

Native American Trust Land Transfers in Minnesota

by *Laura J. Smith*

Most Native American Indian reservations in Minnesota are geographically isolated from major urban centers, and this has resulted in the historic relocation of large numbers of tribal members to the Twin Cities metropolitan area (Figure 1) for employment opportunities. Most Minnesota reservations are also faced with extremely high poverty rates among residents. The percentage of the population in poverty statewide in the year 2000 was 7.7%, but most reservations experienced poverty levels at least double that rate. The Red Lake and Upper Sioux reservations experienced poverty rates around 40%, whereas the Lower Sioux experienced the lowest poverty rate (9%) of all Minnesota reservations. The lack of an internal tax base makes it difficult for Minnesota tribes to

invest in badly needed economic development ventures on their lands.

In some cases, reestablishment of a tribal land base is necessary before economic development is even possible. Native American tribes may reacquire reservation lands that fell out of tribal ownership in the past or tribes may attempt to acquire new lands outside of reservation areas, possibly in more advantageous locations for development (e.g., urban areas). In either situation, tribes may apply to place these lands in trust with the federal government, which produces a range of political and economic consequences for both the tribes and for state and local governments.

This study, which was supported in part by a John R. Borchert Fellowship from CURA, investigates the influence

of government policy on the spatial distribution of Native American trust lands in the state of Minnesota, as well as the economic impacts of trust transfers based on location. This article discusses the ongoing conflict between tribes and state and local governments over trust land transfers and outlines the current policy process for placing lands in trust. The spatial pattern of recent trust transfers is examined and two new trends are identified that will likely impact future locations of trust transfers in Minnesota.

Native American Land Tenure in Minnesota

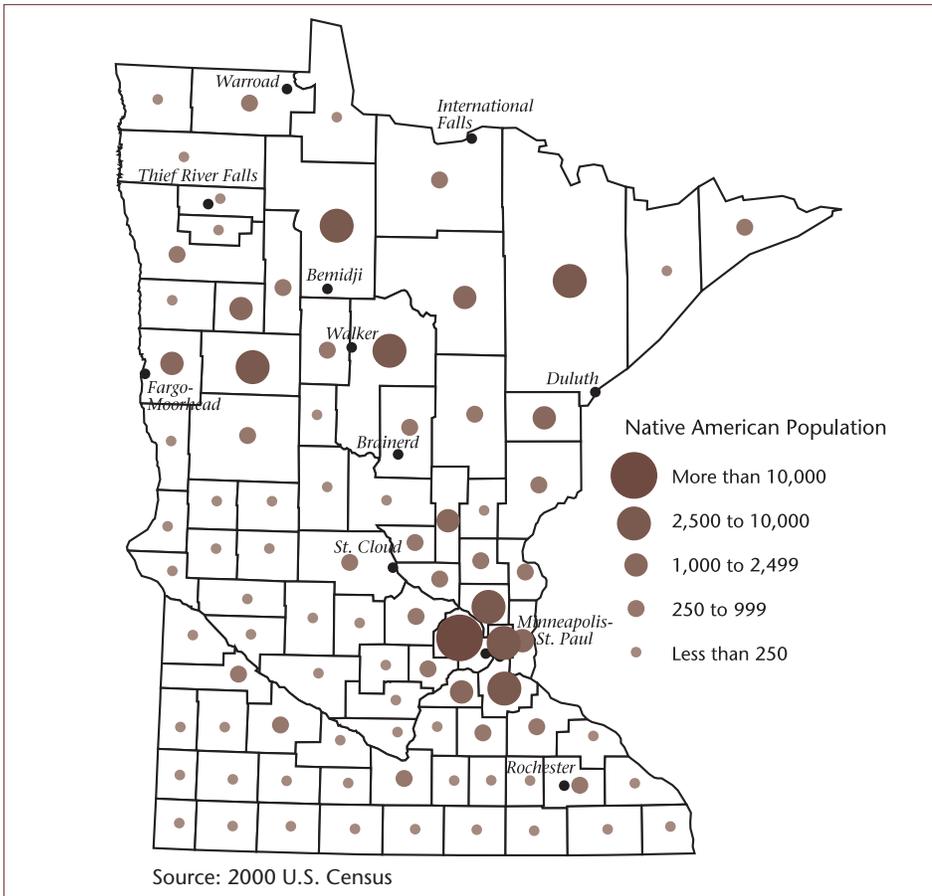
Federal policy on Native American land ownership has shifted greatly over time. Through the mid-1800s, the federal government promoted a policy



Photo by Laura J. Smith

The Shakopee Mdewakanton Dakota Community Center in Shakopee

Figure 1. Native American Population in Minnesota, 2000



of separation of the Native American population, removing Native Americans to reservations through treaties, statutes, or executive orders. Extremely poor economic conditions on these reservations, coupled with a push by White settlers and businesses to open more land to settlement, led to passage of the General Allotment Act (Dawes Act) in 1887 and a transition to a new policy era of assimilation. Supporters believed that if individual Native Americans were given ownership of individual parcels of land, they would become assimilated into mainstream U.S. culture as landowners and farmers and would enjoy improved economic status.

Implementation of the Dawes Act had a major impact on tribal land holdings across the nation, including most reservations in the state of Minnesota. After an allotment of 160 acres was made to each family head, the remaining “surplus” reservation lands were made available to the public, and much reservation land was sold to non-Native Americans.

The Dawes Act also introduced the concept of a *trust* period during which the sale of allotted lands was restricted.

This feature was included to protect Native American allottees from immediate state taxation of their lands, and to give them time to adjust to the responsibilities of land ownership and management. After a trust period of 25 years, the federal government would convey title to the individual Native American owner (in *fee* status), at which time the land could be freely sold and was made subject to state property taxation. However, the 25-year trust period was shortened in many cases because of legislation that made it possible for a Native American allottee to sell his land if he was found “competent” to do so.

The allotment era resulted in a significant reduction in the amount of Native American-owned reservation lands. Lands were lost through both the opening of so-called surplus lands for sale as well as by the loss of allotted lands through sale and tax forfeiture. Of nearly 140 million acres of tribal land-holdings at the time of the act’s passage, only 48 million acres remained in Native American ownership by 1934. In Minnesota, less than 10% of the land on the White Earth reservation remained in Native American ownership.

By the 1930s, the general consensus was that the allotment system and the corresponding direction of federal Native American policy were a great failure. The 1928 Meriam Report, titled *The Problem of Indian Administration*, outlined the drastic loss of land resulting from the Dawes Act and the failure of allotment policies to promote Native American economic development and assimilation. The report called for sweeping reforms in federal Native American policy, many of which were implemented in the Indian Reorganization Act (IRA) of 1934, which signaled the beginning of a new federal Native American policy period focused on promoting tribal autonomy.

To help remedy the erosion of the tribal land base, the IRA ended the practice of allotment, restored any remaining “surplus” lands to tribal ownership, and extended indefinitely the trust period for lands still held in trust. The act was successful in stemming the rapid loss of lands from Native American ownership, and even provided for the expansion of Native American land holdings. The act authorized the secretary of the interior “in his discretion, to acquire . . . any interest in lands . . . within or without existing reservations . . . for the purpose of providing land for Indians.”

Today, Native American tribes in Minnesota and across the country may hold land in different forms, which determine federal, state, and local jurisdictional and regulatory powers in those areas. Tribal jurisdiction applies, and state powers are restricted, within the limits of Native American reservations (Figure 2). Not all lands within reservation boundaries are Native American-owned, however, due to a variety of incursions on Native American title such as allotment. For example, on the Bois Forte reservation in northern Minnesota, 41% of the land is Native American-owned trust land, whereas the other 59% is held privately by the state or county (16%), corporate timber companies (41%), or individuals (2%).

Tribal trust lands make up the largest category of Native American land. These lands are held communally by the tribe, which cannot sell the land without consent of the federal government. The federal government holds title to the land and is responsible for distributing income and interest earned from the land (e.g., royalties from timber or mining leases) to the tribe. A significant amount of allotted Native American

land also remains in trust; the federal government is again responsible for distributing beneficial interest, in this case to the individual owners.

Trust lands may be located inside or outside reservation boundaries, which is a major reason that the approval of new trust lands can trigger conflict. Table 1 shows all possibilities for the placement of newly acquired lands in trust. A tribe may acquire land at any time and apply to the Bureau of Indian Affairs (BIA) and the secretary of the interior to place it in trust status. If the land is located outside reservation boundaries, the application must meet more stringent criteria than if the land is located within a reservation. Individual Native Americans may still apply to place lands in trust, but only when the land is located within or adjacent to a reservation; individuals may not place nonadjacent off-reservation lands into trust.

Conflict over Native American Trust Lands

Because the Constitution vests authority over Native American affairs in the federal government, the regulatory powers of state and local governments are restricted on "Indian land," whether this is reservation land or off-reservation trust land. For example, laws such as zoning, land-use ordinances, or gaming regulations do not apply. The taxation powers of state and local governments are severely limited as well. Both tribal and individual trust lands are exempt from property taxation, although fee lands owned by a tribe or individual Native American are generally taxable, regardless of location (Table 2).

The authority of the State of Minnesota to levy taxes on Native American-owned fee land located within reservation boundaries was only recently clarified by the U.S. Supreme Court in 1998 in a case involving Cass County and the Leech Lake Band of Chippewa. Before this, the state generally treated all Native American-owned lands on reservations as exempt from taxation. Now, Minnesota tribes that reacquire lands in fee on their reservation must place them in trust to exempt them from property taxation.

Aside from the obvious advantage of exemption from property taxation, putting land in trust is not only an issue of economics for tribes but also one of self-determination and tribal control. Because trust lands cannot be sold without federal government approval, tribes often argue that placing lands in

Figure 2. Location of Native American Reservations, Trust Land, and Casinos in Minnesota

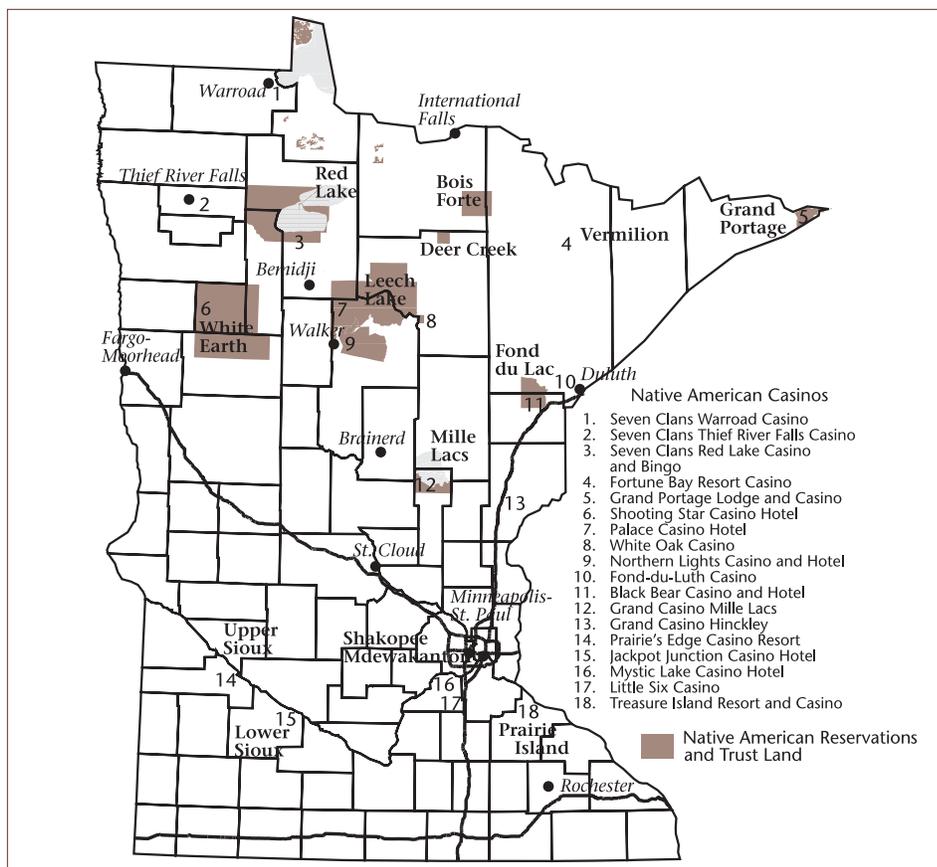


Table 1. Types of Native American Trust Land Acquisitions

Location of property	Original type of ownership	Land purchaser	Placement in trust possible?
On-reservation	Fee	Tribe or individual*	Yes
	Trust	Tribe or individual	Yes
Off-reservation	Fee	Tribe	Yes
	Fee	Individual	No [†]
	Trust	Tribe or individual	Yes

Source: "Land Acquisitions," *Code of Federal Regulations*, volume 25, parts 151.3 and 151.8 (2003).

*If a tribe or individual Native American purchases land on a reservation other than the tribe's own, it may place such land in trust status only with written consent of the tribe having jurisdiction over the reservation.

[†]Unless the land is located adjacent to a reservation.

trust will help restore and maintain their land base and will provide more opportunity for tribal members to return to live on reservations. According to the 2000 U.S. Census, only 23% of Minnesota's Native American population lives on reservations, whereas 22% live in Hennepin County and another 10% in Ramsey County.

Many tribes—such as the White Earth, Bois Forte, and Leech Lake Band of Chippewa in the northern part of the state—have made reacquisition of non-Native American-owned lands within

their reservations a high priority. On the White Earth reservation, the mission of the private nonprofit organization White Earth Land Recovery Project is "to facilitate recovery of the original land base of the White Earth Indian Reservation" to "create a wider sustainable, traditional harvest-based economic foundation" for the community. The Leech Lake Tribal Council budgets money for land acquisitions from the tribe's gaming revenues earned from three tribal casinos located around the reservation (Northern Lights located

Table 2. State Real Property Taxation Authority*

Property owner	Land status	Location of property	Taxation authority?
Tribe	Fee	On-reservation	Yes
		Off-reservation	Yes
	Trust	On-reservation	No
		Off-reservation	No
Individual Native American	Fee	On-reservation	Yes
		Off-reservation	Yes
	Trust	On-reservation	No
		Off-reservation	No
Non-Native American [†]	Fee	On-reservation	Yes
		Off-reservation	Yes

*This refers to the power of either the state or its political subdivisions to impose property tax. In Minnesota, state property tax applies only to certain land uses (commercial-industrial, public utility, and seasonal-recreational).

[†]Non-Native Americans may *lease* trust lands (tribal or individual) with approval of the secretary of the interior. On 56 million acres of Native American land held in trust nationwide, more than 100,000 agricultural, mineral, and other leases exist, covering about 15 million acres. States may levy taxes upon improvements, output, and assets of non-Native American lessees; however, the state may not tax the land itself.

south of Walker, Palace Casino in Cass Lake, and the recently opened White Oak Casino in Deer River). Placing newly acquired lands in trust ensures that the lands are under tribal jurisdiction and control for land-use activities and are exempted from property taxation. However, as stated in the May 2001 issue of the tribal newspaper *DeBahjiMon*, rebuilding the trust land base of the reservation is one of the tribe’s “most challenging and arduous tasks” because of objections to fee-to-trust transfers by state and local government entities.

Across the country, such transfers have spurred everything from statements of protest to legislative proposals and litigation. In Minnesota, there has been frequent vocal opposition from county governments to the placement of land in trust by tribes. County and local governments may resent the loss of control over lands within their jurisdictions or may be protective of their powers against federal and tribal encroachment. They also may be concerned about increasing demand for services such as fire and police protection, and for infrastructure such as roads and traffic signals, when trust lands are developed, especially if plans include casino-related development. Problems in dealing with rapidly increasing demand for services may be amplified in rural communities that do

not have the ability to easily handle such fluctuations.

Finally, the most contentious impact on counties is the exemption of the lands from property taxation. In some cases, tribes have negotiated payments to local governments in lieu of taxes to help cover the cost of services and infrastructure (as in the case of the Red Lake tribe’s development of a casino near Thief River Falls). However, relationships between tribes and local governments can easily become strained by economic issues or by perceptions of economic disparity. Representative of public perception of trust land transfers in the state is the title of a Minneapolis–St. Paul *Star Tribune* graphic from August 28, 1995—“Indians gain land; counties lose money”—which accompanied an article titled, “Indian Property Trusts Irk Counties.”

Transferring Lands to Trust

As stated earlier, the Indian Reorganization Act authorizes the secretary of the interior to accept transfers of land in trust for Native American tribes (and individuals) “for the purpose of providing land for Indians.” The act itself does not provide any standards for when such transfers should be approved (which has proven controversial), but Bureau of Indian Affairs agency regulations require an application be made by the tribe addressing certain criteria,

including justification of the need for land to be placed in trust, intended use of the land, and potential impacts on state and local governments in areas such as tax revenue, jurisdiction, provision of service, and land-use compatibility.

Application criteria vary according to the geographic location of the proposed transfer, specifically whether the land is located on-reservation or off-reservation. There is a presumption in favor of applications for on-reservation lands because they help tribes reestablish jurisdiction over land within their own reservations. Federal regulations specify that lands located *away* from reservations may be placed in trust when the secretary of the interior determines that such a transfer will facilitate “tribal self-determination, economic development, or Indian housing.” Applications for such off-reservation transfers are subject to more demanding criteria, including the anticipated economic benefits associated with the proposed tribal development. As the distance between the tribe’s reservation and the proposed trust land increases (especially toward or into urbanized areas), the BIA gives greater scrutiny to the tribe’s plan and greater weight to the concerns of state and local governments. For both on- and off-reservation applications, concerned state and local governments have a 30-day period during which to provide written comment.

There are even more specific application criteria for lands that are proposed for gaming development. In addition to the IRA, such applications are also governed by the Indian Gaming Regulatory Act. Gaming is prohibited on lands acquired after passage of the act in 1988 unless an exception can be met. The most complicated and controversial of these exceptions provides tribes with an opportunity to establish gaming in any location (even off-reservation) if they have the support of the state’s governor. This has been a rare occurrence; according to the General Accounting Office, only two applications have been approved under this provision (one in Milwaukee in 1990 and one in a suburb of Spokane, Washington, in 1998) and three others are currently pending. In 2001, the St. Croix Chippewa of Wisconsin attempted to use this provision to develop an off-reservation casino in Hudson (30 miles east of St. Paul), but they were not able to secure the support of then-governor Scott McCallum.

Recent Trust Transfers

Before the explosion in popularity of

Native American gaming in the 1990s, many tribes had limited funds with which to acquire land, so land transfers into trust were limited as well. However, with the great success of some Native American casinos (especially those with advantageous locations near urban centers), many tribes have stepped up efforts to buy back reservation lands that had fallen out of tribal ownership, and in some cases to expand Native American ownership and development beyond the reservation (relatively rare in the state of Minnesota).

There has been substantial fear of and resistance to this possibility of off-reservation expansion. During the litigation of *Cass County v. Leech Lake Band of Chippewa Indians* (524 U.S. 103), U.S. Supreme Court Justice Stephen Breyer asked the question: “What would prevent an Indian tribe from buying five acres of downtown Minneapolis and setting up some hotels . . . and casinos and saying, ‘We are exempt from taxation?’” In 1997, Senator Joseph Lieberman of Connecticut introduced an unsuccessful bill to prohibit “economically self-sufficient” tribes from placing off-reservation lands in trust if they were to be used for commercial purposes (including gaming). Lieberman’s state is home to the most successful Native American casino in the nation (Foxwoods Resort and Casino), and the Mashantucket Pequot tribe has recently purchased other lands around the casino property. It is not surprising that the bill’s cosponsor was Senator Rod Grams of Minnesota. Mystic Lake Casino in Shakopee is so successful, and tribal membership in the Shakopee Mdewakanton Dakota community so small (around 300), that per-capita dividends from casino profits have been reported to be \$1 million per member per year. The Shakopee community has the resources to purchase additional lands and they have faced obstacles to placing these lands in trust, as will be discussed in the next section.

Native American trust land transfers tend to be more controversial when they are proposed in off-reservation areas, but on-reservation transfers can face significant opposition as well. Although the Shooting Star Casino is located within the White Earth reservation, it was built on fee land along Minnesota Highway 59 south of Mahnomen that was purchased by the tribe but not placed in trust. In the future, if an application by the White

Table 3. Acreage and Total Market Value of Native American Land Transfers by County, 1992–1998

County	Acres transferred	Total market value of land
Aitkin	80	\$26,700
Becker	4,112	\$434,500
Beltrami	166	\$40,600
Carlton	229	\$145,000
Cass	731	\$3,539,900
Clearwater	152	\$74,600
Cook	660	\$1,253,800
Goodhue	99	\$29,600
Koochiching	72	\$3,900
Mahnomen	1,633	\$635,600
Mille Lacs	245	\$572,200
Redwood	40	\$76,000
St. Louis	114	\$18,200
Scott	170	\$235,800
Yellow Medicine	437	\$385,200

Earth band to place the land in trust is approved, it would remove a substantial source of property tax dollars for Mahnomen County (about 17% of the county’s levy).

Finally, in some cases, tribes may prefer *not* to place newly acquired lands in trust because of the restrictions on selling such property. The Red Lake Band of Chippewa runs Lake of the Woods Casino in Warroad, Minnesota, on fee land that was purchased by the tribe and placed in trust. (Native American gaming is allowed only on reservation or trust land, not on Native American-owned fee land.) The tribe has purchased other commercial properties in Roseau county and built a restaurant in Warroad; these properties remain in fee status because the tribe wants the option to sell these properties without the restrictions associated with trust lands.

Unfortunately, there is no central or comprehensive source for data on the location or number of recent trust transfers in Minnesota. The BIA’s Land Titles and Records Office maintains records on trust transfers (and other land title and ownership data) but does not have an adequate staff or budget to keep records current, and the system does not distinguish between on-reservation and off-reservation locations. Other complications are the ongoing problems

in the BIA concerning current and historical mismanagement of Native American trust accounts, attempted reformation of the trust accounting system (including automation of land title records), and the lawsuit brought against the agency on behalf of individual Native American trust beneficiaries, which resulted in a court-ordered shutdown of all BIA Internet services after December 2001 due to security concerns.

Information on total amounts of trust land by county, or recent transfers of land into trust, varies by data source, even within the BIA. In 1998, the Research Department of the Minnesota House of Representatives completed a survey of county assessors to gather information on trust transfers from 1992 through 1998. Although all 87 counties in the state did not respond, these data represent the most reliable assessment of recent trust transfers in Minnesota.

Trust transfers from 1992 to 1998 totaled about 9,000 acres, with transfers occurring in 15 counties. Table 3 lists acreage transferred by county. Acreage totals include both on-reservation and off-reservation transfers, although the vast majority of transfers were of lands located within reservations. The largest total acreage transferred (4,112 acres) was in Becker County in areas of the White Earth reservation. There is a clear

correlation between trust transfers and counties with reservations.

Much of the land purchased by tribes in Minnesota is undeveloped and without great value in relation to the total property wealth of the respective counties in which the land is located. However, in more rural areas of the state, Native American development (especially gaming operations) may make up a substantial portion of a relatively low total property tax base, as noted earlier in the example of Mahnomon County. The total market value of the trust transfers from 1992 to 1998 was about \$7.5 million, which does not include a substantial amount of transferred acreage that was already exempt from property tax (in most cases because these were reservation lands considered tax-exempt by the state prior to the *Leech Lake* verdict). Table 3 shows the market value of transfers by county. The highest market values transferred were in Cass County (\$3.5 million) and Cook County (\$1.3 million). The data reflect a higher demand for land located near urban centers (Scott County) or in resort and lakeshore retirement areas.

Total taxes paid on the 9,000 acres before they were transferred was \$141,000, the largest portion of which was paid to Cass County (\$51,812). Transfers during this time period made up a small share of the local tax bases of the counties. The largest share was in Mahnomon County, where trust transfers constituted 0.35% of taxable market value in the county.

At the time of the House of Representatives Research Department survey, applications to transfer other lands into trust were pending for 5,300 acres. The market value of these lands was \$13 million—almost double that of the 9,000 acres transferred during the 1992–1998 period—and because more of the properties are commercial or industrial and thus have a higher tax rate, the property taxes paid on these lands were almost six times the taxes paid on the 1992–1998 transfers.

The Future of Trust Transfers

In the past trust transfer requests have been routinely granted, but there is no guarantee that future applications will continue to be approved by the BIA and

secretary of the interior. Possibly because the relative weight of the application criteria are not spelled out, it seems that applications are now treated differently based on the geographic location of the land and the economic “success” of the applicant tribe.

In 1997, the Shakopee Mdewakanton Dakota applied to transfer into trust 593 acres of land adjacent to their existing lands (just south of U.S. Highway 169), which the community had purchased three years earlier. Scott County, the City of Shakopee, and then-governor Arne Carlson all opposed the application. This was the first time a governor had opposed a trust land application in Minnesota. The governor explained that he believed it was “fundamentally unfair to subsidize” the development activities of “a population that is fully able to utilize existing opportunities.”

The opposition of the local and county governments followed years of tension between the tribe and the county, which maintained that Mystic Lake Casino places a sizable burden on the county budget. In 1997, the county



Photo by Steve Schneider

Mystic Lake Casino and Hotel in Shakopee

even considered the idea of placing toll-booths on county roads leading to the casino in an attempt to recoup some of the cost. This action was averted when the tribe signed an agreement to make annual payments to the county for increased service costs, in lieu of taxes. Since then, the tribe has also contributed to the cost of rebuilding highways leading to the casino and has worked with the City of Prior Lake to share road equipment and to fund a Prior Lake police officer who is housed at the tribe's community center.

The tribe's trust application was denied primarily because of the successful economic situation of the tribe. The BIA determined that benefits to the tribe would not outweigh the "detrimental" impacts on local jurisdictions and that the tribe had failed to show that putting the land in trust was necessary to reach their economic development goals. Even without passage of the proposed Lieberman-Grams bill, this application was treated differently because the tribe was deemed already "economically self-sufficient."

In 2000, the tribe once again applied to move the 593 acres (plus additional lands in Prior Lake, for a total of 776 acres) into trust. Governor Jesse Ventura also opposed the transfer, and in both 2001 and 2002 a delegation of county and city officials traveled to Washington, D.C., to voice their opposition to the transfer to BIA staff. At present, there has been no progress in negotiating a local solution, nor has there been further BIA action on the application.

The experience of the Shakopee Dakota community implies possible changes in the way the BIA will judge applications in the future. The BIA

made its decision in the Shakopee case by looking only at the loss of current tax base (not potential future losses, which were deemed "speculative") and by evaluating the loss of tax base relative to the size of the local tax base (not by absolute magnitude). Although the BIA found both of these factors to be insignificant in this particular case, the tribe's application was still rejected. It appears that the critical factor was the tribe's failure to show a need for the trust status, and for exemption from taxation and regulation, to achieve their stated purposes.

Finally, in contrast to local government opposition to trust transfers, we might begin to see struggling communities around the state solicit tribal development to jumpstart their economies. Back in the 1980s, an agreement was made between the Fond du Lac Band of Chippewa and the City of Duluth to encourage "economic development and growth" within the city. The band acquired a one-block area of downtown Duluth and transferred it into trust to develop Fond du Luth Casino, with support from the city. In November 2003, International Falls economic development officials approached the Red Lake Band of Chippewa about a casino project in International Falls to "get people to stop" on their way to Canada and to create local jobs. In this case, the governor's approval would still be necessary because of the off-reservation location of the land in question.

These two new developments—the BIA's treatment of trust transfer applications made by economically successful tribes and the growing solicitation of Native American development to locate

in struggling non-Native American communities—will determine the future of trust transfers and the geography of Native American lands in Minnesota. Recently, local communities have successfully prevented a trust transfer based on arguments of detrimental effects of development and economic success of the tribe, even when the lands were located adjacent to a reservation. We have also witnessed recent cases where local communities have supported and solicited tribal trust transfers to spur economic development that is beneficial to both parties, sometimes in locations far from the reservation. To lessen the unpredictability of trust transfer decisions made at the federal level, the relative weights of different application criteria should be specified, including geographic location, economic standing of the tribe, and opinions of local communities and the state. Ideally, state policy and opinion on trust transfers should reflect a regional outlook—refining the geographic criteria in place at the federal level and balancing the development needs of tribes, rural communities, and urban areas across Minnesota.

Laura J. Smith is assistant professor of geography at Macalester College in St. Paul, Minnesota. This article is based on her dissertation research at the University of Minnesota, which was supported in part by a John R. Borchert Fellowship, an award created by CURA to honor our first director. The fellowship is awarded periodically to an advanced graduate student in geography for work on an issue of importance to the citizens of Minnesota.