

INTERTRIBAL AGRICULTURAL COUNCIL
2026 EASTERN REGIONAL SUMMIT

Trespass on Indian Agricultural Land

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ABOUT US

Who We Are



A private law firm with a public mission.
We believe cultural heritage is a human right.

TRESPASS ON INDIAN AGRICULTURAL LAND



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Full team bios: culturalheritagepartners.com/team/



Recent Representative Work

WHEN BURIALS ARE HIT

Lummi Nation

Broadband crews trenched ancestral burial grounds off reservation at Point Roberts. We won a preliminary injunction against the private telecom company, and the complaint seeks money damages. *Lummi Nation v. Whidbey Telecom* (W.D. Wash. 2026).

BRINGING CHILDREN HOME

Winnebago Tribe of Nebraska

Two boys sent to Carlisle never came home. In its first NAGPRA ruling, the Fourth Circuit held the statute reaches their repatriation to the Tribe. Co-counsel with the Native American Rights Fund and Big Fire Law & Policy. *Winnebago v. Dep't of the Army* (4th Cir. 2026).

YOUR SEAT AT THE TABLE

Tribal Nations nationwide

The ACHP pushed this rewrite through in a week, with no meaningful Tribal consultation. It would make consultation optional and cut sacred landscapes out of the law. We are organizing the pushback and building the record to challenge it. *36 C.F.R. pt. 800* (proposed 2026).

We represent Tribal Nations in trespass, cultural resource damage, repatriation, and jurisdictional matters nationwide.
Ask us about the matters closest to your own.

Agenda

- What Counts as Trespass
- 01 American Indian Agricultural Resource Management Act (AIARMA)
- 02 Indian Agricultural Land
- 03 Products and Resources
- 04 Damages
- 05 Enforcement
- Today's Lessons
- Questions

Four Things I Hope to Empower You With Today

01

Recognize a trespass on your land, including the kinds nobody counts

02

Know what AIARMA covers, and what it does not

03

Know what a trespasser owes you when you enforce

04

Decide whether taking this program over is right for your Nation

PROLOGUE

What Counts as Trespass



**Raise your hand if you believe
there is a trespass happening on
your land, or on your Tribal
Nation's trust land, right now.**

Trespass, in Plain Terms

The ordinary rule

- Owning land carries the right to exclude other people
- Trespass is entry or use without permission
- Trespass does not require damage or injury
- Permission can be narrow, and it can be withdrawn
- The wrong is the intrusion itself



How it happens

- Intentional entry: walking, driving, or placing an object
- Negligent entry: a careless act that puts something there
- Continuing trespass: staying on after permission ends
- Airspace: signs, wires, and building overhangs
- Subsurface: tunneling, drilling, and foundations



Why Indian land differs

- Federal regulation, not state tort law § 166.800.
- Any unauthorized occupancy, use, or action § 166.800.
- Treble damages fixed by statute § 3713(a)(1).
- Costs and attorney fees recoverable § 166.812(c).
- Your Nation can enforce it itself § 3713(c).

Wider Than Almost Anyone Expects

ANY UNAUTHORIZED OCCUPANCY, USE, OR ACTION

The federal definition is one sentence wide and includes the following incursions:

25 C.F.R. § 166.800.

On the ground

- Grazing without a permit
- Fire, however it starts
- Crop and forage theft
- Gravel and timber removal
- Dumping and debris

Structures & access

- Expired rights of way
- Holdover lessees
- Roads cut without a grant
- Utility trenching
- Poles, lines, and pipelines

Water & contamination

- Groundwater contamination
- Diversion and unpermitted wells
- Chemical drift and runoff
- Fuel and feedlot spills

Use without permission

- Commercial operations
- Unpermitted cultivation
- Drone overflight
- Recreation and vehicles
- Looting and digging

No adverse possession here.

Time never converts a trespass into a right on trust or restricted land, however long it has run.

It can start off reservation.

Fire, contamination, and runoff cross the boundary and land on you all the same.

Expired Rights of Way

FOUR WAYS A RIGHT OF WAY BECOMES A TRESPASS

Each of these is a trespass on the day it happens, whatever the file says. *25 C.F.R. § 169.410.*

- | | | |
|-----------|------------------------------------|--|
| 01 | The right of way expired | The term ran out and the line simply stayed where it was. |
| 02 | Wider than the right of way | A road widened or a corridor expanded without anyone asking again. |
| 03 | Never authorized at all | A pole, a turnout, or a spur that no document ever approved. |
| 04 | Holdover occupancy | The company kept using the corridor after the right of way ended. |

**50 years,
maximum.**

Every right of way runs only for the term written in it, and BIA treats 50 years, renewals included, as the outer limit on individually owned land. If nobody has pulled the file, odds are something crossing your land has already run out. *25 C.F.R. § 169.201.*

Do you know when the rights of way across your land expire? Most landowners have never been told, and nobody volunteers it. Pull the rights of way, check the dates, and treat every expired crossing as a live claim.

**So, now raise your hand if you
believe there is a trespass
happening on your land, or on
your Tribal Nation's trust land,
right now.**

**Show of hands. How many of
you want the ability to stop
someone, or something, from
trespassing on your land, or on
your Tribal Nation's trust land?**

IF YOUR HAND WENT UP

Good news. You are in the right room.

- Three times the value of what was taken
- Damage to your resources, cultural resources included
- Your own court, your own judges, your own code
- Against Indians and non-Indians alike
- Your judgment honored in state and federal court
- And the Secretary has to help you do it

Here is where that authority comes from.

01

PART ONE

American Indian Agricultural Resource Management Act (AIARMA)



What the Statute Sets Up

American Indian Agricultural Resource Management Act (AIARMA)

25 U.S.C. §§ 3701 to 3746 (1993). Trespass rules at 25 C.F.R. pt. 166, subpt. I.

01

Purpose. Congress found these lands vital to the economic, social, and cultural welfare of Tribes. § 3701(3).

02

Land covered. Indian farmland and rangeland, plus land occupied by industries that support the agricultural community. Forest land is excluded. § 3703(1).

03

Products and resources. Products are crops, livestock, and forage. Resources add the land, soil, water, air, plant communities, and cultural and religious values. §§ 3703(2), (3).

04

Tribal law governs. The Secretary manages this land under your ordinances, environmental protection and cultural preservation included. §§ 3712(a), (b).

What the Statute Lets You Do

American Indian Agricultural Resource Management Act (AIARMA)

25 U.S.C. §§ 3701 to 3746 (1993). Trespass rules at 25 C.F.R. pt. 166, subpt. I.

01

What trespass is. Any unauthorized occupancy, use, or action on the land. Congress left the definition to the Secretary. § 166.800.

02

What you recover. Treble the value of the products, damage to the land and other resources, survey, appraisal, investigation, and attorney fees. § 3713(a)(1); §§ 166.812, 166.815.

03

Livestock and collection. Impound and sell unauthorized livestock, and refuse new permits until the trespasser pays. §§ 166.806 to 166.811, 166.817.

04

Tribal jurisdiction. Adoption brings concurrent jurisdiction, full faith and credit for your judgments, and no diminishment of sovereign authority. § 3713(c).

02

PART TWO

Indian Agricultural Land



What Counts as Indian Agricultural Land

INDIAN AGRICULTURAL LAND

Three ways a tract qualifies, each with its own definition in the Act.



Farmland

Food, feed, fiber, forage, or seed oil crops, dryland or irrigated. § 3703(6).



Rangeland

Native grasses, forbs, half-shrubs, or shrubs suitable for grazing or browsing. § 3703(14).



Agricultural products

Any Indian land used to produce them, plus supporting industries. § 3703(1).



Forest land

Indian forest land takes its meaning from NIFRMA and is carved out of every agricultural definition on this slide. It runs on the forestry rules instead. § 3703(7); 25 U.S.C. § 3103(3).

No inspection or classification is required. A tract is covered because of what it is and how it is used, whether or not a formal inspection and land classification has ever been done. 25 U.S.C. § 3703(1); 25 C.F.R. § 166.4.

Whose Land This Reaches

COVERED BY SUBPART I

Trust and restricted land you farm or graze, including tracts already under an agricultural lease or a grazing permit. § 3703(9); 25 C.F.R. § 166.4.



Trust and restricted land

Tribal trust land, individual trust allotments, and restricted fee land. § 3703(9).



Any interest counts

One undivided trust or restricted surface interest brings the whole tract in, as does Section 17 corporation land. § 166.4.

ELSEWHERE

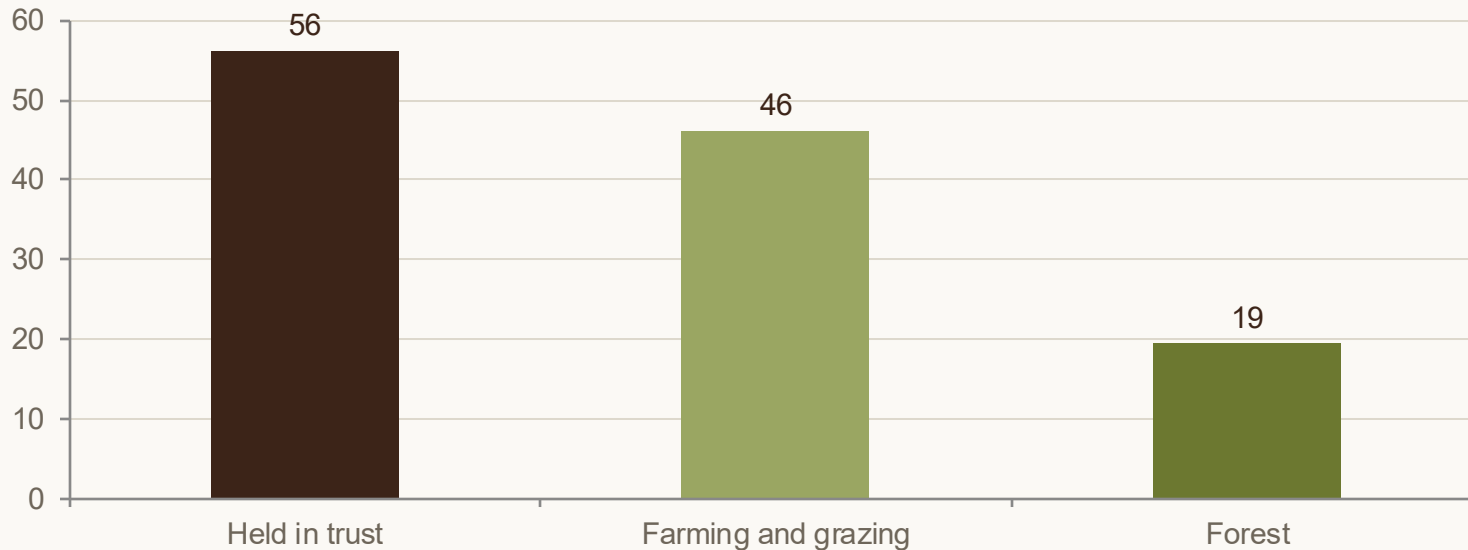
Forest land

Runs on NIFRMA and 25 C.F.R. pt. 163 instead, which give you parallel enforcement tools. §§ 3101 to 3120.

Outside Subpart I

Non-Indian fee land, land outside Indian country, and state and county highways.

How Much Land We Are Talking About



56M

acres held in trust, all uses

46M

acres in farming and grazing

46M + 19M > 56M

Your eyes are not deceiving you. The agencies count these categories differently and some land is counted in more than one category. Whichever way you count it, a great deal of Indian land is agricultural land.

Sources: BIA Office of Trust Services; BIA Branch of Agriculture and Rangeland Development; IFMAT IV (2023).

The Land Test Is Simple

Trust or restricted land that you farm, graze, or use to produce agricultural products is Indian agricultural land.

Trust or restricted

Tribal trust, allotments, or restricted fee. Any interest in the surface counts. § 3703(9); § 166.4.



ANY ONE OF THESE USES

Farmland

Food, feed, fiber, forage, or seed oil crops, dryland or irrigated. § 3703(6).

Rangeland

Native grasses, forbs, half-shrubs, or shrubs for grazing or browsing. § 3703(14).

Agricultural products

Any land used to produce them, plus industries that support the agricultural community. § 3703(1).

No inspection. No classification. No federal blessing required.

A tract is covered because of what it is and how it is used. Forest land runs on NIFRMA instead.

25 U.S.C. §§ 3703(1), (6), (7), (9), (14); 25 C.F.R. § 166.4.

03

PART THREE

Products and Resources



What Counts as an Agricultural Product

AGRICULTURAL PRODUCT

Four categories in the Act, repeated almost word for word in the regulation. 25 U.S.C. § 3703(2); 25 C.F.R. § 166.4.



Crops

Grown under cultivated conditions, for personal use, subsistence, or sale. § 3703(2)(A).



Livestock

Cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, and other animals raised for food, fiber, or burden. § 3703(2)(B).



Forage and feed

Hay, fodder, feed grains, crop residues, and other items grown to feed and care for livestock. § 3703(2)(C).



Traditional materials

Other marketable or traditionally used materials authorized for removal. § 3703(2)(D).

This is the category the treble penalty runs on. The doubling is keyed to the value of the products used or removed. Note that § 166.4 reads "food grains" where the statute says "feed grains," so quote the statute where the distinction matters. 25 U.S.C. §§ 3703(2), 3713(a)(1)(A); 25 C.F.R. § 166.812(a).

What Counts as an Agricultural Resource

AGRICULTURAL RESOURCE

Two halves: what produces, and what the land yields. 25 U.S.C. § 3703(3).



The means of production

Land, soil, water, air, plant communities, watersheds, human resources, and the man-made developments that together comprise the agricultural community. § 3703(3)(A).



The benefits of the land

Cultivated and gathered food products, fibers, horticultural products, dyes, cultural or religious condiments, medicines, water, aesthetic and other traditional values. § 3703(3)(B).

Why it matters Products are what a trespasser takes. Resources are what a trespasser damages, and that damage is recoverable on top of the trebled value of the products. § 166.812(b); § 166.815.

“Condiments” is the enacted text. It appears in the Statutes at Large and in the Code and reads as a scrivener’s error for “components.”

Cultural Resources ARE in the Statute

“cultural welfare”

“cultural or religious components”

“medicines”

“dyes”

“traditionally used materials”

“historic and cultural preservation”

Where they appear in the text

- Congress found these lands vital to the economic, social, and cultural welfare of Tribes and their members. § 3701(3).
- Agricultural resource expressly includes cultural or religious components, medicines, dyes, and gathered food products. § 3703(3)(B).
- Agricultural product reaches other traditionally used materials, not only marketable ones. § 3703(2)(D).
- The Secretary must comply with your historic and cultural preservation laws on this land. § 3712(b); § 166.103.

Where the harm gets paid for

- Damages consider damage to other resources and other factors, the opening for cultural and ceremonial harm. § 166.815.
- Damage must be rehabilitated and stabilized at the trespasser's expense. § 166.801(d).
- But nothing federal sets a value for sacred sites, gathering areas, or traditional cultural properties.
- And the regulation drops forbs from rangeland, the broadleaf plants that carry most gathered foods and medicines. § 166.4.

Only Tribal law can give these words content. Define the cultural and religious components, the medicines, and the traditional values of agriculture in your own code, and the federal damages provisions finally have something to measure.

Does This Reach Hemp and Cannabis?

Hemp: yes

Hemp is a lawful agricultural commodity at or below 0.3 percent THC, and a Tribe may grow it under a USDA-approved production plan. Grown under cultivated conditions on trust land, it is a crop like any other. § 3703(2)(A); 7 U.S.C. §§ 1639o, 1639p.

Cannabis: the crop is the hard part

If your Nation grows cannabis lawfully under Tribal law, the plants are still Schedule I federally unless they fall inside the narrow April 2026 carve-outs. A federal officer is unlikely to treble the value of that crop for you. 21 U.S.C. § 812.

However, your own code can

A Nation that adopts these regulations and writes penalties for trespass to a cannabis operation into its own code can enforce them in its own court, against Indians and non-Indians alike. §§ 166.812(e), 166.803(a); 25 U.S.C. § 3713(c).

Trespass on a Tribal cannabis operation is still trespass. The land, the water, the fencing, and the lost season are recoverable whatever the federal schedule says about the plant.

The Difference Is Simple

What a trespasser takes is a product. What a trespasser damages is a resource. You recover for both.

AGRICULTURAL PRODUCT

Crops § 3703(2)(A).

Domestic livestock
§ 3703(2)(B).

**Forage, hay, fodder, feed
grains** § 3703(2)(C).

Traditionally used materials
§ 3703(2)(D).

AGRICULTURAL RESOURCE

**The means of production: land, soil, water, air, plant
communities, watersheds** § 3703(3)(A).

**The benefits: food, fibers, dyes, cultural and religious
components, medicines** § 3703(3)(B).

Treble the value of the products, plus the damage to the resources. §§ 166.812(a), (b); § 166.815.

04

PART FOUR

Damages



What a Trespasser Pays

The five heads of recovery

01

The value of the products illegally used or removed, plus double that value. Treble in total. § 166.812(a).

02

Any damage to Indian agricultural land and property. § 166.812(b).

03

Your costs and fees. Survey, appraisal, investigation, reports, witnesses, demand letters, court costs, and attorney fees. § 166.812(c); § 166.816; 25 U.S.C. § 3713(a)(1).

04

Gathering, impounding, caring for, and disposing of unauthorized livestock. § 166.812(d); § 166.807.

05

All other penalties authorized by law, the hook for what your own code prescribes. § 166.812(e).

How the Damages Are Measured

How it is measured

01

Forage or crops consumed or destroyed: comparable rate, commercial value, or replacement cost. § 166.813.

02

Products or property used or removed: valued by reference to similar products or property. § 166.814.

03

Rehabilitation, lost revenue, profits, productivity, market value, damage to other resources. § 166.815.

04

Damage must be rehabilitated and stabilized at the trespasser's expense. § 166.801(d).

05

Your code can define the measure. Nothing stops a Tribal code from setting how damages are calculated, including interest, accrual, and compounding, on which Subpart I is silent. §§ 166.812(e), 166.815.

Where the Money Goes

- | | | |
|----|--------------------------------------|--|
| 01 | Back to the land it came from | Proceeds count as proceeds from the sale of products off that same land. |
| 02 | Repairing the damage first | The first call on the money is fixing what the trespass harmed. |
| 03 | To the Indian landowner | Absent a contrary lease term, the landowners receive the trespass damages. |
| 04 | And to the permittee | Someone who lost the use of the land is reimbursed as well. |
-



If it is your allotment, this is your recovery. 25 U.S.C. § 3713(b); 25 C.F.R. §§ 166.818, 162.239.

Recap: The Math Is Simple

Three times the value of what was taken, plus the harm to the land and its resources, plus what it cost you to prove it.

Treble the products

The value of what was used or removed, plus double that value again. § 166.812(a); § 3713(a)(1)(A).



EVERYTHING ELSE THE TRESPASSER OWES

Damage to land and resources

Repair and rehabilitation, lost revenue and productivity, and damage to other resources, cultural resources included. § 166.812(b); § 166.815.

Your costs and fees

Survey, appraisal, investigation, witnesses, court costs, and attorney fees. § 166.812(c); § 166.816.

Livestock handling

Gathering, impounding, caring for, and disposing of unauthorized livestock. § 166.812(d).

And your own code can add what Subpart I leaves out: interest, willful and repeat-offender penalties, and a fee schedule. § 166.812(e).

05

PART FIVE

Enforcement



Who Is Enforcing This Today?

BLA is under-resourced and understaffed.
Trespass is pervasive.

The trust duty is federal. The decision to act on any given trespass is discretionary. 25 U.S.C. §§ 3701(2), 3711; 25 C.F.R. § 166.801.

Your Tribe can enforce this federal law *itself*.

The same section that tells BIA to enforce gives a Tribe that adopts the regulations concurrent jurisdiction with the United States. 25 U.S.C. § 3713(c); 25 C.F.R. § 166.802(a).

25 U.S.C. § 3713(c)

“Indian tribes which adopt the regulations ... shall have concurrent jurisdiction with the United States to enforce the provisions of this section.”

TRESPASS ON INDIAN AGRICULTURAL LAND



The Same Program, Run by Your Government

Adoption is the operative act, and it is self-executing. No application, no certification, no federal approval: a council resolution or a code provision does it. § 166.802(a).

BIA today

- Detects and investigates trespass
- Issues the written trespass notice
- Orders corrective action
- Impounds unauthorized livestock
- Assesses damages and penalties

Your Nation after adoption

- Everything in the first column
- Acts when BIA does not
- Takes the trespasser into your own court
- Reaches Indians and non-Indians alike
- Enforces the judgment in state or federal court
- Sells impounded livestock and applies the proceeds
- Refuses new permits until the trespasser pays
- Directs where the recovery goes, unless a lease says otherwise
- Keeps its sovereign authority undiminished

Everything BIA can do, but in your own court. § 166.803(a); 25 U.S.C. § 3713(c).

25 U.S.C. § 3712(b)

“[T]he Secretary shall comply with tribal laws and ordinances pertaining to Indian agricultural lands including laws regulating the environment and historic or cultural preservation, and laws or ordinances adopted by the tribal government to regulate land use or other activities under tribal jurisdiction.”

Everything the Law Leaves the Tribe to Define

The Secretary manages this land under your ordinances. Everything below is yours to write. § 3712(a).

WHERE THE RULES SAY NOTHING

Interest. No rate, accrual date, or compounding.

Time and proof. No limitations period, burden, or defenses.

Parties. No standing rule, no joint liability.

Penalties. The doubling is a floor. Add willful and repeat.

Sovereign and cultural harm. No federal measure for it at all.

WHERE THE WORDS HAVE NO CONTENT

Unauthorized use. Vehicles, drones, diversion, dumping.

Valuation. Comparable property, rate method, market.

Cultural values. Components, medicines, traditional values.

Scope words. Traditionally used materials, supporting industries.

Emergencies. Four triggers, none of them defined.

And your ordinances reach past trespass. Environmental protection, historic and cultural preservation, and any other law you write for these lands bind the Secretary too. § 3712(b).

What This Means for Rights of Way

The penalty follows the land

Congress commanded penalties for trespass on Indian agricultural lands. The object is the land, not the instrument, and any unauthorized occupancy, use, or action is a trespass. § 3713(a)(1); § 166.800.

An expired right of way is trespass

Taking possession of or using Indian land without a required right of way is a trespass, and an occupant who remains after expiration may be treated as a trespasser. § 169.413; § 169.410.

Subpart I still reaches it

A holdover occupant of Indian agricultural land is a trespasser whatever instrument allowed the crossing, and the treble penalty reaches the value of products used, not only removed. § 166.812(a).

And you can be the one to act

Your authorized representative issues the notice and you hold concurrent jurisdiction. Under § 169.410 pursuing the occupant is BIA's election; under Subpart I it is yours. § 166.803(a); § 3713(c).

Say it in your code. Occupancy after a right of way expires is trespass, each day is a continuing violation, and holdover is compensable at fair rental value plus the Subpart I penalties.

EPILOGUE

Today's Lessons



Four Things You Can Take Home

01

Trespass is any unauthorized use of your land, far wider than cattle through a fence.

02

AIARMA covers trust and restricted land you farm, graze, or use to produce agricultural products.

03

A trespasser owes treble value, damage to land and resources, and your costs and attorney fees.

04

Your Nation can adopt the regulations and run the whole program in its own court.

OVER TO YOU

Questions?

GET IN TOUCH

Thank You!



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Where we can help

- Drafting your trespass enforcement code
- Building out your cultural, natural, and environmental laws
- Investigating and pursuing an active trespass
- Auditing Title Status Reports for expired rights of way and leases
- Enforcing Tribal court orders in state and federal court

Come visit us at our table.

Today and tomorrow. Bring your questions, your maps, and your Title Status Reports.