

# Oneida Big Apple Fest

Legal Considerations



	<b>Criminal Prohibitory Jurisdiction</b>		<b>Civil Cause of Action</b>	<b>Civil Regulatory Jurisdiction</b>	
	Tribal Member	Non-Member	Tribal Member	Tribal Member	Non-Member
<b>Tribe</b>	Tribes retain the inherent authority to criminally punish tribal members.	Tribes do not have the jurisdiction to criminally punish non-Indians.	Tribal members can access tribal courts to resolve civil causes of action.	Unless limited by treaty or statute, tribes retain <i>inherent civil regulatory jurisdiction</i> over tribal members.	Unless one of the Montana exceptions are met, tribes do not have civil jurisdiction over non-members.
<b>State</b>	PL 280 granted Wisconsin criminal prohibitory jurisdiction over offenses committed by tribal members.	Wisconsin has criminal prohibitory jurisdiction over offenses committed by non-members.	PL 280 granted states concurrent jurisdiction. Tribal laws will be given full force and effect only if the tribal laws are not inconsistent with state laws.	Absent compelling circumstances state civil regulatory laws do not apply to tribal members.	State civil regulatory laws apply to non-members.

# Jurisdiction 101



**Criminal Prohibitory Jurisdiction** – In adopting PL 280, Congress granted Wisconsin, and several other states, the jurisdiction to prosecute tribal members in Indian country to the same extent and with the same force and effect that the state had jurisdiction to prosecute offenses committed elsewhere in the state. Does not negate inherent authority, but other laws impose certain limitations.

**Civil Regulatory Jurisdiction** – As a matter of state and federal law, state civil regulatory laws are *generally not* applicable to tribal members on the Oneida Reservation if the Tribe has enacted and enforces its own laws or regulations. But exceptions exist:

- **Civil regulatory law** = state gambling laws. Test: Whether the conduct at issue violates the State's public policy. *California v. Cabazon Band of Mission Indians*.
- **No tribal law in place** = traffic codes. Examination of whether a tribe has a well-established tradition of self-government in area (example: traffic regulation) balanced with the state's interest (dominant interest in regulating traffic on the highway).
- **Montana exceptions** –Tribe has jurisdiction over non-members when: 1) A non-member has entered into a consensual relationship with the Tribe or a tribal member; or 2) It is necessary to protect the health, safety or welfare of the Tribe or tribal members. *Montana v. United States*, 450 U.S. 544 (1981).

**Jurisdiction 101 contd.**







<b>Tribal Law</b>	<b>Activity</b>	<b>Tribal Division(s) or Department(s)</b>
<b>Oneida Vendor Licensing</b>	Service and Craft Vendors	Oneida Compliance Division; Oneida Risk Management Department
<b>Oneida's Vendor Licensing; Oneida's Food Service Code</b>	Food Vendors	Oneida Compliance Division; Oneida Environmental Health and Safety Division
<b>Oneida's Vendor Licensing; Oneida's Food Service Code</b>	Produce Stands	Oneida Compliance Division; Oneida Environmental Health and Safety Division
<b>Oneida's Food Service Code</b>	Apple Pie contest	Oneida Environmental Health and Safety Division
<b>On-Site Waste Disposal Ordinance and Recycling and Solid Waste Disposal</b>	Recycling and solid waste disposal	Oneida Environmental Health and Safety Department; Oneida Conservation Department and Oneida Police Department
<b>Oneida Safety Law</b>	Electrical connections	Oneida Utilities and Oneida Department of Public Works
<b>Sanitation Ordinance</b>	Portable Restroom Facilities	Oneida Utilities Department
<b>Oneida Tribal Regulation of Domestic Animals Ordinance</b>	Hay Ride and Petting Zoo	Oneida Conservation

# Tribal Laws





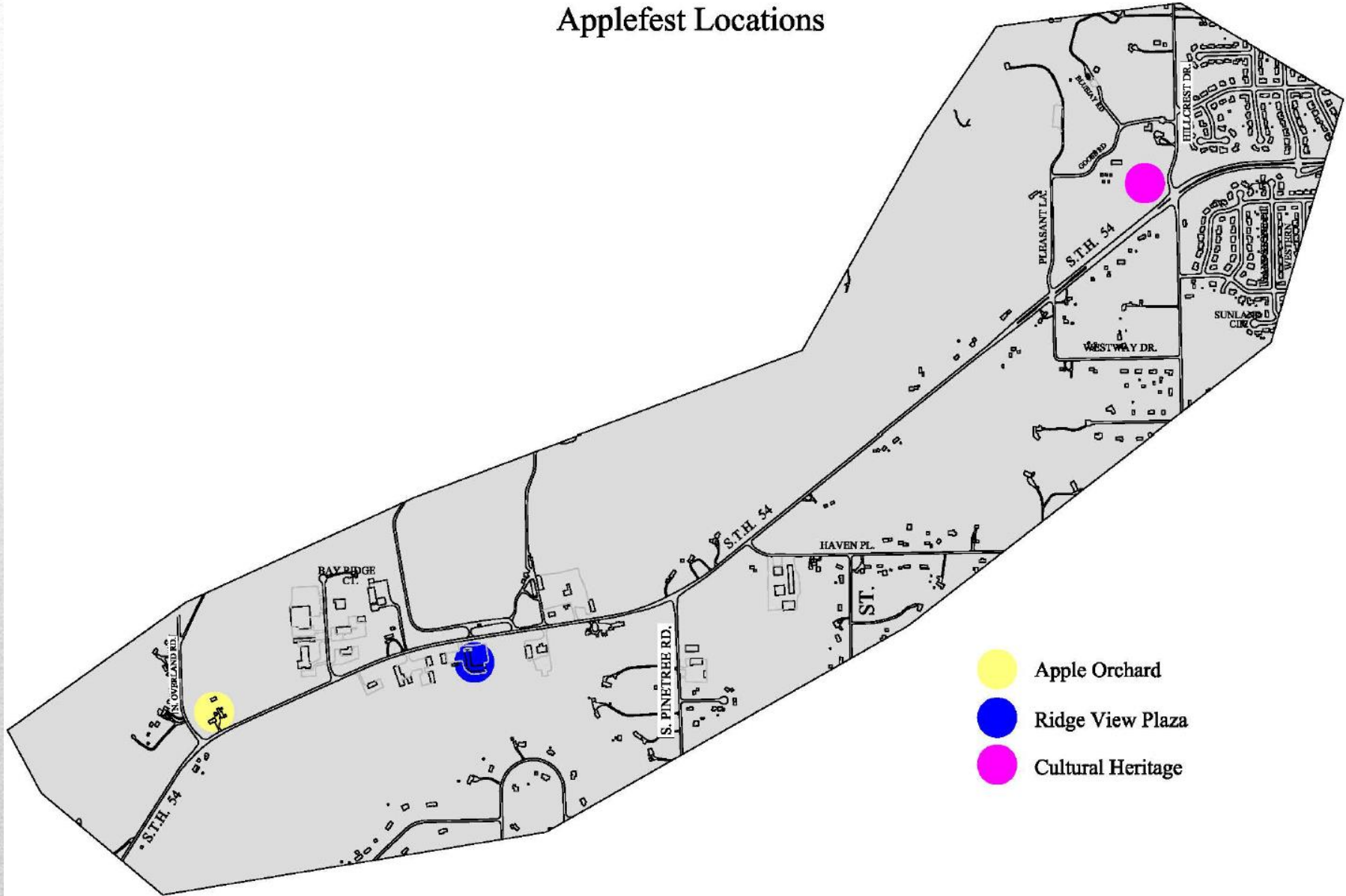
- Pre event action plan
- Risk Management/ Insurance/ Loss Prevention review
- Vendor licensing and compliance
- Legal and purchasing reviews
- Land use license
- Set up and site inspections

# Tribal Processes

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# Applefest Locations





- Security Officers
- RN (from Comprehensive Health)
- Law Enforcement
  - Fire and Rescue
  - Brown and Outagamie County Sheriff Departments (and departments within those counties)
  - (City) Green Bay P.D.
  - (Village) Hobart P.D.
  - State Patrol
  - FBI
- Road Closure
- Pedestrian transportation

# Emergency Response Issues

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# Oneida Nation files civil lawsuit against Village of Hobart over Big Apple Fest

"It's not about the permit. It's about our ability to exercise our jurisdiction, our ability to exercise our sovereign authority over our tribal members," said Oneida Tribe Chairwoman Cristina Danforth.

The Village of Hobart's attorney, Frank Kowalkowski said late Monday afternoon in a statement he made to FOX 11:

**"The Village of Hobart takes its responsibility to protect the health, safety and welfare of the general public very seriously. The Village's Special Event Ordinance is designed to initiate a process so that an event sponsor and the Village may address the impacts the event will have on the Village's resources and its residents. This is especially important for a large event like Big Apple Fest for which there have been significant traffic and other concerns in the past. It is not clear at this time why the Tribe would choose to sue the Village rather than engage in this process. It has never been the Village's intention to stop or delay big apple fest and it has no intention of doing so at this time."**

## Legal issue

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