

Why Major Federal Policy Change is Needed to Support Tribal Economic Development

Arizona State University
Sustaining the Reservation: Creating Tribal Economies Conference

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What is the Tribal Economic Development Problem?

- **Poverty still reigns.** Indian Country was once weathy, but today remains some of the most economically underdeveloped territory within the United States.
- **Structural Barriers.** Despite the success that some Indian nations tribes have had with gaming, most have not recovered from generations of chronic economic deprivation from failed government policies.
- **Few Development Incentives.** Unlike gaming, where legal and economic conditions were aligned to induce billions of dollars of investment, few incentives exist to promote investment beyond gaming and resource development.

What are Some of the Reasons Why Indian Country has not Developed Outside of Gaming?

- **Federal Indian Economic Policy Chaos.** Indian tribal economies have been destroyed by historic federal government policies that promote dependence on the federal government.
- **Government Dependent Land Status.** Indian lands are in “trust” status, subject to direct federal control, and not easily developed.
- **Jurisdictional Confusion.** Indian tribal governments do not have clear and absolute control over tribal lands.
- **Hostile Neighbors.** Indian nations experience on-going threats from outside governments, organizations, and individuals who seek to thwart tribal economic development and economic recovery.

Examples of Legal Barriers to Development

- **Allotted land** – inhibits land development and jurisdictional coherence
- **BIA control** – land use and other federal approvals
- **NEPA** – expensive and time-consuming barrier due to federal land status
- ***Carcieri Decision*** – prevents new lands from becoming Indian Country for tribes recognized after 1934
- **PL 280** – gives states jurisdictional control over certain tribal lands
- **IRS** – courts have authorized taxation of income earned by Indians on tribal lands
- **States/local government taxation** -- courts have given states and local governments authority to tax on-territory retail transactions with non-Indians, on-territory oil and gas production by non-Indians, and non-Indian owned personal property

The Reality of Failed Federal Indian Policy

- **Failed Federal Policies.** Over 200 years of removal, allotment, reorganization and termination policies, the United States has crippled the ability of Indian nations to have internal economies sufficient to sustain their citizens
- **Underdeveloped Tribal Infrastructure.** Decades of paternalistic federal economic and political policies have weakened internal legal, political and economic development infrastructure
- **Gaming is the Exception.** Gaming is the notable exception to failed tribal economic development policies because of a unique combination of factors – high margin business, regulatory advantages, support from government and capital markets.

How Can Tribal Economic Development Occur?

FEDERAL INDIAN POLICY MUST CHANGE TO ALLOW FOR MORE TRIBAL FREEDOM OVER DEVELOPMENT

MORE FREEDOM = MORE TRIBAL DEVELOPMENT

- **Land.** Tribal lands must be easier to develop.
- **Jurisdiction.**
 - Tribal lands must retain regulatory and tax advantages.
 - Tribal governments must have more authority over their own land
- **Friendly Neighbors.** Outside governments must not be allowed to tax and regulate tribal development

What is our Treaty Partner-Trustee the United States Doing to Assist in Tribal Economic Development?

- **No Plan.** There is no comprehensive national federal policy in place in promote tribal economic development
- **No Remedy for Failed Policies of the Past.** Self-determination, Self-governance and Consultation policies do not alleviate the effects of decades of crippling federal policies and laws that undermine tribal sovereignty and tribal development
- **No Obama Administration Tribal Economic Policy**
- **No Congressional Tribal Economic Policy Policy**
- **No Democrat Tribal Economic Policy**
- **No Republican Tribal Economic Policy**

Why Must Federal Indian Policy Change So That Tribes Can Better Development?

- **The U.S. Created the Mess – But Tribes Can Make Things Better if the U.S. Changes its Laws to Support Tribal Development**
- **The Problem is Getting Worse – The “Tribal Fiscal Cliff”**
 - Gaming tribes face increasing competition from land-based and internet-based gaming businesses.
 - Non-gaming tribes may have never achieved any degree of economic prosperity, and so remain economically vulnerable.
 - All tribes face the increasing net decline of federal appropriations

What are the Elements of a Comprehensive Federal Indian Economic Policy?

- **Reform Tribal Land Status** – Tribes need more control over their lands
- **Improved Tribal Self-Regulation** –
 - Congress needs to curb interference by federal agencies and courts over regulation of land and people on tribal lands
- **Promote Tribal Revenue Generation** –
 - Pre-empt state and local taxation of on-territory business activity
 - Provide tax incentives for economic development
 - Establish Treasury Department Self-governance to grow tribal revenues
- **Support Entrepreneurship** –
 - Promote hybrid tribal economies by supporting individual business development
- **Ensure Federal Trust Responsibility** --
 - Guarantee federal appropriations as an entitlement like Social Security

What Policy Changes are Already Occurring?

- **Freedom to Develop Tribal Land –**
 - Part 162 Federal Leasing Regulations
 - HEARTH Act of 2012 (Sen. Heinrich)
 - H.R. 2718 American Indian Empowerment Act of 2013 (Rep. Young and Rep. Cole)
 - Allows conversion of trust land status to restricted fee status protected under 25 USC 177 to eliminate federal ownership control
- **Freedom to Exercise Tribal Regulation**
 - H.R. 1548 Act to Facilitate Energy Development (Rep. Young)
 - S. 1477/H.R. 1226 Tribal Labor Sovereignty Act (Sen. Moran/Rep. Noem)
- **Freedom to Invest on Tribal Lands**
 - H.R. 3030 Tribal Tax and Investment Reform Act (Rep. Kind)

What Additional Policy Changes Should Occur?

- **Promote Tribal Revenue Generation and Investment**

- Create Tribal Empowerment Zones
 - 50 acres of totally tax-immune land to attract investment
- Pre-empt State and Local Taxation of on-territory economic activities
 - Develop new regulations for Indian Trader statute
- Other tax incentives like permanent depreciation and wage credits
- Eliminate distinction between income “earned on” tribal lands from income “derived from” tribal lands
- Support Treasury Department Self-governance
- Resist illusion that tax-exempt bonding will support meaningful tribal economic stimulus -- \$1.5 billion in tax-exempt bonds currently unallocated

- **Promote Entrepreneurship**

- 100% immunity for self-employment income on tribal lands

What is the Foundation of Tribal Economic Policy?

- **Expand and Leverage Existing Federal Indian Policy**

- 25 U.S.C. §§ 4301 Native American Business Development, Trade Promotion, and Tourism --
- “To revitalize economically and physically distressed Native American economies . . .”
- “To promote private investment in the economies of Indian tribes . . .”
- “To promote the long-range sustained growth of the economies of Indian tribes . . .”

- **Federal Funding Guarantee**

- The United States should never cut back Indian appropriations
- Financial commitments to Indian Country are an entitlement no different than Social Security benefits
- Tribal economic success should not jeopardize current funding levels

What can the Administration and Congress do to Support Tribal Economic Development?

- **Develop a Long-Range Tribal Economic Policy**
 - No comprehensive Presidential policy effort since 1984 Reagan Blue Ribbon Commission and 1977 American Indian Policy Review Commission
 - Focus efforts of the new White House Native American Advisory Council on developing a comprehensive economic development plan
- **Develop Tribal Economic Develop Package to take to Congress**
- **Engage Tribal Leaders to develop and promote this agenda**
- **Take political action to restructure the tribal development landscape**

Next Steps?

- Individual Indian nations or a coalition must FOCUS on developing long-range Tribal Economic Policy and Legislative reform package
- Encourage intertribal organizations to FOCUS efforts on comprehensive federal economic policy for Indian Country
- Identify Congressional supporters and hold hearings
- Encourage Obama Administration to lead on Indian Country economic recovery
- For more information, please contact ROP at 202 308 3522.