

2011 White House Tribal Nations Conference

- Washington, D.C. •

Tribal Leader Briefing Book



National
Congress of
American
Indians



WHITE HOUSE TRIBAL NATIONS CONFERENCE

FULL SCHEDULE OF EVENTS NOV 29 – DEC 2

Tuesday, November 29

Tribal Leader Preparatory Meeting

9:00 a.m. – 4:00 p.m.

Grand Hyatt, Independence A Ballroom, 1000 H Street NW

Navajo Nation Washington Office Reception

6:00 p.m. - 8:00 p.m.

750 1st St NE # 1010

National Indian Education Association Reception

6:00 p.m. - 9:00 p.m.

NEA Headquarters, 1201 16th St NW

Wednesday, November 30

White House Briefings and Listening Sessions with Tribal Leaders by Region

by White House Invitation Only

Eisenhower Executive Office Building

12:30 - 2:00 p.m. Representatives from the Eastern, Eastern Oklahoma, Southern Plains, Great Plains, Midwest and Rocky Mountain Regions

3:00 - 4:30 p.m. Representatives from the Pacific and Northwest Regions

Invitees are encouraged to arrive at least 30 minutes before the start of the scheduled start time.

Treasury/IRS Consultation Listening Meeting on General Welfare Benefits

9:30 a.m. – 11:30 a.m.

GSA Auditorium, 1800 F Street NW

Consultation listening meetings to receive input directly from tribal governments.

NIEA Indian Education Roundtable for Tribal Leaders

10 a.m. - Noon

Dirksen Senate Office Building, SD-628

Senate Committee on Indian Affairs Transportation Briefing

10:30 a.m. - Noon

Dirksen Senate Office Building, SD-628

To RSVP or Questions: Please contact Christiane Cardoza at 202-224-2251 or email: comments@indian.senate.gov

National Museum of American Indians Evening Reception

6:30 p.m. - 8:30 p.m.

NMAI, Fourth Street & Independence Ave. SW

Thursday, December 1

White House Briefings and Listening Sessions with Tribal Leaders by Region

by White House Invitation Only

Eisenhower Executive Office Building

9:30 - 11:00 a.m. Representatives from the Southwest, Navajo and Western Regions

3:30 - 5:00 p.m. Representatives from the Alaska Region

Invitees are encouraged to arrive at least 30 minutes before the start of the scheduled start time.

White House Champions Of Change: Native American Youth

By White House Invitation Only

Eisenhower Executive Office Building

Noon - 2:00 p.m. Exceptional Native youth community leaders from the Native American Youth Challenge

Invitees are encouraged to arrive at least 30 minutes before the start of the scheduled start time.

Senate Committee on Indian Affairs Oversight Hearing: "Deficit Reduction and Job Creation: Regulatory Reform in Indian Country"

2:15 p.m.

Dirksen Senate Office Building, SD-628

Reception in Honor of Native American Caucus Co-Chairs Congressman Kildee and Congressman Cole

6:00 p.m. - 8:00 p.m.

Grand Hyatt, Independence A Ballroom, 1000 H Street NW

Celebrating Native Unity...Now!

NCAIED Reception

8:00 p.m. - 11:00 p.m.

Hard Rock Cafe Washington, DC

999 E Street, N.W.

Friday, December 2

White House Tribal Nations Conference

by White House Invitation Only

8:30 a.m. – 3:00 p.m.

Department of the Interior

VIEWING OF THE – White House Tribal Nations Conference

Open to all, hosted by NCAI

Coffee and light breakfast from 8 a.m.

8:30 a.m. – 3:00 p.m.

Embassy of Tribal Nations



TRIBAL LEADER BRIEFING BOOK

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1. **Schedule & Context for the 3rd Annual White House Tribal Nations Conference**
 - a. **Full Schedule for the week of November 28 – December 2**

White House events, NCAI sponsored meetings, receptions, agency and legislative events.
 - b. **Introductory Letter to Tribal Leaders from NCAI President Keel**

A letter that outlines the purpose of this briefing book and introduces the key themes we have addressed to prepare tribal leaders for the 3rd annual White House Tribal Nations Conference
 - c. **An Open letter to President Obama from NCAI President Keel**

A short letter that reflects on the last three years of engagement and urges the President to continue to work with tribal nations to “walk the talk” of the nation-to-nation relationship.
2. **Overview Documents for the Regional Briefings/Listening Sessions & the Issue Breakouts**
 - a. **Honoring Tribes as Governments: A framework for strengthening the nation-to-nation relationship**

A document that outlines major themes identified by tribal leaders as overarching priorities across agencies.
 - b. **Breakout Session Overview Documents**

Five papers that provide an introduction and concrete recommendations that align with key areas to be addressed in the breakout sessions. Current working list of papers and issues to be covered are:

 1. **Creating Jobs and Growing Tribal Economies**

Addresses: access to capital, tax, energy, workforce development, and access to national and international markets.
 2. **Promoting Strong and Safe Tribal Communities**

Addresses: Tribal Law & Order Act implementation, violence against Native women, and homeland security and emergency preparedness
 3. **Protecting Natural Resources and Respect for Cultural Rights**

Addresses: land issues, trust reform, natural resources, water rights, environmental protection, Alaska Native subsistence, sacred sites, cultural protection, climate change, and agriculture programs.
 4. **Improving Access to Healthcare, Education, Housing, Infrastructure and Other Federal Services**

Addresses: issues listed above and telecommunications, veterans, and youth issues.
 5. **Strengthening the Government-to-Government Relationship**

Addresses: consultation, federal funding, *Carcieri* fix, supporting tribal/state relationships, international issues, and federal data collection.

3. Additional Background Materials

a. Matrix of proposed policy changes to provide program flexibility to grow tribal economies and create jobs

A list of low cost regulatory fixes that will create jobs and promote economic development in Indian Country.

b. Investing in Native youth paper

Given the focus on youth issues at this summit, this document outlines key policies to promote the success of Native youth.

c. UNDRIP in action paper

An overview of progress and next steps to advance the UN Declaration on the Rights of Indigenous Peoples (since the President announced the United States would lend its support to UNDRIP at the 2010 summit).

d. Consultation with Tribal Nations: An update on implementation of Executive Order 13175

A six page document that provides a status update of agency responses to the President's Executive Memorandum on EO 13175

e. Outcomes of the 2009 Tribal Nations Summit

An overview of outcomes from the first Tribal Nations Summit.

f. Key Messages for the 2010 Summit

A one page overview of key messages for the 2010 summit, developed at the Tribal Leaders' Preparatory Meeting.

g. Summary of the 2010 meeting between President Obama and the 12 tribal leaders

A two page overview of the pre-meeting between the President and tribal leaders from each of the 12 regions.

h. Summary of 2010 Tribal Nations Summit

A six page overview of the themes from the 2010 summit.

4. Electronic background materials – available at tinyurl.com/TNC2011

- **Program flexibility paper**

A paper that provides background and further justification for the matrix contained in the briefing book.

- **Background papers from regional intertribal partners**

Papers submitted by regional intertribal partners, including CATG and USET.

- **White House Synopsis of the 2010 Summit**

A summary of tribal leader concerns expressed at the 2010 Summit. This document was created by the White House.

- **2010 Briefing Book**

The 30 briefing papers and other background materials created for the 2010 meeting.

- **Additional NCAI background papers**

Additional information on issues addressed in the briefing book.

Special thanks to the regional intertribal organizations for their help in bringing together the valuable information and resources in this book.



Dear Tribal Leader:

This briefing book is intended to prepare you for the high-level dialogue we will all be engaged in this week. The third Annual White House Tribal Nations Conference comes at a challenging time for our nation. The federal budget is under extreme pressure and the nation is facing economic conditions that we have faced in Indian Country for generations.

This week is an opportunity to cast a positive vision for how we as tribal nations – members of the American family of governments – can contribute to a brighter future for the United States. Together we will make sure the Administration and Congress hear from tribal leaders – loud and clear – that the trust responsibility is not a “discretionary” obligation but a solemn promise. We need the resources to move our communities forward because they were promised to us in treaties, acts of Congress, and executive orders, but we also need those resources because without them we know millions of Native and non-Native citizens will suffer. Tribes create hundreds of thousands of jobs, provide quality infrastructure, offer cutting edge health and education services, manage natural resources, create clean energy, and those contributions depend – in part – on our partnership with the federal government.

But we also have good news for a President and Congress who are struggling to address the budget deficit and growing federal debt. While the Indian budget must be held harmless, many changes that tribal nations seek are low-cost regulatory fixes that would allow tribal governments to fully contribute to the economic recovery of our nation. We appreciate the Administration’s partnership in addressing regulatory barriers and we look forward to more conversation this week to move this agenda forward. This meeting is an important opportunity to create a winning environment that allows the Administration to demonstrate the value it has created by advancing our nation-to-nation relationship.

We prepared these materials with the hope that they would provide you with the tools you need to engage in this important nation-to-nation meeting with our President, Barack Obama. The quality of the materials is a reflection of our partnership with the many regional intertribal organizations and individual tribes who have worked with us to develop information to equip you for the important dialogue this week. They have partnered with us every step of the way and provided invaluable feedback to refine the papers so you have the best possible policy recommendations and background materials to ensure the success of the third annual White House Tribal Nations Conference.

At this time, in December 2011, as our tribal nations—and the United States—face economic and political challenges, it is time to work together to achieve a common vision for the future of Indian Country. The efforts of this week, and our ongoing partnership with the Administration in the coming months and years, will shape the future for our tribal nations – and the United States – for generations to come.

Sincerely,

Jefferson Keel
President, National Congress of American Indians



NATIONAL CONGRESS OF AMERICAN INDIANS

AN OPEN LETTER TO PRESIDENT OBAMA

Dear Mr. President:

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band of Mission Indians

RECORDING SECRETARY
Edward Thomas
Central Council of Tlingit & Haida

TREASURER
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EASTERN OKLAHOMA
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Robert Shepherd
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MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomi

NORTHEAST
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Scotts Valley Band of Pomo Indians

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Scott Russell
Crow Tribe

SOUTHEAST
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SOUTHERN PLAINS
Robert Tippeconnie
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SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Ned Norris, Jr
Tohono O'odham Nation

EXECUTIVE DIRECTOR
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In May 2008, as a candidate, you stood before citizens of the Crow Nation and made a promise to them – and to Indian Country – that you would host an annual summit with tribal leaders. As leaders of the 565 tribal nations, we say to you – the leader of our nation, and our adopted brother – thank you for your steadfast commitment to that promise.

We see your commitment clearly, not just in these annual meetings but in the ongoing work of your Administration to “walk the talk” of our nation-to-nation relationship – a solemn trust relationship written into our Constitution and developed as the result of treaties negotiated and agreements made between Indian tribes and the United States in exchange for land and resources.

As our nation faces unprecedented economic and political challenges, and as tribal, federal, and state policymakers focus on job creation, our tribal nations are ready to stand firm with you, and your Administration, just as you’ve stood with us.

This week, tribal leaders will offer an array of thoughts and recommendations to advance the economies of tribal nations and our nation as a whole. We know that – like our tribal governments – some efforts to rebuild our economy require the cooperation of the legislative branch. We certainly urge your support of certain legislative efforts, but in many of our recommendations we focus our attention on efforts that can be advanced through low-cost regulatory fixes – areas where your leadership can remove barriers to tribal economic success and advance the economic recovery for all Americans.

Thank you for your steadfast commitment to our nation-to-nation relationship. We look forward to working with you and your Administration to advance these policies to grow our nation’s economy and put America back to work.

Sincerely,

Jefferson Keel



HONORING TRIBES AS GOVERNMENTS:

A FRAMEWORK FOR STRENGTHENING THE NATION-TO-NATION RELATIONSHIP

Tribes are members of the “American family of governments.” The Commerce Clause of the U.S. Constitution identifies tribes alongside state governments and foreign nations. While this governmental status has been affirmed in treaties, executive orders, acts of Congress, and Supreme Court rulings, it has rarely been fully realized in federal policy.

In their preparation for the third annual White House Tribal Nations Conference, tribal leaders identified five themes that cut across agency and/or issue specific concerns. The themes consist a framework for evaluating the nation-to-nation relationship and should be considered in all nation-to-nation dialogues during the week of the Tribal Nations Conference and as an ongoing roadmap to advance the trust responsibility. The themes are as follows:

1. Consultation
2. Indian Country budget
3. Inclusion in the development and implementation of federal policy
4. Educating partners
5. Sustaining meaningful engagement

1. CONSULTATION

On November 5, 2009, President Obama issued an Executive Memorandum directing all federal agencies to develop a plan within 90 days to consult and coordinate with tribal governments under President Clinton’s Executive Order 13175. Although E.O. 13175 was issued in 2000, its call for meaningful consultation and collaboration with tribes is rooted in the longstanding government-to-government relationship between tribal nations and the federal government.

Accordingly, federal agencies should be implementing E.O. 13175 in a manner that fosters the nation-to-nation relationship and gives tribes equal bargaining power on issues that impact their lands and people. The goal of consultation is to reach mutually agreeable understandings and decisions that acknowledge the interests of both the federal and tribal governments. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) formally acknowledges this process in Article 19, where it states that “States shall consult and cooperate in good faith with the indigenous peoples concerned...in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

In the time since the President’s memorandum and the United States’ endorsement of the UNDRIP, many federal agencies have bolstered their consultation efforts and engagement with tribes. However, many agencies are spending too much time consulting with tribes on consultation processes and policies and not enough time discussing substantive issues. While the procedural components of tribal consultation are important, tribes would like to see the focus of consultation turn toward substantive policy issues impacting tribes.

Additionally, the Administration should focus on the immediate development and implementation of accountability mechanisms and a reporting system to track progress. Tribal leaders often spend a great deal of time and resources providing feedback to a federal agency, only to receive little

response directed toward their recommendations and concerns. For the consultation process to be a real nation-to-nation dialogue, it is essential that agencies be transparent in how they are responding to tribal leaders' feedback. The Administration should develop a tracking system to ensure that agencies take action to address the issues raised during tribal consultation, as well as require agencies to report back to tribes on the status of these issues.

2. THE INDIAN COUNTRY BUDGET

Tribal leaders have persistently requested – especially over the last year – that the obligations to tribal citizens are honored and funded throughout the federal budget. Known as the trust responsibility, the authority to fund programs to meet this obligation is founded in the Constitution and is the result of treaties and agreements made between Indian tribes and the United States in exchange for land and resources. However, much of the funding that fulfills the trust responsibility to tribes is categorized as domestic discretionary spending and must be approved in the annual appropriations bills. As the Congress and Administration continue to deliberate on ways to reduce the budget deficit, whether through raising revenue or reducing spending, the trust responsibility to Indian tribes must be upheld.

Under the caps established by the Budget Control Act of 2011, discretionary spending will shrink from about 9 percent of gross domestic product in 2011 to 6.2 percent in 2021. Given that the “Super Committee” failed to develop an alternative deficit reduction proposal, tribal leaders fear that sequestration will result in deep cuts to federal programs that fulfill the trust, treaty, and statutory obligations to Indian Country. Tribal leaders have consistently drawn a sharp contrast between Indian program funding and other “discretionary” spending, noting that the trust responsibility is not a discretionary choice, it is a solemn agreement that is written into the U.S. Constitution and has been sustained over hundreds of years.

In that context, tribal leaders have identified two priorities related to the budget. First, tribal programs should be held harmless in the implementation of the deficit reduction plans. And second, that the President and the Office of Management and Budget should create an office of the Assistant Director for Native American Programs and the federal budget review process should be reorganized. This reorganization should ensure that federal budgets and policies provide stable sources of funding for tribal governments, so that tribal citizens receive equitable services in the same manner that is found in other jurisdictions.

3. INCLUSION IN THE DEVELOPMENT AND IMPLEMENTATION OF FEDERAL POLICY

Inclusion of tribal governments in the development and implementation of legislation is essential to strengthening the trust responsibility, tribal sovereignty, and tribal governance. The Obama Administration has supported successful passage of several notable pieces of legislation that contain substantial progress for Indian Country. As laws such as the Patient Protection and Affordable Care Act (ACA) and the Tribal Law and Order Act (TLOA) are implemented, the Administration must ensure that tribal governments are included through a government-to-government partnership that is inclusive, equal, and transparent. Central to this relationship is meaningful consultation, inclusive regulation development and implementation, and regular evaluation with tribal leaders.

Inclusion in existing federal policy should be pursued by providing tribes with equal access to programs and funding wherever state governments are included as eligible entities. Where possible, the Administration should enact regulatory reforms to ensure this equal eligibility and support any necessary legislative fixes to make those changes clear. When developing legislative proposals,

especially to protect state and local government budgets, the Administration must include tribes. Provisions in the American Jobs Act to stabilize funding for teachers and first responders and invest in 21st century infrastructure inconsistently address (or are silent on) tribal eligibility for these programs. Those pieces of legislation that are states' responsibilities, but that impact tribal communities, must include a seat at the table for tribal leadership and create a context that promotes participation as equal stakeholders in implementation and evaluation of the respective policies. In addition to ensuring inclusion, the Administration should continue to advocate for adequate implementation funding as a step toward fulfilling the trust responsibility.

Reauthorizations of major legislation like the Farm Bill, the Elementary and Secondary Education (ESEA) Act, and the Transportation Bill offer opportunities to invest in tribal communities and advance more effective public policy. The Administration must work with the Congress to identify opportunities for including tribes in reauthorization bills as governments, grantees, and partners. Identifying these opportunities and capitalizing on them strengthens tribal nations and broader regional economies. For example, the upcoming authorization of the Farm Bill is vital to Indian Country. Agriculture is a growing economy for Indian tribes with Indian agriculture productions generating \$1.4 billion in raw agriculture programs. Including a tribal title in the Farm Bill would advance tribal access to agriculture, ranching, conservation, forestry, nutrition, and other USDA programs, which would create jobs and expand the economy of large, underserved areas of rural America. Administration partners should also work to ensure that Congress includes tribes in the ESEA reauthorization. The current failure of the Senate to include any provisions of the Native Culture, Language, and Access for Success in Schools Act (Native CLASS Act) in their draft bill must be addressed to advance equal access and quality education for Native students and tribal communities.

4. EDUCATING PARTNERS

Honoring tribes as governments must be a culture that extends throughout the federal government and is promoted to non-federal partners. Tribal leaders have often cited the convening power of the Presidency as an underutilized tool to educate the Congress, federal agency staff, and the American people about the unique trust relationship between tribes and the federal government. State-based efforts to include "Indian education for all" are an emerging model that acknowledges that meaningful and equal inclusion of tribes in the American family of government requires a broad understanding of their governmental status and the nature of the trust relationship. Specific recommendations for the Administration include a Presidential address to a joint session of Congress that outlines his vision for the future of the trust responsibility and encourages Congressional leaders to hold regular education sessions, especially for new members, on tribal governments and the trust responsibility. Ongoing and robust education processes should also be implemented at the agency level to ensure that all senior officials – as well as all staff that interact with tribes – have a full understanding of the implications of the trust responsibility for their work.

The federal government also has an opportunity to influence non-federal partners to honor tribes as governments. Given the significant federal funding that flows to state governments, the Administration should encourage Governors and state legislative leadership to consult with tribes and develop education sessions for their staff and members to promote effective government-to-government engagement. Non-government entities should also be encouraged to engage with tribes and ensure that Native citizens and their governments are fully included in the development of programs that expend federal dollars in their communities and broader regions.

5. SUSTAINING MEANINGFUL ENGAGEMENT

With bold actions and a forward-thinking attitude, President Obama has advanced the government-to-government relationship between the United States and tribal nations. With the issuance of an Executive Memorandum on E.O. 13175 on Consultation, appointments of Native people to high level Executive Branch positions, the implementation of an annual White House Tribal Nations Conference, and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), President Obama has substantially elevated his Administration's engagement with tribal nations.

Leaders of tribal nations have long been proponents of expanded and enhanced engagement with the United States government and have stepped up to take advantage of the President's willingness to reach out and work with them on critical nation-to-nation policies. These leaders recognize the progress that has been made over the past three years and are respectful of all that has been achieved. However, tribal leaders also know that this progress must continue and that the gains already made must be institutionalized beyond any one Administration. Too often tribal leaders fight the same battles year after year, Administration after Administration, and decade after decade. Positive gains in one Administration are often negated or stagnate in subsequent Administrations.

The legacy of this Administration must affirm that the trust relationship between tribal nations and the United States government be upheld and recognize that it is the responsibility of each and every federal government entity—not relegated to only the Department of Interior. The President should either expand Executive Order 13175 or issue a new executive order with one definition of trust responsibility and require each federal agency to determine – in consultation with tribes – how this responsibility is being realized in their agency, with plans to address deficiencies.

While tribal leaders are encouraged by the annual White House Tribal Nations Conference, they also have recommendations to define the protocol for this event that recognizes the nation-to-nation relationship. Tribal leaders want to have regular and timely progress reports on their requests and the Administration's commitments made at the Conference. Additionally, the annual Conference should take place in a location other than the Department of Interior, with tribal leaders able to have support staff to take notes on their behalf. Many tribal leaders also request that meetings with the President take place at the regional and, in some instances, at the tribal level.

CONCLUSION

Honoring tribes as governments is consistent with longstanding federal law and policy and offers significant promise to invest in the future of prosperity of our nation.

In all nation-to-nation dialogues, representatives of the federal and tribal governments should ask:

1. How does this advance meaningful consultation?
2. How can we protect and advance the Indian Country budget?
3. Where can tribes be more fully included in the development and implementation of these policies?
4. How can the federal government more effectively educate relevant partners to ensure a full understanding of the trust responsibility?
5. How can the Administration use this opportunity to ensure meaningful nation-to-nation engagement for years to come?



CREATING JOBS AND GROWING TRIBAL ECONOMIES

Tribal nations continue to experience unemployment and poverty rates well above the national average. These rates are exacerbated by the nation's current economic hardships. With deficit reduction efforts underway, it is imperative that the Administration and Congress honor the trust responsibility by allowing tribes greater flexibility to develop their economies. This may be achieved in the following areas by streamlining federal programs and removing the regulatory barriers that continue to impede economic development in Indian Country.

TAXATION

Current tax policy for Indian tribes is inconsistent and fails to recognize Indian tribes' inherent exclusive jurisdiction to levy taxes within the exterior boundaries of tribal lands. This is the result of Supreme Court precedent, agency rulings, and interpretations issued by the Internal Revenue Service. The Administration should actively work with Congress to draft legislation that affirms the jurisdiction of tribal governments to levy taxes within their lands, free from the encroachment of taxes levied from outside jurisdictions.

Recommendations

1. Protect the taxing jurisdiction of tribal nations.
2. Work with Congress to draft legislation that affirms tribal tax jurisdiction.

ACCESS TO CAPITAL

To create jobs in tribal communities and promote economic growth in the surrounding regional economies, the Administration should support initiatives that increase tribal access to traditional financing tools (*e.g.*, tax-exempt financing, the New Markets Tax Credit, Section 1603 grants, as well as tribes' ability to monetize tax credits, or transfer those credits to minority equity partners), while also supporting programs which facilitate job creation, such as those offered by the Small Business Administration (SBA).

Recommendations

1. Establish interagency collaboration for tribal outreach and funding notifications.
2. Eliminate the "essential government function" test that tribal projects must meet to qualify for tax-exempt financing.
3. Urge the Secretary of Treasury to complete the Congressionally mandated study on Tribal Economic Development (TED) Bonds.
4. Reallocate TED Bonds with an increased volume cap for individual allocations, or eliminate the cap altogether, so that TED Bonds can be used to finance larger projects.
5. Ensure tribal governments, through Section 17 Corporations or other wholly owned tribal entities, are eligible for Section 1603 grants.
6. Provide continued support for programs offered by the SBA.
7. Support the elevation of the Office of Native American Affairs within the SBA.
8. Support long-overdue regulations and changes to the 'Buy Indian' Act.

9. Encourage the Department of the Interior to expedite decision-making processes which have a direct effect on tribal economic development opportunities (e.g., approval of leases, timber sales, agricultural sales, leases for rights of way, and land into trust applications).
10. Support passage of the HEARTH Act, which extends the provisions of the Navajo Nation Leasing Act to all federally-recognized Indian tribes.

ENERGY

Tribal nations possess vast amounts of natural resources, yet are unable to develop those resources due to a lack of administrative flexibility and unequal access to traditional incentives used to develop energy. The Administration should work with tribes to unlock the vast potential for tribal energy development.

Recommendations

1. Support the Indian Tribal Energy Self Determination Act Amendments (S. 1684).
2. Interpret the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations.
3. Eliminate inequities in energy development policy, such as the \$6,500 fee, payable to the Bureau of Land Management for each application for a permit to drill on Indian lands.
4. Resolve environmental issues, such as proposals to require hazardous substance determinations on every land transaction, in a manner that fosters economic development in Indian Country and preserves limited resources for efforts such as the Land Consolidation requirements within the *Cobell* Settlement.
5. Clarify regulations under the Energy Policy Act of 2005 to enhance tribal renewable energy development.
6. Create a joint task force (Departments of Energy, Interior, Agriculture, and Environmental Protection Agency), with tribal representatives, to recommend and implement ways to consolidate funding, reporting, and other requirements for programs that support similar activities related to tribal energy development.
7. Ensure the inclusion of tribal representatives and lands in national, regional, and state plans to upgrade and expand the transmission grid.

WORKFORCE DEVELOPMENT

If the United States is to maintain its competitive edge in the global arena, it must invest in its workforce and place an emphasis on technical expertise. Technology specific curricula and training should be further emphasized in programs offered by federal agencies. Establishment of partnerships between federal agencies, community colleges, tribal colleges and universities, and technical/vocational colleges would further increase access to higher education, incentivize job growth in industry, and foster the creation of bridge programs. The Administration should focus on an increase in job training initiatives for tribal membership to learn technical skills that make them competitive applicants for jobs in fields such as health IT and 'smart grid' technicians.

Recommendations

1. Include provisions for technical training in all education and job training programs.
2. Provide access to job training initiatives that will promote technical skill development for tribal members to work in emerging industries.



PROMOTING STRONG AND SAFE TRIBAL COMMUNITIES

As tribal governments work with federal partners to promote strong, safe Native communities, they need access to financial and technical assistance that is equitable and complies with the trust responsibility.

PUBLIC SAFETY

Indian Country commends the Department of Justice (DOJ) for its leadership on issues of public safety in Indian Country and, particularly, for its July 2011 release of a legislative proposal that seeks to address the epidemic of domestic violence against American Indian and Alaska Native women. The DOJ's proposal is the product of true government-to-government consultation and collaboration with tribes that, if enacted, would go a long way toward protecting the safety of Native women and securing their equal access to justice under the law.

We continue to monitor implementation of the Tribal Law & Order Act (TLOA), signed into law on July 29, 2010. While some benefits of the law are taking effect, funding for TLOA-authorized programs is a huge concern for tribes. Although the Administration has proposed very significant budget increases, Congress is making cuts. Tribes lost \$18 million in public safety funding in the recently passed Justice Department appropriations, from a budget that was already wholly inadequate. The Administration should urge Congress to appropriate the full seven percent set-aside of the Office of Justice Programs identified in the President's FY2011 budget and ensure that tribal justice systems are adequately and equitably funded in order to meet their TLOA obligations.

Another area about which tribes remain concerned is the failure of U.S. Attorneys to prosecute Indian country crime—this was the driving force behind the creation of the TLOA. Statistics show that over two-thirds of all Indian country crimes are declined for prosecution. This Administration is working hard to do a better job, but we need to be able to keep track of investigations and prosecutions so that we can target problems and make sure that the necessary improvements happen. The first declination reports will be due at the end of this year, and we want to be certain that the reports are useful to Congress and tribal leaders in addressing the causes of declinations.

Finally, we urge DOJ to make prompt decisions on all tribal requests submitted under Section 221 of the TLOA. Section 221 makes a significant amendment to P.L. 83-280 (PL 280) to allow tribal governments located in PL 280 states to request that the federal government exercise concurrent jurisdiction over reservation crimes. Section 221 proposed regulations have been published in the Federal Register for comment, and publication of the final rule should be forthcoming. Several tribes have placed formal requests with DOJ under this provision, and we urge the DOJ to act on these requests, notwithstanding the delay in publication of the final rule.

Recommendations

1. Continue current efforts to combat violence against Native women.
2. Urge Congress to fully fund TLOA programs and public safety initiatives in Indian Country.
3. Ensure that U.S. Attorneys provide adequate and accurate data in their annual declination disposition reports.

4. Promptly act on TLOA Section 221 tribal requests for the federal government to reassume concurrent jurisdictions over reservations in PL 280 states.

HOMELAND SECURITY

Tribal governments have broad emergency and first-responder responsibilities, as well as extensive border security responsibilities. The Department of Homeland Security (DHS) and DHS Federal Emergency Management Agency have improved service delivery to Indian Country, including the nearly 40 tribes located on and near international borders with Mexico and Canada. However, this significant progress will likely be hindered by budget cuts, which would threaten tribal and national homeland security efforts.

Tribal infrastructure and capacity needs further investment to ensure tribal governments can work effectively and efficiently with surrounding non-tribal jurisdictions. Although DHS has made progress in its tribal outreach efforts, the Administration must do more to remove barriers to program eligibility. Tribal governments have made significant strides in developing emergency preparedness plans for their communities by using tribal resources, coupled with access to training programs developed by the Emergency Management Institute under the DHS Federal Emergency Management Agency. DHS programs that directly fund tribes, such as the Tribal Homeland Security Grant Programs, require increased budgets to assist tribes in meeting national emergency preparedness framework objectives and compliance requirements.

Additionally, we urge the Administration to support immediate amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288) that would allow a tribal leader to request a major disaster or emergency declaration from the President. Direct request authority is critical because many states are precluded by law from assisting tribes, which creates obstacles in the disaster response and recovery process. The authority for tribal leaders to declare major disasters or emergencies will also alleviate situations where tribal boundaries cross two or more states. The Administration should also pursue short-term regulatory action that can facilitate tribal state of emergency declarations and the identification of tribal facilities as critical infrastructure.

Finally, the U.S. should provide additional funding for tribal efforts to develop technologically enhanced tribal ID cards, as well as recognize tribal IDs as valid for domestic and international travel. As a general matter, tribal identification cards (IDs) should be sufficient identification when traveling domestically and internationally. The Departments of State and Homeland Security should collaborate with tribes to ensure that this is happening. More specifically, tribal communities located on or near international boundaries—which are imposed by the federal government without tribal consultation—are eager to implement secure ID card distribution to tribal members. However, they lack the resources to develop costly, technologically enhanced IDs. Many states have received grants for enhanced ID efforts, and the same grants should be made available to tribal governments for this purpose.

Recommendations

1. Increase homeland security grant program access and funding.
2. Support amendments to the Stafford Act to authorize tribal officials to seek presidential disaster declaration.
3. Recognize the validity of tribal IDs as passports.
4. Provide federal assistance to develop enhanced tribal ID cards.



PROTECTING NATURAL RESOURCES AND RESPECT FOR CULTURAL RIGHTS

Natural and cultural resources and the rights conveyed are fundamental to tribal nations and Native people. Tribal nations collectively own almost 100 million acres of land with vast and diverse natural resources, and have protected rights of traditional use to significantly more land and resources. As trust assets, these land and natural resources must be protected and managed responsibly for our future. Our diverse and rich cultures derive their strength and continuity from the land and natural resources which must be protected and respected.

LAND AND TRUST REFORM

Indian land is held in trust or restricted status by the federal government to protect it from alienation and trespass as well as to protect tribal autonomy. The federal government controls management and leasing of Indian trust lands and is responsible for tens of billions of dollars in revenues from oil, gas, timber, minerals, agriculture, and other resources. We need to increase the efficiency of trust administration, improve returns on trust assets, and redirect trust administration to increase support for tribal development initiatives.

Recommendations

1. Support the passage of both the HEARTH Act (H.R. 205 and S. 703) and the Indian Tribal Energy Development and Self-Determination Act (S. 1684) that promote tribal self-determination in the management and leasing (surface and subsurface) of tribal lands.
2. Support the continued efforts to improve the land-to-trust process within the Department of Interior with regular reporting to tribes on status of pending applications.
3. Both amend the Indian Land Consolidation Act (P.L. 97-459) to streamline land acquisition procedures and implement Department of Interior processes to develop cooperative agreements with tribes that include data sharing to fully implement the \$1.9 billion Indian Land Consolidation Fund to address fractionated land ownership.
4. Require continued updating of the Bureau of Indian Affairs (BIA) Indian land leasing regulations, including elimination of the review and approval of all tribal leasing decisions.
5. Restructure the BIA and the Office of the Special Trustee by creating a single line of authority for all functions now split among the two and establish a Deputy Secretary of Indian Affairs with responsibility over Indian affairs within the Bureaus of Reclamation, Land Management, and Minerals Management.

CULTURAL PROTECTION

Protecting Native cultures is necessary for the survival of traditional Native religions, languages, customs, and identity, as well as for the continuation of tribes' status as sovereign nations. The culture and traditional religions of American Indian and Alaska Native peoples require the protection of the physical integrity of the places and objects that we hold sacred. The federal government must remove legal and other barriers that obstruct this sacred spiritual duty of care and protection.

Recommendations

1. Uphold and fortify commitments to protect sacred places and ensure full compliance with the Native American Graves Protection and Repatriation Act.

2. Issue an Executive Order for executive branch agencies to take action to protect and revitalize Native languages and to create a White House initiative on Native language revitalization to coordinate activities.
3. Vigorously enforce the Indian Arts and Crafts Act.
4. Work with tribes to resolve ambiguities in federal laws, regulations, and policies that deny American Indians and Alaska Natives access to and usage of eagle feathers for traditional cultural purposes.

ALASKA NATIVE SUBSISTENCE

Federal laws protecting American Indian and Alaska Native hunting, fishing, and gathering rights apply throughout the United States, but nowhere are they more critical than in Alaska, where these activities remain an economic necessity. Subsistence resources constitute a substantial majority of the nutritional needs of the Alaska Native people, especially in rural areas where subsistence resources also provide spiritual, and cultural sustenance. The commitment to protect the way of life for Alaska Natives is embodied in both the Alaska Native Claims Settlement Act of 1971 and in Title VIII of the Alaska National Interests Lands Conservation Act. However, the federal government has not acted to sufficiently protect these rights.

Recommendations

1. Develop legislation to provide lasting protection for Alaska Native subsistence.
2. Convene a high level interagency meeting with key White House officials and Alaska Native tribal representatives to address Alaska Native subsistence issues.
3. Take interim administrative measures to increase protections for subsistence.

CLIMATE CHANGE

The Intergovernmental Panel on Climate Change (IPCC) noted that tribal nations are “socially and economically disadvantaged [and] are disproportionately vulnerable to climate change.” The uniquely far-reaching and disproportionate impact of climate change among Native people, the absence of comprehensive climate legislation, and the federal trust responsibility collectively merit strong and urgent action by the Administration to support tribes in adapting to climate change impacts and preserving the uniqueness and diversity of tribal cultures.

Recommendations

1. Institutionalize tribal nations involvement in the work of the Council on Environmental Quality’s Climate Change Adaption Task Force.
2. Designate a lead federal agency to address the urgent needs and relocation of Alaska Native villages that qualify for permanent relocation due to climate change and direct federal funding to these efforts.

ENVIRONMENTAL PROTECTION

Tribes are heartened by the meaningful commitment and actions that the Administration has taken in carrying out the Environmental Protection Agency (EPA) Indian policy to improve the environmental and health conditions of tribal lands, water, natural resources, and communities. To take EPA’s successes to the next level, we urge the Administration to address historic unmet needs.

Recommendations

1. Ensure the EPA’s General Assistance Program (GAP) funding for all tribes regardless of jurisdictional circumstances.

2. Create a federal agency task force to examine strategies to harmonize similar and related environmental programs provided to tribes by consolidating funding requirements, enabling more flexible use of that funding, and eliminating duplicative requirements.
3. Implement within the EPA a four-year pilot project that could demonstrate the success of self-governance in addressing the environmental policy needs of Native communities.

NATURAL RESOURCES

Tribes are America's first stewards. They have cared for the land for millennia, managing resources for the generations yet unborn and using knowledge, traditions, and practices handed down by their ancestors. And still today, the physical, cultural, social, economic, and spiritual well-being of Native people depends upon the health of our natural resources. However, tribal natural resources face a diverse array of threats and inequalities, of which are generally none of tribes' making.

Recommendations

1. Direct each federal agency with any natural resource programs to identify those that provide funding to states, local governments, and municipalities – but not to tribal governments – and recommend options for tribal government inclusion.
2. Adopt tribal natural resources as a pilot effort under the White House Rural Council to “work across executive departments, agencies, and offices to coordinate development of policy recommendations to promote economic prosperity and quality of life in rural America.”

WATER RIGHTS AND INFRASTRUCTURE

When Indian reservations were established, American Indian tribes reserved water rights, and these are possibly the most important rights many Indian tribes have yet to exercise. While the United States carries the legal obligation as trustee to protect these tribal rights, federal water policy and programs have too often supported non-Native communities to the detriment of tribal legal rights. In partnership with tribal governments, the Administration should establish water rights, resolve claims, and appropriate the necessary funding to ensure tribal access to water resources.

Recommendations

1. Enact three percent (3%) tribal set-asides to the State Revolving Funds to the Clean Water Act and Safe Drinking Water Act.
2. Provide funding for the Congressionally-authorized tribal water infrastructure projects and for the on-going operation and maintenance of tribal water infrastructure.
3. Support resolution of tribal water rights claims.

INDIAN AGRICULTURE

Agriculture is of growing importance to American Indian economies, with an 88 percent increase in the number of American Indian farmers between 2002 and 2007. According to the Census of Agriculture, annual Indian agriculture production now exceeds \$1.4 billion in raw agriculture products. The U.S. Department of Agriculture (USDA) and its diverse array of programs can and should play an increasingly significant role in tribal communities. Enhanced federal support for agriculture, ranching, natural resource management, and other activities would generate significant benefits for tribes, rural communities, and the nation.

Recommendations

1. Ensure that tribal nations are included in the upcoming reauthorization of the Farm Bill.

2. Revisit and renew current USDA agreements with the Department of Interior and the EPA, and others to work in partnership with tribes to eliminate barriers and to promote coordination of natural resource conservation concerns.
3. Reform the Food Distribution Program on Indian Reservations by permanently including traditional Native foods, encouraging local food production and markets, and eliminating the asset tests.



IMPROVING ACCESS TO HEALTHCARE, EDUCATION, HOUSING, INFRASTRUCTURE AND OTHER FEDERAL SERVICES

Safe healthy communities start with adequate investments in infrastructure and services. Investments in infrastructure and services—especially in rural areas—typically have both immediate and long-lasting economic impacts. Local approaches are the best way to ensure that tribal nations have the means to maintain, support, and utilize these resources successfully.

HEALTH

Indian Country strongly supports the implementation of health care reform and seeks to ensure that the Indian health care delivery system is strengthened and improved. The following recommendations are essential to effectively implement the Indian Health Care Improvement Act and the Affordable Care Act (ACA) in Indian Country. Failure to acknowledge that funding for Native health services is different from health care provided to other Americans will result in either an abrogation of the federal trust responsibility or denial of their right to fully participate in health reform. Indian health care providers, who form a crucial system of care in some of the most remote communities in the country, must receive the funding necessary to operate Indian Health Service (IHS) facilities and fund the community-based programs that tribal communities rely on. Furthermore, the ACA contains many favorable procedural rules, cost-sharing protections, and mandatory enrollment exemptions specific to individual American Indians and Alaska Natives, referred to generally as “Indian.” Unfortunately, the references to “Indian” in the ACA are not uniformly defined and lack a reference to a single definition of “Indian.” In order to avoid confusion in the implementation of the ACA and to ensure that American Indians and Alaska Natives receive the benefits and special protection intended for them in the law, the Department of Health and Human Services (HHS) should provide a department-wide regulatory fix. Such a fix would ensure that those currently receiving benefits under the IHS may continue to do so without penalty.

Recommendations

1. Adequately fund the IHS.
2. Clarify the definition of “Indian” through an HHS department-wide regulatory fix to ensure that American Indians and Alaska Natives receive the benefits and special protection intended for them in the ACA.

EDUCATION

Tribal nations have the largest stake in the education of their citizens. Investments in education prepare our students to be the next generation of tribal leaders. Tribes must be at the table to ensure that the needs of American Indian and Alaska Native students are considered and addressed. In order for tribes and their tribal education agencies (TEAs) to build capacity and better serve their citizens, states must recognize tribal authority over the education of their students. Upon request, states should negotiate with tribal governments to transfer education programs, funding, services, and administrative responsibilities to the tribes. The Department of Education would both facilitate and foster the cooperation of the states and tribes in these agreements through financial penalties of Title I funding. For example, TEAs should be empowered to implement their own school

improvement plans via the accreditation process. Additionally, tribes should be given funds to build capacity for their education departments in the same ways that are accorded to states and districts.

Competitive grant programs within the Department of Education are designed to assist schools in developing compelling, comprehensive education reform. Unfortunately, the schools that could benefit from these reforms the most are not eligible to receive funding. To ensure parity and access for our Native students, tribal schools and the Bureau of Indian Education (BIE) schools must be eligible to compete for these essential funding sources.

Recommendations

1. Require states to work collaboratively with tribes to develop and implement education policy.
2. Ensure that tribal schools and BIE schools are eligible for all educational grant programs.

HOUSING

Housing remains a critical issue for Indian Country as American Indians and Alaska Natives face some of the worst housing and living conditions in the United States. Barriers to housing development in Indian communities include limited private investment opportunities, low functioning housing markets, and poverty. This context underscores the need for substantial investment in expanding the availability of safe, affordable housing to meet the needs of Native communities.

Another concern is the Department of Housing and Urban Development's (HUD) recent assertion that they can delegate the mandate for federal agencies to consult with tribes about undertakings that could affect tribal cultural properties contained in Section 106 of the National Historic Preservation Act (P.L. 89-665 as amended). These non-federal grant recipients, such as cities and nonprofits, are almost universally motivated to build as quickly as possible, with little or no regard for tribal concerns. HUD has been minimally responsive--and even resistant at times--to tribal efforts to work with them to find common ground where tribal consultation rights are respected and cultural properties are protected while addressing HUD's administrative concerns.

Recommendations

1. Continue to support funding for Indian housing programs, especially the Native American Housing Block Grant, Indian Community Block Grant, and Indian Housing Loan Guarantee Fund.
2. Consult directly with tribes—not through non-federal grant recipients—on the impact of off-reservation HUD projects.

PUBLIC INFRASTRUCTURE

Transportation infrastructure development is critical to the millions of Americans who travel through tribal reservations every day. Construction of transportation systems that allow for safe travel and promote economic expansion will help us strengthen our tribal communities, while simultaneously making valuable contributions to much of rural America. The passage of a new transportation authorization is imperative for Indian Country as it provides critical opportunities to access funding for the construction of roads and bridges, as well as the opportunity to create thousands of jobs.

Recommendation

1. Encourage Congress to pass a new Transportation Authorization that invests substantially in the construction of roads and bridges on Indian lands and generates new jobs.

TELECOMMUNICATIONS AND BROADBAND

A recent report by the Federal Communications Commission (FCC) stated that for every job lost, broadband creates 2.6 new jobs, and over the course of the past 15 years, Internet access has created as much economic growth that had occurred during the first 50 years of the Industrial Revolution.

Recommendations

1. Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands.
2. Create a 'Native Nations Broadband Fund' within the Universal Service Fund (USF) to provide targeted funding for broadband deployment in Indian Country.

VETERANS

American Indians and Alaska Natives are well-recognized for their dedication and commitment to serving in the armed services throughout America's history. Returning veterans are entitled to all available benefits, and we urge the Administration to assist in efforts to meet the needs of all veterans, with an emphasis on the following priorities identified by Native veterans.

A Memorandum of Understanding (MOU) between the IHS and the Veterans Health Administration (VHA) was signed in 2005 to better serve American Indian and Alaska Native veterans. The MOU was reissued by IHS and VHA last year because the collaborative effort was not fulfilling its goals. Chief among these goals is preventing the IHS from discouraging Native veterans from utilizing IHS facilities and directing them to the VA for health care, regardless of the health risks from delayed care. We urge swift and full implementation of the MOU.

Given that legislation is currently under consideration to expand the number of Veterans Centers that provide counseling and treatment for PTSD and other mental health issues, a tribal pilot program is imperative to meet the unique needs of Native veterans.

Recommendations

1. Immediately implement the IHS/VHA MOU to ensure Native veterans receive adequate and comprehensive health care.
2. Urge Congress to include a pilot program for Traditional Tribal Veterans Centers to provide Native veterans with culturally-appropriate care for PTSD and other mental health issues.

YOUTH

See youth specific paper in the "background materials" section.



STRENGTHENING THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

Throughout American history, tribal nations have been recognized as governments that pre-dated the United States and have maintained the right to govern their own people and their own lands. The status of Native nations as sovereign governments is recognized specifically in the United States Constitution. From this legal recognition stems a nation-to-nation relationship between tribes and the federal government—a relationship that is documented in historical treaties and affirmed by subsequent laws, policies, and Supreme Court opinions.

We commend President Obama for his demonstrated commitment to the nation-to-nation relationship, and we urge his Administration to strengthen this relationship in the coming year by taking meaningful action in the following areas.

CONSULTATION

Since President Obama issued his November 5, 2009, Executive Memorandum on consultation and coordination with tribal governments under President Clinton's Executive Order 13175, many federal agencies have increased their consultation activities with tribes. However, agencies continue to place too much emphasis on process, rather than on the substantive requirements of E.O. 13175. Moreover, some agencies have taken the stance that certain policy topics are immune from consultation altogether, which is counterproductive. Instead, federal agencies should implement E.O. 13175 in a manner that fosters the nation-to-nation relationship and gives tribes equal bargaining power on issues that impact their lands and their people.

Recommendations

1. Focus on the substantive requirements of E.O. 13175.
2. Develop accountability mechanisms to ensure that tribal input is acted upon.
3. Explore strategies to streamline consultation processes.
4. Support legislation to institutionalize consultation and make it legally enforceable.

CARCIERI FIX

In February 2009, the U.S. Supreme Court issued *Carcieri v. Salazar*, which overturned the long-standing interpretation of the Indian Reorganization Act (IRA) by construing the IRA to limit the Secretary's authority to place land into trust to only those tribes that were "under federal jurisdiction" as of 1934. Legislation is needed to prevent irrevocable damage to tribal sovereignty, tribal culture, and the federal trust responsibility.

Recommendation

1. Support legislation that would affirm Congressional intent of the IRA to permit the Secretary of the Interior to take land into trust for all federally recognized Indian tribes.

INTERNATIONAL ISSUES

Although President Obama officially endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) almost a year ago on December 16, 2010, the Administration has taken little action to implement its key provisions.

Recommendations

1. Create effective infrastructure to promote implementation and monitor compliance with international human rights treaties and other human rights obligations.
2. Create a tribal commission to ensure compliance with the UN Declaration.
3. Urge the UN to allow tribal participation in UN forums as nations, rather than as non-governmental organization representatives.

TRIBAL-STATE RELATIONSHIPS

The Obama Administration has the opportunity to lead by example in working in partnership with American Indian and Alaska Native tribes. State legislators are often unfamiliar with the bounds of tribal sovereignty and the contours of the federal trust relationship with tribes. States may look to the federal government for education and leadership on these issues. The federal government must stand firm in upholding the government-to-government relationship, respecting tribal sovereignty, and supporting tribal self-determination, while at the same time encouraging tribal-state collaborative efforts on issues of mutual concern.

Recommendations

1. Promote an understanding of and respect for tribal sovereignty.
2. Provide more incentives and funding for tribal-state collaborative efforts.
3. Urge state governments to institutionalize tribal-state consultation policies and protocol.
4. Require states to wholly fulfill their obligations under Public Law 280.
5. Support efforts to address restrictive state settlement acts.

FEDERAL FUNDING

The relationship between the tribes and the federal government is based on mutual promises. Through treaties, agreements, and a long history of dealings, vast regions of Indian lands were ceded to the United States. In return, tribes received promises for protection of Indian lands; protection of tribal self-governance; and provision of social, medical, and educational services for tribal citizens. Federal investments to fulfill this trust responsibility are moral and just.

Recommendations

1. Fulfill the trust responsibility by fully funding core tribal programs.
2. Treat tribes on a level consistent with federal support of state and local governments.
3. Honor contractual obligations to tribal governments.

DATA COLLECTION

Fulfilling the federal government's trust responsibility to American Indian and Alaska Native tribes requires accurate data on tribal needs and resources. In order for Native communities to be eligible for certain federal grants, they must be included in national data sets. This inclusion is also important for policymaking and regional resource allocation.

Recommendations

1. Work in close consultation and collaboration with American Indian and Alaska Native tribes to facilitate effective data collection in Indian Country, especially through testing improvements in the Census Bureau's American Community Survey.
2. Include American Indians and Alaska Natives in national data sets and collect comprehensive data from tribes.

PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES
Summary of NCAI Program Flexibility Paper - Full Paper at tinyurl.com/TNC2011

Action		Implementation Partners
Protect the Indian Budget and fully implement relevant legislation		
1	Advocate for full funding and implementation of TLOA, IHCA, and other key federal Indian programs	Administration and Congress
2	Protect the Indian budget from deficit reduction efforts	Administration and Congress
3	Ensure tribal participation in tax reform discussions and ensure equal access for tribes to existing and future incentives to promote access to capital	Department of Treasury
Recognizing Tribes as Nations in Policies and Regulations		
4	Expand the Executive Order on Consultation to fully recognize in policy and practice that all federal agencies have a trust responsibility with tribal nations and they should demonstrate how that will be realized.	Executive Branch, President
5	Affirm tribal sovereignty and use executive powers to provide equal access to funding, adjust restrictive policies and regulations, and ensure tribes are involved in the rulemaking process	Executive Branch, President
6	Expand self-governance to encompass all relevant federal agencies	Executive Branch, President
7	Develop a list of all economic development programs that can be utilized by tribes and Native non-profits	Treasury, Bureau of Indian Affairs, SBA, Department of Agriculture
8	Utilize low-cost means to communicate opportunities to Indian Country	All federal agencies and departments
9	Develop a list of all economic development programs that currently exclude tribes and Native non-profits and make recommendations to include tribal governments alongside their state government peers and increase tribal access to all federal economic development programs	All federal agencies and departments

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Expedite Administrative Processes that Affect Economic Development		
10	Encourage the Secretary of the Interior to exercise his authority in a way that prioritizes and advances tribal economic development (e.g. giving priority to business development leases etc.)	Administration
11	Support Legislation, such as the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, which allow tribes great autonomy over processes which affect economic development in Indian Country, and S. 1684, the proposed Amendments to the Indian Tribal Energy Self-Determination Act, which addresses barriers to tribes' ability to develop Tribal Energy Resource Agreements.	Administration, DOI and all relevant federal agencies
12	Conduct a meeting between senior Commerce officials, tribal leaders, and tribal enterprises to discuss potential tribal participation in U.S. trade missions	Administration
Improve the Method of Data Collection in Indian Country		
13	Direct the Census Bureau to test the effectiveness of higher volume, less regular ACS data collection (e.g. on a biannual basis, rather than monthly) with an eye to improving data quality (particularly to narrowing error boundaries on key socioeconomic data estimates)	White House and Census Bureau
14	Direct DOI to share all existing land data with Indian tribes to help facilitate initiatives such as, but not limited to, land consolidation efforts, applications for leases, etc.	DOI
15	Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country	GAO, OMB, all other relevant federal agencies
16	Direct all federal agencies to review existing grant scoring criteria and offer tribes alternate assessment criteria to account for the diverse quality of data describing Native communities	All federal agencies
17	Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise	All federal agencies

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18	Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself	All federal agencies
Eliminate Match Requirements for Tribal Nations		
19	Eliminate match requirements for grants to tribal governments and tribal organizations	All federal agencies administering grants to tribal nations
Recognize Tribes as Sovereign Nations in Federal Legislation		
20	Support legislation which recognizes tribes as sovereign nations retaining exclusive jurisdiction to levy taxes within the exterior boundaries of their tribal lands	Department of Treasury
21	Explicitly include tribes in legislative proposals to stabilize state and local government budgets	Administration and Congress
22	Encourage Congress to include tribes in the definition of “state” in all relevant legislation	Administration and Congress
Protecting Tribal Tax Jurisdiction		
23	This Administration needs to recognize the inherent exclusive authority of Indian tribes to levy taxes within their own tribal lands, free from infringement by outside jurisdictions	Department of Treasury
Tax-Exempt Financing		
24	Eliminate the ‘Essential Government Function’ analysis currently used to qualify tribal projects for tax-exempt financing	Department of Treasury
25	Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing	Department of Treasury
26	Institute federal guarantees to back tribal bonds on the market	Department of Treasury

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27	Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933	Securities and Exchange Commission
28	Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value	Department of Treasury
29	Expedite the completion of the Tribal Economic Development Bond study under ARRA	Department of Treasury
30	Expand the timeframe for current projects to issue a bond offering	Administration
31	Adjust the general time requirements for bond offering under the TED bond program	Department of Treasury
32	Reallocate unused funding for another bond offering and adjust cap limits, or eliminate cap limits, to encompass larger-scale development projects	Department of Treasury
New Markets Tax Credit		
33	Issue clarification that Section 17 Corporations, Alaska Native Corporation, and other wholly owned tribal entities, are QALICBs	Department of Treasury
34	Support education and outreach to ensure tribes have adequate information on how to use New Markets Tax Credits	Department of Treasury
35	Provide support to identify Community Development Entities willing to work with tribal governments	Department of Treasury
36	Provide a structure that would allow 3-5 small projects, \$10 million and under to jointly access NMTCs	Department of Treasury
37	Include Native trust lands and Alaskan communities under 50,000 in population as eligible investment areas for New Markets Tax Credits	Department of Treasury
Section 1603 Grants		
38	Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program	Department of Treasury
39	Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies	DOI

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40	Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction	HUD
41	Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises	Department of Treasury
42	Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital	DOI, Treasury, USDA, DOE
Promote Public-Private Partnerships to grow the Indian Country Economy		
43	Convene a meeting with financial institutions, Native CDFIs, and tribal leaders to develop partnerships	Department of Treasury and
44	Convene a meeting with tribal enterprises and surety bonding companies	Department of Treasury
45	Convene a meeting with large foundations to encourage co-investment in Indian Country	Department of Treasury and
Alleviating Barriers to Economic Development		
46	Expedite agency decision-making processes which have a direct effect on tribal economic development opportunities, such as the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (e.g., to develop telecommunications infrastructure), and land into trust applications	All agencies
47	Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers	DOI
48	Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way	DOI
49	Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land	DOI
50	Amend or clarify regulations to enhance access to energy development opportunities	DOI
51	Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits	Department of Treasury

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52	Allow Section 17 Corporations and other wholly owned tribal entities to make use of federal tax extenders through the establishment of tax credits which may be sold by the tribal entity on the secondary market	Department of Treasury
Promoting Financial Stability and Entrepreneurship on Tribal Lands		
53	Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund	Department of Treasury
54	Promote agency outreach to Native CDFIs to connect them to potential funding opportunities	Department of Treasury
55	Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI	Department of Treasury
56	Allow federal funds to be used as qualified match for awards to Native CDFIs	Department of Treasury
57	Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments	Department of Treasury
58	Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs	White House and Department of Treasury
59	Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs	Department of Treasury
60	Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country	White House and CFPB
61	Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits	FRB, FDIC, OCC, OTS
62	Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks	FRB, FDIC, OCC, OTS
63	Impose meaningful consequences for non-compliance with CRA requirements	FRB, FDIC, OCC, OTS
64	Ensure bank Performance Evaluations include analysis of services provided to Native communities	FRB, FDIC, OCC, OTS

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Encouraging Entrepreneurship on Tribal Lands		
65	Support and enhance the Buy Indian Act by establishing and enforcing regulations	Administration and Congress
66	Explore ways to implement the Buy Indian Act for any federal program that receives funds for the benefit of Indians	Administration
67	Support the tribal small business 8(a) program	Administration and Congress
68	Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries	All agencies
69	Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget	Small Business Administration
70	Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding	Department of Commerce
71	Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers	Small Business Administration
72	Require GSA procurement or preferences for goods and services that have been manufactured under supplier diversity mentor protégé or other agreements and have at least 51% diversity supplier content.	GSA
73	Seek GSA building leases from qualified minority interests.	GSA
Include Tribal Natural Resources within the Framework of the White House Rural Council		
74	Include tribes in the natural resource focused work of the White House Rural Council	President and Secretary Vilsack
75	Explore tribal natural resources as a focus to develop the Rural Council's work	President and Secretary Vilsack

PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES
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Review Existing Agreements, Strategies & Regulations which Affect Tribal Natural Resources		
76	Conduct a comprehensive review of existing interagency agreements to establish measurable goals and objectives and identify areas where tribal natural resources can advance economic development and create jobs	Administration
77	Direct tribal liaisons to work with tribes to bring together the federal, regional, state, and local agency representatives to develop an integrated natural resources approach	All agencies
78	Develop a NRCS tribal advisory council at the national and regional level to develop and implement natural resource policy that promotes economic development	USDA
79	Have the Natural Resource Conservation Service provide basic conservation services to tribes and Indian landowners equitable to that of other landowners that includes outreach, education, training, and technical assistance	USDA
80	Direct NRCS to document and share with tribes, Native landowners, and NRCS staff what is working in tribal natural resources conservation	USDA
81	Inventory all NRCS training programs for youth and others and conduct outreach to tribes and Native landowners about these opportunities	USDA
Ensure Tribes Receive Equitable Access to Federal Education and Youth Funding		
82	Explicitly include tribal education departments in federal proposals to prevent teacher layoffs and create additional jobs in education systems	Department of Education, DOI
83	Explicitly include tribal education departments in federal proposals to modernize school facilities	Department of Education, DOI
84	The Administration should reinstitute the 10 percent set aside for tribal and rural communities under the YouthBuild Program	Administration
85	Interpret the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty	DOL
Streamline Federal Employment and Training Programs		
86	Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding	DOI, DOL, DHHS

PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES
Summary of NCAI Program Flexibility Paper - Full Paper at tinyurl.com/TNC2011

87	Rescind the March 2009 OMB A-133 Compliance Supplement	DOI, OMB
88	Work with tribal leaders and the Native American Employment and Training Council to develop a program accountability system that meets the needs of Native communities	DOL
89	Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs	All agencies
90	Work with DOL to utilize regulatory means to ensure access for tribal grantees	Administration
91	Establish partnerships between federal agencies, community colleges, tribal colleges and universities, and technical/vocational colleges to increase access to higher education and foster the creation of bridge programs	All agencies
92	Relax Department of Education regulations to allow YouthBuild to compete for innovation funds	Department of Education
93	Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities	All agencies
94	Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding	All agencies
95	Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs	DOI
Support Tribal Colleges		
96	Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges	Administration and relevant federal
97	Reissue the tribal college specific Executive Order (EO 13270), either separately or as a part of an overall Executive Order on Indian education, to require all agencies to work with tribal colleges and provide an implementation plan for such cooperation	Administration
98	Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector	Administration and Congress
99	Support TCUs in obtaining more research grants that can assist the tribal nations that they serve	All federal agencies

PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES
Summary of NCAI Program Flexibility Paper - Full Paper at tinyurl.com/TNC2011

100	Include tribal colleges in efforts to develop jobs in America, looking to TCUs as training centers for workforce development in Indian Country and rural America	DOL and other federal agencies
101	Continue support for UTTC to develop as a regional training center for law enforcement correctional officers	DOI
102	Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs	DOI
General Infrastructure		
103	Explicitly include tribal governments in federal infrastructure programs and legislative proposals	Administration and all agencies
Telecommunications		
104	Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives	USDA
105	Continue to redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands	FCC
106	Create a tribal position, filled by an American Indian or Alaska Native, within the USDA RUS to encourage further collaborative efforts with tribes	USDA
107	Provide for SafetyNet E-911 service for tribal communities since many tribal lands reside in rural areas thereby increasing EMS and law enforcement response times	FCC
108	Establish inter-agency collaboration between the Department of Treasury, Department of Agriculture, and the Department of the Interior with tribes to develop additional financing options collectively, and educate tribes of available financing	Department of Treasury, USDA, DOI
109	Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands	DOI, USDA
110	Create a 'Native Nations Broadband Fund' within the USF to provide targeted funding for broadband deployment in Indian Country. This fund would combine Universal Service support and federal grant resourcing programs	FCC
111	Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data	FCC and NTIA

PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES
Summary of NCAI Program Flexibility Paper - Full Paper at tinyurl.com/TNC2011

112	Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities	FCC
113	Extend tribal radio construction permits nearing the expiration deadline	FCC
114	Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television	Administration, Congress and OMB
115	Urge the FCC to change its stance on reverse auctions for tribal and rural communities and instead provide tribal priority to available spectrum and offer it at discounted or reserved prices	FCC



National
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INVESTING IN OUR YOUTH

For hundreds of years, tribal nations have reflected on their decisions through the lens of its impact on the seventh generation. This perspective on policy making for the benefit of our children, and our children's children, has led tribal leaders to increasingly urge the federal government to enact policies that focus on youth wellness and early intervention. Indian Country is young— about 32 percent of the Natives population is under 18, as compared to 26 percent for the entire United States. However, past and ongoing efforts tend to concentrate solely on the symptoms of poverty and lack of opportunity and, as a result, fail to harness the inherent potential of Native children and teenagers. Young people have the capacity to create and lead positive community change, and should be given the tools and resources to do so.

Native nations need support for a tribal youth-led wellness initiative that addresses safety, education, health care, and job skill development, with coordination across the systems and departments through which these services are delivered. Programs must be developed that cut across agencies to foster healthy lifestyles, safe and supportive environments, successful students, and stable communities.

Native youth are undoubtedly the future of tribal nations, and ongoing investments are required to ensure that they grow into healthy young adults and become the next generation of tribal leaders, community members, and business leaders. Tribal governments know better than anyone else the issues their communities face, and the Administration should provide resources to support tribes in developing their own solutions.

RECOMMENDATIONS

1. Support early and routine school-based assessments

Schools should require regular comprehensive assessments for students on everything from mental health and dental needs to drug abuse, victimization, and educational attainment. These types of assessments will not only help parents and professionals detect the need for intervention and enhance the delivery of any necessary services, but they will also help prevent juvenile delinquency by addressing children's health, social, educational, and other needs before they manifest themselves in the form of delinquent behavior.

2. Reform juvenile justice

There is a growing consensus among tribal leaders and the nation at large that while placing juvenile offenders into detention facilities may be legitimized by federal, state, and tribal law, it is not necessarily in the long-term interests of children or their communities. Detention is too often a dumping ground for youth who should be served by other public systems, kept in school with their families, and be provided with mentoring programs that focus on oversight, curfews, homework, and healthy social activities. This is especially the case for non-violent, first-time, or low-level offenders who typically pose little threat to public safety. Effective implementation of alternatives to incarceration in Indian Country will require

funding and technical assistance for new, culturally relevant programs that will meet local needs and promote tribal self-determination.

3. Invest in school-based youth wellness activities

Tribes need dedicated funding to effectively address tribal youth wellness and juvenile justice reform. A new grant program could support several project phases (e.g., stage one for project development, stage two for implementation, stage three for evaluation, etc.). In the long run, however, this type of short-term grant program will not suffice – tribes will need a permanent funding stream to support youth wellness activities. Currently, most of the funding for these kinds of activities comes from either health-based or law enforcement-based programs. Yet, schools are the focal point for a large part of the type of reform that we are suggesting. As such, more educational resources should be allocated toward programs and initiatives that support tribal youth wellness.

4. Support early financial capability training

To build a strong foundation for future economic development, many tribal nations have developed financial capability training programs focused on building skills for future generations. At the national level, the Tribal Exchange Stock Market Game is an excellent example of a program that promotes financial literacy. A recurring 10-week program for American Indian and Alaska Native students in grades 4 through 12, it teaches valuable financial life skills and team building while strengthening inter-tribal connections. Tribes need more support and resources to implement similar financial literacy programs. This could be pursued by ensuring tribes are included in existing federal financial capability programs and that tribal innovations are highlighted as models for the rest of the country.



THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Indigenous communities across the globe are increasingly relying on international law and international forums for enforcement of their human rights. American Indians and Alaska Natives have increasingly used this strategy. Since President Obama officially endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) on December 16, 2010, tribes have been extremely vocal in urging immediate implementation in all areas of government.

The importance of the UN Declaration to American Indian and Alaska Native tribes cannot be overstated. While not legally binding in and of itself, it nevertheless performs the invaluable functions of gathering together in one document the basic rights of Indigenous peoples, educating the public at large about these rights and providing clear direction for those nation states who have endorsed the Declaration. Tribal leaders and federal agencies need to continue to take concrete and coordinated steps toward implementation of the Declaration.

Potential Next Steps for Tribes in Implementation of UNDRIP:

- 1) **Tribal accountability.** Now that the United States has formally endorsed the Declaration, tribal leaders and their attorneys have the opportunity to be educated on the rights contained in the Declaration and its possible uses at the local, regional, and national level. Tribes can be strategic in their use of the Declaration, but to do so, they must first have a comprehensive understanding of its contents.
- 2) **Federal accountability.** Tribal leaders should urge President Obama to direct each federal agency to: 1) require its employees to familiarize themselves with the Declaration and its contents; 2) conduct a comprehensive review of the extent of its compliance with the Declaration in order to identify those areas where they fall short; and 3) present a plan for achieving full compliance by a specific date.
- 3) **Oversight.** Tribal leaders should urge the United States to create a American Indian and Alaska Native Commission to develop recommendations for implementation of the Declaration, or alternatively, the creation of a joint United States/tribal task force to develop a comprehensive plan for implementation of the Declaration.
- 4) **Collaboration on issues of mutual concern.** Tribes should consider partnering with Indigenous peoples from other countries to tackle issues of mutual concern. Specifically, U.S. tribes should consider forming a joint task force made up of Indigenous peoples from both the United States and Canada—as well as government officials from the United States and Canada—to identify border issues affecting Indigenous rights recognized in the Declaration and to work collaboratively to address them.
- 5) **Annual review.** Tribal leaders should recommend that the Human Rights Council authorize the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to conduct an annual review on the extent to which the Declaration is being implemented within the United Nations itself.
- 6) **An International Model.** In its explanation of its endorsement of the Declaration, the United States stated that it is “committed to serving as a model in the international

community” in rights promotion. Therefore, tribal leaders should urge the United States to support the rights recognized in the Declaration in all international arenas. Tribes should also urge the United States to constructively engage in the ongoing negotiations at the Organization of American States on the draft American Declaration on the Rights of Indigenous Peoples (a process in which Canada is also refusing to engage). The UN Declaration should provide a floor for any such negotiations.



National
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**CONSULTATION WITH
TRIBAL NATIONS:
AN UPDATE ON
IMPLEMENTATION OF
EXECUTIVE ORDER
13175**

Summary Report

OCTOBER 2011

INTRODUCTION

On November 5, 2009, President Obama held a historic meeting with tribal leaders from across the United States and promised to improve the partnership between the federal government and Native nations. As an initial step toward fulfilling this commitment, the President issued an Executive Memorandum that directed all federal agencies to develop a plan within 90 days to consult and coordinate with tribal governments under President Clinton's Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Although E.O. 13175 was issued in 2000, its call for meaningful consultation and collaboration with tribes is rooted in the longstanding government-to-government relationship between Native nations and the U.S. federal government.

E.O. 13175's purpose is to improve governmental services and programs on Indian reservations within a framework of tribal self-determination. Any time an agency develops a new rule, policy, or directive, or takes any action that might impact tribes, the agency must consult with affected tribes early and often during the decision-making process. The fundamental request of the National Congress of American Indians (NCAI) has been that the federal government go beyond dialogue and truly take action to meet its responsibilities to Indian Country.

E.O. 13175 applies to any federal "agency," including any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the federal government. While some independent regulatory agencies concluded that E.O. 13175 does not explicitly apply to their agency, further review and consultation with intertribal organizations (like NCAI) has led those agencies to conclude that President Obama's memorandum issues a broader mandate that recommends the development of a consultation policy by all federal agencies. As such, some independent agencies that did not initially engage in tribal consultation have since developed tribal consultation policies or are in the process of doing so. NCAI encourages all agencies, including independent regulatory agencies, to implement comprehensive tribal consultation policies in a timely manner.

This report is intended to provide NCAI membership with an update on federal agencies' progress in developing and implementing tribal consultation policies. While many agencies have taken this charge seriously and have greatly improved their consultation activities, other agencies are still in the process of developing their policies. This report provides the following information on each agency's progress:

- **Implementation Plan Status:** President Obama's Executive Memorandum directed agencies to submit a tribal consultation implementation plan to the Office of Management and Budget (OMB) within 90 days (by February 3, 2010). We have indicated whether each

agency submitted its plan and on what date, if known. Where possible, we have included a link to the implementation plan on the web.

- **Consultation Policy Status:** We have indicated whether or not each agency has developed a formal consultation policy and, if so, whether it is a draft or final version and how many pages it is. Where possible, we have included a link to the policy on the web.
- **Progress Report Status:** The President's Executive Memorandum further directed each agency to submit to OMB within 270 days (August 2010) and annually thereafter a progress report on the status of each action included in its implementation plan and any proposed updates. If known, we have indicated if and when an agency submitted a progress report and, where possible, included a link to the progress report on the web.
- **Highlights of Major Consultation Efforts Since 2009:** NCAI attempted to contact each agency and obtain any highlights of its major consultation efforts since the President's memorandum in 2009. Please note that the information in this section constitutes selected highlights and does not encapsulate all consultation activities of the given agency. If an agency did not respond to our request, we have included whatever information was publicly available on the web.
- **Contacts:** We have included agencies' point of contact for tribal consultation, as well as agencies' American Indian/Alaska Native website links, if available. Additionally, we have noted contact information for the NCAI staff member responsible for coordination with respective agencies.

This report is a summary of the full 82 page report, which is available on NCAI's website at www.ncai.org.

If you have any questions or comments about this report, please contact Katy Jackman, NCAI Staff Attorney, at kjackman@ncai.org, or Katie Jones, Legislative Fellow, at kjones@ncai.org.

SUMMARY REPORT

Agency	Does the agency have a consultation implementation plan? (Yes/No/Draft)	Does the agency have a consultation policy in place? (Yes/No/Draft)	When was the consultation policy last updated?	Does the agency have a point of contact for tribal consultation? (Yes/No)	Does the agency have an Office of Tribal Relations or equivalent? (Yes/No)
Executive Departments (<i>Sub-agencies in italics</i>)					
Department of Agriculture (USDA)	Yes	Yes	9/11/2008 ¹	Yes	Yes
Department of Commerce (DOC)	Yes	Draft	9/2011	Yes	No ²
Department of Defense (DOD)	Yes	Yes	1998	Yes	No
Department of Education (ED)	Yes	No ³	N/A	Yes	Yes
Department of Energy (DOE)	Draft	Yes	1/16/2009	Yes	Yes
Department of Health and Human Services (HHS)	Yes	Yes	12/14/2010	Yes	Yes
<i>Administration for Children & Families</i>	Follows HHS agency-wide plan.	Yes	8/18/2011	Yes	Yes
<i>CDC/Agency for Toxic Substances and Disease Registry</i>	Follows HHS agency-wide plan.	Draft ⁴	10/18/2005	Yes	Yes
<i>Centers for Medicare & Medicaid Services (CMS)</i>	Follows HHS agency-wide plan.	Yes	Unknown	Yes	Yes
<i>National Institutes of Health (NIH)</i>	No	No	N/A	Yes	No
Department of Homeland Security (DHS)	Yes	Yes	5/11/2011	Yes	Yes

¹ The USDA is currently working to update its tribal consultation policy and plans to release a final version soon.

² The Department of Commerce's current position for Native American affairs, the Senior Adviser on Native American Affairs, is being eliminated due to budget cuts.

³ A Department of Education official has informed NCAI that it plans to follow the Department of the Interior's tribal consultation plan when it is finished.

⁴ CDC is in the process of revising the current policy. It is anticipated that the revised policy will be approved and issued in spring 2012.

Department of Housing and Urban Development (HUD)	Yes	Yes	6/28/2001 ⁵	Yes	Yes
Department of Justice (DOJ)	Yes	Yes (internal only)	Unknown	Yes	Yes
Department of Labor (DOL)	Yes	Draft	9/2011	Yes	No
Department of State (DOS)	Yes	Yes ⁶	2/3/2010	Yes	No
Department of the Interior (DOI)	Yes	Draft	7/18/2011	Yes	Yes
Department of the Treasury	No	Draft (internal only)	7/23/2010	Yes	No
Department of Transportation (DOT)	Yes	Yes ⁷	3/2010	Yes	No
Department of Veterans Affairs (VA)	Yes	Yes	2/4/2011	Yes	Yes
US Army Corps of Engineers	Yes	Draft	9/8/2011	Yes	Yes
Independent Agencies and Government Corporations Affecting Tribal Government Interests					
Advisory Council on Historic Preservation	Yes	Yes	11/17/2000	Yes	Yes
Commission on Civil Rights	No	No	N/A	No	No
Environmental Protection Agency (EPA)	Yes	Yes	5/4/2011	Yes	Yes
Farm Credit Administration	No	No ⁸	N/A	No	No
Federal Communications Commission (FCC)	No	Yes	6/23/2000	Yes	Yes

⁵ HUD is currently working to update its tribal consultation policy and plans to release a final version soon.

⁶ A Department of State official has informed NCAI that DOS's consultation policy is contained within its implementation plan.

⁷ A Department of Transportation official has informed NCAI that DOT's implementation plan functions as the department's formal tribal consultation policy.

⁸ A Farm Credit Administration official has informed NCAI that the agency does not currently have any directives or regulations that would affect tribes. In the event that the agency ever does, it plans to develop a protocol for tribal consultation.

Federal Election Commission (FEC)	No	No	N/A	No	No
Federal Housing Finance Board	No	No	N/A	No	No
National Labor Relations Board (NLRB)	No	No	N/A	No	No
National Science Foundation (NSF)	No	No	N/A	No	No
National Transportation Safety Board	No	No	N/A	No	No
Securities and Exchange Commission (SEC)	No	No	N/A	No	No
Small Business Administration (SBA)	Draft (not public)	Draft (not public)	2011	Yes	Yes
Social Security Administration (SSA)	No	Yes	2010	Yes	No
Federal Boards, Commissions, and Committees Affecting Tribal Government Interests					
Denali Commission	No	No ⁹	N/A	Yes	No
Indian Arts and Crafts Board	No	No ¹⁰	7/18/2011	Yes	No
Marine Mammal Corporation	Yes	No	N/A	Yes	No
National Indian Gaming Commission	No	Draft	3/8/2011	Yes	N/A

⁹ The Denali Commission is currently identifying and developing a list of best practices for tribal consultation in Alaska that can be used across the family of federal agencies.

¹⁰ An official from the Indian Arts and Crafts Board has informed NCAI that it follows the Department of the Interior's policy.



National
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Outcomes of the 2009 Tribal Nations Summit

An Assessment of Commitments made by the Obama Administration

December 1, 2010

Introduction

As part of the work of the National Congress of American Indians (NCAI) to support tribal nations in their nation-to-nation relationship with the federal government, NCAI staff conducted a thorough review of President Obama's 2009 Tribal Nations Summit and produced a matrix of Administration commitments. This document assesses the extent to which the Administration kept those commitments.

Major Commitments Kept

1. Commitment to consultation

In President Obama's opening remarks he directed "every Cabinet agency to give [him] a detailed plan within 90 days" of how they were complying with the full implementation of Presidential Executive Order 13175. Further, the President instructed each agency to include how they were improving tribal consultation.

Outcome

The President signed a memorandum providing those instructions to the agencies. This resulted in extensive consultation by a range of federal agencies. The President also directed the Director of the Office of Management and Budget to submit a report on the implementation of the Executive Order across the agencies within one year of the Tribal Nations Summit (November 5, 2010).

2. Commitment to public safety

The President noted he was committed to "a serious conversation with regard to all aspects of your public safety." Deputy Attorney General Ogden emphasized the Administration would strongly support the Tribal Law & Order Act and noted the Department of Justice's commitment to "bring effective law enforcement and justice to tribal communities." Secretary Salazar noted that "issues of public safety and civil justice will be made a reality in the Obama Administration."

Outcome

With strong support from the Administration, the Tribal Law & Order Act was signed into law on July 29, 2010.

3. Commitment to resolving tribal trust claims

Secretary Salazar recognized there has "been a history of mismanagement of claims and trust assets" that has "blemished the relationship" between tribes and the federal government. He emphasized the government was "committed to changing that."

Outcome

One month after the first Tribal Nations Summit, the *Cobell* settlement was announced. In November 2010, the Senate and House passed legislation approving the settlement and authorizing \$3.4 billion in funds.

4. **Commitment to resolving civil rights claims**

Secretary Vilsack conveyed his dedication to changing the Department of Agriculture's (USDA) "spotty record as it relates to civil rights" and to resolving matters "as expeditiously and as fairly as possible."

Outcome

A settlement of the Keepseagle class action lawsuit between American Indian farmers and ranchers and USDA received preliminary judicial approval in October 2010. The settlement agreement orders USDA to: pay \$680 million in damages to thousands of Native American farmers and ranchers, forgive up to \$80 million worth of outstanding farm loan debt, and take other measures to promote equitable access to USDA programs.

Further Progress Needed

1. **Commitment to energy development**

President Obama noted that the Administration was "securing tribal access to financing and investments for new energy projects." Secretary Chu emphasized the commitment to "promoting energy development" and bringing "more of Indian Country on the grid to develop energy storage mechanisms."

Outcome

Tribes still lag significantly behind states in access to federal funding for energy development. Furthermore, the Tribal Office at the Department of Energy is still without a director, who could play a critical role in advancing tribal energy priorities.

2. **Commitment to economic recovery in Indian Country**

Secretary Locke noted that the Administration is committed "to make sure that [economic] recovery and that the prosperity of America includes tribal lands and tribal people." Secretary Solis noted her Department's focus on high unemployment rates in Indian Country and to expand access to employment programs.

Outcome

Administrative and legislative action to promote job creation must include substantial emphasis on economic development in tribal communities, at least at the scale included in the Recovery Act. The Department of Labor must do more to ensure unemployment is adequately measured and addressed in Indian Country. A specific area requiring immediate action is the Department's green jobs investments that offer insufficient access for tribal communities.

Conclusion

At the President's First Annual Tribal Nations Summit, numerous commitments were made by the Administration. Some were general in nature and will require ongoing monitoring. Others were very specific and were fulfilled. Other specific commitments were not fulfilled.

These Summits offer a critical opportunity to engage with the Administration and secure important commitments to advance the trust relationship. NCAL's work to identify these commitments provides an important yardstick to assess the Administration's relationship with Indian Country. It is critical that we embrace our collective responsibility to work with the Administration to ensure the trust relationship is advanced to the benefit of Native people and the country as a whole.



KEY MESSAGES FOR THE TRIBAL NATIONS SUMMIT WITH PRESIDENT OBAMA

From Tribal Leaders Preparatory Meeting on December 14, 2010

In a process beginning at the 67th NCAI Annual Convention, tribal leaders have identified and refined a series of key messages to share with President Obama and Administration officials at the White House Tribal Nations Summit. At their December 14 preparatory meeting tribal leaders synthesized a set of core messages for the Summit. These key messages are directed at influencing the high level policies that the President can establish to direct the agencies and lead the Congress to fulfill the core principles of tribal sovereignty and meet the federal government's responsibilities on hundreds of specific issues. **We believe that President Obama has the opportunity to establish a Nation-to-Nation Relationship for the 21st Century.** The potential elements of this new relationship include the following:

- 1) Reinvigorating the Trust Responsibility – Every federal agency has a responsibility to support tribal governments and their communities. After the settlement of *Cobell*, we have an opportunity to renew the trust responsibility. The old laws treat tribes as if we were incompetent and the Secretary of Interior must review and approve everything we do. We want to update the trust responsibility so that tribes can make our own decisions about how we deal with our own land and resources. We want to get the bureaucracy out of the way of economic development, and direct funding to effective land management.
- 2) Negotiation of Agreements and Tribal Consent – A policy for the future should recognize that every tribe is different and faces unique circumstances. The primary form of tribal-federal engagement should be the negotiation of agreements with tribal consent.
- 3) Consultation – This type of flexible individualized approach will only be possible when true consultation occurs. Consultation should be enforceable.
- 4) Restoration of Tribal Lands and the *Carcieri* Fix – Every tribal nation has suffered from extraordinary loss of lands. We need your Administration's support to restore those lands, and we urge you to ask Congress to pass legislation to remedy the Supreme Court's decision in *Carcieri*.
- 5) Funding - Tribes provide core governmental services – Education, Law Enforcement, Roads, Court Systems, and Health Care. We need more funding, but equally important, we need to redirect the federal budget toward consistent long term funding that will sustain governmental functions.
- 6) U.N. Declaration on the Rights of Indigenous Peoples – The United States stands embarrassingly alone as the only nation that has failed to ratify the Declaration. We urge the Obama Administration to ratify it.
- 7) Invest in our Children – We need support from the Department of Education and HHS for a wellness initiative that will focus on prevention and early intervention programs in safety, education, health care and job skill development.
- 8) Law Enforcement and Public Safety – The justice system in Indian Country depends on the federal government to actively fulfill its role. We need more aggressive action to implement the Tribal Law and Order Act.
- 9) Economic Development, Finance, and Taxation – Support economic development and guarantee tribes equal treatment under the law by according tribal governments the same treatment as state and local governments for tax and finance matters.
- 10) Cultural Protection – Protect tribal cultures and religions, including protection of sacred places and objects, revitalization of Native languages, religious freedom, and full compliance with NAGPRA.

LIST OF TOPICAL PAPERS IN NCAI TRIBAL LEADERS' BRIEFING BOOK

1. Nation-to-Nation Relationship
 - a. Federal consultation
 - b. Federal/Tribal relationship
 - c. *Carvieri* fix
 - d. Trust reform
 - e. Federal funding
 - f. Tribal/State relationships
 - g. International Indigenous issues
 - h. Federal acknowledgement
 - i. Data collection
 - j. Tribal self-governance
2. Education, Health Care, and Community Services
 - a. Education
 - b. Health care
 - c. Youth wellness
 - d. Veterans
3. Economic Development, Housing, and Infrastructure
 - a. Tax, finance, and regulatory policy
 - b. Business development
 - c. Housing
 - d. Transportation
 - e. Water infrastructure
 - f. Telecommunications
4. Tribal Land, Cultural Protection, and Natural Resources
 - a. Land into trust
 - b. Water rights
 - c. Cultural protection
 - d. Environmental protection
 - e. Alaska Native subsistence
 - f. Climate change
 - g. Energy
 - h. Natural resources
 - i. U.S. Department of Agriculture programs
5. Public Safety and Homeland Security
 - a. Tribal Law & Order Act implementation
 - b. Violence against Native women
 - c. Adam Walsh Act implementation
 - d. Homeland security and emergency management



OVERVIEW OF TRIBAL LEADER MEETING WITH PRESIDENT OBAMA

President Obama hosted a historic meeting at the White House on December 15, 2010, with 12 tribal leaders representing the geographic diversity of Indian Country. The meeting commenced at 4:30pm and lasted for an hour. The President joined the meeting at 5:10pm and stayed until its conclusion at 5:30pm. This draft summary captures the key themes discussed at the meeting.

A commitment to the ongoing relationship

- President Obama noted that his Administration has “respected the government to government relationship” and has been responsive to tribal concerns.
- Chairman Cladoosby of the Swinomish Indian Tribal Community thanked the President for keeping his campaign promise to meet with tribal leaders. He noted that it was time to modernize the trust relationship to reflect tribal capacity to self-govern.
- While the President conceded there was still more work to do, many Administration officials emphasized the opportunity presented by the next two years of the Administration (and hopes for the second term).
- The President’s commitment to nation-to-nation engagement was evident in the senior staff that joined the 12 tribal leaders. The President hosted the meeting and was joined by three cabinet secretaries (Health and Human Services, Interior, and Justice), five senior White House staff (including Senior Advisor, Valerie Jarrett), and three senior staff from the agencies.

Indian Country is diverse

- Chairman Black Eagle of the Crow Tribe noted that the regional format of the meeting was a key acknowledgement of the different challenges and opportunities facing tribes throughout the nation.
- President Thomas of Tlingit Haida Central Council noted the uniqueness of Alaska Native communities with only three tribes that own trust land.

Tribal leader priorities

- The tribal leaders presented a range of key priorities including:
 1. Create a Cabinet level position and elevate key officials who work in Indian Country (for example in the Department of Health and Human Services and Department of Education).
 2. Issue an executive order reaffirming the nation-to-nation relationship. Key features included:
 - a) Recognize the trust obligation and tribes should not be treated as programs
 - b) Amend the tribal consultation executive order to institutionalize the process of consultation, require accountability and measurable progress from the departments, and create a process for dispute resolution
 - c) Ensure regular meetings are held between tribal leaders and the executive branch
 - d) Create an OMB office of Treaty and Trust Responsibility
 3. Sign the UN Declaration on the Rights of Indigenous Peoples
 4. Create a Presidential Tribal Nations Council

Carcieri

- The urgent need for a legislative fix to the *Carcieri* decision was noted by tribal leaders and Administration officials alike.
- Chairman Barbry of the Tunica-Biloxi Tribe noted “we need resolution now.”

Office of Management and Budget

- Chairwoman Diver of the Fond du Lac Band of Lake Superior Chippewa echoed the concerns of other leaders in the meeting and noted that improving the relationship with the Office of Management and Budget (OMB) was the number 1 concern. Even in tough budget times, tribes must be held harmless.
- The President affirmed that the new OMB Director is “sympathetic to these issues,” but the country certainly does face tough budget times.
- Chairman Hayes of the Ute Mountain Ute Tribe noted that OMB does not recognize that tribes provide essential government services.
- Chairman Hall of the Mandan, Hidatsa, and Arkiara Nation noted past discrimination at OMB that underscores the tribal leaders’ priority that the President create an OMB office of Treaty and Trust Responsibility
- Administration officials affirmed the desire for more regular engagement with OMB and recommended the approach of state and local governments, who sit regularly with the OMB Director and institutionalize the relationship

Public Safety

- Chairwoman Diver raised the challenges presented by PL 280 states.
- Attorney General Holder agreed that in some PL 280 jurisdictions relationships are harmonious and others are not.
- Chairman Hall noted particular examples where *Oliphant* tied the hands of tribal leaders to protect their communities from serious crimes.
- Secretary Salazar underscored the energetic efforts of Attorney General Holder and Associate Attorney General Perrelli to partner with tribes to deal with public safety challenges in Indian Country.

Indian Health Care Improvement Act

- Tribal leaders emphasized the need for increased funding of the Indian Health Care Improvement Act.
- Secretary Sebelius noted the largest ever increase in Indian Health Service funding. The President acknowledged the need for increased funding and the importance of prevention programs that are implemented in partnership with tribes using culturally sensitive strategies.

Sacred Sites

- President Shirley of the Navajo Nation noted the importance of Administration support to protect sacred sites.
- Chairman Wright of the Pyramid Lake Paiute Tribe urged stronger enforcement and emphasized that tribes need “a door to the court house” to protect sacred places.
- Secretary Salazar noted the Administration’s aggressive response to looters and others that desecrate sacred sites.

This draft summary document is based on notes and verbal accounts provided to NCAI staff by tribal leaders who attended the meeting.



OVERVIEW OF THE 2010 TRIBAL NATIONS SUMMIT

President Obama hosted the second annual Tribal Nations Summit on December 16, 2010. The Summit was attended by hundreds of tribal leaders representing the 565 federally-recognized tribes. The meeting was attended by nine members of President's cabinet (Secretaries Chu, Donovan, Duncan, LaHood, Salazar, Shinseki, Solis, Vilsack, and EPA Administrator Jackson), several members of Congress, and a range of senior Administration officials.

OPENING SESSION

Secretary of the Department of the Interior, Ken Salazar, offered opening remarks. He was followed by the presentation of the colors by the Navajo Code Talkers Color Guard, the Lakota flag song by seven year-old Hunter Street (Mandan, Hidatsa, and Arikara Nation and Spirit Lake Dakota), an invocation from Governor James Lujan of Taos Pueblo, and an introduction of President Obama by President Fawn Sharp of the Quinault Indian Nation.

In his opening remarks, President Obama reviewed the accomplishments of his Administration and announced that the United States would lend its support to the U.N. Declaration on the Rights of Indigenous Peoples. He noted that the United States should always seek to fulfill "the aspirations it affirms -- including the respect for the institutions and rich cultures of Native peoples."

President Obama and Secretary Salazar emphasized the following components of the Administration's commitment to Indian Country in their remarks:

Government-to-government relationship

- President Obama began his remarks by noting his meeting at the White House with 12 tribal leaders on Wednesday, December 15. He called it a "continuing conversation that began long before [he] was President." He emphasized that he wants to hear more about "how we can strengthen the relationship between our governments."
- Secretary Salazar noted the important work to ensure American Indian and Alaska Native governments are "full and equal partners in our federal family." He also emphasized the purpose of the meeting was to "strengthen the nation-to-nation relationship, ...pledge anew our respect for the inherent sovereignty of tribes, and ...honor [the federal government's] commitment to American Indian and Alaska Native communities."
- Both the President and Secretary Salazar emphasized the importance of improved consultation. The President affirmed that "real change depends on all of us doing our part," and Secretary Salazar noted that meaningful consultation with tribal governments is fundamental to effective policy.

Carcieri fix

- President Obama explicitly noted his support for "legislation to make clear, in the wake of a recent Supreme Court decision, that the Secretary of Interior can take land into trust for all federally recognized tribes."

- Secretary Salazar said that taking land into trust is “one of the most important functions of the Department of the Interior.” He emphasized the tireless efforts of President Obama and Senator Dorgan to get a legislative fix passed and committed that the Administration “will not give up until we get it done.”

Trust reform

- President Obama noted the success of his Administration in resolving “a number of longstanding disputes.” He referred to the *Cobell* and *Keepseagle* settlements as proof that working “toward a brighter future” is only possible “by heeding the lessons of our history.”
- Secretary Salazar called the Claims Resolution Act “one of the most significant” accomplishments of the Obama Administration. He said the *Cobell* settlement ended “this painful chapter in our nation’s history” and “marks the beginning of true trust reform.”

Economic development

- President Obama said that “rebuilding the economy” was the beginning of his Administration’s strategy to help all Indian nations. Components of this strategy include: connecting tribes to the larger economy; investments in roads, school renovations, and job training; and increased lending to tribal governments.
- Secretary Salazar noted Recovery Act investments will “have a lasting legacy” in Indian Country. He also emphasized natural resources as critical to economic development, underscoring the importance of “meeting the critical water needs in Native American communities,” and stressed the need for energy development on tribal lands, previewing an announcement by Secretary Chu of the establishment of an Indian Energy Office at the Department of Energy.

Health Care

- President Obama celebrated the permanent authorization of the Indian Health Care Improvement Act but noted that health disparities in Native communities represent “an ongoing tragedy” and that closing the gap “is not just a question of policy, it’s a question of values.”

Education

- The President committed to doing something about education in Indian Country, noting that “we cannot afford to squander the promise of our young people.” He made concrete commitments to “helping insure that tribes play a bigger role in determining what their children learn” and improving “the programs available to students at tribal colleges.”
- Secretary Salazar noted that the President is investing in Native youth across all departments: undertaking nearly 100 school improvement projects, working with Secretary Duncan to “develop a national education reform agenda that will better serve Indian children,” building a 21st century conservation corps, and hiring over 1,000 Native people throughout the country to work for the federal government.

Public Safety

- Both the President and Secretary Salazar hailed the passage of the Tribal Law & Order Act as a critical framework for reforming public safety in Indian Country.
- President Obama noted that efforts in economic development, healthcare, and education “will not succeed unless all of our communities are safe places to grow up.” He noted the

Department of Justice’s partnership with tribes to “reform the way justice is done on Indian reservations.”

- Secretary Salazar highlighted increases in funding for law enforcement, a 500 percent increase in police officer recruits in 2010, and the launch of intense community policing programs in four reservations.

Tribal leaders then met with Senior Administration officials in five concurrent breakout sessions. They were not broadcast publicly but the closing session included readouts of the five sessions, summarized below.

CLOSING SESSION

Five Administration officials provided summary presentations of the breakout meetings. Secretary Salazar provided closing remarks.

Nation-to-Nation relationship¹

David Hayes, Deputy Secretary of the Interior, summarized the breakout discussing the nation-to-nation relationship. Four senior Administration officials – Secretary Salazar, Deputy Secretaries Corr and Hayes, and OMB Associate Director Ericson – led the breakout, with six other government officials in attendance. Key insights from the breakout were:

- Consultation involves being a “true partner” and “protector” of tribal interests – not only listening to tribes but also alerting them when there is “trouble on the horizon.” Examples of this need to protect tribal interests were seen with respect to health care and taxation particularly.
- The federal government needs to take steps to ensure state governments are not allowed to take steps – with impunity – that adversely affect tribal sovereignty. There was particular emphasis that the federal government is not fulfilling its trust relationship and “stand tall” for tribal sovereignty in the relationship between tribes and the state of Alaska.
- The Administration must reflect their respect for the nation-to-nation relationship in the language they choose, referring specifically to tribal *nations* and “take out of our lexicon” the phrase “tribal communities.”
- Many tribal leaders expressed optimism about the United States endorsement of the UN Declaration on the Rights of Indigenous Peoples.
- Key aspects of sovereignty that tribal leaders asked for additional support on included the recognizing treaties as a “touchstone” of the federal relationship, the importance of land (*Carieri* fix and true trust reform), and the necessity of protecting sacred sites.

Education, Health Care, and Community Services

Dr. Yvette Roubideaux, Director of the Indian Health Service, summarized the breakout addressing education, health care, and community services. Secretary Duncan, and six senior administration officials – Directors Berry (Office of Personnel Management) and Roubideaux (IHS), Corporation for National and Community Service CEO Corvington, Executive Director Schepper (Let’s Move), and Associate Directors Gordon and Fontenot (OMB) – led the breakout, with seven other government officials in attendance. The key messages from that breakout were:

¹ Audio on WhiteHouse.gov was unavailable for Deputy Secretary Hayes’ initial comments. NCAI staff will continue to work with tribal leaders and the Administration to revise this document to fully reflect the readouts and the breakouts themselves.

- The tribal leaders emphasized the need for the federal government to have an interagency approach to the problem of suicide. Tribal leaders seek federal support to apply traditional approaches to address the suicide problems facing many Native communities.
- Direct funding of tribal programs was a concern that cut across issues in this breakout. Tribal leaders were clear that tribal governments need to be funded in the same way as state and local governments. More specifically, the issue of full funding of contract support costs was emphasized.
- The discussion of health care included conversation about the need for more health care providers and the need to rebuild behavioral health programs.
- Discussion on education included the need to improve the relationship between public schools and tribes. Particular strategies included adding a “tribal voice” in history books. Further support of early education programs was also discussed.
- The trust responsibility was another focus of the discussion. Leaders reemphasized the message that the 12 tribal leaders shared with President Obama on Wednesday – that there is a need to create an Indian office at the Office of Management and Budget (OMB).

Economic Development, Housing, and Infrastructure

Del Laverdure, Deputy Assistant Secretary for Indian Affairs at the Department of the Interior, summarized the breakout session that covered economic development, housing, and infrastructure. Seven senior administration officials – Secretaries Donovan, LaHood, and Solis, Deputy Treasury Secretary Wolin, Export-Import Bank of the United States Chairman Hochberg, SBA Deputy Administrator Johns, and OMB Associate Director Briggs – led the breakout with five other government officials in attendance.

Insights offered by tribal leaders included the following:

- The breakout focused on many issues related to infrastructure – roads, housing, land, technology, etc. There was also significant discussion on workforce development and job creation.
- Treasury officials discussed the tribal development bonds. Tribal leaders expressed that these are “absolutely an essential tool for creating the infrastructure that [tribes] need” and sought Administration support to make the program permanent. This action would provide tribes with the same economic tools available to other governments.
- Roads issues were discussed with particular attention to the challenges facing Alaska Native villages, including the large number of unpaved roads. Secretary LaHood encouraged tribes to more fully utilize the TIGER program to meet tribal transportation needs.
- Secretary Donovan spoke about the need for data to understand and effectively meet the housing needs of tribes. The Department of Housing and Urban Development is undertaking a comprehensive study – the first of its kind in 14 years – to gather data on tribal housing needs.
- The development of human resources was also a focus of the breakout discussion. Tribal leaders emphasized the need to train youth and fully utilize tribal colleges as one of the most successful routes to completing a four-year education. Secretary Solis noted a number of programs at the Department of Labor that could be more fully utilized by tribal governments.
- Tribal leaders further emphasized the need for OMB to work with Indian Country to collect data that demonstrate the need for and impact of federal funding.
- Finally, there was a discussion about how the nation-to-nation relationship could include economic engagement with First Nations in Canada and Indigenous peoples elsewhere around the world.

Tribal Land, Cultural Protection, and Natural Resources

Ignacia Moreno, Assistant Attorney General at the Department of Justice, summarized the breakout session that covered tribal land, cultural protection, and natural resources. Three cabinet officials – Secretaries Chu and Vilsack, and EPA Administrator Jackson – led the breakout, with four other government officials in attendance. Key themes from the breakout were as follows:

- The number one issue identified in the breakout was protection of the exercise of subsistence hunting and fishing. Concerns were raised about state regulation, the impact of commercial fishing, and the need to protect wildlife habitats.
- Protection of sacred sites was another focus of discussion, and tribal leaders offered solutions that included a statutory right of action, strengthening the executive order on sacred sites, and consultation on these issues. More specifically, the issue of protecting human remains was raised, with concerns about remains and artifacts in foreign museums and the need for support from the State Department. In addition to consultation with tribes, the discussion identified a need for the federal government to engage with state governments to ensure tribal rights are protected.
- There was a wide ranging discussion on land and natural resource issues. This included a clean *Carrieri* fix, a streamlined land into trust process, streamlined energy development policies, environmental protection, and the impact of climate change, especially in Alaska Native communities.
- The breakout also included a discussion about process, especially seeking a clear message from the Administration on how follow up on the breakout discussion would be managed. One concrete suggestion was a summit on issues facing Alaska Native communities.

Public Safety and Homeland Security

Larry EchoHawk, Assistant Secretary of the Department of the Interior, provided a summary of the breakout discussion addressing public safety and homeland security. Five senior Administration officials – Associate Attorney General Perrelli, FEMA Director Fugate, DHS Deputy Commissioner Aguilar, ONDCP Deputy Director Tucker, and Assistant Secretary EchoHawk – led the breakout, with seven other government officials in attendance. The breakout covered the following themes:

- The focus of the breakout was criminal law enforcement. Assistant Secretary EchoHawk noted the complexity and diversity of the issues in Indian Country (for example, Alaska Natives face very specific challenges, as do Native people in Oklahoma).
- A significant focus of the meeting was the impact of P.L. 280 on Indian Country. When states fail to meet their responsibilities, it has a real impact on Native communities. Tribes are interested in exercising concurrent jurisdiction, but doing so requires adequate funding. P.L. 280 states also require significant coordination among governments. The Tribal Law & Order Act (TLOA) offers significant potential for the federal government to “reenter the picture and provide support.” The discussion particularly addressed Interior consultations on the provisions of TLOA that deal with the Special Law Enforcement Commissions program.
- Tribal leaders in the breakout emphasized the need for stable funding. Short-term grants do not provide the sustained level funding tribes require. Assistant Secretary EchoHawk noted this point was “very valid.” EchoHawk cited the significant increase in funding at Interior alone (14 percent in the past 2 years), with an overall increase of 35 percent across agencies. He emphasized that the investments demonstrate the Administration is intent on doing “everything we can to stand up the tribal justice system.”

- With respect to detention, tribal leaders noted the need to invest limited resources with a focus on the wellness of tribal communities not just “arresting and locking people up.”
- Tribal leaders discussed the link between drug problems in Indian Country and inadequate law enforcement. Administration officials noted the need for interagency coordination to address the challenges posed by drug trafficking.

Concluding Remarks

Secretary Salazar provided closing remarks summarizing the themes of the day and emphasizing the need for ongoing nation-to-nation engagement. In introducing Secretary Salazar, Assistant Secretary EchoHawk noted that the White House Tribal Nations Summit “was merely another step in listening very carefully to what tribal leaders have to say and having an administration that will not only listen, but respond to ideas and thoughts that are communicated to us.”

Secretary Salazar thanked the tribal leaders for their attendance at the Summit and emphasized that the quality of the President’s team working on Indian Country issues and the number of Cabinet Secretaries and other senior officials in attendance demonstrate that working with tribal leaders is “not something that [President Obama] does because he think he has to do it” but is something he does because he wants to start a “whole new chapter” of working with tribal leaders. He underscored that the Summit “is just a step in a long, continuing work,” noting that “you don’t undo 400 years of history in...19 months.”

He specifically noted the commitment to producing a follow up report and invited further comments. Secretary Salazar noted that “the President has asked us to continue our work with the same resolve and the same determination and the same energy” of the first two years of his Administration.

Navajo Nation President, Joe Shirley, offered a closing prayer.



National
Congress of
American
Indians

PROGRAM FLEXIBILITY TO CREATE JOBS AND GROW TRIBAL ECONOMIES

**TRIBAL LEADER DISCUSSION DOCUMENT
FOR THE 2011 WHITE HOUSE
TRIBAL NATIONS CONFERENCE**

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This document is an initial draft intended to support tribal leaders in their preparations for the 2011 White House Tribal Nations Conference. While the development of this document was led by the staff of NCAI, the recommendations do not necessarily reflect the official position of NCAI or our members.

1. Our Nation-to-Nation Partnership: The Framework for Economic Recovery

Both economic development and job creation in Indian Country hinge on the unique governmental relationship between tribes and the federal government. This relationship was affirmed by President Obama's November 5, 2009 memo to federal agencies that directed all federal agencies to comply with Executive Order 13175 (E.O. 13175). The Executive Order provides the framework for a trust responsibility that extends across all federal agencies and not only the Department of the Interior (DOI). In short, E.O. 13175, if fully implemented, opens the door towards achieving a government-wide nation-to-nation partnership between the United States and all federally recognized Indian tribes. This partnership will ensure that Native people—and the United States as a whole—fully benefit from the economic potential presented by our tribal nations.

Honoring Tribes as Governments in All Policy Areas

Indian tribes are polities whose governments retain all privileges and immunities routinely reserved to each government contemplated within the framework of the U.S. Constitution. Nonetheless, tribal governments often are not given the same opportunities provided to state or local governments. For example, the large federal appropriations in the American Recovery and Reinvestment Act (ARRA) for energy programs provided \$12 billion to state governments and less than \$65 million to tribal governments even though tribal land mass (not to mention immense energy potential) justified more than \$600 million. This disproportional treatment denies tribes economic development opportunities and deprives the nation many benefits of the immense energy potential on tribal lands.

Rather than the appropriate treatment as governments, tribes are sometimes treated as corporations or businesses. Examples of this treatment include revenue rulings from the Internal Revenue Service (IRS) requiring 1099 reporting from tribes for education and cultural benefits provided to their members; the essential government function analysis used to determine which tribal development projects qualify for tax-exempt financing; and, general taxing inequities which fail to protect tribal taxing jurisdiction from encroachment by surrounding jurisdictions.

However, when tribes are treated as sovereign nations, and given the flexibility to build their own programs and develop their own economies, they have shown the ability to succeed. For instance, the Indian Self-Determination and Education Assistance Act (ISDEA), through the advent of 638 compacting, contributed immensely towards Indian tribes' ability to fund tribal public safety programs, develop their own educational and health standards and facilities, as well as establish tribal colleges, enabling tribes to provide higher learning institutions for tribal youth within their own communities. Through greater exercise of control, and within the spirit of self-governance, tribal programs have not only grown, but have improved in a manner which reflects tribal values and addresses specific community needs.

A. Overarching Approaches to Promoting Nation-to-Nation Partnership

Protect the Indian budget and fully implement relevant legislation

This Administration has led unprecedented efforts to settle long-standing conflicts between tribes and the federal government and to implement legislation that provides tribes with the tools they need to effectively exercise their inherent governmental rights and responsibilities. Passage of the Tribal Law & Order Act (TLOA) and the permanent reauthorization of the Indian Health Care Improvement Act (IHCIA) are two critical first steps in creating a new context for public safety and healthcare in Indian Country. The legacy of these laws will be established in the extent to which adequate support is provided for implementation.

The most recent cuts, which amount to over \$90 million from proposed funding for essential Department of Justice measures in Indian Country, severely hinder the intent of TLOA and ensure a significant setback to its implementation in the near future. Using this debt and deficit reduction as a compass towards the future of Indian policy, Indian Country's willingness to follow this current path has dissipated. Furthermore, its confidence that the federal government will strive to uphold the trust responsibility during this economic downturn is deteriorating. This uneasiness is magnified by the number of Indian programs that still require full implementation.

Leaders in Indian Country sincerely hope that – even as the debt ceiling law seeks to find both spending cuts and revenue increases in the coming months – the federal government will strive to stay true to the federal trust responsibility. We agree with President Obama that “We can’t balance the budget on the backs of the very people who have borne the biggest brunt of this recession.”¹ The socioeconomic profile of Native nations and peoples demonstrate that our communities have borne the brunt of this recession (and previous recessions).

We encourage the Administration and Congress to honor the trust relationship as they consider spending cuts and revenue increases to address the debt and deficit. Furthermore, as Congressional leaders consider tax reform, we ask the Administration and Congress to ensure any tax reform deal provides tribes access to financing options available to other governments and preserves existing incentives that support the programs and services needed in tribal communities. Finally, any tax reform must be clear that tribes are separate distinct nations, and, as such, must retain the exclusive jurisdiction to levy taxes within the contiguous borders of their land base. Retaining exclusive taxing jurisdiction is one of the most crucial necessities of any governing nation. Tribes are no different.

¹ President Barack Obama, (August 2, 2011), “Statement on the Debt Compromise.” Accessed at: <http://www.whitehouse.gov/blog/2011/08/02/putting-americans-back-work-president-obama-speaks-debt-compromise>

B. Promoting Nation-to-Nation Partnership through Administrative Policies

Access to Information and Consolidation of Resources and Programs

Administrative programs, such as the Department of Justice's recently instituted Coordinated Tribal Assistance Solicitation and the Department of the Interior's 477 program, which recognize the unique reliance of tribal governments on discretionary spending sources to fund general tribal governance, allow tribes the resource flexibility to concentrate on program development rather than the administrative burdens inherent in the traditional grant application process. This is accomplished through streamlining tribal programs and also tribes' application process for critical funding streams, such as grants for law enforcement, workforce training programs, and economic development projects. But more importantly, this is accomplished through the federal agencies' willingness to acknowledge the unique sovereign status of Indian tribes, their needs as government bodies, and their responsibility to develop programs and services for their citizens. Perhaps a similar consolidation of potential resources might be developed in the sphere of economic development.

As the Administration demonstrated with the Recovery.gov clearinghouse, access to information is critical to efficient and effective utilization of federal resources. A similar, cross-department approach in the economic development sector would provide tribes and tribal members better access to the economic development opportunities available from the Department of the Treasury, the Small Business Association (SBA), the Bureau of Indian Affairs (BIA), the United States Department of Agriculture (USDA), as well as other federal agencies. This initiative could also map existing economic development programs that exclude tribes and make recommendations for regulatory or legislative fixes to ensure tribes are afforded equal opportunity to participate in those programs. A particular focus of these efforts would be to ensure that all federal government agencies review their legislative mandates and policies to include "and tribal governments" wherever state governments are eligible for services and funding. To ensure success, this approach begins and ends with acknowledging the unique governing status of tribal nations and their particular community needs.

Streamlining Agency Policies and Procedures which Affect Economic Development and Governance on Tribal Lands

The Department of the Interior (DOI) exercises substantial oversight in Indian affairs. For instance, the Secretary of the Interior must approve land into trust applications, land transfers, leases for business development, and the sale of natural resources. This oversight process hinders business development and acts as a disincentive to potential partnerships with outside entities. We recommend that the Secretary exercise his authority in a manner that advances tribal economic development. For instance, applications for the sale of resources or business development leases should be given priority treatment in the DOI's decision-making process. This approach encourages development in Indian Country and reduces the uncertainties that can discourage outside entities from partnering with Indian tribes. Also, Congress should act swiftly to enact legislation, such as the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, which would allow tribes, if they choose, to exercise their political autonomy over lease approval on tribal lands.

Furthermore, given the increased prevalence of cultural tourism and the sophistication of tribal enterprises, the Department of Commerce should include Indian Country representatives when assembling international trade delegations from government and the private sector.

Improving Methods of Data Collection in Indian Country

Tribes need control over their own data, as well as the ability to build data in areas where it is virtually nonexistent. While federal data collection itself does not stimulate business development, data is increasingly used to determine where and how scarce federal dollars are invested. Since 2000, no meaningful socioeconomic data about Indian Country as a whole has been produced by the U.S. government. The widely documented concerns of rural and remote communities about the Census Bureau's American Community Survey (ACS) are even more pronounced in Indian Country. The Bureau of Labor Statistics (BLS) essentially excludes data from Indian reservations in the monthly labor force reports, and there is a wide discrepancy between DOI labor force reports and those presented by BLS.

Also, the DOI retains vastly important land data but, as of yet, has chosen not to share this data with tribes. Land data is increasingly pivotal in areas such as, but not limited to, the land consolidation provisions within the *Cobell* Settlement. Broadband mapping on tribal lands is also an area where data might be improved through better cooperation with states and federal funding sources for such mapping. These data deficiencies impair the ability of tribal, federal, state, and local policymakers to identify and respond effectively to the needs of tribal nations. They place tribes and Native non-profits at a competitive disadvantage when applying for federal grant funding.

Cost neutral improvements could be made to data collection by ensuring more effective coordination among existing federal research studies. For example, the Native American Lending Study at the Community Development Financial Institutions (CDFI) Fund could be more closely coordinated with the Native American Housing Study being conducted at the Department of Housing and Urban Development (HUD). In other areas covered in this report, interagency collaboration can promote critical access to data in natural resource, energy, education, etc. We recommend interagency collaboration to ensure support of basic surveys and inventories so tribes have accurate and current data to support tribal decision-making. Savings gained from collaboration could be applied to the collection of additional primary data from Indian Country.

Eliminating Match Requirements for Tribal Nations

Finally, match requirements should be eliminated for tribal grant recipients. While many non-tribal grant recipients are organizations with an internal business component, tribal recipients are governments and must find matching funds from within their general revenue stream. Most tribes that are dependent on federal grants have extremely limited resources, and philanthropy in rural and tribal communities is anemic at best. Furthermore, because tribes lack the tax base available to other governments, imposing a match requirement on tribal governments frequently results in

tribes scrambling to find matching funds from limited resources and often leads to the underutilization of funds or precludes tribes from applying for them.

C. Promoting Nation-to-Nation Partnership through Legislative Policies

Recognizing Tribes as Sovereign Nations in Federal Legislation

The nation-to-nation approach has also seen success in legislative approaches towards economic development in Indian Country. The Indian Gaming Regulatory Act of 1988 (IGRA) was enacted, for the most part, to settle jurisdictional questions between federal, state, and tribal governments. In doing so, IGRA drew a line in the sand which mandated that states acknowledge the sovereign status of tribal governments, negotiate compacts with tribal governments in good faith, and recognize their autonomy to develop their own economies through Indian gaming. Currently, Indian gaming is a \$26.5 billion industry and has provided the foundation for many tribes to ensure quality programs and services are available to their citizens. This economic success story has also helped ease the burden of the federal government towards some tribal nations.

The jurisdictional questions which led to the enactment of IGRA pitted states against tribes and were rooted in the belief that tribal governments lacked the inherent authority to develop their own economies through gaming. Congress, through powers enumerated in the Indian Commerce Clause, affirmed tribes' authority to develop their economies through gaming, even where tribal gaming was contrary to state law. Similar battles have occurred for years in the area of tribal tax policy, where the lack of congressional involvement has allowed the judicial branch and interpretations from federal agencies to develop tribal tax law on a case by case basis. The result is inconsistent tax policy which fails to protect the taxing jurisdiction of Indian tribes and predominantly favors states' minimal interest in taxing transactions occurring on tribal lands.

Also, concerning current legislation, tribes need to be expressly included in legislative proposals to protect state and local government budgets. Provisions in the American Jobs Act to stabilize funding for teachers and first responders and invest in 21st century infrastructure inconsistently address (or are silent on) tribal eligibility for these programs. Given the critical role tribes play in many of America's regions, especially in rural areas, equal access to fiscal stabilization funding is critical for all Americans, including Native people.

Furthermore, it is worth noting that when tribes are successful, they contribute not just towards the overall well-being of their own communities, but often towards the well-being of the surrounding local communities as well. As an example, through tribal-state gaming compacts, Indian tribes routinely contribute significant dollars in gaming revenue to support local governments. Also, tribes have created hundreds of thousands of jobs for both Indians and non-Indians through construction contracting, hotel and resort management, law enforcement and emergency response providers, the operation of gaming facilities, as well as natural resource development. However, even with these successes, tribes are still in need of greater administrative flexibility – now more than ever. Because when it comes to economic development in Indian Country, one thing is clear: tribes know what tribes need to succeed. The difficulty lies in gaining administrative support for their needs.

Specific Recommendations to Promote the Nation-to-Nation Partnership

Throughout the various eras of the federal government's policy towards Indian tribes, the majority of tribal communities have largely been dependant on federal funding – in particular, discretionary funding. Looking at the current economic downturn and its projected effects on discretionary government spending, Indian tribes are in dire need of greater opportunities through little to no costs. The only solution is strengthening the nation-to-nation partnership between the United States and Indian Nations. Through this partnership, tribes are better equipped to continue strengthening their economies and stand poised to help their neighboring communities. In the context of developing a stronger nation-to-nation partnership, we have identified broad recommendations in areas such as budget appropriations, promoting partnerships with the private sector, improving access to capital, natural resources, education and workforce development, infrastructure development, healthcare, public safety, and agriculture.

Protect the Indian budget and fully implement relevant legislation

1. Advocate for full funding and implementation of TLOA, IHCIA, and other key federal Indian programs
2. Protect the Indian budget from deficit reduction efforts
3. Ensure tribal participation in tax reform discussions and ensure equal access for tribes to existing and future incentives to promote access to capital

Recognizing Tribes as Nations in Policies and Regulations

4. Expand the Executive Order on Consultation to fully recognize in policy and practice that all federal agencies have a trust responsibility with tribal nations and they should demonstrate how that will be realized.
5. Affirm tribal sovereignty and use executive powers to provide equal access to funding, adjust restrictive policies and regulations, and ensure tribes are involved in the rulemaking process
6. Expand self-governance to encompass all relevant federal agencies
7. Develop a list of all economic development programs that can be utilized by tribes and Native non-profits
8. Utilize low-cost means to communicate opportunities to Indian Country
9. Develop a list of all economic development programs that currently exclude tribes and Native non-profits and make recommendations to include tribal governments alongside their state government peers and increase tribal access to all federal economic development programs

Expedite Administrative Processes that Affect Economic Development

10. Encourage the Secretary of the Interior to exercise his authority in a way that prioritizes and advances tribal economic development (e.g. giving priority to business development leases etc.)
11. Support Legislation, such as the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act, which allow tribes great autonomy over processes which affect economic development in Indian Country, and S. 1684, the proposed

Amendments to the Indian Tribal Energy Self-Determination Act, which addresses barriers to tribes' ability to develop Tribal Energy Resource Agreements.

12. Conduct a meeting between senior Commerce officials, tribal leaders, and tribal enterprises to discuss potential tribal participation in U.S. trade missions

Improve the Method of Data Collection in Indian Country

13. Direct the Census Bureau to test the effectiveness of higher volume, less regular ACS data collection (e.g. on a biannual basis, rather than monthly) with an eye to improving data quality (particularly to narrowing error boundaries on key socioeconomic data estimates)
14. Direct DOI to share all existing land data with Indian tribes to help facilitate initiatives such as, but not limited to, land consolidation efforts, applications for leases, etc.
15. Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country
16. Direct all federal agencies to review existing grant scoring criteria and offer tribes alternate assessment criteria to account for the diverse quality of data describing Native communities
17. Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise
18. Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself

Eliminate Match Requirements for Tribal Nations

19. Eliminate match requirements for grants to tribal governments and tribal organizations

Recognize Tribes as Sovereign Nations in Federal Legislation

20. Support legislation which recognizes tribes as sovereign nations retaining exclusive jurisdiction to levy taxes within the exterior boundaries of their tribal lands
21. Explicitly include tribes in legislative proposals to stabilize state and local government budgets
22. Encourage Congress to include tribes in the definition of "state" in all relevant legislation

2. Business and Finance: Expanding Access to Capital

While many tribes have succeeded in the area of business development and job creation, other tribal governments and individual tribal citizens have struggled to access the necessary capital to build strong, healthy economies within their sovereign territories. Strategies towards expanding access to capital include: (1) facilitating greater access to traditional financing tools; (2) alleviating administrative barriers towards economic development; and, (3) promoting financial stability and individual entrepreneurship on tribal lands..

A. Facilitating Greater Access to Traditional Financing Tools

Finance is the foundation of business development, as well as the primary factor in developing energy resources on tribal lands. While there are a host of financing opportunities available for business development in general, sometimes, due to regulatory barriers or basic lack of information, tribes experience difficulty making use of these opportunities.

Protecting Tribal Tax Jurisdiction

Tribal tax policy is the result of Supreme Court precedent and agency interpretations issued by the Internal Revenue Service. Both of these ‘rulemaking’ processes are accomplished on a case-by-case basis, which results in inconsistent tax policy towards tribal nations. This Administration should prioritize the recognition of tribal nations’ exclusive jurisdiction to levy taxes on tribal lands. The ability to levy taxes is one of the primary functions of a government, yet Indian tribes are often asked to share critical tax revenue with outside jurisdictions, sometimes in the form of discriminatory dual taxation, with no assurance that any of that taxing revenue will be redistributed from the outside jurisdiction, in the form of services and programs, to the tribal nation. Tribal leaders agree that federal tax policy implicating Indian tribes needs to elevate the status of Indian nations beyond its current status, and recognize the inherent exclusive authority for tribes to levy taxes within their tribal lands. This recognition will enable tribes to build core governance funding, without interference from outside entities, which may be used to fund government programs, services, and secure government bonds on the market. During this economic downturn, this recognition of tribal taxing jurisdiction becomes of paramount concern.

Tax-Exempt Financing

For instance, tax-exempt financing is largely unavailable to Indian tribes due to three issues: (1) the “essential government function” threshold (required by Section 7871 (c)(1) of the Internal Revenue Code (IRC)) that tribal projects must meet to qualify for tax-exempt financing; (2) tribes’ general lack of access to the investment market; and, (3) the lack of a strong tax base. Barriers to accessing tax-exempt finance pose a significant inequity for tribal governments and their citizens but also negatively impact surrounding rural and regional economies.

The “essential government function” analysis has restricted the use of tax-exempt financing for Indian tribes only to those development projects which lack any commercial component (e.g., schools, roads, sewer systems, hospitals). In contrast, states and local governments are able to

use tax-exempt financing to develop projects which may or may not contain a commercial component (e.g., marinas, convention centers, golf courses), so long as the majority of either the use of the facility, or the funds used to secure the bond, are governmental in nature. We recommend eliminating the essential government function test in favor of treating tribes like states and local governments.

In addressing the second and third concerns, lack of access to the investment market and lack of a strong tax base, we propose the Indian Finance Act and the IRC be amended to allow federal guarantees to back tribal bonds on the market. Traditionally, states and local governments secure their bonds through their tax base. This tax base consists of property tax, income tax, sales tax, and other taxing streams which generate enough revenue to use as collateral for bond security purposes. Most tribes exercise a modest sales tax, a hotel tax, and gas taxes, but are constantly competing with neighboring states over the right to tax transactions within their own jurisdiction. Ensuring federal guarantees are available to back tribal bond offerings will allow tribes to use their bonding authority more effectively and frequently, creating jobs and business development on the reservation.

Currently, the Indian Financing Act prohibits federal guarantees as a source of security for tax-exempt bonds.² Also, the IRC currently prevents tax-exempt treatment of any bond backed by federal guarantees.³ We recommend bonds guaranteed by DOI for tribal tax-exempt bond issuances be added to the exceptions listed within that section. Taken together, these proposed amendments to the Indian Financing Act and the IRC would expand the tax-exempt financing realm beyond wealthy tribes to include tribes with moderate capital resources to leverage.

Currently, the IRS is accepting comments on the reallocation of remaining funds under the Tribal Economic Development (TED) Bond provision of ARRA. The purpose of the TED Bond component of ARRA was to boost economic development projects in Indian Country and to serve as a pilot project, whereby tribal governments would be able to issue tax-exempt bonds on a level of parity with state and local governments. One suggestion we offer is that the \$30 million cap on TED Bond allocations be raised, or eliminated altogether, to ensure tribes have access to better financing options. Tribes do not want to obtain two debt sources for one development project. As it stands, if a tribe wants to finance a \$50 million hotel using TED Bonds, they must seek the additional \$20 million from another source. Tribes would like the opportunity to develop these types of projects within a single finance obligation. The Treasury Department needs to reallocate the remaining funds for another bond offering with suggestions such as this in mind. The TED Bond component of ARRA presents a great development opportunity for tribes and should be maximized under existing resources.

Facilitating Capital Investment for Tribal Development Projects

Also, tribes need better access to capital investment tools to help facilitate economic development projects. The New Markets Tax Credit (NMTC) is an increasingly important tool to catalyze private sector investments that create jobs and enhance access to capital for small

² See Indian Financing Act, 25 U.S.C. §§ 1451

³ See Internal Revenue Code, 26 U.S.C. § 149 (b)

businesses and community development, especially in distressed communities like Indian reservations. While the NMTC has limitations concerning what activities qualify, as well as what types of communities are targeted as beneficiaries, the IRS has issued guidance that identifies an Indian tribe as a targeted population,⁴ meaning that tribal corporations are qualifying businesses for project financing through the use of NMTCs. However, because of the complicated nature of utilizing NMTCs, tribes have generally steered clear of them as a potential financing option. Under the NMTC program, the actual credit is passed through a Community Development Entity (CDE) to potential investors. Tribes need assistance in locating CDEs that are willing to contribute towards economic development projects in Indian Country through the use of NMTCs. Furthermore, tribes should have the ability to monetize existing credits, such as accelerated depreciation and the Indian Employment Tax Credit, which currently only benefit non-Indian businesses operating on tribal lands.

The Treasury's 1603 grant program provides cash grant incentives for renewable energy projects. However, this funding is not available to governments, including tribal governments. We recommend policy changes that would allow tribal governments, through Section 17 Corporations, wholly owned tribal entities, or ANCSA corporations to use Section 1603 grants.

Allowing tribal governments to use Section 1603 grants to finance energy projects will help alleviate the taxation issues which often stagnates energy development in Indian Country which, in turn, denies the nation access to a critical renewable energy source and undermining tribal economic development potential. Policies that encourage tribes to partner with outside entities have also been used to penalize that same partnership through dual taxation (as established in case law). By allowing tribes to use Section 1603 grants for energy development projects, tribes would be encouraged to take an ownership interest in these projects, expediting tribal energy projects and supporting their success.

Next, expansion of the BIA's guaranteed loan program will reduce the perceived risk that insurance companies associate with tribal governments, due to the doctrine of sovereign immunity. It will also increase access to infrastructure and other construction-related projects, and generate job opportunities and business growth during difficult economic times at no, or very limited, cost to the federal government. The Administration should use existing authorities to provide surety bond guarantees.

Additionally, we request that the Administration provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction. Surety bonding is one of the largest barriers to entry and growth in federal contracting construction in a highly competitive and capital intensive sector. Construction is also an area with a much higher probability of providing direct employment from tribal members and ANCSA tribal member shareholders. From a regulatory standpoint, this authorization could be made available, but limited by meeting certain goals such as tribal member employment opportunities or other metrics.

⁴ See IRS Publication: New Markets Tax Credit, Chapter 1: *Introduction to New Markets Tax Credit*, 1; Chapter 2: *Issues at the CDE Level*, 14, May 2010; Adopting the definition of "targeted population" within the American Job Creation Act of 2004, IRC §45D(e)(2).

Promote public-private partnerships to grow the Indian Country economy

In a time of constrained federal resources, the Administration can contribute significantly to economic growth in Indian Country by using its convening power to draw the attention of private sector and philanthropic investors to the opportunities presented by tribal nations. As an example, financial institution access could be enhanced by convening a strategy session with large financial institutions, small and medium banks, Native Community Development Financial Institutions (CDFIs), and tribal leaders to develop innovative partnerships. Also, to address surety bonding utilization, the Administration could convene tribal enterprises with surety bonding companies. Using the Rural Council as a framework, the Administration could draw particular attention to the underinvestment by philanthropy in tribal nations and convene large foundations to seek commitments to co-invest in Indian Country. There are many other opportunities with respect to labor programs and broadband deployment as listed below.

B. Alleviating Administrative Barriers to Economic Development

The DOI oversees a wide variety of procedures pertaining to development on tribal lands. Many of these areas of oversight have direct effects on economic development and job creation. We recommend the Secretary of the Interior draft an agency-wide initiative to expedite any processes that affect economic development in Indian Country.

Leases, Resource Sales & Land Into Trust Applications

There is an extraordinary high backlog of leases and land into trust applications that have real implications for tribal economies. Research has demonstrated that some BIA regional offices have effectively prioritized land transactions with economic implications.⁵ DOI must institutionalize these best practices at the national level. If expedited, the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (e.g., to develop telecommunications infrastructure), and land into trust applications would quickly and effectively jumpstart tribal economies.

The GAO issued a report that “found no statutory or regulatory requirement that appraisals be used to establish lease values,”⁶ yet the appraisal process remains an integral component to lease approval under current BIA procedures. Short of eliminating the appraisal procedure altogether, we recommend that tribes be given the liberty to select their own land appraisers, providing those appraisers maintain the proper certification and/or licensing requirements. This policy change allows the tribe to partner with DOI to expedite the leasing process.

⁵ NCAI Policy Research Center, (2009), *Exercising Sovereignty and Expanding Economic Opportunity Through Tribal Land Management*.

⁶ GAO: Report to the Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, *Indian Programs - BIA Should Streamline Its Process for Estimating Land Rental Values*, 2, June 1999.

Amending Policies & Regulations

DOI has indicated that it is currently amending the 162 leasing regulations to state that activities pursuant to leased trust land are not subject to regulatory jurisdiction by outside entities, including taxation by states or counties. We recommend this language be drafted to include leased rights of way, which, under current case law, fall within the regulatory jurisdiction of the outside entity. This is important because tribes sometimes lease rights of way to non-Indian entities to develop telecommunications infrastructure, not knowing that this action currently cedes jurisdiction. The result is that tribes expose themselves to outside taxation which does not benefit their communities.

In addition to the administrative issues outlined above, the \$6,500 fee—payable to the Bureau of Land Management for each application for a permit to drill on Indian lands—presents an inequitable disincentive to energy development on tribal lands. The scope of the disincentive is demonstrated by comparison with state fees. For example, in the state of Montana, the same fee ranges between \$25 and \$150. The fee was intended to target energy development on federal lands, not tribal trust lands, but unfortunately it has been interpreted in a manner which frustrates oil and gas development on Indian lands. The Administration should ask the BLM to retract BLM Instruction Memorandum No. 2008-043, which included Indian minerals within the scope of the \$6,500 fee. Also, BLM should be asked to issue a memorandum clarifying that Indian minerals are outside the scope of the energy development on federal lands targeted by the initial fee.

The Administration can also interpret the Energy Policy Act of 2005 to support and fund tribal capacity building; clarify criteria regarding fulfillment of renewable portfolio standards; and reduce the tribal cost share for energy projects under the 2005 Act back to levels in the Energy Policy Act of 1992. With respect to energy efficiency, revision of DOE Weatherization regulations and policies to include tribal programs would enable tribes to receive funding directly, without carrying the burden of proving that state programs do not serve their members.

Also, tribal governments are not exempted from the registration and disclosure rules set forth in the Securities Act of 1933, whereas state and local governments are (Securities Act of 1933, 15 U.S.C. 77c (a)(2), (b)). Thus, tribes must either bear the registration costs or issue bonds into the private placement market, which generally provides inferior terms.

C. Promoting Financial Stability and Entrepreneurship on Tribal Lands

As tribal economies begin to grow, local financing needs for businesses, individuals, and tribes, increase and are exacerbated by the lack of financial institutions serving their communities. The Administration can help support the development of tribal financial institutions serving Indian Country and shape the services provided by outside financial institutions currently situated to help tribal members.

Supporting the Development of Tribal Financing Institutions

Currently, there are more than 60 certified Native CDFIs located in 18 states serving Indian country, Alaska, and Hawaii. The majority of these operate in low-income rural communities. CDFIs provide a wide range of financial products and services including microenterprise loans, small business loans, consumer loans, mortgage financing, financial education courses and credit repair. As such, Native CDFIs play a vital role in developing financial security within tribal communities, many of which have little to no access to local banking institutions.

In a recent nationwide survey of Native CDFIs, 90 percent of respondents indicated receiving federal funding in the last 10 years. However, when asked about their experiences and utilization of funding from six federal departments that commonly fund community development, 58 percent of the programs were used by less than 3 NCDFIs. 10 of the 31 listed federal programs were not used by any of the participating NCDFIs.⁷ This demonstrates a clear need for better agency outreach and coordination to ensure the success of Native CDFIs.

Also, as with other economic success stories in Indian Country, effectively “telling the story” to ensure other tribes can benefit from lessons learned is invaluable. The Administration should direct the Native Initiative of the CDFI Fund to gather best practices in CDFIs serving Native and other rural and disadvantaged communities. Since Indian Country is severely underbanked, it is critical that these successes be shared with tribal governments in appropriate regional and national settings.

The few Native communities that do have bank branches on their reservations are afflicted by one of two challenges: (1) being served by small or intermediate small banks whose CRA exams are not sufficiently robust; or, (2) being served by branches of large banks that can offset underinvestment in Native communities with lending activities elsewhere. It is critical for the agencies to both remove exemptions from data reporting and other tests for small banks (as was done, for example, in the Dodd-Frank Financial Reform Bill), and add a community development component to the CRA exam for large banks. We need an exam methodology that incentivizes the investment in community infrastructure to serve remote, rural, and especially, reservation communities. The current structure of large bank exams allows a lack of community focused lending to be offset by home or business lending in other communities (often urban communities).

The agencies should also impose meaningful penalties on banks that fail to receive satisfactory grades on their CRA exams. One bank in South Dakota, located in the midst of the Lake Traverse Reservation of the Sisseton-Wahpeton Oyate, has received “needs to improve” as its grade on all five CRA exams since 1996 with no clear consequences for this ongoing non-compliance. It is also striking the degree to which Performance Evaluations (PEs) of banks that serve communities with large Native populations completely exclude analysis of bank service to tribal nations. Agencies must require that PEs that cover banks whose service areas include

⁷ Native CDFI Network, *The Utilization of Federal Funding Resources by Native CDFIs: Survey of Native CDFIs*, 4, January 2011.

substantial tribal lands and/or Native populations assess the degree to which those institutions serve the Native communities in question.

Encouraging Entrepreneurship on Tribal Lands

While tribal governments have made great strides in developing their economies with the financing tools available to them, individual tribal members still face the highest unemployment rate of any other minority group, and individual entrepreneurship remains largely underdeveloped among Indian peoples. Indian people interested in developing business ventures must be included within any policy promoting economic development in Indian Country.

Buy Indian

No single measure would do more to help resuscitate Indian Country employment, particularly in manufacturing, than an encompassing Buy Indian government procurement requirement. All infrastructure projects funded and guaranteed by the federal government and the proposed infrastructure bank should require purchases to be made in Indian Country rather than overseas, consistent with our international trade agreements. The Defense Authorization Bill passed in December that requires the Pentagon to buy solar panels from U.S. manufacturers is a good model. Further, to qualify as "Made in Indian Country," at least 75 percent of the content should have to be manufactured within tribal borders. To make that happen, the White House by Executive Order and Congress by legislation should require domestic content calculations to be effective and transparent.

In addition, Congress needs to enact an all-Indian successor to the 1933 Buy American Act. No regulations to implement the Buy Indian Act have been issued in 75 years. Through a combination of regulation and expanded legislation, the Administration should support long-overdue regulations and changes to the Buy Indian Act which ensure that preference is given to on-reservation Native individuals and enterprises, and ANCSA corporations, in awarding contracts, and subsequent subcontracts, with DOI, Indian Health Service (IHS) and other agencies serving American Indian and Alaska Native populations. The Buy Indian Act should also be amended to require the recipient of a contract to provide training and employment preferences to Native people. Furthermore, consultation was held, March 2010, on draft regulations for the Buy Indian Act. Yet, to date, DOI has failed to release its final regulations.

Government Contracting

Government contracting in Indian Country, through the tribal 8(a) program has been subject to more regulatory oversight from both the Small Business Administration and Department of Defense than most other contracting programs. The regulatory oversight combined with Congressional oversight has had a chilling effect on the very agencies that the Native communities rely on for contracting revenue. The tribal 8(a) program has already been altered in the Senate by placing a justification requirement on contracts exceeding \$20 million. This is a far lower threshold than that applied to other sole source awards. Tribes use the 8(a) program to support the economic health of entire communities, and it has proven effective regardless of a tribe's location or size, making it a viable tool for all tribal governments. To support this effective incentive for tribal governments, the Administration should demonstrate their clear and unambiguous support for the program and provide certainty in the contracting marketplace.

We further recommend that the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries be expanded to all industries. This adjustment would encourage greater participation in the program at a time when Section 811 has had a chilling effect on government contractors.

Also, the Administration should support legislative language that elevates the Office of Native American Affairs (Office) within the Small Business Administration (SBA). With limited authority and resources, the Office promotes Native-owned 8(a) business development, HUBZone empowerment and other government contracting, entrepreneurial education, and capital access. It is necessary that the Office be brought into line with other administrators at the SBA and have the capacity to provide funding for Indian-focused technical services through tribal colleges and existing service providers.

Other non-tribe specific SBA opportunities, such as the SBA 7(a) program, offer potential funding opportunities. The 7(a) program provides financial help for businesses that handle exports to foreign countries, businesses that operate in rural areas, and for other specific purposes. The loans offered to businesses operating in rural areas are smaller, yet have a more streamlined, simplified application process. Similarly, the SBA Section 504 loans operate in conjunction with community-based non-profit organizations. More information needs to be accessible to individual tribal members interesting in starting their own business ventures.

Specific Recommendations to Expand Access to Capital

Facilitating Greater Access to Traditional Financing Tools

Protecting Tribal Tax Jurisdiction

23. This Administration needs to recognize the inherent exclusive authority of Indian tribes to levy taxes within their own tribal lands, free from infringement by outside jurisdictions,

Tax-Exempt Financing

24. Eliminate the 'Essential Government Function' analysis currently used to qualify tribal projects for tax-exempt financing
25. Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing
26. Institute federal guarantees to back tribal bonds on the market
27. Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933
28. Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value
29. Expedite the completion of the Tribal Economic Development Bond study under ARRA
30. Expand the timeframe for current projects to issue a bond offering
31. Adjust the general time requirements for bond offering under the TED bond program
32. Reallocate unused funding for another bond offering and adjust cap limits, or eliminate cap limits, to encompass larger-scale development projects

New Markets Tax Credit

33. Issue clarification that Section 17 Corporations, Alaska Native Corporation, and other wholly owned tribal entities, are QALICBs
34. Support education and outreach to ensure tribes have adequate information on how to use New Markets Tax Credits
35. Provide support to identify Community Development Entities willing to work with tribal governments
36. Provide a structure that would allow 3-5 small projects, \$10 million and under to jointly access NMTCs
37. Include Native trust lands and Alaskan communities under 50,000 in population as eligible investment areas for New Markets Tax Credits

Section 1603 Grants

38. Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program
39. Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies
40. Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction
41. Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises
42. Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital

Promote Public Private Partnerships

43. Convene a meeting with financial institutions, Native CDFIs, and tribal leaders to develop partnerships
44. Convene a meeting with tribal enterprises and surety bonding companies
45. Convene a meeting with large foundations to encourage co-investment in Indian Country

Alleviating Barriers to Economic Development

46. Expedite agency decision-making processes which have a direct effect on tribal economic development opportunities, such as the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (*e.g.*, to develop telecommunications infrastructure), and land into trust applications
47. Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
48. Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way
49. Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land
50. Amend or clarify regulations to enhance access to energy development opportunities
51. Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits

52. Allow Section 17 Corporations and other wholly owned tribal entities to make use of federal tax extenders through the establishment of tax credits which may be sold by the tribal entity on the secondary market

Promoting Financial Stability and Entrepreneurship on Tribal Lands

Supporting the Development of Tribal Financing Institutions

53. Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund
54. Promote agency outreach to Native CDFIs to connect them to potential funding opportunities
55. Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI
56. Allow federal funds to be used as qualified match for awards to Native CDFIs
57. Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments
58. Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs
59. Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs
60. Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country
61. Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits
62. Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks
63. Impose meaningful consequences for non-compliance with CRA requirements
64. Ensure bank Performance Evaluations include analysis of services provided to Native communities

Encouraging Entrepreneurship on Tribal Lands

'Buy Indian' Act

65. Support and enhance the Buy Indian Act by establishing and enforcing regulations
66. Explore ways to implement the Buy Indian Act for any federal program that receives funds for the benefit of Indians

Small Business Administration

67. Support the tribal small business 8(a) program
68. Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries
69. Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget
70. Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding

71. Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers
72. Require GSA procurement or preferences for goods and services that have been manufactured under supplier diversity mentor protégé or other agreements and have at least 51% diversity supplier content.
73. Seek GSA building leases from qualified minority interests.

3. Natural Resources: Building sustainable prosperity

In a recent report, *Economic Impact of the Department of the Interior's Programs and Activities*, Secretary Salazar states that “The lands, waters, wildlife, and cultural and historic resources that the Department of Interior oversees are an engine of prosperity for our Nation.” Tribal nations and individuals “own” vast natural resources, but these resources have not been “an engine of prosperity” for our peoples. By any account, the owners of almost 100 million acres of land and rights to even more land with forests, lakes, rivers, aquifers, wildlife, minerals, plants, agricultural products, energy reserves and potential, natural beauty, and cultural and historic significance should be the wealthiest people in the nation. Yet, American Indian and Alaska Native peoples are the poorest in the nation. This staggering mismatch between assets and success is explained by the fact that we have not been in control of our own resources and the federal management of our trust assets has been inadequate.

As tribal nations build capacity and take over the management of our vast natural resources tribes have the potential to power economic recovery in Indian Country and beyond. With the right policies and investments, tribes can create jobs for our own citizens and those of neighboring communities.

Include Tribal Natural Resources within the Framework of the White House Rural Council

Rural natural resources are one of the four focuses of the newly formed White House Rural Council, chaired by Secretary of Agriculture Vilsack. Given the extensive tribal natural resources in rural areas, we recommend tribal natural resources play a robust role in the natural resources focus of the Council. We further encourage the adoption of tribal natural resources as a pilot effort for “working across executive departments, agencies, and offices to coordinate development of policy recommendations to promote economic prosperity and quality of life in rural America...”

Review Existing Agreements, Strategies & Regulations that Affect Tribal Natural Resources

Existing interagency agreements that address tribal natural resource issues provide the opportunity to enhance economic outcomes. All existing agreements should be revisited, renewed, and/or revitalized with specific focus on the DOI, Agriculture, the Department of Energy, and the Environmental Protection Agency. This review should identify tangible and measurable goals and objectives, provide opportunities for stakeholder input, and provide reports on the overall success and specific achievements under these agreements.

In addition, several current federal agency advisory bodies that deal with natural resources lack tribal representation. All agencies with responsibilities for tribal natural resources should review current and future agency advisory bodies to ensure tribal representation and the support necessary for participation.

Also, the Department of Agriculture’s Natural Resource Conservation Service (NRCS) offers several opportunities to document and implement low-cost efforts to expand access to natural

resources best practices. The agency can analyze existing programs to ensure equal access for tribal nations and Indian landowners to outreach, education, training, and technical assistance. NRCS can also utilize existing networks to document and share with tribes, Native landowners, and NRCS staff what is working in “best or promising practices” in tribal natural resources conservation. In the critical area of training programs, the agency should inventory all NRCS training programs for youth and others and conduct outreach to tribes and Native landowners about these opportunities.

Specific Recommendations

Include Tribal Natural Resources within the Framework of the White House Rural Council

- 74. Include tribes in the natural resource focused work of the White House Rural Council
- 75. Explore tribal natural resources as a focus to develop the Rural Council’s work

Review Existing Agreements, Strategies & Regulations that Affect Tribal Natural Resources

- 76. Conduct a comprehensive review of existing interagency agreements to establish measurable goals and objectives and identify areas where tribal natural resources can advance economic development and create jobs
- 77. Direct tribal liaisons to work with tribes to bring together the federal, regional, state, and local agency representatives to develop an integrated natural resources approach
- 78. Develop a NRCS tribal advisory council at the national and regional level to develop and implement natural resource policy that promotes economic development
- 79. Have the Natural Resource Conservation Service provide basic conservation services to tribes and Indian landowners equitable to that of other landowners that includes outreach, education, training, and technical assistance
- 80. Direct NRCS to document and share with tribes, Native landowners, and NRCS staff what is working in tribal natural resources conservation
- 81. Inventory all NRCS training programs for youth and others and conduct outreach to tribes and Native landowners about these opportunities

4. Education and Workforce Development: Preparing the next generation

Any viable economic development initiative must include provisions for education and workforce development. This includes education strategies to build a robust workforce for future generations. The 2010 Census counted almost 1.7 million Native youth under the age of 18, comprising 31.6 percent of the entire Native population. More specifically, there is a large bubble in the 15-19 age group for the Native population, so even more Native young people will be headed to college or other advanced education within the next four years.

Further investments in workforce development include: job training and skill development resources, entrepreneurship training, resume building, internship programs, referral services, as well as worker reentry programs for juvenile and adult offenders. For the most part, these programs are reliant on grant funding made available through legislation such as the Workforce Investment Act of 1988. There are many industries likely to experience increased growth in the decades to come including green jobs, health care, and information technology. Tribal communities offer immense potential in all these sectors and should be given opportunities to provide innovations in these fields through education and workforce development initiatives.

Ensure Tribes Receive Equitable Access to Federal Education and Youth Funding

Exclusion of tribal governments from provisions of the American Jobs Act is a troubling development that fails to adequately invest in improving the education system for the growing population of Native youth. Efforts to prevent teacher layoffs and create additional jobs in public early childhood, elementary, and secondary education in the 2011-2012 and 2012-2013 school years, represent critical investments in America's school systems. In that context, exclusion of the over 200 tribal educational departments from eligibility for this proposed program is deeply troubling.

Additionally, while proposed school modernization provisions provide limited funds to tribal colleges and BIE schools, tribal education departments are excluded from accessing the funds that would support the modernization, renovation, and repair of elementary and secondary school buildings.

When inequities are enacted in federal law to exclude tribal government access to funding, it has a requisite impact on tribal citizens. The Administration should rectify this by also interpreting the Green Jobs Title of the Energy Independence and Security Act (P.L. 110-140) to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty.

Also, the YouthBuild program, administered by the Employment and Training Administration, was transferred from the Department of Housing and Urban Development (HUD) to the Department of Labor (DOL) by President George W. Bush on September 22, 2006. This program assists disadvantaged, low-income youth ages 16-24 in obtaining education and work

skills to be competitive candidates in the job market. Youth participate in building affordable housing for homeless and low income individuals while attending classes to obtain their High School Diploma or GED. When the program was transferred to DOL, the 10 percent set-aside for rural and tribal programs was eliminated.

The YouthBuild program recruits youth that have been adjudicated, aging out of foster care, high school drop-outs, and other at risk populations. In 2010 4,252 youth participated in the program and had a completion rate of 78 percent, and of those that completed the program 60 percent were placed in jobs or further education. It was also reported in 2010 that of the 4,252 participants in the YouthBuild program 4 percent were Native American. Citing these statistics, the Administration should ensure a tribal set-aside is reinstituted into future YouthBuild funding.

Streamline Federal Employment and Training Programs

Indian Country has deeply appreciated the Obama Administration's commitment to smarter government. In the current environment of constrained federal resources, streamlined federal programs are necessary. In this context, it is troubling that the Administration has thus far given tepid support – and in some cases presented obstacles to the success of – the Indian Employment, Training, and Related Services Demonstration Act of 1992, otherwise known as the 477 Program. The program allows for the voluntary participation of tribes to combine formula funded federal grants and funds, related to employment and training, into a single budget with a single reporting system. The lead agency in this demonstration is DOI, Office of Indian Energy and Economic Development. The formula funded programs include those offered through the BIA, Department of Labor (DOL), Department of Health and Human Services (HHS), and the Department of Education. There is no expiration date on this demonstration.

However, certain auditing provisions were changed under the March 2009 OMB A-133 Compliance Supplement issued by DOI, which requires tribes to deconsolidate their employment and training federal funds so that they could be audited individually. This went into effect for 2010 audits and cost several tribes large sums of money to recreate records for each individual program that was consolidated under the 477 program. Once programs and associated funds are consolidated under 477 they lose their separate identities and are spent in accordance with the 'single budget' plan. The Administration needs to support programs like 477 as successes and work to ensure their longevity, as well as more widespread participation throughout Indian Country.

Also, the Administration should provide outreach to tribal governments and urban Indian centers about the various federal programs that tribal members are eligible to participate in. Where tribes are eligible to access mainstream funding sources, federal agencies should be encouraged to conduct extensive and targeted outreach to tribes and Native non-profits. Workforce development opportunities currently available to Indians on and off the reservation include: the BIA's Division of Workforce Development program; the Department of Labor's Indian and Native American Program; the Department of Labor's Youth Services program; and the DOI's Youth in the Great Outdoors Program.

Finally, emerging jobs, such as e-commerce and telecommunications projects, are currently not viable options for tribal members in remote locations of the reservation due to infrastructure needs. We recommend youth exchange programs be developed with a focus on building skills for success in a technological world. The leaders of the future in Indian Country must be computer savvy, and possess the ability to communicate well in diverse locations. Instituting youth exchange programs which seek to develop these skills will improve the leadership of tomorrow's Indian tribes.

Support Tribal Colleges

Higher education is one of the main drivers of economic development in the United States, particularly for American Indian and Alaska Native communities. Higher levels of education correlate with higher earnings, lower unemployment rates, and lower poverty rates. It is estimated that by 2018 only 10 percent of jobs will be accessible to workers without a high school diploma. Furthermore it is estimated that by 2018 only 28 percent of jobs will be available to those with just a high school diploma. In 2005, a typical year-round worker in the United States with a bachelor's degree earned 62 percent more than someone with a high school diploma.⁸ A college degree has a positive ripple effect on the well-being and economic strength of tribal communities and society as a whole.

Tribal Colleges and Universities (TCUs) provide a unique opportunity for workforce development and training within Indian country and are essential education and job training institutions in many rural communities. More than 37 TCUs provide training in two and four year accredited degree programs on more than 75 campuses in 15 states, including on the reservations of the 10 largest tribal nations in the United States, and a few are now providing advanced degrees in several disciplines. The TCUs serve more than 30,000 students from well more than 250 federally recognized Indian tribes. TCUs vary in enrollment (size), focus (sciences, workforce development/training, liberal arts, etc.), location (woodlands, desert, frozen tundra, rural reservation, urban), and student population (predominantly American Indian). However, tribal identity is the core of every TCU, and they all share the mission of tribal self-determination and service to their respective communities.

TCUs are on the forefront of job training efforts to capitalize on Indian Country's potential in policy areas including alternative energy and green jobs, and the health care industry. According to the American Indian Higher Education Consortium some of the most popular tribal college programs are in high demand fields including business and vocational/career programs.⁹ The programs of the TCUs are often oriented to the economic needs of the specific tribal nations they serve, but they remain an underutilized and often underfunded resource for workforce training needs of the economies of the tribal nations. Economic specific programs range from things like veterinary science to construction technology and environmental sciences. Many of the TCUs also help protect and advance the tribal culture and language of the specific tribe they serve.

⁸ Baum, S. & Jennifer M. (2007). *Education Pays: The Benefits of Higher Education for Individuals and Society*. Washington, DC : College Board.

⁹ American Indian Higher Education Consortium. (2009). *AIHEC-AIMS Fact Book 2007: Tribal Colleges and Universities Report*. Alexandria: American Indian Higher Education Consortium.

Because of the increasingly critical role TCUs are playing in Indian Country, it is paramount that TCUs are included in existing and proposed programs to develop America's workforce through community colleges.

Specific Recommendations

Ensure Tribes Receive Equitable Access to Federal Education and Youth Funding

82. Explicitly include tribal education departments in federal proposals to prevent teacher layoffs and create additional jobs in education systems
83. Explicitly include tribal education departments in federal proposals to modernize school facilities
84. The Administration should reinstitute the 10 percent set aside for tribal and rural communities under the YouthBuild Program
85. Interpret the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty

Streamline Federal Employment and Training Programs

86. Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding
87. Rescind the March 2009 OMB A-133 Compliance Supplement
88. Work with tribal leaders and the Native American Employment and Training Council to develop a program accountability system that meets the needs of Native communities
89. Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs
90. Work with DOL to utilize regulatory means to ensure access for tribal grantees
91. Establish partnerships between federal agencies, community colleges, tribal colleges and universities, and technical/vocational colleges to increase access to higher education and foster the creation of bridge programs
92. Relax Department of Education regulations to allow YouthBuild to compete for innovation funds
93. Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities
94. Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding
95. Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs

Support Tribal Colleges

96. Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges
97. Reissue the tribal college specific Executive Order (EO 13270), either separately or as a part of an overall Executive Order on Indian education, to require all agencies to work with tribal colleges and provide an implementation plan for such cooperation
98. Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector

99. Support TCUs in obtaining more research grants that can assist the tribal nations that they serve
100. Include tribal colleges in efforts to develop jobs in America, looking to TCUs as training centers for workforce development in Indian Country and rural America
101. Continue support for UTTC to develop as a regional training center for law enforcement correctional officers
102. Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs

5. Infrastructure: Framework for economic recovery

Modernizing America's infrastructure is a key priority for tribal nations and the nation as a whole, especially in light of the economic challenges facing our communities. With respect to tribal roads, the Indian Reservation Roads (IRR) comprise over 104,000 miles of public roads and are owned by the Bureau of Indian Affairs (BIA), Indian tribes, states and counties. More than 65 percent of the system is unimproved earth and gravel, and approximately 24 percent of IRR bridges are classified as deficient.

These inadequate road conditions make it very difficult for tribal community residents to travel to hospitals, stores, schools, and employment centers. The poor condition of these roads, bridges, and transit systems jeopardizes the health, safety, security, and economic well-being of tribal members and the traveling public. Tribal roads and bridges are often in such disrepair that children are prevented from attending school, sick and injured people cannot reach hospitals, and emergency responders cannot provide timely assistance to people in need.

This inadequate transportation infrastructure has a tangible impact on tribal communities. Community members suffer injury and death by driving and walking along reservation roadways at rates far above the national average.¹⁰ Over the past 25 years, 5,962 fatal motor vehicle crashes occurred on Indian reservation roads, with 7,093 lives lost. While the number of fatal crashes in the nation declined 2.2 percent during this time period, the number of fatal motor vehicle crashes per year on Indian reservations increased 52.5 percent.¹¹ Adult motor vehicle-related death rates for American Indians/Alaska Natives are more than twice that of the general population.¹²

ARRA provided key funding for safety, maintenance, and construction transportation infrastructure. These investments helped a great deal but also demonstrate the need for significant changes and sustained investments in federal transportation safety programs serving Indian Country.

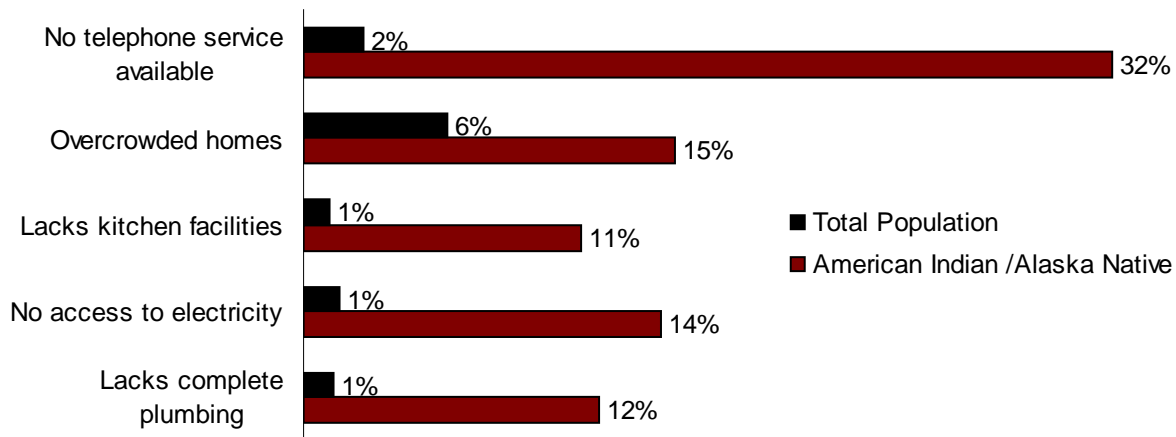
As is evident in the table below, the basic living characteristics of tribal nations demonstrate significant need for expanded infrastructure for individuals and nations.

¹⁰ U.S. Department of Transportation. (2004). *Pedestrian safety in Native America*. Washington, DC: Author.

¹¹ U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA). *Fatal motor vehicle crashes on Indian Reservations, 1975-2002*. (2004, April). Washington, DC: Author.

¹² U.S. Department of Health and Human Services, Centers for Disease Control. (n.d.) *Injuries among American Indians/Alaska Natives (AI/AN): Fact Sheet*. Retrieved November 13, 2009, from www.cdc.gov/MotorVehicleSafety/native/factsheet.html.

Basic Living Characteristics¹³



Beyond traditional physical infrastructure, access to the internet is a critical priority.

The United Nations recently announced that access to the internet is a basic human right because it facilitates civic engagement, assists economic development initiatives, promotes long distance learning and telemedicine, and is an invaluable source of information. However, tribal communities continue to experience low access and connectivity rates for basic broadband and analog telephone services. Where competitive forces have facilitated the build out and deployment of broadband internet, telephone and radio access, tribal communities have experienced numerous bureaucratic and financial barriers to access.

There are approximately 500 telecommunications companies that receive loans from USDA's Rural Development, Rural Utilities Service (RUS). Out of those 500, eight are tribally owned/operated telecommunications authorities operating on tribal lands. Analog telephone penetration rates on tribal lands are at 67.9 percent, while 98 percent of the nation has access to basic telephone service. The disparity on tribal lands pertaining to internet access is even higher, estimated at less than 10 percent penetration while 95 percent of Americans live in housing units with access to fixed broadband infrastructure. These figures create drastic inequities in access to critical needs such as E-911 services, which ensure that emergency services are available and adequately attainable. Not to mention, lack of basic communications infrastructure, if it persists, will only enhance the digital divide currently experienced by tribal nations.

The federal government through its trust responsibility, and congressional passage of the 1934 Communications Act and subsequent amendments through the 1996 Telecommunications Act, has a fiduciary responsibility to provide avenues of access for connectivity and universal service in tribal communities. The establishment of a reliable telecommunications infrastructure is essential to the operation of tribal government, health care, education, economic development,

¹³ U.S. Census, 2000; Energy Information Administration, *Energy Use and Renewable Energy Development Potential on Indian Lands*, 2000; 2006 GAO 06-189 Report, *Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands*

and public safety. For these reasons, it is critical that the Administration continue to advocate for increased tribal provisions in the Universal Service Fund and Intercarrier Compensation reforms to elevate broadband deployment as a trust obligation.

In carrying out broadband deployment in Indian Country, identifying financing options will be critical. The Administration may find it necessary to establish interagency collaboration between the Department of Treasury, Department of Agriculture and the DOI to identify financing options for telecommunications and broadband infrastructure build-out, as well as to educate tribes about this full list of options in a low-cost way. Also, as noted earlier, tribal access to federal programs is critical to moving our communities forward. Proposals in the American Jobs Act, including the American Infrastructure Financing Authority (AIFA) and Project Rebuild, are either unclear (in the case of AIFA) or explicitly exclude tribal governments from accessing infrastructure investments (in the case of Project Rebuild). Equal access to federal infrastructure investments is critical to advancing tribal economies and rebuilding the economy of our nation as a whole.

Specific Recommendations

General Infrastructure

103. Explicitly include tribal governments in federal infrastructure programs and legislative proposals

Telecommunications

104. Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives
105. Continue to redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands
106. Create a tribal position on local, national, administrative and federal-state boards addressing telecommunications
107. Provide for SafetyNet E-911 service for tribal communities since many tribal lands reside in rural areas thereby increasing EMS and law enforcement response times
108. Establish inter-agency collaboration between the Department of Treasury, Department of Agriculture, and the Department of the Interior with tribes to develop additional financing options collectively, and educate tribes of available financing
109. Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands
110. Create a 'Native Nations Broadband Fund' within the USF to provide targeted funding for broadband deployment in Indian Country. This fund would combine Universal Service support and federal grant resourcing programs
111. Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data
112. Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities
113. Extend tribal radio construction permits nearing the expiration deadline

114. Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television
115. Urge the FCC to change its stance on reverse auctions for tribal and rural communities and instead provide tribal priority to available spectrum and offer it at discounted or reserved prices



CALIFORNIA ASSOCIATION OF TRIBAL GOVERNMENTS

November 22, 2011

Five (5) Topics for Discussion at Tribal Nations Conference

The California Association of Tribal Governments (CATG) is the state-wide inter-tribal association of Indian tribes in the State of California. CATG proposes the following five (5) topics for discussion at the Tribal Nations Conference.

1. TRIBAL TAXATION & JURISDICTION, TAX CREDITS AND TAX EXEMPT BONDS
2. TRIBAL GOVERNANCE
3. TRIBAL BROADBAND
4. TRIBAL ENERGY
5. FEE-TO-TRUST ACQUISITIONS

1. TRIBAL TAXATION, TAX CREDITS AND TAX EXEMPT BONDS

A. Tribal Tax Base

CATG requests the President help to restore the tribal tax base and re-assert tribal jurisdiction over tribal lands as the most important priority in Indian Country. The authority of tribes to levy taxes on tribal lands has never been successfully disputed. However, over many years, state and local governments, with the support of courts that have invented and then expanded the authority of state and local governments to levy taxes on non-tribal improvements and other things of value and individuals on tribal lands has crippled the ability of tribes to levy taxes, which would result in double taxation. In order to restore the tribal tax base, the President should help restore the sole and exclusive jurisdictional authority of tribes over their own tribal lands. This includes the exemption from State income tax of tribal citizens who reside on tribal lands or within tribal communities, enabling tribes to levy tribal citizen income taxes.

Tribes provide many governmental services to all people within their jurisdiction, especially in the area of emergency services and environmental protection. As such, tribal governments should have exclusive access to their entire tax base including that derived from non-members and non-member improvements. The burden of proof should be on the States or Counties to prove a justification for intrusion.

There is currently no reciprocity in tax policy. Tribal members who work, buy or own property in the off-Reservation community do not have their taxes rebated to their Reservations, even though they may derive almost all of their governmental services from the tribe. Any intrusion of State or local governments into the tribal tax base should include reciprocity.

The mechanism to affirm the jurisdiction of tribal governments over tribal lands and tribal governments' sole and exclusive authority to levy taxes within the exterior boundary of tribal lands may be effected by either a definition of tribal lands in federal law, or a unique definition



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of tribal land status that may be authorized by Congress and approved by the Interior Secretary upon application by a tribe, similar to a “political subdivision” determination under Title 26 Subtitle F, CHAPTER 80, Subchapter C, § 7871(d). This should include language affirming that a tribal government possesses all authority equivalent to a State government in all matters. This authority should include the delegation of all authority necessary for a tribal government to make final agency decisions in all matters, including lease agreements (for up to 99 year terms) and NEPA record-of-decision (ROD), while the federal government would defend the tribal government against third-party litigation.

B. Tribes Equivalent to States; Tribes’ Monetization of Tax Credits; Tribal Tax Exempt Bond Authority

Tribal governments must be treated as State governments in all instances. As such, all federal funding should be appropriated directly to tribal governments and not through State governments.

Existing economic incentive programs using tax credits should be specifically targeted to and funded for tribes, including the authority for tribes to monetize such tax credits, or convey such credits to a tribal minority equity partner. This enumerated authority and additional funding should include: New Market Tax Credits; CDFI; Empowerment Zones and Enterprise Communities; USDA RBEG and RBOG; PTI, ITC, and modified accelerated cost recovery system (§168(j)).

For tax exempt bonds, CATG requests the President support amendments to Title 26 Subtitle F, CHAPTER 80, Subchapter C, § 7871 to remove the essential government function test (§§ 7871 (c)(1) & (e)) and to prohibit the IRS’s \$10,000 fee charged to determinations of tribal political subdivisions (§ 7871(d)). At the least, the IRS should revise its harmful interpretation of the EGF test and its intrusive audit regime of tribal government bonds.

CATG requests the President support federal supports for tribal economic development bonds and tribal tax exempt bonds. If the Treasury can pay 0.25% to for-profit commercial banks for overnight deposits, at a cost of tens of millions, then tribal TEDB or tax-exempt bonds should receive modest price supports for term or interest rates to help make financial terms reasonable.

CATG requests the President authorize infrastructure funding channeled directly to tribes through self-governance compacts or self-determination contracts. CATG requests the President support the development of a P.L. 102-477-type program for distributing public works/infrastructure funding to tribes to include the Economic Development Administration (EDA), Department of Commerce, Economic Development Assistance Programs available under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq), Department of Energy, USDA, and other Departments and programs. To make this program available to and useful for all Tribes under public works/infrastructure legislation, these



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funds should: (a) be distributed to tribes through self-governance compacts or self-determination contracts, (b) provide specific and targeted eligibility for all tribes equally without regard to level of regional distress, (c) eliminate or reduce the matching requirement, (d) increase the funding percentage to 100% of project costs, and (e) maintain or increase the three year funding period for use of grant proceeds. The combination of more efficient use of direct funds, and the increase of tax revenues available to tribes through the restoration of the tribal tax base, would enable tribes to move ahead dramatically in economic development, energy, land and resource use and tribal governance even while federal tribal funding remains flat or recedes.

C. Water Infrastructure

1. *Enact 3 percent tribal set-asides to the State Revolving Funds to the Clean Water Act and Safe Drinking Water Act.* An Indian Health Service study finds that \$53.7 million per year is needed until 2018 to reduce by 50 percent (from 12 percent to 6 percent) tribal homes' lack of access to safe drinking water and basic sanitation. While a laudable goal, if accomplished it would still leave Indian Country homes with a lack of access that is 10 times greater than the national population. The interagency task force charged with reducing this percentage finds that the goal cannot be met without increased funding. The tribes are grateful that the Obama Administration consistently advocates for 2 percent set-asides in the President's annual budget request the State Revolving Funds under to the Clean Water Act and the Safe Drinking Water Act. Tribes ask that the Administration support annual—and eventually permanent—3 percent set-asides to these funds.
2. *Provide funding for the operation and maintenance of tribal water infrastructure.* The water infrastructure on many tribal lands fails before the end of its design life because of minimal maintenance and repair, often because the tribe lacks funding for full-time operators of tribal water systems. Tribes have consistently called for funding for operation and maintenance of tribal drinking water systems. Rural communities receive support from a rural water and wastewater circuit rider program via Section 5005 of the Farm Bill 2008. Federal funding for the operation and maintenance of drinking water and wastewater infrastructure on tribal lands exists through Public Law 86-121 and Public Law 94-437, but has never been appropriated. Based on the trust responsibility, identified great need, and the principle of equity, tribes request funding for a tribal water and wastewater circuit rider program to enable operation and maintenance of tribal water infrastructure.
3. *Provide funding for Congressionally authorized water infrastructure projects.* Many tribal water infrastructure projects authorized by Congress lack meaningful funding even decades after the initial authorization. As a result, these capital improvement projects in Indian Country fall into disrepair before even being completed, and large percentages of tribal residents remain without potable and irrigable water. This threatens public health and deters—if not halts—economic and agricultural development on those lands.



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D. Emergency Declarations/Critical Infrastructure

CATG request the federal government recognize the authority for tribal governments to declare a state of emergency on their tribal lands. Such tribal government authority may be approved upon application of a tribe following approval of a tribal emergency plan compliant with federal regulations.

CATG also calls for designation of at least one tribal facility as critical infrastructure, which would be determined by a tribal government to be the most important facility and critical infrastructure during an emergency. Tribes' critical infrastructure would be listed via the state and FEMA for critical infrastructure, and, therefore, such Tribes would be eligible for emergency funding.

2. TRIBAL GOVERNANCE

A. Tribal Consultation

CATG requests the President issue a revised or new executive order on tribal consultation based on the following principles:

1. The EO should require that no Department, Bureau of Agency may propose, promulgate, amend, revise or modify any regulation, rule, policy or program that may uniquely, materially or significantly effect any tribe, tribal government or tribal enterprise with prior consultation with such tribal entities potentially effected and the opportunity for tribal responses.
2. Consultation may be invoked by either tribes or the Administration.
3. The definition of tribal consultation should include a clear standard and measurement against it for the purpose of accountability, and mechanisms that provide for consequences for failure to meet the standard;
4. The standard for tribal consultation and requirement for an active tribal consultation program be required in the strategic plan of every Department, including a metric to measure the quantity and quality of tribal consultations held during the past year.

B. Self-Governance

The Congress should approve and the President sign H.R. 2444, the long-delayed amendments to the Tribal Self-Governance Act.

CATG requests the President mandate the following changes in the BIA Self-Governance and Self-Determination program:

- Fixed costs should be separately funded and not taken from tribal program funds.



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- Fringe costs and pay costs should be separately funded and not taken from tribal program funds.
- Contract support costs, including indirect costs and direct costs, should be fully funded (100%).
- Contract support costs should be separately and fully funded (100%) for all federal agencies.
- Programs previously removed from the TPA system should be returned, e.g., road construction and maintenance, general assistance, etc.
- TPAs should be increased by 10% to compensate for years of funding decreases.
- The Director of the Office of Self-Governance and Self-Determination should be elevated to the position of Assistant Secretary of Self-Governance and Self-Determination reporting directly to the Secretary of the Department of the Interior.

C. Tribal Jurisdiction

The President should support and enable tribes' negotiations of self-governance compacts with tribes whereby tribes and its trustee may agree that tribes have all authority necessary and any necessary delegated authority to make all decisions, including such decisions deemed as final federal actions, for any governance or land or trust asset or environmental determination or agreement within the exterior boundaries of the tribal lands of the consenting tribe. The sole responsibility of the federal trustee would be the protection against alienation of tribal lands, the acquisition of fee lands to trust, and the defense of the tribe and its tribal officials and its entities against third party litigation. The tribe would agree to comply with and enforce all federal and tribal laws, and to waive any claims or litigation against the federal government arising from the tribe's actions under the self-governance compact. Under this compact, all tribal citizens and tribal improvements, all non-tribal residents of the tribal lands and non-tribal improvements and transactions on the tribal lands, would be deemed to have consented to the authority of the tribal government and be subject to tribal taxation to the exclusion of State and local government taxation.

D. Reauthorize the Safe, Accountable, Flexible Transportation Equity Act – A Legacy for Users (SAFETEA-LU) using the existing funding formula.

The CATG requests the President support its position on the re-authorization of SAFETEA-LU, as follows:

- Support the continued inclusion of State and County Roads in the IRR system
- Support existing formula (TTAM):
 - 50% CTC
 - 30% VMT
 - 20% Population
- Support existing County & State Road inventory status



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- IRR Program must continue to fund roads that fit the IRR definition regardless of ownership in order to fulfill the intent of the IRR program, which is to “....provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and communities for Indians and Alaska Natives, visitors, recreational users, resource users, and others while contributing to economic development, self-determination, and employment of Indians and Alaskan Natives (25 CFR PART 170)”

CATG supports the current formula for distributing Indian Reservation Roads (IRR) funding and opposes any proposals that would erase the gains the majority of Tribes received in SAFETEA-LU, despite the decrease in the rate of increases for other tribes (whose funds did not decrease).

CATG supports:

- IRR Inventory must continue to include all roads that fit IRR definition regardless of ownership
- State and County roads must continue to be included in the VMT that generates IRR distribution of funds.
- At a minimum, efforts should include retaining state or county roads on the IRR Inventory, whichever road type that generates the most VMTs to benefit California Tribes.
- Grandfather in all existing Bureau of Indian Affairs (BIA), Tribal, state and county roads onto the BIA IRR Inventory prior to the next reauthorization act.
- Any eligible IRR road data submitted by Tribes should be applied consistently throughout the nation
- Continue to utilize the Native American Housing Assistance and Self Determination Act (NAHASDA) database for population statistics.
- Increase funding for Road Safety Programs for California Tribes.
- Reinstate BIA Road Maintenance funds that have been cut in half (50%).

CATG opposes:

- State and County roads deemed ineligible for consideration or removed from the IRR Inventory.
- Any efforts to remove state and county roads from a Tribe's inventory.
- Limit of 15 miles to and from reservation.
- Limit of maximum Average Daily Traffic (ADT) limit to 10,000 for all roads added to the IRR System.
- Any efforts to eliminate twenty-five percent (25%) road maintenance funding from the BIA IRR Program.

3. TRIBAL BROADBAND

CATG requests the President authorize the amendment of the National Broadband Plan to include a Tribal Broadband Plan, which would focus on access for every tribal government to



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broadband backbone service as a trust obligation. The National Broadband Backbone connectivity must be universal and ubiquitous by full spectrum connectivity to each tribal government. Every Tribe should be deemed to have a government service obligation and the jurisdiction as a competitive eligible telecommunications carrier (CETC) to provide broadband service to its own tribal lands and tribal citizens, including Alaska Native tribes (IRA tribes, villages, and tribal consortiums), Oklahoma tribes, California landless tribes, New York tribes and other trust lands (including Native Hawaiians). Tribes should decide how broadband is to be delivered to tribal members, with the Redefinition of sustainability as a government service obligation, and, as a government service obligation, sustainability doesn't require initial profitability. Tribal broadband should be deploy and managed through a P.L. 102-477-type program for all related programs (IHS, HUD, BIE (Bureau of Indian Education), economic development, governance, public safety). Amend the use of the Universal Service Fund (USF) to fund broadband deployment, and amend the Farm Bill to ensure that tribes can always get a waiver of the non duplicating policy when they apply to serve their areas. Please see Exhibits 1 and 2 for further detail.

4. TRIBAL ENERGY

CATG requests the President fully support and adopt the recommendations of the Indian Country Renewable Energy Consortium (ICREC) (see Exhibits 3 and 4). ICREC's and CATG's recommendations include:

- Adopt and support the recommendations of the Indian Country Renewable Energy Consortium (ICREC).
- A clear chain of command in support of Indian energy efforts should be established in the Department of Interior and Department of Energy, including significant and frequent access to the Secretary's office by an assistant secretary of Indian Energy in DOI and DOE, and coordinated efforts to manage and advance Indian renewable energy initiatives.
- In the DOI, there should be established a direct working relationship between the Asst Sec of Indian Energy and the Asst Sec of Economic Development and Tribal Land, and with Tribal and other Indian programs throughout the DOI should report to and be coordinated through these offices.
- The DOI Asst Sec of Indian Energy, Asst Sec of Economic Development and Tribal Lands, the Asst Sec of SG & SD, and the DOE Asst Sec of Indian Energy, and offices with tribal energy responsibilities in the Bureau of Land Management, Federal Energy Regulatory Commission, and WAPA should form a tribal energy policy council to leverage the expertise and strengths of the various programs and tribal points of contact throughout these Departments.
- Effective coordination of DOI and DOE budgeting needs to be established in order to effectively allocate program funding intended to benefit Indian energy programs.



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- The Department should segregate from the guaranteed loan pool the tribal loan guarantee funding specifically for eligible Indian projects, which should be done in consultation with the DOE and DOI.
- The DOE OIE and DOI OIEED should have access to technical assistance from the various DOE laboratories, power marketing administrations and other programs as an effective means to provide comprehensive project assistance to Tribes until funds can be appropriated by Congress to properly fund these offices as authorized.
- DOE's Lawrence Livermore National Laboratory has recently should undertake a series of in-depth renewable finance analyses regarding relevant financial structures and undertake a similar initiative applicable to the particular opportunities and challenges in partnering with Tribes and their enterprises to determine the most effective financial structures for leveraging Tribal capital investment given the inability of tribes, as tax exempt entities, to monetize renewable energy tax credits.
- DOE and DOI, and other relevant agencies such as BLM, DOT, FERC, and WAPA, could use existing authorizations for inter-agency coordination mechanisms for Indian energy initiatives, and begin to identify for tribes and the renewable energy industry the a coherent, strategic tribal renewable energy plan.
- There exists an unacceptable level of regulatory uncertainty with respect to gaining approvals for siting and permitting energy projects on Indian reservations through conventional land agreement structures, including conventional leases by tribes or their Section 17 corporations, or Tribal Energy Resource Agreements delegations, or any other type of associated easement agreement.
- Working in concert with other federal agencies that have Tribal project and program duties, the DOI and DOE can lead an inter-departmental effort to create Tribal energy project siting guidelines as it, and other agencies such as the Bureau of Land Management, DOT, FERC, and WAPA have expertise in the baseline regulatory requirements for energy facility siting.
- Tribes should be provided the option to manage and report program funds related to tribal energy through a P.L. 102-477-type program and through self-governance compacts and self-determination contracts as the most effective means to ensure local control by programs and funding by tribes at the reservation level, and as a means to ensure accountability and transparency.

5. FEE-TO-TRUST ACQUISITIONS

A. 25 C.F.R. PART 151 Fee-to-Trust Acquisitions

CATG requests the Bureau of Indian Affairs immediately consult with tribes for the purpose of revising its recently announced BIA Handbook procedures for discretionary trust acquisitions on-reservation and/or contiguous to a reservation for individual Indians and tribes and mandatory trust acquisitions for the same parties. These procedures place a disproportionate



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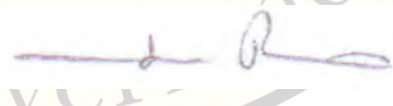
burden on tribes, which has no basis in statute or regulation, in favor of local and state governments that oppose FTT acquisitions. CATG also requests the unlawful and inappropriate administrative moratorium on fee-to-trust acquisitions for Alaska tribes in the State of Alaska be removed immediately. An injustice to one tribe or one region of tribes is an injustice to all tribes, and cannot be tolerated. CATG requests the BIA focus sufficient resources on processing FTT acquisitions to fix a broken system that unfairly delays FTT applications, requires tribes to pay the cost of and perform FTT application processing in order to advance their FTT applications. Even with tribes assuming the burden of costs and expert work, BIA delays continue to delay applications for many years. Restoration of the former tribal land base is the key to tribal economic prosperity and the welfare of its citizens. CATG further requests FTT acquisitions be deemed mandatory. CATG cannot understand the FTT acquisitions authorized by the Indian Reorganization Act of 1934 for the purpose of restoring the tribal land base is a discretionary and not a mandatory activity.

B. Carcieri Decision

CATG urges the President and the Secretary of Interior to work closely with the Senate Indian Affairs Committee and the House Natural Resources Committee and Subcommittee on Indian and Alaska Native Affairs to ensure swift enactment of legislation to address the Supreme Court's misguided decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009). S.676, H.R. 1234, and H.R. 1291 have been introduced in the 112th Congress to remedy this issue. S. 676 and H.R. 1234 are "clean" bills without any provisions unrelated to the "fix" of the Carcieri decision. H.R. 1291 includes a provision adversely impacting Alaska tribes. CATG strongly urges your approval of a "clean" Carcieri Fix bill. Failure to act soon on these proposals risks irrevocable damage to Tribal sovereignty, Tribal cultures and the Federal trust responsibility. We thank you for your efforts thus far on this matter and look forward to continuing our work together on passage of a "clean" Carcieri Fix bill.

Please direct any questions to the CATG Executive Director, Mr. Will Micklin, at (619) 368-4382. Thank you.

Sincerely,



Mark Romero, Chairman
CATG Board of Directors



CALIFORNIA ASSOCIATION OF TRIBAL GOVERNMENTS

November 22, 2011

Summary of Immediate White House Executive Authority Actions Requested Tribal Nations Conference

The California Association of Tribal Governments (CATG) is the state-wide inter-tribal association of Indian tribes in the State of California. CATG proposes the President use his executive authority to immediately effect the following actions.

The Internal Revenue Service should immediately modify its General Welfare Doctrine's general welfare exceptions for tribal citizens and tribal governments to recognize tribal cultural distinctions and practices that make tax reporting and liability inappropriate for certain payments by tribes to tribal citizens, including scholarships, funeral expenses, temporary lodging, cultural and governmental travel, and other items. The IRS should officially recognize that all payments to tribal members from gaming revenues that are not per capita payments designated in approved revenue allocation plans are not subject to tax.

The Internal Revenue Service should waive its \$10,000 fee imposed on tribes for a "political subdivision" determination under Title 26 Subtitle F, CHAPTER 80, Subchapter C, § 7871(d). The DOI Secretary should make approval of any tribe's application for such a determination a priority.

The President should by executive order require all federal departments and agencies to treat tribal governments as State governments in all instances. As such, and where within the authority of the President, all federal funding should be appropriated directly to tribal governments and not through State governments.

The Internal Revenue Service should modify its interpretations to Title 26 Subtitle F, CHAPTER 80, Subchapter C, § 7871 to apply the essential government function test (§§ 7871 (c)(1) & (e)) to tribes the same as it does for state and local governments, and end its intrusive audit regime of tribal government bonds.

The President should by require the Secretary of Treasury, and work with the Federal Reserve, to implement financial supports for tribal economic development bonds and tribal tax exempt bonds, such as guarantees and interest rate caps.

The DHHS Secretary and OMB Director should immediately withdraw it's A-133 category cost reporting directive for the P.L. 102-477 program for all tribal self-governance compacts or self-determination contracts.



CALIFORNIA ASSOCIATION OF TRIBAL GOVERNMENTS

The White House should work with all departments and agencies to implement a P.L. 102-477-type program for tribal programs in economic development, broadband, energy and land use, including the Economic Development Administration (EDA), Department of Commerce, Economic Development Assistance Programs available under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq), Department of Energy, USDA, DOI, and others. To make this program available to and useful for all Tribes under public works/infrastructure legislation, these funds should: (a) be distributed to tribes through self-governance compacts or self-determination contracts, (b) provide specific and targeted eligibility for all tribes equally without regard to level of regional distress, (c) eliminate or reduce the matching requirement, (d) increase the funding percentage to 100% of project costs, and (e) maintain or increase the three year funding period for use of grant proceeds. The combination of more efficient use of direct funds, and the increase of tax revenues available to tribes through the restoration of the tribal tax base, would enable tribes to move ahead dramatically in economic development, energy, land and resource use and tribal governance even while federal tribal funding remains flat or recedes.

The USDA Secretary should immediately implement the rural water and wastewater circuit rider program via Section 5005 of the Farm Bill 2008 (Public Law 86-121 and Public Law 94-437) and reallocate funding for a tribal water and wastewater circuit rider program to enable operation and maintenance of tribal water infrastructure.

The FEMA Director should recognize the authority for tribal governments to declare a state of emergency on their tribal lands following approval of a tribal emergency plan compliant with federal regulations. FEMA should also immediately provide for a tribe's designation of at least one tribal facility as critical infrastructure, which would be determined by a tribal government to be the most important facility and critical infrastructure during an emergency, whether or not a tribe has tribal land or not and including Alaska tribes. Tribes' critical infrastructure would be listed via the state and FEMA for critical infrastructure, and, therefore, such Tribes would be eligible for emergency funding.

The President issue a revised or new executive order on tribal consultation based on the following principles:

1. The EO should require that no Department, Bureau of Agency may propose, promulgate, amend, revise or modify any regulation, rule, policy or program that may uniquely, materially or significantly effect any tribe, tribal government or tribal enterprise with prior consultation with such tribal entities potentially effected and the opportunity for tribal responses.
2. Consultation may be invoked by either tribes or the Administration.



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3. The definition of tribal consultation should include a clear standard and measurement against it for the purpose of accountability, and mechanisms that provide for consequences for failure to meet the standard;
4. The standard for tribal consultation and requirement for an active tribal consultation program be required in the strategic plan of every Department, including a metric to measure the quantity and quality of tribal consultations held during the past year.

The President should immediately mandate the following changes in the BIA Self-Governance and Self-Determination program:

- Fixed costs should be separately funded and not taken from tribal program funds.
- Fringe costs and pay costs should be separately funded and not taken from tribal program funds.
- Contract support costs, including indirect costs and direct costs, should be fully funded (100%).
- Contract support costs should be separately and fully funded (100%) for all federal agencies.
- Programs previously removed from the TPA system should be returned, e.g., road construction and maintenance, general assistance, etc.
- TPAs should be increased by 10% to compensate for years of funding decreases.
- The Director of the Office of Self-Governance and Self-Determination should be elevated to the position of Assistant Secretary of Self-Governance and Self-Determination reporting directly to the Secretary of the Department of the Interior.

The DOI Secretary should immediately require the BIA to return the Safe, Accountable, Flexible Transportation Equity Act – A Legacy for Users (SAFETEA-LU) to the pre-existing funding formula with the following attributes:

- the existing formula (TTAM):
 - 50% CTC
 - 30% VMT
 - 20% Population
- IRR Inventory must continue to include all roads that fit IRR definition regardless of ownership (25 CFR PART 170).
- State and County roads must continue to be included in the VMT that generates IRR distribution of funds.
- At a minimum, efforts should include retaining state or county roads on the IRR Inventory, whichever road type that generates the most VMTs to benefit California Tribes.
- Grandfather in all existing Bureau of Indian Affairs (BIA), Tribal, state and county roads onto the BIA IRR Inventory prior to the next reauthorization act.



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- Any eligible IRR road data submitted by Tribes should be applied consistently throughout the nation
- Continue to utilize the Native American Housing Assistance and Self Determination Act (NAHASDA) database for population statistics.
- Increase funding for Road Safety Programs for California Tribes.
- Reinstate BIA Road Maintenance funds that have been cut in half (50%).

DOI should oppose:

- State and County roads deemed ineligible for consideration or removed from the IRR Inventory.
- Any efforts to remove state and county roads from a Tribe's inventory.
- Limit of 15 miles to and from reservation.
- Limit of maximum Average Daily Traffic (ADT) limit to 10,000 for all roads added to the IRR System.
- Any efforts to eliminate twenty-five percent (25%) road maintenance funding from the BIA IRR Program.

CATG requests the President authorize the amendment of the National Broadband Plan to include a Tribal Broadband Plan, which would focus on access for every tribal government to broadband backbone service as a trust obligation. The National Broadband Backbone connectivity must be universal and ubiquitous by full spectrum connectivity to each tribal government. Every Tribe should be deemed to have a government service obligation and the jurisdiction as a competitive eligible telecommunications carrier (CETC) to provide broadband service to its own tribal lands and tribal citizens, including Alaska Native tribes (IRA tribes, villages, and tribal consortiums), Oklahoma tribes, California landless tribes, New York tribes and other trust lands (including Native Hawaiians). Tribes should decide how broadband is to be delivered to tribal members, with the Redefinition of sustainability as a government service obligation, and, as a government service obligation, sustainability doesn't require initial profitability. Tribal broadband should be deploy and managed through a P.L. 102-477-type program for all related programs (IHS, HUD, BIE (Bureau of Indian Education), economic development, governance, public safety).

The President should immediately order the following actions in support of tribal energy:

- A clear chain of command in support of Indian energy efforts should be established in the Department of Interior and Department of Energy, including significant and frequent access to the Secretary's office by an assistant secretary of Indian Energy in DOI and DOE, and coordinated efforts to manage and advance Indian renewable energy initiatives.
- In the DOI, there should be established a direct working relationship between the Asst Sec of Indian Energy and the Asst Sec of Economic Development and Tribal Land, and



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with Tribal and other Indian programs throughout the DOI should report to and be coordinated through these offices.

- The DOI Asst Sec of Indian Energy, Asst Sec of Economic Development and Tribal Lands, the Asst Sec of SG & SD, and the DOE Asst Sec of Indian Energy, and offices with tribal energy responsibilities in the Bureau of Land Management, Federal Energy Regulatory Commission, and WAPA should form a tribal energy policy council to leverage the expertise and strengths of the various programs and tribal points of contact throughout these Departments.
- Effective coordination of DOI and DOE budgeting needs to be established in order to effectively allocate program funding intended to benefit Indian energy programs.
- The Department should segregate from the guaranteed loan pool the tribal loan guarantee funding specifically for eligible Indian projects, which should be done in consultation with the DOE and DOI.
- The DOE OIE and DOI OIEED should have access to technical assistance from the various DOE laboratories, power marketing administrations and other programs as an effective means to provide comprehensive project assistance to Tribes until funds can be appropriated by Congress to properly fund these offices as authorized.
- DOE's Lawrence Livermore National Laboratory has recently should undertake a series of in-depth renewable finance analyses regarding relevant financial structures and undertake a similar initiative applicable to the particular opportunities and challenges in partnering with Tribes and their enterprises to determine the most effective financial structures for leveraging Tribal capital investment given the inability of tribes, as tax exempt entities, to monetize renewable energy tax credits.
- DOE and DOI, and other relevant agencies such as BLM, DOT, FERC, and WAPA, could use existing authorizations for inter-agency coordination mechanisms for Indian energy initiatives, and begin to identify for tribes and the renewable energy industry the a coherent, strategic tribal renewable energy plan.
- Working in concert with other federal agencies that have Tribal project and program duties, the DOI and DOE can lead an inter-departmental effort to create Tribal energy project siting guidelines as it, and other agencies such as the Bureau of Land Management, DOT, FERC, and WAPA have expertise in the baseline regulatory requirements for energy facility siting.
- Tribes should be provided the option to manage and report program funds related to tribal energy through a P.L. 102-477-type program and through self-governance compacts and self-determination contracts as the most effective means to ensure local control by programs and funding by tribes at the reservation level, and as a means to ensure accountability and transparency.

The DOI Secretary should immediately require the Bureau of Indian Affairs to immediately consult with tribes for the purpose of revising its recently announced BIA Handbook procedures



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for discretionary trust acquisitions on-reservation and/or contiguous to a reservation for individual Indians and tribes and mandatory trust acquisitions for the same parties. These procedures place a disproportionate burden on tribes, which has no basis in statute or regulation, in favor of local and state governments that oppose FTT acquisitions.

The DOI Secretary should immediately remove the unlawful and inappropriate administrative moratorium on fee-to-trust acquisitions for Alaska tribes in the State of Alaska and begin processing all fee-to-trust applications submitted by Alaska tribes. An injustice to one tribe or one region of tribes is an injustice to all tribes, and cannot be tolerated.

The DOI Secretary should direct the BIA to focus increased and sufficient resources on processing FTT acquisitions to fix a broken system that unfairly delays FTT applications, requires tribes to pay the cost of and perform FTT application processing in order to advance their FTT applications. Restoration of the former tribal land base should be designated as one of the keys to tribal economic prosperity. FTT acquisitions should be deemed mandatory.

The DOI and USDA and DOE Secretaries should jointly re-issue an amended Secretarial Directive 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (issued June 5, 1997), to apply to the GBEPA, the MBTA and the ESA, and to protect the sovereign rights of tribes and tribal development rights on tribal lands using a best interests test to protect tribal economic interests balanced against environmental interests, and especially those non-tribal interests outside of tribal lands.

Please direct any questions to the CATG Executive Director, Mr. Will Micklin, at (619) 368-4382. Thank you.

Sincerely,

Mark Romero, Chairman
CATG Board of Directors

Exhibit 1 – CATG Recommendations for Tribal Broadband Development

The President should:

1. Support and adopt the recommendations of the Native American Broadband Association and the National Congress of American Indians that would:
 - a. Develop a Tribal Broadband Plan within the National Broadband Plan.
 - b. Improve for tribal government applicants the second and third round of the Broadband USA NOFA offered as BTOP and BIP by the USDA RUS and the Department of Commerce NTIA.
 - c. Direct funding to tribes to conduct digital mapping for the National Broadband Plan that is now directed only to States. There is great doubt that States will adequately conduct digital mapping on tribal lands, consistent with States' failures to pass through federal funding to tribes from the Department of Homeland Security or the Department of Justice or many other such examples.
 - d. Support the passage of a Tribal Telecommunications bill.
 - e. Support tribal set aside of funding for Tribal Broadband Plan build out, with tribes provided with the necessary funding and recognized jurisdiction to build their own broadband systems.
2. Amend the Farm Bill to ensure that tribes can always get a waiver of the non duplicating policy when they apply to serve their areas

CATG requests the President take the following actions:

- Adopt and support the recommendations of the Native American Broadband Association (NABA) and the National Congress of American Indians (NCAI) on tribal broadband.
- Change the Rural Utility Service loan policy that prohibits tribes from accessing funds to acquire facilities that are already the subject of existing loan programs.
- Expand access to broadband access by passing the Native American Connectivity Act, increasing the scope of the Universal Service Fund to include broadband and amending the Telecommunications Act to broaden the definition of "underserved areas." Work with regulators to include tribes in future ownership of telecommunications.
- Consider tribal land rights and ownership when tribes regulate or operate utilities within their reservations. Legislation should clarify court cases that create confusion about tribal jurisdiction.
- Allow tribes to lease facilities to service their population.
- Congress should require government-to-government consultation for spectrum management on tribal lands, and ensure tribal access and options for ownership and management of spectrum on tribal lands.
- The FCC should recommit itself to its policy of a government-to-government relationship with tribal governments and ensure that tribal governments have equal opportunities to those available to any other governing authority,

and 1) adopt a definition for tribes as “unserved”; 2) recognize the authority of tribal governments regarding the use of FUSF funds on tribal lands; and 3) designate tribal lands as separate study areas.

- Tribal land carve-out from any caps on FUSF support, permanent waiver of the parent trap rule and waiver from any reverse auction policy.
- Advocate self-provisioning through tribal telecom development as a key empowerment of building tribal sovereignty.
- Universal service funds need to be better directed and held more accountable. The Commission’s universal service policy reform must prioritize funding and efforts to connect unserved communities, particularly tribal communities as required by both the mandates of the Communications Act and as required under the Federal Tribal trust responsibility.
- The FCC needs to clarify and define its trust responsibilities to tribal communities.
- Efficiency as a criteria for eligibility as ETC carrier, at least in tribal areas, should not be predicated purely on “price”, but should include the true “build-out” costs to “connect” all geographic areas of the service area, with particular emphasis on reaching previously “unconnected” residents.
- The Commission must enforce failure to fully connect all geographic areas in tribal areas, particularly when data and determination show that a carrier has failed to provide equitable service, or material incremental gains in connecting unserved areas.
- There should only be one ETC in a rural area, particularly in a tribal unserved area.
- Service plans in unserved tribal areas should be negotiated with the respective tribe(s). ETCs operating in unserved or historically underserved areas should be required to consult with tribes on how to improve connectivity in the tribal area and to file a plan with the Tribe and the Commission on proposed efforts.
- All providers should be held to the same standards of quality of service and reliability in order to attain or retain their ETC designation.
- The Tribe, as victim of the failure to provide fair and reasonable service, should have the delegated authority to choose or bid out its universal service provider.
- Tribes should be given every direct assistance, resource and opportunity available through the Commission’s auspices, particularly in issuance of certificates of convenience and wireless licensing, to self-provision service.
- An annual report regarding the state of unserved areas with a specific emphasis on unserved tribal areas should be provided to the public by the Commission.
- The Federal Communications Commission “Indian Desk” should report directly to the Chairman of the Commission, such as an “Office of Tribal Government Affairs”, or a Tribal Government Bureau.
- Indian Country deserves serious consideration by the FCC and the Sirius/XM merged business entity for its provision of a 24-hour program stream

drawing on existing Native radio program sources.

Native Nation Telecom Policy as Advocated by the National Tribal Telecommunications Association, the National Congress of American Indians, the Affiliated Tribes of Northwest Indians and the California Association of Tribal Governments

The FCC Should:

- A. Support Tribal Sovereignty:** The FCC has the authority to treat Tribes differently, and as a matter of Trust Responsibility to Native Nations, should:
1. Include Tribes on all FCC policy decisions that affect Native communities
 2. Where (price cap) carriers recede from tribal service areas in right of refusal decisions, give Tribes the first option to serve themselves;
 3. Give Tribes the choice of which ETC shall connect the Native community—the Tribe conducts a quality of service and connectivity auction, like E-rate dispersals;
 4. Support the decision of all Native Nations to serve themselves—the other option of Tribal choice;
 - a. By designating the entire Native community as a single service area;
 - b. By waiving regulatory rules (parent trap); extra filings; and 2-year delay for reimbursements that impede service startup;
 - c. By providing all technical assistance and regulatory funding to support regulatory broadband service within the Tribe;
 5. Require all non-Native ETCs to attain permission from Tribes to serve Native communities;
 6. Require all regulatory providers and vendors to engage in commercial consultation with Native Nations on quality of service to the community;
 7. Delegate public interest obligation monitoring on Tribal lands to Tribes;

- B. Support a Tribal-Carve Out:** to ensure Native sovereignty the FCC must:
1. Protect the sustainability of all current Tribal regulatory services with a hold-harmless support level set at 2011 funding levels, with a floor on USF and ICC funding levels and exemption from high cost cap and ICC changes—impact will be less than \$5 million annually under ABC plan;
 2. Promote the sustainability of future Tribal regulatory broadband services with a safety-net mechanism to offset all regulatory costs that exceed regulatory revenues under the Connect America Fund mandates, with full cost recovery for broadband infrastructure investments—impact on CAF will be limited for service to 200,000-400,000 Native households;
 3. Support for a Tribal Broadband and Linkup program;
 4. Exempt Tribes from reverse auctions, focusing on need, parity of technology, and quality of service needed on Native lands;
 5. Waive Tariff #5 Section 8.4 and 8.5 rates for NECA Incumbent rate of return local exchange carriers providing broadband service in native

communities so that they are not required to remit or credit the wholesale rate for broadband service and still receive the full settlement of required revenues from NECA, so savings can be used to reduce broadband costs for Native communities;

6. Amend the Farm Bill to ensure that tribes can always get a waiver of the non duplicating policy when they apply to serve their areas.

C. Support a Native Broadband Fund: NTTA proposes a Native Broadband Fund to support the underlying Public Switched, Public Safety, Mass Media, and Broadband Mobility Networks; connect public institutions; map Native communities; and provide feasibility and startup assistance to Tribes seeking to implement regulatory service.

Exhibit 2 – CATG Recommendations for the National Broadband Plan

CATG requests the President authorize the amendment of the National Broadband Plan to include a Tribal Broadband Plan, which would focus on:

- a. Access for every tribal government to broadband backbone service is a trust obligation
 - i. National Backbone connectivity must be universal and ubiquitous by full spectrum connectivity to each tribal government
 - ii. Tribe has a government service obligation and the jurisdiction as a competitive eligible telecommunications carrier (CETC) to provide broadband service to its own tribal lands and tribal citizens
- b. Tribal lands use HUD population definition and include
 - i. Alaska Native tribes (IRA tribes, villages, and tribal consortiums)
 - ii. Oklahoma tribes
 - iii. California landless tribes
 - iv. New York tribes
 - vi. Other trust lands (including Native Hawaiians)
3. Tribal Government Broadband Service Obligation & Sustainability
 - a. Tribes have many non-economic reasons to provide broadband
 - b. Tribe decides how broadband is to be delivered to tribal members
 - c. Redefines sustainability as a government service obligation
 - i. As government service obligation sustainability doesn't require initial profitability
4. Technologies covered
 - a. Focus on broadband services, including wireless broadband, and don't focus on technology
 - b. Don't focus on POTS, cable TV or Cellular telephone
5. Tribal Broadband Plan Process
 - a. Establish benchmarks for tribal broadband deployment
 - i. Establish a Tribal Broadband Plan as part of the National Broadband Plan
 - ii. Fund tribes, through the BIA, to complete a tribal broadband digital map for every tribe
 - ii. Add tribal land ID requirement to Form 477
 - b. Create Demonstration Projects
 - i. Option 1 – Provide broadband to all tribes in an inter-tribal governmental association, such as the state-wide California Association of Tribal Governments
 - ii. Set aside spectrum for deployment
 - iii. Consider multiple specific frequencies to be set aside for tribes
 - iv. Provide sufficient bandwidth for today and for reasonably foreseeable growth
 - vi. Deploy and manage program funds in a P.L. 102-477-type program.
6. Amend the Farm Bill to ensure that tribes can always get a waiver of the non duplicating policy when they apply to serve their areas

TALKING POINTS FOR RESPONSE TO INDIAN ENERGY CONCEPT PAPER

Introduction / Overview

1. We are encouraged that the Committee is taking a leadership role in ensuring the inclusion of provisions which will set a sound foundation to promote development of the untapped renewable energy resources on tribal lands
 - a. More than 10% of wind on Indian lands (conservative estimate) and even more for solar.
 - b. This means that it is near impossible to achieve the President's goals on carbon reduction and energy independence without a serious effort to remove the impediments on the Indian Country renewable development.
 - c. Too often in the past, tribes have been left out of burgeoning economic development opportunities; we must ensure that the foundation is set for effective tribal participation in the emerging green economy.
2. Unfortunately, existing policies create an unequal playing field where tribes are at great disadvantage.
3. The Consortium supports policies focused on the objective of evening the playing field so that Indian Country lands will not be left out of this new clean energy economy.
4. There are three key areas that need to be addressed which constitute the Consortium's key priorities: Financing, Transmission and Streamlining of Leasing.

Key Priorities

1. Financing. Observation: Tax Credits and Incentives (Investment, Production and New Market) are critical incentive tools for renewable development.
 - a. Tax incentives in combination are necessary for renewable projects to compete with other conventional generation – it will have the effect of increasing investment in generation, which increases need for expanded manufacturing capacity, which drives down equipment prices – all of which makes many renewables a great long-term investment
 - b. But tribes are non taxable for these purposes and cannot take advantage of these critical tools.
 - c. At best, it condemns tribes to primarily a royalty relationship and any options to own projects on their lands become unnecessarily difficult.

- d. Recommendations: Even the playing field by making the tax credits tradable/fungible. Alternatively, re-authorize and expand grant *in lieu* of tax credits for certain renewable projects on Indian lands.
- 2. Transmission. Observation: It is self-evident that for commercial renewable development, transmission of the power generated to market is essential to the viability of any significant renewable build-out in Indian Country.
 - a. Conversely, the lack of sufficient transmission capacity is a principal hindrance to development of renewable resources.
 - b. Problem is particularly acute in Indian Country – long neglected.
 - c. Potential to worsen and increase the divide if power of eminent domain – as contemplated – is granted, which creates more incentives to transmission developers to build around Indian lands
 - d. Recommendations: To make Indian Country projects competitive, we have to provide counter-incentives such as transmission interconnection and service priority; financial incentives to invest capital on transmission projects in Indian Country; public/tribal/private authorizations for WAPA and BPA to expand transmission within current corridors.
 - e. In all planning of the build out and zones and corridors, tribal voices must be included from the beginning and not just as stakeholders but on par with other governments.
- 3. Streamlining Leasing. Observation: There are plenty of cumbersome regulations and processes that greatly disadvantage Indian Country in attracting projects on their lands despite vast developable renewable resources. Streamlining of these processes is a top priority.
 - a. Recommendations: We endorse and look forward to working with the Committee in its “one stop shop” proposal and the bundling of ROW and land lease approval and recommend strongly that a focused renewable and transmission one-stop shop is proposed.
 - b. We are proposing that provisions to expand authority to for leasing for at least up to 50 years, and perhaps up to 99 years, because the horizon for these projects are much longer than other economic development projects.
 - c. Finally, because of the objections to TERAs (not a single tribe has adopted one to completion), we need to revisit whether there should be a categorical exclusion for renewable projects under a certain size (e.g., 200 mw), or within certain established corridors, or that there be no federal approval needed for such projects within certain parameters.

Consortium Observations on the SCIA The Concept Paper

1. On Financing, we do not think you really address the central issue. Although there is wide agreement that DOE should have to implement the tribal-specific loan guarantee program, that is insufficient. Addressing fungibility of tax credits and incentives is key and while we recognize that other Committees have roles on this issue, we would expect that the Senate Indian Committee would take some leadership position on this as well.
2. On Transmission, we agree that tribes should be included in policy discussions of transmission siting and DOE should include a study of Indian Country transmission. But, in addition, there is a need for priority to counteract the impact of granting eminent domain authority on non-Indian lands.
3. On Streamlining, we think rather than try to improve TERA, legislation should increase maximum years for lease terms and not require federal approval of certain renewable development projects under a certain projected size. This is essential to even the playing field with non-Indian lands.

In addition, presently Indian lands often compete with federal lands because of geographic proximity. This context makes it difficult to attract capital investment in renewables and transmission simply because other federal lands have streamlined their leasing processes, but that has not happened for tribal lands. This is yet another reason why this is such a critical issue.

INDIAN COUNTRY RENEWABLE ENERGY BILL

COMMENTS TO SCIA ENERGY CONCEPT PAPER AND RECOMMENDED ADDITIONS

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***Note:** Many of the policy recommendations included in this document were prepared by the Indian Country Renewable Energy Consortium (ICREC). While not yet official, on-going recommendations and comments from staff at the National Congress of American Indians (NCAI) and the Council of Energy Resource Tribes (CERT) have been incorporated . All recommendations from Senate Committee on Indian Affairs (SCLA) Indian Energy Concept Paper dated September 10, 2009 have been included in the document in **GREY**.*

Comments to SCIA Energy Concept Paper – And Recommended Additions
DRAFT – FOR DISCUSSION PURPOSES ONLY

KEY: SCIA Provisions-**GREY**; New language-*Italicized*; New Language within existing language-Ital/Underline

OVERVIEW

Although there is tremendous potential for renewable energy development in Indian Country, actual projects have been slow to materialize. This has been due to a variety of obstacles ranging from long lease approval times to difficult transmission access and ill-fitting financial incentives. In light of the national strategic importance of renewable energy resources and the vast undeveloped renewable resources in Indian Country, coupled with the potential significant benefits of working with tribal governments, it seems that renewable energy resource development should grow rapidly in Indian country. But the last two decades have made clear that is not the case. The known and identifiable impediments have proven difficult; and the reality is that there continues to be severe underdevelopment despite great interest among tribes and developers alike.

The Indian Country Renewable Energy Consortium (ICREC) has combined the extraordinary expertise of Indian Country and its allies along with the many tribal governments, tribal and Alaska Native Corporations, all of whom have a great interest in *and are actively* pursuing all aspects of renewable development. Combining this expertise, energy and vision, ICREC represents an unprecedented consortium of experience and interest with which to identify the hurdles that have inhibited development to date and seeks now to outline a policy agenda to address the challenges and the opportunities.

Primary and priority policy issues facing Indian Country renewable energy and infrastructure development are broadly summarized as the following:

Sections

- 1) **LEASING & SITING** – Indian lands lease review & approval processes take as many as two to three years longer than the comparable processes for projects on Federal lands, and there is an emerging necessity to coordinate renewable energy development and renewable transmission siting and leasing protocols on Federal and Indian lands
- 2) **TRANSMISSION INFRASTRUCTURE** – Inadequate transmission infrastructure on Indian lands and difficult access to transmission on and from Indian lands, and obstacles to access to public energy grids present significant problems to renewable energy development in Indian country
- 3) **FINANCING** – Current financial incentives are not consistent with Tribal financing tools and thus act as a disincentive to a tribe's capital investment in its own projects and infrastructure
- 4) **FEDERAL PROGRAMS** – Indian energy programs are not adequately structured to support renewable energy deployment in Indian country

**Comments to SCIA Energy Concept Paper – And Recommended Additions
DRAFT – FOR DISCUSSION PURPOSES ONLY**

KEY: SCIA Provisions-**GREY**; New language-*Italicized*; New Language within existing language-*Ital/Underline*

LEASING & SITING

Indian Lease Review & Approval Processes are Cumbersome and Lengthy and There is an Emerging Necessity to Coordinate Federal and Indian Renewable and Renewable Transmission Siting and Leasing Protocols

SUMMARY

Renewable projects sited and financed in Indian Country are a new phenomenon that requires new rules and procedures to make them viable. However, investors, developers and Tribes who seek to invest capital on renewable projects are finding that the lack of clarity with respect to trust and Indian land lease reviews and permitting on Indian reservations, and the unknown length of time involved in such reviews and the issuance of permits, as well as the isolation of Tribal renewable energy sources from distribution grid, serves as a disincentive to capital deployment. Developer commitments and capital tend to flow along the path of least resistance. As federal agencies and states make it easier to site and permit projects on federal and state lands, creating a more transparent and predictable process, capital will be better attracted to those projects and away from Indian lands.

LEASING & SITING PROVISIONS INCLUDED IN SCIA INDIAN ENERGY CONCEPT PAPER

- a) **STREAMLINE AND SUPPORT INDIAN ENERGY DEVELOPMENT BY EXPANDING ONE-STOP SHOPS.** Develop a demonstration program that directs the Department of the Interior's Office of Indian Energy and Economic Development to establish 3-5 Indian Energy Development Offices (one-stop shops) in Regional and Agency Offices where there is a high level of energy development opportunities to expedite permitting, provide technical resources, and help develop tribal managerial and technical capacity.

PROPOSED LANGUAGE: *Expediting Energy Resource Development on Tribal Lands. The Secretary is authorized to establish a demonstration program within the Office of Indian Energy and Economic Development to oversee the establishment of three (3) to five (5) Indian Energy Development Offices within the regional and agency offices of the Bureau of Indian Affairs for the purpose of facilitating the development of energy resources on Indian lands through the provision of technical resources and assistance in the development of tribal managerial and technical capacities associated with energy resource development, and to expedite the leasing and permitting processes related to the development of energy resources on Indian lands.*

NOTE: *This ICREC contends this can be accomplished through existing authorities and can be established immediately, and on at least a pilot initiative in those areas with the most active Indian renewable project leasing and permitting activities, until such time that budgets and/or appropriations to properly support the program can be reprogrammed or authorized to establish a permanent program.*

- b) **EXPAND USE OF INDIAN MINERAL DEVELOPMENT AGREEMENTS TO INDIVIDUAL INDIANS.** Currently, tribes use Indian Mineral Development Act (IMDA) agreements to be more active in the leasing of minerals on their lands and to have more control in the development of the terms of the agreements that are negotiated. The law could be amended

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to allow allottees to use the IMDA agreements in a manner similar to tribes. Allowing allottees to be more active in the leasing of their lands would eliminate some of the steps currently needed to process energy leases on allotment lands.

PROPOSED LANGUAGE: Amendment to Sec. 2108.

Tribal right to develop mineral resources. Nothing in this chapter shall impair any right of an individual Indian or an Indian tribe organized under section 16 or 17 of the Act of June 18, 1934 (48 Stat. 987), as amended [25 U.S.C. 476, 477], to develop their mineral resources as may be provided in any constitution or charter adopted by such tribe pursuant to that Act [25 U.S.C. 461 et seq.].

- c) **BUNDLE THE LEASING AND RIGHTS-OF-WAY APPROVAL PROCESSES ON INDIAN LANDS.** Current laws separate the processes for obtaining leases and right-of-ways on Indian lands. The law could be changed to provide Tribes the option to sign energy leases that include automatic approval for necessary and reasonable right-of-ways. Combining these steps would streamline the energy development process.

COMMENT: This authorization is arguably already addressed in section 2604 of the Energy Security Act of 2005.

PROPOSED LANGUAGE: Amendment to Sec. 323. “Rights-of-way for all purposes across any Indian lands. The Secretary of the Interior [be, and he is empowered] is authorized to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the lands belonging to the Pueblo Indians in New Mexico, and any other lands heretofore or hereafter acquired or set aside for the use and benefit of the Indians.” *For purposes of energy resource development on Indian lands, the Secretary is authorized to approve rights-of-way in combination with his approval of leases of Indian lands for energy resource development.*

- d) **ENCOURAGE LONG-TERM RESERVATION-WIDE PLANNING AND STREAMLINE ENVIRONMENTAL REVIEW OF ENERGY PERMITTING.** The federal government is required to conduct environmental reviews for most development on Indian lands. However, this process takes far too long in part because the federal government conducts the environmental reviews on a project-by-project basis. The law could be changed to direct the DOI’s Office of Indian Energy and Economic Development to prepare comprehensive environmental review documents for reservation-wide energy planning. This should decrease the amount of time needed to obtain permits for projects. [Perhaps ask for funding for several demonstration projects for large land based tribes with significant renewable energy potential. To what extent is this already addressed through TERAs in Sec. 2604 of EPAct 2005?]

PROPOSED LANGUAGE: Sec. 2602 Energy Security Act of 2005 is amended as follows:

- (a) **DEPARTMENT OF INTERIOR PROGRAM.** –

(1) To assist Indian tribes in the development of energy resources, [and] to encourage long-term reservation-wide planning, to streamline environmental

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review and permits associated with the development of energy resources on Indian lands, and further the goal of Indian self-determination....

- (A) In carrying out the Program, the Secretary shall –
(B) provide grants to Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, *to encourage long-term reservation-wide planning, to streamline the environmental review of energy resource development projects and permits associated with such projects,* and to process, use, or develop those energy resources on Indian land...

- e) **REPEAL THE FEDERAL CHARGE FOR OIL AND GAS DRILLING ON INDIAN LANDS.** The Consolidated Appropriations Act of 2008, permitted the Bureau of Land Management to collect a \$4,000 charge for processing applications to drill on federal lands, including Indian lands. The law could be changed to exempt Indian lands while still allowing the charge for other federal lands. This would eliminate one of the obstacles to encouraging energy development on Indian lands.

PROPOSED LANGUAGE: Division E of Title I of the Consolidated Appropriations Act of 2008 (Public Law 111-8), Interior and Related Agencies, Bureau of Land Management, is amended as follows: “In addition, \$36,400,000 is for the processing of applications for permit to drill and related use authorizations, to remain available until expended, to be reduced by amounts collected by the Bureau and credited to this appropriation that shall be derived from \$4,000 per new application for permit to drill that the Bureau shall collect upon submission of each new application”, *provided that applications for permits to drill on Indian lands shall not be subject to such \$4,000 fee.*

ADDITIONAL LEASING & SITING PROVISIONS RECOMMENDED

- a) **STREAMLINE THE APPRAISAL PROCESS** and/or allow for third-party appraisals with Tribal consent.
- b) **AUTHORIZE LONG TERM AND RENEWABLE TRANSMISSION LEASES.** An amendment to 25 U.S.C. §415 authorizing 25-year leases with an option to renew for an additional 25-years for renewable energy projects (projects defined as eligible for tax credits under IRS sect 45 and 48) and transmission projects substantially benefitting renewable projects without Secretarial approval.

PROPOSED LANGUAGE: Amendment to 25 U.S.C. 415: “Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years,” *with the exception of leases for the development of energy resources on Indian lands, for which there shall be an option to renew the lease for a period of 25 additional years for*

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renewable energy projects and transmission projects substantially associated with such renewable energy projects, without further action or approval by the Secretary.

- c) **EXTEND THE ALLOWABLE LENGTH OF SECTION 17 TRIBAL CORPORATIONS LEASE TERMS.** Extend current authorization by Tribal corporations chartered under the Indian Reorganization Act Section 17 to lease lands and to extend the current terms of leases up to at least 50 years

PROPOSED LANGUAGE: Amendment to Sec. 477. "Incorporation of Indian tribes; charter; ratification by election. The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: Provided, That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefore interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law; but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation", *with the exception of leases for the development of energy resources on Indian lands, for which there shall be an option to renew or extend the term of the lease to 50 years, without further action or approval by the Secretary.*

- d) **DIFFERENTIATE BETWEEN INDIAN LANDS AND PUBLIC LANDS PROVISION FOR NEPA PURPOSES.** NEPA requires the evaluation of impacts to the environment resulting from a proposed federal action, which has to date been inclusive of almost all proposed activities on Indian lands including leases and rights of way. Because development on Tribal lands generally does not have a comparable impact on the general public, the Interior Secretary could be authorized to certify a Tribal environmental review and enforcement plan and a Tribal officer could agree to have the status of a responsible federal officer under NEPA to satisfy the evaluation requirements.

NOTE: The Energy Policy Act of 2005 attempted a system where tribes can develop and win DOI approval for the tribe's own ersatz NEPA system. It's far from ideal, but in theory, if tribes want to have their own NEPA process, and don't want to have to rely on DOI to prepare environmental reviews, there is a way to handle that in existing law. Some possible language is below.

PROPOSED LANGUAGE: *The Secretary of the Interior shall, upon petition by any tribe, deem the requirements of the National Environmental Policy Act, 42 USC 4321 et seq., to have been fulfilled with respect to the siting, development, and/or operation of any renewable energy project proposed for development by the petitioning tribe, provided that the tribe demonstrates, in a manner satisfactory to the Secretary, which shall include provisions for monitoring and enforcement, that the proposed renewable energy project:*

- (a) Will be located entirely on trust land and in a HUB zone (NOTE: or other pre-defined high poverty or qualified census track or other area);*
- (b) May be owned or have an option for ownership by a tribe or tribal enterprise either as a lessor or owner; and*
- (c) Will apply appropriate avoidance and mitigation measures with respect to federally protected species and their habitats.*

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TRANSMISSION INFRASTRUCTURE

Inadequate Transmission Infrastructure and Difficult Access to Transmission

SUMMARY

Although a significant federal hydropower and transmission footprint runs throughout Indian Country in the western United States, ironically, in almost every instance, tribal projects experience difficulty in securing access to the transmission infrastructure situated on Indian lands and in securing connectivity between Tribal renewable energy projects and electrical grids. Closer and more meaningful national coordination with the federal government with respect to access, use and planning for future expansions of our critical national transmission system would be a green lifeline to numerous and strategic Tribal communities.

ADDITIONAL TRANSMISSION PROVISIONS RECOMMENDED

- a. **AUTHORIZE WAPA AND BPA TO EXPAND** current constrained areas along current corridors with authorization to enter into Power Marketing Administration (PMA)/Tribal partnerships for expansions or lines within expanded current corridors, and with specific authorizations to allow tax-exempt bonding authority to Tribes as a financing tool to acquire equity and ownership positions in said projects.

PROPOSED LANGUAGE: SEC. 402. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY. *The Hoover Power Plant Act of 1984 (Public Law 98–381) is amended by adding at the end the following:*

Sec. WESTERN AREA POWER ADMINISTRATION BORROWING AUTHORITY FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY ON INDIAN LANDS. AUTHORITY.—

(1) IN GENERAL.—*Notwithstanding any other provision of law,*

(A) the Western Area Power Administration may borrow funds from the Treasury; and

(B) the Secretary shall, without further appropriation and without fiscal year limitation, loan to the Western Area Power Administration, on such terms as may be fixed by the Administrator and the Secretary, such sums (not to exceed, in the aggregate (including deferred interest), \$6,500,000,000 in outstanding repayable balances at any one time) as, in the judgment of the Administrator, are from time to time required for the purpose of—

(i) constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by the Western Area Power Administration located on or adjacent to tribal lands for the primary but not exclusive benefit of renewable generation capacity located on tribal lands; and

(ii) delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date of enactment of this section and for the primary but not exclusive benefit of renewable generation capacity located on tribal lands.

(2) PARTICIPATION.—*The Administrator may permit other entities to participate in the financing, construction and ownership projects financed under this section, with priority given to the participation of entities which have partial or full ownership of a Tribe or tribal corporation.*

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Sec. *BONNEVILLE POWER ADMINISTRATION BORROWING AUTHORITY FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY ON INDIAN LANDS.*

(1) *For the purposes of providing funds to assist in financing the construction, acquisition, and replacement of the transmission system of the Bonneville Power Administration and to implement the authority of the Administrator of the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.), an additional \$3,250,000,000 in borrowing authority is made available under the Federal Columbia River Transmission System Act (16 U.S.C. 838 et seq.), to remain outstanding at any time, for the purposes of:*

(A) constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by the Bonneville Power Administration located on or adjacent to tribal lands for the primary but not exclusive benefit of renewable generation capacity located on tribal lands; and

(B) delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date of enactment of this section and for the primary but not exclusive benefit of renewable generation capacity located on tribal lands.

(2) PARTICIPATION.—The Administrator may permit other entities to participate in the financing, construction and ownership projects financed under this section, with priority given to the participation of entities which have partial or full ownership of a Tribe or tribal corporation.

- b. **CREATE A TRIBAL PREFERENCE FOR TRANSMISSION CAPACITY AND QUEUING FOR TRANSMISSION PROJECTS.** Authorize queuing and capacity preference in FERC-approved new transmission projects for transmission rights and interconnections for Tribal and Alaska Native renewable projects located in empowerment zones and HUB zones in Indian Country or authorize eligibility for any federal incentives by virtue of their status as Indian lands. Additionally, direct federal PMAs, as they undertake queue reform including cluster studies and similar assessment through the end of 2010, to advance applications for projects sited on Indian lands that have met the relevant criteria for interconnection requests.

PROPOSED LANGUAGE: *The Secretary of Energy and the Administrator of any federal power marketing administration shall, when deciding to make available capacity on or authorize or otherwise facilitate interconnection to any federally owned or controlled electric transmission line or system, grant preference to projects that meet the criteria specified in Sec. _____, provided that such preference shall be superior only with respect to those entities not otherwise entitled as of the date of this Act to preference in allocation of federally owned transmission capacity.*

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FINANCING

Current Financial Incentives are Inconsistent with Tribal Financing Tools and Serve as Disincentives to Capital Investment in Tribal Projects and Infrastructure

SUMMARY

As tax-exempt entities, tribal governments have a very limited ability to employ current tax-based credits and other financial incentives for renewable energy development – the primary drivers for renewable investment in the United States. The desire of Tribes and native communities to own and control critical renewable energy infrastructure has thus far hampered renewable project development in Indian Country.

FINANCING PROVISIONS INCLUDED IN SCIA INDIAN ENERGY CONCEPT PAPER

- a) **INCREASE PROJECT FINANCING AVAILABLE TO TRIBES BY REQUIRING IMPLEMENTATION OF THE DOE INDIAN ENERGY LOAN GUARANTEE PROGRAM** A DOE Indian Energy Loan Guarantee Program was authorized by the Energy Policy Act of 2005, but DOE has not implemented the program because the legislation did not require it. The Program is currently authorized at \$2 billion. The law should be changed to require DOE to implement the program.

ADDITIONAL FINANCING PROVISIONS RECOMMENDED

- a) **AUTHORIZE A TRIBAL TRANSMISSION LOAN GUARANTEE PROGRAM.** Authorize a new tribal loan guarantee program and set aside current tribal loan guarantees already authorized specifically for manufacturing projects as well as transmission projects sited on Indian lands and ensure that the loan guarantees are harmonized with any recent or any new financial incentives, such as new markets tax credit financing structures to enhance and leverage the goals of these important programs.

PROPOSED LANGUAGE SEC. 406. RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION LOAN GUARANTEE PROGRAM. (a) AMENDMENT.—Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.) is amended by adding the following at the end:

Sec . TRIBAL PROGRAM FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY AND ASSOCIATED ELECTRIC POWER TRANSMISSION PROJECTS.

(a) IN GENERAL.—the Secretary may make guarantees under this section only for the following

categories of projects that commence construction not later than September 30, 2020:

(1) Renewable energy systems, including incremental hydropower, that generate electricity or thermal energy, and facilities that manufacture related components, on trust lands or lands owned by Tribes or Alaskan Native village governments.

(2) Associated electric power transmission systems, including upgrading and reconductoring projects.

(b) FACTORS RELATING TO ELECTRIC POWER TRANSMISSION SYSTEMS.—In determining to make guarantees to projects described in subsection (a)(2), the Secretary may consider the following factors:

(1) The viability of the project without guarantees.

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(2) *The availability of other Federal incentives.*

(3) *The importance of the project in meeting reliability needs.*

(4) *The effect of the project in meeting a Tribe's, federal government's and/or region's environment (including climate change) and renewable energy goals; and*

(5) *The coordinated federal and expressed tribal goals to encourage and facilitate strategic renewable energy and associated transmission development in order to make viable the economic expansion of currently stranded renewable resources on many Indian reservations.*

- b) **AUTHORIZE PRODUCTION TAX CREDITS (SECTION 45) TO BE ASSIGNABLE.** Incentivize Tribal and Alaska Native investment via transferability of IRS section 45 production tax credits between Tribes (and intertribal energy development entities) and their partners within a defined legal relationship. Congresswoman Herseth-Sandlin (SD) has introduced as stand-alone version of this request, titled the *Fair Allocation of Internal Revenue Credit for Renewable Electricity Distribution by Indian Tribes Act of 2009* (H.R. 2982).

CURRENT PROPOSED H.R. 2982 LANGUAGE: *Transfer By Indian Tribes Of Credit For Electricity Produced From Renewable Resources.*

(a) *IN GENERAL.—Paragraph (3) of section 45(e) of the Internal Revenue Code of 1986 (relating to production attributable to the taxpayer) is amended to read as follows:*

“(3) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—

(A) IN GENERAL.—In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

(B) SPECIAL RULE FOR INDIAN TRIBES.—

(i) IN GENERAL.—In the case of a facility described in subparagraph (A) in which an Indian tribe has an ownership interest in the gross sales from such facility, such Indian tribe may assign to any other person who has such an ownership interest in such facility any portion of the production from the facility that would (but for this subparagraph) be allocated to such Indian tribe. Any such assignment may be revoked only with the consent of the Secretary and shall be made at such time and in such manner as the Secretary may provide.

(ii) INDIAN TRIBE.—For purposes of clause (i), the term ‘Indian tribe’ means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to electricity produced and sold after the date of the enactment of this Act.

- c) **AUTHORIZE INVESTMENT TAX CREDITS (SECTION 48) TO BE ASSIGNABLE.** Incentivize Tribal and Alaska Native investment via transferability of IRS section 48 investment tax

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credits between Tribes (and intertribal energy development entities) and their partners within a defined legal relationship.

OTHER ANCILLARY SECTION 48 PROPOSED LANGUAGE: *Energy Property Investment Credit Allocation Rule for Indian Tribal Governments.*

(a) *IN GENERAL.* - Section 48(a) of the Internal Revenue Code of 1986 (relating to energy credit) is amended by adding at the end the following new paragraph:

“(5) Assignment of Basis by Indian Tribal Governments. - In the case of energy property in which an Indian tribal government (within the meaning of section 7871) has an ownership interest, such government may assign to any other person who has such an ownership interest in such property any portion of the basis of such property that would (but for this paragraph) be allocated to such government. Any such assignment -

(A) shall be made not later than the date such property is placed in service for purposes of this section,

B) shall be made in such manner as the Secretary may provide, and

(C) may be revoked only with the consent of the Secretary.”.

(b) *EFFECTIVE DATE.* - *The amendment made by the section shall apply to property placed in service after the date of the enactment of this Act and before January 1, 2015*

RECOMMENDED LANGUAGE:

Proposed new Section 38(e):

(e) Indian tribes[and Alaskan Native Corporations - An Indian tribe, Alaskan Native Corporation or intertribal energy development entity as a lessor of property may elect to treat the lessee of such property as having purchased such property for purposes of the credits provided for in Section 45 and Section 48, even if the property would not otherwise be Section 38 property in the hands of such Indian tribe[, Alaskan Native Corporation or intertribal energy development entity.

Proposed language addition at end of Section 168(h)(2)(A):

A Qualified Facility under Section 45 and Energy Property under Section 48 shall not be characterized as Tax-Exempt Use Property as the result of an ownership interest by an Indian tribal government.

- d) **AUTHORIZE A PERMANENT EXTENSION OF THE INDIAN WAGE CREDIT AND ACCELERATED DEPRECIATION ALLOWANCE.** These have been relatively uncontroversial provisions which have been in place and reauthorized over the years and are a tremendous help in both attracting and optimizing capital to projects in Indian Country. Businesses cannot effectively plan with only annual reauthorizations of these incentives.

Under IRC 168(j)(8), accelerated depreciation allows investors to accelerate the depreciation rate applied to equipment and other property associated with economic development projects on Indian lands – a valuable tax incentive for capital-intensive industries such as energy. Under IRC 45A(f), the wage tax credits allow investors to take advantage of reduced federal employment taxes on Indian employees of a business located on Indian lands. These tax incentives were originally created for a limited period of time, but have been extended on a year by year basis and expired at the end of 2007. An extension to December 2009 passed in the ARRA, but a permanent authorization of current IRS Section 168(j) accelerated

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depreciation is needed, as well as a more aggressive provision for renewables for a period of 5 years at a rate of half of current authorized depreciation periods

PROPOSED LANGUAGE: *Permanent Extension Of Indian Employment Credit And Depreciation Rules For Property On Indian Reservations.*

(a) Employment Credit-

(1) IN GENERAL- Section 45A of the Internal Revenue Code of 1986 (relating to Indian employment credit) is amended by striking subsection (f).

(2) EFFECTIVE DATE- The amendment made by this subsection shall apply to taxable years beginning after December 31, 2007.

(b) Depreciation Rules-

(1) IN GENERAL- Subsection (j) of section 168 of the Internal Revenue Code of 1986 (relating to property on Indian reservations) is amended by striking paragraph (8).

TO BE DRAFTED: Language for “a more aggressive provision for renewables for a period of 5 years at a rate of half of current authorized depreciation periods”

(2) EFFECTIVE DATE- The amendment made by this subsection shall apply to property placed in service after December 31, 2007.

- e) **AMEND P.L. 98-369 SECTION 60(B)(C) TO ALLOW LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS.** Incentivize Tribal and Alaska Native Investment via loss transferability between Native Corporations and Tribes and their partners within a defined legal relationship.
- f) **REAUTHORIZE TRIBAL RENEWABLE ENERGY PRODUCTION INCENTIVES (REPI) –** reauthorize the REPI for Tribal Projects for production tax credit (PTC) projects in order to provide a non-tax credit financial incentive for renewable energy electricity produced and sold by qualified renewable energy generation facilities that can be used in conjunction with New Markets Tax Credits and accelerated depreciation allowances on Indian lands.
- g) **REAUTHORIZE GRANTS-IN-LIEU-OF-TAX CREDITS AND AUTHORIZE ELIGIBILITY FOR TRIBES.** If there is any reauthorization of this program which was established in section 1603 of the American Recovery and Reinvestment Tax Act of 2009, authorize specific eligibility of Indian Tribes and Alaska Native Corporations in this program.
- h) **AFFIRM TAX EXEMPTION OF RENEWABLE AND RENEWABLE TRANSMISSION PROJECTS LOCATED ON INDIAN LANDS.** The assessment and collection of State and/or County taxes on non-tribal entities and improvements on Indian reservations represents a significant loss of tribal tax revenue and basic sovereign control. Possessory interest tax revenues and leasehold tax revenues (in most instances all sales tax revenues) are being assessed or threatened to be assessed by states and their political subdivisions. These revenues are a benefit to local and/or state governments, who use these this tax base to build infrastructure off-reservation. None of these revenues flow back to Tribes, who have either inadequate or no tax bases to build infrastructure. State and local tax assessments act as a disincentive for tribes to impose similar assessments, given the resulting double taxation that discourages businesses enterprises from investing in tribal projects. This dynamic could be resolved

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through the affirmance of an exemption of non-tribal entities from state taxation when their renewable generation and transmission assets are located on-reservation.

- i) **CREATE A TRIBAL DIVISION IN ANY CLEAN ENERGY BANK.** Authorize a Tribal division within any newly created DOE Clean Energy Bank to manage the authorized Tribal energy loan guarantees and coordinate all other tribal-specific energy finance programs to ensure that all are properly and optimally leveraged. Additionally, ensure Tribes have a representative Board seat.

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FEDERAL PROGRAMS

Indian Energy Programs are not Appropriately Structured to Support Renewable Deployment

SUMMARY

Indian Country renewable energy & transmission projects are positioned to be one of the most significant economic and infrastructure development opportunities for Indian Country. With Tribal communities economically hamstrung by inadequate infrastructure, no tax base and population growth outpacing infrastructure growth – energy and infrastructure development that will not just provide new revenue streams but also attract capital investments in manufacturing, new sustainable employment and a new hope to Indian Country deserve a dedicated focus by the agencies that serve Indian Country.

FEDERAL PROGRAM PROVISIONS INCLUDED IN SCIA CONCEPT PAPER

- a. **SUPPORT ENERGY EFFICIENCY EFFORTS ON INDIAN LANDS BY INCLUDING TRIBES IN DOE’S STATE ENERGY PROGRAM.** This program provides funding to State governments for development and implementation of laws, policies, and programs to conserve and improve energy efficiency. A tribal set-aside would help build tribal governing capacity for energy efficiency programs and codes. [Recommend no less than 5% tribal set-aside].
- b. **ENSURE THAT INDIAN TRIBES BENEFIT FROM HOME WEATHERIZATION ASSISTANCE PROVIDED BY DOE.** DOE’s current Weatherization program presumes that tribal funding pass through State programs, and requires tribes to justify through burdensome criteria, why direct funding should be provided to them. It is difficult for many tribal members to access state weatherization programs. Furthermore, the existing funding formula and requirements often result in inadequate funding and onerous administrative burdens that discourages tribes from establishing tribal weatherization programs that would serve their people directly and create jobs. A tribal set-aside of Weatherization funds, [recommend no less than 10%] and a restructuring of the program that provides funding to build tribal capacity and for circuit riders, would help ensure that weatherization assistance reaches reservation homes.

COMMENT: Tribes have the opportunity to opt-out of the state program, but have pass through several criteria before receiving such funds directly. Two tribes currently receive funding directly – Navajo and Northern Arapahoe. This topic area may be covered already under Waxman-Markey and ACELA.
- c. **STUDY ON INCLUSION OF INDIAN TRIBES IN NATIONAL AND REGIONAL ELECTRICAL INFRASTRUCTURE PLANNING.** Nationwide plans often overlook Indian lands and consequently tribes are not able to participate in development opportunities. DOE’s Indian Energy Office could conduct a study, either alone or in concert with other planning efforts, to identify Indian tribes interested in developing energy resources and the obstacles that need to be overcome to provide transmission of tribal energy resources to energy markets.

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KEY: SCIA Provisions-**GREY**; New language-*Italicized*; New Language within existing language-*Ital/Underline*

COMMENT: As context see Sec. 2605 of EAct 2005 whereby BPA and WAPA are to encourage tribal energy development and transmission siting in Indian Country.

- d. **AMEND THE INDIAN ENERGY TITLE OF THE 2005 ENERGY POLICY ACT- TERAs.** To date, going on 5 years after the enactment of the 2005 Energy Policy Act, no Indian tribe has entered into a Tribal Energy Resource Agreements (TERA) with the Secretary pursuant to Title V of that Act. Title V might be streamlined and improved to make the TERA process a more practical, effective and attractive alternative to the IMDA or the Mineral Leasing Act.

**RECOMMENDATIONS OF THE
CALIFORNIA ASSOCIATION OF TRIBAL GOVERNMENTS
FOR THE
TRIBAL NATIONS SUMMIT
ARISING FROM THE
WHITE HOUSE RURAL ECONOMIC DEVELOPMENT COMMISSION MEETING
AUGUST 22, 2011**

On July 26, 2011, Department of Labor Secretary Solis testified before the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP) at a hearing on "Building the Ladder of Opportunity: What's Working to Make the American Dream a Reality for Middle Class Families."

Among the topics she discussed in her opening remarks, Secretary Solis stressed the importance of providing training and education to prepare workers for the high growth industries, with particular attention to jobs in the green energy, advanced manufacturing, and healthcare sectors. The Secretary's comments around these principles that she sees as essential to preserving and expanding the middle class in the 21st century American economy, apply equally to American Indian and Alaska Natives. Re-casting Secretary Solis' remarks to clearly apply to the citizens of Indian Country demonstrates her principles are undiminished, and, in fact, shine even brighter when illuminating the challenges faced by Native communities.

- Building a manufacturing sector is critical to building the tribal economies.
- In June, the President announced the Advanced Manufacturing Partnership, an effort that brings industry, universities, and the federal government together to invest in emerging technologies that will create high quality manufacturing jobs and enhance our global competitiveness. This Administration initiative will leverage existing programs and proposals, and invest more than \$500 million to build domestic manufacturing capabilities in critical industries. Tribal governments and their tribal communities should be equal participants in this initiative.
- Rapidly changing technology and a shifting economy requires life-long learning of skills that will have to be portable to support moves within and between emerging industries. Such training is a necessity in Indian Country.
- The Bureau of Labor Statistics (BLS) projects that two-thirds of the occupations that will grow the fastest between 2008 and 2018 will require postsecondary education...The Department must collaborate with the Indian Country colleges to ensure that American Indian and Alaska Native workers have the advanced skills they need to obtain middle class jobs.

Jobs created in Indian Country do not go overseas. For example, on November 13, 2010, the Associated Press reported "GE Plans to Create 1,000 Jobs in China" and invest \$2 billion in China over the next two years. On the same day GE CEO Jeffrey Immelt expressed concern over China's protectionist policies, telling reporters that he is very concerned about China's indigenous innovation policy. Under the plan,

the Chinese government would be permitted to buy high-tech and other goods only from companies that developed the technology in China. The policy has the potential to exclude American businesses out of billions of dollars worth of government contracts. Forty percent of the Chinese economy is based on government purchases. Investments in tribal governments on tribal lands is an investment in America that stays in America produces new jobs that otherwise would not exist.

There remains a wall keeping investment out of Indian Country, too much like the original Wall on Wall Street in early New York City that was built to keep Indians out. The SEC continues this formidable barrier to this needed capital deployment in tribal communities. It comes in the form of the SEC's definition of "Accredited Investor."

A private equity fund invests in private companies that need it to successfully grow. Investment professionals that manage the fund determine capital allocations among investment opportunities. The managers raise cash for their investment pool from "Accredited Investors", and by limiting your investors to "Accredited Investors" the fund will not be classified as a "public offering."

The SEC, through Regulation D of the Securities Act of 1933, defines who (or what) is an Accredited Investor. It includes high net worth people and other special groups. However, it does not include Indian Nations. The consequence is the managers fundraising for their private equity investment pool do not accept money from Indian Nations. More importantly, people are going to be less inclined to raise a private equity fund that invests in Indian Country if they can't seek money from Indian Country itself. The significant negative impact is the financially successful Indian Nations can't invest in funds that want to finance companies in Indian Country that desperately need capital. This is absurd.

There is no rational reason to exclude Indian Nations from the definition of Accredited Investor. Regulation D excludes many Native Nations, with the sophistication, expertise and capital to soundly evaluate investment opportunities, from investing and from attracting investment in Indian Country. Indian Nations with a threshold capital amount and access to sophisticated investment advice should be deemed by the SEC to be Accredited Investors by definition.

A common challenge for parties interested in doing business with tribes is inefficiency in execution of the business arrangement. One common issue when doing business in Indian Country is how disputes are dealt with. Unfortunately, disputes arise and need to be resolved in a predictable, uniform manner. Most non-Indian parties don't understand how their agreements with sovereign tribal governments will be dealt with. Predictability is key. Without certainty, economic development in Indian Country will continue to be anemic.

One solution is through the actual contract itself. An alternative solution is a Model Uniform Tribal Commercial Code to govern business contracts in Indian Country, much like the Model UCC used in the U.S., with adjustments made that reflect Native cultures, needs and objectives. Tribal governments could then choose to adopt a Model Uniform Tribal Commercial Code, with further revisions specific to their own needs and cultural values. An adopted Model Uniform Tribal Commercial Code would certainly in business contracting and consequently more economic development transactions in Indian Country.

Another simple solution is outreach to private businesses and investors to educate them about the opportunities for business growth, job creation and investment in Indian Country. This outreach effort would include education about business structures available for partnership with tribes, and about the certainty and safety available for investment. This education must come, however, when the message can safely say business transactions take no longer and costs no more than it does in the rest of America. Today, that cannot be truthfully said. Significant improvements to BIA and OST operations must occur to move towards this goal.

Investment in Indian Country must make economic sense in order to grow tribal economies. Here are some of the existing advantages that, if executed, would underpin economic enterprise in Indian Country:

1. Accelerated depreciation recovery periods of 26 USC § 168j for most non-residential depreciable property. This is perhaps the most significant improvement to the bottom line of net profit.
2. Tax credits based on wages and health insurance for tribal employees who live on or near the tribal boundaries of 25 U.S.C. § 45A.
3. Federal employment tax (FUTA) credits if they hire qualified individuals.
4. The power of HUBZone (Historically Underutilized Business Zones). The SBA's HUBZone program allows businesses located in HUBZones to have contracting preferences with federal agencies (assuming the business falls within certain size standards). The tribal allocations should be increased for federal agencies required by law to allocate a certain amount of their contracting budgets to HUBZone-certified businesses.
5. The SBA's 8(a) program, which qualifies businesses at least 51% owned by the relevant Indian Nation (as in the 8(a) context). The set-aside whereby federal agencies are required by law to allocate a certain amount of their contracting budgets to 8(a)-certified businesses should be expanded beyond the 5% for non-DoD agencies, and the DoD set-aside should be funded.
6. The ability for tribes to leverage certain preferential financing, such as the Bureau of Indian Affairs guaranteed loan program, should be increased and not decreased.
7. The Tribal Economic Development Bond (TEDB) program report should be released by the Department of the Treasury. The two TEDB tranches were not exercised by tribes due to adverse market conditions. These TEDB obligations of over \$2 billion should be extended, including new allocations to new applicant

tribes, and supported by Department of Treasury and/or Federal Reserve price supports. TEDB price supports would include bond insurance, interest rate leverage (to lower the interest rate), and term supports to increase term durations for amortizations. Such supports would make these TEDB tranches attractive to tribes and deploy capital to Indian Country at little to no cost to the federal government. 8. Fully implement all of the recommendations on Tribal Economic Development Bonds ("TEDB") made by the Internal Revenue Service ("IRS") Advisory Committee on Taxation ("ACT") Indian Tribal Government ("ITG") subcommittee in its report issued June 14, 2011.

Unemployment above nine percent for more than twenty months hasn't occurred in mainstream America since the Great Depression, and real unemployment approaches 18%; however, most of Indian Country has faced fifty to eighty percent unemployment since the Reservation system began over 150 years ago. Today Indian Country is facing a catastrophic jobs crisis. Yet Washington overall has yet to embrace a large-scale job creation agenda for tribes. Even if we reach consensus around the deficit and the debt limit -- the only economic issue even getting any attention these days -- the expected solution of near-term federal budget reductions will likely slow the national economy even more and for an even longer period, and Indian Country will suffer more than other communities. Job creation in Indian Country depends not on giving tribes a competitive edge, but on raising us up to an even playing field with everyone else. Parity and equity is what Indian Country needs.

Recently Leo Hindery Jr. of the Smart Globalization Initiative at the New America Foundation and Leo W. Gerard -- who is International President of the United Steelworkers and a member of the executive council of the AFL-CIO -- co-chaired a twenty-person Task Force on Job Creation seeking real solutions to the jobs crisis this country. The recommendations of this group of policy makers, economists, business and labor leaders developed a series of 15 immediate recommendations for reversing the crisis, outlined in a new report, "Vision for Economic Renewal: An American Jobs Agenda." The findings of six vital policy areas that our government must address in order to create millions more jobs now are easily applied to Indian Country. These areas are: manufacturing, trade and globalization, U.S.-China trade, the infrastructure crisis, jobs in the green economy, and youth unemployment. Here's these recommendations can be applied to Indian Country:

Manufacturing

In Indian Country the manufacturing sector can finally become a cornerstone of the tribal economy and thus an engine for new job creation. Yet manufacturing has bypassed tribal lands with avoidance by both tribes and potential partners, tenants and investors. Manufacturing potential unrealized despite the incentives of accelerated depreciation, FUTA credits and guaranteed loans. Why?

One of the fundamental reasons is that Indian Country lacks a national manufacturing strategy that integrates policies around tax and investment, job

training, domestic procurement, deal efficiency, and re-investment. And we lack any plan for how to restore this sector. The task force identified several ways to bring back this sector, which I will cast to the mold of Indian Country with little change.

- **Buy-Indian Procurement requirements.** No single measure would do more to help resuscitate Indian Country employment, particularly in manufacturing, than an encompassing buy-Indian government procurement requirement. All infrastructure projects funded and guaranteed by the federal government and the proposed infrastructure bank should require purchases to be made in Indian Country rather than overseas, consistent with our international trade agreements. As well, to qualify as "Made in Indian Country," at least 75 percent of the content should have to be manufactured within tribal borders. To make that happen, the White House by Executive Order and Congress by legislation should require domestic content calculations to be effective and transparent. Domestic sourcing requirements for all government procurement programs (e.g., Buy Indian, the Recovery Act, the Energy Policy Act of 2005) and programs that support Indian Country (e.g., the 8(a) program, the HUBZone program) should also be reviewed to ensure that contracting agencies are obeying and implementing the requirements. The Defense Authorization Bill passed in December that requires the Pentagon to buy solar panels from U.S. manufacturers is a good model. In addition, Congress needs to enact an all-Indian successor to the 1933 Buy American Act.

- **Link an investment tax credit directly to jobs.** A 10% investment tax credit for the development of manufacturing facilities in partnership with tribes and/or on tribal lands (e.g., Alaska tribes don't have tribal trust lands and many California tribes are landless, so Alaska and many California tribes must be deemed eligible by definition) would pump hundreds of millions of dollars into Indian Country plants. And with an additional investment tax credit for new equipment, businesses could retool their factories. The target industries include the businesses of the new green economy – wind, solar, biomass and hydropower renewable energy, broadband and mobile communications, and heavy construction for the renewal of America's infrastructure.

Trade

America's trade deficit since 2001 is a massive \$6 trillion, which means those dollars are going to overseas manufacturers using developing world workers toiling for minimal pay under harsh conditions. Large American companies are now large multinational companies that move production overseas to use cheap labor. There is no good reason why unemployed American Indians and Alaska Natives can't retake the best of the overseas labor market and replace at least a portion of overseas trade with domestic trade with the following initiatives:

- **Restructure the tax code so tribal companies can succeed and companies can locate on tribal lands.** Provide tax incentives for companies to invest in tribes and on tribal lands (including Alaska tribes and many California tribes that have no tribal lands in trust). In addition, the Buy-Indian Act should be implemented.

- *Implement the Buy-Indian Act.*

- *Fully fund the 8(a) program set asides, including DoD 8(a) programs.*

- *Fully fund the HUBZone program, and deem eligible all tribal lands and communities (including landless tribes and Alaska tribes).*

Competitiveness – An even playing field

It is impossible to overlook that fact that business development in Indian Country is more difficult, and far less successful, than on the other side of the Reservation boundary. Economic development stems from sophisticated industrial and mercantilist trade policies, not from 19th century BIA and OST policies and procedures. The economy of tribes will continue its decline unless our leaders in Washington take immediate action to take on archaic economic practices that restrain tribal economic development.

- **Improve the execution of business transactions in Indian Country.** Today the BIA and OST business execution process for business transactions involving tribal trust assets and resources, the time and costs of deal-making in Indian Country, is longer, costlier, and far more uncertain than for the rest of America. The BIA is finally addressing the recommendations issued in the 1999 National Academy of Public Administration (NAPA) report, titled “A Study of Management and Administration: The Bureau of Indian Affairs.” The NAPA study concentrated on management, support, and administrative responsibilities throughout the Bureau of Indian Affairs and highlighted a number of weaknesses and management issues and served as the cornerstone for changes in the organization. Ignored for the past 12 years, the renewed effort will address opportunities for more effective and efficient operations. The BIA and OST must take the yoke from the neck of tribes if tribal economies are to operate on the same even playing field as the rest of America.

- **Remove match requirements.** The requirement for a tribe to match federal funding for grants or loans, up to 50% of the funded amount, is a significant barrier to tribal participation. Tribes who need startup funding simply have not the discretionary funds necessary for such matches. In addition, the match requirement for essential social services programs, such as TANF and Child Support Enforcement and ACF and Head Start and a long list of other programs, drains tribes of discretionary revenues that would otherwise go to economic development.

- **Pay full indirect and direct costs for all programs.** Only in the last two years has the administration paid nearly 100% of indirect costs on due to tribes, and a far lesser percentage of direct costs. ARRA funding paid NO indirect costs. These underpayments, or no payments in the instance of the ARRA, seriously harm tribal finances by requiring tribes to pay from its discretionary funds the necessary supplement to indirect and direct cost shortfalls as required by the NBC. This is significant drain on tribes’ discretionary funds that would otherwise be used for economic development.

- **Create a White House office to focus on American Indian and Alaskan Native competitiveness.** A transparent office dedicated to establishing competitiveness in Indian Country would improve our tribal economic standing. It would help align trade and tax policy so that tribal incentives match the commercial opportunity.

- **Pursue a reasoned line on environmental policy.** Application of NEPA, ESA and GBPA conservation restriction measures on tribal lands by BIA, BLM, USFS, FWS and Army Corps of Engineers is playing by a different set of rules. Tribes have been

watchful and successful stewards of our tribal lands while non-tribal lands have been impacted by development and poor environmental practices. The result are on-going attempts to restrict development on tribal lands as mitigation for impacts on disturbed non-tribal lands. Also, tribal development projects are required to employ extensive and expensive conservation restriction measures that forestall development projects without the overriding consideration of the economic benefit to tribal citizens and their tribal government. Our government must be willing to challenge and mitigate the disastrous effects of economic and environmental policies on Indian Country manufacturing and trade. This should start with a clearer focus from the White House, guided by the independent body recommended above and directed at all federal agencies, that puts the economic interests of tribes above the interests of off-reservation third party interests whose goal is to maintain tribal lands as undeveloped mitigation “banks” offsetting the impacts of previous development on the surrounding non-tribal community. Initiatives should include applying Secretarial Directive 3206 to all federal agencies, providing categorical exclusions as the first and preferred option to development projects on tribal lands.

- **Facilitate Tribal Self-Determination.** The office dedicated to establishing competitiveness in Indian Country would also consult with tribes on: (1) improving the Energy Policy Act of 2005 with amendments that would make attractive to tribes the Tribal Energy Resource Agreement (TERA); (2) proposing legislation that would delegate secretarial authority to tribes for approval of tribes’ transactions involving tribal trust assets and resources in place of the Secretary of the Interior. Our recommendation is this delegated authority would be effected by each tribe, negotiating the extent of their self-governance, from complete self-determination bounded only by (a) federal protection against alienation of tribal lands and (b) federal defense for tribes against litigation of tribal activities/land use, to the traditional direct service tribe on the other end of the spectrum. Tribes’ agreements negotiated with the Secretary would result in a binding and enforceable agreement that both parties-at-interest and third parties would rely upon for certainty and enforceability, and that would provide expedient approval for commercial transactions, which are the foundational building blocks necessary for economic development.

- **Eliminate tribal exclusions.** The Congress has enacted many provisions that specifically make ineligible tribes from participating in federal programs and services. These must be eliminated.

- Eligibility requirements for tribal land in trust. The requirement for tribal land in trust status discriminates against and makes ineligible all Alaska tribes (save for the Metlakatla Community) and many California tribes who have no tribal land in trust status. The Interior Secretary and the BIA should make every effort to establish land in trust status for the benefit of landless tribes, including Alaska tribes, as a priority.

- Exclusion of Alaska tribes. Many federal statutes, including the Energy Policy Act of 2005, and many grant and loan programs, exclude Alaska tribes from eligibility.

Infrastructure Crisis

Coincident with the lack of an Indian Country trade and manufacturing economy is

the absence of infrastructure on tribal lands. After years of little to no investment in tribal infrastructure, America faces a national deficit of \$14.2 trillion that is prompting federal budget reductions that are likely to severely impede economic investment and undermine any progress towards establishing an Indian Country economy. Without adequate roads, clean water and sewer utilities, broadband, and reasonably priced electricity “stubbed out to the curb” on tribal lands, tribal opportunities to attract businesses to tribal lands is not competitive with non-tribal lands just across a tribe’s reservation boundary. We need initiatives implemented over the next five years that will meet Indian Country’s core infrastructure needs that do not require additional federal appropriations. Relying upon federal spending for infrastructure improvements will fall far short of tribal goals.

- **Create a levered National Infrastructure Bank.** The administration and Congress should create an Indian Country infrastructure bank that would be an independent financial institution owned by the government and tribes. Able to fund a broad range of infrastructure projects beyond roads and utilities, it would make loans and loan guarantees and leverage private capital. It should be able to sell or issue general purpose bonds to raise funds for lending and investment, sell specific project bonds when necessary, and invite private investment, along with tribal government pension plan investments.

- **Tribal Taxation.** The authority to tax is the authority of a sovereign. The authority of a tribe to tax is indisputable and has never been successfully challenged. Tax revenues and a tax base is essential for infrastructure improvements, public services and tax exempt financing. This is not simply a statement of policy, but a statement of economic reality. Over the past 200 years tribes’ authority to assess and collect taxes on tribal lands has been continually narrowed by unilateral judicial interpretation and caveat. If tribes are to have any chance to restore their economies, tribes must restore their tribal tax base. America began with the Constitution’s references to Indian tribes that recognized tribes to be tax exempt. A roll-back of the effects of the judicial activism of the past 200 years that strangled the tribal tax base would provide the opportunity for new tribal revenues for infrastructure improvements as a supplement to existing federal funding without the need for significant additional federal funding. Earlier this year the City and County of San Francisco offered a tax “vacation” to the company Twitter to attract this corporation for long-term occupancy in the City as a significant additional to the local economy. Neighboring counties or neighboring states did not seek legislation or pursue litigation to prevent this offer as they have done with tribes. Tribes simply seek the same equity and respect shared by local and state governments among themselves.

- Possessory Interest Taxation. State and local government taxation of non-tribal improvements on tribal lands conveys revenues away from tribes and to local and state governments. A percentage of these revenues are returned to local governments for infrastructure improvements. The tax proceeds that fund infrastructure improvements essential to economic development must be restored to tribes.

- Severance Taxation. Severance taxes, the taxes upon the resources “severed” or conveyed off of tribal lands, has a complex history of litigation involving tribes and state and local governments. While tribes have prevailed in many instances, the continued uncertainty regarding a tribe’s authority regarding severance taxation is exacerbated by the burden of “double taxation” where state and local governments are permitted to apply their taxes in addition to tribal taxes for resources located on tribal lands. This “double taxation” burden is unconscionable and a major impediment to tribes’ use of tribal trust resources on tribal lands for the operation of tribal governments and for the benefit of tribal citizens. The administration and Congress can act to restore the sole jurisdiction of tribes for taxation of their own resources.
- Sales Tax. The assessment and collection of sales taxes on tribal lands is an economic boom for litigation attorneys on both tribal and state governments sides, but a severe drain on the tribal economy. The same rules that apply between states for variances in and authority over sale taxes at the boundaries between counties or states, whereby county and state governments respect the authority of each other to assess and collect different sales tax rates, are available to tribes. The administration and Congress can require that transactions that originate on tribal lands are subject to sales taxes only by tribal governments.
- Tribal Citizen Income Taxation. Over the past 40 years judicial activism and aggressive state governments have sought to narrow the test for exemption from state income taxation of tribal citizens. The test began as whether state government taxation of tribal citizens living on an Indian reservation harmed the interests of the tribal government. Today, the test in many states is so narrow as to make all but a few tribal citizens subject to state income taxation. Tribes must be able to assess and collect income tax on their own tribal citizens and any tribal citizen living within their jurisdiction over tribal lands if tribal governments are to restore their own tax base. The administration and Congress should take necessary action to affirm that a tribal government has sole jurisdiction for income taxation over any tribal citizen living on its tribal lands. These new income tax revenues would be a significant addition the tribal treasury at no cost to the federal government and an insignificant decrement to state income tax roles.

Green Economy

Employment opportunities in the "green economy" represent significant opportunities in Indian Country where tribes hold 10% of the renewable energy potential in America. Tribal energy projects will put people to work in project development jobs, project construction jobs, project operation jobs, and manufacturing jobs, which is a tremendous multiplier effect for both tribal economies and local communities nearby, and will stimulate more economic growth across America with the additional of clean, reliable, low cost renewable energy. Leaders in Washington must do more to encourage growth in this industry.

• **Extend the Section 1603 Cash Grant Program to tribal renewable energy production.** This program converts non-refundable tax credits for renewable

energy production into cash grants. Extending the program to tribes will help create tribal jobs and make possible tribal-owned projects that heretofore have necessarily limited tribes to lessors of their tribal lands to developers due to their lack of access to this program and other tax credit opportunities.

- **Extend the Advanced Manufacturing Tax Credit to Tribes.** ARRA authorized up to \$2.3 billion in tax credits for investments in qualified advanced energy projects at manufacturing facilities, such as energy storage, electricity transmission, energy conservation technologies, and others. This credit should be extended in duration as well as made available to tribes for conveyance to tribal partners participating in projects on tribal lands who are able to monetize the tax credit.

- **Expand Title 17 Loan Guarantee Program.** Title 17 of the Energy Policy Act of 2005 provides federal loan guarantees for the construction of energy-related facilities that use "new or significantly improved technologies" which are "non-commercial" and have high technological risk. These guarantees lower the cost of capital for these projects. Broadening Title 17 to include energy-efficiency investments would help spur this market and create new jobs.

- **Extend the Work Opportunity Tax Credit (W.O.T.C.) to Tribes and beyond August 2011.** This law provides small businesses with tax incentives to hire people who might ordinarily struggle to find work - for example, those with lesser skills and veterans. Congress expanded the tax credit in 2009 to include the tax credits for hiring disconnected youth. Our ongoing tribal unemployment demands that this W.O.T.C. provision be extended to tribes to convey to partners participating in projects on tribal lands, with an extended duration well beyond August of this year.

CONCLUSION

Our national leadership is responsible for tackling the extreme real unemployment and stagnant wages crises that has always existed on tribal lands, and that has been made significantly worse by the economic downturn. While the nation suffers 9% unemployment and states up to 13%, the majority of Indian Country has historical unemployment rates of 50% to 80%. Indian Country needs the same passion and commitment directed at job creation for communities with 13% unemployment rates directed to tribal job creation. The promise of the national broadband plan to make broadband services available to the 35% of Americans without access to broadband services must also apply the same passion to bring broadband services to the 92% of Native Americans and Alaska Natives who today lack such access. The determination to protect the tax bases of states and local governments must be applied to the restoration of tribal governments who have seen their tax base revenues conveyed off of tribal lands and out of the treasuries of tribal governments, gutting the tax base essential for revenue bonds and infrastructure development. The tax credits that make renewable energy projects financeable and profitable for for-profit commercial corporations, most of them foreign corporations, must be made available and useable by tribes, whose tribal lands hold nearly 20% of renewable energy potential in America but who are blocked from using tax credits or tax exempt bonds and don't receive allocations of new market tax credits.

While the administration and Congress is waking up to the discontent of the 99% voiced by the Occupy Wall Street movement, CATG asks for recognition that Indian Country is the least 1% of the 99%. CATG asks for discrete, determination, effective actions to address Indian Country's needs.

Citations

The following are citations of current tribal economic development statutory and regulatory authority.

25 USC sec 1544. Encourages federal contractors to subcontract with Indian organizations or tribally owned economic enterprises by providing "an additional amount of compensation" equal to 5 percent of the total subcontract amount to the federal contractor.

25 CFR sec 101.2. The Indian Revolving Loan Fund allows tribes to acquire loans for the purposes of: housing development, educational endeavors, to finance economic enterprises, and to generally promote economic development.

25 CFR sec 103.2. The Indian Loan Guaranty and Insurance Fund guarantees up to 90 percent of a loan acquired by tribal members, Indian-owned companies, and tribal enterprises.

25 USC sec 1541. The BIA is authorized to provide technical assistance for financial assistance for competent management, and assistance for financial administration to Indian loan applicants.

25 CFR sec 103.20. The BIA interest loan subsidy program that reimburses part of the interest due on behalf of Indian borrowers.

25 USC sec 1521. The Indian Business Development Program provides equity capital through grants to Indians, Indian nations, and Indian-owned businesses.

The Native American Business Development, Trade Promotion, and Tourism Act of 2000

25 USC sec 4301 a-b. The Native American Business Development, Trade Promotion, and Tourism Act of 2000 supports a wide policy goal of promoting tribal economic development. The Act sets forth stated goals of: acknowledging that Indian tribes "retain the right to enter into contracts and agreements to trade freely, and seek enforcement of treaty and trade rights"; encouraging "intertribal, regional and international trade and business development" to raise the productivity and standard of living for tribal members; and promoting "economic self-sufficiency and political self-determination" for Indian nations among other goals.

25 USC sec 4303b. The above act established the Office of Native American Business Development of Interior, Small Business Administration, Department of Labor, and other pertinent agencies. The office serves as an assistance center for Indian-owned businesses for a broad range of development needs such as marketing, technical assistance, and financial planning. Through this Act, tribes may choose among regulatory environments across national lines to manufacture goods or services

piecemeal based upon which regulatory environment is most suited for the particular economic activity.

25 USC sec 4302b. The above Act authorized the Native American Export and Trade Promotion Program, whose goal is stimulate demand for Indian goods and services.

25 USC sec 4304c. The NAETPP encourages tribal activities such as marketing, financing of trade missions, and insuring the participation of pertinent federal agencies in international trade fairs.

25 USC sec 4304d. Makes eligible any Indian-owned business engaged in importing or exporting activities for business development technical assistance including identification of foreign markets, any compliance with foreign or domestic laws relating to importing and exporting of tribal goods and services, and other technical assistance for entering into financial agreements with foreign partners.

25 USC sec 4305. The Act promotes tourism development demonstration projects in four areas: Oklahoma, the Pacific Northwest, the Plains, and the Four Corners region of the Southwest. The demonstration projects are centered on facilitating the development and financing of tourism infrastructure, such as feasibility studies, market reports, and assistance for the creation of roads as part of the physical infrastructure.

26 USC sec 45D. Qualifies tribal entities, like state entities, for establishing Community Development Entities, which are community development financial institutions within their reservations or historical boundaries. Federally certified entities are entitled to administer federal incentives such as New Market Tax Credits to companies who provide services and meet the applicable criteria.

Small Business Administration

13 CFR sec 124.109. Under the federal Small Business Administration, tribal corporations of Indian nations are eligible to obtain federal contracts. To be eligible, a tribal entity must initially establish economic disadvantage.

13 CFR sec 124.506b. Tribes that qualify under this program may be awarded a sole-source contract without limitations on the federal contract value.

13 CFR sec 124.517. Any direct award to a tribe under this program is safeguarded from challenge by any other business entity due to the regulations “no contest” provision.

13 CFR sec 124.109. Tribal enterprises are not subject to size limitations regarding the entire range of tribal corporate affiliations.

*Due to the success of these programs, there are legislative proposals to roll-back or eliminate many of the above-described tribal benefits.

Indian-owned private businesses located within tribal jurisdictions are eligible for many of the federal programs and incentives described above. Additionally, Indian-owned businesses on the reservation are exempt from state and local regulation as entities regulated under tribal law. State sales taxes applicable to non-Indian transactions are permissible under federal law within tribal jurisdiction.

26 USC sec 168. Any corporation within a tribe’s jurisdictional boundaries has the advantage of accelerated depreciation of their asset base.

26 USC sec 45A. Tribally located corporations receive tax credits based on wages and health insurance for tribal employees who live on or near the tribal boundaries.



SECOND CLASS TRIBAL SOVEREIGNTY

RESTRICTIVE SETTLEMENT ACTS

A number of tribes are subject to Federal laws that substantially restrict their sovereign rights, essentially limiting them to a form of second class tribal sovereignty. This includes tribes that have been the subject of restrictive settlement acts, tribes that may be subject to the restrictions outlined in the *Carciere* case, and tribes in Public Law 280 states. These restrictions are contrary to the general Federal policy to accord all tribes the same status.¹

Notably, the Restrictive Settlement Acts (RSA's) were primarily meant to settle historic Indian land claims and remove a cloud of uncertainty from the title of the affected lands. However, the RSA language often contains a wide variety of specific restrictions on jurisdiction and sovereignty. Over the years, State and local governments have aggressively sought to interpret RSA provisions in a manner that undermines inherent tribal sovereignty in almost every conceivable area of tribal governance. The United South and Eastern Tribes, Inc. (USET) has launched a Restrictive Settlement Act² Initiative (Initiative) to address this ongoing threat to tribal sovereignty. The tribes participating in this initiative assert that any interpretation of the Settlement Acts must be made in accordance with the federal policy of self-determination, the reserved rights doctrine, and the Indian law canons of construction. The RSA's were not meant to provide a means by which inherent tribal sovereignty could be gradually diminished to the point that it does not resemble what is commonly understood to be tribal sovereignty.

The intent of the Initiative is to gain the Administration's public and ongoing support to cooperatively find a path towards parity in the scope of tribal sovereignty when compared to the

¹ See 25 U.S.C. § 476(f) ("Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the [IRA]... , or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes."). See also 25 U.S.C. § 476(g) ("Any regulation or administrative decision or determination of a department or agency of the United States ... that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.").

² The USET RSA Initiative is currently focused on the Aroostook Band of Micmacs Settlement Act, 25 U.S.C. § 1721 (1991 Amendment); Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986, 25 U.S.C. § 1724 (1986 Amendment); Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721-1735; Massachusetts Indian Land Claims Settlement Act, 25 U.S.C. § 1771; Rhode Island Indian Claims Settlement Act, 25 U.S.C. §§ 1701-1716; and the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, 25 U.S.C. § 941 (collectively referred to herein as the "Restrictive Settlement Acts" or "RSA's").

majority of federally recognized tribes in Indian Country. The following five (5) requests have been shared with Interior to frame ongoing discussions:

1. When there is an opportunity to support remedial legislation that strengthens the rights of Tribes, Interior should do so. While some RSA's have undergone minor amendment, there have been no meaningful amendments that further the federal policy of self-determination.
2. Interior should publicly acknowledge that RSA Tribes are equal in status to all other federally recognized tribes (subject to the specific limitations of the RSAs) and should not be treated differently under: (a) federal Indian law passed for the benefit of Indians, or (b) federal programs implemented for Indians.
3. Interior should formally acknowledge that in accordance with its trust responsibility it must make resources available for ongoing analysis, review, and oversight of the challenges arising as a result of the RSA language.
4. Interior should be available to provide input on the federal policy of encouraging tribal sovereignty when state and local governments push back against the exercise of that sovereignty. Interior's efforts in this respect should be focused on: (a) education of the non-Tribal parties, (b) the potential benefits to non-Tribal parties of strong Tribal governments, and (c) avoiding, whenever possible, costly litigation which diverts scarce tribal resources.
5. When Interior analyzes the potential effect of proposed legislation on Indian Country, part of that analysis should explore how to ensure that beneficial Indian legislation will be fully applicable RSA Tribes.

For additional information on the Restrictive Settlement Act Initiative, please contact Kitcki Carroll, Executive Director, United South and Eastern Tribes, Inc, at 615.467.1540 (kcarroll@usetinc.org), or John T. Plata, at 202.822.8282 (jplata@hobbsstrauss.com).