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STRENGTHENING SELF-SUFFICIENCY: OVERCOMING BARRIERS TO ECONOMIC DEVELOPMENT IN NATIVE COMMUNITIES

FIELD HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

AUGUST 17, 2011

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STRENGTHENING SELF–SUFFICIENCY: OVERCOMING BARRIERS TO ECONOMIC DEVELOPMENT IN NATIVE COMMUNITIES

WEDNESDAY, AUGUST 17, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Kahului, Maui, HI

The Committee met, pursuant to notice, at 9:25 a.m. at the Maui Beach Hotel, Kahului, Maui, Hawaii, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. I call this hearing of the Committee on Indian Affairs to order. Aloha mai kakou.

AUDIENCE. Aloha.

The CHAIRMAN. Thank you so much for being here with us today. Today's hearing on Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development in Native Communities is a very important topic for Native communities here in Hawaii and across our country. I want to, with much aloha pumehana, warm love, to welcome you to Hawaii, to my island home. Many of the barriers to economic development Alaska Native and American Indian communities struggle with such as remoteness, limited infrastructure, access to capital and trust land status are challenges Native Hawaiian communities must also overcome in order to strengthen community self-sufficiency.

Critical to any self-sufficient community is a healthy economy. For many Native communities, developing and sustaining strong economies has been a challenge complicated by a number of factors. These factors include the unique challenges associated with leveraging lands held in trust and ensuring that their people have the skills necessary to compete in a global economy. Economic development goes well beyond simply being able to open businesses and create jobs. Smart economic development builds for the strengths of the community. It contemplates the needs of the markets of today and tomorrow. It often requires community visioning and strong leadership to help foster its growth. It takes individual initiative and collective goal setting. The Federal Government has a trust responsibility to help stimulate strong economies in Native communities to advance the well-being of their people. Our goal is

to set policies to help them be sustainable and maximize the assets of their communities.

I want to extend a special mahalo or thank you to all of those who have traveled far to join us today. We have important work to do, and we need and appreciate your input. Your expertise and experience is invaluable to helping us craft the right policies. As Chairman, it is my goal to ensure that we hear from all of you who want to contribute to the discussion. And for that, let me say that the hearing record is open for two weeks from today, and I encourage everyone to submit your comments through written testimony. I want to remind the witnesses to limit your oral testimony to five minutes today.

And let me just add we are in Hawaii. We are on Hawaiian time, and so, we want to hear from you. Serving on our first panel are two members of our communities, and that's Michael R. Smith, Deputy Director of Field Operations with the Bureau of Indian Affairs and the Department of the Interior in Washington, D.C. Also Ms. Michelle Kauhane, Deputy Director for the State of Hawaii's Department of Hawaiian Home Lands based in Kapolei, Hawaii. I want to welcome Mr. Smith and Ms. Kauhane. Will you please come and take your seats at the table.

In the meantime, I have so much gratitude here and want to say mahalo nui loa to so many people, and I know it's not really a time to begin to mention names, because I don't have all of your names here. But let me say mahalo to my staff, who has worked really hard, the staff in Honolulu and Washington, D.C. And I want to say mahalo to Loretta Tuell, who is seated back here, who is the Staff Director, and also Rhonda Harjo, Minority Deputy Counsel, who is here with us.

And also, I should mention we did invite Senators to come, and of course, they're busy. And I also invited them to, if they cannot come themselves, to send a staffer from their office. And so, we have two staff members here, Jeanette Lyman from Senator Udall, and also Kenneth Martin from Senator Johnson as part of the staff from Washington, D.C. And there are others here who have come to help us with this hearing. So, mahalo nui to all of them. And so, let me read some of the names that are here. And I know I'm not naming them all, but Annelle Amaral, who is Vice-President of the Association of Hawaiian Civic Clubs. Leimomi Kahn, who is the past President of the Association of the Hawaiian Civic Clubs. Trustee Boyd Mossman of the Island of Maui from OHA. And Tasha Kama from SCHHA and Tony Lee from Hawaii Maoli. And these are folks who are really helping with the cause in Hawaii. Rosemary Morillo, who is a council member of the Soboba Tribe, who is here, too. There are others who I will introduce who are witnesses here, so I want to again welcome Mr. Smith and Ms. Kauhane.

And Mr. Smith, would you please proceed with your testimony.

STATEMENT OF MICHAEL R. SMITH, DEPUTY BUREAU DIRECTOR, FIELD OPERATIONS, BIA, U.S. DEPARTMENT OF THE INTERIOR

Mr. Smith. Thank you, Mr. Chairman.

Good morning. It is a pleasure to be here. It's my pleasure to be here today to present the Department of Interior's statement on the Strengthening Self Sufficiency, Overcoming Barriers to Economic Development in Native Communities. My name is Michael Smith, and I'm an enrolled member of the Laguno Pueblo Tribe in New Mexico, and I was born on the reservation of Fort Hall Idaho, Shoshone-Bannock, which was my mother's Tribe.

I am the Deputy Director of Bureau of Indian Affairs for Field Operations within the Department of the Interior. The Bureau of Indian Affairs provides services directly or through contracts, grants or compacts to a service population of about 1.7 million American Indians and Alaska Natives, who are enrolled members of 565 federally recognized Tribes living on or near Indian reservations in the 48 contiguous states and the State of Alaska. In addition, the BIA is responsible for the administration and management of approximately 56 million acres of land held in trust by the United States for American Indians. These are Tribes and Alaska Natives. Building strong, prosperous Native American economies is a priority for this administration.

Earlier this month, the White House's Domestic Policy Council and the National Economic Council convened a meeting with Native American economic development experts for a White House Native American business leaders round table. This round table is part of the White House rural council's ongoing engagement with leaders across rural America and gave administration officials an opportunity to hear from Native American business leaders and policy experts about how we can work together to improve economic conditions and create jobs in Tribal communities.

While each Tribal community and their economy is unique, there are a number of common factors that have inhibited economic development in Indian country. Primary road blocks include, one, lack of collateral in which Tribes and reservation businesses can obtain capital; number two, lack of a business development environment; number three, lack of physical and legal infrastructure; number four, difficulty in developing natural resources due to multiple governments having regulatory and taxing jurisdiction over development; number five, lack of educational and training opportunities to develop a skilled work force; and number six, lack of access to modern technology.

Many of these road blocks are products of the history of Federal, State, Tribal relations and have Tribe-specific nuances that must be addressed on a Tribe-by-Tribe basis. Therefore, Indian Tribes must be the driving force behind Federal policies targeted toward job creation and economic development in Indian Country, which is consistent with the policy of Indian self determination. Nonetheless, the Department does support a couple of pieces of legislation that will assist with spurring economic development in Indian Country.

In addition, the Department has also recently identified the following strategies and actions that could be implemented to en-

hance business and infrastructure development in Indian Country. Recently, the United States Accountability Office, GAO, stated that the uncertainty in accruing land in trust for Tribes as a result of the United States Supreme Court decision in Carcieri versus Salazar in 2009 is the primary barrier to economic development in Indian Country.

Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian Tribes. Home lands are essential to the health, safety and welfare of the Tribal Nations. The Department strongly supports Congress' effort to address the Carcieri decision. In addition, President Obama's fiscal year 2012 budget proposal included Carcieri fix and language signaling his strong support for a legislative solution to resolve this issue. Since the Carcieri decision, the Department must examine whether each Tribe seeking to have land acquired in trust under the Indian Reorganization Act, IRA, was under Federal jurisdiction in 1934.

This analysis is done on a Tribe-by-Tribe basis. It is time-consuming and costly for Tribes, even for those Tribes whose jurisdictional status is unquestioned. It requires extensive legal and historical research and analysis and has engendered new litigation about Tribal status and secretarial authority. Overall, it has made the Department's consideration of deeded trust applications more complex. The Department believes that legislation is the best means to address the issues arising from the *Carcieri* decision and to reaffirm the Secretary's authority to secure Tribal home lands for all federally-recognized Tribes under the Indian Reorganization Act.

A clear congressional reaffirmation will prevent costly litigation and lengthy delays for both the Department and the Tribes to which the United States owes a trust responsibility. The Department also recently testified before this Committee in strong support of Senate Bill 703, the Helping Expedite and Advance Responsibile Tribal Home Ownership Act of 2011, which would restore Tribal authority to govern leasing of Tribal lands for those Tribes who wish to exercise that authority.

Under this legislation, Tribes would submit their own leasing regulations to the Secretary for approval and then process leases under Tribal law without prior express approval from the Secretary. This bill has the potential to significantly reduce the time it takes to approve leases for homes, small businesses and renewal energy. The Department is also working internally on ways to spur economic development in Indian Country. First, the Department recognizes that Indian Tribes must be able to determine how their home lands would be used. Thus, the Department is revising 25 CFR Part 162, the regulations governing leasing on Indian lands.

Once completed, this effort will mark the most significant reform in Indian land leasing in 50 years. The Department's revisions will streamline the process by which leases of Indian lands are approved; thereby, promoting home ownership, economic development and renewable energy development on Indian Tribal lands. The Department conducted three Tribal consultation sessions on this initiative in April and has reviewed and considered all Tribal comments on the draft leasing regulations. The Department expects to

proceed to a formal notice of proposed rule-making in the near future. We intend to conduct further consultation at that time in addition to receiving public comments on the proposed regulations. As it stands, our plan is to complete the rule-making for these regulations in early 2012.

Second, for the United States to adequately identify and focus on unemployment in Indian Country, we must first collect reliable data that will allow us to track progress over time. The Assistant Secretary for Indian Affairs is charged and specifically in its office of the Indian Energy and Economic Development, IEED, is stimulating economics, fostering job creation and improving the quality of life in Native American and Alaska Native communities.

I will be referring to that office quite often as IEED, Indian Energy and Economic Development. The Department of the Interior, the departments, Interior, Commerce, Agriculture and Labor, all have programs that target economic development in Indian Country. Several agencies estimate conditions in Indian Country, but no department has specifically targeted Indian Country to produce reliable and accurate economic data. Therefore, Indian Affairs has recently hired an economist, who has begun to work with IEED on collecting better economic data to support various programs.

In addition, in July of this year, Larry EchoHawk, the Secretary for Indian Affairs, signed a memorandum of understanding with Harvard University's Project on American Indian Economics. Whereby, the Department and Harvard will collaborate on promoting Tribal economic development to research, outreach and leadership education. The Department and the Harvard project have identified areas of possible collaboration. One, and these are in bullet form, research efforts that focus on improving economic opportunities in Tribal communities that facilitate Tribal development in the legal and political infrastructure that will promote economic development in Tribal communities. And that addresses disparities in economic indicators.

Two, the identification and development of outreach efforts having high potential impact on economic development initiatives in Tribal communities. The capacity for those communities to promote economic development, opportunities for productive research and curriculum programs on economic development and Tribal Government management. And three, expanded outreach and recruitment opportunities for graduate education in Harvard University and its allied organizations and leadership management in the professional fields relevant to Indian Country economic development policy as well as the orientation and training of the Department's Indian Affairs managers to foster a climate of economic growth in Tribal communities.

The Department has been engaging in Tribal Governments in our national energy priorities, including renewable energy development on Tribal lands. We know that Tribal lands hold a great capacity for solar, wind and geothermal projects. And we are committed to helping Indian Tribes unlock that potential. IEED has identified reservations with renewable energy potential. The IEED addresses energy, conventional and renewable, and mineral potential in Indian Country is part of its mission. IEED is currently working with one of 50 projects on approximately 35 reservations

with 29 additional projects recommended for over 4.1 million in energy and renewable program development funding for fiscal year 2012.

This, however, is barely tapping the potential that exists in Indian Country for energy development. IEED has identified 267 reservations with renewable energy potential, but the resources on these reservations has not yet been adequately determined. The potential on these reservations is as follows: Wind energy, 535 million kilowatts; solar energy, 17,600 million kilowatts; woody biomass 3 billion kilowatts; geothermal, 21 million kilowatts; and hydroelectric, 5.7 million kilowatts.

A tremendous need exists to quantify these potentials on individual reservations to gain a better understanding of how best to develop these resources. On June 21, 2011, the Department published the Department of the Interior's Economic Contributions. This report shows that energy and mineral development play a very substantial role in Tribal economies. Highlights of the report are as follows. BIA/BIE, which is the Bureau of Indian Education, and IEED have an estimated economic impact of $14.45 billion. 85 percent or $12.3 billion of this impact is derived from energy and mineral development on Tribal lands.

The economic impact reiterated by BIA/BIE and IEED create an estimated 136,761 jobs. 88 percent or 120,934 of these jobs are directly associated with energy and mineral development on Tribal lands. I will be submitting a graph as part of my testimony. Royalty income in 2010 from energy development is projected to be greater than $650 million. Our new focus on resource development versus resource assessment is far more proactive and useful to Tribes as they can make informed decisions in resource development, thus providing a springboard to the development and realization of economic benefits from their energy and renewable resources.

The IEED is concentrating on developing these capabilities in accordance with the Indian Mineral Development Act. The Federal Government responsibilities under the Indian Mineral Development Act of 1982 include providing economic evaluations of energy and mineral resources, providing expert technical advice on engineering, geology, geophysics and economics to Indian mineral owners and providing expert technical advice to Indian mineral owners in negotiating IMDA agreements with respective developers.

Since 1982, the IEED has spent over $85 million on developing energy and mineral resource information. As a direct result of these expenditures, over $1.13 trillion of in-the-ground potential energy resources have been identified. These results have provided the foundational information necessary for a future economic development of these resources. I know I've taken quite a long time to read this testimony, Mr. Chairman, and I appreciate your forbearance.

I would like to add one thing as part of my testimony. This Administration sincerely supports the efforts of Hawaiian communities or Native Hawaiian recognition. And as indigenous people, they should be joined in the Bureau of Indian Affairs as one of our components to deliver services to. I thank you, Mr. Chairman, and I'm available for any questions.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF MICHAEL R. SMITH, DEPUTY BUREAU DIRECTOR, FIELD OPERATIONS, BIA, U.S. DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and Members of the Committee. It is a pleasure to be here today to present the Department of the Interior's statement on "Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development in Native Communities." My name is Michael Smith and I am the Deputy Bureau Director for Field Operations in the Bureau of Indian Affairs (BIA) within the Department of the Interior (Department).

The Bureau of Indian Affairs (BIA) provides services directly or through contracts, grants, or compacts to a service population of about 1.7 million American Indians and Alaska Natives who are enrolled members of 565 Federally recognized Tribes living on or near Indian reservations in the 48 contiguous United States and Alaska. In addition, the BIA is responsible for the administration and management of approximately 56 million acres of land held in trust by the United States for American Indians, Indian Tribes, and Alaska Natives. Building strong, prosperous Native American economies is a priority for this Administration.

Earlier this month, the White House's Domestic Policy Council and the National Economic Council convened a meeting with Native American economic development experts for a White House Native American Business Leaders Roundtable. This Roundtable is part of the White House Rural Council's ongoing engagement with leaders from across Rural America, and gave Administration officials an opportunity to hear from Native American business leaders and policy experts about ways we can work together to improve economic conditions and create jobs in Tribal communities.

While each Tribal economy is unique, there are a number of common factors that have inhibited economic development in Indian Country. Primary roadblocks include: (1) lack of collateral with which Tribes and reservation businesses can obtain capital; (2) lack of a business development environment; (3) lack of physical and legal infrastructure; (4) difficulty in developing natural resources due to multiple governments having regulatory and taxing jurisdiction over development; (5) lack of educational and training opportunities to develop a skilled work force; and (6) lack of access to modern technology. Many of these roadblocks are products of the history of federal-state-Tribal relations, and have Tribe-specific nuances that must be addressed on a Tribe-by-Tribe basis. Therefore, Indian Tribes must be the driving force behind federal policies targeted toward job creation and economic development in Indian Country, which is consistent with the policy of Indian self-determination. Nonetheless, the Department does support a couple of pieces of legislation that would assist with spurring economic development Indian Country. In addition, the Department has also recently identified the following strategies and actions that could be implemented to enhance business and infrastructure development in Indian Country.

Recently, the United States Government Accountability Office (GAO) stated that the uncertainty in accruing land in trust for Tribes, as a result of the United States Supreme Court decision in *Carcieri v. Salazar,* 129 S. Ct. 1058 (2009), is the primary barrier to economic development in Indian Country.[1] Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian Tribes. Homelands are essential to the health, safety and welfare of the Tribal Nations. The Department strongly supports Congress's effort to address the *Carcieri* decision. In addition, President Obama's FY 2012 budget proposal included *Carcieri* fix language signaling his strong support for a legislative solution to resolve this issue.

Since the *Carcieri* decision, the Department must examine whether each Tribe seeking to have land acquired in trust under the Indian Reorganization Act was "under federal jurisdiction" in 1934. This analysis is done on a Tribe-by-Tribe basis; it is time-consuming and costly for Tribes, even for those Tribes whose jurisdictional status is unquestioned. It requires extensive legal and historical research and analysis and has engendered new litigation about Tribal status and Secretarial authority. Overall, it has made the Department's consideration of fee-to-trust applications more complex.

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[1] See, Testimony of Anu K. Mittal, Director, Natural Resources and Environment, *Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands,* Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, U.S. House of Representatives (April 7, 2011).

The Department believes that legislation is the best means to address the issues arising from the *Carcieri* decision, and to reaffirm the Secretary's authority to secure Tribal homelands for all federally recognized Tribes under the Indian Reorganization Act. A clear congressional reaffirmation will prevent costly litigation and lengthy delays for both the Department and the Tribes to which the United States owes a trust responsibility.

The Department also recently testified before this Committee in strong support of S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011, which would restore Tribal authority to govern leasing on Tribal lands, for those Tribes that wish to exercise that authority. Under this legislation, Tribes would submit their own leasing regulations to the Secretary for approval, and then process leases under Tribal law without prior express approval from the Secretary of the Interior. This bill has the potential to significantly reduce the time it takes to approve leases for homes, small businesses, and renewable energy.

The Department is also working internally on ways to spur economic development in Indian Country. First, the Department recognizes that Indian Tribes must be able to determine how their homelands will be used. Thus, the Department is revising 25 C.F.R. Part 162, the regulations governing leasing on Indian lands. Once completed, this effort will mark the most significant reform to Indian land leasing in 50 years. The Department's revisions will streamline the process by which leases of Indian lands are approved, thereby promoting homeownership, economic development, and renewable energy development on Tribal lands. The Department conducted three Tribal consultation sessions on this initiative in April, and has reviewed and considered all Tribal comments on the draft leasing regulations. The Department expects to proceed to a formal Notice of Proposed Rulemaking in the near future. We intend to conduct further consultation at that time, in addition to receiving public comments on the proposed regulations. As it stands, our plan is to complete the rulemaking for these regulations in early 2012.

Second, for the United States to adequately identify and focus on unemployment in Indian country, we must first collect reliable data that will allow us to track progress over time. The Assistant Secretary, Indian Affairs, and specifically its Office of Indian Energy and Economic Development (IEED) is charged with stimulating economies, fostering job creation, and improving the quality of life in Native American and Alaska Native communities. Adequately gauging the impact of IEED's economic development strategies, programs, and initiatives is difficult as there is no reliable baseline index of unemployment and productivity in Indian Country. The Departments of the Interior, Commerce, Agriculture and Labor all have programs that target economic development in Indian Country. Several agencies estimate conditions in Indian Country, but no Department has specifically targeted Indian Country to produce reliable and accurate economic data. Therefore, Indian Affairs has recently hired an economist who has begun to work with IEED on collecting better economic data to support various programs.

In addition, in July of this year, Larry Echo Hawk, the Assistant Secretary—Indian Affairs, signed a Memorandum of Understanding (MOU) with Harvard University's Project on American Indian Economic Development whereby the Department and Harvard will collaborate on promoting Tribal economic development through research, outreach and leadership education. The Department and the Harvard Project have identified areas of possible collaboration:

- Research efforts that focus on improving economic opportunities in Tribal communities, that facilitate Tribal development of the legal and political infrastructure that will promote economic development in Tribal communities, and that address disparities in economic indicators.
- The identification and development of outreach efforts having high potential impact on economic development initiatives in Tribal communities, the capacity of those communities to promote economic development, opportunities for productive research and curriculum programs on economic development and Tribal government management.
- Expanded outreach and recruitment opportunities for graduate education at Harvard University and its allied organizations in leadership, management and other professional fields relevant to Indian Country economic development policy, as well as the orientation and training of the Department and Indian Affairs managers to foster a climate of economic growth in Tribal communities.

Third, the Department has been engaging Tribal governments in our national energy priorities, including renewable energy development on Tribal lands. We know that Tribal lands hold a great capacity for solar, wind and geothermal projects, and

we are committed to helping Indian Tribes unlock that potential. IEED has identified reservations with renewable energy potential.

The IEED addresses energy (conventional and renewable) and mineral potential in Indian Country as part of its mission to fulfill the Administration's New Energy Frontier Initiative. IEED is currently working on more than 50 projects on approximately 35 reservations. This, however, is barely tapping the potential that exists in Indian Country for energy development. A tremendous need exists to quantify these potentials on individual reservations to gain a better understanding of how to best develop these resources in accordance with Indian Tribes.

This concludes my statement. I am happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you very much for your testimony, Mr. Smith. We thank you for what you're doing. You've mentioned many programs that we need to utilize to help our economy. And we'll ask you specific questions about some of the programs.

Ms. Kauhane, would you please proceed with your statement.

STATEMENT OF MICHELLE KAUHANE, DEPUTY DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Ms. KAUHANE. Thank you. Aloha, Chairman Akaka and Members of the Senate Committee on Indian Affairs. Mahalo for the invitation and the opportunity to provide testimony on behalf of the State Department of Hawaiian Home Lands regarding the barriers to economic development in Native communities. My name is Michelle Kauhane, Deputy Director of the Department of Hawaiian Home Lands. I'm also a Native Hawaiian homesteader residing in Kapolei, Oahu in Honolulu.

DHHL is responsible for the administration, compliance and meeting the mission of the Hawaiian Homes Commission Act. We are a State agency managing a federally-created land trust to reconnect Native Hawaiians to their ancestral lands in Hawaii. It is well understood that the progress made to implement the primary purpose of returning Native Hawaiians to their lands under the Hawaiian Homes Commission Act is and has been inadequate. The homesteading program to issue lands to Native Hawaiians, although the cornerstone of the Act with the potential to create economic opportunities, has been challenged by the location of our trust lands, lack of infrastructure investment by the Federal Government and also a lack of operational funding to support the administration of our trust.

The Hawaiian Home Lands trust is one of the best hopes to advance the economic self-sufficiency of our Native people. Moreover, the economic development potential for Native Hawaiians, if realized, can and will advance the economic prosperity of the entire State of Hawaii. My testimony today will focus on four topical areas to overcoming some of the barriers to economic development that we face on homesteads. First, reauthorization of NAHASDA. In 2000, the Congress enacted Title VIII of NAHASDA creating for the first time a modest allocation of Federal funding to support the development of affordable housing for low and moderate income beneficiaries.

We recommend the Committee work to update and reauthorize the Native Hawaiian Housing Block Grant, as has been done for Indian Country. Second, infrastructure investments. Approximately 75 percent of the open lands of the Hawaiian Home Lands trust re-

main undeveloped. One of the largest barriers to issuing land to the 20,000-plus individuals on our wait list is investment into the infrastructure for roads, utilities, water/wastewater facilities, broadband and renewable energy sources.

We recommend the inclusion of all Native lands in the Substantially Underserved Trust Areas, the SUTA definition of trust lands as enacted in the 2008 Farm Bill. Access to capital for infrastructure development on the unique trust lands of the America's indigenous peoples need only be included in the capital strategies of the Congress that have built and will continue to build the country.

Third, access to consumer capital. One of the most common sources of consumer capital for business startups, enterprise investments and fueling economic development in any community is home equity. There is a significant disparity between the loan products available to homesteaders in comparison to loans available in the fee simple marketplace in Hawaii. Likewise, there are similar disparities in product availability on trust lands in Hawaii in comparison to the lands held in trust on the continent. Specifically, while the rest of the nation is allowed to refinance existing FHA mortgages to reduce interest rates and access equity up to 85 percent of the loan to value, our FHA 247 loan product on Hawaiian Home Lands limits refinancing transactions and access to equity at 75 percent.

On the only other federally-backed consumer mortgage product available on Hawaiian Home Lands, the HUD 184(a) loan program, the authorizing language was inadvertently silent on the eligibility to refinance at all. Unlike its Indian Country counterpart, the HUD 184 program here in Hawaii stifles refinancing as a standard practice for our people.

The result of the deficiencies in the FHA 247 and the HUD 184(a) products creates an even greater economic divide by closing off a lifeline of capital that is a requirement for any healthy community. We recommend that the Committee work with the Administration to assess and implement action necessary to bring parity to the FHA 247 and 184(a) programs available to Native Hawaiians on their trust lands.

Finally, improved administration of the trust. The Department of Hawaiian Home Lands understands there's an incredible opportunity to tap into the experiences and best practices the Federal Government has in Indian Nations. We recognize that the Federal trust land management practices have taken a journey that include missed opportunities and pitfalls, but also includes evolved policies that have resulted in substantial improvements.

An example of a substantial improvement that DHHL has embraced is the adoption of our policy of Beneficiary Consultation, recommended by beneficiary advocacy groups and based on the Federal Tribal Consultation process in place under Presidential Executive Order. Though the policy of Beneficiary Consultation is relatively new to our department and to our homestead communities, we are finding it to be a best practice that will yield positive results, including the advancement of the self determination policy inherent in the Hawaiian Homes Commission Act.

Simply said, consultation strengthens our connection to the people our agency was created to serve through the provision of our

land, and also engages the incredible ingenuity and knowledge of the people themselves, to implement solutions that matter the most. We recommend the Committee encourage more active engagement and interaction by the Department of the Interior, the Federal agency with oversight responsibility of the Hawaiian Homes Commission Act and the State of Hawaii with the Department of Hawaiian Home Lands and the homestead communities.

We further recommend the enactment of the Native Hawaiian Government Reorganization Act by the Congress, which would extend the Federal policy of self government to the Native Hawaiian people. Native Hawaiians need Federal recognition.

I thank you for the opportunity to present our testimony and to identify areas that we can work together to overcome barriers of economic development.

[The prepared statement of Ms. Kauhane follows:]

PREPARED STATEMENT OF MICHELLE KAUHANE, DEPUTY DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Aloha Chairman Akaka and Members of the Senate Committee on Indian Affairs.

Mahalo for the invitation and opportunity to provide testimony on behalf of the State of Hawaii, Department of Hawaiian Home Lands (DHHL) regarding the barriers to economic development in Native communities.

My name is Michelle Kauhane, Deputy Director at the Department of Hawaiian Home Lands, appointed by Governor Neil Abercrombie. Prior to my appointment, I spent 10 years in the Native non-profit sector, as the Executive Director of one of Hawaii's most active financial literacy and foreclosure prevention agencies, Hawaiian Community Assets (HCA). HCA is also the first non-profit mortgage broker in Hawaii, established to promote homeownership on the trust lands of the Native Hawaiian people by providing specialized expertise necessary to navigate financing unique to Hawaiian Home Land communities.

Hawaiian Homes Commission Act

Since Hawaii's overthrow as an independent nation and the subsequent annexation to the United States, one of the most significant federal policy achievements for Native Hawaiians was the enactment by the U.S. Congress of the Hawaiian Homes Commission Act of 1920 (HHCA). The HHCA began as a resolution in the territorial government in Hawaii, and advocated by the territory's congressional representative, Prince Jonah Kuhio Kalanianaole. Similar to other land allotment acts of that era for Alaska Natives and American Indians, the HHCA established a land trust of approximately 200,000 acres of land, to provide for the rehabilitation of Native Hawaiians through the provision of land for residential, agricultural and pastoral homesteading. In addition, the HHCA encourages economic development on trust lands through land licenses for commerce and public purpose development.

The Admissions Act of 1959 required the HHCA to be administered by the state of Hawaii with federal oversight by the Department of Interior and the Congress. DHHL became the state agency responsible for the administration of the HHCA since 1961, governed by a 9-member Hawaiian Homes Commission appointed by the Governor of the state of Hawaii. Its Director, a member of the Governor's cabinet, also serves as the Chairman of the Commission. In short, DHHL is responsible for administration, compliance and meeting the mission of the HHCA. We are a state agency managing a federally created land trust to reconnect Native Hawaiians to their ancestral lands in Hawaii.

The most commonly used terms in our communities to describe Native Hawaiians eligible for the HHCA land trust, are "lessee", "beneficiary" or "homesteader". For the purpose of my testimony, these terms will be used to describe Native Hawaiians defined as eligible to receive land under the HHCA. Equally important to the committee topic, is to share the existence of beneficiary organizations governed by beneficiaries or homesteaders themselves. These organizations, called homestead associations, have existed for decades, and are important partners to state government in reaching the full potential of the HHCA.

Homesteading Progress

After 91 years since the enactment of the HHCA, just over 8,000 land leases have been issued to beneficiaries for homesteading purposes. In the last 10 years, approximately 2,500 leases were issued. An estimated 35,000 lessees and family members reside on homestead lands throughout Hawaii. Approximately 48 percent are located on Oahu, 23 percent on the island of Hawaii, 22 percent in Maui County, and 7 percent on Kauai. Among the lessees, the majority of leases are residential (89 percent), followed by 8 percent agricultural and the remaining 3 percent in pastoral.

According to a 2008 lessee survey conducted by SMS Research, DHHL lessee households consist of 3 to 7 people with a mean of 4.2 household members. The median household income among lessees was $48,731 in 2008, lower than the median household income for the State at $63,746. In addition, the survey estimated 51 percent of DHHL lessee households had incomes below 80 percent of the HUD median.

In addition to the beneficiaries on the land, the waiting list of beneficiaries to receive a land award under the HHCA exceeds 20,000, with waiting times ranging from 5 years to 50 years. It is well understood, that the progress made to implement the primary purpose of returning Native Hawaiians to their lands under the HHCA, is and has been inadequate. The primary barriers to improved and increased progress by DHHL can be described as follows:

1. *Location of Trust Lands*—As was common with other Native peoples in the country, the lands allocated to the Hawaiian Home Land trust consist of some of the most difficult to access, with terrains that make development challenging and expensive.
2. *Infrastructure Funding to Develop Trust Lands*—Since the enactment of the HHCA and Hawaii Admissions Act which required the state of Hawaii to administer the land trust, the Federal Government has not appropriated funding to DHHL to administer the trust, nor made any significant investment to infrastructure that would render the lands inventory adequate for homesteading use. Only within the last decade, in 2000, with the enactment of the Native Hawaiian Housing Block Grant, an amendment to the federal Native American Housing Assistance and Self Determination Act (NAHASDA), DHHL began receiving a modest allocation for the development of low to moderate income housing. Due to land conditions described in item 1 above, much of these funds have been directed toward subdivision development to build roads, utilities and residential lots.
3. *Operating Funding to Administer Trust Lands*—The administration of the Hawaiian Home Land trust requires an operating budget and staffing resources to implement the purposes of the HHCA. Since administration began by the state of Hawaii in 1959, a fraction of the annual operating costs of DHHL have been appropriated by state government. This reality, together with the modest annual federal support under NAHASDA only beginning in 2000 described in item 2 above, DHHL is operated almost entirely through revenues generated by trust lands leased or licensed for nonhomesteading purposes. As a result, the ability to further the homesteading program for Native Hawaiians through the provision of land is hindered.

In summary, the homesteading program to issue lands to Native Hawaiians for residential, agricultural or pastoral homesteads, which is the cornerstone of the HHCA and which would create economic opportunities for the beneficiaries of the Hawaiian Home Land trust, has been challenged by the location of trust lands, lack of infrastructure investment by the Federal Government, and a lack of operational funding to support the administration of the trust.

Overcoming Barriers to Economic Development in Homesteads

The Hawaiian Home Land trust is one of the best hopes to advance the economic selfsufficiency of Native Hawaiians. Moreover, the economic development potential for Native Hawaiians if realized, can and will advance the economic prosperity of the entire state. When a dollar is invested in infrastructure on Hawaiian home lands, a Hawaii business is building a road, or installing utility lines. When a dollar is spent in the administration of the trust, a vital job necessary to administer the trust is created, and becomes a part of the spending power of the people of Hawaii. The significance of the hearing topic of "Overcoming Barriers to Economic Development in Native Communities" could not be more relevant and beneficial as the nation maintains its attention on a national economic recovery.

My testimony will focus on four topical areas to overcoming barriers to economic development on homesteads, as follows:

1. *Reauthorization of NAHASDA*—In 2000, the congress enacted Title VIII of NAHASDA, creating for the first time, a modest allocation of federal funding to support the development of affordable housing for low and moderate income beneficiaries. We recommend the committee work to update and reauthorize the Native Hawaiian Housing Block Grant, as has been done for Indian Country.
2. *Infrastructure Investments*—Approximately seventy-five percent of the open lands of the Hawaiian Homes land trust remain undeveloped. One of the largest barriers to issuing land to the 20,000+ individuals on the wait list is investment in infrastructure for roads, utilities, water/waste water facilities, broadband and renewable energy sources.

   As the congress moves infrastructure investments for the country through various federal agencies and programs, we recommend that the trust lands of all Native peoples, including Native Hawaiians through the inclusion of the Substantially Underserved Trust Areas (SUTA) definition of trust lands as enacted in the 2008 Farm Bill (P.L.110). Access to capital for infrastructure development on the unique trust lands of America's indigenous peoples need only be included in the capital strategies of the congress that have built and will continue to build the country.
3. *Access to Consumer Capital*—One of the most common sources of consumer capital for business start ups, enterprise investments and fueling economic development in any community, is home equity financing. There is a significant disparity between the loan products available to homesteaders in comparison to loans available in the fee simple marketplace in Hawaii. Likewise, there are similar disparities in product availability on trust lands in Hawaii in comparison to trust lands on the continent.

   Specifically, while the rest of the nation is allowed to refinance existing FHA mortgages to reduce interest rates and access equity up to 85 percent of loan to value, the FHA 247 loan product for Hawaiian Home Lands limits refinancing transactions and equity financing to 75 percent loan to value. Further, the product prohibits business purposes, educational tuition and other meaningful financing purposes that advance economic security and economic opportunities for Native Hawaiians. The rest of the nation, including the counterpart FHA 248 program for Indian lands, does not have these prohibitions, creating a significant disparity in accessing consumer capital.

   On the only other federally backed consumer mortgage product available on Hawaiian trust lands, the HUD 184a program, the authorizing language inadvertently was silent on the eligibility to refinance at all. Unlike its Indian Country counterpart, the HUD 184 program, refinancing is a standard and normal transaction that enables Indian borrowers to refinance and capture interest rate savings as the market re-prices. Perhaps more important, is the eligibility of Indian borrowers to utilize the HUD 184 program on homes located on or off their trust lands. This is a powerful tool in anti-poverty strategies of asset-building through homeownership and equity assets.

   The result of the deficiencies in the FHA 247 and HUD 184a products creates an even greater economic divide by closing off the lifeline of capital that is a requirement of any healthy community. We recommend that the committee work with the Administration to assess and implement actions necessary to bring parity to the FHA 247 and HUD 184a program available to Native Hawaiians and their trust land assets.
4. *Improved Administration of the Trust*—Given the history of the last 91 years since enactment of the HHCA of which the state of Hawaii has administered since 1959, and the federal oversight of the Hawaiian Homes land trust, there is an incredible opportunity to tap into the experiences and best practices of the Federal Government and Indian nations. We recognize that federal trust land management practices have taken a journey that includes missed opportunities and pitfalls, but also includes evolved policies that have resulted in substantial improvements.

   An example of a substantial improvement DHHL has embraced is the adoption of our policy of Beneficiary Consultation, recommended by beneficiary advocacy organizations and based on the federal Tribal Consultation process in place under Presidential Executive Order. By examining the historical context of Tribal Consultation, its implementation approach, and the purpose of this policy in every federal agency, DHHL drew similarities to our status as a state government agency, and our need to consult with beneficiaries of the Hawaiian Home Land trust, and the organizations most comparable to Tribes

in the federal consultation policy, homestead associations organized by and governed by Native Hawaiian beneficiaries of the trust.

Though the policy of Beneficiary Consultation is relatively new to DHHL and to our homestead communities, we are finding it to be a best practice that will yield positive results, including the advancement of the self determination policy inherent in the HHCA. Simply said, consultation strengthens our connection to the people our agency was created to serve through the provision of land, and also engages the incredible ingenuity and knowledge of the people themselves, to implement solutions that matter most.

There are other examples of improved administration by DHHL where we have sought information and examined the trust land management strategies of the Federal Government, and Indian organizations on the continent. These include facilitating the flow of Community Development Financial Institution (CDFI) services by partnering with Native community organizations, and involving homestead associations in economic strategy development.

We recommend the Committee encourage more active engagement and interaction by the Department of Interior, the federal agency with oversight responsibility of the HHCA and the state of Hawaii, with DHHL and the homestead communities. Sharing experiences is one of the most powerful sources of good policy-making. As DHHL defines its role more clearly in the administration of the HHCA and implements stronger relationships with the beneficiary organizations that represent the beneficiaries of the land trust, every stakeholder can benefit from greater engagement with the federal Government and the counterpart Indian organizations on the continent and Alaska.

We further recommend the enactment of the Native Hawaiian Government Reorganization Act by the congress, which would extend the federal policy of self government to the Native Hawaiian people, regardless of eligibility under the HHCA. As the state of Hawaii has done in recent months, through the passage of a state recognition bill, we know that the well-being of our state is tied directly to the wellbeing of Hawaiian communities in every area, including economic, education, and health, which can only be achieved through the strength of Hawaiian ways of life and culture.

Thank you for the opportunity to present testimony and to identify areas we can work together to overcome barriers to economic development.

The CHAIRMAN. Thank you very much, Michelle, for your testimony. I would like now to proceed to questions.

Mr. Smith, in your testimony, you mentioned two Committee bills that are intended to streamline the land in trust and leasing processes on Indian lands. If these bills are passed, do you think they will significantly improve economic development opportunities for Tribal Governments?

Mr. Smith. Yes, Mr. Chairman. I sincerely believe that and we have been working toward that effort with the idea that this will take a Tribal Governance from each Tribe and the proper codes, the proper ordinances or business codes in order for them to move forward with their leasing regulations. So we believe this. We know that we have at least a half dozen or more model Tribes that are ready to go.

And the minute that we are able to, you know, act upon any congressional intent, then we will be able to offer this to Tribes, and they will have very little interference, if any at all, from the Federal Government. We may still be available for technical assistance and guidance, but they will be in charge of those leasing activities.

The CHAIRMAN. Thank you. Ms. Kauhane, you identified the need to address the disparity in the FHA 247, the HUD 184 mortgage products as a key solution to creating economic development. What are additional access to capital examples that promote economic development in Native communities, and what is needed so they can be utilized on Hawaiian Home Lands?

Ms. KAUHANE. The FHA 247 and 184, Senator Akaka, as I mentioned, limit access to capital. And in any community, we need access to our home equity when we want to send our kids to college, start up new businesses, for all sorts of reasons to have an infusion of cash into communities anywhere. An easy and quick fix for us to do is to negotiate with the current Administration at the Department of HUD to correct the MOU that is currently in place with the State Department of Hawaiian Home Lands that are limiting these loan to value limits and bring parity to our loan products equivalent to that of our Indian counterparts.

The CHAIRMAN. Mr. Smith, you mentioned that the Department of Interior has hired an economist to collect more reliable economic date in Native communities so Federal programs can be better to help those communities. When did you expect the report to be completed, and what will the Department do with that data to specifically improve economic conditions in Native communities?

Mr. Smith. Mr. Chairman, it's been almost 37 years since we had an economist at the Department of Interior Bureau of Indian Affairs, and I'm not sure exactly why that has happened. But we did hire earlier this year an economist who has a proven track record of being able to gather data and analyze that data and put it in a format that would be usable by Tribes.

We're also depending on the Tribal side of things. The Tribal Data Task Force has been able to provide information in almost every format you can think of, so that together, we can provide something that will be usable early on in 2012. And I believe the efforts are being recognized by the Assistant Secretary through the Office of Self Governance. I believe at least one of the members of the data management team is in the audience, Chairman Ron Allen from the Jamestown S'Klallam Tribe, and that information will be so valuable, because it will be offered to Tribes in a format that will be best utilized whenever they develop their plans to move forward.

The CHAIRMAN. Thank you very much.

Ms. Kauhane, according to your testimony, there is a serious disparity in the loan to value ratios for Native Hawaiians and for everyone else. Native Hawaiians living on homesteads cannot take out a second mortgage or refinance to take out home equity to start a business. How does this create a barrier to economic development in homestead communities, and what can be done to remove the barrier to creating parity?

Ms. KAUHANE. Again, I will say out loud for the record that access to capital in our communities is paramount, that in order for us to continue development that we need to have access to capital. The homesteaders, again, the easy fix is to correct the MOU with HUD and to change the existing language—with the department's agreement, so that we can remove the barrier or remove the loan to value ratio to bring parity to the loan products.

The CHAIRMAN. Since you mentioned starting businesses, what is the DHHL doing to encourage economic development on home lands?

Ms. KAUHANE. Currently the department is focused in community development on regional plans where we consult with our beneficiaries and the various homestead areas to talk about eco-

nomic development ideas that the community may have, whether that be for early childhood education, community centers. And we are facilitating processes where our homestead associations then are allowed the leases holding the licenses to the lands in their homestead regions so that they can practice self determination and start businesses and do economic development activities, they desire within their homestead communities and within the Department's regional plans.

The CHAIRMAN. Mr. Smith, the Department's Indian Loan Guaranteed Program has been a successful tool for allowing Tribes to gain access to capital. But funding is expected to decrease. What type of outreach has the Department done with Tribes and other Federal agencies to make sure that Tribes still have access to similar programs?

Mr. Smith. Well, initially the 1972 Indian Financing Act that established the Guaranteed Loan Program was highly successful. Because along with the oversight and guidance, there was a pot of money that was called, I believe, the Indian business development grant. Those funds were offered to Tribes and individuals over a period of time, probably about 20 years. And now those funds are no longer available.

So, the outreach that has resulted in recent times has been through other Federal agencies, the USDA, the SBA and others. And more importantly, we have relied on the ceiling, in other words, about $7 million of the ceiling that has a multiplying factor or a multiplier factor where we go to a lender such as a bank, and the Tribe is the client but we are the guarantor of that loan, so that no matter what the loan amount is, we are sitting at the table with the Tribe and the lender to assure the success of that project.

The CHAIRMAN. Now that you are talking about business, has the Department issued loan guarantees for developing ADA companies as part of its efforts to spur economic development in Indian Country?

Mr. Smith. I believe we have, and we've also reached out to the military in that regard because the military controls quite a lot of the capital that's being used to develop infrastructure throughout the United States, including Indian reservations. In that regard also, I mentioned earlier the Harvard project that we have entered into a memorandum of understanding that will assist us in developing a strategy that's going to be used in Indian Country.

The CHAIRMAN. Yes. Well, I also wondered about how that MOU has been helpful. And I'm glad to hear that it has been.

Well, I thank you both so much for your testimony as well as your answers here. This without question will be helpful to us. Thank you so much for being here at this hearing.

Ms. KAUHANE. Thank you, Senator.

Mr. Smith. Thank you, Mr. Chair.

The CHAIRMAN. I would like to invite the second panel to the witness table. Also, I want to extend my thank you to my staff in Hawaii; Joan Ohashi, who is Chief of Staff, and also Jesse Broder Van Dyke, who is my communications man here.

And I also have two staff, Daphne Tong and Lopaka Baptiste from Honolulu, who is helping us with these kinds of issues and

the Native Hawaiian Government Reorganization Act. So, it's good to have them here, too.

I would like to ask the second panel to please come forward to the table, Mr. Brian Patterson, President of the United South and Eastern Tribes of Nashville, Tennessee. And Robin Danner, who is the President/CEO of the Council for Native Hawaiian Advancement in Honolulu, Hawaii. Welcome to both of you.

Mr. Patterson, will you please proceed with your statement.

BRIAN PATTERSON, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES

Mr. PATTERSON. Good morning, Senator. Aloha as it is in the home land of the Hawaiian people. It's good to be in this land to embrace the people, to hear the language, hear the songs. The USET family of 26 Federally-recognized Tribes has long been a supporter and an advocate for the Hawaiian recognition of the Hawaiian protection of the landscape, cultural landscape, the bones of our people, the cultural and sacred sites. USET, the United South and Eastern Tribes, has been a long supporter and advocate for the Hawaiian rights platform. And we look to continue to develop and leverage that relationship between our peoples.

So, thank you for the opportunity to come here and present today. I'm grateful that you have and other Senators on the Committee have a strong staff to support the much needed work that needs to be done, but ultimately, it is Indian Country that needs to drive its agenda. It is Indian Country that must define itself, but we can only do so through collaboration and partnership and using resources and opportunities available such as yourself to advance. So, we look to work in collaboration.

We're grateful for all the hard work that's coming out of the Committee, the many roundtables, and as Loretta had many discussions with Tribal leaders throughout the country, Rhonda has had great communication with our Tribal leaders. We're most appreciative of their efforts. And so today, I bring to you perhaps a unique perspective to this discussion. As a representative on my Nation's Governing Council, the Oneida Indian Nation of New York, which I served on Council for 20 years, I can tell you how my people and our neighbors have benefitted from the success of our businesses and operations, how our Turning Stone Casino Resort 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 our resort in broadening our business enterprises and in providing health, housing, education and cultural programs for our people, how we have witnessed, our current generation have witnessed a complete rebirth of our nation through this effort.

But on the other hand, the perspective I bring in is as President of the United South and Eastern Tribes, a coalition, a family of 26 Federally recognized Tribal Governments located all across the eastern half of the United States, I can tell you more than half of my USET Tribes do not have the same resources or opportunities to develop their own economies. We are limited in our ability to draw businesses 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. And in some cases, Tribal home lands are often 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 land, 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 has plagued much of Indian Country. You cannot build business without land. You cannot build health clinics, housing, schools, community centers without land.

You cannot rebuild a community without land. And you cannot ensure that what you build today will be there for our next generation if you do not have clear ownership and control and title 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 versus Salazar, the Court held that the Secretary of Interior has the authority to take land into trust under the Indian Reorganization Act of 1934 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 the Carcieri-based challenges to trust acquisitions. The Federal Government long ago recognized that individual States must be treated the same under law, regardless of when they were admitted into the union. Imagine the public outcry if Alaska and Hawaii were denied the full rights to statehood simply because they did not become states until after 1934. Yet, under Carcieri, Tribal Governments are divided into two classes with two 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 within Indian Country. Congressional action is needed to ensure permanent resolution of this issue. Although DOI may continue to acquire land the trust for Tribes, any decisions to do so remain under the threat of the Carcieri-based administrative and court challenges. Until Congress takes action to clarify that the Secretary has the authority to take land into trust for all Federally recognized Indian Tribes, *Carcieri* will undoubtedly be a great source of controversy.

While *Carcieri* has the potential to affect all Tribes, I would like to draw your attention to land issues that affect a great number of my USET-member Tribes. Like *Carcieri*, the unintended consequences of the Land Claim Settlement Acts affecting at least

eight of my USET Tribes are essentially prohibiting these Tribes 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 the States to make meaningful, positive changes in those agreements—simply because State Governments have no reason to engage in change or in negotiations.

In addition, language in several of these Settlement Acts bars Tribes from fully enjoying the benefits of Federal law intended to help Tribes rebuild their community and exercise their governmental rights. For example, the Maine Indian Claims Settlement Act provides that Federal laws applicable to Indian Tribes generally shall be applicable, unless they affect the civil, criminal, or regulatory jurisdiction of the State of Maine.

The Settlement Acts for all 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 inequity. 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 it has potential that Federal laws passed for the benefit of Tribes will be made inapplicable by Settlement Acts language, via State implementing legislation.

A Tribal State task force at the Federal level directed to address Settlement Act language, and empowered to make recommendations to State legislatures via Federal and Tribal representatives must and should become a reality. The Department of the Interior must ensure that recommendations to change the Settlement Act language are not ignored, but are instead given serious consideration by the States as is the intent of the 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 a lasting impact. Both Tribal Governments and their neighboring communities need—and deserve to have—responsible expectations that the investments they make today will still be here to generate benefits for the future generations yet to come. This is not to stay 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 with the resources that 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 whole Tribal communities and their partners may reap the benefits of cooperative ventures.

Within USET, we have a number of discussions about how to promote economic development. It is clear to us that all too often the barriers to economic development are artificial in nature. For example, there's too much Federal and sometimes State control over economic development decisions on Tribal lands, as alluded to in the earlier presentation. Because of the need for excessive studies and reviews and often complex process requirements, many projects fail before they are given the chance to succeed. Excessive regulatory and bureaucratic requirements create long 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 will 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 the Tribal development and leasing decisions.

Your Committee's recent passage of the HEARTH Act is much appreciated and a great step in this direction.

There is a lot of work that can be done, and there is a lot of work that remains to be done in the area of taxation. Tribes are governments. Just as any other government depends upon 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 the 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 rates.

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 own land. 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 their existing resources. If the Federal Government would honor and fulfill its trust obligations, Tribes could spend greater time on growth and progress. It is the time for systemic changes that free us from the change of dependency and offer the opportunity for empowerment.

In my opinion and both in the personal experience and the experience of many of my Oneida people, one of the most urgent and critical needs for such partnership is in the area of education. My ancestors understood this, and taught our children how to hunt and fish and build shelter and farm the land. We must teach our children today the skills they need to thrive in the 21st century. We must establish mentoring programs so that our youth can exercise talents in law, medicine, engineering, research and information technology. 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. Even though our treatise defines such, we don't want the Federal Government to be taking 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 self-determining people. And sometimes, as in *Carcieri* and Settlement Act fixes, it means correcting mistakes and ensuring that all Tribal Governments are on 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 our citizens. I applaud your efforts and the Committee's efforts for this important work in matters affecting Indian Country and for its willingness to learn from the Tribes themselves. The tradition of my people and the tradition of my ancestors, I wish you the power of the good mind and as you continue your work with a good heart and a good mind.

I wish to close by saying mahalo, thank you, and stay with me on this one. Kupuna, my elder, a hui hou, until we meet again, until we meet again. And I will mauka, head towards the mountain, makai, be by the sea if you come to look for me.

[The prepared statement of Mr. Patterson follows:]

PREPARED STATEMENT OF BRIAN PATTERSON, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES

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.

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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 *Carcieri* 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.

The CHAIRMAN. Thank you very much, Mr. Patterson, for your testimony and your heartfelt feelings as well. So, Ms. Danner, will you please proceed with your testimony?

ROBIN PUANANI DANNER, PRESIDENT/CEO, COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

Ms. DANNER. Aloha, Chairman Akaka. Welcome home.

The CHAIRMAN. It's good to be home.

Ms. DANNER. I would like to welcome Committee staff, from your staff and also Senator Barrasso and Senator Johnson and Senator Udall. It's awesome to have the staff here. I would like to welcome the esteemed Tribal leader, President Patterson, my colleague here, coming to our homeland.

For the record, my name is Robin Puanani Danner. I'm the President of the Council for Native Hawaiian Advancement, which is most comparable to other advocacy organizations like USET or NCAI or the Alaska Federation of Natives. We are governed by a 21-member board of directors consisting of Native Hawaiian leaders from across the state. I'm also a 13-year homesteader on the Hawaiian Home Lands Federal land trust enacted by Congress in 1920, just 14 years after the enactment of the 1906 Indian Allotment Act.

Before I summarize my testimony, Chairman, I would like to take a moment to especially thank you as Chairman of the Committee and Vice Chairman Barrasso for authorizing this field hearing here in the State of Hawaii. From a citizen view, one of the biggest challenges to advancing successful solutions in our communities is the unacceptable view that Hawaii is a junket, a paradise of prosperous and lighthearted islanders and a place where Federal officials do not belong.

We have record high homelessness, foreclosures that are climbing every day, teen suicides that are above the national average and frightening dependency on offshore energy and food. So, I want to thank you, Chairman Akaka, for rejecting those ill-informed notions by holding this hearing right here at home and firmly acknowledging, sir, that our children, our elders, our well-being in Hawaii is no more important and no less important than the families of any other State or communities. So, I thank you.

CNHA's full testimony submitted to the record takes really a twofold approach to the Committee's topic. We separated our comments by economic development solutions for general business expansion and economic development solutions necessary for trust land areas. Together we identified five major categories and 14 specific recommendations. Of significance, Mr. Chairman, 11 of our 14

recommendations require no new funding and have no budgetary impact to the Federal Government; yet, these recommendations truly have the potential to crush barriers impeding economic growth in our communities.

For example, we recommend that the trust lands of Indian Tribes, Alaska Native villages and Hawaiian Home Lands be automatically included in the investment areas of Federal programs like the U.S. Treasury new market tax credits or the new $1 billion program the CDFI bond guarantee program that will be rolling out next year, or the USDA facilities and infrastructure programming, regardless of Census data or rural definition.

Historically, the capital markets have really just ignored the trust land areas. We have an opportunity, however, Chairman, to change that reality by including our trust lands located in 35 states across the country, including Hawaii automatically as eligible for successful Federal programs that incentivize the private sector investments in geographic areas around the country. As a more specific example, the new market tax credit enjoys strong bipartisan support, funded at $3 billion annually for the last ten years.

The inclusion of trust lands in the investment area definition does not require any additional funding. It merely creates expanded opportunities for capital investors to consider expanding locations. So, trust land communities must be automatically included and not left behind.

Another no-budget impact recommendation under the stabilizing homesteading rules category that we talk about in our testimony, we recommend the Federal Government begin the Federal rulemaking process that has never been accomplished in the 90 years since the Hawaiian Homes Commission Act was enacted or in the 16 years since the Hawaiian Home Land Recovery Act was enacted in 1995.

Business and economic development needs certainty, certainty of process and rules in order to make capital investment decisions. And our Native people need the same to fully engage the opportunities under their land trust. And I think that all would agree the Department of Hawaiian Home Lands, our State of Hawaii partner, would greatly benefit from more definitive Federal rules under which to administer its responsibility to issue land to their Hawaiian people.

And yet another example of a no budgetary impact recommendation contained in our testimony is a legislative or administrative fix to enable our borrowers under the HUD 184(a) and FHA 247 mortgage loans programs to refinance for lower interest rates or to invest home equity or small business enterprises, purchase farm equipment, et cetera. Without this fix, we estimate upwards of $187.5 million in equity remains trapped and out of reach by our trust land residents to invest in college tuition, home expansions and business startups.

We would also like to see, Chairman, these products have parity with our Indian counterparts that allow these mortgage products to be utilized on trust lands or off trust lands in the fee simple market. It was inadvertent. It was not included in ours. President Patterson was able to use his HUD 184 anywhere in the country, whether it's in his reservation or not.

Unlike Hawaiians, we are limited only to small four percent land base that is the Hawaiian Home Commission Act. And my final example of a no-budget impact recommendation, Senator, is for Congress to reaffirm the Federal trust relationship under the Native 8(a) business firms under the Small Business Administration program; thereby, eliminating graduation requirements for Tribal 8(a)'s, Native Hawaiian 8(a)'s or Alaska Native corporation 8(a)'s, which will strengthen truly one of the most successful economic development programs ever created.

In closing, overall, Chairman, the most effective solution to overcoming economic development barriers is the extension of the Federal self-governance policy to our Native people in Hawaii through enactment of the Native Hawaii Government Reorganization Act. Thank you for the opportunity to be with you here today.

[The prepared statement of Ms. Danner follows:]

PREPARED STATEMENT OF ROBIN PUANANI DANNER, PRESIDENT/CEO, COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

Aloha Chairman Akaka and Members of the Senate Committee on Indian Affairs,

My name is Robin Puanani Danner. I am the President and Chief Executive Officer of the Council for Native Hawaiian Advancement (CNHA), founded in 2001 to enhance the cultural, economic and community development of Native Hawaiians. CNHA, with a membership of over 150 Native Hawaiian Organizations, dedicated to addressing the challenges in our communities from education to business, affordable housing to cultural preservation, is a statewide advocate most comparable to the National Congress of American Indians (NCAI), and the Alaska Federation of Natives (AFN).

I am Native Hawaiian, born on the island of Kauai, raised in the fishing village of Niumalu, the Indian reservations of the Apache, Navajo and Hopi, and spent many years among the Alaska Native peoples. For the last 13 years, I have lived on my Native homestead issued under the Hawaiian Homes Commission Act, with my children and husband. My background includes former positions in finance as a bank executive, a Tribal Housing Authority executive director, and county housing director serving Native populations. Currently, I am the chair of the board of the Homestead Community Development Corporation that in addition to my position with CNHA, is highly relevant to the field hearing topic of *Overcoming Barriers to Economic Development in Native Communities.*

Field Hearing

First and foremost, mahalo for holding an oversight field hearing in our homeland of Hawaii, the 50th state of the United States. It is a constant challenge to ensure that decision makers, policy makers and federal officials come to Hawaii, to see firsthand, to walk the issues as we do every day, just as these officials do in other states of the union. Many who are uninformed, assume incorrectly, that Hawaii is a "junket" and a paradise without needs. We have an epidemic of homelessness, fast rising in the ranking of states with the most foreclosures, and as an island state, we are almost entirely dependent on imports of fossil fuel and food.

The significance of the committee, embracing the reality that data feeds good policy, that there is no substitute to raising awareness and seeing first hand, and that no matter the distance or the logistical difficulty, Hawaii is as important as Montana or Wyoming, or Nebraska or Arizona or South Dakota. Our children, our elders, and the solutions that are possible to work on with the Committee are as important as any other. This field hearing is a powerful re-enforcement of the Committee's jurisdiction on our issues, and that we are not invisible to our Federal Government.

Native Hawaiians and the Federal Trust Relationship

As the Committee knows, Native Hawaiians are among the families of Native peoples of the United States, and although not as well known, are included in the federal Indian policy and trust relationship. In 1920, the U.S. Congress enacted the Hawaiian Homes Commission Act (HHCA), establishing a federal land trust that nearly mirrors the content of the 1906 Indian Allotment Act. In 1959, the U.S. Congress enacted the Hawaii Admissions Act, which includes language to further recog-

nize the trust relationship with Native Hawaiians. Over the last 90 years, the U.S. Congress has enacted over 150 statutes recognizing my people as Native, like American Indians and Alaska Natives, using the plenary power authorized under the U.S. Constitution to address a myriad of issues.

Similar to the Office of Insular Affairs for the territorial peoples of the U.S. and the Bureau of Indian Affairs for American Indians and Alaska Natives in the Department of the Interior, Congress created the Office of Native Hawaiian Relations to continue the process of reconciliation in accordance with P.L. 103–150, the Apology Resolution, and to oversee the trust responsibilities of the United States to Native Hawaiians, with a particular emphasis on the HHCA and the 1995 Hawaiian Home Land Recovery Act.

Native Hawaiians and the State Trust Relationship

One of the conditions of statehood enacted by the United States was a compact between the federal and state governments, to administer the HHCA referenced above through the establishment in 1961 of the state of Hawaii Department of Hawaiian Home Lands (DHHL). The Hawaii state constitution incorporates and embraces the United States' trust relationship to Native Hawaiians, which was further strengthened by the 1978 Constitutional Convention which established a second state agency, the Office of Hawaiian Affairs (OHA). Each of these state agencies are public trusts of the people of Hawaii, not representing Native Hawaiians, but rather representing all of the people of our state to deliver on the trust mandates established under federal law and state law. There are similar "Offices of Indian Affairs" in other state governments, including Utah and Arizona.

In 2011, the state of Hawaii enacted Act 195, to recognize a Native Hawaiian government, as have been done more than 60 times in other states of the union. In 2011, this honorable committee, the Senate Committee on Indian Affairs, voted to approve the Native Hawaiian Government Reorganization Act, to similarly recognize the self-governance of Native Hawaiians, creating parity with the more than 560 Native governments in approximately 35 states of the country.

In summary, the relationship of Native Hawaiians to state and federal governments, is very similar and mirrors the policies and agencies of our counterpart Native peoples in the other 49 states. The Department of Hawaiian Home Lands (DHHL) and the Office of Hawaiian Affairs (OHA), are Hawaii state agencies with trust responsibilities to Native Hawaiians. Similarly, the United States government has acknowledged its federal trust responsibility to Native Hawaiians and administers it through agencies such as the Departments of the Interior, Health and Human Services, and Housing and Urban Development.

Native Hawaiians and Their Trust Land Representative Organizations

Similar to Indian Country and the organization of Native governments around trust land areas, eligible Native Hawaiians have long held and established governing organizations organized around the trust lands established under the HHCA. These organizations are commonly referred to as homestead associations, or homestead beneficiary organizations. Over 30 such homestead associations exist across the state, tied directly to homestead trust lands of the HHCA. Each has enrolled homestead members and residents, and each democratically elects its leadership.

In many ways, these homestead associations mirror the mission and representation that pueblos, Tribes, or villages do in other areas where federally created trust land areas exist. Participation is voluntary in nature by eligible members, and the actions of these homestead associations are governed by the participating eligible members.

There exist many other significant types of Hawaiian organizations, including social justice private nonprofits, member nonprofits like CNHA or the civic clubs and Royal Hawaiian Societies. These organizations are similar to the service focused, cultural and advocacy organizations of many Native organizations around the country. The homestead associations are significant in the context of the hearing topic of *Overcoming Barriers to Economic Development in Native Communities*, as the solutions discussed require an understanding of the distinction between Native Hawaiian communities that are on trust lands similar to Indian reservations and Native Allotments which are unique and distinct from Native Hawaiian communities that are not on trust lands.

Overcoming Barriers to Economic Development

Our testimony is organized into two distinct areas of discussion and recommendations—General Economic Development and Trust Land Economic Development.

I. General Economic Development

This discussion content focuses on information and recommendations relevant to advancing Economic Development regardless of geographic location. Although Native Hawaiians represent roughly 23 percent of the population in the state of Hawaii, we represent fewer than 9 percent of the total small business firms. The two top barriers to economic development we will focus on are business development and access to capital.

A. Business Growth: The SBA 8(a) Program

The SBA 8(a) Business Development program was born in the 1960s to address the economic disparity of minority populations, including veterans, women, and racial minorities. The program sought to connect under-represented Americans in the commerce of the country—doing business with and serving one of the best customers on the planet, the Federal Government. A brilliant and successful program that not only increased the number of vendors available to our government, but it also created opportunities to establish and grow healthy American-owned, American-run companies that added to the nation's economic growth and health.

In the decades that followed, the Congress recognized the success of the SBA 8(a) program for individual American-owned firms, and connected it to the federal trust responsibility to its Native peoples by amending the program to include Native community owned enterprises for Tribal governments, congressionally mandated Alaska Native Corporations and Native Hawaiian nonprofits. With a historical view of over 200 years of Indian policy to address the impact of building a great nation with the lands of Native peoples, it is absolutely clear that the amendments to the SBA 8(a) program to include Native 8(a) firms is one of the single most successful policies to be made.

Native 8(a) firms are not owned by individuals like their counterpart Minority firms, but rather by organizations that are accountable to millions of Native members and not to private investors. These organizations exist to lift up entire Native populations, to invest any and all resources available to this mission, whether an American Indian Tribe, an Alaska Native Corporation or a Native Hawaiian Organization. Every business success under the Minority 8(a) is one more individual with economic hope and the chance for prosperity. Every business success under the Native 8(a) brings economic hope to millions, and provides a tool that is so well suited under the federal trust policy—the tool of commerce with our own Federal Government, to advance and lift up our communities for which the government has a solemn trust responsibility.

Moreover, every Native 8(a) is an American company. We don't move overseas when the economy gets difficult. We are American firms, with roots deeper than the country itself. We are engines for economic recovery for our communities, for the counties and the states where we are located, and we hire our fellow Americans. There is no question that the Congress was exactly right, to amend the SBA 8(a) Business Development program that has and continues to be a successful program for individually-owned American firms, to extend it to be a successful program for community-owned Native firms with a unique federal relationship as long as the country is old.

SBA 8(a) Recommendations

As the most successful program to advance the economic self determination under the federal trust policy, the Native 8(a) program should be expanded and strengthened! There are six areas of recommendation presented:

1. *No Funding Required: Establish Federal Contracting Goals for Native 8(a) Firms.* Minority 8(a) firm categories have established contracting goals. We recommend that the Congress establish minimum contracting goals for Native 8(a) firms separate and in addition to the existing goals for Minority firms.
2. *Minimal Funding Required: Adequately Fund SBA Oversight, Training and Technical Assistance.* Native 8(a) firms are unique given their unique ownership, and unique business mission. We recommend that the Congress appropriate $10 million a year to the SBA dedicated to oversight of the entire SBA 8(a) program, including Native 8(a) firms, and to implement consistent and qualitative training, technical assistance and compliance monitoring for Native 8(a) firms and Federal Government contracting officers.
3. *No Funding Required: Reaffirm the Federal Trust Relationship.* Native 8(a) firms are defined as firms owned by a very specific group of Native organizations, specifically, Tribal governments, Alaska Native corporations mandated by Congress and Native Hawaiian controlled nonprofits with a social mission.

We recommend that Congress enact legislation to reaffirm the participation of these organizations in the 8(a) program as part and parcel of the federal trust responsibility to advance economic self determination.

4. *No Funding Required: Remove Barriers to Facilitate Growth of Native 8(a) Firms.* As Native organizations that are uniquely dedicated to and mandated to exist to address the social and economic well-being of Native peoples over any dedication to investors or individual wealth, these organizations should be exempted from graduating out of the SBA 8(a) program, should be exempted from size standards or economic disadvantaged criteria applied to individuals, and should have an SBA 8(a) application form that is relevant to these organizations, so long as the federal trust responsibility exists.
5. *Minimal Funding Required: Build Capacity of Native 8(a) Firms.* Establish and fund a mentor protégé program to encourage mature Native 8(a) firms to mentor emerging Native 8(a) firms. There are no better mentors than those that understand the mentee's history, challenges, structural composition and business goals to advance community solutions. We are seeing some success by pockets of Native organizations around the country. Leveraging this success to share it along with best practices is a powerful tool of capacity building.
6. *No Funding Required: Congressional Oversight and Reporting.* Native organizations are unique and have a very different business goal and model. They are very much an important stakeholder in achieving the purposes of the federal trust policy. As such, the participation and progress of these organizations in the SBA 8(a) program should be monitored by the Congress. We recommend that every 5 years, the SBA Office of Native American Affairs produce a Congressional Report to measure the progress, success and impact of these organizations in the business of government contracting.

B. Access to Capital: The Native CDFI Assistance Program

In the 1990s, the U.S. Treasury Department established one of the most successful "access to capital" programs in the country, serving under-served and rural populations and communities in every state, the Community Development Financial Institutions Fund (CDFI Fund). Essentially, the CDFI Fund creates opportunities for capital to flow to communities through nonprofit loan funds certified by Treasury, and receives seed funding that attracts private capital. The program has facilitated access to billions of dollars of capital to areas unable to be served by conventional financial institutions. In 1999 and 2000, the Treasury Department engaged in analysis and consultation with Native leaders to ascertain why there was low participation by Native communities in the CDFI Fund and to bring this successful program to bear.

Sol Kahoohalahala, Blossom Feiteira, myself and many others participated in roundtable discussions with Tribal leaders from Alaska and around the country. The result of the national dialogue established the Native American CDFI Assistance program (NACA), part and parcel of the larger CDFI Fund for the country. Having a subset product on Native areas, has proven to be an outstanding strategy, and resulted in 60 Native CDFIs being certified across the country, now deploying capital on the ground in their communities. It is a great beginning, and will result in a highly effective tool to overcoming the access to capital barrier that has prevailed for centuries in our Native areas.

Native CDFI Recommendations

There are two areas of recommendation presented:

1. *No Funding Required: NACA Permanence.* Make Permanent the subset NACA program with established formula based funding.
2. *No Funding Required: Matching Funds.* Allow funding from other federal agencies to be eligible as matching funds to the NACA program, to increase overall impact in Native communities and trust land areas which will reduce duplicate lending related functions delivered by multiple sources of funding.

II. Trust Land Economic Development

This discussion content focuses on information and recommendations relevant to advancing Economic Development on and in trust land areas. Access to trust lands, access to capital, and stability in the homesteading program rules are the top barriers to economic development for trust land areas and Hawaiians.

A. Access to Land for Economic Development

The trust lands established under the Hawaiian Homes Commission Act of 1920, fourteen years after the 1906 Indian Allotment Act, essentially calls for the issuance of homestead allotments to eligible Native Hawaiians for residential, agricultural and pastoral purposes, otherwise referred to as "homesteading". The HHCA also allows for trust lands to be issued for "nonhomesteading" purposes, with specific language and sections established to promote the self determination and self-sufficiency of Native Hawaiians through land instruments for commerce and other purposes.

Over the 90 year history of the administration of the trust by the federal, territorial and state governments, the non-homesteading aspect of land use, has almost entirely been used to benefit state government operating budgets, or businesses and organizations not controlled by Native Hawaiians, even though section 204 and section 207 of the HHCA clearly sets out a priority for Native Hawaiians.

In the limited instances where access to land has been made available for commerce under the HHCA to Native Hawaiians and/or their economic development organizations, extraordinary work and economic impact has resulted. For example, on Hawaii Island, the homestead association, Makuu Farmers Association, was licensed a small parcel of trust lands under section 207 of the HHCA. They run a very successful Farmers Market serving the entire community of vendors and consumers, while utilizing net revenues to self sustain the operation of the marketplace.

On the island of Kauai, yet another homestead association, the Anahola Hawaiian Homes Association, was licensed two parcels of trust lands under section 207 of the HHCA as well. Today, an outdoor marketplace is in full operation with vendors from across Kauai, and consumers from the visitor industry engaging in commerce in this homestead community. The second parcel is under way to be developed as a Cultural Camp & Academy which will be sustained through revenues and occupancy fees year round.

On the island of Oahu, the Nanakuli Homestead Association is working to develop a commercial center to bring business and consumer goods to their homestead community, as well as a cultural center and affordable housing project. Also on the island of Oahu, the Waimanalo Hawaiian Homestead Association has successfully developed a community center, certified kitchen and other self-sustaining projects serving the entire community.

These examples represent hundreds of jobs collectively. These examples are also far too few, but have the potential to be greatly increased, if access to land by Native Hawaiians is implemented as the Congress intended with the enactment of the HHCA in 1920.

Access to Land Recommendations

There are two areas of recommendation on Access to Land presented:

1. *No Funding Required: Active Federal Oversight on Land Instruments.* Engage an oversight hearing scheduled every 4 years by the SCIA to require the state of Hawaii, DHHL to report to the Congress, on the land disposition of Hawaiian Home Lands to Native Hawaiians and/or organizations controlled by them for homesteading, economic development and commerce.
2. *Minimal Funding Required: Tribal & Native Land Development Capacity.* Establish a Trust Land Development Capacity pilot program within the Department of Commerce for Tribes and Homestead Associations with trust lands to pursue development projects that promote jobs, economic impact and wealth in the states where trust lands are located. Funded at a pilot level of $5 million for 5 years each, is an extremely small investment to achieve results that align trust lands with the economic recovery of the country, in education, in energy and business districts.

B. Access to Capital on Trust Lands for Economic Development

The trust land nature of Hawaiian Home Lands is both a blessing and a curse for economic development. It is a blessing for many of the same reasons it is for Indian Country, which is a preserved land base held in trust that cannot be alienated, for our people to nurture Native Hawaiian language and culture, and continue our life ways as the original peoples of the Hawaiian Islands, regardless of homesteading eligibility by any individual Native Hawaiian. However, access to capital is made more difficult due to the trust nature of our lands.

It need not be a curse, with strategic approaches that ensure capital intended for all of America, is also considered for trust land areas like Hawaiian Home Lands, Indian Reservations and Alaska Native villages.

Access to Capital on Trust Land Recommendations

There are two recommendations to systematically improve access to capital on trust lands.

1. *No Funding Required: Eligibility of Trust Lands for Federal Programs.* Make trust lands in the 35 states where they exist, automatically eligible as investment areas under all federal programs, including U.S. Treasury, USDA, HUD, regardless of census tract income data or rural definitions. This no cost action and policy making by the Federal Government will advance the incentives and awareness of economic development opportunities by the capital markets in a greater way. Access to capital is the lifeline to any healthy community, and its ability to produce economic impact. The particular areas where this recommendation will increase the flow of capital includes but is not limited to:
   - New Market Tax Credits (Treasury)—wherein private sector, financial institutional dollars are incentivized to be deployed in certain census tracts around the country. Inclusion of trust land areas will broaden the spectrum for these investors to consider projects in trust land areas, whether for energy, business, school facilities or marketplaces.
   - USDA Funding—wherein agricultural, rural business, water/waste water infrastructure and telecommunication programs are incentivized to grow the nation's agri-business, healthy foods, broadband and development infrastructure in rural defined areas. Inclusion of trust land areas will ensure access for trust land areas, that are woefully underserved, but have tremendous potential for some of the greatest job creation and economic recovery strategies for Native peoples and the local and state economies where they are located.
   - CDFI Bond Guarantee Program (Treasury)—a program enacted by Congress in 2010 to increase capital through bond guarantees to eligible census tracks in the country. Inclusion of trust land areas in the eligible definition, provides yet another platform for the barrier of accessing capital to be addressed. This program is framed to deliver $100 million dollar blocks of bond guarantees to projects and infrastructure nationwide.
2. *No Funding Required: Mortgage Product Parity on Hawaiian Home Lands.* One of the primary sources of capital for economic development and small business start up, is home equity. We recommend that the HUD 184a and FHA 247 mortgage loan products developed based on Indian Country's products, be updated to bring parity to the ability to refinance and invest home equity in business ventures.

C. Stability in Trust Land Rules

Trust land allotments to Native Hawaiians consist of long term leases of land for residential, agricultural and pastoral homesteading. Particularly in the case of farms and ranches, the success of these activities can greatly depend on generations of family farmers and ranchers. Original lessees may designate successors to these allotments, however are limited to certain familial designations, which can be a barrier to the long term investment and success of farming and ranching under the homestead program of the HHCA.

Moreover, the Federal Government has never promulgated administrative rules under which its delegated authority to the state of Hawaii is to be implemented, resulting in disputes that can be avoided through the federal rule making process. Economic development and business, like anywhere in America, requires certainty in the rules and processes—trust land areas are no different.

Stability in Homesteading Program Rules Recommendations

Federal consultation policies have a proven record of being a best practice in addressing challenges of Native communities. As such, we have two recommendations to engage this successful practice:

1. *No Funding Required: Consultation by State of Hawaii and DOI.* Under the committee's jurisdiction on Native issues, encourage the state of Hawaii, DHHL, or the federal Department of Interior, to engage in consultation to dialogue with Homestead Associations, to identify priorities for the HHCA which would provide stability for homesteading for generations of families, creating a stable environment for economic investment, economic development and economic self-sufficiency.
2. *No Funding Required: Implement Federal Rulemaking on HHCA and HHLRA.* Request the federal Secretary of Interior to begin the process of federal rulemaking for the Hawaiian Homes Commission Act, and the Ha-

waiian Home Land Recovery Act, to adequately provide guidance to the state of Hawaii, on the implementation of these laws.

Conclusion and Summary

In conclusion, eleven of the fourteen recommendations contained in this submission represent action items that have no federal budget impact. Funding is an ever-needed resource however there are huge steps that can be taken to advance economic development in Native communities that require no funding at all. We hope the committee will consider our recommendations for Native Hawaiians, but also for all Native peoples in the country.

In addition, Chairman Akaka and Members of the Committee, we extend our thanks for the committee's work on the Native Hawaiian Government Reorganization Act of 2011. The real root barrier to economic development for any Native peoples, whether on trust lands or anywhere in our homelands, is the ability to take responsibility and control of our assets and resources under the federal policy of self-governance.

History is a great teacher. Over the last 2 centuries, the country has struggled to balance the building of a great democracy and the impact on its indigenous peoples. Our Federal Government tried extermination, wardship, assimilation, termination, and under an evolving policy under the Kennedy and Johnson Administrations, and then with decisiveness under the Nixon Administration, the Federal Government firmly embraced the policy of self-determination and self-governance toward Native peoples.

Study after study, including those completed by Harvard University in the last decade, validates this policy as the most successful. The Congress has the plenary power to enact legislation on behalf of Native peoples. While we have made advances in the areas of housing, healthcare, and education where Congress has taken action—the real game changer for our socio-economic condition, lies in our self-governance and responsibility for our collective assets and resources to advance the solutions that connect us to our homelands.

If the trust relationship has meaning, if we are to honor those that have gone before us, if we are to build upon a difficult past to create the future we can all be proud of, then we must embrace and lift up the solutions that take down the barriers to economic self-determination. CNHA is firmly in support of the passage of the Native Hawaiian Government Reorganization Act.

Mahalo for the opportunity to submit comments to the Committee.

The CHAIRMAN. Thank you very much for your testimony.

Mr. Patterson, USET represents approximately 25 Tribes who have very diverse economic development needs and opportunities. Some Tribes are well established. Of course, others are in the beginning stages. Given the diversity of USET Tribes, what are your recommendations for how Congress and the administration can help Tribes achieve economic self-sufficiency?

Mr. PATTERSON. Absolutely great comment. Thank you, Chairman. It is, you know, it is a very difficult landscape to manage. Even Tribes with great success, which I have Tribes that have the largest resort casinos in the world. You know, it takes time to manage and overcome the 200 years of poverty, deprivation and multigenerations of trauma that people have endured. But it's very difficult to manage and advance the priorities with Tribes that have little or no economic development, which are many in USET. And we're going to begin to focus on that.

And I believe there exists a great opportunity for our Tribes across Indian Country to really work in collaboration and through leadership to identify the restrictions in recommendations that affect economic development, to identify the challenges in overcoming those restrictions that are faced by Indian Country. Some of those include access to capital, job skills and training, need for interagency collaboration. And in doing so, I think it provides great opportunities to Tribes to identify the Federal resources and technical

experience, the programs that are there that exist within the Federal Government. That we have that opportunity to identify all the Federal programs available to Tribes, and by addressing —by becoming aware of these cases, I think we have the opportunity to remove the regulatory barriers such that exist in energy development.

And by doing so, it also goes along the lines, as Mr. Smith has identified, I think by advancing in this direction, we bring real leadership to the Indian Country, real opportunity to Indian Country. And we go to promote a better future for our youth across Indian Country. You know, I'm a lifelong member of ASES, American Science and Engineering Society, and I just so admire the work they do with Indian Country. And if you go to one of their conferences and you look, there's NASA. There's Chrysler, IBM, all these prominent, prominent opportunities recruiting the brightest and greatest minds of Indian Country.

But you know what, I've never heard of an American Indian/Native Hawaiian youth saying, you know what, I want to grow up and go to work for one of these leading companies. It is always I want to go to work and come back and make a difference for my people. I need to make an impact for my future generations. And I think, you know, the results of this collaborative process would allow for our young people to turn inward back to their home communities to address the many issues and trauma, multigenerations of trauma that we've endured. So, I really think the key is we can get issue specific such as access to capital and the tax issues, but I really think if we could work in a collaborative fashion, we can really lead our leaders in an effort that identifies the opportunity that currently exists and brings strategies to advance those. Thank you.

The CHAIRMAN. Thank you very much for that response.

Ms. Danner, I found your written testimony to be thoughtful, providing 14 recommendations to improve economic development for all Native peoples. If the Committee could advance just one or two of your recommendations, which ones do you think have the highest priority for economic development?

Ms. DANNER. Senator, Native 8(a) absolutely would be number one on my list. It touches American Indians, Alaska Natives and Native Hawaiians. It is the most successful economic development program for Indian business, for Hawaiian business. Indian Country has been in it for a couple of decades. The Alaska Natives have been in it for a couple of decades. Native Hawaiians have just started just in the last ten years.

But it has enabled our community-owned companies, American companies, to engage in having the best customer there ever is to ever be on the planet, which is the Federal Government itself. Native 8(a) contracting is powerfully important. When economic times get tough, Indian companies, Native Hawaiian companies, we don't leave town. We stay in our communities. Our companies stay, and we continue to hire people. That would be my number one if this Committee could move legislation.

My second top priority for economic development across the board would be to move an initiative that establishes trust lands wherever they are located in the 35 states that I'm aware of to be

automatically included as eligible for successful Federal programs. We keep becoming the afterthought of the afterthought. For example, when Congress or the Administration establishes a program, they'll say, okay, we want to make sure we take care of rural. We want to make sure we take care to low to moderate income. Those are mandatory standards.

I would like to add a third standard, Senator, that says we've got take care of the more difficult places, the deserts of capital, which is trust land areas where the capital markets continue to ignore us. So, we need to be third leg of that double stool. So, that the preferences are for rural. That takes care of rural America. The preferences are for low to moderate Americans no matter where they live, and trust land areas, which scare the markets or because they're uncertain.

But what it does is it creates an incentive and an invitation to come check it out, come to talk to President Patterson, come talk to Chairman Allen about trust land. And if we could do that, Senator, that would not be a short-term fix. That would be one of the long term legacy policies that would make sure that Native business people, Native government leaders are at the table when the capital markets are moving. We're right there with them. We're on their minds, and they're on our minds.

So, those would be my top two recommendations, Senator, to move a strong legislative agenda on Native 8(a) and to move a strong legislative agenda to influence and get trust lands, SUTA, Substantially Underserved Trust Land Areas, as a standard just like a low to moderate income is, just like rural is.

The CHAIRMAN. Thank you. Thank you for your answer there and your response.

Mr. Patterson, the Committee recently held a Tribal taxation roundtable where issues were discussed such as taxation of Tribal Government programs, lack of access to tax exempt bonds and tobacco taxation. Can you tell the Committee what recommendations you have for dealing with these various tax issues?

Mr. PATTERSON. Absolutely. Great platform. I think the first thing that needs to be a fundamental, systematic, systemic kind of issue is that whenever we're talking of these issues, we recognize that Indian Country and Tribal Governments have standing in the unique relationship with this country. I would also, whenever States are interjected into language, that Tribal Governments are also included in that same breath. I think that that is a great disparity, and the States feel that they have a greater right than the Tribes, because there's not this basic awareness.

When we talk of the issues affecting taxations, we can get specific on issues such as tax exempt bonds, Tribal economic development bonds, security bonding, et cetera, which I am by no means an expert. But what I am concerned with is that these continued direct frontal attacks that are infringing on our Tribal abilities and Tribal sovereignty, that Tribal leaders from across the country become engaged and discuss platforms to advance their issues.

To date, the United South and East Tribes along with the Affiliated Tribes with Northwest Indians, ATNI, held a meeting. And we invited NCAI along for the ride. And we met down at the Miccosukee Indian Reservation. And it was a Tribal leader effort

to advance the issues which are many that we are facing in taxing. And from that initial meeting, we're going to have a second meeting in California. It was supposed to be this month. It needs to be rescheduled.

We have identified four priority areas in which we feel we can move forward. I will mostly certainly advance them to Loretta and the staff, so you can see specifically what the Tribal leaders are talking about. My intent, my interest is first and foremost in ensuring that the Tribal leaders have a vision to ensure that the Tribal leaders have a goal and to strategize the priorities to meet those objectives. But I think the greatest need is when we're talking on taxation in Indian Country, that whenever States are mentioned that Indian Country, Tribal Governments are mentioned right along with States. Thank you.

The CHAIRMAN. Thank you for your response.

Ms. Danner, following up on what you had mentioned, what does the SBA 8(a) program help to advance economic development in Native communities, and how can we maximize this program's potential?

Ms. DANNER. The SBA program advances business. It is responsible, probably one of the single-most impressive Federal programs to advance business ownership control by Native peoples across the nation creating jobs, not just for our own communities and our own members of our communities, but also for the economies in our counties and in our States. Where we are located, we are creating waves of economic development. And I think that the recommendations included in my testimony around the SBA is I think that we have to take a frontal approach of what the critics of the program are, which is they confuse the Native 8(a) program with the minority individual 8(a) program; whereas, our Native 8(a) program, these are business firms owned not by individuals. They are owned by entire communities.

They are owned by Tribal Governments. They are owned by Congressionally created Alaska Native Corporations. They are owned by Native Hawaiian non-profits. All three of them are accountable, not to any shareholder or investor, these business enterprises, social enterprises are accountable to millions in communities. And so, I think we need to just embrace that reality, and we're not trying to do a Native 8(a) inside a minority program. I think if we have a legislative approach, Senator, that reaffirmed the Federal trust relationship and that that is the source of the Native 8(a) program from the very beginning, I think if we eliminate the graduation requirements of our Native 8(a) firms out of that program every nine years having to reapply—the trust relationship is the trust relationship.

It is forever. And so, that relationship of economic development, and hand on our shoulder is forever. It doesn't end in nine years and restart every nine years. I think that if we could be bold and courageous about that Federal trust relationship and put forward legislation that acknowledged it and provided technical assistance for emerging 8(a)'s. For example, the SBA has a mentor protégé program for big companies to mentor little companies. The reality in our company is we are better mentors for one another. So, I would love to see a section of the Native 8(a) program for those

who are successful in the 8(a) programs, that are Tribal 8(a), there's a mentor protégé program for them to incentivize to mentor the smaller Tribes or Native Hawaiian organization 8(a)'s.

We have a lot we can share with one another. We don't necessarily need to go through the barriers to convince the big corporate dynamo why it is we have a corporation that gives up all our revenues cultural development and language preservation. So, I think as part of the economic recovery of the nation, it is a bright spot. It is hugely a great opportunity for Native American companies to show that we can do business. We've been training for thousands of years. If, as President Patterson said, the Federal Government can just get out of the way. But before you do, embrace and strengthen the fact that Native 8(a) is not an affirmative action program. It is a trust relationship program, that we're in this marriage forever together.

The CHAIRMAN. Ms. Danner, based on your experience and your expertise, I was interested in the need for more certainty for capital investments through Federal rule-making for the Hawaiian Homes Commission Act and the Hawaiian Home Land Recovery Act, which I sponsored in 1995.

Can you share how the Federal rule-making process will strengthen the purposes of those important land acts for Native Hawaiians, how it will help to remove barriers to economic development in these communities?

Ms. DANNER. Chairman, Federal administrative rules to some, and even to me sometimes, can be bureaucratic. Sometimes we run away from them, and sometimes we should run toward them. This is an area that I think after 90 years of not having Federal Administrative Rules for the Hawaiian Homes Commission Act, not having Federal administrative rules for 16 years after the Hawaiian Homes Recovery Act was passed, this is a time for us to take, to start the ball, to create a beginning and start to develop those administrative rules for the next generation and the generation after that.

Because first and foremost, the development of rules creates a certainty, a process and land use goals for partnerships and land users. And for 50 years, the State of Hawaii has been the trust agent for the Federal Government and the administration of the Hawaiian Homes Commission Act. They've pretty much been absent. There has been no oversight or capacity building of their state agency partner, their state government partner.

And so, I think that the Federal rules process, if we start it, what it will do is begin to build capacity at our state government level interacting with people like Mr. Smith, and we don't have to take so long to learn the power of consultation. It will happen much faster if the Federal Government will step forward and take its oversight role over state government, start those engaging conversations that we would advance the empowerment and self-determination successes that I hear through President Patterson and others when they speak.

I also want to say that if we do this Federal administrative—promulgate Federal administrative rules, I think we will begin to see a mitigation of lawsuits. Right now, the State of Hawaii and its attorney generals are not meeting with other attorney generals that

have people like your staff director Loretta Tuell. These are people who invest their lives in Indian law, in Federal management. We're way out here, and so our attorney generals and our lawyers here look at everything through the affirmative action lens, where we should be looking through the trust administration.

So what happens is we have a state agency, the Department of Hawaiian Home Lands. It means well, does not have the experiences of other Native peoples and doesn't have the guidance and oversight of the Federal Government. There are no clear administrative rules, so interpretations change four years to four years, every time there is a new governor, every time there's a new administration. So, the Hawaiian people, we're left to figure out those disputes by either battling it out politically or in the courts.

And so, I think that if the Federal oversight Department of Interior did its job and began to have oversight over the Department of Hawaiian Home Lands, which will create capacity building by having that interaction, then I think we will see less lawsuits. Because the State of Hawaii will have a more clear path of administrative rules on how to implement, and they'll have the benefit of Indian Country and how the Department of Interior impalements certain aspects of the law.

So, while, you know, no one wants to see papers and papers and papers of the Federal Register, it's just true that without that Federal administrative rule guidance for us as beneficiaries, as Hawaiians, for the state government, there's more disputes.

So, I just think it would be a capacity building issue, and it would help us to stop spending our valuable resources on legal fees and start collaborating together and start implementing some of the great lessons that Indian Country has spent 200 years teaching the Federal Government.

The CHAIRMAN. Thank you for your response.

Finally, let me ask Mr. Patterson whether you have any comments to make on that particular question?

Mr. PATTERSON. You know, I really like the thoughts. She reminds me, back home, the matrilineal culture, led by our grandmothers represent the heart and soul of our communities. They are the true leaders of our nation. Us men, we certainly just operate within the scope of authority, but it's the women who hold the heart and soul of our people in our country and our nation. And I like to see Ms. Robin Danner's strength and courage to stand up there. And when she said we've got to fight, I almost wanted to duck away.

[Laughter.]

It reminded me of back home, we say, we have to fight that issue. We have to stand up for our rights. Let's send our women up there.

[Laughter.]

And that's true. That's a true story. Our women have sustained us. I thank her for her astuteness, strength and courage to advance those issues. But I think these are some of the regulations and restrictions that I talked about, and I think it warrants further discussions to identify, so we can begin to make specific recommendations that would remove some of these barriers. As Mr. Smith was talking and we were talking about —he was talking about the

economists and the loan program and USDA. Well, you know, in USDA, Indian Country is included as a socially disadvantaged minority. We are not a minority. We have a unique specific relationship defined by treaty through Constitution that states our relationship.

And so, I think that if we were to sit down and begin to formulate strategies and move forward to identify this relationship—you know, it took me going to Harvard to talk to Harvard earlier to realize that relationships are paramount, and everything else is derivative. Something my second grader understands in the sand box. If she doesn't play with others in the sand box, she's not playing in the sand box. It took me quite a few years to come to that realization. So, my children are ahead of me in many ways, which is a good thing. But I think the more we can work to reexamine the restrictions, we could come to some specific recommendations that won't cost anybody anything.

The CHAIRMAN. Well, I thank you both for your responses. It will be helpful for the Committee. And again, I thank you for being our witnesses on Panel 2. So mahalo. Thank you very much.

I would like to invite the final panel to the witness table. Serving on our third panel is Honorable Nathan Small, Chairman of the Shoshone-Bannock Tribes in Fort Hall, Idaho. Also, the Honorable Ron Allen, Tribal Chair of the Jamestown S'Klallam Tribe in Sequim, Washington.

And so, it's good to have both of you here with us this morning. And I would like to say to Mr. Smith, please send our aloha to Assistant Secretary Echo Hawk when you get back. And I want to wish all of you folks well in the Administration and what you're doing for the indigenous people of our country. And also, I just want to mention today we've had our friend here who has been rather prominent, and I just want to mention him and his family, Branscombe Richmond and his lovely wife Lei and his son were here. And I just want you to know he has an interest in what's happening here. Thank you very much for being here. And we will proceed with your testimony, Mr. Small.

STATEMENT OF HON. NATHAN SMALL, CHAIRMAN, FORT HALL BUSINESS COUNCIL, SHOSHONE–BANNOCK TRIBES

Mr. SMALL. Thank for this opportunity to testify. My name is Nathan Small. I'm the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes of Idaho. We don't like to say Idaho. It's of Idaho, because we've been there long before Idaho became Idaho. But I guess for geographical purposes, we mention Idaho.

I'm honored to discuss the Tribes' economic development initiatives and the challenges we face to improve our economy. Before discussing our specific initiative, I would like to first raise our concern with the Budget Control Act. While the act was critical to avoid a governmental default, we urge that many programs be protected from cuts. In treaties with Indian Tribes like the Shoshone-Bannock Tribes, there were ceded millions of acres of our homelands to build this great nation. In return, the U.S. promised to provide for our health care, education, public safety and general welfare.

Our treaty was a peace treaty between us and the United States. And to uphold these obligations, Indian programs must be held harmless from spending cuts. We urge the Committee to work with the Super Committee and the rest of the Congress to make sure they understand the government's obligations to the Tribes.

That brings me now to some of the Tribes' economic initiative and the Federal barriers that we face in moving this project along. One of our biggest projects is our wind farm initiative. We have partnered with another Tribe to develop a $400 million wind farm on the reservation. This project is major step for us, but we've run into many obstacles.

Because the project is on trust land, it is subject to NEPA, which is costly and time-consuming. The EIS alone will cost us $1.9 million and two years of study. In addition, the EIS approval process has taken an excessive amount of time with many delays. A nearby wind farm near the reservation is already up and running, even though we started our project first. This non-Tribal wind farm did not have to navigate all the bureaucratic red tape that we do. We urge Congress to consider reforms to NEPA that would provide extensions for our economic development projects and for an expedient and cost efficient review.

The Federal Tax Code also presents a major obstacle for renewable energy development on Indian lands. Approximately 25 percent of the revenue generated from these projects comes in the form of tax credits; however, Tribes aren't taxable entities and can't use the credits. There are contractual ways to organize the transactions so that Tribes can obtain the credits, but the process is cumbersome and complex. We encourage the Committee to work with the finance committee to amend the code to enable Tribes to trade tax credits or sell them on an open market.

Another significant barrier to our economic development is access to capital. The Treasury Department reports that inequity investment gap in Indian Country is $44 billion. The Indian Guaranteed Loan Program has been somewhat of a bright spot for us. This program assisted in financing our $20 million state-of-the-art justice center, which opened last year. This program is also helping us secure a $33 million loan for a new hotel and convention center that's currently under construction.

As you can see, we have regularly benefitted from this program. We urge the Congress to fully fund these critical programs to spur economic development in Indian Country. It has been sorely underfunded for decades. No other agency provides the same kind of financing support for Tribes as this program.

Another opportunity for our people is farming. Approximately 110,000 acres of our lands are used for farming. With an annual production value of more than $80 million. A sizeable percentage of Idaho's famous potatoes are grown on our land. However, we lack capital to fund operations, equipment, infrastructure for farming on a large scale. Banks typically will not loan money to us to farm our land because the land cannot be used as collateral.

Having prime farm land, cheap water, low lease rates and lack of competitive bidding on our lands have made non-Indian farmers on the Reservation very wealthy.

We seek your assistance so that we can farm our own lands. If we can do this, we can make great strides in revitalizing and diversifying our economy. While there's an urgent need to create new economic opportunities in Indian Country, we won't succeed without a strong Tribal work force. To help improve Indian Country's work force, we urge the Committee to make necessary amendments to the 477 program.

The program saves us thousands of dollars in administrative costs each year. However, despite this success, agencies are engaged in forcing Tribes to separately account for certain programs. These actions directly conflict with the purpose of the program and are a great cost to the Tribes. Legislation to reverse this change has been included in the FY 2012 House Senate Appropriations Bill. We urge the Senate to pass that and to make other necessary changes.

Lastly, we cannot successfully improve our economy without basic infrastructure such as adequate roads and affordable telecommunication systems. We are working hard to make progress in these two areas, which is described in our written testimony.

Chairman, we thank you for your efforts to improve the economy conditions in Indian Country. The Tribes are very proud of what we've been able to accomplish, but we still have a long ways to go.

And with your permission, I would like to submit some other documents. Mainly, that is our economic impact statement that the five Tribes of Idaho have put together for the purposes of I guess you could say getting some respect from the State of Idaho and its legislature.

[The prepared statement of Mr. Small follows:]

PREPARED STATEMENT OF HON. NATHAN SMALL, CHAIRMAN, FORT HALL BUSINESS COUNCIL, SHOSHONE-BANNOCK TRIBES

Good morning, Chairman Akaka and Members of the Committee. My name is Nathan Small and I am the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes (Tribes) located on the Fort Hall Indian Reservation (Reservation) in southeast Idaho. I am honored to be here today to discuss the Tribes' economic development initiatives, our success stories, and the challenges we face to bring economic vitality to our people, our community, and the surrounding area.

Background on the History of the Shoshone-Bannock Tribes

The Tribes are a federally recognized Indian Tribe organized under the Indian Reorganization Act of 1934. The Shoshone and Bannock people are comprised of several related bands whose aboriginal territories include land in what are now the states of Idaho, Wyoming, Utah, Nevada, Colorado, Oregon, and parts of Montana and California. In 1867, President Andrew Johnson by Executive Order designated the Fort Hall Indian Reservation for various Shoshone and Bannock bands that occupied the area since time immemorial. On July 3, 1868, the Shoshone and Bannock Tribes concluded the Second Treaty of Fort Bridger, which was ratified by the United States Senate on February 24, 1869. Article 4 of the Fort Bridger treaty promises that the Reservation would be a "permanent home" to the signatory Tribes. Although the Fort Bridger Treaty called for the Reservation to be approximately 1.8 million acres, various "surveying errors" in 1873 reduced its actual size to approximately 1.2 million acres.

One of the United States' purposes in setting aside the Reservation was to protect the Tribes' rights and to preserve for them a home where their Tribal relations might be enjoyed under shelter of authority of the United States. Subsequent cession agreements with the United States reduced the Reservation to the present day size of 544,000 acres. Of the 544,000 acres, 97 percent of the land is Tribal land or held by the United States in trust for the benefit of the Tribes or its individual members. The Reservation is the largest reservation in Idaho. Our Reservation pro-

vides an irreplaceable homeland for economic activity and cultural practices based on strong religious traditions premised on the sacredness of our land. Our current Tribal membership is approximately 5,300 members.

Our Reservation is blessed with an extensive biodiversity including rangelands, croplands, forests, streams, three major rivers (the Snake, Blackfoot, and Portneuf), reservoirs, springs, and wetland areas, an abundance of medicinal and edible plants, wildlife (elk, deer, moose, bison, big horn sheep, etc.), various species of fish, birds, and other animal life. The Reservation lands are mountainous and semi-desert, and overlay the Snake River aquifer, a large groundwater resource. The culture and continued existence of the Shoshone and Bannock peoples depend on these resources.

Our Current Economic Situation

The Ft. Hall Indian Reservation is named after a trading post that was an important stop in the 1800s along the Oregon Trail and California Trail. The Reservation is situated in the counties of Bannock, Bingham, Power, and Caribou in southeastern Idaho with the city of Pocatello on its southern border and the city of Blackfoot on its northern border.

The Shoshone-Bannock Tribes commissioned a report titled *2009 Economic Impacts of the Shoshone-Bannock Tribes on the Regional Economy.* The report was completed in October 2010.* Below are highlights from the report to help paint a picture of the current economic conditions on the Reservation:

- The Shoshone-Bannock Tribes have increased total regional employment by 4,097 jobs including the multiplier effects (i.e., the direct, indirect, and induced impacts).
- Total sales from Tribal economic activity was $330.6 million in 2009 including the mutliplier effects.
- The Shoshone-Bannock Tribes have raised gross regional product (value-added) by $183.0 million, of which approximately 29 percent is from agriculture.
- New tourist traffic to the Tribes' casinos is estimated at 200,000 people per year; over 40 percent are from out of state, representing new dollars to the state economy.
- In terms of employment rankings, the Shoshone-Bannock Tribes would rank 1st place in Bingham County if all 920 direct employees were situated in Bingham County. The Tribes would rank 4th place in Bannock County if all direct employees were situated in Bannock County. Statewide the Tribes rank in the top 66 Idaho employers (public and private) and would rank 40th place against private employers alone.
- In the four-county regional economy, the Tribes constitute 5.7 percent of all jobs, 3.6 percent of all sales, and 4 percent of all wage and salary earnings (including the multiplier effects).
- In comparison to Bannock County (alone), the Tribes would constitute 9.6 percent of all jobs, 7.3 percent of all sales, and 7.6 percent of all wage and salary earnings (including the multiplier effects) if all Tribal activities were situated in Bannock County.

The Tribes are very proud of what we've accomplished in revitalizing our economy despite the barriers described below but we still have a long way to go in improving the quality of life of our people. Below, I set forth specific areas where the Tribes seek assistance to address obstacles and concerns in order to create opportunities for economic development.

Grave Concerns Over the Budget Control Act of 2011

The need for this hearing and the need to develop economic solutions in Indian country are heightened by the debt limit crisis and the faltering U.S. economy. We commend Senator Crapo, our Senator, for his tremendous efforts as part of the "Gang of Six" to work across party lines to avert a government default. We know that he spent a great deal of time working on this problem, and we thank him for his service. America needs more leaders like Senator Crapo who truly puts the country and its economic future first instead of getting mired in unyielding partisan and ideological bickering. After all, you can't cut up principles on a plate.

Congress passed and the President signed the Budget Control Act of 2011 (Public Law 112–25) on August 2, 2011, which ultimately raised the debt ceiling through 2013 and put in place a number of austerity measures to cut government spending. The Act cuts government projected spending by $2.3 trillion over the next decade,

*A full copy of the report has been retained in Committee files.

starting with $841 billion in spending caps and $44 billion in projected cuts for FY12. A Joint Select Committee on Deficit Reduction (also known as the "Super Committee") created under the Act would then issue recommendations for another $1.5 trillion in cuts over the next decade. The Congress must pass and the President must sign legislation containing the Super Committee's recommendations by January 15, 2012; otherwise, agency budgets will automatically be cut across the board by $1.2 trillion. While we acknowledge that this agreement was vital to avoid a government default, we are very concerned about this agreement.

The Federal Government must learn to live within its means; but, at the same time, it must honor its treaty and trust obligations with Indian Tribes. The status of Indian Tribes as governments is specifically acknowledged in the U.S. Constitution, and our treaties are affirmed in it to be the "supreme Law of the Land." Through hundreds of treaties with the United States, Indian Tribes, like the Shoshone-Bannock Tribes, ceded hundreds of millions of acres of our homelands to build this great nation. In return, the United States promised to provide for the health care, education, public safety, and general welfare of Indian citizens.

To uphold the Federal Government's solemn treaty and trust obligations, Indian programs must be held harmless in the face of projected cuts. In other words, these programs should not be viewed as "discretionary" spending or as "pork" that can be cut. For these reasons, we urge Congress to use a scalpel as it makes reductions to federal spending instead of a cleaver. We urge the Senate Committee on Indian Affairs to dialogue and educate the Super Committee and its colleagues in the Congress about the government's obligations to Indian Tribes as these bodies work to meet the requirements of the Budget Control Act.

Federal Barriers to Tribal Economic Development

Past and current federal laws and policies have wreaked havoc on Tribal economies, ignored Tribal infrastructure needs, and suppressed Indian economic development. While the current federal policy supporting Indian self-determination has enabled some Tribes to make headway towards reaching the ultimate goal of economic self-sufficiency, many barriers remain.

The barriers range from the most basic needs to spur reservation businesses and investment, such as infrastructure (it is estimated that unmet Tribal infrastructure needs exceed $50 billion), to the more complex, such as a general lack of understanding of Tribal court systems and jurisdiction in Indian country. In addition, Tribal governments and individual Indian entrepreneurs have long lacked the access to capital that many non-Indian small businesses have. The Treasury Department reports that the equity investment gap in Indian country is $44 billion. Both Indian businesses and non-Indian businesses seeking to initiate or continue commercial activity in Indian country also face difficulty in staffing their operations because generational poverty and unemployment have resulted in an untrained workforce on a number of reservations. In addition, the status of Indian lands, which are held in trust by the United States, creates barriers to investment and business. The trust status of Indian lands—and federal laws that attach to that status—force Tribal governments to obtain federal agency approval for even the most minute decisions and require Tribal governments to comply with costly and time-consuming environmental requirements set forth in the National Environmental Policy Act (NEPA). These same federal burdens are not present outside of Indian country.

The remainder of my testimony discusses proposals to address many of the barriers identified above.

Need for Access to Capital

The Ft. Hall Indian Reservation has historically faced many barriers to economic development that continue to this day. Due to the historic downgrade of the U.S. credit rating and the potential downgrade in the municipal bond market, we are concerned that the economic barriers we face will multiply as a result of a decrease in liquidity and possible rising interest rates in the future. This will negatively impact our economic development, housing, and infrastructure projects. It is already difficult for us to find capital for major projects, and now we fear that it will only get more difficult and more expensive to the point of being cost prohibitive.

For example, the Tribes expect to open its new $47 million 164,000 square feet Hotel and Event Center by May 2012. The event center will seat up to 1,400 people and accommodate meetings, conferences, banquets, and entertainment venues. The five-story hotel will include 156 rooms, laundry facilities, a guest pool, a spa and fitness center, and a sports grill and deli. This facility has been years in the making, and the groundbreaking was on April 27, 2011. This project will be an economic boon for the Reservation and for southeastern Idaho, bringing in hundreds of millions of dollars. However, we are concerned how the economic downturn and the

drying up of financing may impact our new facility and are, therefore, closely monitoring the situation. The Bank of Albuquerque approved a $33 million loan secured with a guarantee under the Indian Guaranteed Loan Program for the project. We went through a long, difficult journey to secure the financing despite the fact that the Tribes have stellar credit, so we can only imagine how much harder it will be to move on future projects with the stagnating economy. Moreover, this saga continues to this day as we must jump through hurdles to keep the financing in place. Even with a sizeable guarantee on the loan, it seems the lender keeps coming back for a double guarantee to the point that we feel like we are practically signing our lives away.

The Indian Guaranteed Loan Program, which was established by the Indian Financing Act of 1974 (P.L. 93–262), has been a bright spot for us in accessing capital. The program helps Indian businesses obtain loans from private lenders that would otherwise be unwilling to make such loans on commercially reasonable terms. In addition to our Hotel and Event Center, the Indian Guaranteed Loan Program has assisted us with our new state-of-the-art Justice Center, which opened last year on February 16, 2010. It houses our police department, juvenile and adult detention, and Tribal courts under one roof. Over a decade ago, the BIA informed the Tribes that it must vacate its justice facilities due to their poor condition. After years of unsuccessful efforts to find federal funding for construction of a new justice facility, we committed $4 million of our own funds and took out a $15.9 million loan to construct the new facility, which was also secured with the help of the Indian Guaranteed Loan Program.

It would have been very difficult to construct the Justice Center in the current economic climate, especially given the proposed cuts to the program by the Administration that would put the program on life support. We urge the Congress to fully fund this critical program in order to spur economic development in Indian country. Despite the success of this program, it has been sorely underfunded for decades. No other agency provides the same kind of financing support for Tribes as this program. As you can see, we have truly benefitted from it.

Changing the Tax Code to Spur Reservation Economies

We believe that Congress needs to amend the Internal Revenue Code (IRC) to provide incentives to invest in renewable energy, infrastructure, and other economic development projects on Indian reservations. Without changes, we will continue to be at a disadvantage. Tax credits would assist on renewable energy projects for Tribes because we would have a better opportunity at ownership at earlier stages. We support provisions in H.R. 1599, introduced by Rep. Tom Cole, which would, among other things, provide for tax credits for tech companies in Indian country (Title VI) as well as expanding the ability of Tribal governments to issue taxexempt bonds (Title V) and the streamlining of the Tribal leasing process (Title VII). In particular, the provision to expand Tribal governments' ability to issue tax-exempt bonds for on-reservation projects would provide much needed access to outside investment capital to Tribes nationwide. We urge enactment of these provisions.

Also, in 2005–2006, the accelerated depreciation provision for businesses located on reservations lapsed. This provision was very helpful in attracting high-tech, capital-intensive employers to reservations. Since the lapse, the provision has been sporadically extended for usually no longer than one year. The short duration of the extensions has not provided enough certainty to incentivize businesses to invest in Indian country.

The accelerated depreciation credit and similar tax credits should be permanently reinstated. S. 1008, introduced by Senator Jim Inhofe, would amend the IRC to permanently extend the depreciation rules for property used predominantly within an Indian reservation. H.R. 1039, introduced by Rep. John Sullivan, would amend the IRC to permanently extend the Indian employment credit and depreciation rules for property used predominantly within an Indian reservation. However, while we support permanent accelerated depreciation in Indian country, we cannot support S. 1008 or H.R. 1039 as written. Provisions should be added to these bills requiring Tribal consent for the accelerated depreciation on property located on a reservation. Otherwise, like on the Ft. Hall Indian Reservation where there are some non-Tribal entities located there due to historical circumstances and over our objections, some may seek undue tax advantages not intended for them.

The Tribes also urge the creation of incentives to help start-up businesses of Tribal members on the Reservation. The Tribes spend $315 million a year on goods and services but very little of its stays here. If we could keep even $4–5 million here in our own small businesses, then it would make a tremendous dent in our poverty and unemployment rates. There is a small business association on the Reservation that has been providing some services and support but it is all volunteer-based.

Opening Opportunities for Tribes to Engage in Trade

Like other Indian Tribes, we have interstate highways, railroad lines, and even shipping channels and airports crossing our Reservation, adjacent to it, or even located on it. Our Reservation actually has an airport capable of handling air cargo jets. We—and other Tribes with similar advantages—could be participating in the world economy if our reservation were designated as a Foreign Trade Zone (FTZ). Unfortunately, most Indian reservations are in somewhat remote locations and cannot operate Foreign Trade Zones because of the "60 mile/90 minute rule," which requires that an FTZ be within 60 miles or 90 minutes driving time of a U.S. Customs office. The closest one to us is in Salt Lake City, which is a 2½ hour drive or 150 miles away. The next closest are in Boise, Idaho, and Butte, Montana—both about 250 miles away. These distances were much greater barriers to customs oversight when the Foreign Trade Zone Act was passed in 1934 than they are today. The Act should be updated to reflect modern advancements and the United States' unique obligations to Indian Tribes so that Tribes can more readily engage in commerce with the world.§

To that end, we propose legislation that would provide the Secretary of Commerce, acting through the Foreign Trade Zone Board, with discretionary authority to waive the "60 mile/90 minute" rule found at 15 CFR § 400.21(b)(2)(i) for Tribal FTZ grantees and operators. This would give Indian Tribes something to "bring to the table" in partnerships for regional development.

We also laud Rep. Cole for introducing H.R. 2362, the Indian Tribal Trade and Investment Demonstration Project Act of 2011, because of its innovative approach to developing commerce between Indian Tribes and foreign countries.

Challenges in Developing Energy Resources on the Reservation

Tribal communities tend to have some of the highest energy costs in the nation due to the rural/remote nature of many reservations, the lack of energy infrastructure, and the lack of high density population centers. As a result, energy efficiency and conservation upgrades have very high success rates in Indian country. We support funding directed toward energy efficiency and conservation programs as these programs have been very successful on our Reservation thus far. For example, we are currently replacing diesel fuel water pumps for solar-powered pump systems to use for watering troughs for cattle, performing energy audits and efficiency upgrades on some of our major facilities, and installing solar panels on some of our Tribal buildings.

Indian reservations have some of the highest concentrations of clean renewable energy resources in the country. In 2004, the Department of Energy estimated that 14 percent of the wind energy potential in the nation is located on reservations and that reservations will be a key factor in energy security and independence in the future. The Tribes seek to harness its wind and other renewable energy resources to promote energy production on the Reservation. Specifically, the Tribes have partnered with another Tribe to develop a $350-$400 million wind farm on the Reservation. This project is a major step in economic development for the Tribes, but we have run into many obstacles that threaten the success of the project.

Because the wind project is on trust land, it is subject to NEPA. Therefore, the BIA requires an Environmental Impact Statement (EIS) in order to approve the lease. The EIS is estimated to cost $1.9 million, and we are the ones that must pay this cost. We have hired a third party consultant to perform the majority of the work. However, the approval processes have taken an excessive amount of time with the turn-around time from the BIA for even minor paperwork taking months. For example, a 6-page document took 4 months for the BIA and the Solicitor's Office to review due to insufficient staff handling NEPA matters. Further, the BIA staff tasked to this project consistently miss important calls and meetings that cause severe delays and add unnecessary risk to the financial viability of the project.

Moreover, given that the project is a very large undertaking, it requires constant risk mitigation to be successful. Unfortunately, one of the major impediments to the success of this project is the lack of BIA involvement in the process due to limited BIA staff resources. We believe that, if a NEPA analysis is required on Tribal lands and if we must pay the costs to comply with NEPA, then the BIA should, at a minimum, have sufficient staff resources on the national, regional, and local levels to move these projects forward on a timely basis. In stark comparison, a nearby wind farm on fee land is already up and running even though we started our project first. This non-Tribal wind farm did not have to navigate all the bureaucratic red tape that we do.

We urge increased funding for the environmental review process so that BIA, instead of Tribes, will cover the costs for compliance with NEPA and hire staff who have the time to assist in advancing these projects. AlterNatively, Congress should

consider reforming NEPA to provide exceptions or an expedited review for Indian country economic development projects. The Tribes have always been strong environmental stewards since time immemorial, and we agree with many of the goals of NEPA. However, the government promised to make our lands a permanent home, and federal laws should reflect and support this promise.

Another major obstacle for renewable energy development on Tribal lands is that tax credits for renewable energy, like wind, are only useful for tax-based entities. Tribes, counties, and municipalities are at a disadvantage when they pursue energy projects. The Tribes strive to own a wind farm on the Reservation but approximately 20–25 percent of the revenue generated from these projects is in the form of tax credits that cannot be utilized by Tribes. This puts Tribes at a direct disadvantage and promotes non-Tribal ownership of projects on Tribal lands. We request that there be equal opportunities for Tribal ownership of renewable energy projects and that the Congress amend the laws so that tax credits generated can be traded to a taxable partner or sold on an open market. To that end, we support H.R. 1992, introduced Rep. Raul Grijalva, which would allow Tribes to assign renewable electricity production to their partners for tax credits. AlterNatively, we recommend that the Federal Government create a grant program for Tribes or Tribally-owned businesses so that we can compete with non-Tribal entities on energy projects on Tribal lands.

Challenges to Secure Adequate Telecommunications Infrastructure

The Tribes lack reliable, affordable high-speed communications and Internet services, including in emergency situations, for homes and businesses on the Reservation, restricting educational opportunities and greatly hindering economic development. The Tribes have been a long-time consumer of communications services from the big telecommunications companies. Like many other Indian Tribes, we have always been underserved or not served at all by the big companies. Mountain Bell became U.S. West, then Qwest, now CenturyLink. But the service remains slow and expensive, and the local distribution and service lines consist of old and deteriorating copper. The Reservation does not have high-speed Internet service except where there are purchasers of dedicated T–1lines, which are very expensive. Currently there is no incentive for the carriers serving the Reservation to improve service. The current incumbent service provider has opted out of state regulation and its rates are soaring. Moreover, the provider has a history of trespass on our Reservation, cannot document its rights of way, and is out of compliance with Tribal ordinances. Even though the provider is profiting in the range of $1 million each year for "service" on the Reservation, it has yet to employ Tribal members or even get a Tribal business license.

Over the last ten years many entrepreneurs have approached the Tribes with proposals to "partner" with us to develop cell phones, wireless Internet, or other wireless services. The deals have always been the same. They always want a commitment of Tribal money or Tribal resources for a system that someone else would own.

In 2007, the Tribes conducted a feasibility study to determine the best course to follow in addressing our communications needs. This study recommended that the Tribes develop our own telecommunications enterprise. It further recommended that the Tribal telecom enterprise be the "incumbent local exchange carrier" as defined in the Telecommunications Act of 1996. Doing this would mark a new expression of sovereignty—Tribal ownership of the means of communication. It would have the economic benefit of plugging a million-dollar annual leak in the Tribal economy, keeping Tribal dollars in circulation on the Reservation.

The greatest obstacle the Tribes face on this endeavor is the same obstacle faced by many rural-state telecoms: a widely dispersed and less affluent customer base spread out over many miles of line. The Federal Government has addressed this issue through FCC Universal Service Fund (USF) payments. These payments, or absence of them, can make or break a Tribal telecom. The highest level of USF payments typically go to the incumbent carrier, which is usually the non-Indian firm that established a prior presence on the Reservation.

We applaud the FCC's June 21, 2011, order designating the Standing Rock Telecommunications, Inc., a Tribally-owned wireless carrier, as a competitive eligible telecommunications carrier (ETC) that can receive USF support in providing wireless service to reservation residents regardless of the presence of non-Tribal incumbent carriers and regardless of wire center boundaries or partial wire centers. The order expressed support for increasing critical communications infrastructure in underserved areas, such as Indian reservations, and promoting economic development in these areas as well as educational opportunities through distance learning programs. This order will pave the way for other Tribally-owned carriers to receive USF support so that finally Tribes can address the problem of unreliable and costly

telecommunications service options on reservations to connect to the rest of the world.

To realize our goal of our own Tribal telecom, the Tribes have secured a $116,000 grant for technical services and planning from the Rural Utility Service (RUS), USDA, and have selected a Native telecom firm to provide these services. Signature of the contract is pending the arrival of funds. There will be approximately one year to complete technical studies and set up an operating telecom carrier. The Tribal telecom carrier will apply for certification and then apply for RUS or "Farm Bill" loans as appropriate. Our hope is to designate the Reservation as our service area and to train Tribal members to run the telecom.

We encourage legislation and/or policies that would expedite the transfer of reservation service areas from non-Tribal incumbents to Tribally-owned ETCs as well as compensate current incumbent carriers on a per-service line basis for these transfers. Further, we support the continuation of the USF for the benefit of not only Indian country but also for the rest of rural America to ensure that there are opportunities for affordable telecommunications services. To this end, we request that the Committee determine if legislation would assist in promoting telecommunications opportunities in Indian country.

The Need for Adequate Transportation Infrastructure

The Ft. Hall Indian Reservation, as stated above, is 544,000 acres and our communities are located far apart. Our Reservation is located within four counties in Idaho. Without adequate roads, we will not be able to improve our Reservation economy. It is the lifeline for everything. Currently, the Tribes receive $700–800 per road mile under the BIA's Indian Reservation Roads (IRR) Program compared with the amount of federal dollars that states and county governments receive, which is approximately $2400 per road mile. As you can see, we are behind before we start.

Idaho is a PL 280 state; and, in 1963, the state passed laws providing, among other things, for concurrent civil and criminal jurisdiction with the Tribes and the Federal Government over any of our roads that are maintained by the county or state (Idaho Code §§67–5101 and 5102). Starting in the 1940's through the 1990s, because the BIA did not have the funds or equipment to keep up with the road maintenance on all our IRR roads, it entered into road maintenance agreements with the counties in which the Reservation is located. Under these agreements, upon construction of certain roads by the BIA, the counties were to maintain them. As a result, the counties and the state assumed concurrent jurisdiction over these roads.

While the Tribes receives its IRR funds from the BIA, the state and the counties are able to count our IRR roads in their inventories under the maintenance agreements and, thus, gain road funds for these miles. However, the state and the county provide very little maintenance for roads over which they have responsibilities.

In January 2009, the Tribes entered into a Memorandum of Agreement (MOA) with Bingham County (County), one of the four counties in which the Reservation is located, so that the Tribes exercise regulatory authority over land use and zoning matters on the Reservation and the County defers to the Tribes on these matters. This MOA reflects the parties' cooperative approach to land use regulation for lands located within the boundaries of the Reservation and the County. In 2010, the County relinquished all the maintenance agreements they held on about 20 miles of IRR roads on the Reservation. As a result, the Tribes can begin to receive IRR road maintenance dollars for these miles.

The Tribes plan to reach out to Bannock County, which has concurrent jurisdiction and maintenance agreements over approximately 33 miles of our IRR roads, and to Power County, which has concurrent jurisdiction and maintenance agreements over approximately 20 miles of our IRR roads, to see if similar agreements can be executed with them as with Bingham County. Currently, the Tribes have approximately 450 miles of roadway under the IRR road system we maintain. If the Tribes gain back the remainder of the roadways that were placed in maintenance agreements with the counties, then our road miles under IRR maintenance would be approximately 520 miles, allowing us to receive IRR road maintenance funds for them.

As for the national controversy amongst Tribes over the allocation of funds under the IRR Program, we believe that state and county roads should not be counted in the IRR inventory given the limited pot of money. IRR funds should lawfully only be used for IRR roads. Counties and states have responsibilities to maintain their roadways and receive funding to do so. Basically, allowing non-IRR roads into the system changes the amounts all Tribes receive for road maintenance of IRR roads—for the worse. Large land-based Tribes like the Tribes with large amounts of IRR road miles suffer as a result. For instance, we used to receive about $1.2 million

per year for our contract dollars but now we receive about $930,000 per year under our 638 contract at least partially due to some of the smaller or roadless Tribes supplanting some of our dollars by including state/county roads in their IRR system. Our funding for road maintenance is now $393,000, down from $470,000 in recent years, due to the inclusion of state and county roads in the IRR system.

Challenges to Agricultural Economic Development

Historically, as explained above, the working capital needed to fund operations, equipment, and infrastructure for farming on a large scale has not been accessible to Tribes and individual Indian landowners on reservations. Banks typically will not loan money to Tribes or individual Indian landowners to farm on trust land because the land cannot be used as collateral. We applaud the class action settlement in *Keepseagle v. Vilsack*, where the Federal Government acknowledged USDA's credit discrimination against Indians. Hopefully, justice will be served and one of the results of this case will be the creation of a federal process where we are treated equally and fairly on our agricultural economic development endeavors on our own lands.

Approximately 83,000 acres of the Reservation's trust lands are used for farming spuds, wheat, barley and beets, with an annual production value of more than $80 million. A sizable percentage of Idaho's acclaimed "Famous Potatoes" are grown in the fertile sandy soil of the Reservation and watered by an extensive series of canals and ditches created by the BIA in the early 1900s. The Fort Hall Irrigation Project was built with the intention of turning the oncenomadic Shoshone and Bannock people into farmers, but lack of capital has historically prevented the Tribes from farming our own lands. Prime farmland, cheap water, low lease rates and lack of competitive bidding on Reservation lands have made non-Indian farmers on the Reservation some of the richest individuals in the state.

In recent years, the Tribes and individual landowners at Fort Hall have taken a more active role in agricultural production on the reservation. Local Indian landowners formed the Fort Hall Landowners Alliance to provide education on the BIA leasing process, to promote sound farming practices, to encourage landowners to draw up wills to prevent further fractionation of reservation lands, and to assist landowners in negotiating higher lease rates. At the same time, the Tribes are now an active participant in the BIA's bidding process when farm leases—which are typically a mix of Tribal and individual Indian owned land—come up for renewal on the Reservation. We are partnering with a couple of the larger farmers with extensive irrigation systems already in place to share in the costs of production and the profits—and the losses—from farming reservation land. What we have learned is that our land competitively leases from between $150–$350 per acre depending on soil conditions and can yield a profit of up to $800 per acre, depending on market conditions. The Tribes currently farm some 550 acres on the Reservation in partnership with other farmers. Our goal is to use revenue from this partnership as capital to purchase the equipment needed (irrigation pivots, pumps, etc.) to eventually farm our own land for ourselves. As you can see, if we could farm our own lands, then we could make great strides in revitalizing and diversifying the economy on the Reservation. Further, we own our own fresh pack and rail spur and seek ways to develop our agricultural economy from "the ground to the market" and would appreciate assistance in this endeavor.

Training a Strong Tribal Workforce

While there is an urgent need to create new economic opportunities in Indian country, it will not be truly successful unless individual Indians are prepared to step in when these opportunities arise. To help improve Indian country's workforce, we urge the Committee to make necessary amendments to the Indian Employment Training and Related Services Act, also known as the 102–477 Program. The 477 Program permits Tribal governments to consolidate federal employment training programs, cut Tribal administrative costs, and lessen the burden of federal bureaucracy—all at no cost to the U.S. taxpayer. The 477 Program scored the highest rating for BIA's programs assessed by the Office of Management and Budget. The 477 Program has saved the Tribes thousands of dollars in Tribal administrative costs and enables us to stretch precious federal dollars for employment training and workforce development to maximize our efforts to help our Tribal members gain employment.

Since 1992, Tribes nationwide have utilized the 477 Program to consolidate funding from various federal job-training programs, including the Temporary Assistance for Needy Families program (TANF), while streamlining accounting and reporting mechanisms. However, in spite of this documented success, officials at the Department of Health and Human Services (DHHS) have recently ceased the transfer of TANF funds to the Department of the Interior for inclusion in Tribal self-govern-

ance compact and self-determination contracts. This action severely undermines the efficiency of the 477 Program.

Some of these changes are included in the FY 2012 House Interior Environment and Related Agencies Appropriations bill, H.R. 2584 at Section 430. We urge the Senate to pass similar language to reverse the decision made by DHHS and make other necessary changes to this successful program.

Conclusion

We thank you for your efforts to improve the economic conditions in Indian country. We hope you find this information helpful as you continue to develop ways to improve the quality of life on reservations.

The CHAIRMAN. Thank you very much for your testimony, Chairman Small.

Chairman Allen, please proceed with your statement.

STATEMENT OF HON. W. RON ALLEN, TRIBAL CHAIRMAN/CEO, JAMESTOWN S'KLALLAM TRIBE; TREASURER, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. ALLEN. Thank you, Mr. Chairman. I begin by saying aloha.

AUDIENCE. Aloha.

Mr. ALLEN. I have to admit I have had the honor of testifying before your Committee many times over my 34-year career with my Tribe, and I have to say that testifying before you in Hawaii is much more pleasing. I can dress accordingly. The humid heat in Washington, D.C. is not something I aspire to when I have to come in and talk to you and your colleagues about Indian affairs and our interests.

I also am a board member, I'm the Treasurer for NCAI. I've been on that board for 20 years and have been a strong champion of Native Hawaiian pursuit of sovereignty. Sovereignty is something that is precious to all of Indian Country from Alaska to Florida and to the outreach of the Hawaiian islands. Our indigenous brothers and sisters out here are lacking the same legal and political status of the rest of their colleagues on the mainland. And I want to thank you personally as the Chair of my Tribe and as members of the NCAI, who have been strong supporters of the Native Hawaiian Sovereignty Bill. And we have high hopes before this session concludes, that we will get what we need to get that bill passed and restore the rightful sovereignty of Native Hawaiian peoples.

Economic development is, of course, important to all of us, and I was very appreciative of hearing the testimony of Robin and Michelle regarding the Native Hawaiian issues, which is common issues for all of the Indian Country and all of our indigenous people. I think that the comments and observations and recommendations of the two panels before Chairman Small and myself are all very strong and very good. I'm delighted that you'll be entering my testimony into the record, and we've also asked that there is a paper, a briefing paper before the White House, you know, and it was referred to as the White House Native American Business Leaders Round Table Discussion Paper.

And I would ask that it also be put in the record, because they from all the national Indian organizations and Indian Country, we made a number of similar recommendations that you witnessed this morning.

The CHAIRMAN. It will be included in the record.

Mr. ALLEN. Thank you, Mr. Chairman.

The needs of Indian Country with regard to achieving our self-sufficiency and self-reliance, as our California brothers and sisters like to use that phrase, is an important agenda without a doubt. Self-determination and empowerment of our Tribal communities to be able to take control of our destinies, to be able to create jobs and create revenues aside from the Federal Government is going to be essential that we have the tools, we have the access to the resources, the capital necessary to generate employment opportunities for our Tribal businesses as well as businesses for our citizens of our communities that they can develop their own business opportunities.

The BIA has an important role. The Department of Commerce and the SBA have important roles. The Department of Agriculture and Rural Development has an important role. HHS and the ANA programs over in that department has an important role. The Department of Labor has an important role. They all come together, and they all become a part of the solution. So, it's not just one. It's many.

You heard this morning about the importance of infrastructure. You've heard the importance of protecting our land base. You've witnessed through this hearing and other hearings the challenges that we have in terms of accessing capital onto reservations where legal standing and legal protections for those trust lands, whether it's here in Hawaii or in our reservations or up in Alaska, that it causes us some peculiar challenges, that the financial industry has a difficult time penetrating and we access. They don't treat us the same.

It is not an equitable relationship between that industry and our communities so that we can become more self-sufficient and self-reliant. So, those kinds of issues are going to be critical to us. I always have noticed that it seems like in America, when we advance the interest of America in our economy, which is a big deal to us and to Congress today, it's always kind of out of sight, out of mind. And it's an afterthought policy. Oh, yes, what about the indigenous people of this nation? What about those reservations, whether they're in Idaho or Washington or Hawaii or Alaska and so forth? How do we reach them?

The new market of today is the broadband industry. It is the Internet, okay, so do we have the infrastructure? Do we have mobile communications out in our communities? The answer is predominantly no. And our adequate resources would be an advantage to the opportunity for us to move that agenda. You have heard this morning discussions of the energy needs so that we can create alterNative energy. Well, how much energy is the Department of Energy actually providing to access energy or pursue alterNative energies, whatever those energy opportunities are, whether it's wind or hydro or geothermal, et cetera?

Are they out there, and are they really aggressively, are they meaningfully putting resources out there for the Tribes to be able to develop those kinds of opportunities to enhance our economies and our communities? And often, not all of our Tribes are in rural communities where there's strong markets. Most of our Tribes are in rural communities where there's weak markets, and we need to be able to access those markets, and it takes capital and infrastruc-

ture to make that happen. In my testimony, we show how the Jamestown Tribe has leveraged different opportunities.

The SBA 8(a) program is really a good program. It does have some flaws in it, and it does have some unintended restrictions. But it does do a good job. The current conditions of the Section 8 of the Department of Defense helps provide the adequate resources. I have colleagues in the Senate who actually are looking at some of our sister Tribes and Alaska Native Corporations in a jaundiced way, which misrepresents how we move our agenda. So, moving economic agenda on certain rules is okay for corporate America, but it's not okay for Native America. There's something wrong with that story, something wrong with that picture. And we need to correct that message.

Because, quite frankly, they should not be afraid of us. They should not be fearful of us becoming independent and becoming stronger. As governments and as business entities to be able to provide the kinds of resources to deal with the unemployment problems that we have in our respective communities and throughout the indigenous communities, that's the big deal to us. We want to be our own—we want to stand on our own two feet, to be able to take care of our own community needs. Washington, D.C. can't do it. The State capitals can't do it. But we can if you would provide us the right tools, the right legislation that gives us the authority, that instructs the IRS in terms of what is taxable and what's not taxable. The revenues of our businesses is our tax base. Where other governments have a tax base, we don't. That is our tax base, and that is an important agenda. So, we've shown where we've been successful. The loan guarantee program works. We need a surety bonding guarantee so that we have companies that go out there and become effective, so you have to have those kinds of resources. Where other industries will leverage assets that they have, we can't leverage our trust resources. You can't leverage it, because if something goes awry, they can't capitalize on it. So, it doesn't work.

The loan guarantee programs work. BIA works. SBA works, but it needs to be stronger. And the surety bonding program can work. It's an irony of it's an insurance industry, but it's not an insurance industry. They don't want risk. They just want the money, and we need them to go get the contracts. So, those are programs that get our businesses on their two feet, and so we can become successful.

I'll close, Mr. Chairman, by saying that we want to leverage. We want to become independent. We want to be self-reliant. But we need the tools to do it, and we need the authority to do it. And that's what we need from Congress. Thank you, sir.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF HON. W. RON ALLEN, TRIBAL CHAIRMAN/CEO, JAMESTOWN S'KLALLAM TRIBE; TREASURER, NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the Jamestown S'Klallam Tribe, I want to thank you Mr. Chairman and the Senators of this Committee for the opportunity to provide testimony on this very important topic of Overcoming Barriers to Economic Development in Native Communities.

General observations regarding Economic Development in Indian Country

Economic Development in Indian Country trails significantly behind the rest of the nation and the acute economic conditions experienced by our Tribal citizens are

even more pronounced than those of the current economic crisis. Tribal citizens are more vulnerable to the impacts of the current economic conditions because Tribal governmental revenues depend entirely on effective economic development to support nearly every aspect of reservation life and Tribal governance. However, chronic underfunding by the U.S. Government and the severe lack of private investment has left the economic potential of Indian Country unrealized. Tribes are forced to rely on our own economic ventures to generate revenue to support citizen programs and maintain government services for our people. Yet, Tribes are expected to meet these economic challenges with fewer resources and greater restrictions placed on vital economic financing tools and incentives. It stands to reason that Tribes should be given all of the tools and incentives available to other governments to raise and attract capital.

When given the right tools to exercise our inherent right of self-government, Tribes can effectively lift our communities out of poverty and fully participate in the American economy. It is not just our Tribal citizens who benefit from federal investment in our communities, surrounding communities, and at times, entire regions, are also beneficiaries of Tribal success. The severe critical barriers to development that exist in Indian Country are the result of many factors, including, past federal policies that were imposed on Tribes. Congress has an opportunity to reverse these trends that are impeding the success of Tribal economies by providing appropriate financing tools and tax incentives and dismantling existing barriers for Tribes to fully utilize programs and services. These efforts will ultimately benefit Tribal communities and stimulate economic growth that, in turn, builds a stronger America and creates jobs.

Tribal Self-Determination and Self-Governance works, but more investments would achieve even greater successes. Economic Development has been highly uneven, with many reservations remaining in great poverty. Regulations and legislation devised to address the needs of state and local government programs often neglect to include Tribes or promote ambiguous interpretation regarding Tribal participation. While this was not the intention of the legislation or regulations, resolving the uncertainty or unintended exclusion is an unfortunate means of promoting Tribal economies. Economic development is essential to our independence but we cannot achieve this without a strong revenue source.

The Jamestown S'Klallam Tribal accomplishments are a result of vision, a progressive attitude, hard work and a respectful relationship with the Federal government. Economic self-sufficiency will enable us to continue to diversify into alter-Native business opportunities, build stronger economic resources and diminish our dependence on the federal component of resources for the Tribe. We would like address and make recommendations of the following areas:

Small Business Association 8(a) Business Development Program

One of the most effective economic development programs for Tribes, especially rural Tribes, has been the Small Business Administration's (SBA) 8(a) program. Tribe's use the 8(a) program to sustain the economic well-being of entire communities. The program has demonstrated its effectiveness as a viable economic tool for all Tribal governments because it has proven successful regardless of a Tribe's location or size.

Despite the positive economic gains realized by Tribes and the demonstrated success of the program, the Native 8(a) program has been subject to more regulatory oversight than most other government contracting programs. Certain program provisions that were designed to promote Tribal participation are currently under scrutiny and are liable to be scaled back. For example, the newly imposed justification requirement for contracts exceeding $20 million is arbitrary and perplexing at best, given the fact that this is a far lower threshold than that applied to other non-Tribal sole source awards. This program should be commended for job creation and improving the dire economic conditions of Native communities. It is unfathomable that there are efforts to debilitate the program when it is beginning to make a difference for so many economically distressed Tribal communities and is an affront to the federal-Tribal relationship.

The Native 8(a) program confirmed Congress' commitment to advance Tribal self-determination and self-sufficiency. Congress had the foresight to recognize that providing incentive tools for business development would be much more beneficial to Native communities than simply appropriating funds for economic development assistance.

Jamestown S'Klallam Tribe Native 8(a) Success

The SBA 8(a) program has opened up a whole new business sector for our Tribe creating new employment opportunities for our Tribal citizens and revenue sources

for our Tribal programs including health care, education and community support services. The 8(a) program enables our Tribe to enter into federal markets previously precluded from Tribal operations. For example, the program has paved the way for JKT Construction (JKTC) to seek Federal Government construction projects and to form a Mentor Protégé relationship that has provided training and joint ventures, which has allowed our business to work on projects that we would not otherwise have had the funding resources to handle. The ability to contract over a term of years is critical to our Tribe's overall economic success and will greatly enhance our ability to provide critical government, social and cultural services to our citizens and build a solid infrastructure in our community. This is economic development that will assist the Tribe in moving toward its goal of economic self-sufficiency.

We strongly urge the 8(a) program be left intact and subject to existing effective federal oversight mechanisms that are already in place. Participation of Native enterprises in the SBA's 8(a) Business Development Program has proven its importance to building strong Native economies and job opportunities, as well as employment for the surrounding communities.

Surety Bonding

There has been a long standing need for a Surety Bonding program for Indian Country. Bonding companies, uncomfortable and unfamiliar with sovereign Tribes, have been simply unwilling to provide bonding for Tribal construction projects. The perceived risk associated with sovereign immunity has precluded and even obstructed Tribally-owned construction companies from accessing surety bonds even when such immunity is waived for certain contracts. This industry impediment clearly suppresses our business opportunities because small business contractors are being required to show that they can obtain surety bonds to perform subcontract work.

There is an obvious need for a surety bonding program that would allow Tribal businesses to effectively compete without having to rely on an additional partner for the sole purpose of bonding. In order for Tribes to compete for and secure contracting opportunities, we need Congressional support of programs that ensure access to surety bonding for eligible Indian-owned construction companies.

Although, construction is an area with a much higher probability of providing direct employment for Tribal citizens, surety bonding is one of the largest barriers for Tribes seeking entry and growth in this highly competitive and capital intensive sector.

Tribes therefore, urge Congress to authorize waivers for Tribes to facilitate entry and expansion into federal construction and explore options that will benefit contractors as opposed to sureties, such as loan guarantees for operating capital. Expansion of the Bureau of Indian Affairs (BIA) guaranteed loan program to include Surety Bonding guarantees will reduce the perceived risk associated with Tribal sovereign immunity that is assumed by insurance companies. 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.

Tribal Government Tax Status Act

We strongly urge that the Tribal Government Tax Status Act be amended so that Tribes have better access to secure bonding for economic development.

Although the intent of the Tribal Government Tax Status Act was to implement measures that would afford Tribes equal parity with their state and local governmental counterparts for purposes of issuing tax exempt debt, the law, as interpreted by the Internal Revenue Service (IRS), substantially limits the ability of Tribes to raise revenue for economic development activities that would generate new revenue for community-service purposes. The IRS) has unduly and narrowly defined how it can be used to access financing to address community, governmental and economic development goals.

As a result of this limited and narrow interpretation of "essential governmental functions", Tribes are precluded from utilizing the same revenue raising authority and tax advantages that other governmental entities enjoy. Under the Internal Revenue Code, income accruing to state and local governments is not taxable. Tribal tax free bonds, however, can only be used for essential governmental functions, a restriction not imposed upon states and local governmental entities. In essence, Tribes are treated as political entity anomalies, enjoying some of the tax benefits of states and localities and suffering many of the burdens of ordinary tax payers. Congress has a trust obligation to ensure that Tribal governments are afforded an equal federal tax status.

As the federal budget becomes more restrictive, Tribal governments, like state and local governments will have to find new revenue sources to support the delivery of essential government services. If Tribes are not granted a tax and bonding status similar to states and local governments, Indian governments will not be able to stimulate development nor sustain governmental services for our Tribal citizens. States and local governments are able to levy property and income taxes upon their constituents in order to raise revenue for financing economic development ventures. Tribes, however, have virtually no corresponding tax-advantaged financing tools to promote economic development. The goal of the Tribal Government Tax Status Act of 1984 was to provide a mechanism that would address this financial void and provide Tribes with the types of financial tools that further the development of an environment necessary for economic and social self-sufficiency.

In 2009, the American Recovery and Reinvestment Act ("ARRA") authorized Tribal governments for the first time, to issue tax exempt bonds for private development activities in the same manner as state and local governments. Prior to the passage of ARRA, tax exempt bonds issued by Tribal governments could only be used (with limited exceptions) for essential government purposes. ARRA lifted this restriction on a temporary, limited basis allowing Tribal economic development bonds to be issued subject to a $2 billion cap.

We strongly urge this Committee to advance measures that would permanently authorize Indian Tribal governments to use qualified tax-exempt private activity bonds for similar types of projects and activities as those allowed for State and local governments.

Urgent Need to Enhance Access to Capital

Indian Country has been ignored by investors as a result of many factors, including, geographic isolation, lack of resources, and perceived political risk. The trust status of Tribal land precludes its use as collateral for financing economic development incentives. Furthermore, businesses that prefer fee ownership of a business site for tax-incentive purposes are discouraged from seeking business development opportunities in Indian Country. As a result, Tribes encounter countless barriers to acquiring developmental capital and conventional sources of credit to finance economic initiatives. Federal policies that ignore these barriers, or underestimate their significance, hold little potential for success.

Sustaining growth beyond the federal investment means having access to capital and incentives to achieve such goals. Access to capital is fundamentally an issue of equal opportunity for Tribal citizens. Congress can help support the development of Tribal financial institutions serving Indian Country and shape the services provided by outside financial institutions currently situated to aid Tribal governments and their citizens. It is urgent for Congress to correct the unfair and unequal treatment of access to capital as the private sector has available to them, particularly the corporate sector.

Loan Guarantee Programs

Guaranteed financing is needed for Tribal economic development projects. For over a decade, one of the Bureau of Indian Affairs (BIA)'s most successful programs is the Guaranteed Loan Program for businesses. This program provides an attractive incentives and assurances for banks to expand and underwrite loans in Indian country, assisting Tribes and their members in accessing capital and encouraging lending to Indian-owned businesses. Loan guarantees are also an attractive financial measure because they result in the leveraging of federal dollars. Federal program funding and guarantees have been critically important in support of developing an economic foundation.

This program, however, was targeted for deep cuts despite its positive returns because not all of the funds were allocated in a timely manner to Tribal entities. Tribes should not be forced to bear the brunt of the agencies failure to properly manage the program and dispense financing in a timely manner. The BIA Loan Guarantee Program is a very important tool for raising the level of Tribal Self-Sufficiency. If not for the BIA Guarantee Loan Program, many Tribes would not, in most cases, be able to get loans from the standard sources available to other entities and businesses.

The BIA Loan Guarantee Program has been very instrumental to the Jamestown S'Klallam Tribe.

The BIA loan guarantees allowed Jamestown Properties, Inc. to construct needed facilities and create economic opportunities and jobs. The first BIA loan was used to guarantee a loan to construct two buildings on the Tribal campus. These buildings consist of the Community Center/Dental Clinic and the Social and Communities Services Building. The Community Center is the focal point of our Tribal cam-

pus and is used for Tribal events, as well as available for use by Tribal citizens. It is a business facility that brings great pride to the Tribe.

The Dental clinic which is located in the lower level of this building has created economic opportunities not only for the Tribe, but for the Tribal citizens employed there. The dental clinic sees both Tribal citizens, as well as members of the larger regional community. It creates resources to help fund the Tribal citizen dental program. The clinic is also one of the few clinics in the area that provides services to Medicaid dental patients. The Social and Community Services building houses Tribal programs which have a great impact on the Tribal citizens. These programs include youth, education, elders, and Indian Child Welfare.

Jamestown Properties also received loan guarantees to build the Longhouse Market and Deli. This building, which is leased to JKT Gaming, Inc., houses a unique and culturally stunning gas station and market. The Longhouse Market has proven to be highly successful not only in operating profits for the Tribe, but also increases the Tribe's tax base. Proceeds from the cigarette tax compact with the State of Washington helps provide funds for government services, which are severely underfunded by the Federal government. Fuel tax compact funds are used for needed transportation infrastructure projects. The Market has helped the Tribe diversify its economic base by providing non-gaming revenues.

Our Tribe urges the need for an enhanced loan guarantees for Tribal governments that will, at the very least, open the door to credit, reasonable rates, and the ability to repay tax-exempt debt. Part of the Congressional and Federal rationale to cut back this program is that the program could be duplicating other services, such as the SBA loan programs. This assumption is wrong and will undermine the Tribes economic development efforts. This important program has very positive benefits and successes for Indian country. The default rate is low and key in assisting Tribes with economic development and providing additional jobs to Indian country. We respectfully urge this Committee to preserve and even enhance this successful program.

Conclusion

Investing in our Jamestown Tribal community and business operations and Tribes across Indian Country is worthwhile. The Tribe's progressive approach has proven that a small Tribe can be a major force for good in the community—not only for Tribal citizens, but for the entire region. This success has led to a decreased dependence on federal funding, and the return of the independent, self-reliant nature that has always characterized the S'Klallam people. We effectively and efficiently combine federal and Tribal resources to support economic development projects.

When Congress invests in Indian Country, we prove to be good investments to strengthen our local, state and national economies. We can put our labor force to work right away, build our infrastructure for future growth, benefit surrounding communities, and most important, improve the health and well-being of our citizens, the goal of every government.

In conclusion, the Jamestown S'Klallam Tribe endorses and promotes the positions and recommendations of our National Inter-Tribal organizations, including the National Congress of American Indians (NCAI), the Native American Finance Officers Association (NAFOA) and the Native American Contractors Association (NACA). In particular, we respectfully request to include in the *Congressional Record* the briefing materials prepared by NCAI titled, "White House Native American Business Leaders Roundtable" and ask the Committee to support this proposal and the recommendations contained therein.

Thank you again for the opportunity to present these views. We look forward to continuing our work with the Committee in advancing these goals.

Attachment

WHITE HOUSE NATIVE AMERICAN BUSINESS LEADERS ROUNDTABLE

BRIEFING MATERIALS

AUGUST 4, 2011

CONTENTS

This document is a collaborative effort of leaders from throughout Indian Country whom the White House invited to the Native American Business Leaders Roundtable. While the development of this document was led by the staff of the National Congress of American Indians (NCAI) the recommendations do not necessarily reflect the official position of NCAI or our members.

CONTEXT FOR THIS ROUNDTABLE

As the American economy continues its slow recovery, it is increasingly evident that

> *Urban communities – while a growing proportion of America's population by some measures – cannot thrive, nor can the nation, if tribal nations (and other rural communities) are not successful. In short, sustainable prosperity in America is intimately linked to a robust rural-urban partnership that fully utilizes the innovation of Native nations.*[1]

This reality is at the heart of the issues that will be addressed in this roundtable. The Administration faces a unique opportunity to remove barriers to the success of tribal economies. These efforts will ultimately benefit tribal communities and stimulate economic growth that builds a stronger America.

As the "cloud of uncertainty" lifts over Washington this week, it is fitting that the White House Native American Business Leaders Roundtable Discussion takes place immediately after the new debt ceiling law goes into effect. The possible outcomes from increased cuts and revenue demands may significantly impact tribal economies – both those that are struggling during the current downturn and those that are thriving.

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."[2] The profile of Native people on issues related to this roundtable demonstrate our communities have borne the brunt of this recession (and previous recessions):

Business Development

- 2007 data from the Census Bureau identified 236,967 businesses owned by individual American Indian- and Alaska Native people. While this figure was an increase of 17.7 percent from 2002 (on par with national growth). These data excluded tribally-owned businesses and represented a significantly decreased rate from that seen in the 1990s.
- Individually-owned American Indian and Alaska Native businesses generated $34.4 billion in receipts in 2007, a 28 percent increase from 2002.[3]

Access to Capital

- Native people are among America's most underbanked populations with a full 44.5 percent of American Indian and Alaska Native households underbanked, and 15.6 percent completely unbanked.[4]

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[1] National Congress of American Indians, (June 2011) "Innovative Native Nations in Rural America: Key Partners in Building Sustainable American Prosperity"

[2] 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

[3] US Census Bureau, (March 15, 2011), "Census Bureau Reports American Indian- and Alaska Native-Owned Businesses Generated $34 Billion in Receipts in 2007." Retrieved at: http://www.census.gov/newsroom/releases/archives/business_ownership/cb11-47.html

- Eighty six percent of Native communities lack access to a single financial institution (with a broad definition that included a simple ATM).[5]
- Fifteen percent of Native community members need to travel over 100 miles to access a financial institution.[6]
- The Department of the Treasury estimated a $44 billion unmet capital need in Indian Country in 2001.[7]

Workforce Development

- Native communities have faced Depression level unemployment for generations. In 2000, when the national unemployment rate was less than 3.5 percent, the on-reservation unemployment rate was 22 percent.[8]
- The Economic Policy Institute reports that the Native unemployment rate has risen at a rate 1.6 times the size of the white increase during the recession (to 15.2 percent for all Native people).[9]

Broadband

- Basic telecommunications infrastructure is unavailable to approximately one-third of Native people. Nationally, telephone access is available to 98 percent of the population but only 67.9 percent of tribal lands, with many tribes where over half of citizens lack access to telephone services.[10]
- Broadband penetration rates are even more divergent. While 95 percent of Americans live in housing units with access to fixed broadband infrastructure, broadband is available to less than 10 percent of Indian Country.

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 stay true to the federal trust responsibility. We encourage the Administration, and the Joint Committee on Deficit Reduction, to honor the trust relationship as they consider spending cuts and revenue increases to address the debt and deficit. Maintaining investment in tribal innovation is essential to ensuring tribes can fully contribute to America's economic recovery. Balancing the budget will not sustain America's economy if it leads to spending cuts that create further unemployment on reservations and increase demand on already strained programs in communities that already have the highest rate of unemployment in the nation.

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[4] FDIC National Survey of Unbanked and Underbanked Households (Dec. 2009) http://www.fdic.gov/householdsurvey/ p10.

[5] Department of the Treasury, (2001) *Native American Lending Study*, http://www.cdfifund.gov/docs/2001_naeta_lending_study.pdf

[6] Treasury 2001

[7] Treasury 2001

[8] U.S. Census Bureau, Census 2000 Summary File 4

[9] Algernon Austin, (2010), "Different Race, Different Recession: American Indian Unemployment in 2010." Retrieved at: http://www.epi.org/page/-/pdf/ib289.pdf?nocdn=1

[10] 2006 GAO 06-189 Report, *Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands*

As Congressional leaders consider tax reform, we encourage the Administration and Congress to ensure any tax reform deal ensures tribes have access to financing options available to other governments and preserves existing incentives that support the programs and services that are needed in tribal communities more than almost any other sector in America.

Native people are America's most rural population and represent more than 5 million Americans, 1.7 percent of the population.[11] Tribal lands cover over 100 million acres, or more than 5 percent of the nation's land base, an area comprising more than 100 million acres. Taken together, this area would make Indian Country America's fourth largest state behind only Alaska, Texas, and California. This sizable land base and the unique status of tribes as members of the "American family of governments," acknowledged in the Commerce Clause of the Constitution, Indian Country is a key incubator for policy innovation to build a strong American economy.

In spite of the opportunity presented by tribal nations, Native people face significant barriers to economic success. As outlined below in the energy case study (page 32), action to remove regulatory barriers could unleash significant economic potential in Indian Country and make an important contribution to the development of America's renewable energy future.

We welcome the opportunity to engage with key Administration officials on these important issues to the future of Indian Country and our nation.

[11] 2010 Census [P.L. 94-171] Summary File Data and Population Distribution Chart. Retrieved from: http://www.census.gov/rdo/data/2010_census_redistricting_data_pl_94-171_summary_files.html

FULL LIST OF RECOMMENDATIONS

OVERARCHING RECOMMENDATIONS

I. HONOR TRIBES AS GOVERNMENTS IN ALL POLICY AREAS

a) 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
b) Encourage Congress to include tribes in the definition of "state" in all relevant legislation
c) Develop clear tax and regulatory policy in consultation with tribal governments

II. PROMOTE PUBLIC-PRIVATE PARTNERSHIPS TO GROW THE INDIAN COUNTRY ECONOMY

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

III. IDENTIFY ALL FEDERAL ECONOMIC DEVELOPMENT PROGRAMS AVAILABLE TO TRIBES AND COMMUNICATE TO INDIAN COUNTRY

a) Develop a list of all economic development programs that can be utilized by tribes and Native non-profits
b) Utilize low-cost means to communicate opportunities to Indian Country

IV. STREAMLINE FEDERAL TRUST DECISIONS TO PRIORITIZE ECONOMIC DEVELOPMENT

a) 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.)

V. IMPROVE DATA COLLECTION METHODS AND ENSURE THAT ACCURATE DATA ARE MADE AVAILABLE TO POLICYMAKERS

a) 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)
b) Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country

c) 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
d) Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise
e) Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself

VI. WAIVE MATCH REQUIREMENTS TO ACKNOWLEDGE THE UNIQUE CHALLENGES FACED BY NATIVE COMMUNITIES

a) Eliminate match requirements for grants to tribal governments

ACCESS TO CAPITAL

VII. NEW MARKETS TAX CREDIT

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

VIII. SECTION 1603 GRANTS

a) Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program

IX. TRIBAL TAX-EXEMPT BONDS

a) Eliminate the 'Essential Government Function' analysis currently used to qualify tribal projects for tax-exempt financing
b) Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing
c) Institute federal guarantees to back tribal bonds on the market
d) Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933

TRIBAL ECONOMIC DEVELOPMENT BONDS

a) Expedite the completion of the Tribal Economic Development Bond study under the Recovery Act
b) Expand the timeframe for current projects to issue a bond offering
c) Adjust the general time requirements for bond offering under the TED bond program
d) Reallocate unused funding for another bond offering and adjust cap limits to encompass larger-scale development projects
e) Expand eligibility to include ANCSA corporations and issue clarification that Alaskan tribes and Alaska Native Corporations qualify to issue Tribal Economic Development Bonds

TAX-EXEMPT PRIVATE ACTIVITY BONDS

a) Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value

X. SURETY BONDING

a) Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies
b) Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction
c) Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises
d) Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital

XI. TAX EXTENDERS

a) Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits
b) 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

XII. LEASES, RESOURCE SALES & LAND INTO TRUST APPLICATIONS

a) Prioritize the timely completion of procedures affecting economic development in indian country by the Department of the Interior
b) Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
c) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way

XIII. BARRIERS TO ENERGY DEVELOPMENT

a) 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
b) Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
c) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way
d) Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land
e) Amend or clarify regulations to enhance access to energy development opportunities

XIV. CDFI FUND – NATIVE INITIATIVES

a) Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund
b) Promote agency outreach to Native CDFIs to connect them to potential funding opportunities
c) Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI
d) Allow federal funds to be used as qualified match for awards to Native CDFIs
e) Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments
f) Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs
g) Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs

XV. COMMUNITY REINVESTMENT ACT

a) Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country
b) Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits
c) Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks
d) Impose meaningful consequences for non-compliance with CRA requirements
e) Ensure bank Performance Evaluations include analysis of services provided to Native communities

XVI. SMALL BUSINESS ADMINISTRATION

a) Support the tribal small business 8(a) program
b) Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries

c) Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget
d) Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding
e) Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers
f) Require 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.
g) Seek GSA building leases from qualified minority interests.

XVII. BUY INDIAN ACT

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

XVIII. TRADE MISSIONS

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

SKILLS AND JOB TRAINING

XIX. STREAMLINING FEDERAL EMPLOYMENT AND TRAINING PROGRAMS

a) Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding
b) Rescind the March 2009 OMB A-133 Compliance Supplement
c) 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

XX. TRIBAL COLLEGES

a) Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges
b) 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
c) Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector
d) Support TCUs in obtaining more research grants that can assist the tribal nations that they serve

e) 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
f) Continue support for UTTC to develop as a regional training center for law enforcement correctional officers
g) Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs

XXI. EMERGING EMPLOYMENT OPPORTUNITIES

a) 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
b) Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs

XXII. YOUTHBUILD

a) Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs
b) Work with DOL to utilize regulatory means to ensure access for tribal grantees
c) 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
d) Relax Department of Education regulations to allow YouthBuild to compete for innovation funds

XXIII. CURRENT WORKFORCE DEVELOPMENT PROGRAMS AND SERVICES

a) Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities
b) Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding

ACCESS TO BROADBAND

XXIV. RURAL DEVELOPMENT LOAN PROGRAM

a) Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives
b) Redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands
c) Identify and communicate programs that offer tribes competitive financing options (e.g. low interest rates and extended repayment terms or the waiver of non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant administered by federal agencies)

d) Create a tribal position, filled by an American Indian or Alaska Native, within the USDA RUS to encourage further collaborative efforts with tribes

XXV. UPGRADE E-911 ABILITIES

a) 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
b) Ensure that wireline telephone carriers have an updated ALI database that is inclusive of tribal lands
c) Ensure that wireless mobile telephone carriers fully implement and continually update E-911 Phase 2 on tribal lands ensuring that this service is accurate within 300 meters when determining the location of a caller and subsequently routing them to an appropriate PSAP
d) Provide and support amendments to be inclusive of tribal governments and lands in HR 2629 "Next Generation 9-1-1 Advancement Act of 2011"

XXVI. COMMUNICATIONS INFRASTRUCTURE

a) 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
b) 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
c) Ensure adequate access to tax exempt bond financing and that broadband deployment meets the 'essential government function'
d) Support a 'tribal-centric' build out model for communications infrastructure
e) Use the E-Rate model for tribal communities to prioritize the need for communications networks and for managing costs and distribution logistics
f) Continue waivers for the E-Rate model to provide access to the general public in tribal communities beyond the 'school hours' designation
g) Urge the FCC to alter the definition of 'library' to allow eligibility for tribal libraries to receive E-Rate support

XXVII. UNIVERSAL SERVICE FUND (USF)

a) 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
b) Support the creation of a separate tribal account within the Mobility Fund
c) Create a 'Tribal Seat' on the Joint Federal-State USF Board to ensure a voice for Indian Country to receive these vital communications services
d) Include broadband internet service access and mobility services in the list of services provided by the USF
e) Allocate and reserve spectrum for tribal communities and make existing spectrum over tribal lands available for public interest needs

f) Develop a comprehensive Native Spectrum Policy to enhance tribal access to spectrum for public needs and the ability to acquire and retain licenses to said spectrum
g) Urge the FCC to designate 'unserved areas' and 'unserved broadband areas' as those areas that are 15% below the nationwide average of telecommunications service
h) Increase support for tribal telecommunications corporations to attain ETC designation in order to provide service to tribal members
i) Include provisions for tribal communities to receive funding from the CAF, while ensuring the continuation of vital analog services such as Lifeline, Link-Up, and the High Cost programs

XXVIII. SPECTRUM DASHBOARD DATA

a) Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data
b) Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities

XXIX. REVERSE AUCTIONS OF SPECTRUM

a) 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
b) Ensure adequate consultation is undertaken and tribes are compensated in the case that reverse auctions continue

XXX. TRIBAL LANDS BIDDING CREDIT (TLBC)

a) Enforce the TLBC program and ensure that recipients of these credits build out service in tribal communities
b) Intervene when providers have experienced obstacles presented by state or local governments
c) Reacquire spectrum allocated to entities who fail to serve their designated tribal lands and give tribes first priority to obtain these licenses at reserve or discounted prices

XXXI. PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM (PTFP)

a) Extend tribal radio construction permits nearing the expiration deadline
b) Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television

OVERARCHING RECOMMENDATIONS

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 spans across all federal agencies and not simply the Department of the Interior (DOI). The consultation policies that emerged from or were enhanced by E.O. 13175 serve an important purpose, but the federal government must progress beyond consultation to fully support economic development in Indian Country. Tribes need true government partnership with all federal agencies. 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.

I. HONOR TRIBES AS GOVERNMENTS IN ALL POLICY AREAS

Indian tribes are polities whose governments have all of the privileges and immunities routinely reserved to other governments in the U.S. federal structure. 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 (Recovery Act) 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 denied tribes economic development opportunities and deprived 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 if tribal programs qualify for tax-exempt financing; and, general taxing inequities which favor states' encroachment into the taxing jurisdiction of Indian tribes.

Indian Country was heartened by recent legislative efforts that affirmed tribal sovereignty and the status of tribes as governments. In the specific policy areas covered by this roundtable, the Dodd-Frank Act's definition of "state" to include tribal governments is a model that should be pursued in other federal legislation. Robust economic growth in Indian Country also depends on clear tax and regulatory policy that affirms tribal sovereignty. Examples of this are allowing tribes to fully enact and utilize tax and regulatory policy to encourage economic growth; allowing tribal corporations to establish S Corporations; or pre-empting state taxation on all activities, and/or transactions, occurring on leases within the contiguous borders of an Indian reservation and/or Indian country. The development of such a tax policy is critical to building strong, sustainable tribal economies.

Specific Recommendations

a) 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
b) Encourage Congress to include tribes in the definition of "state" in all relevant legislation
c) Develop clear tax and regulatory policy in consultation with tribal governments

II. PROMOTE PUBLIC-PRIVATE PARTNERSHIPS TO GROW THE INDIAN COUNTRY ECONOMY

In a time of constrained federal resources, the Administration can significantly contribute to economic growth in Indian Country by using its significant convening power to draw the attention of private sector and philanthropic investors to the opportunities presented by tribal nations. 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. 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 myriad other opportunities with respect to labor programs and broadband deployment as listed below.

Specific Recommendations

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

III. IDENTIFY ALL FEDERAL ECONOMIC DEVELOPMENT PROGRAMS AVAILABLE TO TRIBES AND COMMUNICATE TO INDIAN COUNTRY

The network of federal investments that promote economic development is extremely complex. As the Administration demonstrated with the Recovery.gov clearinghouse, access to information is critically important for efficient and effective utilization of federal resources. The simplest starting point is to create a central list identifying financing options from various agencies and federal programs that tribes and tribal members can use for business development. As an example, the Department of Justice (DOJ) has instituted a Coordinated Tribal Assistance Solicitation (CTAS) listing, which is a central location for all tribe-specific funding from the various agencies within DOJ. A similar, cross-department approach in the economic development sector would help tribes and interested individuals access the Indian Country economic development opportunities available from the Department of Treasury, the Small Business Association, the Bureau of Indian Affairs, and other agencies.

Specific Recommendation

a) Develop a list of all economic development programs that can be utilized by tribes and Native non-profits
b) Utilize low-cost means to communicate opportunities to Indian Country

IV. STREAMLINE FEDERAL TRUST DECISIONS TO PRIORITIZE ECONOMIC DEVELOPMENT

The Department of the Interior (DOI) exercises substantial oversight in Indian affairs. Land into trust applications, land transfers, leases for business development, and the sale of natural resources all must be approved by the Secretary of the Interior. In the economic development sphere, this oversight process puts a drag on 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 will encourage development in Indian Country and reduce the uncertainties that can discourage outside entities from partnering with Indian tribes.

Specific Recommendation

a) 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.)

V. IMPROVE DATA COLLECTION METHODS AND ENSURE THAT ACCURATE DATA ARE MADE AVAILABLE TO POLICYMAKERS

While federal data collection itself does not stimulate business development, data are 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. These data deficiencies impair the ability of tribal, federal, state, and local policymakers to identify and respond effectively to needs in Native communities. 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). Savings gained from collaboration could be applied to the collection of additional primary data from Indian Country.

Specific Recommendations

a) 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)
b) Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country
c) 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
d) Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise
e) Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself

VI. WAIVE MATCH REQUIREMENTS TO ACKNOWLEDGE THE UNIQUE CHALLENGES FACED BY NATIVE COMMUNITIES

Most tribes have extremely limited resources, philanthropy in rural and tribal communities is anemic at best, and much of the money available to tribes (and Native nonprofits) comes from grants and other federal sources. Because tribes lack the tax base available to other governments, imposing a match requirement on tribal governments has frequently resulted in tribes scrambling to find matching funds from limited resources and has often led to the underutilization of funds or precluded tribes from applying for them.

Specific Recommendations

a) Eliminate match requirements for grants to tribal governments

ACCESS TO CAPITAL

While some tribes have succeeded in the area of business development and job creation, most tribal governments and individual tribal citizens have struggled to access the necessary capital to build strong, healthy economics within their sovereign territories. Expanded access to capital includes three different strategies that can be employed by the federal government: (1) greater access to traditional financial capital markets (investment capital, mortgage capital, etc.); (2) greater access to federal dollars that can provide seed money for project development; and, (3) promoting strategies that expand existing tribal businesses—"raising capital" by generating increased business revenues. The following is a list of suggestions for expanding access to capital in Indian Country that the current Administration could promote without legislation and with little to no cost.

FINANCING PROJECTS, FEDERAL INCENTIVES AND PROGRAMS

Finance is the foundation of business development. 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.

VII. NEW MARKETS TAX CREDIT

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 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,[12] 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. Beyond the IRS designation of Indian tribes as a targeted population, the government should further clarify that Section 17 Corporations, as well as other wholly owned tribal entities, are qualified active low-income community business (QALICB).

The complicated nature of utilizing NMTCs has meant they are underutilized to serve Native communities. Under the NMTC program, the actual credit is passed through a Community Development Entity (CDE) to potential investors. In return, QALICBs are able to seek funding directly from the CDE. Tribes need assistance in locating CDEs that are willing to contribute towards economic development projects in Indian Country. Clarification of Section 17 Corporations, and other wholly owned tribal entities, as QALICB would help tribes attract CDEs

[12] *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).

willing to work with tribal communities. A structure that would allow three to five Native projects to partner to meet the current minimum threshold of $10 million for smaller projects.

Specific Recommendations

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

VIII. SECTION 1603 GRANTS

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 or wholly owned tribal entities, and 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.

Specific Recommendation

a) Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program

IX. TRIBAL TAX-EXEMPT BONDS

Tax-exempt bond financing has remained an underused option for tribes because of 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.

The Department of the Treasury (the Treasury) has indicated the need for a more streamlined approach in determining which tribal projects qualify for tax-exempt financing. A reasonable and straightforward approach would be to consider any activity undertaken by a Section 17 Tribal Corporation, or other wholly owned tribal entity, to meet the threshold necessary to qualify for tax-exempt financing. This approach makes sense because such tribal corporations are incorporated for the sole purpose of supporting the government functions of the tribe. While tribal governments may have more "corporate like" elements than their state and local counterparts (because of Indian Reorganization Act impositions, restrictions on their power to tax, and legislative requirements like those in the Indian Gaming Regulatory Act), tribes' business engagement is really no different from state and local governments' revenue-generating business engagement with state lotteries, alcohol sales, hunting and fishing licenses, and the like. Any meaningful economic development initiative pertaining to tribes must recognize these essential similarities between tribal governments, state governments, and local governments rather than penalize tribes for focusing on a mix of revenue-generating activities made necessary by adherence other federal laws.

In addressing the second and third concerns, 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. However, from a tribal perspective, high unemployment rates, the trust status in which their land is held, and inequities in current tax law make it impossible for tribes to secure their bonds using their tax base. 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.[13] Also, the IRC currently prevents tax-exempt treatment of any bond backed by federal guarantees.[14] We recommend bonds guaranteed by the Department of the Interior 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.

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.

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[13] *See* Indian Financing Act, 25 U.S.C. §§ 1451

[14] *See* Internal Revenue Code, 26 U.S.C. § 149 (b)

Specific Recommendations

a) Eliminate the 'Essential Government Function' analysis currently used to qualify tribal projects for tax-exempt financing
b) Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing
c) Institute federal guarantees to back tribal bonds on the market
d) Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933

TRIBAL ECONOMIC DEVELOPMENT BONDS

Section 1402 of the Recovery Act included a provision for the issuance of Tribal Economic Development Bonds (TED Bonds). The purpose of the TED Bond component of the Act 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. The Secretary of the Treasury was to issue a study on TED Bonds no later than a year after enactment of the Recovery Act. More than two years later, a completed study on the TED Bonds has not been released. The Administration should ensure the study is completed and disseminated as soon as possible. If the findings from the study indicate that TED bonds were successful, the Administration should support the program's transition out of the pilot phase and into full program implementation.

The TED Bond offering under the Recovery Act also needs several adjustments. Currently, the date by which an applicant must declare that they reasonably expect to issue a bond is approximately one year from the requested allocation. This timeframe needs to be expanded. Tribes are finding that, for a variety of reasons, it takes longer than a year to even get most projects shovel ready, let alone ready for a fair market bond offering. One of the reasons for this is the arduous BIA leasing process (see below). Next, the $30 million cap on TED Bonds needs to be lifted to ensure tribes have access to better financing options. The initial rationale given for the $30 million cap was that there were concerns about larger, wealthy tribes utilizing the majority of the TED Bond funding if no cap was instituted. However, there still remains a large unused amount of allocated funding. One of the reasons for this is that 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 while utilizing 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. Finally, Alaska Native Claims Settlement Act (ANCSA) corporations seek eligibility to utilize TED bonds to finance projects to meet the myriad needs of Alaska Native communities.

The Treasury Department needs to reallocate the remaining funds for another bond offering with these suggestions in mind. The TED Bond component of the Recovery Act presents a great development opportunity for tribes and should be maximized under existing resources.

Specific Recommendations

a) Expedite the completion of the Tribal Economic Development Bond study under the Recovery Act
b) Expand the timeframe for current projects to issue a bond offering
c) Adjust the general time requirements for bond offering under the TED bond program
d) Reallocate unused funding for another bond offering and adjust cap limits to encompass larger-scale development projects
e) Expand eligibility to include ANCSA corporations and issue clarification that Alaskan tribes and Alaska Native Corporations qualify to issue Tribal Economic Development Bonds

TAX-EXEMPT PRIVATE ACTIVITY BONDS

Currently, tribes may only issue tax-exempt private activity bonds (PABs) for tribal manufacturing facilities,[15] while states may issue PABs for a wide variety of development projects (*e.g.*, airports, docks and wharves, mass commuting facilities, facilities for the local furnishing of electric energy or gas, sewage facilities, as well as a host of other qualifying purposes).[16] Expanding the PAB authority of Indian tribes will help attract and promote economic development within the contiguous borders of reservations and territories. The latest report issued by the Advisory Committee on Tax Exempt and Government Entities (ACT) suggested expanding tribal PAB authority to extend to commercial projects which have economic (job creation), environmental, or other social value (*e.g.*, renewable energy projects; retail facilities; tourism and recreation facilities; land acquisition or reacquisition of historical homelands, etc.).[17] We support this recommendation and suggest that any regulatory, and/or procedural processes, such as volume caps, be developed through consultation with tribal leaders.

Specific Recommendation

a) Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value

X. SURETY BONDING

Expansion of the BIA's guaranteed loan program will reduce the perceived risk associated with tribal sovereign immunity that is assumed by insurance companies. 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

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[15] *See*, IRC 26 U.S.C. § 7871 (c)(2), (c)(3).
[16] *See*, IRC 26 U.S.C. §§ 141 (e), 142.
[17] Advisory Committee on Tax Exempt and Government Entities (ACT) Report, *Indian Tribal Governments: Supplemental Report on the Implementation of Tribal Economic Development Bonds Under the American Recovery and Reinvestment Act of 2009*, 12, June 15, 2011.

government. The Administration should use existing authorities to provide surety bond guarantees.

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.

The surety requirement on construction contracts arises out of the Miller Act. There is only one provision in the statute – 40 USCA § 3134 -- which addresses the waiver of Miller Act requirements for certain types of contracts. Under this provision, the Administration, through the Secretaries of the Army, the Navy, the Air Force and Transportation may waive Miller Act requirements for: (1) cost-type contracts that entail the construction, alteration or repair of any public building or public work of the Federal Government; or, (2) contracts that entail the manufacturing, producing, furnishing, constructing, altering, repairing, processing or assembling of vessels, aircraft, munitions, materiel, or supplies for the Army, Navy, Air Force or Coast Guard. There is one additional provision in the law that authorizes the Secretary of Transportation to grant the waivers for contracts for the construction, alteration, or repair of vessels when the contract is made under the provisions of two other laws.

As noted in the overarching recommendations above, the Administration can also utilize the federal government's convening power to bring together surety bonding companies to educate them on the potential offered by tribal projects. For a variety of reasons, tribal enterprises have not yet developed robust working relationships with the various surety bonding companies. Convening a meeting between surety bonding companies and tribal economic development enterprises would make a substantial contribution to establishing strong working relationships for future projects.

Specific Recommendations

a) Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies
b) Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction
c) Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises
d) Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital

XI. TAX EXTENDERS

The accelerated depreciation and Indian employment tax credits are inconsistently available because they are renewed from year to year and are often not renewed in time or are made retroactive. This inconsistency makes them unreliable as investment vehicles to support multi-year, large-scale projects - which they are intended to incentivize.

The Administration should support long-term investment and production tax incentives that can be counted on by investors and used as an asset by tribes. Making these incentives permanent would not add additional cost on an annual basis. It would also attract non-Indian businesses into Indian Country instead of only benefiting those non-Indian businesses already doing business on the reservation.

Also, these federal incentives do little for tribally owned entities. The initial intent was to attract outside business to promote economic development and job creation in Indian Country. As a result, tribally owned businesses receive no incentives. This is discouraging because tribal businesses encourage job growth and economic development better within Indian Country than outside entities because they are investing in their own community. We recommend the accelerated depreciation and Indian employment tax credit be available to Section 17 Corporations, and other wholly owned tribal entities, in the form of tax credits which may be sold on the secondary market.

Specific Recommendation

a) Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits
b) 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

OVERCOMING ADMINISTRATIVE BARRIERS

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.

XII. LEASES, RESOURCE SALES & LAND INTO TRUST APPLICATIONS

There is an extraordinary current 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.[18] DOI must

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

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,"[19] 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 adjustment in current procedures allows the tribe to partner with DOI to expedite the leasing process.

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 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.

Specific Recommendations

d) Prioritize the timely completion of procedures affecting economic development in indian country by the Department of the Interior
e) Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
f) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way

XIII. BARRIERS TO ENERGY DEVELOPMENT

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.

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[19] 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.

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.

Specific Recommendations

a) 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
b) Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
c) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way
d) Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land
e) Amend or clarify regulations to enhance access to energy development opportunities

REGULATING TRIBAL FINANCE DEVELOPMENT

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.

XIV. CDFI FUND – NATIVE INITIATIVES

Currently, there are more than 60 certified Native CDFIs located in 18 states serving Indian Country, Alaska, and Hawaii. The majority of them 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. They also play a critical role in developing financial and entrepreneurial skills – a direct investment in the reservation workforce.

While the recent growth in certified Native CDFIs has been met with increased federal appropriations, the Native Initiatives do not have a dedicated line-item in the federal budget. The importance of the Native Initiatives should be underscored by an appropriation of at least 10 percent of the CDFI Fund budget. We encourage the Administration to support the inclusion of permanent language within the Riegle Community Development and Regulatory Improvement

Act, the CDFI's enabling act, to ensure the longevity and continued support for the Native Initiatives.

The emphasis of the CDFI Fund on non-government entities has meant that tribal governments have been kept at arm's length in most cases of CDFI development. On the other hand, some tribal governments have invested deeply in their CDFIs and seen significant success. Exploring regulatory or legislative options to explore certification of tribally-owned CDFIs may offer potential to engage tribal governments more fully in financial institution development to serve their communities.

In a recent nationwide survey of Native CDFIs, 90 percent of respondents indicated receiving federal funding in the last 10 years. 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.[20] This demonstrates a clear need for better agency outreach and coordination to ensure the success of Native CDFIs.

Another explanation for low utilization of other federal funding sources is the onerous match requirements applied to many federal government programs. Given the proven success of Native CDFIs, regulations should be amended to eliminate match requirements completely or at least allow other federal awards (e.g. HUD, the Administration for Native Americans, and other agencies) to be used to meet the match requirement associated with CDFI Fund awards.

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. These successes should be specifically shared with tribal governments in appropriate regional and national settings.

As noted above, mainstream financial institutions provide quite limited services to Native communities. The Administration should use its convening power to bring together financial institutions to explore strategies to increase access to private financing that can be utilized by Native CDFIs.

Native CDFIs fulfill an important role in developing tribal economies. However, the majority of Native CDFIs report that they have little to no contact with their representatives in Congress. The Administration should encourage Native CDFIs to communicate on a regular basis with their elected officials. When elected officials hear and see the good work Native CDFIs are doing for their communities they will be stronger advocates for Native CDFIs and help support budgets that include community development funding.

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

Specific Recommendations

a) Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund
b) Promote agency outreach to Native CDFIs to connect them to potential funding opportunities
c) Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI
d) Allow federal funds to be used as qualified match for awards to Native CDFIs
e) Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments
f) Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs
g) Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs

XV. COMMUNITY REINVESTMENT ACT

Lack of data in Indian Country often hinders tribes' ability to support their initiatives. This is no different in the area of small businesses and financing for tribes. The Dodd-Frank Act requires that financial institutions collect and that the Consumer Financial Protection Bureau report information concerning credit applications made by small businesses and women- or minority-owned businesses. These data should be specifically analyzed to identify challenges to capital access for Native entrepreneurs. It would also be helpful for financial institutions to collect Census tract data on community development lending and investing; small business lending; and bank deposit and consumer lending. This emphasis on data that is specific to Indian Country will enable tribal communities to evaluate bank performance. This is important since a large body of research indicates that minorities received more high-cost and risky lending than was justified based on their creditworthiness.

Despite the significant alternative energy potential in Indian Country, there are numerous regulatory barriers to capitalizing on the renewable energy available on tribal lands. As noted above, despite these opportunities, tribes have been left out of federal efforts – and many private investments – to support domestic energy development. To ensure maximum benefit for the national, regional, and tribal economies, tribes can and must be provided with the same opportunities as states to become meaningful participants in the nation's clean energy future. As recommended by the Center for American Progress, the agencies should clarify that both investments in alternative energy facilities and energy efficiency enhancements can be considered for CRA credit. This regulatory clarification offers much promise for economic development and innovation in tribal communities.

The few Native communities that do have bank branches on their reservations, are afflicted by one of two challenges: (1) served by small or intermediate small banks whose CRA exams are not sufficiently robust; or (2) 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 substantial tribal lands and/or Native populations assess the degree to which those institutions serve the Native communities in question.

Specific Recommendations

a) Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country
b) Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits
c) Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks
d) Impose meaningful consequences for non-compliance with CRA requirements
e) Ensure bank Performance Evaluations include analysis of services provided to Native communities

ENCOURAGE ENTREPRENEURSHIP AMONG TRIBAL MEMBERS ON AND OFF THE RESERVATION

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.

XVI. SMALL BUSINESS ADMINISTRATION

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 the Section 811 has had a chilling effect on government contractors.

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

a) Support the tribal small business 8(a) program
b) Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries
c) Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget
d) Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding
e) Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers
f) 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.
g) Seek GSA building leases from qualified minority interests.

XVII. BUY INDIAN ACT

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.

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 the Department of the Interior, Indian Health Service 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.

Specific Recommendations

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

XVIII. TRADE MISSIONS

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

Specific Recommendation

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

ALTERNATIVE ENERGY
A CASE STUDY DEMONSTRATING THE IMPACT OF REGULATORY CHANGES

Indian Country contains vast potential in the areas of solar and wind energy development. The Department of Energy (DOE) estimates that wind power from tribal lands could satisfy 32 percent of total U.S. electricity demand, and tribal solar resources could generate twice the total amount of energy needed to power the country. Yet at this time only one commercial scale renewable energy project operates in Indian Country. While other tools have been successful to develop tribal economies, renewable energy development both mirrors tribal values and beliefs and would meet a critical need to invest in a secure energy future for America.

Why is the process stalled?
Currently, there are few incentives for tribes to take an ownership interest in energy development projects. However, there are a number of energy development incentives, such as tax credits, available for non-tribal entities. This often compels partnerships with outside entities in order to access the necessary capital and infrastructure needed to develop a project.

Even when these partnerships are formed, the need for the Secretary of the Interior to approve leases on tribal trust land acts is a significant disincentive to energy development projects. Often times, lease approval may take longer than a year and by that time, the initial enthusiasm behind the established business partnership has all but disappeared.

The major barrier to allowing tribes to benefit from energy development projects is the state's ability to tax the non-Indian entity doing business on the reservation. This taxation problem has frustrated wind energy development projects in California and South Dakota, as well as general business development in a variety of other locations.

Solutions
Aside from legislation clarifying that states cannot tax activity occurring on leased tribal lands, tribal corporations need greater flexibility in financing options. Allowing tribal corporations to receive transferable tax credits and to utilize Section 1603 grants for energy development projects, as discussed above, would encourage tribal ownership over energy development projects, thereby alleviating the taxation issues which accompany partnerships with outside entities. Also as discussed above, the suggested changes to tax-exempt bonding authority and the clarification regarding tribal corporations' use of the New Markets Tax Credit, would allow tribes to develop their energy resources as well. Even clarifying regulations noting that alternative energy investments would qualify for Community Reinvestment Act credit would add to the possible capital to fund tribal projects.

This brief example demonstrates how simple regulatory fixes, outlined in the preceding recommendation, could encourage economic development within Indian Country, its basic principles can be applied to most economic ventures on tribal lands.

SKILLS AND JOB TRAINING

Any viable economic development initiative must include provisions for workforce development. This includes 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 myriad 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.

XIX. STREAMLINING 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 and the need to contribute to a robust economic recovery, streamlined federal programs are a necessity that senior Administration officials promote regularly as a promising practice for federal investments.

In that context, it is troubling that the Administration has continued past practice of offering tepid support – and in some cases presenting obstacles to the success of –the Indian Employment, Training, and Related Services Demonstration Act of 1992, otherwise known as PL 102-477. 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 the Department of the Interior, Office of Indian Energy and Economic Development and formula funded programs include those offered through the Bureau of Indian Affairs, Department of Labor, Department of Health and Human Services, 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 the Department of the Interior, which required 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 PL 102-477. Once programs and associated funds are consolidated under PL 102-477 they lose their separate identities and are spent in accordance with the 'single budget' plan. Currently Section 430 of the House appropriations bill seeks to rescind the March 2009 Compliance Supplement to allow for tribes to annually audit, and be audited by the federal government, to track 477 funds.

Indian Country's interest in rescinding the OMB ruling is about a more robust accountability system proposed by the Native American Employment and Training Council and the community of Indian tribes and other Native grantees funded under Section 166 of the Workforce Investment Act (WIA) strongly supports full accountability for program results in the Native WIA programs. The council supports a program accountability system which incorporates each of the following

principles: (1) it is consistent with the purposes of Section 166 WIA programs (for PL102-477 programs as well); (2) it is consistent with the nature of Native WIA programs as Native programs and takes Native circumstances into account; (3) it strengthens services for Native people; (4) it supports the needs of Native youth; (5) it contributes to the creation of jobs for Native people and the economic development of Native communities; (6) it protects the privacy of information on Native program participants and the confidentiality of the case management process; (7) it can be implemented without increasing administrative costs; and (8) it is developed in consultation with the Native American Employment and Training Council and the leaders of Indian tribes and Native communities. Unfortunately, the reporting systems proposed, mandated, or interpreted for these workforce training programs by OMB and the Labor Department's Employment and Training Administration meet none of these eight requirements.

Specific Recommendations

a) Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding
b) Rescind the March 2009 OMB A-133 Compliance Supplement
c) 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

XX. TRIBAL COLLEGES

Higher education is one of the main drivers of economic development in the United States, and particularly for American Indian 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 that same time frame 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.[21] 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).

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

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.[22] 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.

Research is becoming a focus for many TCUs with partnerships including the Department of the Interior, Department of Agriculture, Department of Housing and Urban Development, the National Science Foundation, National Aeronautics and Space Administration, and universities nationwide. These partnerships support research and education programs that focus on issues such as climate change, sustainable agriculture, water quality, wildlife population dynamics, and diabetes prevention. TCU faculty are engaged in research in many areas including: hydrology, molecular cell biology, archaeology, entomology, community health, environmental science, aerospace engineering, and advanced manufacturing processes.

UNITED TRIBES TECHNICAL COLLEGE

United Tribes Technical College (UTTC) is one of the most unique tribal colleges. Operated by the five tribal nations with a presence in North Dakota, it is one of the oldest TCUs, founded in 1968 as United Tribes of North Dakota Development Corporation. The vision of the founding tribal leaders was that UTTC could become a force for economic development among the tribal nations in North Dakota. One of its many early accomplishments was the placement of tribal planners on the reservations in North Dakota, among the first tribal planners in the United States.

UTTC offers two year degree programs and one year certificates in more than 17 areas, as well as four year degree granting programs in elementary education, criminal justice and business administration, as well as a number of on-line courses and degree programs. UTTC serves more than 1,000 students from as many as 75 tribal nations at any one time on its campus near Bismarck, North Dakota.

In addition to this academic mission, UTTC has also remained true to the vision of its founders, with several intertribal programs housed on its campus. These include a Minority Business Development Agency serving North and South Dakota, a Tribal Transportation Planning Center, and the offices of the North Dakota Association of Tribal Colleges. UTTC is further developing a Leadership Institute and has been in the recent past a University Center for economic development under a grant from the Economic Development Administration. UTTC's personnel

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

have the skills to provide a variety of economic development technical assistance, especially including technical training for the creation of economic development infrastructure and tribal planning capabilities.

UTTC is also seeking to become a regional center for law enforcement training, both advanced and basic training. Safety in Indian Country is extremely critical for the maintenance of stable tribal economies, and, together with AIHEC, UTTC has a Memorandum of Understanding with the Department of the Interior to pursue this objective. At present, there is only one Indian Police Academy in the United States, and its capacity is limited, yet the need exists for several thousand more law enforcement correctional officers in Indian country.

The MBDA center serves as a minority small business hub for the region. With limited funds and personnel, the MBDA center assists individual and Tribal clients to develop business plans and assist in lining up financing for such business. This center, or its equivalent, has been part of UTTC's campus since 1971, and has helped create more than 10,000 jobs in Indian country in the past 40 years. Specific comments from the UTTC MBDA center regarding how to improve these resources so vitally needed for entrepreneurship development are located elsewhere in this Briefing Paper.

Specific Recommendations

a) Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges
b) 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
c) Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector
d) Support TCUs in obtaining more research grants that can assist the tribal nations that they serve
e) 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
f) Continue support for UTTC to develop as a regional training center for law enforcement correctional officers
g) Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs

XXI. EMERGING EMPLOYMENT OPPORTUNITIES

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 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, related to the previous section, emerging jobs, such as e-commerce and telecommunications projects, are currently not viable options for tribal members in remote locations of the reservation. 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.

Specific Recommendations

a) 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
b) Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs

XXII. YOUTHBUILD

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, the YouthBuild Program is administered by the Employment and Training Administration. 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.

Specific Recommendations

a) Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs
b) Work with DOL to utilize regulatory means to ensure access for tribal grantees
c) 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
d) Relax Department of Education regulations to allow YouthBuild to compete for innovation funds

XXIII. CURRENT WORKFORCE DEVELOPMENT PROGRAMS AND SERVICES

Often times, tribal members are unaware of the workforce development opportunities available. As a starting point, the Administration can 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:

Bureau of Indian Affairs - Division of Workforce Development
Operating under the Office of Indian Energy and Economic Development (IEED), the Division of Workforce Development manages a wide variety of job placement and training activities. The IEED works in conjunction with the Departments of Labor and Health and Human Services, and other organizations, to coordinate programs for approximately 50,000 individuals per year. Examples of programs include the National Indian Ironworker Training Program, as well as highway construction training and employment programs.

Department of Labor - Indian and Native American Program
Operating under Section 166 of the Workforce Investment Act of 1998, the Indian and Native American Program (INAP) seeks to make Native Americans more competitive in the workforce, while, in general supporting the economic development of Indian, Alaska Native, and Native Hawaiian communities. In general, Section 166 grants are awarded to American Indian and Alaska Native communities to be used in the development of community-specific employment programs, such as developing job readiness, resume building, and referral services. INAP also partners with the National Indian and Native American Employment and Training Association to host a national employment and training conference.

Department of Labor - Youth Services
The Department of Labor's Youth Services Program (YSP) is a formula-funded youth program intended to serve eligible low-income youth, ages 14-21, who face barriers to employment. While this program is not American Indian/Alaska Native specific, it does serve urban areas with large populations of tribal members. Services available under the YSP include tutoring, alternative secondary school offerings, summer employment opportunities linked to academic and occupational learning, paid and unpaid work experiences, occupational skills training, as well as mentoring, guidance and counseling services.

Department of the Interior – Youth in the Great Outdoors Program
DOI's Youth in the Great Outdoors Program employs, educates and engages young people in exploring, connecting with and preserving America's natural and cultural heritage. The program places an emphasis on developing the stewardship roles of participants in caring for the environment. As an example, it focuses on the new energy frontier, tackling climate change issues, empowering Native communities, building trails, enhancing wildlife habitat, and restoring cultural and historic landmarks. Each of these focuses meets a current need in tribal communities.

Specific Recommendations

a) Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities
b) Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding

ACCESS TO BROADBAND

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. Analog telephone penetration rates on tribal lands are at 67.9 percent, while 98 percent of the nation has access to 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. 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, and public safety.

XXIV. RURAL DEVELOPMENT LOAN PROGRAM

Approximately 500 rural telecommunications companies 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 and have acquired eligible telecommunications carrier (ETC) designation from the Federal Communications Commission (FCC). These loans are for the purposes of providing funding for facilities and equipment to upgrade, maintain, and expand deployment of broadband services. However, they are unavailable to tribes pursuing start up initiatives for their own telecommunications companies because the USDA is unable to provide loans to entities that would provide competition with rural carriers receiving similar loans from the USDA. This presents an obstacle to tribes desiring to develop their own telecommunications abilities and provide these vital services to their membership. While the USDA loan program has benefited certain tribes that have established their own telecommunications, it has not been inclusive of tribes seeking these funds if they will provide competition to nearby rural telecommunications companies.

Specific Recommendations

a) Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives
b) Redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands
c) Identify and communicate programs that offer tribes competitive financing options (e.g. low interest rates and extended repayment terms or the waiver of non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant administered by federal agencies)

d) Create a tribal position, filled by an American Indian or Alaska Native, within the USDA RUS to encourage further collaborative efforts with tribes

XXV. UPGRADE E-911 ABILITIES

Full access to emergency services is an essential component of a business-friendly reservation environment. Unfortunately many tribal communities across the nation lack analog and/or digital access to E-911 services. Broadband services are an essential life saving utility that should provide tribal communities with security and assurances that emergency services are available and adequately attainable through E-911.

Another critical public safety feature related to E-911 is the Automatic Location Identification data base. ALI failure occurs when a phone number is not located in the database and the Public Safety Answering Point (PSAP) operator must ask the caller of their location and redirect them to an appropriate PSAP that services that area. Since many non-tribal members are unaware of the areas/names of tribal lands this leads to prolonged EMS and law enforcement response times that can prove very serious.

Ensuring tribes are a part of this critical piece of 21st century infrastructure requires efforts by the Congress and Administration to ensure tribes are included in HR 2629 "Next Generation 9-1-1 Advancement Act of 2011," which contains currently no provisions pertaining to tribes. The goal of this proposed legislation is to foster migration from analog, voice-centric 9-1-1 to a next generation IP-based model. However, many tribes across the nation currently do not have access to even basic analog telephone services and therefore this gap to access for emergency services on tribal lands will increase if tribal consideration is not given.

Specific Recommendations

a) 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
b) Ensure that wireline telephone carriers have an updated ALI database that is inclusive of tribal lands
c) Ensure that wireless mobile telephone carriers fully implement and continually update E-911 Phase 2 on tribal lands ensuring that this service is accurate within 300 meters when determining the location of a caller and subsequently routing them to an appropriate PSAP
d) Provide and support amendments to be inclusive of tribal governments and lands in HR 2629 "Next Generation 9-1-1 Advancement Act of 2011"

XXVI. COMMUNICATIONS INFRASTRUCTURE

There are a number of existing options that tribes could utilize to acquire funding/financing for tribal telecommunications infrastructure deployment. For instance, New Markets Tax Credits (NMTC) could be used to subsidize the costs of infrastructure deployment in tribal communities; the Office of Indian Energy and Economic Development offers funding for feasibility studies and also offers the Loan Guarantee program; and the USDA's Rural Utilities Service provides

loans to tribes to cover start up, maintenance, and expansion of facilities and equipment. Community Development Entities (CDE) have utilized NMTCs for 'gap financing' on myriad projects to alleviate a portion of costs. As noted above, the NMTC Program offers tax incentives to attract private sector investment in businesses located in economically distressed communities. Although NMTCs are targeted towards economically distressed communities, tribes may not have the financial capabilities to apply for these incentives. The Office of Indian Energy and Economic Development (IEED) could play a crucial role in attracting industries and businesses towards tribal communities and incentivize NMTCs. IEED could also spur additional economic development initiatives in Indian Country through its Divisions of Economic Development, Capital Investment, and Workforce Development. Recently IEEDs Native American Business Development Institute (NABDI) has also announced that it was soliciting proposals from federally recognized Indian tribes for technical assistance training. This funding was aimed at conducting feasibility studies on tribal lands for the purposes of economic development initiatives. Tax exempt bond financing (outlined in more detail in the previous section) offer another potential source of funding for broadband deployment. The broad array of funding possibilities underscores the need for coordinated inter-agency outreach to engage and educate tribes about the various financing options to develop broadband infrastructure. This could be done through the clearinghouse recommendation outlined under Section III of the "Overarching Recommendations."

Developing tribal communications infrastructure will also require a policy environment that acknowledges the unique needs of tribal communities. Similar to local ownership and investment that is supported in rural communities, a tribal-centric model would allow tribes to improve access, affordability, deployment, and provide tribes with increased data collection on access to broadband services or lack thereof. Careful consideration must be given to tribal communities and the socio-economic situations that exist on reservations. Federal criteria on applications should be reformed to prioritize tribal need for vital services offered by broadband access, such as: educational dropout rates, unemployment and poverty rates, and access to emergency medical services. The E-Rate model was created to subsidize communications services to rural and low-income areas. The current definition of 'library' allows for E-Rate funding if said library is also eligible for funding from a state library administrative agency, which tribes are not eligible for. Consideration of the unique needs of tribes compel several changes to the E-Rate model to extend the build out of tribal communications infrastructure.

Specific Recommendations

a) 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
b) 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
c) Ensure adequate access to tax exempt bond financing and that broadband deployment meets the 'essential government function'
d) Support a 'tribal-centric' build out model for communications infrastructure
e) Use the E-Rate model for tribal communities to prioritize the need for communications networks and for managing costs and distribution logistics.

f) Continue waivers for the E-Rate model to provide access to the general public in tribal communities beyond the 'school hours' designation
g) Urge the FCC to alter the definition of 'library' to allow eligibility for tribal libraries to receive E-Rate support

XXVII. UNIVERSAL SERVICE FUND (USF)

The USF was created by the FCC in response to congressionally mandated 'universal service' goals provided in the Telecommunications Act of 1996. The USF draws its funding from all telecommunications carriers that provide service internationally and between the states. Each carrier must pay dues for the USF to the Universal Service Administrative Company (USAC), an independent, not-for-profit company that oversees and allocates USF funds to support the High Cost, Low Income, Rural Health Care, and Schools and Libraries programs.

Although the USF has provided much needed funding to tribal communities for broadband infrastructure deployment and a myriad of beneficial services, there are a multitude of reforms that could be utilized to assist tribes further along the path of self-determination.

The creation of a Tribal Mobility Fund would provide targeted funds to tribal lands for the expansion of mobile 3G coverage. Allocation of funds from the Mobility Fund to the Tribal Mobility Fund would provide adequate time for the FCC to coordinate with tribes and seek tribal leader input on how to best utilize the funds to bring mobile services to tribal lands. Tribes should also be given the opportunity to choose either 3G or 4G coverage based upon their own community's needs.

The eight tribal telecommunications companies that have attained eligible telecommunications carrier (ETC) designation have increased broadband connectivity by 300-900 percent. As such, tribal ETC designations should not be halted or barred if a rural telecommunications company operates a service area that extends within tribal reservation boundaries. Service areas must be redefined to accommodate a tribal ETC designation. Tribes should also be given first right of refusal to access spectrum over their own lands.

Tribal access to the Connect America Fund (CAF) offers significant potential. The CAF will provide funding for access to a network that will be capable of providing high-quality voice-grade service and broadband. As the nation begins its transition from analog to digital services there needs to be an assurance that tribes will have increased access to develop and enhance digital services within their respective communities.

Specific Recommendations

a) 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
b) Support the creation of a separate tribal account within the Mobility Fund
c) Create a 'Tribal Seat' on the Joint Federal-State USF Board to ensure a voice for Indian Country to receive these vital communications services

d) Include broadband internet service access and mobility services in the list of services provided by the USF
e) Allocate and reserve spectrum for tribal communities and make existing spectrum over tribal lands available for public interest needs
f) Develop a comprehensive Native Spectrum Policy to enhance tribal access to spectrum for public needs and the ability to acquire and retain licenses to said spectrum
g) Urge the FCC to designate 'unserved areas' and 'unserved broadband areas' as those areas that are 15% below the nationwide average of telecommunications service
h) Increase support for tribal telecommunications corporations to attain ETC designation in order to provide service to tribal members
i) Include provisions for tribal communities to receive funding from the CAF, while ensuring the continuation of vital analog services such as Lifeline, Link-Up, and the High Cost programs

XXVIII. SPECTRUM DASHBOARD DATA

Current Spectrum Dashboard contains detailed information, mapping, and research capabilities for areas where broadband service is either already available or could potentially be provided, yet Indian Country is poorly represented in this data.

Specific Recommendation

a) Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data
b) Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities

XXIX. REVERSE AUCTIONS OF SPECTRUM

Reverse auctions were established by the FCC to enable spectrum allocation and funding to a telecommunications carrier that requests the least amount of funding for infrastructure deployment in a given area. This system thereby benefits large companies with substantial access to capital and the financial means to fund broadband infrastructure deployment in rural and tribal communities. Therefore, the reverse auction system effectively excludes tribal participation in the bidding process due to their economic resources. Continued use of the reverse auction system for tribal and rural communities is already opposed by the Joint Federal-State USF Board and it will only prevent access to spectrum and licensing ownership options.

In many senses, spectrum is a natural resource for the 21st century. Therefore, tribes should have the ability and right to acquire, and retain licenses to spectrum over tribal lands. Tribes should also have the right to lease existing spectrum over tribal lands to telecommunications carriers. If the FCC continues with reverse auctions of spectrum over tribal lands then tribes should receive a percentage of revenues generated from said auctions when they involve spectrum over tribal lands. Companies that want to acquire spectrum over tribal lands should approach tribes and the federal government for consultation efforts.

Specific Recommendations

a) 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
b) Ensure adequate consultation is undertaken and tribes are compensated in the case that reverse auctions continue

XXX. TRIBAL LANDS BIDDING CREDIT (TLBC)

The TLBC was introduced by the FCC to provide an incentive for telecommunications companies to expand broadband services to tribal lands that have a penetration rate equal to or lower than 85 percent. These credits were awarded to winning bidders and were meant to offset infrastructure deployment costs but have failed to expand broadband services to tribal communities. Some of the shortfalls surrounding the TLBC program include tribal communities unable to acquire spectrum licenses, lack of increased coverage to unserved and underserved tribal populations and geographic areas, commercial providers unable/unwilling to include tribal provisions for service, and limited support for tribal public safety efforts including the enhancement of wireless PSAPs in tribal communities.

The Administration should enforce the program and ensure recipients of these credits actually serve the designated communities or reacquire the spectrum allocated to those entities.

Specific Recommendations

a) Enforce the TLBC program and ensure that recipients of these credits build out service in tribal communities
b) Intervene when providers have experienced obstacles presented by state or local governments
c) Reacquire spectrum allocated to entities who fail to serve their designated tribal lands and give tribes first priority to obtain these licenses at reserve or discounted prices

XXXI. PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM (PTFP)

In tribal communities, radio is the most effective medium for informing a community of weather conditions, traffic issues, evacuations, and other emergency conditions. Tribal and rural radio stations provide essential life saving information, which is essential in lands that have limited 911 services due to lack of access to telephone or broadband.

The PTFP was administered by the National Telecommunications and Information Administration (NTIA) within the Department of Commerce and provided funding for radio and television broadcast stations. Unfortunately, during the debate surrounding the elimination of the PTFP, there was a misconception by the Administration and Congress that it encouraged duplicative spending and that the Corporation for Public Broadcasting (CPB) was ably equipped to assume the duties of this program. On the contrary, the PTFP would cover costs associated with public radio equipment, construction of new stations expanding to unserved and

underserved communities, and maintained an emergency fund for the replacement of radio equipment due to natural disasters and terrorist attacks. The CPB provides no funding for any of the aforementioned needs. It only provides funds to radio and television stations that are currently operable and have reached certain levels of staffing, financial support, and dedicated audience. By statute the CPB is required to spend a majority of its funds to assist broadcast stations with producing high quality public programming, which is not inclusive of infrastructure build out for new stations. While the CPB currently provides funding to current operable tribal radio stations, it would not be able to provide financial assistance to newly designated tribal radio stations. The PTFP also covered all costs associated with planning and provided matching funds that would cover 50-75 percent of a new station's cost.

In 2007 the FCC opened filing for noncommercial educational radio systems for the first time in seven years. The FCC granted 38 noncommercial FM radio construction permits to tribal groups. These permits had a three year deadline to complete construction of studios and transmitters – many of which are nearing expiration. However, many tribes relied on the PTFP program to develop their radio stations and since its dissolution have been seeking alternative funding sources and requesting extensions for their tribal radio construction permits.

Specific Recommendations

a) Extend tribal radio construction permits nearing the expiration deadline
b) Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television

The CHAIRMAN. Thank you very much, Chairman Allen.

Chairman Small, how do you plan to use the impact report to further economic development on the reservation and in the region?

Mr. SMALL. The impact statement was put together by the five Tribes of Idaho. The five Tribes are the Fort Hall Tribe, Shoshone-Bannock; and the Coeur d'Alene Tribe up in Northern Idaho; the Kootenai Tribe clear up further north near the Native border; as well as the Nez Perce Tribe and the Shoshone-Paiute Tribes. The Shoshone-Bannocks and the Shoshone-Paiutes are on the southern part of Idaho. We're on the southeastern side, and the Shoshone-Paiute is on the southwestern side of the state.

The reason that we put this together was to try to have some type of commitment from the State of Idaho in fostering business creations, expansion and job roles. The Tribes had had a long history of working with the respective regional communities and other governments. The common interest and goals shared by the local, Tribal, State and Federal governments can be best served through cooperation and communication by working together, which can ensure the agreements made between our forefathers are honored.

This whole impact statement was specifically, like I indicated a little bit, was to try and get some respect from the State of Idaho and from the governor. We wanted the governor to at least have an Indian seat in the governor's office like a lot of other states have. But our current governor basically refuses to do that. He hasn't even visited our reservations. He travels through there bite a bit, but he doesn't stop there. He doesn't visit our government.

Sometimes when we've talked with him, he has no idea who we are, what we are, why we are and where we came from. He doesn't even understand what treaties are with us. So, we have a huge problem with our current governor, and he needs to understand as well as some of the State legislators need to understand that we

are an economic force when it comes to our reservation. Particularly, the Shoshone-Bannock.

We're the largest reservation. We have over 544,000 acres of land. 97 percent of that is still in trust, still in trust. It's either owned by Tribes, by the Tribe or by the individual Indians out there. And that's uncommon for these days. A lot of Tribes are checkerboard to the point of are they even considered, you know, where are they at right now. So, we've been able to very jealously guard what we have had. We're purchasing land when we can to make it 100 percent soon. But again, when you look at all of the farming activity of farming on our reservation, how does any and all other economic opportunities that the Tribe could get into?

We have gaming. It's not one of our top money-makers on the reservation. The top money-maker would be our agricultural land base. However, as I indicated in my testimony, that we cannot, for some reasons cannot get the capital to do our own farming. We've entered into some agreements with some of the major potato processing plants in our part of state. And we've seen—we've seen what can be done with our land. We've made millionaires out of some of the corporate farmers on the reservation, but we're not.

The CHAIRMAN. Thank you for your response on that.

Chairman Allen, in your testimony, you described the success your Tribe has had with the 8(a) program. Your concern with that program is that additional barriers will be placed on participating Tribes as you mentioned. What do you think will happen to Tribes if that program is made more restrictive?

Mr. ALLEN. Well, personally, Mr. Chairman, I think that it's going to suppress and squeeze out the potential for the existing and the potential Tribal and individual businesses that want to become independent and want to become competitive in that environment. What the SBA 8(a) does is it narrows down the competition and allows us to create mentorships with companies that are larger than ours. And then we can develop a relationship and skills, the talents and the capacity to become successful in a competitive world. That's what its intent is.

If they continue to restrict, if they continue to narrow it down, what it does is it takes us out of the competitive arena for those Federal contracts. So, it's not just Department of Defense. There are contracts over in HHS, contracts in the other departments and agencies that we should and could access. And 8(a) opens up those opportunities. Now, but what would happen if they make it more —what actually Section 811 does, it narrows it down. So, those companies that are competing for those contracts don't have that same restriction. It's only for Native 8(a)'s. It's not for the other 8(a)'s, so we're treated differently again. So, if they narrow it down some more, then, quite frankly, it just diminishes the potential success of both Tribal and individual 8(a) opportunities.

The CHAIRMAN. Thank you.

Chairman Small, in your testimony, you noted that had the Shoshone-Bannock Tribes have increased regional employment by 4,097 jobs. How many of the jobs went to Tribal members, and how many went to local community members? What impact have these jobs had on the reservation and on surrounding communities?

Mr. SMALL. We have about 1,000 of our people that are working for the Tribes itself, the Tribal Government. We have others of our people that are working for the local BIA agency offices. We have Indian Health Services. That is also, we have a lot of our Tribal members that are working there, and we also have some enterprises that are Tribal enterprises. So, we've probably got, of all of those jobs, about 1,000 of our people are actually working. The rest of the work force is made up of other Indians and other non-Indians.

Most of the jobs that we looked at that are there comes through or farming activities. These corporate farmers that are out there, they've provided the bulk of the jobs on the reservation through the farming activity that is there. So again, enough about our agricultural process.

The CHAIRMAN. Thank you. Chairman Allen, in prior committee hearings, you predicted that Tribal economic development opportunities would be impacted if the *Carcieri* fix did not pass Congress. Has your prediction come true?

Mr. ALLEN. It's going in the direction of my prediction, Mr. Chairman. The problem with the *Carcieri*, as testified by Brian Patterson, is that it creates a very precarious legal standing for many of the Tribes. It did create two sets of Tribes, those that were recognized by the Federal Government before 1934 and those after, without a doubt. And a lot of land has come into trust since then, which includes reservations that have gaming operations, of which we have a great deal of financial investment in the financial industry.

And so, it's much harder for us to access that Federal financing, simply because of "can you engage in this activity" or "what is the status of this property with regard to the businesses that you want to engage in" and its status on that property after 1934 if you are recognized as such. So, it's moving in that direction. And the problem is—there's many problems it's creating, but among those problems, it's creating a lot of legal problems. And Robin Danner was talking about legal costs. When you're fighting for your rights, you're fighting for your opportunity as opposed to using the legal profession to put together packages and deals and the legal details of a successful business. So, that's what unfortunate. Now we find ourselves in court defending our legal standing. Is the activity taxable, because is it on trust land or not? And so, it's always about jurisdiction between the Tribes and the local government and State government.

And they're always looking for revenues, and they would just love to be able to come in and tax our businesses or our citizens that are conducting business on our reservation. So, yes, it's moving in a very negative direction and creating a fuel to this anti-Indian sentiment that always was prevailing throughout America. And now, it's resurfacing in a different way. And it's very unfortunate, because we were hoping that we were healing those wounds that are generations old.

The CHAIRMAN. Well, thank you very much. Finally, let me ask this both of you what impact do you think these recent financial issues could have on Tribes, and what are your concerns when the Congressional Debt Committee begins its work?

Mr. SMALL. I'm very worried about our ability to secure future financing for our projects with the downgrade of the U.S. credit rating. One example is our ongoing $33 million hotel and event center project. We are seeing the impacts of the last few weeks from the debt ceiling negotiations on this project. We are experiencing financing complications in our efforts to move forward on it. We do have a BIA guarantee. But they're not giving that guarantee much respect, because of the downturn.

And that's just the bank that we're currently negotiating with. They don't feel the BIA guarantee is a total guarantee for this project because of the recent stuff that's been going on. And it's always been difficult for us to access capital for our projects, and the economic downturn is going to make things tough. We are worried that the banks will freeze lending to us in the future, especially if the government doesn't provide loan guarantees or other incentives to lenders.

We're also worried that the Congressional Debt Committee is going to make massive cuts to basic services to our Tribal members such as education, health care and public safety. For Tribes in the U.S. like ours, we have—we feel that the U.S. has some treaty responsibilities, which are recognized and in the Constitution. So, we feel that we know there's going to be some massive cuts. We've all heard about them. But we would like to make sure that we are not or we will be immune from those cuts because of the obligations under the treaties that we made with the United States Government.

The CHAIRMAN. Thank you for your response. Chairman Allen.

Mr. ALLEN. Mr. Chairman, I share Chairman Small's concerns and even fears about the current condition of the financial climate and environment. You see very large Tribal packages being renegotiated and establishing new kinds of conditions and even encroachment on Tribal sovereignty in the protection of our trust resources and assets. That has to be alarming for Indian Country as those developments unfold. The rules, as I had stated earlier, when we deal with the financial industry, it's not the same. We're not treated the same. If we have a casino, the amortization schedules and the balloon requirements, the payment requirements that are imposed on our financing is not the same as a private sector.

If you were going to build a hotel, it's not the same as the private sector. If we are going to build a hotel, that's one issue. If Best Western builds a hotel, it's a different standard in terms of the kinds of criteria and conditions of leveraging those finances, it's much more restrictive. The cost of money is higher. And now with the current financial climate, it's even more expensive. Many of the Tribes want to develop businesses and enterprises or it doesn't matter whether it's hospitality industry or some other venture. It's difficult to access, and it's very expensive money to pursue.

The Stimulus Bill that you passed a couple of years ago required the Department of Treasury and the IRS to provide you a report. Over a year ago, it was due, and that report was supposed to say, supposed to describe what's wrong with the 1984 Tribal Government Tax Status Act that allowed Tribal Governments to have the same status as other governmental entities to go out and secure low cost, low interest tax exempt bonds for the purposes of eco-

nomic development and governmental infrastructure. It is very problematic.

The rules, the interpretation of the IRS is much more restrictive for Tribes than it is for local and State governments. And that report was supposed to come back to you with recommendations. I haven't seen it yet I've heard it was done, and I think that the Senate should ask where is that report and demand it and hold hearings on its recommendations in terms of what I believe is appropriate amendments to that Act that would enhance that kind of opportunity for us to be able to move in that direction.

I think that there are other financial incentive opportunities for the Tribes, because it targets really large projects. We're talking 50, 100 million or more. It doesn't do any good for a Tribe that just needs 10 million, which it doesn't pencil out in terms of going and getting that kind of money, you know, for a project with a small Tribe, like the Hoh Tribe out in the West Coast with 100 people and they just want something small. So, we need to review the financial industry and even discuss with the financial industry why are the rules different when you're lending to the Indian Tribes and the Indians citizens than elsewhere, and what you can do about it.

The CHAIRMAN. Well, I want to thank you very much for participating in today's hearing. This has been very valuable. You have helped to define the barriers to economic development, but more importantly, you have helped to identify concrete things we can do to help clear the barriers an encourage Native communities towards self-sufficiency. When Native economies strive, the benefits are far-reaching. Job creation and economic benefits reach county, regional and State economies as well.

So, I look upon what we're doing as building on a basis here and continue to expand it as we go along. And to do it in what Hawaiians call a pono way, meaning correct justification, and to do it right. And so, I look forward to continuing this school in the pono way to help the indigenous people of our country. And that's my reason for being here, and I tell you I feel so proud and privileged to be Chairman of the Indian Affairs Committee, only the second indigenous person. Of course, the first was Ben Nighthorse Campbell, Senator, who was the first.

And so for me, this has been a pleasure. And I intend to continue to work on those issues that have in a sense been pushed aside, but we need to take care of these in the time that we have. So mahalo nui loa. Thank you so much for your help in all of this. And again, I just want to remind you, because I want to hear from everybody, though you've not been a witness, if you want to write, please, you know, let us know what you think. And remember that the hearing record is open for written testimony for two more weeks.

So, if you can do that within that, we would certainly appreciate it. Again, mahalo nui loa. Aloha, safe trim home to all of you here. And I thank God for you, our indigenous people, our country, and thank God for what we're able to do for our people. Mahalo nui loa. This hearing is adjourned.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF JAMES D. KIMMEL, HAWAIIAN NATIONAL

Aloha Everybody,

My name is James D. Kimmel; I am testifying today as a Hawaiian National, a naturalized citizen of the Lawful Hawaiian Government—the Kingdom of Hawai'i—even as I am an Ambassador of the Spiritual Brotherhood of the Kingdom of Heaven and a representative of the Prince of Peace of this world who is also the Sovereign Creator of our Universe.

Brothers and sisters: the kingdom of God is at hand, meaning a return to that high spiritual concept of Jesus who proclaimed that the kingdom is the will of his heavenly Father, dominant and transcendent in the heart of the believer. That which the world needs most to know is: Men are the sons of God, and through faith they can actually realize, and daily experience, this ennobling truth.

All of the social, moral, economic and political problems of today have grown out of the consequences of the failure of the Jewish leaders to recognize and accept Jesus as the Son of Man and Son of God who bestowed himself on our world for the benefit of all the worlds in his universe—the Sovereign Creator of our universe. The mindset of the Jewish leaders, who saw themselves as a ***Chosen People*** with a national destiny of Global Dominion, was such that made it impossible for them to accept Jesus and his new teachings of the gospel of the spiritual brotherhood of the kingdom of heaven when he appeared. Had Jesus been accepted by the Jewish leaders, Israel would probably have become the spiritual Capitol of the world with a national destiny of loving service to the people and nations of the world, and we would have peace on earth and good will among all men instead of world wars, starvation, economic and political slavery.

Queen Liliuokalani wrote in her book—***Hawaii's Story by Hawai'is Queen, Liliuokalani***—that the takeover of Hawai'i by the U. S. Government sent an ominous signal of change in the foreign policy of the United States. This was the outworking of unification of the Jewish leaders under the World Zionist Organization, in 1897 in Basel, Switzerland, with the express purpose of putting Israel back on the map as part of their ways and means of gaining global dominion over the people, nations and natural resources of the world. To accomplish their ends required the slow and steady takeover

of the United States Government from within and without until today, the United States of America of the Queen's day has become the United States of Israel today.

The Queen of the Kingdom of Hawai'i filed her Official Protest to the American *Coup de Etat* against the U. S. Government on June 17, 1897, closing her statement thusly: ***...and to the Almighty Ruler of the Universe, to Him who judgeth righteously, I commit my cause.*** This is the same Person the American's refer to in their Declaration of Independence as ***their Creator***, and ***Supreme Judge of the world.***

Insofar as He is the same person the Jewish leaders had crucified on April 7, A.D. 30, even the same person who referred to himself as ***the Vine***, and the people of the world as ***the branches***, he could see nothing but trouble evolving out of the Zionist conspiracy that was organizing for the takeover of America and the rest of the world. The Vine knows all of his branches perfectly because his Spirit of Truth and Idealistic Beauty lives within each of the branches, enshrouding the souls of all his children.

It was from this soil that the Zionists produced the economic and political climate of world wars, moral failures, economic depressions and the general depravity of the Zionist Occupied Government of the Obama Administration.

In response to the overthrow of the Kingdom of Hawai'i, the Zionist design to takeover the U. S. Government and the world, the Supreme Judge of the world chose to honor the Queen's Official Protest, and accordingly, ruled in her favor. With the approach of the 100th anniversary of the overthrow of the Kingdom of Hawai'i on January 17, 1893, the American government conspired to pass legislation that would make it legal for them to sell the stolen property of the Kingdom of Hawai'i. But, without their knowledge, the Spirit of the Prince of Peace, the Spirit of Truth, was at work in the U. S. Senate, enabling the passage of Public Law 103-150 in 1993, the so-called Apology Bill. That their Apology was a manifestation of dishonesty and insincerity has been proven by their failure ***to return the stolen horse*** followed by their ***seditious conspiracy*** to foist the fraudulent Akaka Bill over the highest interests of the Hawaiian people. Neither the Akaka Bill nor the U. S. Government have the blessing of the Prince of Peace at this time of great deceit. The spirit of truth will not provide input that would enable passage of the Akaka Bill nor the defacto State of Hawai'i-OHA equivalent.

Meanwhile, passage of Public Law 103-150 enabled the Kanaka Maoli to bring their government out of forced exile under Kingdom and International Law and reinstate the *de jure* Lawful Hawaiian Government—the Kingdom of Hawai'i—on March 13, 1999, as the proper claimant to the stolen Hawaiian Archepelago. Accordingly, the American dreams of ***E Pluribus Unum***, ***Annuit Coeptis***, and ***Novus Ordo Seclorum*** ended with the takeover of the Kingdom of Hawai'i, the unification of the World Zionist Organization, and the rebirth of the Zionist cause of global dominion in 1897.

The ***One Person*** recognized by both the United States Government and the government of the Kingdom of Hawai'i is the Prince of Peace of this world today, our Sovereign Creator-Father and our older human brother—Jesus of Nazareth.

No one other than our Divine Parents, whose spirits live within us, could possibly know, love, understand and respect us and the global situations of the People of Hawai'i and the rest of the nations of the world. God loves each of his children with an infinite love, and this is to advise you of the situation of alignment of your will with those who have taken over the Government of the People of the United States from within. It would be wise to stop waging war on earth and start waging peace at home and on earth in the loving service of your brothers and sisters in the kingdom of heaven on earth today, the spiritual brotherhood of all humankind under the fatherhood of God. Stop aiding and abetting the parasitic alien of Zionist origins that has been the cause of more than a century of turmoil, violence and destruction for the political and economic benefit of a few, by the few and for the few who have enabled such rebellion against God and man.

As it stands, under the dominating Zionist influence and their lust for global dominion, the people and government of the people of the United States have been led to dig the pit of their own destruction by wholeheartedly doing to other people in other nations what they would never want done to themselves and their nation. If the blind lead the blind they shall both fall into the pits of their own destruction.

We are each and all the sons and daughters of the Gods of Love, Truth, Mercy and Forgiveness. Taken together, we constitute the spiritual brotherhood of the people of the world—the kingdom of heaven. Meanwhile, the Prince of Peace has ruled in behalf of the Official Protest of Queen Liliuokalani relative to the reinstatement of her Government, the Kingdom of Hawai'i, and the outworking of the will of God, relative to the spiritual rebirth of the kingdom of heaven that Jesus started, within the jurisdiction of the reinstated Kingdom of Hawai'i, which has His blessing. Brothers and sisters, the kingdom of God is at hand! Alooooha!

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