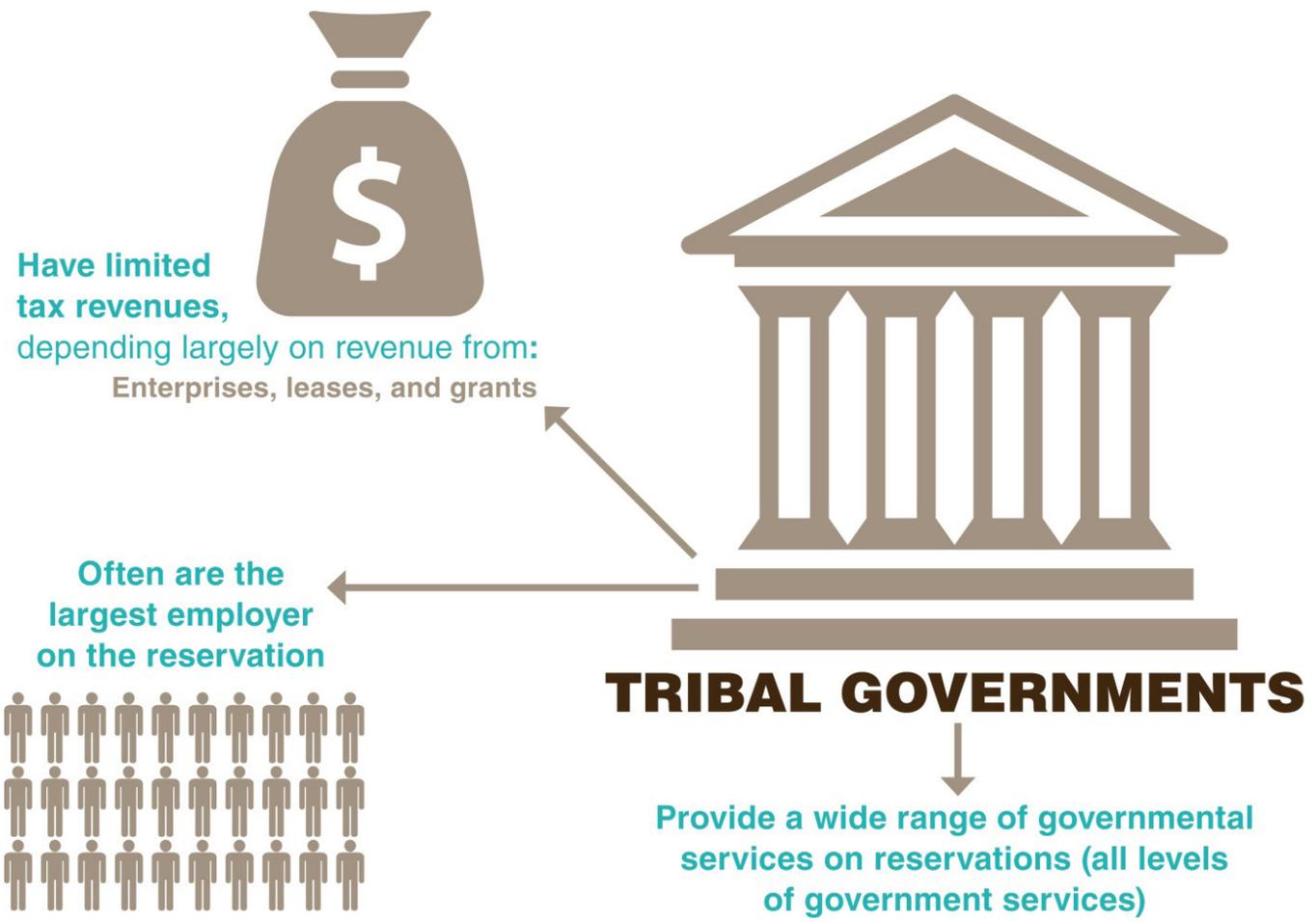
52 436 U.S. 49 (1978)

53 Cohen 2005 §7.05.

Uniquely, tribal governments have the responsibilities of all levels of government.

### Tribal Governments Functions

Uniquely, tribal governments have the responsibilities of all levels of government and are often the largest employer on the reservation. They often provide drinking water, treat waste water, and collect trash like many city governments. They generally conduct law enforcement like cities and counties and often regulate and manage the environment and natural resources like states and the federal government. They provide transportation services like all levels of government. Despite the expansive range of responsibilities, tribes have substantially fewer revenue sources than other governments because tribal governments generally do not tax their members' income, and do not have the authority to tax land because it is held in trust by the federal government. They are dependent largely on revenue from business activities, leases, grants and programmatic funding, such as transportation formula allocations. The significant need for governmental revenue in Indian Country was specifically recognized as a rationale in passage of the federal Indian Gaming Regulatory Act<sup>54</sup> that established the federal policies for tribes to develop gaming operations.



54 P. L. 100-497, 25 U. S. C. § 2701 et seq

## Leasing, Rights-of-Way and Allotted Lands

Beginning with *Johnson v. McIntosh* (first of the Marshall Trilogy decisions) the status of the majority of land on reservations and in Indian Country is trust land. Tribal lands are legally owned by the United States and held in trust for the tribe. Within a reservation, the tribal government establishes who has rights to use which lands and for what purposes. Rights to use may be determined by tribal custom or tribal law, including land use plans and zoning statutes. Generally, only Congress can authorize the sale or transfer of trust land and most leases, and rights-of-way require approval by the Secretary of Interior, generally through the BIA.

As a result of a number of historical factors (e.g., allotments passing to non-Indians, lands allocated to churches), many tribes have parcels of privately held land within their reservation boundaries. Tribal authority over parcels of private land within a reservation is complicated and determined by a balancing of factors related to the tribe's ability to be self-governing and its ability to protect the health and welfare of the reservation population.<sup>55</sup>

Allotted land that did not pass out of trust status (which is the situation for essentially all allotted lands on reservations within Arizona) also complicates tribal planning, leasing, and land use. Because of partial inheritance of allotted lands over generations, often referred to as *fractionation*, many allottees and their descendants (often referred to as 'landowners' although the land is still held in trust) have rights to allotted lands within reservations.<sup>56</sup> Historically, the United States, as trustee of tribal lands, acted through the BIA to lease rights for easements, rights-of-way, extraction of natural resources, and other purposes on reservations. As trustee of the land

within reservations and for Indian-owned allotments, the BIA generally maintains approval responsibilities for leases even for those negotiated by the tribe and allottees / landowners. However, many tribes have obtained greater authorities in the past two decades to make their own decisions concerning land use and leasing.

In some instances the fractionation was so serious and the number of allottees so large that they could not even be accounted for in the Federal government's computer system. The flaws in this system meant that the funds that were generated from leasing activities on the land were also very minuscule. Because the ownership interests were so small, the government would generate checks that were for only a few cents for the money earned from mining leases, farming leases, or timber leases that the government had approved as activity on the Indian land. Over time the Federal Government could not account for these funds and the American Indian Trust Fund Management Reform Act<sup>57</sup> was enacted by Congress to deal with this issue. The administrators of this act failed to provide an adequate accounting for the funds and could not produce



Photo of Elouise  
Pepion Cobell

documents to ensure the land was properly managed or managed at a fair market rate or in some cases could not ensure that the proper payments were ever even made.

A class action by Indian owners of allotments was recently settled against the United States alleging mismanagement of individual Indian money accounts of

<sup>55</sup> *Montana v. United States*, 450 U.S. 544 (1981).

<sup>56</sup> 25 U.S.C. Title 25, 25 CFR §162.

<sup>57</sup> P. L. 103-412, U. S. C. Title 25, Chapter 42, § 4001 et.sec.

revenues from leases, royalties, and other payments made to the BIA for the benefit of the allottees.<sup>58</sup> This litigation had been ongoing since 1996 on behalf of approximately 500,000 beneficiaries. Estimates of the amount of money that is unaccounted for by BIA (revenues received but not distributed to the individual Indian landowners) range from \$6 to \$8 billion.<sup>59</sup> The Secretary of the Interior and Assistant Secretary of Indian Affairs were held in contempt for a number of years until a settlement was finally agreed upon and just recently, that settlement has been approved by Congress. This Cobell litigation and the American Indian Trust Fund Management Reform Act of 1994<sup>60</sup> have resulted in significant changes in management of trust assets. Many tribes still express substantial concerns about the role of federal management of tribal and American Indian resources.

**TABLE 3 – 1: TRIBES WITH ALLOTTED LANDS IN ARIZONA**

| TRIBE                                     | APPROXIMATE NUMBER OF ACRES OF ALLOTTED LAND AND PERCENT OF TOTAL LAND |
|---|--|
| Salt River Pima-Maricopa Indian Community | 25,000 (50%)   |
| Gila River Indian Community               | 100,000 (30%)  |
| Tohono O’odham Nation                     | 40,000 (1%)  |
| Colorado River Indian Tribes              | 6,000 (2%)   |
| San Carlos Apache Tribe                   | 1,000 (< 1%)   |
| Navajo Nation (AZ land only)              | 91,400 (0.75%)   |
| Yavapai-Apache Nation                     | 100 (0.5%)   |

### Taxation - Tribal, State and Federal

Most tribal governments have a tribal tax code, which primarily taxes non-Indian activity on the reservation. Tribal lands are held in trust by the United States, which restricts the legal ability of tribal governments to levy property taxes. Historically, and even today as demonstrated in the 2010 census, Als living on reservations have been the most impoverished people within the United States and tribal governments are understandably reluctant to impose tribal income taxes on their members. Tribes have enacted transaction taxes, severance taxes, and taxes on possessory interests, payable by those doing business on reservations or contracting to provide services on the reservation.



58 *Cobell v. Salazar*, previously *Cobell v. Norton*, 334 F.3d 1128 (D.C. Cir. 2003); *Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001); *Cobell v. Babbitt*, 91 F. Supp. 2d 1 (D.D.C. 1999).

59 See Indian Trust: *Cobell v. Kempthorne* at <http://www.indiantrust.com/>.

60 25 U.S.C. §§4001-4061

Although **states cannot tax tribes**,<sup>61</sup> legal questions are periodically raised about whether a particular tax falls on the tribe, a tribal member or other entity, and whether the activity being taxed takes place on or off the reservation. These may appear to be simple questions, but there has been a great deal of litigation to determine the answers to these questions in relation to road building, timber harvesting, school construction and cigarette sales. A state tax may be valid, if the legal incidence of the tax is on a non-tribal entity or person even if the tribe is required to perform administrative tasks to collect and remit the tax.

The taxing jurisdictions of a tribe and a state may not be exclusive, creating the possibility of double taxation for activities on tribal lands. Tribal-state tax issues are increasingly resolved with tax agreements or compacts in part because Congress has not passed legislation to resolve the conflicts between state and tribal taxing authority. Many reservations have businesses, such as “smoke shops” where a tribal business can sell an item at less cost, such as tobacco products, because the state taxes do not apply. State taxes on sales within a reservation may apply, if the court determines that the tax is on the non-Indian purchaser. Different states have different taxing statutes, which have different results for what may appear to be the same activity.

### Law Enforcement and Tribal Courts

Law enforcement on tribal lands within Arizona is overwhelmingly conducted by law enforcement personnel, commissioned officers, or police who work for tribal governments or, in some cases, the BIA. Most tribes within Arizona have contracted from the BIA either through P.L. 93-638 contracts or as part of Self-Governance compacts and have their own police departments. In addition, most tribes employ rangers who are also commissioned officers, but who focus

primarily on protection of natural, biological, and cultural resources. Rangers are often out in the field in uninhabited areas and may be the first to come across people who are trespassing, illegally dumping, vandalizing cultural resources, shooting game, or fishing without appropriate permits or permissions from the tribal government.



Following the early Supreme Court decision in *Worcester v. Georgia*, for several decades, federal law was clear that states did not have jurisdiction within Indian Country. However, beginning in the 1880s several cases (particularly *Draper v. United States* - 1896<sup>62</sup>) began to complicate the issue substantially, particularly when non-Indians were involved. This trend of limited tribal criminal jurisdiction over non-Indians culminated in the *Oliphant v. Suquamish Tribe*<sup>63</sup> court case decision by the Supreme Court in 1978, which decided that tribes do not have criminal jurisdiction over non-Indians. Following the decision in *Oliphant*, the issue of adjudicatory jurisdiction in criminal cases varies depending on the Indian or non-Indian status of the parties, the location(s) in which the crime occurred, and the severity of the crime (e.g., felony or misdemeanor). Some tribes have agreements with the federal government and the state government, such as cross-deputization agreements, that allow state and local police forces to enforce tribal law and tribal police forces to enforce state law.

61 *Okla. Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995).

62 164 U. S. 240 - 1896

63 435 U. S. 191 (1978)

Absent special federal legislation, such as P.L. 280, state criminal jurisdiction is generally preempted by federal statutes<sup>64</sup> as well as by the exercise of federal law enforcement authority<sup>65</sup> in Indian Country.<sup>66</sup> Tribal criminal jurisdiction is generally limited to misdemeanor offenses committed by Indians.<sup>67</sup> Tribal courts are not considered courts of the United States and as a result, the double jeopardy clause does not apply: an individual may be prosecuted in federal and tribal court for the same offense but only with misdemeanors charges (not felonies) under tribal law.

## Major Crimes

In 1885 Congress passed the Major Crimes Act to assert federal jurisdiction over cases of serious crimes committed by Indians that occur in Indian Country, even when the victim is non-Indian. Initially, the list of crimes covered by the act included felonies such as murder, manslaughter, rape, assault with intent to commit murder, arson, burglary, and larceny. The list has been expanded several times by Congress.

**Given the complexity of adjudicatory jurisdiction, arrests can be very complicated within Indian Country.**

Within Indian Country, as defined by federal law, and on lands *not* subject to P.L. 280 jurisdiction (as is the case in Arizona), for crimes by Indians against Indians that fall under the Major Crimes Act, there is concurrent federal or tribal jurisdiction. Tribes have exclusive jurisdiction of Indians committing non-Major crimes. Crimes by Indians against non-Indians (both “Major” and non-Major) are under concurrent federal or tribal jurisdiction. With the following exception, the federal government has exclusive jurisdiction over crimes by non-Indians against Indians, and the state has jurisdiction over crimes by non-Indians against non-Indians.

The Violence Against Women Reauthorization Act of 2013 (P. L. 113-4), signed into law on March 7, 2013, authorizes participating tribes to exercise special domestic violence criminal jurisdiction over all persons, including non-Indians, if the defendant:

1. resides in the Indian country of the participating tribe;
2. is employed in the Indian country of the participating tribe; or
3. is a spouse, intimate partner, or dating partner of:
  - a. a member of a participating tribe; or
  - b. an Indian who resides in the Indian country of the participating tribe.

The term “participating tribe” means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

64 18 U.S.C. §§1153 and 3242.

65 25 U.S.C. §2801 et seq. and 25 CFR §§10-12.

66 The exception to this general rule is *United States v. McBratney* 104 U.S. 621 (1882) in which the United States Supreme Court dismissed a criminal action against a non-Indian defendant accused of murdering another non-Indian in Indian country. The court held that the state had jurisdiction.

67 The United States Supreme Court held in *Oliphant v. Suquamish Indian Tribe* 435 U.S. 191 (1978) that tribal court criminal jurisdiction did not extend to non-Indians. The Court extended this reasoning in *Duro v. Reina* 495 U.S. 676 (1990) to Indian non-members of the prosecuting tribe. However, Congress remedied the issue of jurisdiction over non-members Indians, codified in 25 U.S.C. §1301(2).

Given the complexity of adjudicatory jurisdiction, arrests can be very complicated within Indian Country. In some cases, including within Arizona, tribal police are often cross-deputized so they can stop and arrest individuals without knowing their status as Indian or non-Indian, particularly for issues such as speeding. In addition, Arizona generally gives full faith and credit to tribal court decisions, though actual implementation can sometimes be complicated.



### Civil Jurisdiction

Determining tribal or state civil jurisdiction is more complicated than determining criminal jurisdiction because the federal government has not preempted the assertions of civil jurisdiction by states. Without federal preemption there is often the question whether a state action infringes on the right of Indians on reservations to make their own

laws and be ruled by them.<sup>68</sup> The application of this standard becomes complicated when one or more of the litigants are non-Indian or if the actions take place on lands that are not held in trust for the tribe such as public roadways.<sup>69</sup>

### Tribal Courts

Typical IRA-based tribal constitutions did not establish tribal law enforcement or judicial systems. However, by the year 2000, approximately 140 tribes had established tribal courts<sup>70</sup> and more tribes are moving in this direction. Tribal court systems are created by tribal law, by federal law, or a combination of both. The United States has authority to establish courts of Indian offences with limited jurisdiction in Indian Country, often referred to as CFR courts for the sections of the Code of Federal Regulations under which they are operated.<sup>71</sup> Within Arizona, many tribes not only have trial courts but appeals courts as well. The larger tribes often have court facilities that have sophisticated electronic capabilities, translation services, and state-of-the-art courtrooms.

<sup>68</sup> *Williams v. Lee* 358 U.S. 217, 220 (1959).

<sup>69</sup> See *Strate v. A-1 Contractors* 520 438 (1997).

<sup>70</sup> Cohen 2005 §4.04[3][c][iv][A].

<sup>71</sup> 25 CFR §§11.100-11.104.

## TRIBAL TRANSPORTATION PROGRAM (TTP) ROADS

This section provides a brief history of roads on tribal lands. The TTP System is comprised of nearly 140,000 miles nationally, with about 15,000 miles on reservations located in Arizona. See **Table 3-2**. Funding for these roads has a long history, dating to the Federal Aid Road Act of 1916,<sup>72</sup> which set the federal transportation funding policy for roads serving public lands and Indian reservations. Five years later, states with significant federal lands would be accommodated with a reduced local share, as the result of the Federal Highway Act of 1921.<sup>73</sup>

**TABLE 3 – 2: TRIBAL TRANSPORTATION PROGRAM SYSTEM ROAD MILEAGE BY OWNERSHIP**

| BIA WESTERN REGION, BIA NAVAJO REGION AND NATIONAL   |                                    |               |                       |
|--|------------------------------------|---------------|-----------------------|
| IRR SYSTEM ROAD MILEAGE  |                                    |               |                       |
| ROAD OWNERS  | ROAD MILEAGE BY REGIONS IN ARIZONA |               | NATIONAL ROAD MILEAGE |
|  | Western Region                     | Navajo Region |                       |
| Bureau of Indian Affairs (BIA)   | 4,939.9                            | 3,779.8       | 31,394.0              |
| Tribal   | 697.1                              | 3,418.7       | 27,971.4              |
| State  | 630.1                              | 847.8         | 23,865.5              |
| Urban (City)   | 33.7                               | 89.0          | 3241.4                |
| County and Township  | 184.1                              | 499.8         | 67,689.4              |
| Other BIA  | 6.8                                | 0             | 138.3                 |
| Other Federal  | 53.0                               | 0             | 5,393.7               |
| Other  | 0                                  | 0             | 4,364.9               |
| Total  | 6,544.7                            | 8,635.1       | 164,058.6             |
| Source: <a href="https://flh.fhwa.dot.gov/programs/ttp/port/documents/fy17-ttp-data-report.pdf">https://flh.fhwa.dot.gov/programs/ttp/port/documents/fy17-ttp-data-report.pdf</a> , and correspondence with BIA Western and Navajo regions |                                    |               |                       |
| The above mileage does not include proposed roads, null category or BIA functional classification 11.  |                                    |               |                       |

In the 1920's, toward the end of the Allotment era, policy failures were documented and the federal allotment policy of individual Indian private land ownership became a national issue. Assessments were initiated to examine the conditions on the Indian reservations. On February 21, 1928, upon the request of Hubert Work then Secretary of the Interior, a survey team lead by Lewis Meriam for the Institute of Government Research published their findings in *The Problem of Indian Administration*. This report, referenced as the Meriam Report, delved into issues concerning living and economic conditions, community life, health, education, legal aspects and missionary activities on the reservations.<sup>74</sup>

72 39 Stat. 355, enacted on July 11, 1916.

73 Federal Highway Administration. America's Highway 1776-1976: A History of the Federal Aid Program. Government Printing Office, Washington D.C.

74 Deloria Jr., Vine and Lytle, Clifford. 1983. American Indians, American Justice. Austin, Texas: University of Texas Press. 12

Several months after the Meriam Report became public, the 70th Congress debated Public Law 70-520 that incorporated language to establish an Indian Reservation Roads (IRR) Program. Arizona Senator Henry Ashurst argued for construction appropriations for the roads within the Indian reservations. At the time, poor roads were hindering the transport of surplus crops from the Indian reservations to market.<sup>75</sup> States and counties in the West have traditionally favored federal highway financing because of concerns over the expense of building, connecting and maintaining roads on tax exempt lands, such as public lands and Indian reservations. “So long as the federal government retains practically one-fourth of the land of the State [of Arizona] for tax-free Indian reservations, it will have a distinct obligation to assist the State in its development by the medium of roads and schools and other essentials to civilization. Senator Ashurst’s bill, if enacted into law by congress, would constitute a partial discharge of this obligation to western states on the part of the federal government.”<sup>76</sup>

On May 26, 1928, Congress enacted P.L. 70-520.<sup>77</sup> The bill authorized IRR appropriations and directed the Secretary of the Agriculture, which had oversight of the Federal roads, to work with the state highway agencies and the Department of Interior to survey, construct, reconstruct and maintain the Indian reservation roads not eligible for Federal-aid highway funding.<sup>78</sup>

The IRA of 1934 and its implementation coincided with President Roosevelt’s New Deal initiated during 1933 through 1939. “At the same time, the Roosevelt



Stuck in Sand c.1930, South of Walpi, Navajo Indian Reservation.

Administration implemented the largest programs of investment in the reservations up to that time.”<sup>79</sup>

Under the New Deal policy, the Public Works Program was established by the 1933 National Industry Recovery Act. Few industries were hit as hard as construction during the Great Depression; therefore, Congress appropriated \$3.3 billion to boost public work projects, including public highways. Highways under the Department of Agriculture received the largest portion, \$400 million. An allocation of \$50 million was dedicated for trail and road improvements on public lands and Indian reservations.<sup>80</sup>

Public Works Administrator Harold Ickes supported U. S. Commissioner of Indian Affairs John Collier to institute a federal preservation policy to protect Indian culture and provided about \$7 million Public Works Administration funds to stimulate the reservation economies. A portion of the Public Works Administration funds financed road improvements on Indian reservations, but the bulk of the projects were irrigation infrastructure, building structures and school facilities. The Indian New Deal primarily involved tribal labor on the public works and conservation projects.<sup>81</sup>

75 Hall, Ron and Pape, Kyle. 2011. *Approaching Funding Misallocations: Congressional Intent of the Indian Reservations Roads Program*. 2011 National Tribal Transportation Conference (Poster session)

76 Money for Indian Reservation Roads. *Arizona Silver Belt*. April 15, 1928

77 45 Stat. 750, 25 U. S. C. 318(a)

78 August 7, 2002, Federal Register. 51329-51330

79 Collins, William S. 1999. *The New Deal In Arizona*. Arizona State Parks Board, Phoenix, Arizona. p144, 15, 238,272

80 Collins, William S. 1999. *The New Deal In Arizona*. Arizona State Parks Board, Phoenix, Arizona. p144, 15, 238,272

81 Collins, William S. 1999. *The New Deal In Arizona*. Arizona State Parks Board, Phoenix, Arizona. p144, 15, 238,272.

Under the Surface Transportation Assistance Act of 1982,<sup>82</sup> Congress created the Federal Lands Highway Programs (FLHP) Office within the Federal Highway Administration (FHWA) to coordinate transportation on Federal lands. The Act also expanded the IRR System to include tribal, county and state owned public roads, in addition to the roads owned by the BIA.<sup>83</sup>

Through a series of interagency agreements, the BIA and the FLHP Office jointly administered the IRR Program. The first interagency agreement dates back to 1946 and involved the predecessors of the BIA and the FHWA – the Office of Indian Affairs and the Bureau of Public Roads.<sup>84</sup>

In 2012, new federal surface transportation legislation was enacted. Known as MAP-21 (Moving Ahead for Progress in the 21st Century Act<sup>85</sup>), this legislation changed the name of the Indian Reservation Roads Program to the Tribal Transportation Program (TTP), which will be discussed in more detail in Module 4.

## ISSUE RESOLUTION: IMPLEMENTATION OF GOVERNMENT-TO-GOVERNMENT APPROACHES WITH TRIBAL GOVERNMENTS INCREASES THE ABILITY TO RESOLVE ISSUES

Interactions between tribal nations and state agencies work best when they are based on mutual trust and respect developed by positive interactions over time. One of the key elements in building trust with tribal nations is a government-to-government approach. In some cases, state, county, and city staff may view tribal governments as minority groups or public stakeholders, rather than as governments. It

82 P.L. 97-424, U.S.C. 23.

83 August 7, 2002, Federal Register. 51329-51330.

84 August 7, 2002, Federal Register. 51329-51330.

85 P.L. 112-141, U.S.C. 23.



may be helpful when considering how to interact with tribal nations to consider how your agency would interact with another state, a federal agency, or another country.

Like all relationships, relationships between states and tribal governments need to be maintained and work best when individuals are able to build relationships before disputes arise. It may also be valuable to develop written agreements, including formal Intergovernmental Agreements, to establish how disputes will be resolved before they may occur.

In addition, government-to-government issue resolution will almost certainly require the involvement of the highest elected officials at some point, not just staff at either the tribe or state agency. It is important for staff of all parties, even those with delegated authority, to seek direction from top officials at important decision-making points in resolving disputes.

Importantly, while formal consultation with tribal governments may not solve all issues, consulting with tribes is required by Arizona and ADOT policy. Informal meetings with tribal staff may not solve every issue either. However, information sharing, periodic update meetings, and successful joint projects increase mutual trust and respect, build relationships, and increase the likelihood of finding common ground. Often tribal and state governments have common goals that can be identified and built on to achieve successful results for all the jurisdictions involved.

THIS PAGE WAS INTENTIONALLY LEFT BLANK



## Module 4: Effective Tribal Consultation and Coordination

### Learning Objectives

This module includes the following learning objectives:

- ⌚ Understanding of the meanings of consultation and coordination.
- ⌚ Understanding that effective consultation and coordination with tribal governments and tribal staffs require different approaches than those used in working with other types of governments.
- ⌚ Understanding of the guiding principles and critical elements of effective consultation and coordination processes.
- ⌚ Knowledge of the requirements for consultation and coordination with tribal governments.
- ⌚ Knowledge of ADOT procedures for consulting with tribal governments.
- ⌚ Understanding what tribal governments need to know when working with ADOT and ADOT employees responsibilities in providing that information.
- ⌚ ADOT tribal consultation policy and guidance.
- ⌚ Understanding of why it is important for employees throughout ADOT to be able to effectively communicate with tribal governments and tribal members.
- ⌚ Understanding what ADOT personnel need to know about working with Tribes
- ⌚ Understanding what ADOT employees need to know about the Tribal Transportation Program (TTP).

### Module Summary

Good communications is discussed as a critical element in establishing strong relationships with tribal governments, members, and staff. Coordination and consultation are defined for the purposes of ADOT employees working with tribal governments. The long history of broken promises and physical atrocities has led to the loss of trust by tribal governments and Indian people when dealing with other governments.

Trust must be built through developing mutual respect and understanding at the individual and government levels.

Guiding principles and critical elements for consultation on the personal and organizational levels are discussed. ADOT's general procedures for consulting with tribes are presented.

Important information about the ADOT organization and project process from planning to maintenance is provided. Funding sources are identified and technical assistance and training opportunities are discussed. The role of ADOT employees in providing tribes information about the ADOT organization, processes, and resources is discussed.

Policy documents that provide consultation process direction are summarized and process-related guidance publications are introduced.

**IT IS CRITICAL TO KEEP IN MIND THAT ADOT IS COMMITTED AS AN AGENCY TO EARLY CONSULTATION AND COORDINATION WITH TRIBAL GOVERNMENTS ON DECISIONS AFFECTING TRIBES.**



## GOOD COMMUNICATIONS – THE PATH TO BUILDING TRUSTING AND SUCCESSFUL RELATIONSHIPS WITH TRIBAL GOVERNMENTS

Communication can be defined as imparting, delivering, or conferring from one person to another. “Imparting” and “delivering” infer the passing of information in one direction, i.e. this is the way it is. Historically, these two methods have dominated communications between federal and, sometimes, state governments with tribal governments and Indian populations, leading to long held, less than trustful relationships.

“Conferring” implies personal sharing of information and ideas through discussion, coordination, and consultation—in other words, two-directional communication. This communication approach with tribal governments has been initiated in recent years by ADOT and is the focus for this training. The approach is the key to building trusting and successful relationships. It can be used to facilitate decisions on major transporta-



tion issues and to learn about each other’s government and culture.

ADOT employees working with tribes should seek out and build on the established working models with tribal governments. Examples include the ADOT Tribal Liaisons, Historic Preservation Team, Engineering Districts, and ADOT-Tribal Partnerships. At times, ADOT and its employees must utilize one-way communications on an issue impacting a tribe or tribes, but usually that should follow conferring with tribal representatives on the issue.

## DEFINITIONS OF TRIBAL CONSULTATION AND COORDINATION

Consultation and coordination are two methods of conferring that will be discussed in this module. Consultation is an organizational-level activity that can take place through written correspondence or personal contact. This module places primary focus on consultation, because it is the subject of this training program and because of its emphasis in federal laws, regulations, and executive orders and Arizona Revised Statute 41-2051.

Consultation has specific process and decision-making requirements and can address coordination issues. Coordination is typically the more informal process of the two. It is commonly practiced on a personal level, but can be an organizational level activity.

## Difference between Consultation and Coordination

The basic difference is that consultation occurs prior to taking an action that could impact a tribe and involves conferring on what action is to be taken. Coordination occurs after the decision is made on the action to be taken and involves working together on implementing the action, considering the mutual interests of the parties involved.

Depending on the complexity of the action, consultation might be required during the implementation phase. Consider a major highway improvement project on tribal lands. Consultation is required at the planning, programming, and project development levels and might be required during construction and maintenance if significant issues emerge that impact the tribe.

### CONSULTATION DEFINED

Webster defines consultation as “a meeting of persons to discuss, decide or plan something.”<sup>1</sup>

Title 23 (Highways) Code of Federal Regulations (CFR), Part 450.104 defines consultation as meaning “that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken. This definition does not apply to the “consultation” performed by the States and the Metropolitan Planning Organizations (MPOs) in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and Tribal conservation plans or

maps or inventories of natural or historic resources. (see §450.216(j) and §450.324(g)(1) and (g)(2)).”

Title 23 Code of Federal Regulations, Part 450.324(g) defines consultation as involving as appropriate:

1. Comparison of transportation plans with State conservation plans or maps, if available; or
2. Comparison of transportation plans to inventories of natural or historic resources, if available.”

The U.S. Department of Transportation Tribal Consultation Plan defines [tribal] consultation as referring to:

### *“Meaningful and timely discussion*

**Tribal Consultation means conferring on a government-to-government basis in accordance with an established process and prior to taking actions on issues of mutual importance. It is conducted in an atmosphere of trust built through mutual respect and understanding and in consideration of the sovereignty, history, culture, protocols, and views of the parties involved. Consultation concludes with periodic follow-ups about actions taken.**

### *in an understandable language with Tribal governments.”*

ARS 41-2051 does not provide a definition for consultation, but requires each state agency to have a tribal consultation policy. It supports the need for the consultation policies with reference to: tribes’ long existence in Arizona; tribal lands covering about 28 percent of the State’s land area; tribal sovereignty; spirit of cooperation in government-to-government relations; and better understanding and informed decision-making.

**ADOT MGT-16.01** Department-wide Native Nation/ Tribal Government Consultation Policy defines consultation as: “Meaningful and timely discussion in an understandable language with tribal governments

during the development of regulations, policies, programs, plans or matters that significantly or uniquely affect federally recognized American Indian tribes and their governments.”

The following definition assimilates these multiple definitions and guidance into a meaningful and effective tribal consultation definition for ADOT employees to use when working with tribal governments. The term “government-to-government” in the definition represents a commitment to fully respect the sovereign rights of self-government and self-determination due to federally recognized tribal governments.

## COORDINATION DEFINED

There are many definitions of “coordination.” Webster has several definitions including: “to function harmoniously” and “a person or thing of the same rank with another, and working or employed to the same end.” An example under these definitions for ADOT-Tribal coordination might be coordinating the implementation of a public meeting at a tribal community to provide for tribal members input on a State Highway project. Another example might be coordinating the setup of a mobile truck weigh station at a location on tribal lands.

Title 23 (Highways) CFR, Part 450.104 defines coordination as meaning “*the cooperative development of plans, programs, and schedules among agencies and entities with legal standing and adjustment of such plans, programs, and schedules to achieve general consistency, as appropriate.*” An example of an application for this federal definition is that the State Transportation Improvement Program (STIP) must be coordinated such that it contains the projects in Transportation Improvement Programs (TIPs) for ADOT (5-Year Construction Program), Metropolitan Planning Organizations (MPOs) and Tribes, with no conflicts.

The ADOT MGT-16.01 Department-wide Native Nation/Tribal Government Consultation Policy defines coordination as: “Cooperative actions among agencies and entities to integrate activities, responsibilities, and control to ensure resources of all parties are used as efficiently as possible”. Coordinating roadway maintenance and traffic signal operations responsibilities at a busy intersection of a State Highway and tribally-owned road would be an example of coordination under this definition.

The following definition for tribal coordination can be used by ADOT employees when working with tribal governments on issues of mutual interest.

**Tribal coordination means working cooperatively and harmoniously with tribes and tribal staff to efficiently and effectively implement actions to achieve the objectives of the parties involved. Coordination is conducted in an atmosphere of trust built through mutual respect and understanding and in consideration of the sovereignty, history, culture, protocols, and views of the parties involved.**

“Let us put our minds together and see what life we will make for our children.”

### - Sitting Bull

Hunkpapa Lakota Sioux Chief

Photo Source: PBS New Perspectives on The West, [http://www.pbs.org/weta/thewest/people/s\\_z/sittingbull.htm](http://www.pbs.org/weta/thewest/people/s_z/sittingbull.htm)



## GUIDING PRINCIPLES FOR CONSULTING WITH TRIBES

ADOT is committed to tribal consultation, not only for processes for which it is required, but also for opportunities that can further trust building and strong relationships with tribal governments. Expanding on the preceding discussion of trustful relationships and good communications, there are a number of guiding principles for consulting with tribes that will assist ADOT employees in developing successful relationships. These principles, as stated below, were drawn from the *ADOT Tribal Transportation Consultation Process Reference Manual*.<sup>86</sup>

### Identify Consultation Issues and Participants Early

Since consultation follows an established government-to-government process, it is important that issues for which consultation is appropriate be identified as soon as possible. This will place both parties on notice that consultation is involved. Consultation is required by federal law or policy for some issues, such as statewide transportation plans and programs, and cultural resources.

For other issues, it is up to ADOT employees or tribal representatives to identify the issue as a candidate for consultation. Once an issue is identified as a candidate for consultation, the ADOT employee involved must confirm that consultation is appropriate and who should lead the consultation for ADOT. For some issues, the employee or management involved will have the authority to make those decisions.

**The government-to-government consultation process must involve officials of comparable governmental stature and authority.** The highest elected tribal official, such as the President, Chairperson, or Governor will be consulted, unless the tribal official delegates this authority to tribal administrative or transportation staff. The ADOT employee should not rely exclusively on her/his tribal contact to make that decision, since the contact might not have the authority to do so. Other tribal government officials should be contacted to help confirm the appropriate tribal consultation participants. These officials should be identified as soon as an issue is set for consultation to ensure the appropriate levels of personnel are involved early in the process.

“These transportation issues are multiple and complex because of the number of jurisdictions that need to be involved in the planning, maintenance, construction, and law enforcement necessary to maintain a transportation system. It is extremely important that coordination, cooperation and consultation between tribal governments, the Bureau of Indian Affairs Division of Transportation and the Arizona Department of Transportation take place from the inception of the planning as well as throughout the entire planning process.”

- **Vice Chairman Shan Lewis**, Fort Mojave Indian Tribe (2020)



<sup>86</sup> Jacobs Engineering, 2009. Tribal Transportation Consultation Process Reference Manual. Phoenix: Arizona Department of Transportation.



### Respect Tribal Sovereignty and Individuality

Consultations are more likely to be successful when ADOT management and employees demonstrate respect for tribal sovereignty by taking affirmative action to become knowledgeable about the specific sovereign authority of the Tribe or Native Nation being consulted. Also, acknowledgement of each Tribe's individuality and distinctiveness is an important first step when building trust and effective working relationships. Reference to a tribe needs to be the official tribal government name (see **Table 1-1** on **Page 9**). Slang terminology, such as "the Indian" or "those Indians," is not appropriate when referring to a tribal government, community, or member. These terms may not sound offensive to non-tribal representatives; however, this may not be the case for tribal officials or members that are involved in official meetings or in one-on-one discussions with ADOT employees.

**Tribal sovereignty ensures that any decisions about the tribes with regard to their property and citizens are made with their participation and consent.**  
 - Bureau of Indian Affairs<sup>1</sup>  
<http://www.bia.gov/FAQs/index.htm>

## Cultural Knowledge – Every Tribe Is Unique

Tribes and Indian Nations residing in Arizona and that have ancestral/aboriginal land interests have their own cultures, customs, and traditions. Cultural awareness, sensitivity, and competency are all essential dimensions of knowledge and understanding that increase the skill and ability of ADOT employees to work effectively with Tribes and Native Nations. Information should include knowledge of tribal governmental structures and processes, tribal laws, rules and regulations, and (as reasonable and appropriate) tribal customs, traditions, and beliefs. Information on these items may often be found on official tribal government websites, by contacting ADOT tribal liaisons, or contacting the appropriate tribal representative through request by formal correspondence. Several tribes offer workshops or training to outside agency staff assigned to work with their tribe on projects or programs. For Arizona, tribal Internet website links can be found at <http://www.aztribaltransportation.org/tribes.asp> the Arizona Governor's Office on Tribal Relations; or the Inter Tribal Council of Arizona websites.

## Historical Knowledge – Tribal Perspectives of History Are Shaped by Their Experiences

As this and previous modules have demonstrated, the history of broken trust, broken treaties, and relocations, and many other abuses have shaped perspectives. ADOT employees should strive to be informed how treaties, federal laws, or court decisions are applicable to Tribes and Native Nations individually or as a group. Tribal governments may exercise extreme caution as to language that is incorporated into intergovernmental agreements and contracts. Open communication with tribal decision makers to develop appropriate language is a positive strategy for addressing this concern.

## Intergovernmental Relations

Government-to-government relations should build on established models and ongoing relationships. Understanding the applicability of state laws and policies to activities impacting tribal governments and tribal lands is also important. This includes understanding the dynamics of government-to-government relations and knowledge of existing intergovernmental agreements or Memorandums of Understandings. Generally, there are various levels of government-to-government relations protocol that will lead to better understanding. It is proper to equate the highest elected chairperson, president, or governor of a tribal government to the governor of the state. Tribal leaders are involved in initiation of tribal consultation and included in follow-up communication and correspondence. The tribal leader may designate a tribal government representative to become involved in consultation negotiations and/or to carry out consultation processes within the limits of their tribal sovereignty, laws, and communication protocols.

## Openness to Change

Previous knowledge and understanding acquired before formal tribal consultation may contrast, or be in conflict with the views or understandings of the Tribe or Native Nation(s) being consulted. This means that ADOT employees must be open-minded at all times and willing to change or adjust their position or understanding, based on their interaction with the Tribe/Native Nation. Discussions should be open and candid, so the potential impacts of an ADOT decision or proposal on tribal interests, resources, communities, or citizens can be fully assessed.

## Respect for Points of View, Listen and Act Patiently

At all times during consultation meetings, respect for a person's opportunity to speak and for differing points of view must be maintained. It is also important to listen patiently and intently, and to wait to respond until all the views of the tribal representative have been expressed. A discussion that may seem "off-topic" will often lead to an understanding of an issue or consequence. To interrupt a speaker might lead to shutting off further discussion and potentially prevent progress toward reaching agreement on an issue. **It would be proper to make the intention to speak be known simply by raising a hand to be acknowledged.**

LISTENING  is a show of **respect** 

## Spirit of Cooperation

It is important from the beginning of relationships that there be a commitment to working cooperatively and for the long term. ADOT actively utilizes the partnering process in developing, fostering, and enhancing working relationships with Tribes and Native Nations in Arizona. The partnering principles are utilized both in formal and informal settings. The Federal-State-Tribal Partnering processes described in Module 5 are proactive efforts to partner.

## Meeting Basics

First impressions can be a concern to ADOT employees or the state's professional consultants who are involved in tribal consultation meetings. Often it is not known what to expect, particularly in the case of a first time meeting with tribal officials. Many tribal governments are sophisticated in their business practices and will set the tone for the protocol to be followed. Generally, these meetings are conducted as professional business meetings. Business attire should be pertinent to the level of government-to-government consultation undertaken. The general considerations here are following state business practices and how ADOT should be represented.

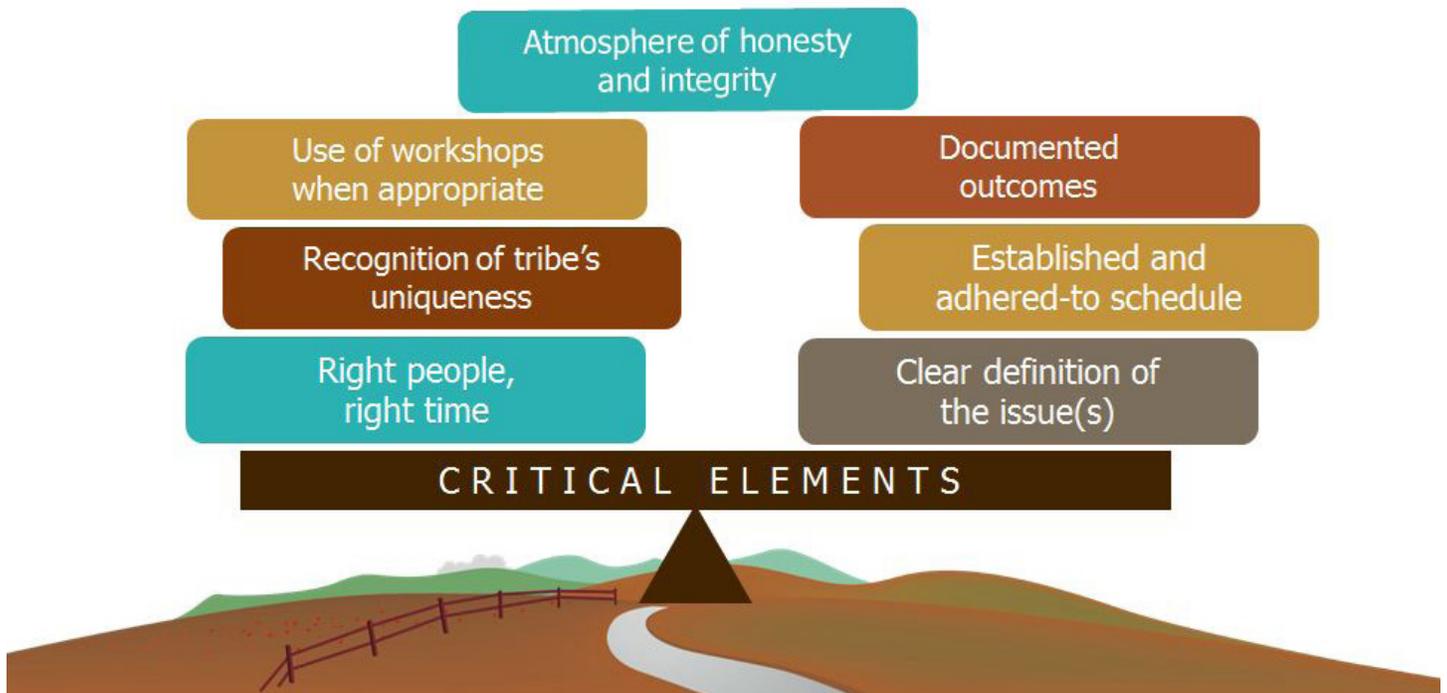
"You must speak straight so that your words may go as sunlight into our hearts. Speak Americans. **I will not lie to you; do not lie to me.**"

- **Cochise,**  
Chiricahua Apache Chief

## CRITICAL ELEMENTS IN CONSULTATION AND COORDINATION WITH TRIBES

Consultation and coordination have both organizational and personal aspects. How consultation and coordination are conducted reflects both on the represented organization, as well as the individuals involved. The success of consultation and coordination activities involving tribes is significantly dependent on trust built through mutual respect and understanding. **Honesty and integrity must be maintained by all parties involved.** Building trust requires work and time at both the organizational and personal levels.

There are several critical elements that apply to both the personal and organization levels of coordination and consultation.



- Clear description of the issue to be addressed.
- Identification and involvement of all parties who should participate.
- Adequate time for the coordination or consultation to be completed, including document reviews and meeting notices.
- Established and adhered-to schedule.
- Recognition that tribes differ traditionally, culturally, and administratively.
- Outcomes of coordination and consultation are documented.
- Use of workshops and/or task forces, when appropriate, to develop issue solution alternatives and recommendations.

## ADOT PROCEDURES FOR CONSULTING WITH TRIBES

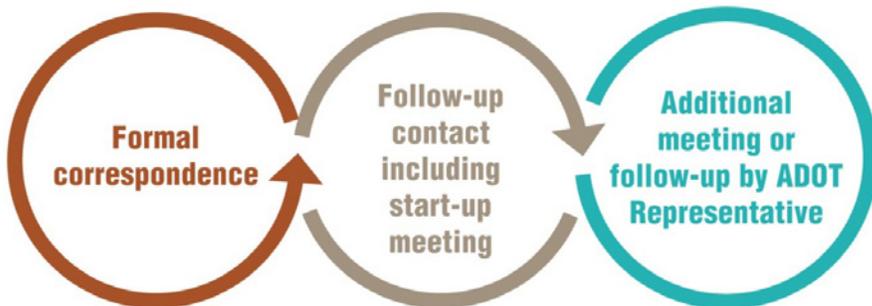
ADOT has developed general tribal consultation procedures that can apply to a broad range of consultation activities and specific procedures that are used for tribal consultation required under Section 106 of the National Historic Preservation Act.<sup>87</sup> The procedures described as follows have been reviewed by the Historic Preservation Team (HPT) of ADOT Environmental Planning<sup>88</sup>.

87 P. L. 89-665, 16 U. S. C. 470 et seq.

88 Source: ADOT Environmental Planning

## ADOT Initiated Tribal Consultation General Procedure

To the extent practicable and permitted by federal and state law, ADOT seeks input from appropriate elected or appointed tribal officials before undertaking any action or policy that will, or is reasonably believed to have the potential to affect a tribal government or its members.



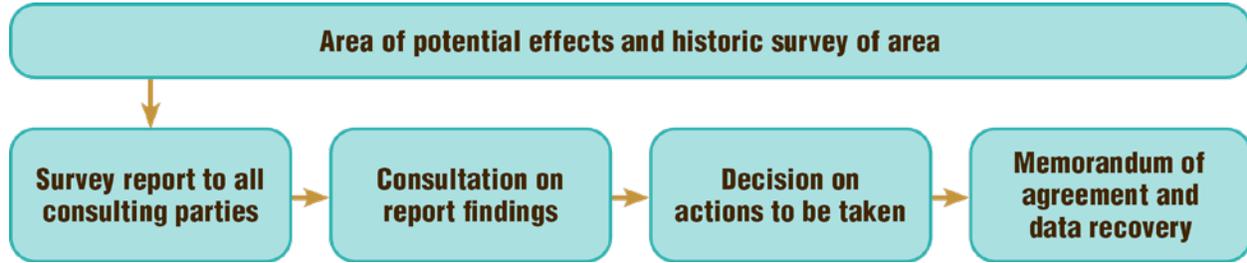
ADOT has developed a general government-to-government consultation procedure when the situation dictates, such as in the planning and programming processes. The graphic outlines the procedure and is followed by a more detailed description.

### GENERAL CONSULTATION PROCEDURE ELEMENTS

- **FORMAL CORRESPONDENCE** - Formal consultation correspondence is drafted, finalized, and signed by the ADOT Director or other designated ADOT executive level official, to be sent by conventional mail to the Tribal leader with related attachments. For Section 106 consultation under the ADOT Five-Year Transportation Facilities Construction Program, the ADOT director does not sign those letters. For Section 106 the tribal cultural contact person and the tribal government representative is contacted.
- **CORRESPONDENCE COPY DISTRIBUTION** - Copies of the correspondence and related documents will be sent by conventional and/or electronic mail to: 1) the designated tribal transportation contact(s); 2) the tribal cultural resources contact (s); 3) other authorized tribal/tribal related agency representative(s), as appropriate; and 4) authorized and/or designated ADOT representative(s) who will be involved in the consultation process. These individuals will be identified as copy recipients on the correspondence
- **FOLLOW-UP CONTACT** - will be carried out through telephone and/or email communication (or fax transmittal if needed for tribes located in remote areas of the state). This will be conducted by the authorized/designated ADOT representative who will obtain details on a start-up consultation meeting and who in turn will send notice to the ADOT Director, other ADOT executive level officials and department representatives to be involved in the consultation process.
- **OTHER FOLLOW-UP MEETINGS AND ANY RELATED ACTIONS** - will be conducted/coordinated by the authorized/designated ADOT representative and tribal representative(s), as appropriate. The ADOT Director and other executive level officials will be kept informed on progress of the effort until it is closed or if agreement is made to continue on an ongoing basis.

## ADOT Historic Preservation and Cultural Resources Section 106 Specific Tribal Consultation Procedure

The ADOT HPT uses two processes for tribal consultation involving historic and cultural resources for construction projects. One applies to federally funded or permitted projects and the other to state-only funded projects. The requirements of State Historic Preservation Act versus the National Historic Preservation Act are different, but for the purposes in the ADOT HPT, the process is similar. The following flow chart illustrates the major steps in the process and is followed by a description of the major consultation actions.



## TRIBES RESIDENT IN ARIZONA<sup>89</sup>

- In conducting consultation with tribes, either when a project is on tribal land or on land that is of historical and cultural importance to a tribe, a consultation letter goes to the tribal leader without attachments and a copy of the letter goes to the authorized tribal representative with a copy of the report.
- Even for tribes with Tribal Historic Preservation Offices (THPOs), coordination letters are sent to the government officer as well as the THPOs.
- Contact information for the agencies is maintained in the ADOT HPT Portal. The entries for the tribal representatives indicate to whom consultation is addressed, and to whom reports are transmitted.
- The standardized consultation letters include the format for sending consultation to tribes. Note that the tribal letters request for the tribe to indicate if there are any traditional cultural property concerns in the project area and to respond within 30 calendar days.
- ADOT now has NEPA and CE Assignment so they are fiscally and legally responsible for environmental compliance, except in a limited number of cases which are coordinated through FHWA.
- Currently the Hualapai Tribe, Navajo Nation, San Carlos Apache Tribe, Hopi Tribe, Salt River Pima-Maricopa Indian Community, Pascua Yaqui Tribe, Gila River Indian Community, and White Mountain Apache Tribe are the only tribes with recognized THPOs (the Pueblo of Zuni, headquartered in New Mexico, also has a THPO). The THPO is treated as a SHPO for the purposes of Section 106 consultation.
- Specific to Navajo Nation: The Navajo Nation Historic Preservation Department (NNHPD) issues clearance for reports, not projects. As such, NNHPD requires that an Archaeological Inventory Record (AIR) form be included with each report. These forms provide a summary of the information in the report that pertains to Navajo Nation land only. This is a document that the On-calls are required to prepare in compliance with the stipulations of their survey permit from the Navajo Nation. After a document has been submitted to NNHPD with an AIR form and a project consultation letter, the NNHPD will issue a “compliance document” indicating their concurrence with the report findings. All correspondence to the Navajo Nation should be sent via certified mail/return receipt only. Future undertakings in the same project area can use existing “compliance documents” in lieu of resubmitting reports and AIR forms.

89 Source: ADOT Environmental Planning

- Areas of tribal concern, based on past work with the Tribes, can be found in the ADOT-HPT Portal. Section 106 stipulates that a “good faith effort” must be made to obtain a tribal response. ADOT interprets “good faith effort” to mean that one follow-up

telephone call and follow up with emails are made to the tribal representative to determine whether or not to expect a response. If no response is received in 30 calendar days, the recommendation of effect will hold.

## TRIBES NOT RESIDENT IN ARIZONA

The rapid settlement of the United States by European settlers forced many Native American populations to move from traditional hunting, trading, and farming lands to reservation areas leaving behind burial mounds, village sites, and other historic resources. There are tribes from the past that may have cultural and/or religious interests in Arizona but no longer reside in the state as described in Module 1.

Federal and state laws require extensive surveys to ensure that the remains of American Indian culture are identified before improvements to transportation and other infrastructure can proceed. Laws also specifically protect American Indian burial grounds and other historic areas from being damaged or disturbed. Agencies must make a reasonable and good faith effort to identify and contact American Indian tribes that attach historic and cultural significance to land in the improvement area, but may now reside outside the state and area of impact.

The website <https://www.achp.gov/news/newly-updated-online-tool-assists-involving-indian-tribes-early-section-106-historic> provides information about online tools to assist in determining which Indian tribes have an interest in the project areas, particularly for Section 106 consultation. The HUD Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat/> is a GIS based tool to help users identify tribes that may have an interest in the location of a HUD-assisted project and provide tribal contact information to assist users with initiating Section 106 consultation under the National Historic Preservation Act. The BIA Tribal Leaders Directory <https://www.bia.gov/bia/ois/tribal-leaders-directory/> is another GIS based tool that can be used to identify contact information for federally recognized tribes.

**If a construction project is located within the boundaries of tribal lands, direct consultation is required. Tribal notification is required for all projects.**

ADOT’s Environmental Planning and Historic Preservation specialist assigned to the project will make the necessary inquiries to comply with this requirement.

## CULTURALLY SIGNIFICANT SITE SECURITY

Preservation of tribal culture is critical to tribes and the Native American way of life. Module 2 demonstrated how the federal government attempted to break these cultural ties during the Allotment and Assimilation Era. Today, preserving tribal culture is an important element in developing mutual respect and understanding.

Throughout Arizona there is evidence of tribal historic and cultural legacy both above and beneath the ground surface. Section 106 of the National Historic Preservation Act requires federal agencies to consult with tribes on any decisions that may affect their historic and cultural legacy. ADOT consults on behalf of FHWA, even though they still maintain their federal responsibilities for government to government consultation. A tribe may request formal government to government consultation on a project that ADOT is doing, if they feel that ADOT is not responsive to them or for whatever reason they want to include FHWA. Most of the time, ADOT completes projects without FHWA. Identification or discovery of culturally significant sites can occur at any time

in the ADOT project process, including during planning design, construction and maintenance.

Refer to **Pages 134 to 140** for a detailed description of the ADOT Project Process from Planning to Maintenance, which includes application references to the Section 106 Process.

Culturally significant sites include locations that provide physical evidence and understanding of historical tribal life and Native American burial sites. If a potentially culturally significant site is discovered, it is secured, but the time frame of events and who is contacted will be different depending on the land ownership and whether this is a construction project where there is an existing Project Assessment (e.g. data recovery or testing was needed for this project). If the project had the potential to contain buried human remains, there would most likely have had a burial agreement in place before the project began, which would dictate what happens for discoveries. The site is typically secured using fencing or restricted access.

It is important for anyone in the vicinity of a Native American burial site to understand the critical need for the preservation of dignity and respect for the people buried there, just as is the case at any cemetery.

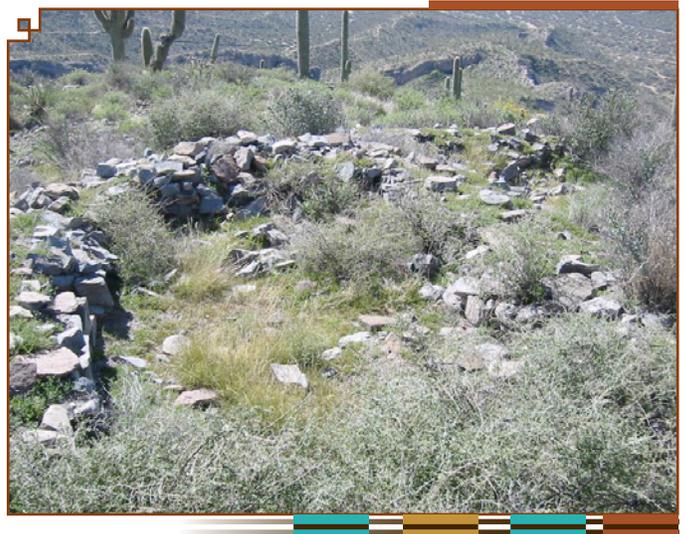
Additional concerns with security include:

- The general public wandering on culturally significant sites out of curiosity;
- Looters in search of valuable artifacts;
- Workers disregarding the sensitivity of the sites.

On-site workers should be familiarized with any burial agreements or discovery plans for the project and be required to attend cultural sensitivity training provided by the tribe for work on tribal lands. A copy of the treatment plan for discoveries should be readily available and accessible on-site.



Site under investigation near SR 77. Source: ADOT Blog, August 15, 2012



Source: 2007-2008 Arizona Site Steward Handbook, Arizona State Parks

## ADOT INTERACTS WITH TRIBES AT BOTH THE ORGANIZATIONAL AND PERSONAL LEVELS

### Organizational Level Interaction

ADOT often conducts activities that require developing successful working relationships with a single tribe or multiple tribes simultaneously. Examples include:

- The Federal-State-Tribal Transportation Partnership Program on a tribe-by-tribe basis aims at developing, fostering, and maintaining good working relationships through communication, collaboration, consultation, and coordination.
- Organizational contacts on a programmatic basis involving multiple tribes, such as consulting with tribes on a road project as is required for identifying cultural and religious sites in implementing Section 106 of the National Historic Preservation Act of 1966.
- Organizational contacts on a state-wide basis involving all tribes, such as with the development of the state-wide long-range transportation plan and Five-Year Construction Program.

Following are actions that will help ADOT earn organizational trust from tribal governments.

#### WORKING WITH A SPECIFIC TRIBE:

- Recognize the sovereignty of the Tribal government and its jurisdiction over lands within Indian Country as defined by federal law and that ADOT will not assert authority over Indian Country.
- Know its history and why it might not trust ADOT.
- Learn and respect the tribe's culture and customs.
- Hold meetings at a tribal location.
- Mutually agree on the objectives of the consultation and/or coordination.
- Mutually agree on meeting protocol and document it.
- Listen well.
- Make mutual decisions and document them.
- Be true to your word.

#### WORKING WITH MULTIPLE TRIBES REQUIRES ADDITIONAL ORGANIZATION:

- Invite all affected tribes to participate in the activity—remember that no tribe, including a non-resident tribe, makes decisions for another tribe.
- Invite tribal organizations, such as the Inter Tribal Council of Arizona, Inc. (ITCA), to participate in the activity. Although ITCA cannot make a decision for a tribe, it can identify issues that non-participating tribes could raise.
- Seek consensus among the tribes involved on procedural matters and document the procedures.
- Respond with written explanation to affected tribes on policy matters when ADOT chooses a different direction from that requested by the tribe(s).

## Personal Level Interaction

Personal level contacts with tribal governments and their staff usually occurs in one of two ways.

- Personal contacts in the field on a daily basis, such as with roadway maintenance or on a construction project.
- Personal contacts on a less frequent basis, such as during the planning and programming process, design of a project, acquiring a right-of-way easement, conducting a rail corridor study, implementing a rural transit project, or implementing aspects of an ADOT-Tribe Partnership agreement.

The following steps will help an ADOT employee establish effective relationships with tribal contacts and the tribal government.

- ☑ Know the tribe’s history, paying particular attention to events that might cause the tribal government and its people to distrust you or ADOT. Try to place yourself in the tribe’s position, and think of actions you might take to mitigate distrust. Often the tribal government’s website will have information about the tribe’s history. Conducting an Internet search for the tribe will also often identify websites, such as Wikipedia, that provide substantial information, including historical information, about the tribe. Caution should be exercised in accepting the accuracy of information obtained from the Internet.
- ☑ Get to know some tribal representatives who are members of the tribe. Meet with them face-to-face at their place to learn about their culture, customs, practices, and protocols. Share information with them about ADOT and how it works. Ask them how you can earn the tribe’s trust. Practice what they tell you.
- ☑ Be true to your word, and do not make commitments that you cannot keep.
- ☑ Do not be condescending. You are working with your counterpart, not a subordinate. Avoid the tendency to be condescending when working with small tribes that may have limited transportation capacity and expertise.
- ☑ Know the tribe’s decision-making process and take it into consideration when budgeting time for a decision.
- ☑ Treat people as they want to be treated, not as we think they should be treated.
- ☑ Always keep in mind the tribe’s sovereign status.

|   | Personal level | Organizational level |
|---|----------------|----------------------|
| One-on-one or small groups                                    | ▲              | ▲                    |
| Large groups  |                | ▲                    |
| Get to know the people you are working with and their customs | ▲              | ▲                    |
| Be true to your word  | ▲              | ▲                    |
| Do not be condescending                                       | ▲              | ▲                    |
| Treat people as they want to be treated                       | ▲              | ▲                    |
| Know the tribe's decision-making process                      | ▲              | ▲                    |
| Avoid surprises   | ▲              | ▲                    |
| Recognize the tribe's sovereignty                             | ▲              | ▲                    |
| Formal process  |                | ▲                    |

## Language Differences

On occasion an ADOT employee or project team might interact with a tribal member(s) where language differences create a communication barrier especially during public outreach that may include tribal elderly members. The assistance of an interpreter (spoken language) and/or translator (written language) should be explored and secured, if needed, at the beginning of a project. Acquiring this skill set ensures that ADOT is complying with the requirements of Title VI of the Civil Rights Act of 1964 by providing meaningful access to Federal Aid Highway program (s) or other activity for which ADOT receives Federal financial assistance.

If needed, the lead ADOT project manager should account for an interpreter and/or translator fees in the entire project budget because this is specialized skill that requires compensation. The lead Tribal contact should be consulted on the Tribe's preference or to determine if this assistance is necessary. If so, ADOT staff must utilize the State contract for interpretative and/or translator services. If the State's Foreign Language Vendor list does not offer the specific services for the Tribal language that is needed, then it is suggested to explore whether or not the following process may work for a particular project. Adding a Tribe or a Tribal department to the existing State contract is not an option.

- ADOT can contract for the required interpreter and/or translator services through a sub-consultant to the prime consultant or;
- If the fees are less than \$5,000, ADOT can issue a purchase order directly to the Tribe, or Tribal department for these services. A Tribe will often prefer assistance from one of its Tribal members or employees before looking outside for assistance.



Lastly, the following are additional sources for interpreter/translator resources but as indicated, these should be explored as a secondary or supplemental assistance with appropriate consultation and coordination.

- **TRIBAL EMPLOYEES** - There will be many tribal employees, particularly from the tribal headquarters area who will speak the native language as well as English. The tribal court will be a likely source for both interpretation and translation expertise. Other sources could be employees of tribal chapters, districts or villages.
- **ADOT DISTRICT, LOCAL MAINTENANCE AND MVD EMPLOYEES** - Many of the employees who serve tribal areas are tribal members who speak both the native language and English.
- **BUREAU OF INDIAN AFFAIRS (BIA) EMPLOYEES** - BIA has regional offices in Phoenix and Gallup, NM (Navajo), but more importantly, agency field offices throughout the State that serve specific tribes. The agency offices may have multi-lingual staff that will know the local native language.
- **INDIAN HEALTH SERVICE (IHS) EMPLOYEES** - The IHS has area offices in Phoenix, Tucson and Window Rock. It also has many health care centers that serve tribes throughout Arizona. Since IHS employees work directly with tribal members, many of whom speak only their native language, many IHS employees are multi-lingual.
- **COUNTY EMPLOYEES** - Some counties have employees that could assist with interpretation/translation, possibly at no expense, particularly if the county is involved in the ADOT project or other effort.

## EARNING TRIBAL TRUST IS A KEY TO SUCCESSFUL ADOT/ TRIBAL RELATIONSHIPS

There is a long history of broken promises and physical atrocities in Native American relations with the United States and other governments and non-Indian people. Some of the broken promises for specific tribes were discussed in Module 1. An example of physical atrocities endured is that of the Yavapai-Apache Nation people of the Verde Valley as described below. These broken promises and atrocities have led Native Americans and tribal governments to develop a strong distrust

of government agencies that seem incessant in attempting to achieve their objectives without consideration and at the expense of tribes and their people. Tribes will never forget the past treatment. “The events of the past is as if they happened yesterday” (Keown, 2010). It is important not to express frustration with this distrust either verbally or in the manner in which we conduct business. It is not always necessary to verbally express frustration. It is often apparent in one’s actions. Building trust takes time. To illustrate the point further, federal-tribal relations have taken over 200 years to develop, while state-tribal relations are evolving over a period of less than 50 years.

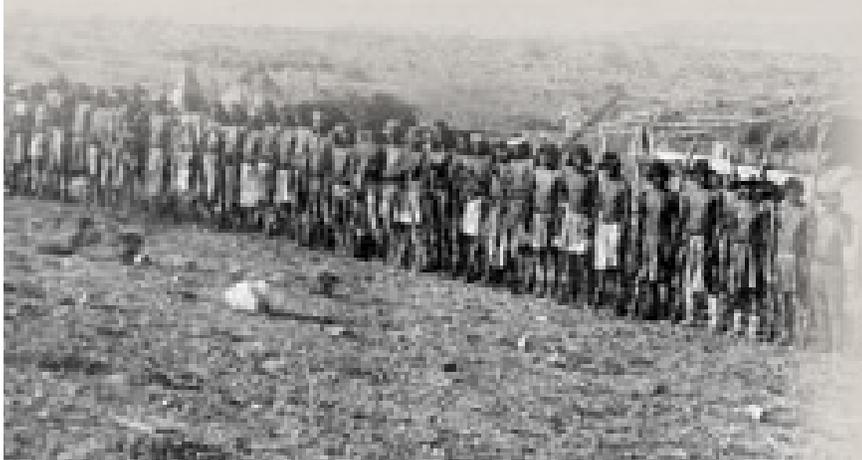
### AN EXAMPLE OF BROKEN PROMISES AND PHYSICAL ATROCITIES: THE YAVAPAI-APACHE NATION

On February 27, 1875, the United States Army, acting on an Executive Order from the President, transferred an estimated 1,500 Wipukyipai (Yavapai) and Dil zhéé (Apache) people from the Rio Verde Indian Reservation to the Indian Agency at San Carlos, Arizona, 180 miles away.

The Yavapai and Apache people were forced to march, under duress, through winter flooded rivers, mountainous terrain, and harsh weather. The arduous journey resulted in hundreds of lives lost, as the people were swept downriver or suffered illnesses from the harsh conditions.

The forced removal of the indigenous people also resulted in the loss of several thousand acres of treaty lands promised to the Yavapai and Apache by the United States government.

Yavapai-Apache lined up for forced march from Rio Verde Indian Reservation to San Carlos on February 27, 1875



“Many of our people were exterminated and died on the journey and while incarcerated. We remember and solemnly observe this sad period in our people’s history, the lost generation at San Carlos...When our people returned to the Verde Valley in 1900, they returned only to find that their homelands had been overtaken and ravaged by local settlers. We celebrate our ancestors’ sacrifices and their persistence.”

- **Thomas Beauty**,  
Former Chairman, Yavapai Apache Nation, 2007-2010



## Cultural and Traditional Considerations – Building Trust through Mutual Respect and Understanding

The keys to building trust are developing mutual respect and understanding. Mutual respect results from people being true to their words. It also requires respect for the sovereignty of the governments involved in the relationship. Understanding requires an ADOT employee to know and appreciate the history, culture, and protocols of the tribe that she/he is working with and to honor those factors in the relationship. Practicing respect and understanding on a consistent basis will lead to successful ADOT-Tribal relationships. It must be understood that, as sovereign nations with separate histories, cultures and protocols, no tribe speaks for another tribe. An approach to building trust with one tribe might not work with another tribe.

Trust must be built at the organization and individual employee levels in order for ADOT to effectively consult and coordinate with tribal governments. Since individual employees represent the organization, the way an employee is

perceived by a tribal government or tribal member will be a reflection on the organization he/she represents, whether it be ADOT as a whole or one of its organizational units. This means that every ADOT employee who works with tribal governments or tribal members must have the skills and knowledge to build trustful relationships.

Larry D. Keown, an Anglo, wrote the book “Working in Indian Country”<sup>90</sup> based on nearly 20 years of learning to successfully work with Indian communities and tribal leaders. To build respect when working with a tribe he suggests an overall approach using a modification of the Golden Rule that would have you work with a tribe as the tribe would have you to work with it. He recommends implementing 12 rules to carry out this approach, ranging from being personal rather than bureaucratic to respecting Indians’ concept of time to solving problems together.

### BUILDING RELATIONSHIPS

**Never say “Here is what I’m going to do for you”. Instead, focus on “Here is who we are and what we do, and does it fit with your needs, goals, and culture.”**

**Working in Indian Country, Page 191**

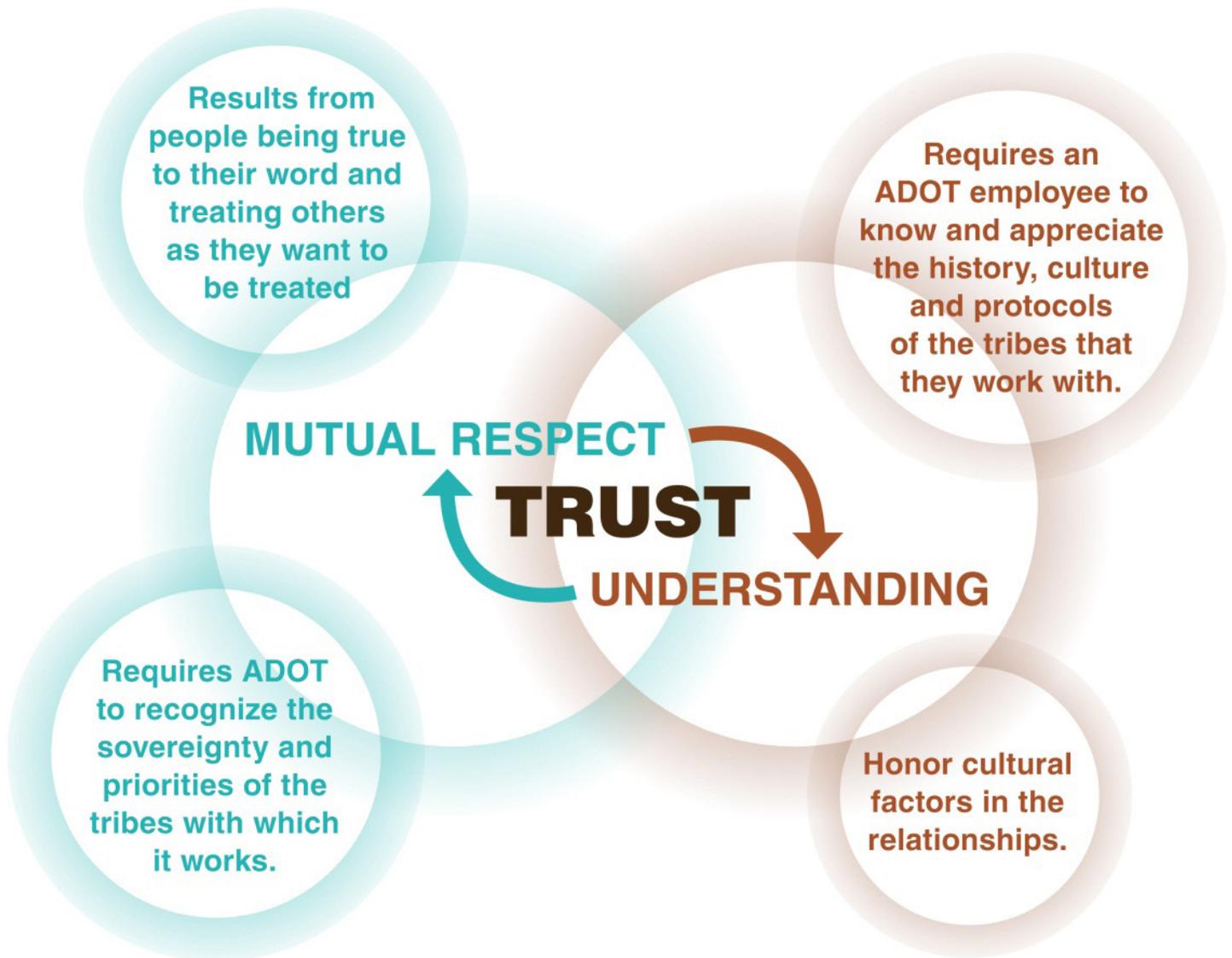
“They made us many promises, more than I can remember, but they never kept but one; they promised to take our land, and they took it.”

- **Red Cloud**  
Oglala Lakota Sioux Chief

Photo Source: Dakota-Lakota-Nakota Human Rights Advocacy Coalition



90 Keown, Larry D., 2010. Working in Indian Country. Englewood, Colorado: Hugo House Publishers, Ltd.



### IMPORTANCE FOR ADOT EMPLOYEES TO BE ABLE TO EFFECTIVELY COMMUNICATE WITH TRIBAL GOVERNMENTS, MEMBERS AND STAFF

Employees throughout ADOT communicate with tribal governments, members, and staff. Sometimes the communications take place on a daily and informal basis, such as at Motor Vehicle Division offices or with road maintenance and construction employees in the field. In other situations the communications are less frequent, but still relatively informal, such as reviewing plans for a roadway project, discussing application requirements for federal funding of an airport or transit project, or discussing solutions to trucks bypassing ports of entry. Finally, in some instances communications take place in formal atmosphere. Examples include consultation requirements for planning, programming and cultural reviews, and partnering activities between ADOT and a tribe.

ADOT is committed to building strong tribal relations. Relationship building begins at the personal level through effective daily communication with tribal people. Regardless of whether it is a one-time interaction or an ongoing relationship, building trust through mutual respect and understanding is key to building strong tribal relations. Trust building takes time, and if ADOT employees consistently show mutual respect and understanding, trust will develop.



For an ADOT employee to be an effective communicator when interacting with tribal people, it is important for the employee to be able to provide information about the ADOT organization, functions, and policies. It is important for ADOT employees working with a tribe on developing a transportation project to understand the sources of tribal transportation funding and the path through which the tribe receives those funds. The last portion of the module is devoted to providing basic information about tribal transportation funding and in particular the Federal Tribal Transportation Program (TTP).

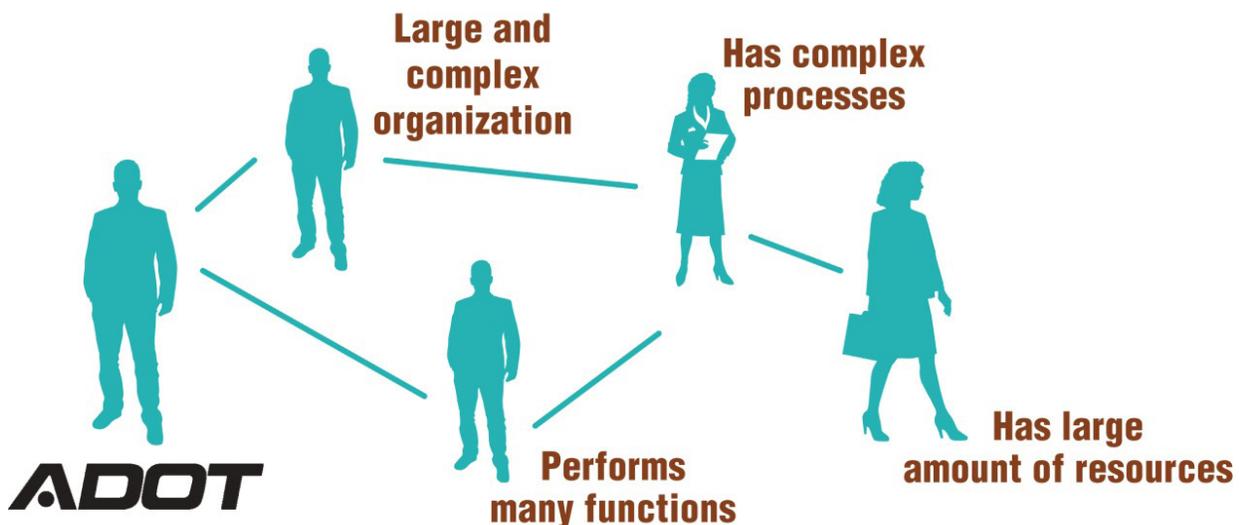
## WHAT TRIBES/NATIONS NEED TO KNOW WHEN WORKING WITH ADOT

ADOT is a large and complex organization that performs many functions, has a large amount of resources, and conducts many complex processes. Most ADOT personnel do not have a grasp of the scope of the Department’s activities and how all of the pieces fit together.

Tribal governments have limited understanding of ADOT’s functions, resources, or its processes. ADOT employees need to be able to discuss how ADOT is organized as a whole and how they fit into the ADOT organization. Employees should also be able to guide tribal personnel on where to go in ADOT for more information in response to questions about specific topics important to the tribe. Freely providing accurate and timely information will assist in the trust building process. This section provides ADOT employees basic information about the ADOT organization and activities of potential interest to tribes in the coordination and consultation processes as well as for other purposes. Additionally, the Office of the Arizona Attorney General Transportation Section supports ADOT on a number of tribal issues that include:

- Negotiating and approving agreements and contracts with tribes
- Providing opinions on ADOT/tribal relations
- Defending ADOT in litigation involving tribal governments

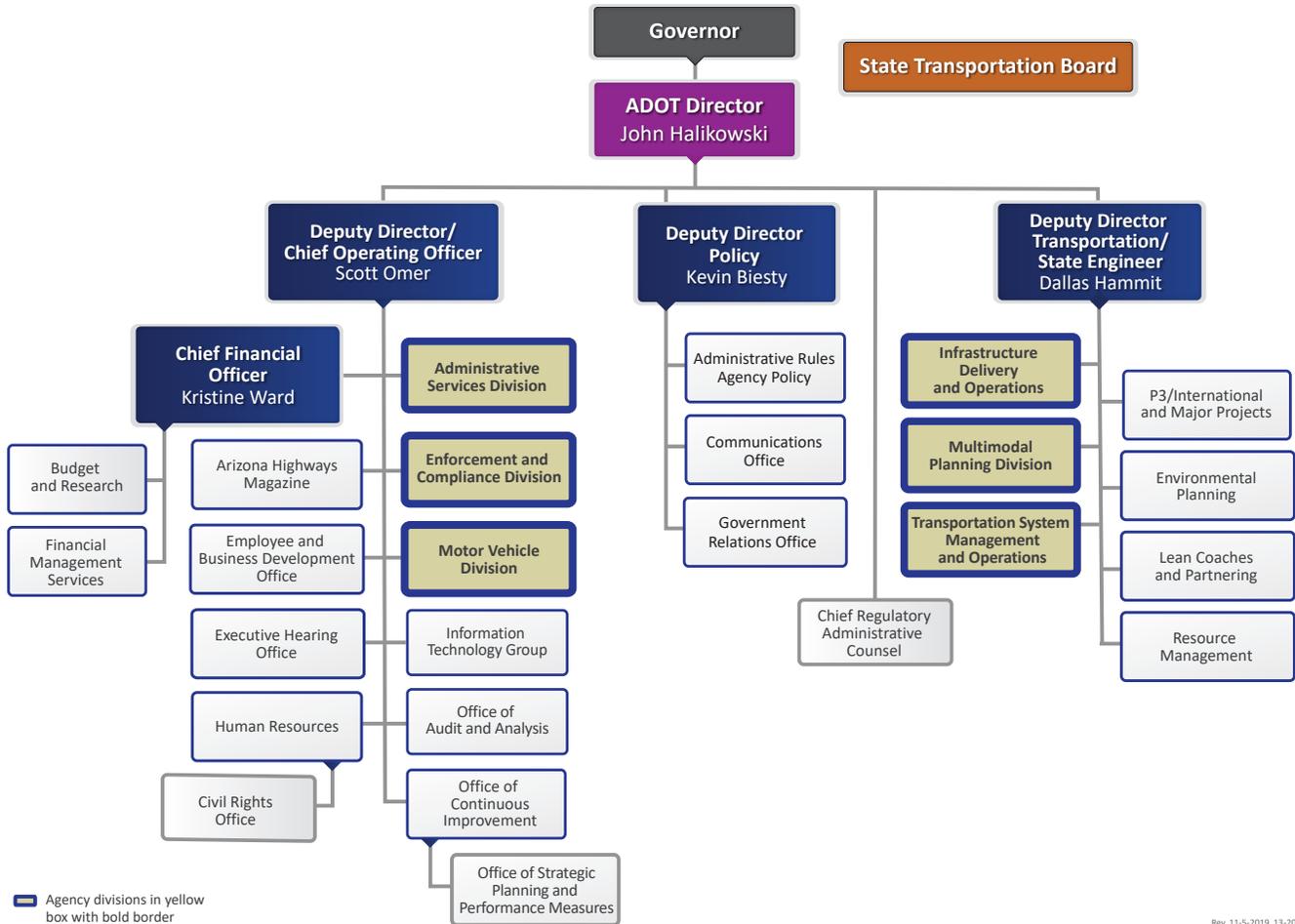
Chart 4-1 shows the major units of the ADOT organization. Table 4-1 lists responsibility assignments by major organizational unit in areas that could be of interest to tribes.



**ARIZONA  
TRIBES**

**Few tribes have transportation departments or even staff dedicated to transportation**

CHART 4 – 1: ADOT ORGANIZATION CHART (NOVEMBER 5, 2019)



Rev. 11-5-2019 13-201

**TABLE 4 – 1: ADOT MAJOR ORGANIZATION UNITS / RESPONSIBILITY ASSIGNMENTS OF POTENTIAL TRIBAL INTEREST**

| <b>TABLE 4-1: ADOT MAJOR ORGANIZATION UNITS / RESPONSIBILITY ASSIGNMENTS OF POTENTIAL TRIBAL INTEREST</b> |  |
|---|--|
| <b>ORGANIZATION UNIT</b>  | <b>RESPONSIBILITY ASSIGNMENTS</b>  |
| <b>Director’s Office</b>  | <ul style="list-style-type: none"> <li>▶ Highest Department consultation level</li> </ul>  |
| <b>State Transportation Board (STB)</b>   | <ul style="list-style-type: none"> <li>▶ Members represent geographical areas of state. In recent years there have been several State Transportation Board members representing Tribal interests who are knowledgeable in tribal transportation issues.</li> <li>▶ Approves long range transportation plan</li> <li>▶ Approves 5-Year Program</li> <li>▶ Determines components of State Highway System</li> <li>▶ Awards construction contracts</li> </ul>         |
| <b>Arizona Highways Magazine</b>  | <ul style="list-style-type: none"> <li>▶ Obtains tribal permit and guide when telling stories on tribal land for the publication of in Arizona Highways</li> </ul>   |
| <b>Administrative Services Division (ASD)</b>   | <ul style="list-style-type: none"> <li>▶ Manages ADOT facilities on tribal lands</li> <li>▶ Assures ADOT compliance with federal environmental laws</li> <li>▶ Manages land, wildlife, and vegetation along State Highways</li> </ul>  |
| <b>Enforcement and Compliance Division (ECD)</b>  | <ul style="list-style-type: none"> <li>▶ Commercial vehicle inspections including safety and weight</li> <li>▶ Commercial vehicle driver credentials</li> <li>▶ Commercial vehicle permits</li> <li>▶ Operates Ports of Entry</li> </ul>   |
| <b>Motor Vehicle Division (MVD)</b>   | <ul style="list-style-type: none"> <li>▶ Drivers’ licensing</li> <li>▶ Motor vehicle registration</li> <li>▶ Tribal fuel tax refund agreements</li> <li>▶ Operates MVD offices on tribal lands</li> </ul>  |
| <b>Infrastructure Delivery and Operations (IDO)</b>   | <ul style="list-style-type: none"> <li>▶ Designs, constructs, maintains and operates State Highway System on tribal lands</li> <li>▶ Acquires rights-of-way from tribes for State Highways</li> <li>▶ Develops intergovernmental agreements</li> <li>▶ District offices are a primary tribal interface for ADOT</li> <li>▶ Performs environmental planning, including cultural consultation with tribes</li> <li>▶ Provides local government assistance</li> </ul> |

**TABLE 4-1: ADOT MAJOR ORGANIZATION UNITS / RESPONSIBILITY ASSIGNMENTS OF POTENTIAL TRIBAL INTEREST**

| ORGANIZATION UNIT  | RESPONSIBILITY ASSIGNMENTS   |
|--|--|
| <b>Multimodal Planning Division (MPD)</b>                      | <ul style="list-style-type: none"> <li>▶ Develops multimodal statewide and area transportation plans including plans on tribal lands</li> <li>▶ Develops the ADOT 5-Year Transportation Facilities Construction Program and the State Transportation Improvement Program</li> <li>▶ Administers federal transit funding programs</li> <li>▶ Consults with government officials in non-metropolitan areas on the distribution of federal transportation funds to those areas.</li> <li>▶ Provides tribal transportation liaisons</li> <li>▶ Administers the ADOT Transportation Research Program</li> <li>▶ Provides traffic data and mapping</li> </ul>  |
| <b>Transportation Systems Management and Operations (TSMO)</b> | <ul style="list-style-type: none"> <li>▶ Traffic management, such as Traffic Operations Center, dynamic message signs, traffic signal system coordination</li> <li>▶ Traffic system maintenance, such as traffic signals, statewide striping and signing, pavement management program, roadway lighting</li> <li>▶ Operational and traffic safety, including Road Safety Assessments, Strategic Highway Safety Plan, administration of the Highway Safety Improvement Program, Traffic Records and Criminal Software Program, and Arizona Crash Information System</li> <li>▶ Emergency management</li> <li>▶ Initiatives and innovative projects, such as dust warning systems, wrong way detection, surge protectors for traffic signal cabinets, and annual review of no passing zones</li> </ul> |
| <b>P3 Initiatives and International Affairs</b>                | <ul style="list-style-type: none"> <li>▶ International transportation affairs</li> <li>▶ Potential future ADOT/tribal agreements to jointly sponsor public private partnership projects</li> </ul>   |
| <b>Arizona International Development Authority (AIDA)</b>      | <ul style="list-style-type: none"> <li>▶ Development, financing and/or operation of projects located within 62 miles north or 6 miles south of the Arizona-Mexico border</li> <li>▶ ADOT provides administrative support for AIDA.</li> </ul>  |
| <b>Communications</b>  | <ul style="list-style-type: none"> <li>▶ Tribal community relations</li> <li>▶ Public involvement on tribal lands</li> <li>▶ ADOT/Tribal Partnering Program</li> <li>▶ ADOT policies and rule making</li> <li>▶ ADOT federal and state legislative relations</li> <li>▶ Providing information on legislation</li> </ul>  |

The Transportation Section of the Arizona Attorney General's (AG) Office consults and coordinates with tribal governments in the development of intergovernmental agreements and contracts with ADOT. The AG's Office provides opinions on ADOT/tribal relations and represents the State in litigation involving tribal governments.

## WHAT ADOT PERSONNEL NEED TO KNOW ABOUT WORKING WITH TRIBES

This section provides a brief introduction to transportation project considerations for projects on state roads through or serving tribal lands.

### Tribal Employment Rights Office (TERO) and Business License Requirements

Title 23 USC 140(d) allows for Indian preference in employment for projects on Indian reservation roads and on federal-aid highway projects carried out near Indian reservations. Roads "near" an Indian reservation are those within a reasonable commuting distance from the reservation. All tribal members are eligible for employment preference without regard to tribal affiliation. Prior to project bid solicitation, the ADOT project manager should facilitate coordination with the tribal government and appropriate Tribal Employment Rights Office/Ordinance (TERO) to determine if there are Indian employment goals for the project, required tribal TERO fees, and / or contract provisions or other requirements. TERO contact information for tribes in Arizona is provided in the tribal profiles in Module 1.

More detailed information can also be obtained from ADOT MPD Tribal Liaisons. In addition, the Southwest Region Tribal Employment Rights Organization (SWRTERO) has established a website that includes a list of its tribal membership, their contact information, and information on current events, see <https://www.swrtero.com/>

### Right-of Way Agreements

If the new or additional ROW occurs on tribal or public land, approval must be obtained from the applicable tribe or agency to construct the project. A joint project agreement or an IGA can fulfill this function. Refer to the Tribal, State, and Federal Lands section in this chapter for more information on acquiring tribal or public land. Using tribal land for ROW requires the consent of the applicable tribal council and may require approval from BIA. Projects requiring new ROW or an easement on tribal land typically require that an Environmental Assessment be prepared according to BIA guidelines. However, requirements and expected time frames may vary between tribes. More discussion on this topic is provided in the Section Final Design and Right-of-Way Acquisition in this chapter.

### Permitting and Other Considerations

Projects and maintenance activities that involve tribal land require additional coordination and sometimes, additional studies, approvals and permits. The level of environmental studies required for a project may change depending on whether the project is located partially or wholly on tribal land.

### ADOT Tribal Certifications of Road Maintenance

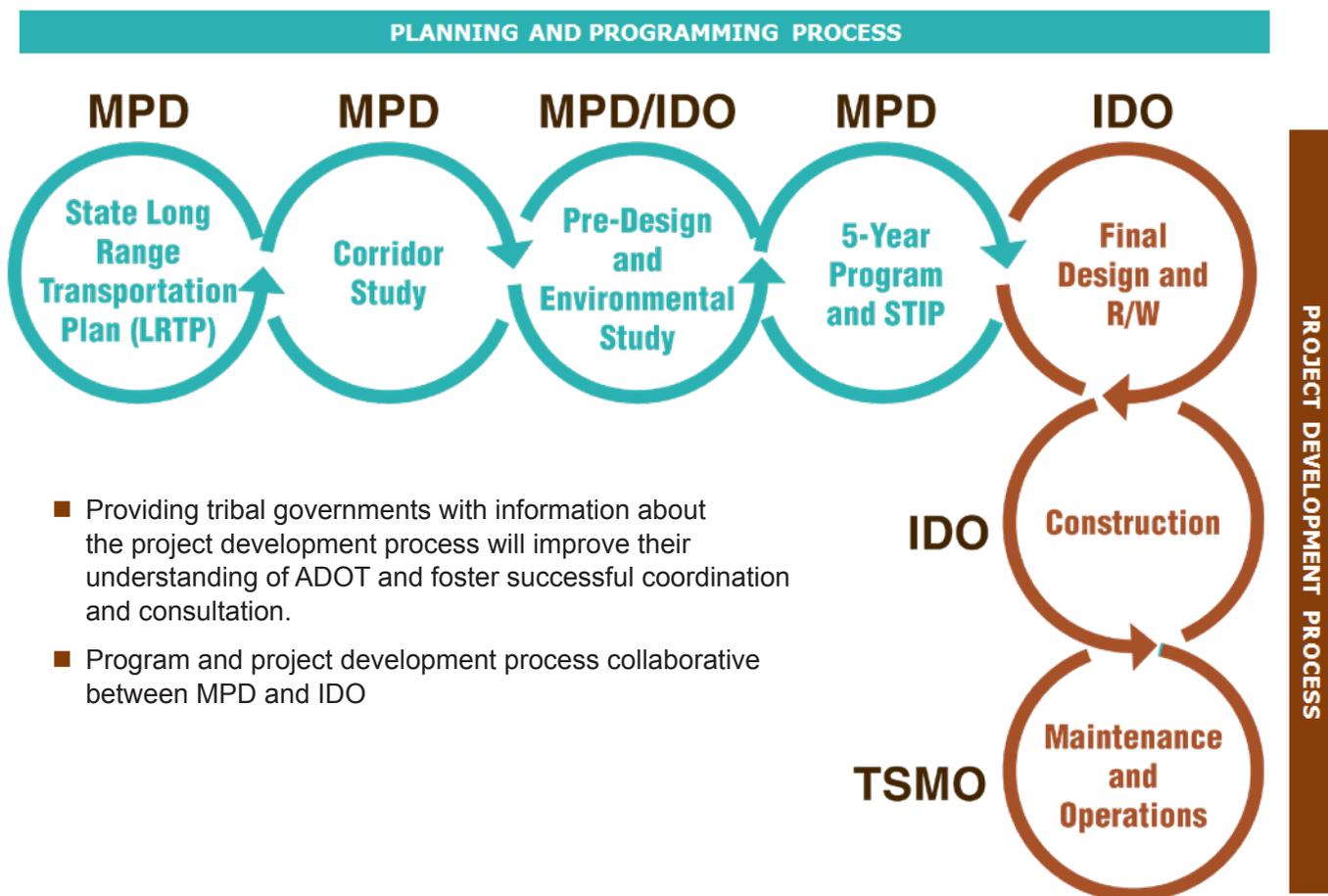
Since 2007 ADOT has provided Certification of Road Maintenance agreement letters to Tribal governments in Arizona. This process enables the Tribes to include State highways in their Tribal Transportation Program (TTP) Transportation Facilities Inventories pursuant to 25 CFR 170.5, 25 CFR 170.442 and 25 CFR

170.446(g). Under 25 CFR part 170.446(g) Acknowledgement of Public Authority responsibility, a Tribal government, or the Bureau of Indian (BIA) Regional Office on behalf of a Tribe, can make a request of ADOT for a “Certification of Road Maintenance of State-Owned Highways” agreement letter to include state routes and their related road inventory data into the Tribal Transportation Program (TTP) National Tribal Transportation Facility Inventory (NTTFI). In turn the BIA, FHWA, or Tribes can use the NTTFI to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing TTP facilities, and develop management systems.

## ADOT PROJECT PROCESS FROM PLANNING TO MAINTENANCE

Coordination and consultation with tribes can take place at any stage in the project planning, development, and implementation process. Providing a tribal government(s) with basic information about the project process will improve its understanding of the project status, including decision-making, and will likely improve the success of the coordination or consultation. ADOT’s internal project process for a major State Highway project is shown schematically in **Chart 4-2**.

**CHART 4 – 2: ADOT INTERNAL PROJECT PROCESS FOR A MAJOR STATE HIGHWAY PROJECT**



Following **Chart 4-2** is a brief discussion of the process. Various resources with more complete discussions on the project development process are provided in the ADOT Planning Website.<sup>91</sup>

91 ADOT Planning, <https://azdot.gov/planning>

## Long-Range Transportation Plan (LRTP)

ADOT-MPD prepares a **State LRTP** based on a collaborative long-range planning process. The draft Plan is presented to the public and government stakeholders for comment. **Consultation with tribal governments is required.** The Plan identifies policy recommendations and/or projects within a 20-year planning horizon, is cost constrained, and is required to be evaluated on an annual basis and updated every five years.

Strategic investment levels are identified and included in the Long Range Transportation Plan, which is normally updated every 5 years. The 2018 plan established recommended policy direction for allocation of future revenues across the following three major investment categories:

- **PRESERVATION** – Activities that preserve transportation infrastructure by sustaining asset condition or extending asset service life.
- **EXPANSION** – Improvements that add transportation capacity through the addition of new facilities and or services.
- **MODERNIZATION** – Highway improvements that upgrade efficiency, functionality, and safety without adding capacity.

## Corridor Studies

ADOT conducts corridor studies along long segments of State Highways. The purpose of a corridor study is to determine the future development and alignment of the highway. Corridor studies often cross tribal lands or lands of historical/aboriginal interest to tribes. If it appears that future development of the corridor could impact Indian cultural or religious artifacts, **consultation with tribal governments will be required** during the study. The project team should work with the ADOT Historic Preservation Team (HPT) in Environmental Planning to determine the level of consultation required.

## Pre-Design and Environmental Study

Project scoping is performed by IDO. It includes enough preliminary design to permit performing the appropriate environmental documentation of project impacts and to provide the basis for a cost estimate sufficient for project programming. Public involvement is often required as part of the environmental documentation process. **Tribal consultation is required as part of the environmental process if cultural resources could potentially be impacted by the project.**

## State Transportation Improvement Program (STIP)

All highway and transit projects in the state, funded under Title 23 and the Federal Transit Act, must be included in a federally approved STIP. Projects in the STIP must be consistent with the statewide long-range transportation plan and metropolitan transportation improvement programs (TIPs). The program must reflect expected funding and priorities for programming, including transportation enhancements. **Tribal TIPs are reflected in this program.**

## ADOT's Planning to Programming (P2P) Process

ADOT's Planning to Programming (P2P) process is used to prioritize projects on the state highway system. ADOT uses procedures described in the Final ADOT Planning to Programming Scoring Guidebook (November 2019) scoring criteria which results in the Statewide Prioritized Project List. The P2P process is conducted

annually by the Arizona Department of Transportation (ADOT) Multimodal Planning Division (MPD) to prioritize all prospective statewide facility improvements. The P2P process is a performance-based process resulting in the development of the Draft Five-Year Transportation Facilities Construction Program (Five-Year Program).

### Five-Year Program

The five-year ADOT **Transportation Facilities Construction Program** is developed with the projects identified through the planning processes. Projects in the five-year program, when adopted by the STB, are “officially” funded and detailed project development is authorized. Public hearings are held in Flagstaff, Phoenix, and Tucson on a tentative five-year program, prior to final approval. **Consultation with tribal governments is required.** Construction of specific projects can only commence after the project is funded and authorized by STB.

### Final Design and Right-of-Way Acquisition

Following inclusion into the five-year program, projects advance to the design phase where a number of pre-construction activities including final design, utilities relocation determinations, and right-of-way acquisition take place. The functions of the design phase are performed by ADOT staff or design consultants. Final decisions for State Highway facilities are the statutory responsibility of ADOT and the STB as provided for in Title 28 of the Arizona Revised Statutes, as amended. The design is finalized and documents are prepared for bid and construction. The environmental documentation for major projects is conducted in the pre-design phase. Environmental documents for minor projects and often environmental clearances for construction are completed during final design. ADOT HPT consults with tribes and other involved agencies. For projects on the ADOT Five Year Transportation Facilities Construction Program; they can only commence when the environmental compliance has been successfully completed (including tribal consultation). Utility plans and agreements are prepared, right-of-way plans are developed, and necessary rights-of-way are acquired so that utilities and right-of-way clearances can be given prior to bid advertisement. Although acquisition of rights-of-way on tribal lands does not fall under the requirements for consultation, it does require substantial communications and time to complete.

Tribes grant ADOT transportation use easements that allow the State to use the land for transportation purposes only. The process of acquiring easements over reservation lands is similar to the steps required to obtain property not held in trust. ADOT or other acquiring agencies identify land requirements; survey the proposed acquisition; identify ownerships; appraise the property; and conduct negotiations. The main difference when lands are held in trust for Native Americans is that the recourse to use eminent domain is generally not available. **All right-of-way actions on tribal lands, including temporary construction easements, must be approved by the tribe and the appropriate BIA office.** Joint Project Agreements (JPAs) between ADOT and a tribe are sometimes required to be developed and executed as part of the final design and right-of-way processes. Special provisions are developed and included in the contract documents to advise prospective bidders of specific requirements associated with work on the reservation.

Tribes must be involved early and continuously throughout the design process. The contract bid documents must include all appropriate Tribal Employment Rights Office (TERO) requirements prior to solicitation for bids.

## Construction

After completion of the final design for a project, sealed bids are solicited from licensed and bonded contractors. Bids are submitted, opened, and reviewed. The lowest responsive and responsible bidder will be awarded the project by the STB and construction activities are authorized to commence.

Upon award of the project to the low bid contractor, the project enters the construction phase. Coordination with affected tribes remains critical through the construction phase of the project. For example, if artifacts are in a place where artifacts were not previously located, then ADOT would consult on this post-review discovery situation. The contractor must adhere to all tribal requirements included in the environmental clearance document. It is also critical that the contractor comply with all TERO requirements, which is the case for any project (planning, design, or construction). Specific tribal requirements must be included in the project special provisions contract documents.

## Maintenance and Operation

Daily maintenance and operation of the state highway system is the responsibility of ADOT through its Engineering Districts. A map showing the tribal boundaries and the ADOT engineering district boundaries is shown in **Map 4-1**.

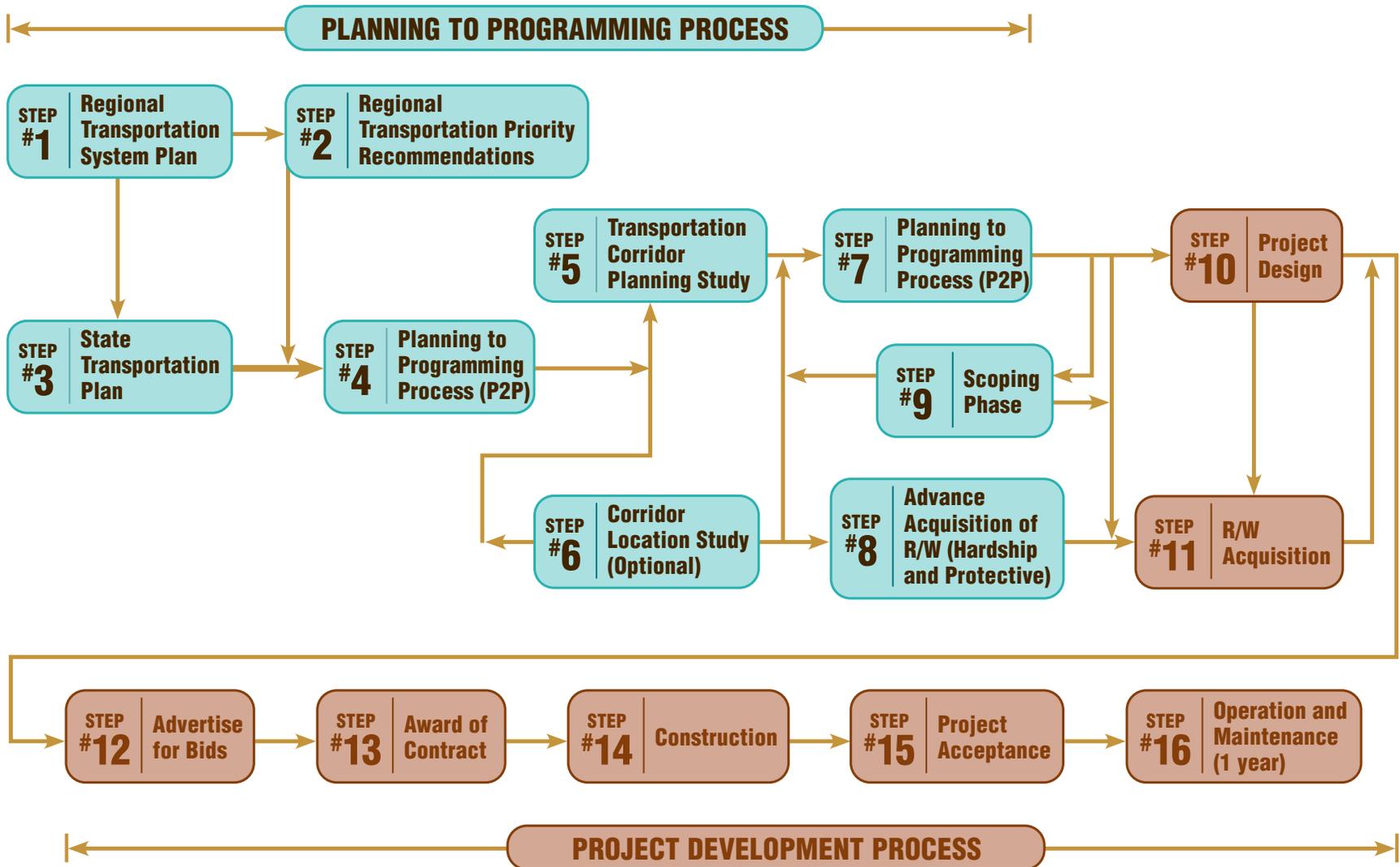
The ADOT District Engineer or designated representative is responsible for assuring that tribal cooperation and coordination occur on maintenance and operation activities on roadways across tribal lands. ADOT maintenance and operations personnel must establish a personal trust relationship with their tribal government counterparts to foster cooperation and coordination in carrying out their separate and joint responsibilities. Routine maintenance activities are generally covered by the standard maintenance provisions approved in the use easements. **Tribal consultation is included in maintenance activity requests.**

**Chart 4-3** shows an expanded project process that includes regional planning and programming conducted by Councils of Government (COGs) and Metropolitan Planning Organizations (MPOs). Note how regional planning and programming feeds into ADOT's planning and programming processes. **Chart 4-3** also shows points in the project process where tribal consultation is conducted. If reading this document online, a description of the consultation that can take place can be seen by hovering over the plus icons for a description of the consultation activities that can take place during that phase of the project process. For more detailed guidance regarding the consultation points described in **Chart 4-3**, refer to the FHWA-ADOT Section 106 process chart at the following website address: <http://www.aztribaltransportation.org/pdf/FHWA-ADOT-Section-106-Existing-Process-Reference-Guide.pdf>



CHART 4 – 3: INTEGRATED PROJECT PROCESS WITH CONSULTATION POINTS

**Typical Project Flowchart with Tribal Consultation/Input Points Identified**



**CHART 4 – 3: INTEGRATED PROJECT PROCESS WITH CONSULTATION POINTS (CONTINUED)**

|                 |   |
|-----------------|---|
| <b>STEP #1</b>  | <b>STEP 1:</b> The Planning Process begins at the regional level. COGs and MPOs consider project recommendations from tribal, local and regional transportation studies into the regional planning process. Tribes are also encouraged by the COGs and MPOs to participate in the regional planning process and provide transportation improvement input at the COG/MPO regional board and/or transportation committee levels.  |
| <b>STEP #2</b>  | <b>STEP 2:</b> Tribal officials are encouraged by the COGs and MPOs to participate in the regional planning process so their input can be considered regarding recommended priority projects that may impact tribal lands and that will go into the regional COG/MPO transportation improvement program.  |
| <b>STEP #3</b>  | <b>STEP 3:</b> The Planning Process continues at the state level. Project and/or transportation issue recommendations from tribal, local, regional, county and statewide studies are taken into consideration during development of the State Long Range Transportation Plan. The extent to which these recommendations are considered depends on the type of LRTP to be developed i.e. the state may develop a project, policy or investment type LRTP (or combination of these). The State LRTP also ties in with the development of the Statewide Transportation Improvement Program, the Five-Year Construction Program, and state visioning processes which all include opportunities for tribal input through consultation outreach and public involvement processes. Formal correspondence is sent out to each tribal leader with tribal transportation/planning and cultural resources contacts copied to inform them of the initiation of the plan development and to invite tribal participation in the planning process. Follow-up tribal consultation is coordinated with designated tribal contacts and carried out as required. |
| <b>STEP #4</b>  | <b>STEP 4:</b> The programming process begins at the state level. Tribal officials are encouraged to participate in the programming process to address transportation issues that may impact tribal lands. Comments and recommendations on project funding or implementation are received from the general public and jurisdictional representatives during monthly State Transportation Board public hearings. ADOT is currently implementing a “Planning to Programming” (P2P) process that supports a performance-based programming process, in support of this work.  |
| <b>STEP #5</b>  | <b>STEP 5:</b> As part of the corridor planning study process there is the opportunity for governmental officials and stakeholders to provide input on issue/project identification either through technical advisory committee participation, consultation outreach methods, or public participation processes. A planning level environmental assessment is completed as part of the planning study process.  |
| <b>STEP #6</b>  | <b>STEP 6:</b> As part of the corridor location study process there is the opportunity for governmental officials and stakeholders to provide input on issue/project identification either through technical advisory committee participation, consultation outreach methods, or public participation processes. These types of studies also include an environmental overview and identification of appropriate courses of action. Tribal cultural resources staff are consulted as required.  |
| <b>STEP #7</b>  | <b>STEP 7:</b> The programming process continues at the state level. Tribal officials are encouraged to participate in the programming process to address transportation issues on projects that may impact tribal lands. Comments are received from the general public and jurisdictional representatives on the Tentative -5-Year Transportation Facilities Construction Program during three separate State Transportation Board public hearings. ADOT is currently implementing a “Planning to Programming” (P2P) process that supports a performance-based programming process, in support of this work.   |
| <b>STEP #8</b>  | <b>STEP 8:</b> The Project Development Process begins with the advance acquisition of right-of-way if deemed necessary for a priority project. Advance acquisition of new right-of-way must include an environmental review. Tribal transportation, environmental and/or cultural resources staff are consulted as required.  |
| <b>STEP #9</b>  | <b>STEP 9:</b> The project scoping phase gets NEPA and Section 106 processes underway. Tribal consultation needs are identified for addressing environmental issues and Section 106 requirements. Formal notice is sent to tribal leaders/contacts of ADOT’s intent to construct improvements. Joint Project Agreements or Intergovernmental Agreements are completed, as needed.   |
| <b>STEP #10</b> | <b>STEP 10:</b> During the project design phase implementation of environmental mitigation gets underway. Tribal cultural resources staff are consulted as required to address Section 106 requirements.  |
| <b>STEP #12</b> | <b>STEP 12:</b> Environmental mitigation measures are included in the bid package so contractors are aware of their responsibilities. Tribal cultural resources staff are consulted as needed to address Section 106 requirements.  |
| <b>STEP #14</b> | <b>STEP 14:</b> Environmental mitigation measures are included in the project contract so contractors are legally responsible for implementing them. Tribal cultural resources staff are consulted as needed to address Section 106 requirements during project construction. Tribal and/or BIA technical staff may be involved in partnering process particularly if project is on tribal land.  |
| <b>STEP #16</b> | <b>STEP 16:</b> Environmental mitigation issues can arise during maintenance, particularly during ground disturbance activities. If a maintenance crew uncovers an expected cultural artifact, Tribal cultural resources staff must be consulted to determine the disposition of the artifact.  |

## Sharing Information on Available Funding Programs, Guidelines, and Application Deadlines

The primary source of dedicated funding for tribal transportation is the Tribal Transportation Program (TTP), which provides less funding than is needed for transportation improvements. Tribal governments need more transportation funding than the TTP provides and assisting them to find additional funds can help build the trust and respect essential for good ADOT-tribal relations. ADOT employees can be of significant service to tribal governments and build good will by bringing new or upcoming funding opportunities to their attention or providing assistance in locating potential funding sources upon request.

ADOT funding program managers should consider providing tribal training on programs for which tribes are eligible. A workshop format for training could be valuable, potentially including an overview of the use of program funds, eligibility, and program requirements. Walking participants through the application procedures and data requirements would be important as well as sharing success stories, including providing examples of successful applications with applicant approval. The time requirements for processing applications and any agreement requirements should be discussed.

The ADOT Tribal Transportation website provides a comprehensive list of transportation funding programs for which tribes could be eligible. Clickable links are provided to information about each program, including, descriptions, contacts, guidelines application requirements, and other information about the programs. The list of programs on the website changes frequently as Congress modifies, adds, and discontinues programs. This has been a significant issue in recent years for many of the transportation funding sources as Congress has struggled to achieve consensus on how to fund transportation.

The ADOT Tribal Transportation website address is: <http://www.aztribaltransportation.org/>. Click “Grant Opportunities” on the home page and then the “Resources” tab, followed by “Funding.” A direct link to the resources page is <http://www.aztribaltransportation.org/resources.asp>

## Technical Clearance Assistance including Right-of-Way, Environmental, and Utilities

The ADOT Local Public Agency (LPA) Section provides guidance, assistance with project delivery and oversight to local and tribal governments for the Federal Aid Highway Program in Arizona. The ADOT LPA Section will assist the project sponsor and project managers with delivery of federal funded local government projects and will provide oversight and monitoring of federal funded local projects. Programs include:

- Transportation Alternative Program (TA)
- Safe Routes to School
- Off System Bridge Program

LPAs are encouraged to visit the ADOT LPA site at <https://azdot.gov/node/5434> for more information on project initiation guidance and materials related to managing a local project.

Right-of-way, environmental, and utilities clearances follow complicated processes. Following are sources of additional assistance for these activities.

The ADOT Right of Way Group maintains two tribal liaisons who can provide technical assistance on right-of-way clearance matters. The contact information for the tribal liaison can be obtained by calling **602-712-3257**.

Environmental clearance is required for all projects. ADOT Environmental Planning is responsible for issuing the project environmental clearance, including any required geotechnical clearance. Substantial technical guidance has been developed

for completing required environmental work. The current Environmental Planning Group website address can be found under ADOT WEBSITES on the last page of this Handbook. The Environmental Planning can be contacted at **602-712-7767** for additional technical assistance with environmental clearance.

Utilities clearance is required to assure either there are no utilities that will interfere with construction or that there is a plan to move utilities that would interfere with construction. Project utilities clearance is issued by the ADOT Utility and Railroad Engineering Section. Technical guidance for utilities clearance is found in the Utility Report Guidelines at the current Utility and Railroad Engineering Section website address located under ADOT WEBSITES on the last page of this Handbook. Additional technical assistance with utility clearance can be obtained by contacting the Utility and Railroad Engineering Section at **602-712-8161**.

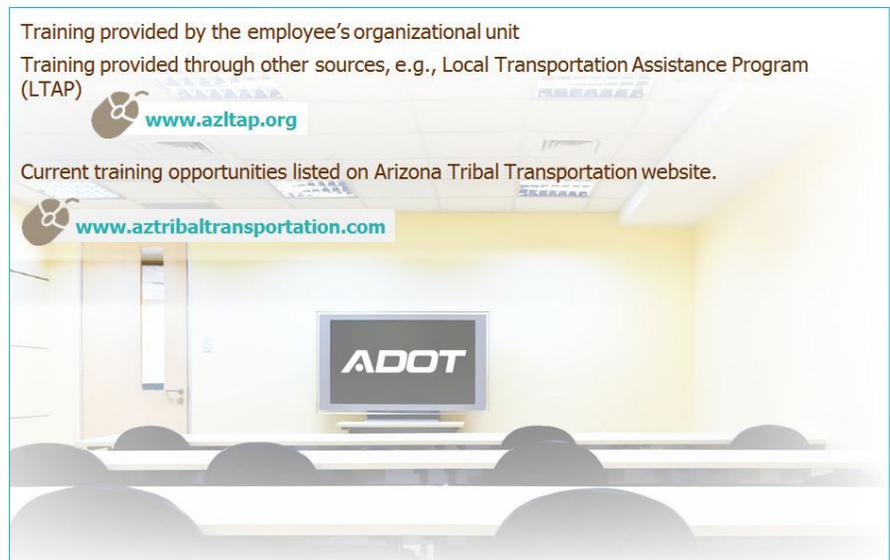
### Sharing Training Opportunities

Training is valuable for tribal governments and its employees, just as it is for ADOT staff. ADOT employees should consider outreach to tribes if and when training opportunities arise that might benefit tribal governments. Frequently, ADOT organization units offer training for their employees, and making this training available to tribal personnel at the same time provides the opportunity for ADOT and tribal representatives to build trust and relationships while learning together on topics of mutual interest.

Following are sources for other joint training opportunities. The Arizona Tribal Transportation website provides information on current training opportunities that could be of interest to ADOT staff working with tribes. The web address is: <http://www.aztribaltransportation.org/training.asp>. Training resources include this handbook and the associated online training modules, as well as the ADOT Integrating Statewide and Tribal Transportation Planning Workshop. The Arizona Local Technical Assistance Program (LTAP) administered by ADOT provides a wide range of transportation related training. The LTAP web address is:

<http://www.azltap.org>. Tribal transportation training, which is often available to personnel working with tribes, is provided through the Tribal Technical Assistance Program (TTAP), <https://ttap-center.org/>. As of 2019, the FHWA is currently consulting with tribes to consider future changes to the TTAP program. In the interim, technical assistance and on-line training may be requested by the tribes through the Center for Local Aid Support at [CLAS@dot.gov](mailto:CLAS@dot.gov). Once the

delivery model for the TTAP is available, more information will be available at the Tribal Technical Assistance Program website at <https://ttap-center.org/>. ITCA frequently sponsors training opportunities and its website address is: <http://itcaonline.com/>. Several tribes offer training on cultural sensitivity, such as the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, and others.



## Arizona Traffic and Criminal Software (AzTraCS)

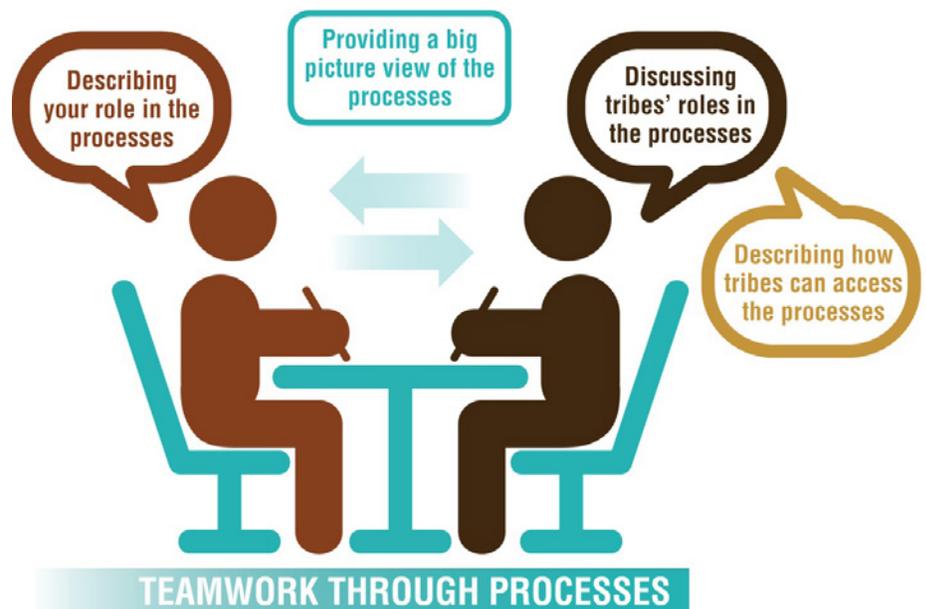
Arizona Traffic and Criminal Software (AzTraCS) is a mobile crash reporting software system, that can be used for electronic traffic citations, developing traffic crash reports, and other reports/forms. This system allows data to be collected in the field and has built in data analysis capabilities. The data can then be used to identify transportation safety improvement needs and support funding requests. An AZTraCS Intergovernmental Agreement is the actual AZTraCS contract and defines the scope of work. The deployment of the system could be gradual, or a full deployment in each patrol vehicle. For more information on this program, contact the ADOT Custodian of State Crash Records at 602-712-7487.

## ADOT's Planning and Programming Processes

The ADOT planning and programming processes were briefly discussed in the "ADOT Project Development Process from Planning to Maintenance" section of this module. Effective consultation with tribal governments in the statewide transportation planning and programming processes is very important to ADOT for several reasons.

- Tribal lands cover 28 percent of Arizona's total area. The statewide transportation system cannot be complete without including the transportation system on tribal lands.
- Tribal governments are sovereign. Transportation decisions on tribal lands must consider the views of the tribal governments involved.
- Transportation planning and programming precede design, construction, and maintenance in the project development process, and it is important to have tribal input to project development early in the process.
- Effective consultation at the planning and programming stage strengthens tribal trust and relationship building.

ADOT employees in the MPD and the IDO, including the Engineering Districts, have important roles in the transportation planning and programming processes. These employees should share their roles in the



processes with tribal representatives with whom they have contact. They should also present the big picture of the processes to provide tribal governments a better understanding about how planning and programming works in ADOT and how they can become involved in the decision-making process. These employees should also become familiar with the ADOT tribal consultation policies and procedures for transportation planning and programming and their roles in consultation.

Other ADOT employees who have contact with tribal personnel, but are not involved in transportation planning and programming, should familiarize themselves with the basic elements of the processes. This familiarization will permit them to respond to basic questions about the processes and provide contact information to ADOT personnel involved in transportation planning and programming.

Following is an expanded discussion of the transportation planning and five-year programming processes for ADOT employees not involved in these processes. For a detailed discussion of the planning and programming processes, see the ADOT Transportation Programming website at <https://azdot.gov/planning/transportation-programming>.

The program begins with a long-range visioning process, moves into a more realistic 20-year plan and finally yields each Five-Year Program. ADOT's Planning to Programming (P2P) process is used to prioritize projects on the state highway system. P2P connects ADOT's Long Range Transportation Plan to the Five-Year Construction Program through performance measures.

ADOT's planning efforts include developing a Five-Year Transportation Facilities Construction Program. ADOT's Five-Year Program is a lineup of projects that is revised annually. It serves as a blueprint for future projects and designates how much local, state and federal funding is allocated for those projects. The Five-Year Program covers the construction budget for highways, transit, airports and highway-support facilities.

All highway and transit projects in the state must be included in a federally approved State Transportation Improvement Program (STIP). Tribal TIP projects are also included in the STIP.

### Tribal TIP inclusion in the STIP

The ADOT Multimodal Planning Division initiates the process of updating the Arizona STIP to include tribal projects by contacting the FHWA Office of Federal Lands Highway to obtain the most current FHWA approved Tribal TIPs for the 22 tribes in Arizona. On an annual basis ADOT's timeline is to have the Arizona STIP submitted to FHWA by August for approval by September. If in the event ADOT does not receive any Tribal TIP updates prior to August, ADOT proceeds to include the Tribal TIPs that were

included in the previous year's STIP. Until such a time any updated and approved tribal TIPs become available ADOT includes them in the Arizona STIP through a STIP amendment.

### ADOT Research Study – “The Role of Arizona Tribes in Transportation Decision Making” (2012 - 2015)

The ADOT Research Center conducted a study entitled “The Role of Tribes in Transportation Decision Making in Arizona.” The objective of the study is to investigate the role of tribal communities in the selection and funding of transportation improvements on tribal lands, and to identify opportunities to strengthen the role of tribal governments in the state and regional decision-making processes. It identifies how these processes occur in Arizona and other states, and what the legal and institutional barriers are at the state and federal level. Then it identifies opportunities to address the issues.

As part of the research effort, information was gathered from tribes in Arizona and from tribes and DOTs in the states of Washington, New Mexico, Minnesota, California, South Dakota, and Montana. Additionally, interviews were conducted with FHWA, BIA, TTAP and transportation personnel from each COG and MPO in Arizona. The purpose of the information gathering is to learn about funding and planning of multimodal transportation projects on tribal lands.

The study found that fostering quality communication and building stronger relationships between tribal entities and regional partners, specifically councils of governments and metropolitan planning organizations, were prevailing recommendations. Examples of key funding practices included opportunities for tribal governments to form partnerships and to pool resources. This study is available at <https://apps.azdot.gov/ADOTLibrary/publications/project-reports/pdf/SPR718.pdf>.

## Transportation Planning Process

The transportation planning process begins with a statewide visioning process to identify future transportation needs based on current and projected deficiencies. Following visioning, a State Long-Range Transportation Plan is developed based on a collaborative long-range planning process. The State Long-Range Transportation Plan is presented to the public for broad-scoped comments and input. The State Long-Range Transportation Plan identifies policy recommendations and/or specific improvement projects within a 20-year planning horizon, is cost constrained, is based on performance standards, and is required to be evaluated on an annual basis and formally updated every five years. Tribal governments must be consulted during the development of the State Long-Range Transportation Plan.

The Arizona Revised Statutes (ARS) require the plan be developed under the STB's direction in accordance with the following requirements

“28-307. Long-range statewide transportation plan; board duties

- A.** The board shall develop a statewide transportation plan as provided in this section and section 28-506.
- B.** The statewide plan shall be adopted on or before December 31, 2006 and shall be reviewed and updated on or before July 1 of each fifth year thereafter. The board shall update the dollar estimates in the statewide plan every two years in conjunction with the certifications required by section 28-335.
- C.** In establishing the statewide plan, the board shall endeavor to ensure that the future transportation system facilitates, rather than directs, future development in this state. To the greatest extent possible, the board shall ensure that the statewide plan reflects the future transportation needs of the various areas of this state as reflected in adopted local and regional land use and general plans.
- D.** In establishing the statewide plan, the board shall consider, to the greatest extent possible, local, regional and **tribal transportation plans.**”

“I only ask of the government to be treated as all other men are treated.”

- **Chief Joseph Nez Perce**

Photo Source: Library of Congress – USZ62-49148



## Transportation Programming Process

The ADOT Five-Year Transportation Facilities Construction Program specifically includes all major State Highway and airport construction projects. It also includes categorical funding for minor projects. The Program is updated on an annual basis and is required by statute to be approved by the STB. Modifications to the Program occur throughout the year and must also be approved by the STB.

ADOT's Planning to Programming (P2P) process is used to prioritize projects on the state highway system. P2P connects ADOT's Long Range Transportation Plan to the Five-Year Construction Program through performance evaluation. A detailed description of the P2P process is described in the Planning to Programming Guidebook, available at <http://azdot.gov/planning/transportation-programming/planning-programming>.

The program is developed by working closely with local planning organizations and community leaders to identify ready-to-construct or design projects. A potential project goes through several levels of review to become part of the tentative program before being presented to the State Transportation Board for consideration and approval. A public comment period and public hearings are also part of the process. The board considers all public comments before voting to approve the Five-Year Program.

## ADOT TRIBAL CONSULTATION GUIDANCE

There is a substantial level of federal and State level guidance of tribal consultation. Federal statutes and regulations specifically require tribal consultation during the transportation planning and programming processes. Section 106 of the National Historic Preservation Act requires consultation with tribes on projects that could involve tribal cultural and religious impacts. Although most employees do not have a role in the areas mentioned, State and federal policies clearly point to consultation as a tool to use when issues arise with proposed policies and actions that could have impacts on tribal governments.

The following paragraphs introduce consultation policy and procedural guidance that all ADOT employees should become well acquainted with, since it shapes how ADOT expects its employees to interact with tribal governments on issues that impact them.

### MGT-16.01 ADOT Department Wide Native Nation/Tribal Government Consultation Policy

“ADOT recognizes the sovereign status of Native Nations/Tribal Governments and their jurisdiction over lands within reservation boundaries as defined by Federal law 18 U.S.C. §1151. ADOT also recognizes its exclusive control and jurisdiction over state highways within reservation boundaries as defined in A.R.S. §28-332(A). In recognition of Native Nations/Tribal sovereignty, ADOT respects the unique and continuous existence of each Native Nation’s/Tribe’s government, people, history, culture, codes and laws.”

This policy establishes guidance for ADOT’s relationship with Native Nations/Tribal Governments in the State of Arizona. The policy is intended to guide ADOT personnel when interacting with the Native Nations/Tribal Governments in Arizona. The policy includes the following statement and commits to 13 specific actions that the Department will take in furthering relationships with Native Nations/Tribal Governments. Included in these actions are:

- Building relationships with tribal governments
- Providing technical assistance and training



**ARIZONA DEPARTMENT OF TRANSPORTATION  
POLICIES AND PROCEDURES**

MGT-16.01 DEPARTMENT-WIDE NATIVE NATION/ TRIBAL GOVERNMENT  
CONSULTATION POLICY

Effective: July 23, 2019 Review: July 23, 2021  
 Supersedes: MGT-16.01 (09/14/2016) Transmittal: 2019 – July  
 Responsible Office: Director’s Office (602) 712-7227 Page 1 of 5

**1.01 PURPOSE**

This policy establishes guidance for the Arizona Department of Transportation’s (ADOT) relationship with Native Nations/Tribal Governments in the State of Arizona.

**1.02 SCOPE**

This policy is intended to guide ADOT personnel when interacting with the Native Nations/Tribal Governments in Arizona. To support the implementation of this policy, an online training course titled, ADOT Tribal Transportation Consultation Training and accompanying Handbook is available from the ADOT Learning Center Online Training page.

**1.03 AUTHORITY**

A.R.S § 28-332(A)  
 Executive Order 13175  
 Executive Order 2006-14  
 United States Department of Transportation (US DOT) Order 5301.1  
 18 U.S.C. § 1151

**1.04 BACKGROUND**

The Arizona Department of Transportation (ADOT) is a multimodal transportation agency that is responsible for planning, building and operating the state highway system and the Grand Canyon Airport. Within the State, multimodal transportation systems cross numerous jurisdictional boundaries. In particular, approximately 1,237 centerline miles of the state highway system traverse Native Nation/Tribal lands along with 18 airports maintained by the Native Nations/Tribal Governments. There are 22 Native Nations/Tribal Governments that have jurisdiction over approximately 28% of the land base within Arizona. Thus, the State is committed to work together with the Native Nations/Tribal Governments for the common purpose of protecting the health, safety and welfare of the traveling public in Arizona through a continuously improving working relationship.

- Working with tribes to identify funding resources
- Engaging in partnering
- Providing consultation and communications opportunities regarding decisions affecting tribes, and implementation of the STIP.
- Encouraging mutual understanding of unique cultural and organization practices

The full policy can be viewed at <http://www.aztribaltransportation.org/PDF/ADOT-MGT-16-01-Tribal-Consultation.pdf>

## ADOT Tribal Consultation Annual Report

In support of ADOT's Tribal Consultation Policy, a Tribal Consultation Annual Report is prepared which summarizes major collaborative activities which were conducted by ADOT Tribal Liaisons in coordination and participation from various ADOT divisions, sections, and groups. The ADOT Tribal Consultation Annual Report is available on the ADOT Tribal Transportation website at <http://www.aztribaltransportation.org/policies.asp>.

## United States Department of Transportation (USDOT) Order DOT 5301.1 and Tribal Consultation Action Plan

DOT 5301.1 was developed in response to Presidential Executive Order 13175 that requires federal agencies to establish a tribal consultation process in developing policies that have tribal implications. The consultation action plan is required by presidential memorandum.

The USDOT seeks to foster and facilitate positive government-to-government relations between the department and all federally-recognized Indian tribes. The purpose of the Order and plan is to develop, improve, and maintain partnerships with Indian tribes by using agreed upon processes when the Department develops, changes, or implements policies, programs, or services with tribal implications. The Order includes 17 policy points. It requires consulting with tribes before taking any actions that may significantly or uniquely affect them. Each DOT component, e.g. FHWA, is required to develop and implement action mechanisms to achieve 10 specific goals cited in the Order.

- The USDOT Action Plan includes seven elements—two of the most important plan elements from an ADOT perspective are:
- Fostering meaningful government-to-government relations
- Assisting tribal members in developing transportation capacities

Although this is a federal order and plan, it impacts ADOT because the Department is expected to adhere to federal policies to maintain eligibility to receive federal transportation program funding. Information about Executive Order DOT 5301.1 can be found at the following website: <http://www.fhwa.dot.gov/tribal/news/consultation.htm>.

## Arizona Revised Statute 41-2051

The Governor has a strong commitment to consulting with tribal governments. This commitment is expressed in statute 41-2051, which establishes the Governor's Office on Tribal Relations (GOTR) and sets tribal consultation requirements. More information on GOTR is provided in Module 5.

**"41-2051. Governor's office on tribal relations; director; responsibilities of state agencies; report**

**The governor's office on tribal relations is established. The office shall assist state agencies in implementing tribal consultation and outreach activities.**

**The governor shall appoint the director pursuant to section 38-211. The director is entitled to receive compensation pursuant to section 38-611. The office may employ clerical, professional and technical personnel subject to chapter 4, article 4 of this title and shall prescribe their duties and determine their compensation pursuant to section 38-611.**

**Each state agency shall:**

**Develop and implement tribal consultation policies to guide the agency's work and interaction with the tribal nations of this state.**

**To the extent practicable and permitted by law, seek input from appropriate elected or appointed tribal officials before undertaking any action or policy that will, or is reasonably believed to, have the potential to affect a tribal community or its members.**

**To the fullest extent possible and to the best of the agency's ability, integrate the input generated from tribal consultation into the agency's decision-making processes to achieve mutually acceptable solutions.**

**Designate a state member to assume responsibility for the agency's implementation of the tribal consultation policies and to act as the principal point of contact for tribal affairs.**

**On or before October 1 of each year, review the agency's tribal consultation policies and submit an electronic progress report with performance measures to the office. The office shall make the reports available to tribal leaders and legislators.**

**The office may initiate or assist programs on tribal land only on the request or with the approval of the tribal nation.**

**At least once a year, the governor shall meet with the tribal leaders of the twenty-two tribal nations and communities in a state-tribal summit to address issues of mutual concern."**

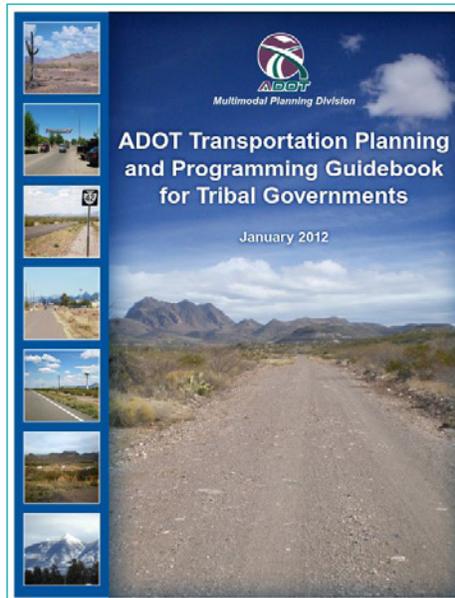
## ADOT Transportation Planning and Programming Guidebook for Tribal Governments Manual

The *ADOT Transportation Planning and Programming Guidebook for Tribal Governments* is intended to provide tribal governments and their transportation planning personnel assistance in understanding the ADOT planning and programming processes and associated funding sources. ADOT personnel should share this manual with tribal contacts.

The Guidebook is organized to first provide background on the State Highway System and its relation to tribal lands and the ADOT engineering management districts. It explains ADOT's vision, mission, goals, and responsibilities in relation to management of the state transportation system. The Guidebook provides tribal governments with an overview of the ADOT planning and programming process for major transportation projects. It provides a summary discussion of ADOT's funding sources for transportation improvement.

The Guidebook is not all inclusive of every detailed process used by ADOT, but does provide tribal governments with a basic understanding of current planning and programming processes as they relate to tribes. It also provides tribal personnel with information for the various ADOT departments that they may need to contact to address their transportation questions and concerns. To assist in referencing, often used transportation acronyms and terminology and a comprehensive glossary are provided.

The Guidebook can be found at the current Guidebook website address under ADOT WEBSITES on the last page of this Handbook.

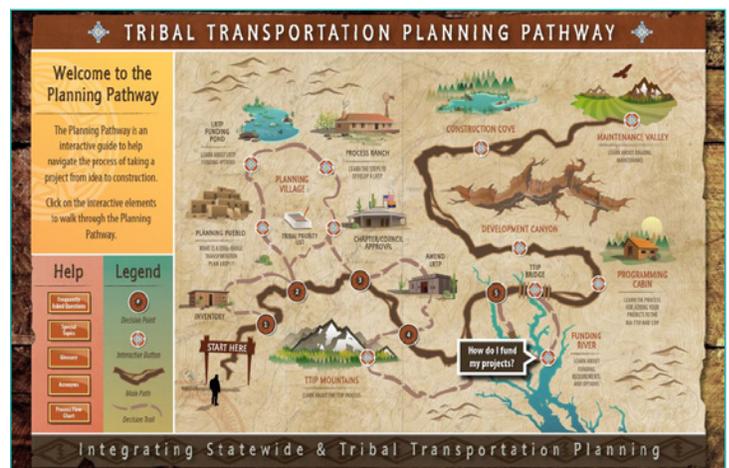


## Integrating Statewide and Tribal Planning Workshop

ADOT has collaborated with tribes in Arizona to complete numerous multimodal planning studies. To supplement these studies, ADOT developed this interactive training workshop specifically to provide tribal personnel and lead decision-makers with easy-to-understand procedures to implement projects recommended in the planning studies. The workshop is a computer-based, interactive training program that guides users through

the transportation improvement project phases of planning, funding, programming, development and maintenance.

The workshop curriculum is presented through a Tribal Transportation Planning Pathway in which users click on interactive elements to open training modules outlining key steps and processes for implementing transportation improvement projects. A comprehensive database of funding sources that the Tribe may pursue to support the construction and on-going maintenance of a transportation system is also included. More information is provided at <http://www.aztribaltransportation.org/training.asp>.



## WHAT ADOT EMPLOYEES SHOULD KNOW ABOUT THE TRIBAL TRANSPORTATION PROGRAM (TTP)

The TTP and the FTA's Tribal Transit Program are the primary **dedicated** sources of surface transportation funding for tribes. Tribes are not directly eligible for State generated Highway User Revenue Funds (HURF). They are eligible for other federal highway program and State and federal airport funding, but must compete with state and local governments for those funds.

The purpose of the Tribal Transportation Program TTP is the "Safe and adequate transportation and public road access to and within Indian reservations, Indian lands and communities for Indians and Alaskan Natives, visitors, recreational users, and others, while contributing to the economic development, self-determination, and employment of Indians and Alaskan Natives."<sup>92</sup> The Federal Highway Trust Fund, Highway Account, provides funding for the TTP. A TTP road is defined as a public road located within or providing access to an Indian reservation, or Indian trust land, not subject to sale or transfer except by approval of the federal government or the tribe involved.<sup>93</sup> Broad categories of eligible TTP activities are transportation planning, road and bridge construction, rehabilitation and maintenance, safety engineering and transit facilities. The TTP, including funding, is authorized under the Federal Lands Highway Program (FLHP) of the Federal Highway Administration (FHWA), 23 USC 204.<sup>94</sup>

TTP allocations are made to tribes on a formula basis and can be used for improvement of any road and/or bridge open to the public that is on/or serving tribal lands that is included in the National Tribal Transportation Facility Inventory (NTTFI). This inventory can include roads owned by State, County, City or other jurisdictions such as the United States Forest Service or the Bureau of Reclamation that a tribe chooses to include in the NTTFI. TTP funds may also be used for public transit facilities and equipment and other road-related facilities, such as pedestrian and rest area facilities, and the operation and maintenance of transit facilities. Uniquely, TTP funds can be used to match other federal funds. TTP funds provided to tribes can only be spent on eligible projects and activities identified in an FHWA approved Transportation Improvement Program (TIP).

### Tribal Transportation Program Funding Delivery Options

Under the provisions of the Indian Self-Determination and Education Assistance Act (P. L. 93-638) and the provisions for Indian Reservation Roads in Part 170 of Title 25 Code of Federal Regulations (25 CFR 170), tribes can use any of five delivery options for the use of TTP funds. It is important for ADOT employees working with a tribe on transportation projects to know what delivery option the tribe uses, since it will affect the path through which the funds will flow to the project.

<sup>92</sup> August 7, 2002, Federal Register. 51329-51330

<sup>93</sup> 2009. 94th Arizona Town Hall from Here to There: Transportation Opportunities for Arizona

<sup>94</sup> August 7, 2002, Federal Register 51329-51330

- **SELF-DETERMINATION CONTRACT (P.L. 93-638 CONTRACT)** – Tribes can enter into a contract with the BIA on a project-by-project basis to design, construct and/or administer projects funded with TTP Funds. The extent of BIA involvement in these contracts will vary depending on the activities the tribe contracts. For example, the Tribe may want to contract the design of the project and have the BIA perform the required 2nd level reviews, or they could contract to administer a construction project and request the BIA to perform construction monitoring. Any work performed on a construction project by the BIA is charged to the Tribe’s allocation of TTP funds and requires authorization by Tribal resolution. As with other federal-aid highway funds, the tribe must make the expenditure up front and be reimbursed with TTP funds. In addition, the tribe must do at least 15 percent of the work themselves, and the rest of the work is carried out by BIA and the firms the tribe subcontracts to do the remainder of the work.
- **SELF-GOVERNANCE AGREEMENT (OSG)** – Tribes can choose self-governance, i.e. minimal BIA involvement, for major programs such as transportation. The Salt River Pima-Maricopa Indian Community is the only transportation self-governance tribe in Arizona. Under these agreements, TTP funds flow from the Federal Lands Highway Program (FLHP) Office in FHWA to the BIA Department of Transportation and then to the Office of Self-Governance (OSG) in the Department of Interior. OSG distributes the funds directly to individual tribes in advance of project expenditures, based on an approved TTP TIP.
- **DIRECT SERVICE FROM BIA** – Under this option, Tribes have opted not to contract all or a portion of a project and has requested that the BIA do the work as a direct service. The extent of direct service provided on a project by the BIA must be authorized by a tribe. Direct Service on projects can range from project planning and the development of roadway plans, specifications, and estimates to construction contract administration.
- **FHWA PROGRAM AGREEMENT WITH FLHP OFFICE** – Funds flow from the FLHP Office directly to the Tribe through an annual referenced funding agreement. The funds are placed in a separate tribal bank account and can be used on any project identified in the Tribe’s TTP TIP. FHWA performs annual audits of the use of the funds.
- **BIA TTP (G2G) AGREEMENT** – This option mirrors the FHWA Program Agreement, except the TTP funds flow from the FLHP Office to the BIA-DOT and then directly to the tribe through an annual Referenced Funding Agreement (RFA). Tribe’s can opt to “buy-back” services from the BIA Regional Office through a Direct Service Addendum. In this case, the funds to pay for the work by BIA would be held back from the Tribe’s RFA for BIA use. Unused funds held back for BIA use are returned to the Tribe’s RFA at the end of the Fiscal Year. G2G funds must be placed in a separate tribal bank account and can be used on any project identified in the Tribe’s TTP Transportation Improvement Program. BIA Regional Office DOT staff performs annual audits of the use of the funds.



Tribes are required to conform to the requirements in 25 CFR 170 for long range planning and transportation improvement program development under all of the options. The Self-Governance Agreement, FHWA Program Agreement and BIA TTP (G2G) Agreement options provide tribes the most flexibility in controlling the funds by providing the tribe up front funding to carry out the TTP Program.

A Program Delivery Guide is provided by the Federal Lands Highway Office of Tribal Transportation at <https://flh.fhwa.dot.gov/programs/ttp/guide/Place>.

FLH Funding Options - Tribal Transportation Program Agreement is described on page 10.

### Proposed Tribal Transportation Self-Governance Program

A proposed rule to establish and implement the Tribal Transportation Self-Governance Program, as authorized by the Fixing America's Surface Transportation (FAST) Act, is currently in a review and comment period. The proposed rule was negotiated among representatives of Tribes and the Federal Government. The Program would provide to participating Tribes greater control and decision-making authority over their use of certain DOT funding for which they are eligible recipients while reducing associated administrative burdens. The proposed rule is described at: <https://www.federalregister.gov/documents/2019/10/02/2019-21464/tribal-transportation-self-governance-program>.



## Module 5: ADOT Tribal Coordination with Tribal-focused Organizations



### Module Learning Objectives

The module includes the following learning objectives:

- 🕒 Organizations which work with tribal governments in Arizona to promote consultation and coordination on transportation issues.
- 🕒 ADOT's Federal-State-Tribal Transportation Partnership Program.
- 🕒 ADOT's tribal liaisons and coordinators.

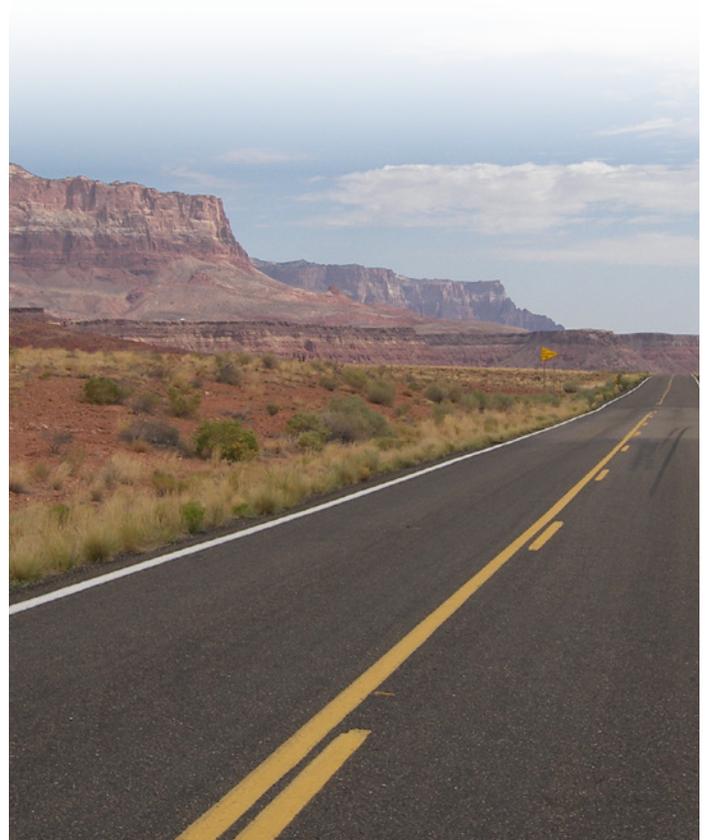
### Module Summary

This module presents an overview of organizations and mechanisms, which are working with Tribes in Arizona to promote communication and cooperation on key issues.

- The Bureau of Indian Affairs (BIA) is the federal agency that provides services to American Indians and Alaska Natives and serves as trustee for tribal lands.
- Councils of Government (COGs) and Metropolitan Planning Organizations (MPOs) are regional transportation organizations that tribal governments may join or participate in to become involved in ADOT planning and programming.
- The Tribal Technical Assistance Program provides training and technology transfer assistance to tribal governments.
- The Governor's Office on Tribal Relations assists and supports tribal communities and enhances government to government relations between tribal nations within the state.

- Inter Tribal Council of Arizona, Inc. (ITCA) is both an association and corporation operated by 21 of the 22 Indian tribes in Arizona. ITCA's purpose is to provide the member tribes with the means for action on matters that affect them collectively and individually, to promote tribal sovereignty and to strengthen tribal governments.
- Federal-State-Tribal Transportation Partnerships support consultative and coordinative working relationships among the tribe and federal, state, and other organizations.

Contact information for ADOT organizations which provide tribal liaisons and coordinators is included at the end of this chapter.





## BUREAU OF INDIAN AFFAIRS (BIA)<sup>95</sup>

The BIA was established in 1824 and is the oldest bureau in the United States Department of Interior. It provides services directly or through agreements to approximately 1.9 million American Indians and Alaska Natives. The mission of the BIA is to “enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians (AIs), Indian tribes, and Alaska Natives (ANs).”

“... enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of **AMERICAN INDIANS, INDIAN TRIBES, and ALASKA NATIVES**”

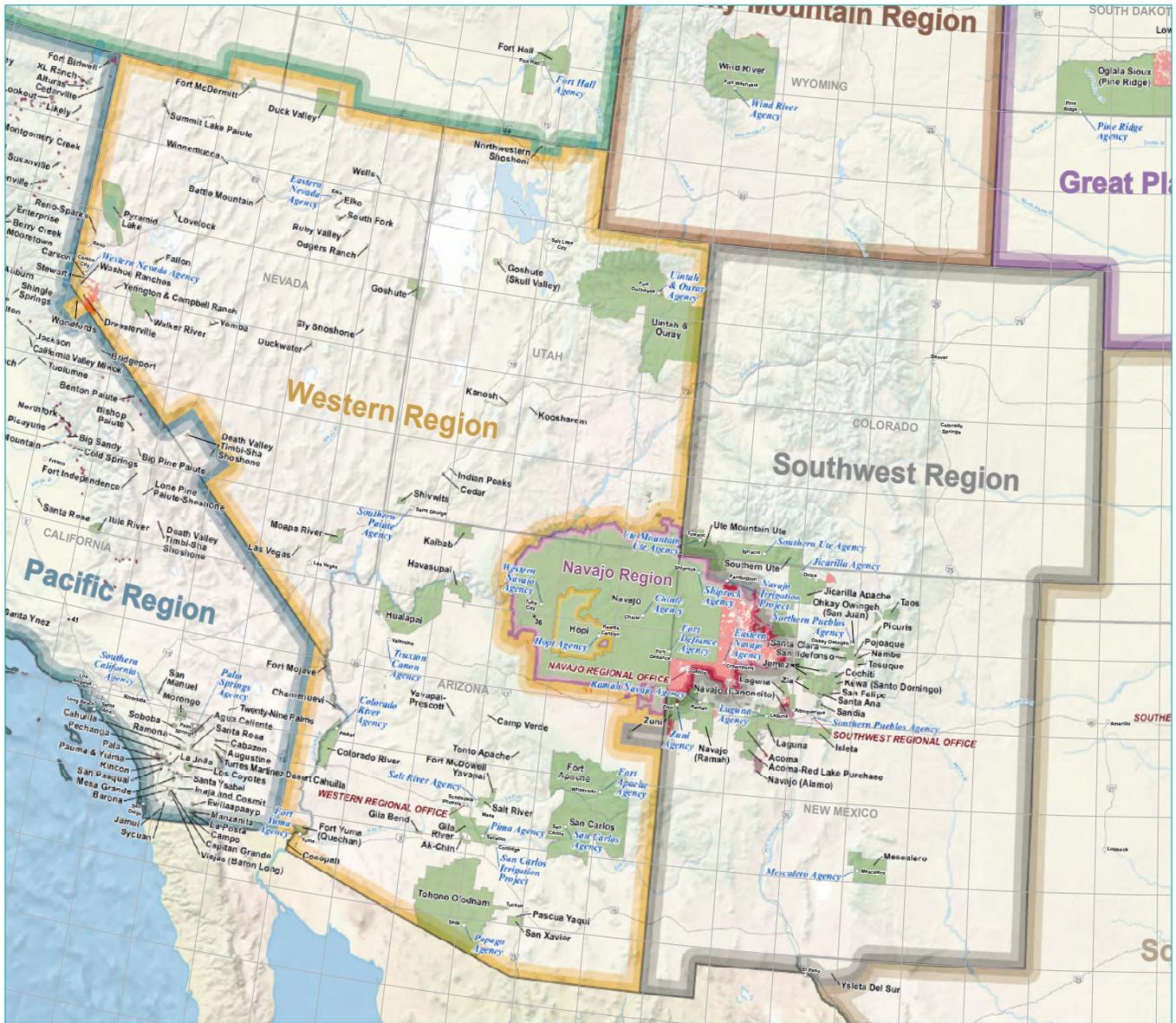


*Bureau of Indian Affairs (BIA)*  
*Excerpt from Mission Statement*

The BIA works with tribal governments in the administration of the federal Tribal Transportation Program (TTP) funds directly or through contracts or agreements. Twenty tribes in Arizona and all tribes in Utah and Nevada are served by BIA’s Western Regional Office in Phoenix, the Pueblo of Zuni is served by the BIA Southwest Regional office in Albuquerque, New Mexico, and the Navajo Nation is served by the Navajo Regional office located in Gallup, New Mexico. In addition to the regional offices, BIA also maintains sub-agency offices to serve tribes at the reservation level. See **Map 5-1** for the boundaries of the three regions.

<sup>95</sup> Bureau of Indian Affairs website: <http://www.bia.gov>.

MAP 5 – 1: BIA NAVAJO, SOUTHWEST, AND WESTERN REGION BOUNDARIES



The addresses of the Western, Southwest and Navajo Regional Offices are:

**NAVAJO REGIONAL OFFICE**

PO Box 1060  
 Gallup, NM 87305  
 Phone: 505-863-8314 ■ Fax: 505-863-8324  
<http://bia.gov/regional-offices/navajo>

**SOUTHWEST REGIONAL OFFICE**

1001 Indian School Road, NW  
 Albuquerque, NM 87104  
 Phone: 505-563-3103 ■ Fax: 505-563-3101  
<http://bia.gov/regional-offices/southwest>

**WESTERN REGIONAL OFFICE**

2600 N. Central Avenue ■ 4th Floor Mailroom  
 Phoenix, AZ 85004-3050  
 Phone: 602-379-6600 ■ Fax: 602-679-4413  
<http://bia.gov/regional-offices/western>

“Delivery of program services to the federally recognized tribes and individual Indians and Alaska Natives, whether directly or through contracts, grants or compacts, is administered by the twelve regional offices and 83 agencies that report to the BIA Deputy Director-Field Operations, located in Washington, D.C. Each regional office is headed by a Regional Director who is responsible for all Bureau activities within a defined geographical area except education, law enforcement and functions of an administrative nature.”<sup>96</sup> The typical Regional Office includes a Deputy Regional Director for Trust Services and Deputy Regional Director for Indian Services.

The Deputy Regional Director for Trust Services oversees a staff of specialists responsible for natural resources (water resources, forestry and fire, irrigation and safety of dams), agriculture, (farm, pasture, and range), fish, wildlife and parks and real estate services (land acquisition and disposal land title records office, probate, rights-of-way, and lease/permit). BIA is the trustee for Native American trust lands.

The Deputy Regional Director for Indian Services oversees a staff of specialists responsible for transportation (planning, design, construction, and maintenance) and Indian services (tribal governments, human services, housing improvement).<sup>96</sup> The BIA Regional Offices can provide direct transportation services to tribes such as design of projects or construction administration or they can provide technical assistance for tribes that decide to perform those functions themselves.

### Office of Self Governance

The Office of Self Governance is responsible for implementation of the Tribal Self Governance Act of 1994, including development and implementation of regulations, policies, and guidance in support of self-governance initiatives. The staff negotiates

<sup>96</sup> Bureau of Indian Affairs website: <http://www.bia.gov/regional-offices>

annual funding agreements with eligible tribes and consortia, coordinates the collection of budget and performance data from self-governance tribes, and resolves issues that are identified in financial and program audits of self-governance operations. The Office works with tribal governments to protect and support tribal sovereignty within a Government-to-Government partnership and to advocate for the transfer of federal programmatic authorities and resources to tribal governments in accordance with tribal self-governance statutes and policies. This Office allocates the portion of the TTP funds set aside for self-governance tribes. Salt River Pima-Maricopa Indian Community is a self-governance tribe for transportation in Arizona.

### Office of Indian Services

The Office of Indian Services includes the Divisions of Self-Determination and Transportation. The Division of Self-Determination was created by the Indian Self-Determination and Education Assistance Act of 1975 and is charged with the responsibility to further American Indian tribes’ exercise of Self-Determination as a matter of policy. The Division provides training and technical assistance to BIA regional and agency employees, tribal officials, and their staffs. The mission of the Division of Transportation is to provide and assist tribes to develop their capacity to plan, construct, and maintain safe and efficient transportation networks; and to promote tribal tourism. Its activities include operation and maintenance of BIA roads, administering the TTP, and working with FHWA on programs for which FHWA has responsibilities. These activities are provided directly and through contracts, grants, and other agreements.

### Office of Trust Services

The Office of Trust Services carries out BIA trust responsibilities to Indian tribes and individuals and oversees all headquarter activities associated with management and protection of trust and restricted

lands, natural resources, and real estate services. The office provides land related functions to Indian trust owners including acquisition, disposal, rights-of-way, leasing and sales, and assists them in the management, development, and protection of trust land and natural resource assets. Programs administered include real estate services; land title and records; probate; natural resources; forestry and wildland fire management; irrigation, power and safety of dams. As trustee for the protection of tribal lands, any right-of-way transaction involving tribal trust lands requires BIA approval.

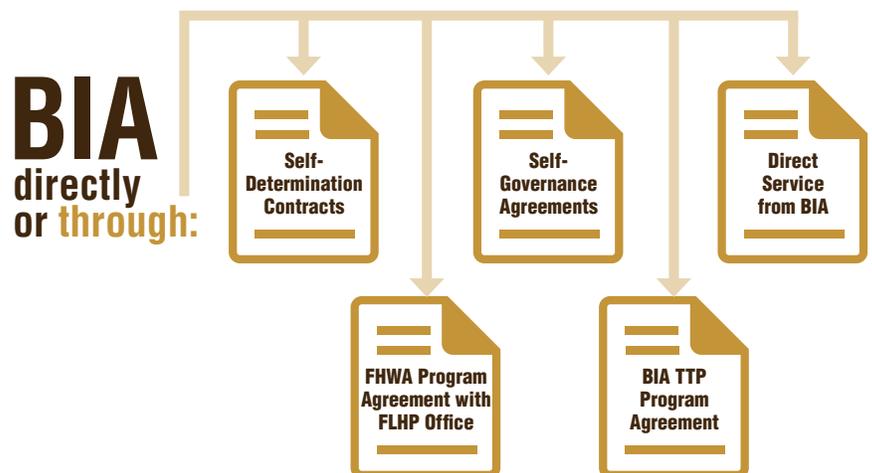
### Delivery Options for Funding Projects

The BIA works with tribal governments to enter into agreements for the use of TTP funds directly or through contracts or agreements. It is important for ADOT employees working with a tribe on transportation projects to know what delivery option the tribe uses, since it will affect the path through which the funds will flow to a project. These delivery options are briefly reviewed here (see the Section on Tribal Transportation Program Funding Delivery Options at the end of Module 4 for further details):

It should be noted that that a proposed rule on a Tribal Transportation Self-Governance Program is currently under review (<https://www.federalregister.gov/documents/2019/10/02/2019-21464/tribal-transportation-self-governance-program>).

- **SELF-DETERMINATION CONTRACT**– Tribes can enter into a contract with the BIA, on a project-by-project basis, to design, construct and/or administer projects funded with TTP funds. The extent of BIA involvement in these contracts will vary depending on the project activities the tribe wants to conduct.
- **SELF-GOVERNANCE AGREEMENT**– Tribes can choose self-governance, i.e. minimal BIA involvement, for major programs such as transportation. The Salt River Pima-Maricopa Indian Community is the only transportation self-governance tribe in Arizona.
- **DIRECT SERVICE FROM BIA** – Under this option, Tribes have opted not to contract all or a portion of a project and has requested that the BIA do the work as a direct service.
- **FHWA PROGRAM AGREEMENT WITH FLHP OFFICE** – Funds flow from the FLHP Office directly to the Tribe through an annual funding agreement. The funds are placed in a separate Tribal bank account and can be used on any project identified in the Tribe’s TTP TIP.

- **BIA TTP (G2G) AGREEMENT**– This option mirrors the FHWA Program Agreement, except the TTP funds flow from the FLHP Office to the BIA-DOT and then directly to the tribe through an annual Referenced Funding Agreement (RFA). Tribe’s can opt to “buy-back” services from the BIA Regional Office through a Direct Service Addendum. Funds must be placed in a separate tribal bank account and can be used on any project identified in the Tribe’s TTP TIP.

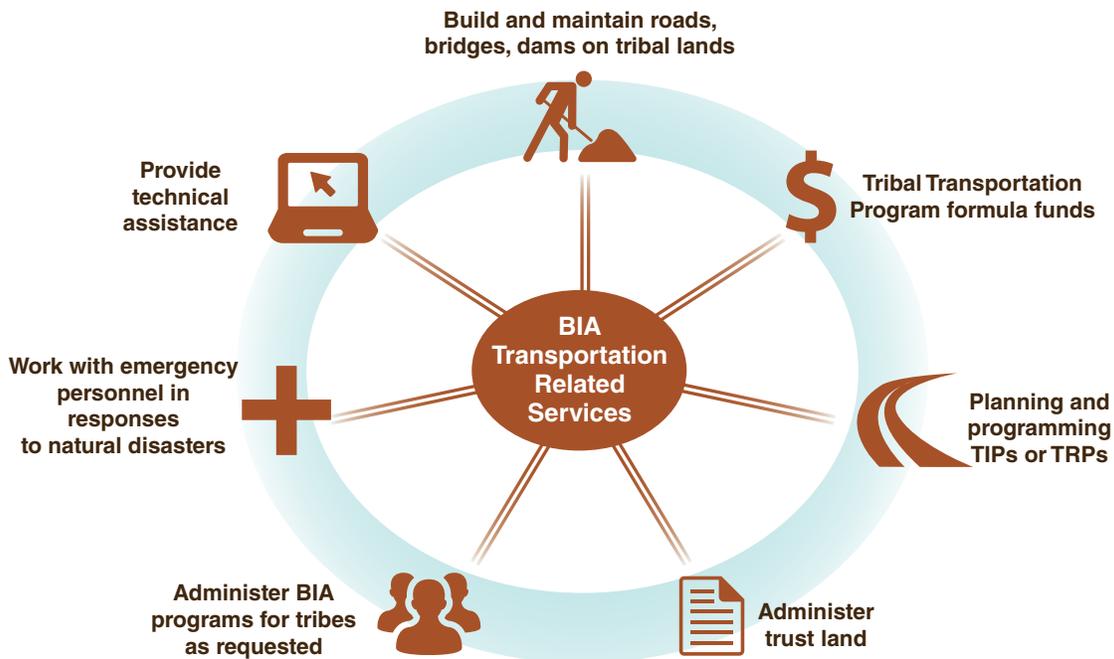


## BIA Transportation Related Services

The BIA provides a number of transportation-related services for tribal governments based on the tribes' selected contract or agreement delivery option for the federal Tribal Transportation Program (TTP) as reviewed above. TTP formula funds in many cases flow from Federal Highway Administration through BIA to tribes. Prior to distribution of TTP funding to tribes throughout the United States, there are set asides for planning, safety, bridges and program administration, and tribe supplemental funding.

BIA works with tribes to utilize these funding sources and can offer technical support as needed to help the tribes meet their transportation needs. BIA is often the interface or liaison between the tribes and the Office of Federal Lands Highway, US Department of Transportation for delivering services such as the following:

- Roads, bridges and dams on tribal lands are frequently designed, constructed and maintained by BIA.
  - The BIA holds tribal lands in trust for tribes and allotment land owners. This means that whenever an activity requiring tribal land, such as building or expanding a road, the BIA must approve the use of the land, as well as the tribal government and land owner.
  - In addition to designing, constructing and maintaining roads, BIA often administers other activities, such as transportation planning, for a tribe.
- Again, this work is performed under direct service agreements.
- Under agreement with tribes, BIA maintenance personnel perform emergency repairs for roads and bridges that are required as a result of storms and other natural disasters.
  - The BIA also provides to tribes technical assistance. For example, the Bureau provides guidance on implementing transportation planning, programming, and road inventory activities required by the federal Tribal Transportation Program.



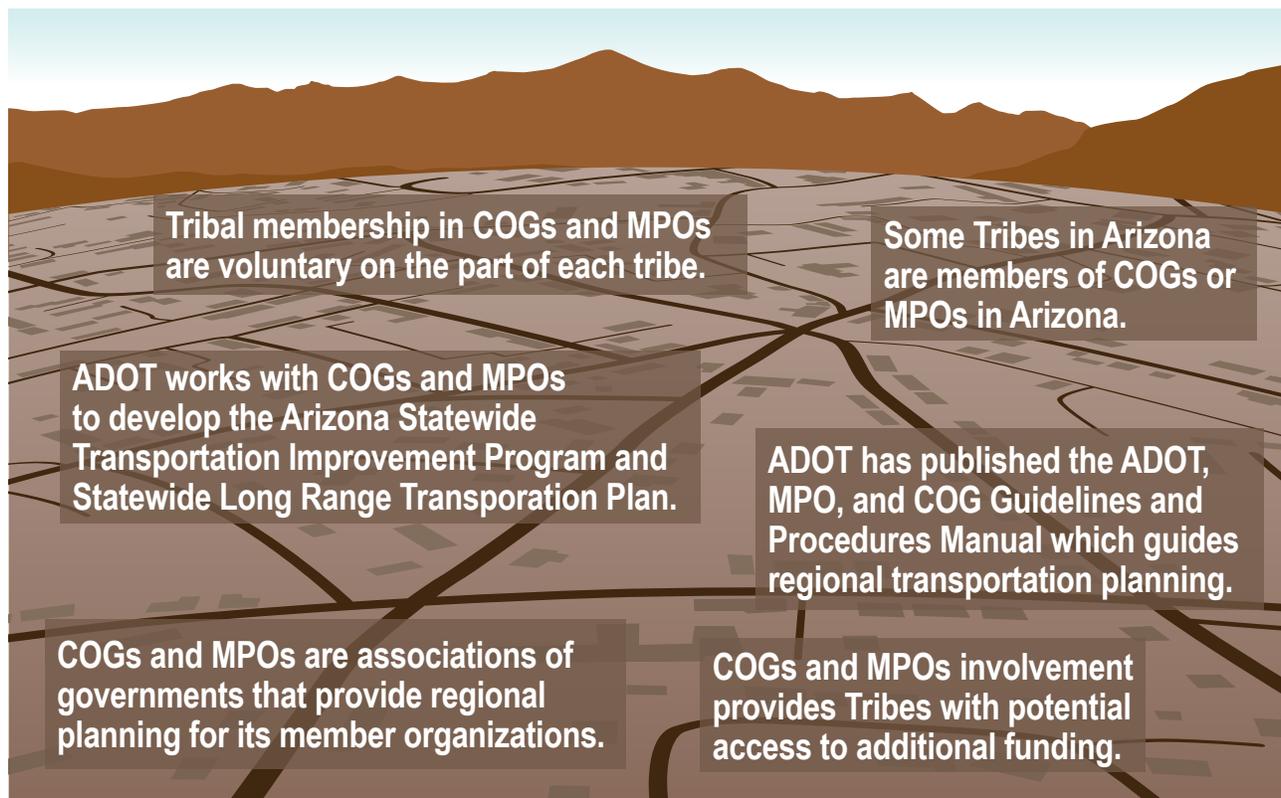
## COUNCILS OF GOVERNMENTS AND METROPOLITAN PLANNING ORGANIZATIONS

In 1969, Governor's Executive Order No. 69-6 directed the State Department of Economic Planning and Development to complete a Regional Delineation Study. Following the recommendations of the study, Governor's Executive Order No. 70-2 formally established planning and development districts within the state. Under the Executive Order, the state was divided into six districts based upon county boundaries for the purpose of performing and coordinating non-metropolitan comprehensive planning on a regional basis. These districts were named **Councils of Governments (COGs)**. The Executive Orders can be found by entering the document title in the search bar on the following website:

<https://azmemory.azlibrary.gov/digital/collection/execorders>.

**Metropolitan Planning Organizations (MPOs)** were established by the Federal Transportation Act of 1973 following a process similar to that which initially established the COGs. This legislation specifically tasks MPOs with the responsibility for transportation planning within their regions. The MPOs represent urbanized areas with populations of 50,000 or more and a population density of at least 1,000 people per square mile. However, today some MPOs also provide regional decision-making in the areas of air quality, water quality, regional development, and human services. It should be noted that in January 2020 the Flagstaff MPO changed its name to MetroPlan.

New MPOs are established when an area reaches the urbanized population and density thresholds mentioned above. In 2013, three MPOs were established. They are the Lake Havasu Metropolitan Planning Organization, the Sierra Vista Metropolitan Planning Organization, and the Sun Corridor Metropolitan Planning Organization.



On January 8, 2013, the Lake Havasu City Council adopted Resolution Number 13-2697 approving the establishment of the Lake Havasu Metropolitan Planning Organization (LHMPO) and Resolution Number 13-2698 establishing the boundaries of LHMPO. Member jurisdictions of the LHMPO are the City of Lake Havasu, Mohave County, and ADOT.

The Sierra Vista Metropolitan Planning Organization (SVMPO) was established in May 2013 and is led by a board of directors with representatives from the member agencies of the City of Sierra Vista, Cochise County, and ADOT.

On March 5, 2013, the Casa Grande City Council passed Resolution No. 4768 “Authorizing the Establishment of a Metropolitan Planning Organization as provided for in the Provisions of Title 23 United States Code Section 134 and Title 49 United States Code Chapter 53.” The Sun Corridor MPO was established in 2013 and member jurisdictions include the cities of Casa Grande, Coolidge, and Eloy, Pinal County, and ADOT.

Many tribes in Arizona are members of and have a working relationship on transportation matters with one or more of the COGs or MPOs in Arizona. Tribes have limited transportation resources and being a participant in COGs and MPOs transportation decision-making processes provides them potential access to additional funding. **Map 5-2** shows the locations of COGs and MPOs in Arizona.

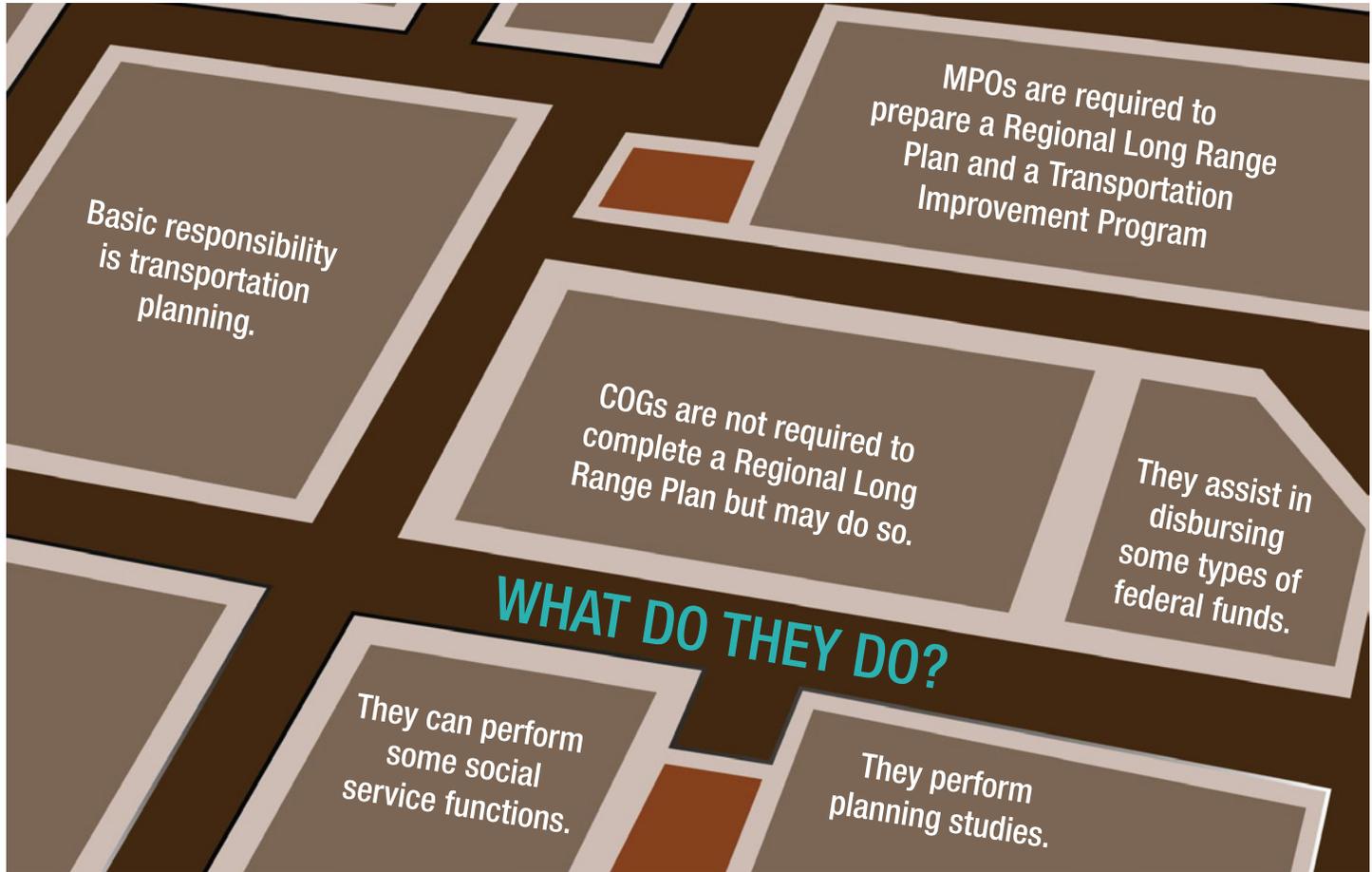
In addition, a metropolitan area with a population of 200,000 and above is designated as a Transportation Management Area (TMA). MPOs that are designated as TMAs have greater requirements for congestion management, project selection and certification. Designation of TMAs and their requirements are identified in 23 CFR 450.300. Currently, there are two TMAs in Arizona and they are the Maricopa Association of Governments (MAG) and Pima Association of Governments (PAG).

## What Do COGs and MPOs Do?

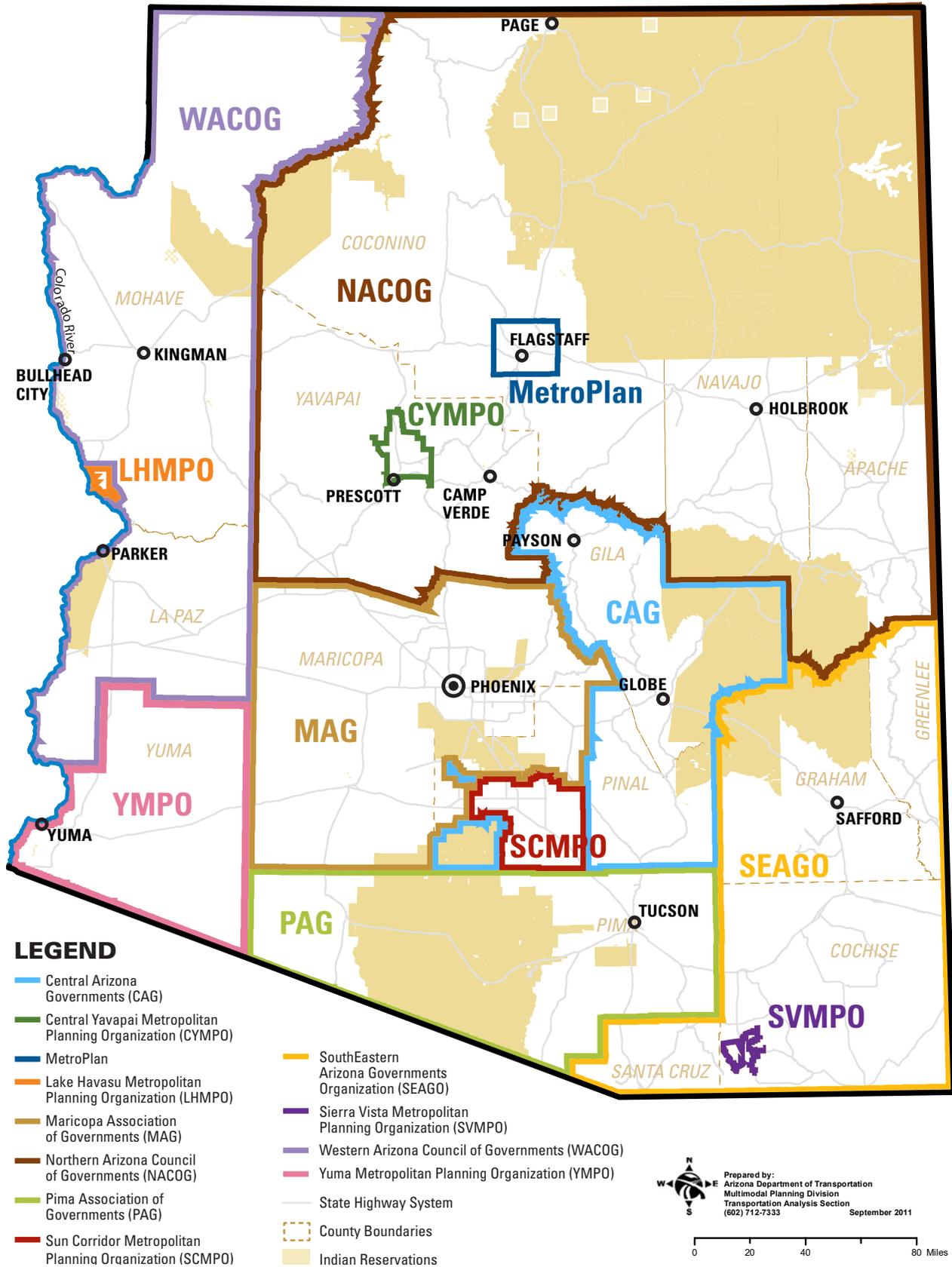
COGs and MPOs are regional planning organizations which have a basic responsibility of performing transportation planning. MPOs are required to prepare a Regional Long Range Plan and a Transportation Improvement Program, as well as transit coordination plans. COGs are not required to complete a Regional Long Range Plan, but may do so. COGs and MPOs distribute the allocations of federal funds to regionally prioritized projects. They develop annual work programs that outline their transportation planning responsibilities and the services they perform for their member agencies. They perform various planning studies at the request of their membership. In rural areas, COGs also undertake social service functions. ADOT representatives work closely with COGs and MPOs to develop the Arizona Statewide Transportation Improvement Program (STIP), which identifies statewide priorities for transportation projects. COGs and MPOs also provide input in the development of the Statewide Long Range Transportation Plan that reflects regional visions for transportation. For more information about the STIP and the Long Range Plan, visit the Transportation Programming and Transportation Planning website address that can be found under ADOT WEBSITES on the last page of this Handbook. ADOT has published the ADOT, MPO, and COG Guidelines and Procedures Manual, which is a resource document to assist in the implementation of regional transportation planning functions and programs administered by the ADOT Multimodal Planning Division. This manual provides guidance related to the planning processes and administrative requirements for conducting transportation planning activities. The goal of this manual is to clarify roles and responsibilities, improve efficiency among organizations and reduce

questions and potential conflicts. It also provides more detailed information about the MPOs and COGs in the state. For more information about this manual, please visit the ADOT, MPO, and COG Guidelines and Procedures Manual website address that can be found under MANUALS / GUIDEBOOKS on **Page 184** of this Handbook.

Additionally, website addresses are listed under the METROPOLITAN PLANNING ORGANIZATIONS AND COUNCILS OF GOVERNMENTS WEBSITES in the Reference Section of this Handbook.



MAP 5 – 2: ARIZONA COGS AND MPOS



## COG and MPO Transportation Funding

The COG and MPO services are also carried out in accordance with the Casa Grande Resolves Accord. In April 1999 transportation officials representing the FHWA, ADOT, COGs, MPOs, and transit operators within the state met in Casa Grande, Arizona to review and identify needed changes to the state transportation planning and programming processes. The “Casa Grande Resolves” also facilitated improved intergovernmental communications and relationships between ADOT, the MPOs and COGs. The primary objective of the meeting was to come to agreement on how to plan and program transportation projects in Arizona. Consequently, this meeting resulted in seven guiding principles to be carried out through the statewide planning and programming processes. It also resulted in establishment of a revenue allocation process to ensure equitable distribution of transportation funds across the state including distribution to the COGs and MPOs. It should be noted that the guiding principles have been endorsed by the State Transportation Board (STB) in its Board Policies. **The STB policy also notes that tribes share in the responsibility to ensure that plan and program implementation meets the transportation needs of the people of Arizona.** See Board Policy 20 at the Board policy link at <http://aztransportationboard.gov/downloads/board-policies-map.pdf>, also found under ADOT WEBSITES on the last page of this Handbook. It should be noted that the need to coordinate, work with, and consult with tribal governments is reflected throughout the STB policies (specifically Policies 3, 4, 6, 16, 20, 33, and 34. A commitment at the beginning of the document is for “Cooperation in planning and programming efforts with Transportation Management Areas (TMAs), Metropolitan Planning Organizations (MPOs), Councils of Government (COGs), **tribal and local governments**”.

Currently the funds that the COGs and MPOs receive are largely federal and they distribute their allocation of federal funds to regionally important projects based upon their plans and TIPs. COG and MPO member representatives review project requests received (from local and tribal governments within their regions) through a consensus process, and collectively decide on the priorities and where funds will be spent based on need and merit. The ADOT district engineers also coordinate efforts with the COGs and MPOs to ensure that there are consistent regional plans. Another reason Arizona uses the COGs and MPOs is to reduce the number of individual entities going directly to the funding sources since FHWA and ADOT are limited on resources to work directly with all governmental agencies.

Some examples of funding that the COGs and MPOs receive include allocations from the following federal programs:

- **SURFACE TRANSPORTATION BLOCK GRANT PROGRAM (STBGP)** - This program provides flexible funding for construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements and either highway or transit projects are eligible. There are set-aside funds for transportation alternatives, such as pedestrian, bicycle, and trail improvements.
- **HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP)** - This program is intended to reduce traffic fatalities and serious injuries on all public roads and bicycle and pedestrian pathways.
- **CONGESTION MITIGATION AND AIR QUALITY (CMAQ) IMPROVEMENT PROGRAM** - The CMAQ program provides a flexible funding source to State and local governments for transportation projects and programs to help meet the requirements of the Clean Air Act. Funding is available to reduce congestion and improve air quality for areas that do not meet the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter (nonattainment areas) and for former nonattainment areas that are now in compliance (maintenance areas).

### ■ STATE PLANNING AND RESEARCH (SPR)

- This program provides funding for transportation planning assistance for future highway programs, local public transportation systems, and regionally identified research projects.

### ■ TRANSPORTATION ALTERNATIVES PROGRAM

- The Transportation Alternatives Program was authorized under the Moving Ahead for Progress in the 21st Century Act (MAP-21), and provides funding for programs and projects defined as transportation alternatives. This new program replaced the Transportation Enhancement (TE), Safe Routes to School (SRTS) and Recreational Trail (RT) Programs with a broader range of alternative transportation solutions eligible for federal funding. Eligible activities under the Transportation Alternatives Program include:

- Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.
- Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers.
- Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.
- Construction of turnouts, overlooks, and viewing areas.

- Community improvement activities, which include but are not limited to:
  - ▲ Inventory, control, or removal of outdoor advertising;
  - ▲ Historic preservation and rehabilitation of historic transportation facilities;
  - ▲ Vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
  - ▲ Archaeological activities relating to impacts from implementation of a transportation project.
  - ▲ Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to address storm water management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff; or reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.
- Projects and activities eligible under the former Recreational Trails Program.
- Projects and activities eligible under the former Safe Routes to School Program. This program was established to help children walk and bicycle to school to improve safety and health, and to reduce traffic and air pollution in the vicinity of schools.
- Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

## Tribal Participation in the COGs and MPOs Programs and Processes

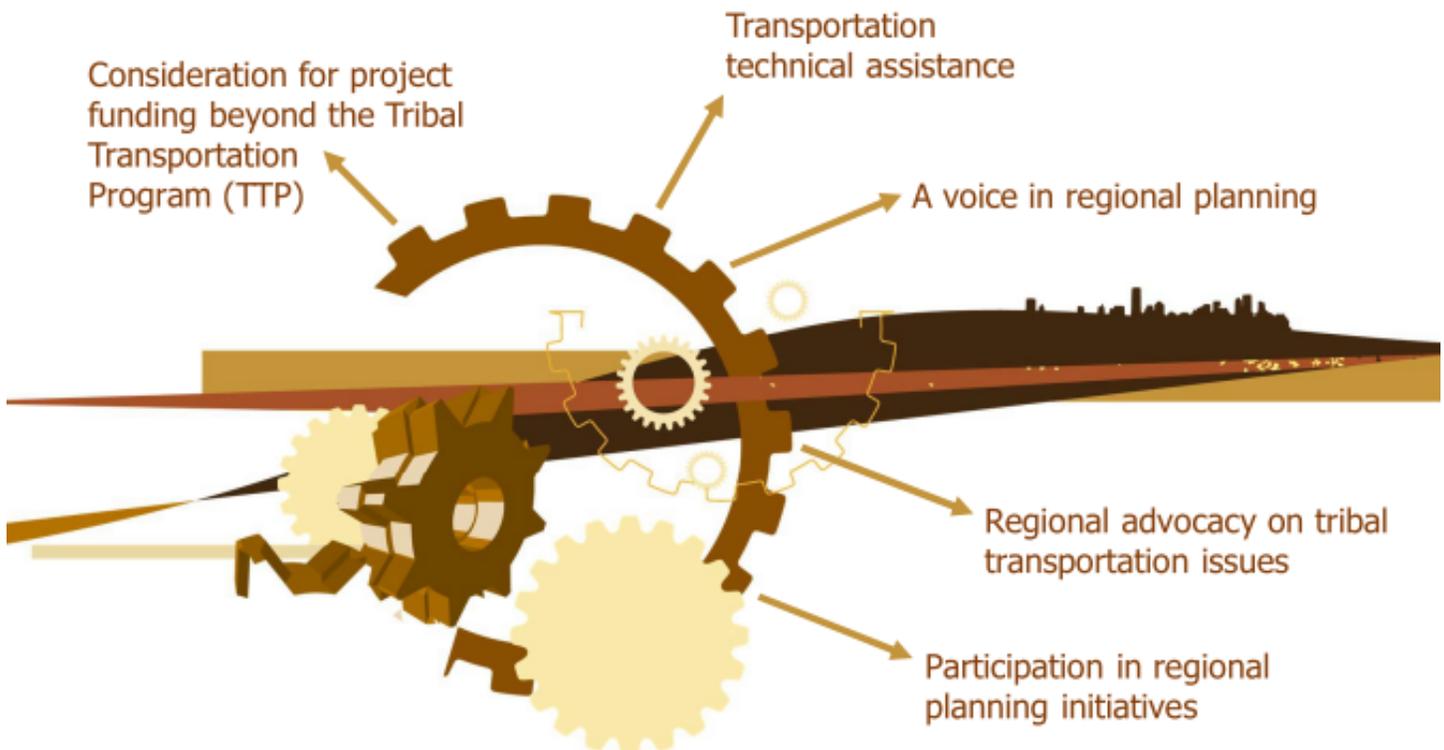
The state legislation that conforms to the requirements stipulated in the federal transportation legislation to enable tribal participation and consultation in the state and regional transportation planning programs and programming processes is located under Title 28 of the Arizona Revised Statutes Chapter 2 Section 28-503 and Chapter 17 Section 28-6308, see <http://www.azleg.gov/ArizonaRevisedStatutes.asp>.

Tribes that are members of COGs and MPOs participate on the Regional Boards/Councils and/or technical committees thereby providing the tribes an opportunity to vote on transportation issues and projects in the region. It is understood that because of sovereignty or other concerns, some tribes may choose not to participate in formal COG/MPO actions.

### Advantages of COG and MPO Membership

Tribes that are members of COGs and MPOs participate in the regional decision-making process and are afforded several specific advantages from their membership, such as:

- Consideration for project funding beyond the federal Tribal Transportation Program (TTP) – COG or MPO representatives from these entities review regional project requests and collectively decide on the priorities and where funding will be spent.
- Transportation technical assistance – this can vary depending on the COG or MPO, but normally they can provide traffic counts and accident information, planning studies, and some assistance in preparing applications.
- A voice in regional planning – whether a voting or non-voting member, participation in a COG or MPO will provide more opportunities for tribal governments to communicate their priorities.
- Regional advocacy on tribal transportation issues – tribal participation can bring both concerns to the forefront and obtain input on concerns of tribal interest.
- Participation in regional planning initiatives, which can include safety, alternate modes, and other types of regional studies. COG and MPO staff works with local governments to address similar issues faced by the communities within their regions.



Current tribal membership participation status on the Arizona COGs and MPOs is summarized below:

**COGS**

**CENTRAL ARIZONA GOVERNMENTS (CAG)**

■ **TRIBAL MEMBERSHIP:**

- Ak-Chin Indian Community
- Gila River Indian Community
- San Carlos Apache Tribe
- White Mountain Apache Tribe



■ **OTHER TRIBES WITH RESERVATION LAND IN CAG REGION:**

- Tonto Apache Tribe
- Tohono O’odham Nation

**NORTHERN ARIZONA COUNCIL OF GOVERNMENTS (NACOG)**

■ **NO OFFICIAL TRIBAL MEMBERSHIP ON THE REGIONAL COUNCIL. TRIBES THAT PARTICIPATE AT TRANSPORTATION POLICY ADVISORY COMMITTEE /TECHNICAL SUBCOMMITTEE MEETINGS ARE:**

- Hopi Tribe

■ **OTHER TRIBES WITH RESERVATION LAND IN THE NACOG REGION:**

- Navajo Nation
- Kaibab Band of Paiute Indians
- White Mountain Apache Tribe
- Havasupai Tribe
- Yavapai Apache Nation
- Yavapai Prescott Indian Tribe
- Hualapai Tribe
- Pueblo of Zuni



**SOUTHEASTERN ARIZONA GOVERNMENTS ORGANIZATION (SEAGO)**

■ **TRIBAL MEMBERSHIP ON THE EXECUTIVE BOARD:**

- San Carlos Apache Tribe



**WESTERN ARIZONA COUNCIL OF GOVERNMENTS (WACOG)**

■ **NO OFFICIAL TRIBAL MEMBERSHIP ON THE REGIONAL COUNCIL. TRIBES THAT PARTICIPATE AT TRANSPORTATION ADVISORY COMMITTEE MEETINGS ARE:**

- Chemehuevi Indian Tribe
- Hualapai Tribe
- Kaibab Band of Paiute Indians
- Colorado River Indian Tribes
- Fort Mojave Indian Tribe



MPOS

**CENTRAL YAVAPAI METROPOLITAN PLANNING ORGANIZATION (CYMPO)**



- NO OFFICIAL TRIBAL MEMBERSHIP ON THE EXECUTIVE BOARD OR TECHNICAL A COMMITTEE
- TRIBE WITH LAND IN THE CYMPO REGION:
  - Yavapai-Prescott Indian Tribe

**METROPLAN, GREATER FLAGSTAFF**



- NO OFFICIAL TRIBAL MEMBERSHIP.

**LAKE HAVASU METROPOLITAN PLANNING ORGANIZATION (LHMPO)**



- NO OFFICIAL TRIBAL MEMBERSHIP.

**MARICOPA ASSOCIATION OF GOVERNMENTS (MAG)**



- TRIBAL MEMBERSHIP ON THE REGIONAL COUNCIL:
  - Fort McDowell Yavapai Nation
  - Gila River Indian Community
  - Salt River Pima-Maricopa Indian Community
- OTHER TRIBES WITH LAND IN MAG REGION INCLUDE:
  - Tohono O’odham Nation

**PIMA ASSOCIATION OF GOVERNMENTS (PAG)**



- TRIBAL MEMBERSHIP ON THE REGIONAL COUNCIL:
  - Pascua Yaqui Tribe
  - Tohono O’odham Nation

**SIERRA VISTA METROPOLITAN PLANNING ORGANIZATION (SVMPO)**



- NO OFFICIAL TRIBAL MEMBERSHIP.

**SUN CORRIDOR METROPOLITAN PLANNING ORGANIZATION (SCMPO)**



- NO OFFICIAL TRIBAL MEMBERSHIP.

**YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO)**



- TRIBAL MEMBERSHIP ON THE EXECUTIVE BOARD:
  - Cocopah Indian Tribe
- TRIBES ON THE TECHNICAL ADVISORY COMMITTEE:
  - Quechan Indian Tribe (Fort Yuma)

## TRIBAL TECHNICAL ASSISTANCE PROGRAM (TTAP)

The Federal Highway Administration (FHWA) Office of Innovative Program Delivery's Center for Local Aid Support established a national Tribal Technical Assistance Program (TTAP) as a one-stop transportation resource for tribal communities across the country.

As of December 2019, FHWA placed the TTAP in-person training on suspension to determine the next TTAP delivery model. In the interim, technical assistance and online training is available to tribes. FHWA responds to technical assistance requests through the Center for Local Aid Support at [CLAS@dot.gov](mailto:CLAS@dot.gov). Self-paced online training is available on the TTAP website at [ttap-center.org](http://ttap-center.org) under the "Online Learning" menu item.

There are also other organizations and conferences that provide resources for technical assistance. These include:

- The National Association of County Engineers (NACE), the
- American Public Transportation Association (APTA), the
- American Public Works Association (APWA), and the
- Arizona Transit Association (AZTA)

Annual conferences are also held throughout the state including the Arizona Roads and Streets Conference, Construction in Indian Country Conference, and the Rural Transportation Summit.



## GOVERNOR'S OFFICE ON TRIBAL RELATIONS (2016 - PRESENT)

The Governor's Office on Tribal Relations (GOTR) was initially established as the Commission of Indian Affairs in 1953 by the 21st Legislature to consider and study conditions among the Indians residing within the State of Arizona. The agency mission made targeted efforts to assist and support state and federal agencies in assisting Indians and tribal councils in this state to develop mutual goals, to design projects for achieving goals and to implement their plans.

Effective July 1, 2016 and pursuant to Arizona Revised Statutes, section 41-2051(A), the legislature established the Governor's Office on Tribal Relations in order to assist and support tribal nations and communities in the state and to enhance government-to-government relations. The Office assists state agencies in implementing tribal consultation and outreach activities, which include:

1. Developing and implementing tribal consultation policies to guide the agency's work and interactions with the tribal nations in Arizona.
2. Seeking input from appropriate elected or appointed tribal officials before undertaking any action or policy that will, or is reasonably believed to, have the potential to affect a tribal community or its members.
3. Integrating the input generated from tribal consultation into the agency's decision-making process to achieve mutually acceptable solutions.
4. Designating a staff member to assume responsibility for the agency's implementation of the tribal consultation policies and to act as the principal point of contact for tribal affairs.
5. Annually review the agency's tribal consultation policies and submit a progress report with performance measures to the Governor's Office, which shall make reports available to tribal leaders and legislators.

The GOTR organizes the Indian Nations and Tribes Legislative Day for the purpose of celebrating the rich culture and history of Tribes and Nations in Arizona and also to address issues of mutual interest.

**GOVERNOR’S OFFICE ON TRIBAL RELATIONS**

1700 W. Washington St., Suite 430

Phoenix, Arizona 85007

Phone: 602.542.4421

[www.gotr.azgovernor.gov](http://www.gotr.azgovernor.gov)



2012 Indian Nations and Tribes Legislative Day





## INTER TRIBAL COUNCIL OF ARIZONA, INC. (ITCA)

ITCA has carried out the goals identified by its member Tribes for over 35 years. In 1975, with the realization that “these challenges and opportunities require the force of united and concerted voice and action which one tribe alone does not possess”,<sup>97</sup> the Tribes established a private, non-profit corporation under the laws of the State of Arizona to promote Indian self-reliance through public policy development. Members work together on matters that affect them collectively and individually, to promote tribal sovereignty, and to strengthen tribal governments.

The members of ITCA are the highest elected tribal officials: tribal chairpersons, presidents, and governors. These representatives are in the best position to have a comprehensive view of the conditions and needs of the Indian communities they represent. Today, the membership includes 21 of the 22 tribal governments in Arizona; the Navajo Nation is not an ITCA member tribal government. As a group, the tribal leaders represent governments that have a shared historical experience. Consequently, the tribes have a common governmental status as well as similar relationships with federal and state governments. ITCA is governed by an Executive Board composed of First Vice President, Second Vice President, and Secretary/Treasurer.

The purpose of the organization is to provide the member tribes with the means for action on matters that affect them collectively and individually, to promote tribal sovereignty, and to strengthen tribal governments. ITCA provides an independent capacity to obtain, analyze, and disseminate information vital to Indian community self-development.

### WHAT IS ITCA'S MISSION?

**To provide it's member tribes with a united voice and the means for united action on matters that affect them collectively and individually, to promote tribal sovereignty and to strengthen tribal governments.**

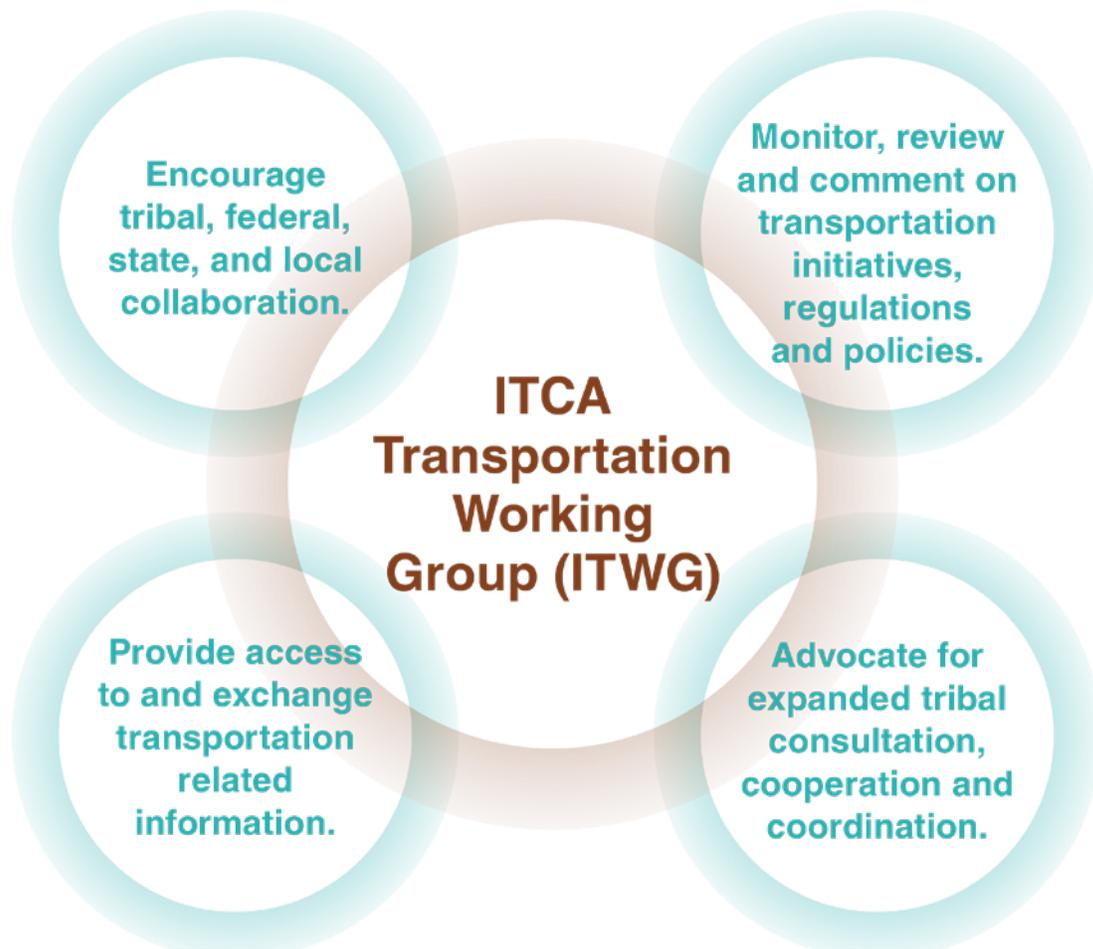
## ITCA Transportation Working Group (ITWG)

The purpose of the ITCA transportation program is to expand consultation, coordination and cooperation between the Tribes in Arizona, Nevada and Utah and the federal, state and local transportation agencies. The activities of this program are coordinated through the ITCA Transportation Working Group. ADOT has entered into a contract to support the ITWG, and provide additional support services.

The objectives of the program are to:

- Monitor, review and comment on transportation initiatives, regulations and policies.
- Advocate for expanded tribal consultation, cooperation and coordination.
- Provide access to and exchange transportation related information with tribal transportation representatives.
- Encourage tribal, federal, state and local collaboration and, as needed, involve elder, economic development, education, housing, law enforcement, cultural resources, environment, health, emergency response, court, and planning departments within the Tribes.
- Coordinate the ITCA Transportation Working Group (ITWG), ITWG Task Forces, Tribal Transportation Caucus and the Tribal Leaders' Transportation Working Group.

<sup>97</sup> Excerpt from the Articles of Incorporation of the Inter Tribal Council of Arizona, Inc. 1975. [www.itcaonline.com](http://www.itcaonline.com)



**INTER TRIBAL COUNCIL OF ARIZONA**

2214 North Central Avenue, Suite 100

Phoenix, Arizona 85004

Phone: (602) 258-4822

<https://itcaonline.com/>

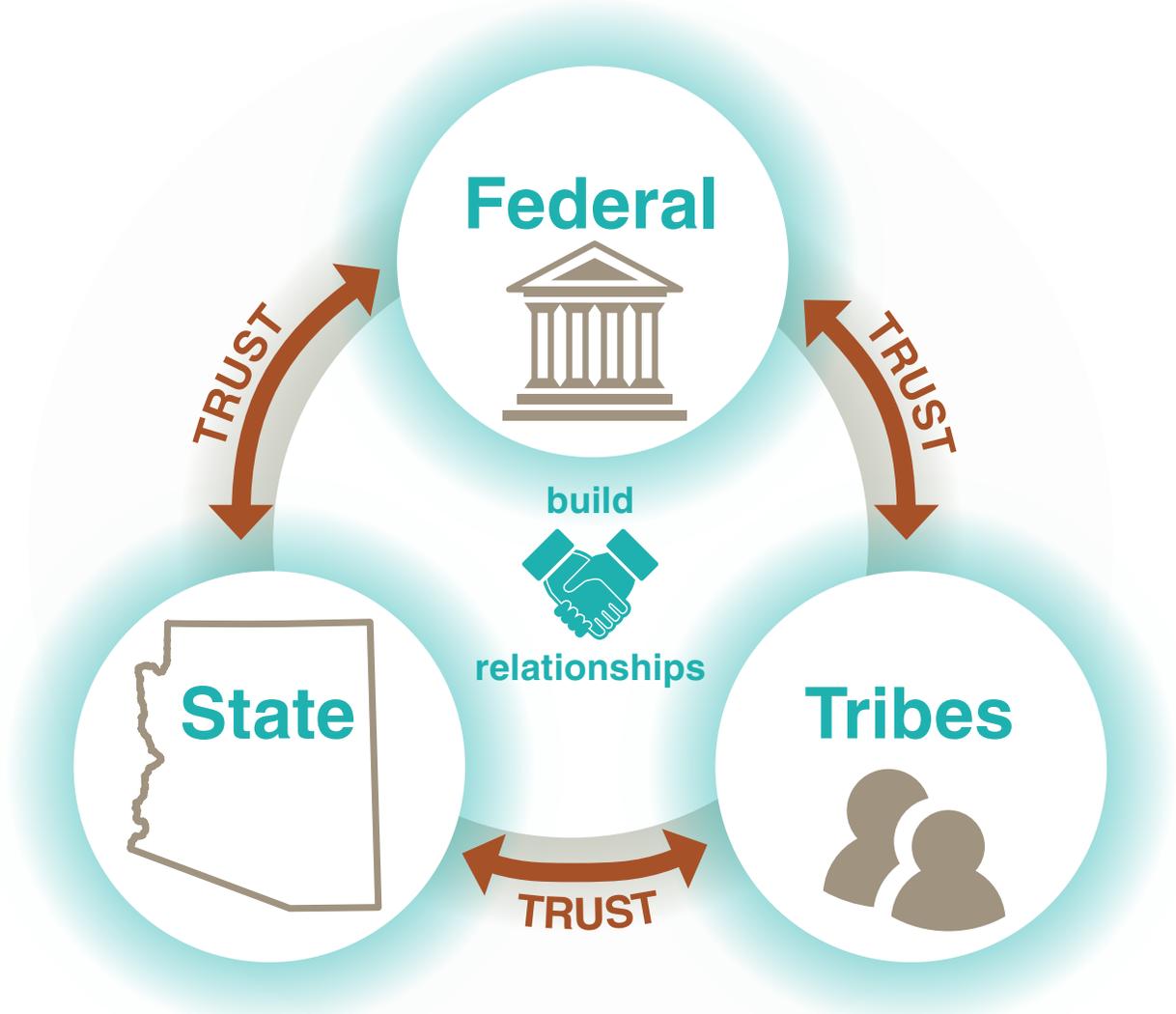


## FEDERAL-STATE-TRIBAL TRANSPORTATION PARTNERSHIPS

The concept of federal-state and tribal partnerships is to build trust and establish long term relationships, which is vitally important to assist in consultation and coordination.

In 2004, the Governor’s Tribal Summit on Transportation, resulted in the initiative to re-establish a transportation partnership process with the Navajo Nation. This then led to partnerships being established with three other tribes. Each partnership is structured to include a steering committee, which consists of

management level representatives from the partner agencies. The steering committee guides the partnership activities in accordance to the partnership mission, goals, and objectives. When an issue is identified that needs further research or additional partners and resources, task teams are formed. Task team members can consist of volunteers from the committee or temporary partnership members. The team will work on the issue and report back to the steering committee. The steering committee in turn reports back to the partnership as a whole at an Annual Partnership Meeting. The Annual meeting attendees include: tribal leaders, officials and partner directors, the steering committee and others.



There are now three Federal – State – Tribal Partnerships working in Arizona:

- Hopi Tribe/Hopi DOT/BIA/FHWA/ADOT/Coconino County/Navajo County/Navajo Nation/Navajo DOT/NACOG Partnership
- Navajo Nation/Navajo DOT/ADOT/BIA/FHWA/ Hopi Tribe/ Coconino County/Navajo County/ Apache County/NACOG Partnership
- San Carlos Apache Tribe/White Mountain Apache Tribe/San Carlos Apache DOT/White Mountain Apache DOT/State/Federal/Counties/ Railroad/ Private Organization/CAG/SEAGO Partnership

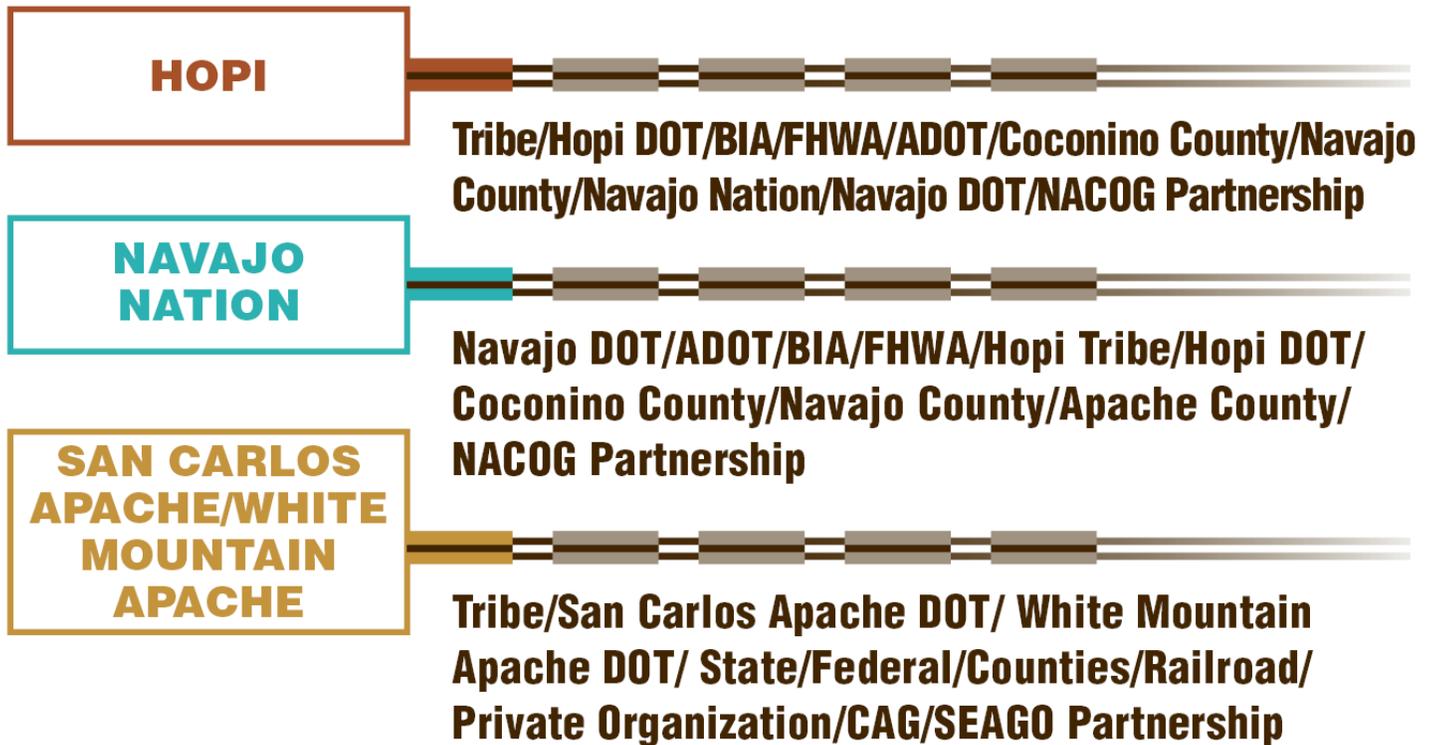
These partnerships provide significant opportunities for ADOT to earn the trust essential to establishing excellent long-term working relationships with the tribes involved. Each partnership has its own unique missions, goals, and objectives.

Information about the mission, partnership, tribal membership, charters, history, and meetings about these three partnership groups can be found on the following webpages:

- Hopi Tribe Transportation Partnership: <http://aztribaltransportation.org/htp/index.asp>
- Navajo Nation Transportation Partnership: <http://aztribaltransportation.org/nnp/index.asp>
- San Carlos Apache Tribe/White Mountain Apache Tribe Transportation Partnership: <http://aztribaltransportation.org/sca/index.asp>

An overview of the partnerships are provided at: <http://aztribaltransportation.org/tribal-partnerships.asp>

## CURRENT PARTNERSHIPS



## Partnership Missions

The following mission statements were developed for each of the partnerships. Note the use of words, such as team values, respect, open communication, cooperation, trust, strengthen working relationships, and collaboration that are crucial to an effective consultation process.

### HOPI TRIBE/HOPI DOT/BIA/FHWA/ADOT/COCONINO COUNTY/NAVAJO COUNTY/NAVAJO NATION/NAVAJO DOT/NACOG PARTNERSHIP (HOPI TRIBE TRANSPORTATION PARTNERSHIP)

**MISSION:** The Hopi Department of Transportation, along with our other partnership members, are committed to uphold our team values while working towards our transportation goals to improve our infrastructure and increase safety for our communities and the traveling public.

### NAVAJO NATION/NAVAJO DOT/ADOT/BIA/FHWA/HOPI TRIBE/COCONINO COUNTY/NAVAJO COUNTY/APACHE COUNTY/NACOG PARTNERSHIP (NAVAJO NATION TRANSPORTATION PARTNERSHIP)

**MISSION:** The mission of the Navajo Nation Partnership is to develop, foster and maintain good working relationships in order to construct, operate and maintain the most reliable, economical, efficient and effective transportation system for the safety of the traveling public. We commit to promoting a sustained opportunity and investment in the partnership effort through the pursuit of mutually beneficial goals in a spirit of respect, open communication, cooperation and trust.

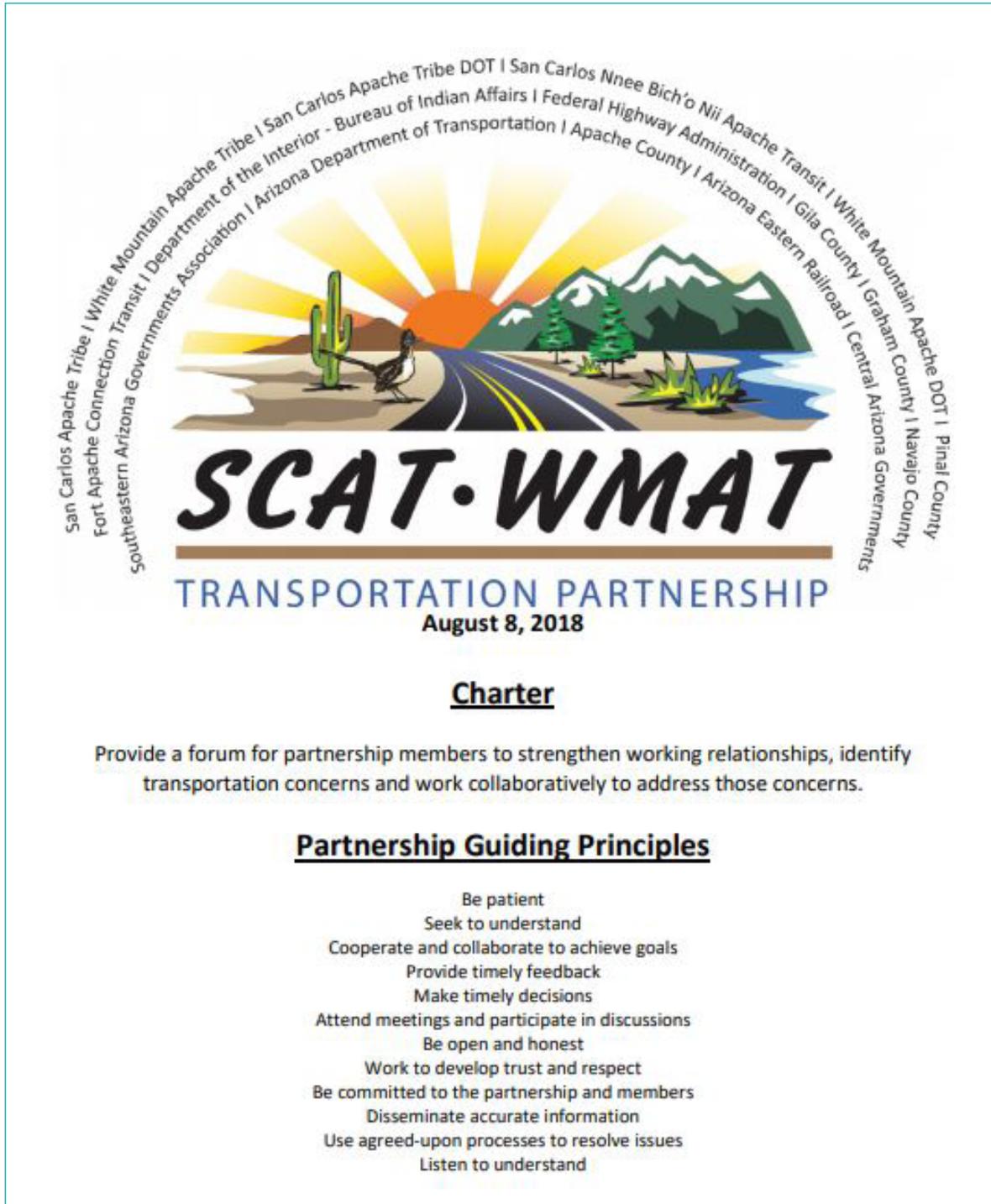
### SAN CARLOS APACHE TRIBE/WHITE MOUNTAIN APACHE TRIBE/SAN CARLOS APACHE DOT/WHITE MOUNTAIN APACHE DOT/STATE/FEDERAL/COUNTIES/RAILROAD/PRIVATE ORGANIZATION/CAG/SEAGO PARTNERSHIP (SCAT/WMAT TRANSPORTATION PARTNERSHIP)

**MISSION:** The mission of the SCAT/WMAT Transportation Partnership is to provide a forum for partnership members to strengthen working relationships, identify transportation concerns and work collaboratively to address those concerns.

## Partnership Charters

Each partnership develops a partnership charter to guide the group. The charters are unique to each partnership. The Hopi Tribe Transportation Partnership Charter describes the mission statement and steering committee values and goals. The Navajo Nation Transportation Partnership Charter describes the mission statement, standards of conduct, and objectives for the partnership. The SCAT/WMAT Transportation Partnership Charter describes the mission and partnership guiding principles.

Following is an image of the SCAT/WMAT Transportation Partnership Charter.



## Contact Information for ADOT Tribal Liaisons and Coordinators

- To assist with tribal consultation and coordination efforts, certain ADOT divisions, sections, groups, and offices have designated personnel to work directly with tribal officials and staff on a regular basis. These organizations are summarized in **Table 5-1**. Specific contacts for each of these organizations can be found at: <http://www.aztribaltransportation.org/contacts.asp>

**TABLE 5 – 1: ADOT TRIBAL LIASIONS AND COORDINATORS (MAY 2020)**

| TABLE 5-1 ADOT TRIBAL LIASIONS AND COORDINATORS                               |  |  |
|---|--|--|
| ORGANIZATION  | ADDRESS  | ORGANIZATION RESPONSIBILITY  |
| ADOT Multimodal Planning Division (MPD)                                       | ADOT Statewide Planning<br>206 S. 17th Ave.<br>Phoenix, AZ 85007<br>Phone: 602-712-7333  | ADOT MPD Tribal Planners, who also work as ADOT department-wide tribal liaisons, provide planning support and intergovernmental coordination for ADOT’s statewide and regional planning projects and programs as they impact tribal governments and communities. Special emphasis is placed on conducting coordination efforts to improve tribal participation in the statewide transportation planning and programming processes. |
| ADOT Infrastructure Delivery and Operations Division (IDO) Right of Way Group | ADOT Right of Way Group<br>205 S. 17th Ave MD 612E<br>Phoenix, AZ 85007<br>Phone: 602-712-7316                                   | The ADOT Right of Way Tribal Liaisons work with the tribal partnership steering committees plus associated task teams to address tribal transportation issues. As Right of Way Project Managers, they review project documents and plans and oversee acquisition of parcels needed by ADOT for highways throughout the state.  |
| ADOT Environmental Planning (EP)  | ADOT Environmental Planning Group, Central Office<br>1611 W. Jackson Street, MD EM02<br>Phoenix, AZ 85007<br>Phone: 602-712-7767 | The Technical Section Manager works with the Historic Preservation Team within the NEPA process. There is no one individual responsible for all tribal consultation; however, the Historic Preservation Coordinators are responsible for ensuring that all necessary Section 106-related tribal consultations take place and that the tribal consultation process is in full federal and state compliance.                         |
| ADOT Communications   | ADOT Communications<br>206 S. 17th Avenue, MD 140A<br>Phoenix, AZ 85007<br>Phone: 602-712-7070                                   | Staff from the ADOT Communications provides public relations and media relations throughout the state. This office also supports activities involving Native American Tribes.  |

**TABLE 5-1 ADOT TRIBAL LIASIONS AND COORDINATORS**

| ORGANIZATION  | ADDRESS  | ORGANIZATION RESPONSIBILITY   |
|---|--|---|
| ADOT Partnering Office                                  | ADOT Partnering Office<br>206 S. 17th Avenue, Room 171<br>Phoenix, Arizona 85007<br>Phone: 602-712-8069                            | The ADOT Partnering Office provides a forum for collaborative teamwork. ADOT currently has partnering teams with the Navajo Nation, Hopi Tribe, San Carlos Apache Tribe, and White Mountain Apache Tribe.   |
| ADOT Government Relations and Policy Development Office | ADOT Government Relations and Policy Development Office<br>206 S. 17th Avenue, MD 140A<br>Phoenix, AZ 85007<br>Phone: 602-712-7543 | The ADOT Government Relations and Policy Development Office provides a proactive and effective process through which ADOT communicates with and serves the state legislature, elected officials, and the people of Arizona. Governmental Relations assists with tribal related issues involving ADOT. |

Source: <http://www.aztribaltransportation.org/contacts.asp>

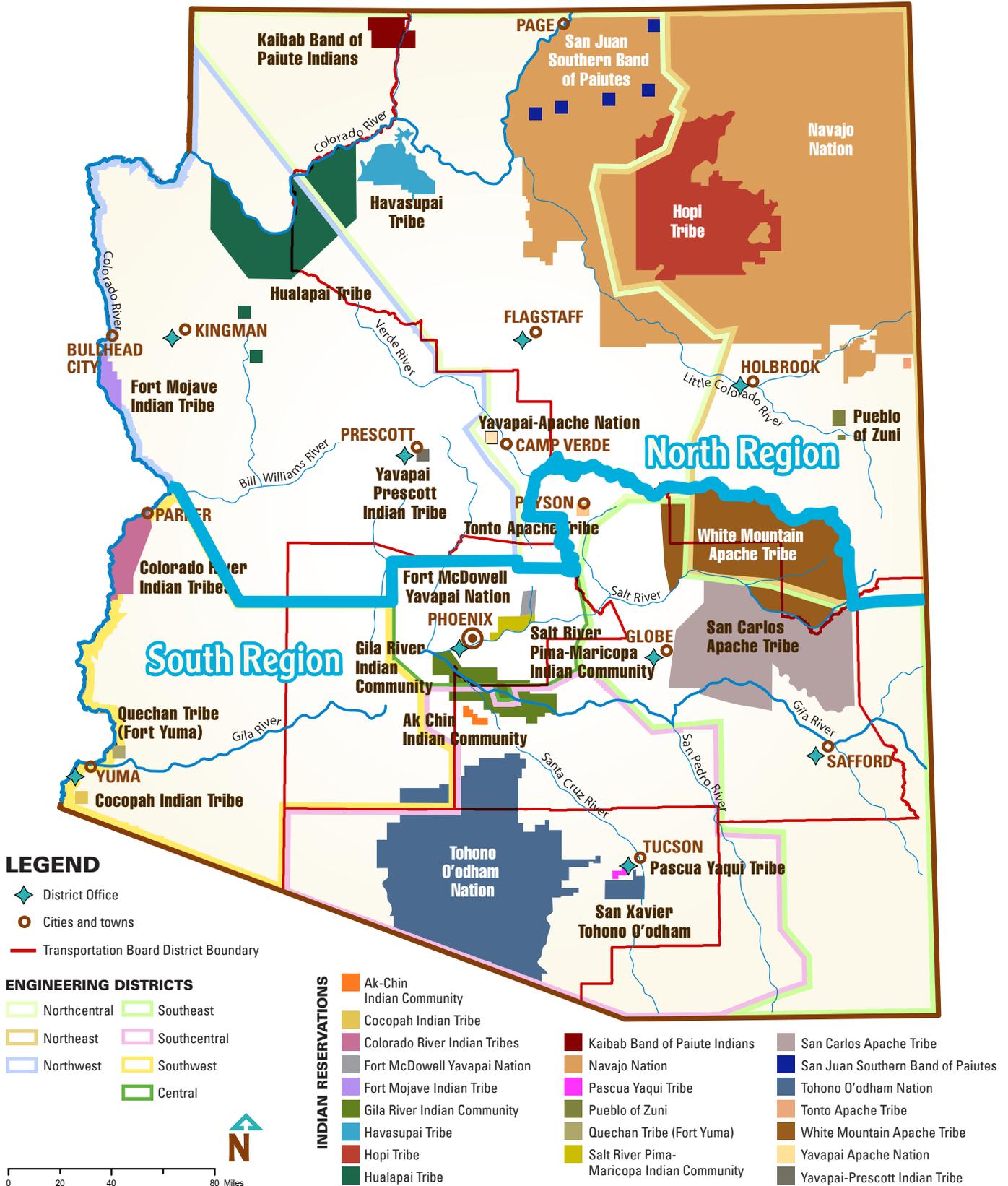
## ADOT DEPARTMENT-WIDE TRIBAL LIAISONS

ADOT employs two Tribal Liaisons within the Multimodal Planning Division that work in a department-wide capacity. Both liaisons conduct regional responsibilities to address tribal transportation policy and statewide issues as well as carry out consultation, coordination, and cooperation activities for transportation planning projects.

In order to better serve tribal communities in Arizona, the ADOT MPD Tribal Liaisons have organized tribal land areas within Arizona into regions of responsibility to provide improved coverage and service (see **Map 5-3**). The Liaisons also provide backup coordination assistance to one another, as needed.

Contact information for the ADOT Tribal Liaisons is provided in **Table 5-1** and on the ADOT Tribal Transportation website at <http://www.aztribaltransportation.org/contacts.asp>

MAP 5 – 3 AREAS OF RESPONSIBILITY FOR ADOT MPD TRIBAL LIAISONS



## ARIZONA TRIBAL TRANSPORTATION WEBSITE

ADOT has developed a comprehensive website entitled, Arizona Tribal Transportation at <http://www.aztribaltransportation.org/>

This website was developed to improve tribal relations through resource information sharing. It is designed to be a central location for Federal-State-Tribal transportation partnerships, projects, activities, groups, links, and other related information. Sections of the website include:

- **Home page** – provides an overview of tribal transportation considerations in Arizona and a map of tribal lands, an overview of tribal transportation consultation policies in Arizona, upcoming events, and grant opportunities.
- **Tribes in Arizona** – provides links to tribal websites for tribes in Arizona and for out-of-state tribes with ancestral/aboriginal land interests in Arizona. It includes a map of *American Indian Reservation Lands in Arizona* by ADOT District and a map of American Indian Reservation Lands in Arizona by COGs and MPOs.
- **Resources** – provides a wealth of information and links, grouped by Transportation Mode, Planning Resources, Topic, and Funding. There are links to several information portals, such as the American Indian Environmental Office (AIEO) Tribal Portal, Every Day Counts, Tribal Government Resources, ADOT Transportation Planning and Programming – Guidebook for Tribal Governments, ADOT Local Public Agency Projects Manual, and newsletters and magazines.
- **Training** - provides materials for this consultation online training, the ADOT Integrating Statewide and Tribal Transportation Planning Workshop Curriculum, and links to other training such as LTAP Training and Native American Sacred Sites Training.
- **Studies and Plans** – provides links to tribal transportation studies, research studies, and safety plans.
- **Stakeholders and Affiliates** – provides links to tribal transportation stakeholders and affiliates, such as:
  - Arizona Department of Transportation - Engineering District Offices
  - State Transportation Board
  - Governor’s Office on Tribal Relations
  - Tribal Transportation webpages on other state DOT websites, such as New Mexico, California, Florida, Minnesota, Pennsylvania, and Washington State
  - Arizona Counties
  - Arizona COGs/MPOs and Joint Planning Advisory Council
  - Inter Tribal Council of Arizona
  - Bureau of Indian Affairs
  - U.S Department of Transportation – FHWA, FHWA Arizona Division, USDOT Tribal Transportation
  - Federal Lands Highway
  - Federal Transit Administration
- **Policies and Statutes** - describes federal, state and tribal transportation related polices, statutes and regulations.
- **Tribal Partnerships** – provides separate web pages for each of the three Federal-State-Tribal Partnerships in Arizona, and includes information about each partnership mission, history, charter, members, and meetings.
- **Contacts** - provides contact information for ADOT Tribal Liaisons, and information about the regions of responsibility for each Liaison.





## Glossary

1. **GOVERNMENT-TO-GOVERNMENT RELATIONSHIP** – The relationship between sovereign governments that is predicated on fully considering the potential impacts of a proposed action by one government on the other government(s) rights and concerns. It requires open and candid consultation among the governments involved prior to implementing the proposed or alternative action.
2. **NATIVE AMERICAN** – American Indian or Alaska Native.
3. **SOVEREIGNTY** – The ability of a people to decide for themselves how they will live, operate and serve their people. They are a group of people with a common culture, language, history and common descent. Tribes pre-date the United States and their sovereignty is inherent and not delegated by the United States. They are characterized as domestically dependent nations, i.e. they cannot deal directly with foreign governments.
4. **TRIBAL RIGHTS EMPLOYMENT OFFICE OR ORDINANCE (TERO)** – TERO stands for Tribal Employment Rights Ordinance or Office. TERO Ordinances require that all employers who are engaged in operating a business on reservations give preference to qualified Indians in all aspects of employment, contracting and other business activities. TERO Offices were established and empowered to monitor and enforce the requirements of the tribal employment rights ordinance.
5. **TRIBAL CONSULTATION** – Officials of comparable governmental stature and authority conferring on a government-to-government basis in accordance with an established process and prior to taking actions on issues of mutual importance. It is conducted in an atmosphere of trust built through mutual respect and understanding and in consideration of the sovereignty, history, culture, protocols, and views of the parties involved. Consultation concludes with periodic follow-ups about actions taken.
6. **TRIBAL COORDINATION** – Working cooperatively and harmoniously with tribes and tribal staff to efficiently and effectively implement actions to achieve the objectives of the parties involved. Coordination is conducted in an atmosphere of trust built through mutual respect and understanding and in consideration of the sovereignty, history, culture, protocols, and views of the parties involved.
7. **TRIBES** – Tribal governments, including the governments of Native American bands, communities, nations, and tribes. Tribes may or may not be federally or state recognized.

## Reference Section

### TRIBAL CONSULTATION REFERENCES

1. ATR Institute, G.C. Migliaccio, G. Knoebel, R. Martinez, D. Albert, and J. Hurd. 2011. NCHRP Report 690, A Guidebook for Successful Communication, Cooperation, and Coordination Strategies Between Transportation Agencies and Tribal Communities. Washington, D.C.: Transportation Research Board of the National Academies. Website: <http://www.trb.org/Main/Blurbs/165473.aspx>
2. Hutt, S. and J Lavallee. 2005. Tribal Consultation, Best Practices In Historic Preservation. Washington D.C.: National Association of Tribal Historic Preservation Officers. Website: [http://www.nathpo.org/PDF/Tribal\\_Consultation.pdf](http://www.nathpo.org/PDF/Tribal_Consultation.pdf)
3. Jacobs Engineering. ADOT Transportation Planning and Programming Guidebook for Tribal Governments. Phoenix. Arizona Department of Transportation. [http://www.aztribaltransportation.org/PDF/Transportation\\_Planning\\_Programming\\_Gdbk\\_Tribal\\_Govts.pdf](http://www.aztribaltransportation.org/PDF/Transportation_Planning_Programming_Gdbk_Tribal_Govts.pdf).
4. Keown, L. D. 2010. Working in Indian Country. Austin, Texas. Hugo House Publishers, Ltd. Working in Indian Country website: <http://www.workinginindiancountry.com/>
5. U.S. Department of Transportation Tribal Consultation Plan. Website: <https://www.transportation.gov/regulations/tribal-consultation-plan>

### HISTORY AND CULTURE OF AMERICAN INDIANS AND ALASKA NATIVES

1. Indigenous Voices of the Colorado Plateau. Northern Arizona University. Website: [https://library.nau.edu/speccoll/exhibits/indigenous\\_voices/index.html](https://library.nau.edu/speccoll/exhibits/indigenous_voices/index.html)
2. Smithsonian Institution. 1979. Handbook of North American Indians, Southwest, volumes 9 and 10. Washington D.C., United States Government Printing Office.
3. Advisory Council on Historic Preservation Website: <https://www.achp.gov/news/newly-updated-online-tool-assists-involving-indian-tribes-early-section-106-historic>

### TRIBAL-FOCUSED ORGANIZATIONS

1. American Indian Policy Institute at Arizona State University. Website: <http://aipi.clas.asu.edu/>
2. Bureau of Indian Affairs (BIA). Website: <http://www.bia.gov>
3. Heard Museum – Website: <http://www.heard.org>
4. Inter Tribal Council of Arizona (ITCA). Website: <http://itcaonline.com>
5. Intertribal Transportation Association (ITA). Website: <http://www.tribaltransportation.org/>
6. National Congress of American Indians (NCAI). Website: <http://www.ncai.org/>
7. Local Technical Assistance Program (AZLTAP). Website: <https://www.azltap.org/>

## METROPOLITAN PLANNING ORGANIZATIONS AND COUNCILS OF GOVERNMENTS WEBSITES

1. Central Arizona Governments (CAG) website: <http://www.cagaz.org>
2. Central Yavapai Metropolitan Planning Organization (CYMPO), website: <http://http://www.cympo.org/>
3. MetroPlan, MPO for Greater Flagstaff Region, website: <https://www.metroplanflg.org/>
4. Lake Havasu Metropolitan Planning Organization (LHMPO), website: <http://www.lhmipo.org/>
5. Maricopa Association of Governments (MAG), website: <http://www.azmag.gov/>
6. Northern Arizona Council of Governments (NACOG), website: <http://www.nacog.org/>
7. Pima Association of Governments (PAG), website: <http://www.pagnet.org/>
8. Sierra Vista Metropolitan Planning Organization (SVMPO), website: <https://www.svmipo.org>
9. Southeastern Arizona Association of Governments (SEAGO), website: <http://www.seago.org/>
10. Sun Corridor Metropolitan Planning Organization (SCMPO), website: <http://scmpo.org/>
11. Western Arizona Council of Governments (WACOG), website: <http://www.wacog.com/>
12. Yuma Metropolitan Planning Organization (YMPO), website: <http://ympo.org/>

## MANUALS/GUIDEBOOKS

1. Wilson & Company, et.al. *ADOT, MPO, and COG Guidelines and Procedures Manual*, Website: <https://azdot.gov/planning/transportation-planning/tma-mpo-and-cog/adot-mpo-and-cog-guidelines-and-procedures-manual>
2. Arizona Department of Transportation, Environmental Planning, Cultural Resources and Historic Preservation Team Portal, <https://azdot.gov/business/environmental-planning/cultural-resources>
3. Arizona Department of Transportation, Arizona Tribal Transportation, Tribal Transportation Planning Workshop Package, <http://www.aztribaltransportation.org/training.asp>
4. Arizona State Historic Preservation Office, and Salt River Pima - Maricopa Indian Community, Government to Government Consultation Toolkit, <https://sites.google.com/view/az-consultation-toolkit/home>
5. *Jacobs. ADOT Transportation Planning and Programming Guidebook for Tribal Governments*. Arizona Department of Transportation. January 2012. Website: [http://www.aztribaltransportation.org/PDF/Transportation\\_Planning\\_Programming\\_Gdbk\\_Tribal\\_Govts.pdf](http://www.aztribaltransportation.org/PDF/Transportation_Planning_Programming_Gdbk_Tribal_Govts.pdf)
6. Newton, N.J., R. Anderson, et.al. 2005. *Cohen's Handbook on Federal Indian Law*. LexisNexis.
7. United States Census Bureau. 2019. *Understanding and Using American Community Survey Data, What Users of Data for American Indians and Alaska Natives Need to Know*. Washington D.C., United States Department of Commerce. Website: <https://www.census.gov/programs-surveys/acs/guidance/handbooks/aian.html>
8. Handbook for Tribes: [http://www.aztribaltransportation.com/PDF/Transportation\\_Planning\\_Programming\\_Gdbk\\_Tribal\\_Govts.pdf](http://www.aztribaltransportation.com/PDF/Transportation_Planning_Programming_Gdbk_Tribal_Govts.pdf)

## POLICIES

1. ADOT tribal consultation policy, website: <http://www.aztribaltransportation.org/PDF/ADOT-MGT-16-01-Tribal-Consultation.pdf>
2. Arizona Governor's Executive Order 2006-14, Tribal Consultation and Cooperation Policy, website: <https://azmemory.azlibrary.gov/digital/collection/execorders/id/2300/rec/9>
3. Arizona Revised Statute 41-2051, Governor's office on tribal relations; director; responsibilities of state agencies; report, website <https://www.azleg.gov/ars/41/02051.htm>
4. Presidential Executive Order 13175, Consultation and coordination with Indian tribal governments, website: <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>
5. United States Department of Transportation Order DOT 5301.1, Order on government-to-government consultation, website: <https://www.transportation.gov/individuals/foia/dot-order-53011-american-indiansalaska-nativestribes>

## LAWS AND REGULATIONS

1. Arizona Revised Statutes. Website: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>
2. Arizona State Legislature. *Arizona Constitution*. Website: [azleg.gov/constitution/](http://azleg.gov/constitution/)
3. Cornell University Law School, Legal Information Institute. *United States Code: Title 23 – Highways*. Website: <http://www.law.cornell.edu/uscode/text/23>
4. Cornell University Law School, Legal Information Institute. *Code of Federal Regulations: Title 23 – Highways*. Website: <http://www.law.cornell.edu/cfr/text/23>
5. Cornell University Law School, Legal Information Institute. *United States Code: Title 25 – Indians*. Website: <http://www.law.cornell.edu/uscode/text/25>
6. Cornell University Law School, Legal Information Institute. *Code of Federal Regulations: Title 25 – Indians*. Website: <http://www.law.cornell.edu/cfr/text/25>
7. Cornell University Law School, Legal Information Institute. *United States Constitution*. Website: <http://www.law.cornell.edu/constitution/>

## INFORMATION LINKS TO TRIBES IN ARIZONA

1. Ak-Chin Indian Community – <http://www.ak-chin.nsn.us/>
2. Cocopah Indian Tribe – <http://www.cocopah.com/>
3. Colorado River Indian Tribes – <http://www.crit-nsn.gov/>
4. Fort McDowell Yavapai Nation – <http://www.ftmcdowell.org>
5. Fort Mojave Indian Tribe – <http://mojaveindiantribe.com/>
6. Gila River Indian Community – <http://www.gilariver.org/>
7. Havasupai Tribe – <http://theofficialhavasupaitribe.com/>
8. Hopi Tribe – <http://www.hopi-nsn.gov>
9. Hualapai Tribe – <http://hualapai-nsn.gov/>
10. Kaibab Band of Paiute Indians – <http://kaibabpaiute-nsn.gov/>
11. Navajo Nation – <http://www.navajo-nsn.gov/> or <http://www.navajodot.org/>
12. Pascua Yaqui Tribe – <http://pascuayaqui-nsn.gov/>
13. Pueblo of Zuni – <http://www.ashiwi.org/>
14. Quechan Tribe – <https://www.quechantribe.com>
15. Salt River Pima-Maricopa Indian Community – <https://www.srpmic-nsn.gov>
16. San Carlos Apache Tribe – <https://itcaonline.com/member-tribes/san-carlos-apache-tribe/> (not an official SCAT website)
17. San Juan Southern Band of Paiutes – <https://www.sanjuanpaiute-nsn.gov/>

18. Tohono O’odham Nation – <http://www.tonation-nsn.gov/>
19. Tonto Apache Tribe – <https://itcaonline.com/member-tribes/tonto-apache-tribe/> (Not an official Tonto Apache Tribe website)
20. White Mountain Apache Tribe – <http://whitemountainapache.org/>
21. Yavapai-Apache Nation – <http://www.yavapai-apache.org/>
22. Yavapai-Prescott Indian Tribe – <http://www.ypit.com>

## OTHER HELPFUL MATERIALS

1. American Association of State Highway and Transportation Officials website on tribal consultation: [http://environment.transportation.org/environmental\\_issues/tribal\\_consultation/recent\\_dev.aspx](http://environment.transportation.org/environmental_issues/tribal_consultation/recent_dev.aspx)
2. Arizona Airport Association (AzAA) website: <http://www.azairports.org>
3. Arizona Department of Transportation, Tribal website: <http://www.aztribaltransportation.org/>
4. Arizona State University Libraries. *Labriola National American Indian Data Center*. Website: <https://lib.asu.edu/labriola>
5. Colorado State University Libraries. *Native American Resources*. Website: <https://libguides.colostate.edu/nativeamerican>
6. Danelowitz, E.S. and C.Videon. *Native American Resource Sites for Online Research*. Association of College and Research Libraries. Website: <https://crln.acrl.org/index.php/crlnews/article/view/8424/8636>
7. Federal Highway Administration, Office of Tribal Transportation website: <https://flh.fhwa.dot.gov/programs/ttp/>
8. National Archives. *Native American Heritage*. Website: <https://www.archives.gov/research/native-americans>
9. Southwest Chapter of American Association of Airport Executives (SWAAAE) website: <https://www.swaaae.org/>
10. Arizona State Historic Preservation Office (SHPO) and Salt River Pima-Maricopa Indian Community, Government to Government Consultation Toolkit, website: <https://sites.google.com/view/az-consultation-toolkit/home>

## ADOT WEBSITES REFERENCED IN THIS HANDBOOK (VALID JANUARY 2020)

1. Airport Development: <http://azdot.gov/planning/airportdevelopment>
2. Bicycle and Pedestrian Maps and Information: [www.azbikeped.org](http://www.azbikeped.org)
3. Environmental Services and Planning: <https://azdot.gov/business/environmental-planning>
4. Local Public Agency Section:  
<https://azdot.gov/business/programs-and-partnerships/local-public-agency/contact-local-public-agency>
5. Right of Way Group:  
<https://azdot.gov/business/right-way-properties/project-management-right-way-properties>
6. State Transportation Board Policies:  
<http://www.aztransportationboard.gov/downloads/Board-Policies-Map.pdf>
7. Transit Programs and Grants:  
<http://azdot.gov/planning/TransitProgramsandGrants>
8. Transportation Programming and Transportation Planning:  
<http://www.azdot.gov/planning/transportation-programming> <http://azdot.gov/planning/transportation-planning>
9. Utilities and Railroad Engineering Section:  
<http://azdot.gov/business/engineering-and-construction/utility-and-railroad-engineering>

THIS PAGE WAS INTENTIONALLY LEFT BLANK