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Testimony prepared for Brian Patterson
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Chairman Akaka, Vice Chairman Barrasso, members of the Committee, thank you for the opportunity to address you on overcoming barriers to economic development in Indian Country.

I bring, perhaps, a unique perspective to this discussion. As a representative on the governing Council of the Oneida Indian Nation of New York, I can tell you how my people and our neighbors have benefited from the success of our business operations – how our Turning Stone Resort Casino has formed the foundation for our economic rebirth, how we have created jobs for 4,500 people in a region beset by chronic economic problems, how we have invested the proceeds from this Resort in broadening our business enterprises and in providing health, housing, education and cultural programs for our Members.

On the other hand, as president of United South and Eastern Tribes, a coalition of 26 tribal governments located all across the eastern half of the United States, I can tell you that more than half of our USET member tribes do not have the same resources or opportunities to develop their own economies. We are limited in our ability to draw business to tribal lands due to our limitations on being able to offer incentives and the trust status of the land. Although tribal gaming has done many wonderful things for many tribes, it is in no sense a panacea. In some cases, tribal homelands are too remote to make gaming a viable economic development option. In other cases, tribes have chosen not to pursue gaming for reasons of their own. And, in still other cases, some tribes cannot pursue gaming because they don't have their own land on which to build gaming facilities – or because the status of that land is in dispute.

Let me be absolutely clear on this point. Tribal governments cannot fulfill their responsibilities to their citizens if they don't have a stable land base from which to operate and grow. Without that basic, essential asset – undisputed control over their own land – nothing the tribes or Congress or anyone else can do will succeed in eradicating the many ills that plague so much of Indian Country.

You cannot build businesses without land.

You cannot build health clinics or housing or schools or community centers without land.

You cannot rebuild a community without land.

And you cannot ensure that what you build today will be here for the next generation if you don't have clear ownership and control of your land.

Unfortunately, the United States Supreme Court has brought the ownership and control of vast amounts of tribal lands into question. In *Carcieri v. Salazar*, the Court held that the Secretary of the Interior has authority to take land into trust under the Indian Reorganization Act of 1934 (IRA) only for those tribes that were "under federal jurisdiction" in 1934. The Court did not define the term "under federal jurisdiction," and, as a result, tribes that have been under active federal supervision for 200 years or more are now facing *Carcieri*-based challenges to trust acquisitions.

The federal government long ago recognized that individual states must be treated the same under the law, regardless of when they were admitted to the Union. Imagine the public outcry if Alaska and Hawaii were denied the full rights of statehood simply because they didn't become states until after 1934. Yet, under *Carcieri*, tribal governments are divided into two classes with different rights -- those that were "under federal jurisdiction" in 1934 and therefore have the full rights of tribal sovereignty, and those that were not "under federal jurisdiction" in 1934 and therefore have fewer governmental rights. By creating these two classes of tribal governments, *Carcieri* opens the door to considerable confusion and potential inconsistencies concerning the status of **all** tribal lands, tribal businesses, and important civil and criminal jurisdictional issues.

Congressional action is needed to ensure permanent resolution of this issue. Although DOI may continue to acquire land in trust for tribes, any decisions to do so remain under the threat of *Carcieri*-based administrative and court challenges. Until Congress takes action to clarify that the Secretary's authority to take land into trust applies to **all** federally recognized tribes, *Carcieri* will undoubtedly be a source of controversy.

While *Carcieri* has the potential to affect all tribes, I want to draw your attention to land issues that affect several USET member tribes. Like *Carcieri*, the unintended consequences of Settlement Acts affecting at least eight USET tribes means that these tribes are essentially prohibited from exercising their full sovereignty as self-determining peoples.

The Settlement Acts were always intended to be living, dynamic agreements that necessarily must be able to change over time as circumstances and the needs of the tribes and states also change. Unfortunately, in practice, the tribes affected by the Settlement Acts have been unable to engage in good-faith negotiations with states to make meaningful, positive changes in those agreements -- simply because state governments have no reason to engage in such negotiations.

In addition, language in several of these Settlement Acts bars tribes from fully enjoying the benefits of federal laws intended to help tribes rebuild their communities and exercise their governmental rights. For example, the Maine Indian Claims Settlement provides

that federal laws applicable to Indian tribes generally shall be applicable unless they affect the civil, criminal, or regulatory jurisdiction of Maine. The Settlement Acts for all of the tribes I mentioned either expressly make the Indian Gaming Regulatory Act inapplicable, or have been interpreted to make the IGRA inapplicable.

States clearly have no genuine interest in correcting this inequality. The federal government, therefore, must get involved to ensure that all tribes can participate in the benefits that federal laws are intended to bring to Indian Country.

Ongoing study and analysis of the Settlement Acts must be mandatory, especially if there is the potential that federal laws passed for the benefit of tribes will be made inapplicable by Settlement Act language, via state implementing legislation. A fully funded tribal-state taskforce at the federal level directed to address Settlement Act language, and empowered to take recommendations to State legislatures via federal and tribal representatives, must become a reality. And the Department of the Interior must ensure that recommendations to change Settlement Act language are not ignored, but are instead are given serious consideration by states as is the intent of Settlement Act language.

As I said earlier, until and unless these issues are put to rest, no other efforts to improve or encourage economic development in Indian Country will have any lasting impact. Both tribal governments and their neighboring communities need – and deserve to have – reasonable expectations that the investments they make today will still be here to generate benefits for the generations yet to come.

That is not to say that we cannot or should not make those investments today. On the contrary, individual tribes and Indian Country as a whole are investing every day in the future of their communities. Unfortunately, resources are scarce, and even when resources are available, complex and confusing federal rules and regulations often hamper efficient and effective partnerships between tribal governments and private-sector entities. Tribes and federal elected and civil service officials must work together to find creative ways to streamline processes so that both tribal communities and their partners may reap the benefits of cooperative ventures.

Within USET we have had a number of discussions about how to promote economic development. It is clear to us that all too often the barriers to development are artificial in nature. For example, there is too much Federal and sometimes state control over economic development decisions on tribal lands. Because of the need for excessive studies and reviews, and often complex process requirements, many projects fail before they are given a chance to succeed. Excessive regulatory and bureaucratic requirements create long time delays and add to project costs. The good news is that such barriers can be changed.

The path forward should include freeing up tribes to make their own decisions. For example, it would be worth exploring on a demonstration basis allowing some tribes to move trust lands into restricted fee status. These lands would still be subject to a restriction against alienation and should be tax free zones, but as restricted fee lands the

Tribe should be freed of federal influence over tribal development and leasing decisions. This Committee's recent passage of the HEARTH Act is a great step in this direction. There is a lot of work that can be done in the area of taxation. Tribes are governments. Just as any other government depends on tax receipts so should tribes be able to do so. However, tribes have to deal with both federal and state intrusion. The often unclear tax rules in Indian Country jeopardizes interest by outsiders wanting to do business. For example, because states are allowed to tax non-Indian activity on tribal lands, Tribes effectively cannot exercise their own taxation rights. If they do so, the effect of double taxation is to drive out these potential investment partners. In general, tribal lands should be Federal and state tax free zones. There should also be investment tax credits for entities that choose to invest in Indian country.

It would also be beneficial to clarify that the National Labor Relations Act allows tribes to manage and regulate labor issues on their lands. Finally, it would be helpful to amend Federal law to allow tribes subject to state jurisdiction under Public Law 280 and similar acts, to elect to have that jurisdiction rescinded and return to the normal tribal jurisdictional status under Federal law.

Tribes are consumed with fighting to maintain existing resources. If the federal government would honor and fulfill its trust obligations, tribes could spend greater time on growth and progress. It is time for systemic changes that free us from the chains of dependency and offer the opportunity for empowerment.

In my opinion – and in both my personal experience and the experience of many of my Oneida people – the most urgent and critical need for such partnerships is in education. Bringing business ventures onto tribal lands is important, but it doesn't really help the tribal community if our young people aren't qualified and prepared to hold the jobs those businesses offer. Just as our ancestors taught their children how to hunt and fish and build shelter and farm the land, we must teach our children the skills they need to thrive in the 21st century. We must establish mentoring programs so that our youth can exercise their talents in law, medicine, engineering, research, and information technology. We must provide tutors to help students overcome learning difficulties and master the material they need to succeed. We must make it as easy as possible for our children to get a good basic education, and we must provide the tools that can help them take their education as far as they wish to go. Above all, we must create a system in which no Indian child is held back from fulfilling his or her potential because of lack of opportunity.

The federal government may be able to provide significant help in meeting these objectives for Indian Country. Many tribes may benefit from technical assistance in setting up mentoring programs, for example, or from grants to build libraries and study centers on tribal lands, or to provide transportation to and from these facilities for students. If we work together to identify specific needs, we can then come up with creative solutions to address those needs.

Indian people are not looking for a handout. We don't want the federal government to take care of us; we want the federal government to fulfill its responsibilities in helping us

take care of ourselves. Sometimes that means providing technical or financial assistance. Sometimes it means getting out of the way so that we can exercise our rights as self-governing people. And sometimes, as in the *Carciere* and Settlement Act fixes, it means correcting mistakes and ensuring that all tribal governments are on an equal footing under the laws of this land.

Always, however, fulfilling those responsibilities means understanding the issues that hinder tribal governments in their efforts to ensure the health and well-being of their citizens. I applaud this committee for its important work in matters affecting Indian Country and for its willingness to learn from the tribes themselves. In the tradition of my ancestors, I wish all of you the power of a good mind as you continue your work.

Skana.