



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Indian and Insular Affairs Subcommittee staff, Ken Degenfelder
(Ken.Degenfelder@mail.house.gov), Jocelyn Broman
(Jocelyn.Broman@mail.house.gov), and Kirstin Liddell
(Kirstin.Liddell@mail.house.gov) x6-9725
Date: Thursday, February 15, 2024
Subject: Oversight Hearing: “*Economic Diversification to Create Prosperous Tribal Economies*”

The Subcommittee on Indian and Insular Affairs will hold an oversight hearing titled “*Economic Diversification to Create Prosperous Tribal Economies*” on **Thursday, February 15, 2024, at 10:00 a.m. in 1324 Longworth House Office Building.**

Member offices are requested to notify Ransom Fox (Ransom.Fox@mail.house.gov) by 4:30 p.m. on Wednesday, February 14, 2024, if their member intends to participate in the hearing.

I. KEY MESSAGES

- Since the 1970s, the federal government has pursued a policy of self-determination towards tribes, allowing tribal governments to self-direct both services provided to their people and economic development plans that support tribal governmental services.
- Tribes have sought to diversify their tribal economies through various means to expand the services provided to tribal members and build sustainable economic systems to benefit current and future generations.
- Congress should continue working with tribes, tribal organizations, and tribal businesses to reduce duplicative regulatory requirements for land use further, encourage self-determination through tribally formed ordinances and statutes, and streamline how tribes, tribal businesses, and tribal organizations can best take advantage of economic development opportunities that suit them and their needs.
- This hearing will focus on ways tribes have sought to put tribal lands and natural resources into productive use, developed unique native-focused tourism opportunities, and formed tribally chartered economic development corporations to increase economic opportunities.

II. WITNESSES

- **The Hon. Brenda Jesus**, Council Delegate, Navajo Nation Council, Window Rock, AZ
- **Ms. Sherry Rupert**, CEO, American Indian Alaska Native Tourism Association, Albuquerque, NM
- **Mr. Lance Moran**, President and CEO, Ho-Chunk, Inc., Winnebago, NE
- **Mr. Raymond Bacon**, Executive Director, Yurok Economic Development Corporation, Klamath, CA [*Minority witness*]

III. BACKGROUND

This hearing will focus on how tribes have diversified tribal economies and interests to create multiple streams of income for tribal governments and tribal members while also seeking to build resilient and sustainable tribal economies and communities. A diversified economy can support various types of businesses and provide multiple income streams to local governments. This allows communities to weather changes in the economy and create sustainable growth over the long term.

Many tribes have focused on developing diversified economies that support tribal government operations and benefit their members and local communities. However, the regulatory complexity of operating in Indian country and the lack of clarity on certain regulatory standards for tribal organizations and businesses has had detrimental impacts on entrepreneurship, investment, and economic activity.

Benefits of Tribal Economic Development

With the passage of the Indian Self-Determination and Education Assistance Act of 1975,¹ Congress changed the policy of the United States government towards tribes to one of self-determination. While the self-determination policy has allowed tribes to chart their own paths to economic growth, tribal communities often lag behind the general U.S. population.² Congress has granted specific benefits to tribes and tribally owned or Native American-owned entities to support economic development and growth. Particular examples of this include Indian gaming, governed by the Indian Gaming Regulatory Act (IGRA),³ and inclusion of Native-owned enterprises in the 8(a) Business Development Program⁴ administered by the Small Business Administration.

Indian gaming operations have allowed for relatively consistent revenue for tribes. The revenues gained from gaming support the overall well-being of their tribal community, as required by

¹ 25 USC 5301 et seq.

² Akee, Randall. *Sovereignty and Improved Economic Outcomes for American Indians: Building on the Gains Made Since 1990*. Washington Center for Equitable Growth. 2021. <https://equitablegrowth.org/sovereignty-and-improved-economic-outcomes-for-american-indians-building-on-the-gains-made-since-1990/>.

³ IGRA, P.L. 100-497, 25 U.S.C. §§2701–2721. IGRA was passed by Congress in 1988, establishing a three-class gaming structure detailing the roles of tribal, state, and federal governments in Indian gaming operations, and establishing the National Indian Gaming Commission to regulate the industry.

⁴ 8(a) contracting is a major component of many tribal and Alaska Native Corporation economic diversifications. The Small Business Administration houses the 8(a) Business Development Program which provides preference to socially and economically disadvantaged businesses for government contracts.

IGRA, and it has also positively impacted nearby communities. In 2023, over 200 tribes owned, operated, or licensed more than 500 gaming businesses in 29 states.⁵ On average, tribal gaming increases employment by 2.4 percent and wages by 5.6 percent on tribal reservations.⁶ In 2022, Indian gaming accounted for \$48.4 billion in direct gross revenues.⁷ The Mille Lacs Band of Ojibwe have used the revenue from their gaming operations to build and improve schools, assist with health care operations, promote community centers, address infrastructure issues, and more.⁸ Revenue from the Mohawk Casino Resort, owned by the St. Regis Mohawk tribe and one of the largest employers in northern New York, has enabled the tribe to purchase ancestral land.⁹

Tribes have also used gaming revenues to expand into other economic areas, responding to market forces and diversifying income for tribes. The Potawatomi Business Development Corp was started in 2003 with profits from the Forest County Potawatomi Community's tribal casino in Milwaukee, Wisconsin and charged to build an asset base which will help insulate the tribe from any future decline in gaming dollars.¹⁰ However, there are many communities and states where gaming is generally not permitted under state or federal law or where tribes have not negotiated a compact with the state for Class III gaming. Some areas where tribes are located may also be too rural to support profitable gaming operations. In those cases, economic planning that builds upon other opportunities, such as resource development, can be crucial.

Many tribes have expanded their economies beyond Indian gaming, and for that reason statistics generally encompass both gaming and nongaming economic impacts. In January 2020, it was estimated that tribal government and tribal economic enterprises provided over 1.1 million jobs in the U.S. economy, with most of the jobs held by non-tribal members.¹¹ It is believed that the overall impact tribes across the country have on their local economies is underreported as such information is usually found on a tribe-by-tribe and community-by-community basis.¹² For example, the tribal nations of Oklahoma contributed \$15.6 billion to the economy and 113,442 jobs in 2019.¹³ They also contributed over \$1.8 billion in fees for public education and mental health services, with an additional \$84 million supporting schools, municipalities, and other community initiatives.¹⁴

⁵ Murray, Mariel. Indian Gaming Regulatory Act: Gaming on Indian Lands. CRS. <https://www.crs.gov/reports/pdf/1F12527/1F12527.pdf>.

⁶ Wheeler, Laurel. *More than Chance: The Local Labor Market Effects of Tribal Gaming*. Center for Indian Country Development. Federal Reserve Bank of Minneapolis. 2023. <https://www.minneapolisfed.org/-/media/assets/papers/cicdwp/2023/cicd-wp-2023-02.pdf>.

⁷ Stevens, Ernest, Jr. *IGA Report: Record Growth Continues for Indian Gaming in FY2022*. Indian Gaming. 2023. <https://www.indiangaming.com/iga-report-record-growth-continues-for-indian-gaming-in-fy2022/>.

⁸ LaMoore, Vivian. *What is the GRA? Ojibweinaajimowin*. <https://www.inaajimowin.com/news-blog/what-is-the-gra>.

⁹ Gawronski, Quinn. *Mohawks Use New Casino Wealth to Buy Back Ancestral Land, Fund Social Programs*. The News House. 2020. <https://www.thenewshouse.com/borderlines/mohawks-use-new-casino-wealth-to-buy-back-ancestral-land-fund-social-programs/>.

¹⁰ "Native American Tribes Venture Out Of Casino Business" NPR. Feb 21, 2013. <https://www.npr.org/2013/02/21/172630938/native-american-tribes-venture-out-of-casino-business>.

¹¹ Colombe, James & Taylor, Rory. *Tribal Enterprises Drive Economic Activity in Indian Country and Beyond*. 2021. <https://www.minneapolisfed.org/article/2021/tribal-enterprises-drive-economic-activity-in-indian-country-and-beyond>.

¹² "How the economy of Indian Country impacts local communities." High Country News. Apr. 6, 2022. <https://www.hcn.org/articles/economy/how-the-economy-of-indian-country-impacts-local-communities/>.

¹³ Oklahoma Native Impact. Quick Links. <https://www.oknativeimpact.com/>.

¹⁴ Id.

Despite successes of Indian economic enterprises, factors including restrictions on land use, rural character of the reservation, and lack of access to capital and technical assistance continue to restrict the ability of tribes to create diversified and sustainable economic environments that tribes, tribal members, and outside businesses or investors can efficiently navigate.

Economic Diversification Opportunities and Challenges

Natural Resource Development

For many Indian tribes and Alaska Natives, real property holdings are the basis for social, cultural, and religious life and often it is their single most important economic resource. Having a land base is essential for any individual or business to participate in activities including agriculture, grazing, timber, natural resource development, leasing, or building. Depending on whether the land is held in trust, owned in fee, or owned in restricted fee, various restrictions and requirements will dictate how the land can be developed or used. For example, a tribe seeking to lease land for a business would need approval from the Bureau of Indian Affairs (BIA), which can be a lengthy, costly, and time-consuming process.¹⁵

The many land use restrictions imposed on Indian lands prevent tribes and tribal landowners from leveraging trust land as collateral to access financing for economic development, which “eliminates a major source of equity and security for loans.”¹⁶ Often, a tribal member is incapable of using their land or home as collateral for the purposes of entrepreneurial endeavors as they do not technically serve as the legal owner of the land. Furthermore, tribal title records managed by the BIA are not always accurate, leaving investors and prospective business partners wary of conducting business on tribal land.¹⁷ Land into trust applications often take years due in part to environmental review. Tribes often must receive the federal government’s approval to develop land-based resources or even establishing a process for developing lands.¹⁸ This subcommittee has previously explored many of these barriers and some solutions,¹⁹ particularly related to 99-year leases and clarification of tribal ownership of fee simple lands.²⁰

The Navajo Nation has faced several challenges as they have pursued a diversified tribal economy including access to resources and full data. In a September 2023 hearing in the Indian and Insular Affairs Subcommittee, the Navajo Nation testified that if they took over the

¹⁵ 25 C.F.R. § 162.438. Alternatively, a tribe could streamline that process by developing its own leasing code under the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (the HEARTH Act), P. L. 112-151, 126 Stat. 1150, although such codes are also subject to BIA review and approval.

¹⁶ Board of Governors of the Federal Reserve System. *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships* at 8. 2012. <https://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf>.

¹⁷ *Id.* at 9.

¹⁸ Murray, Mariel. *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*. CRS. 2021. <https://crsreports.congress.gov/product/pdf/R/R46647>.

¹⁹ See previous oversight hearing on March 1, 2023 on “Unlocking Indian Country’s Economic Potential” <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=412809>; oversight hearing on September 28, 2023, “Tribal Autonomy and Energy Development: Implementation of the Indian Tribal Energy and Self Determination Act” <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=414889>; and oversight hearing on January 30, 2024 on “Examining the Opportunities and Challenges of Land Consolidation in Indian Country” <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415436>.

²⁰ See previous hearing on March 24, 2023. Legislative hearing on two bills: H.R. 1246 and H.R. 1532. <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=412937>.

expanded leasing authority provided for in the Indian Tribal Energy and Self Determination Act Amendments of 2017, the tribe would lose access to the data that the Department of the Interior (DOI) had on their lands, putting them in a less qualified state to assume the authority.²¹ Congress could consider what data and databases held by federal agencies should be accessible to tribes for their economic development needs and ensure that data is accessible to tribes. The Navajo Nation has also struggled with requirements for duplicative environmental reviews from multiple agencies for building roads, which resulted in delayed projects.²² Congress could consider legislation streamlining regulatory reviews.

Congress could also consider encouraging the use of the restricted fee land status by expanding and clarifying the current regulatory framework for those lands. The Native American Land Empowerment Act, which was last introduced in the 116th Congress, would allow tribes to move trust land into restricted fee status resulting in greater tribal control over the development of the land.²³ With the title of restricted fee land held by the tribe, there is less of a federal nexus on the land use which minimizes federal control, encourages development and allows for more autonomous land use decisions by the tribe.

Native-led Cultural Tourism

The tourism and hospitality industries are drivers of the U.S. economy that generate nearly two trillion dollars annually.²⁴ Tourism can benefit a community at large, not just the initial tourist attraction. Indian tribes and native communities have worked to participate in these industries by using their history to tell their stories and share reservation lands through recreation, tourism, and hospitality.

In 2021, U.S. tourism-related current-dollar, or nominal, output was \$1.70 trillion.²⁵ The American Indian Alaska Native Tourism Association's (AIANTA's) 2021 report *Economic Impact of Indigenous Tourism Businesses Report* found that Alaska Indian, Alaska Native, and Native Hawaiian (AIAANNH) owned tourism businesses accounted for a \$14 billion industry, with 117,852 jobs across 40,618 businesses.²⁶

Tribes that are near U.S. National Parks have built upon those visitor experiences. For example, the Miccosukee Tribe's reservation is along the Everglades. They have used their location and deep cultural heritage to promote tourism. Miccosukee offers "Airboats" for visitors to travel the Everglades and see the traditional hammock-style camps of the tribe. The tribe also provides

²¹ Testimony of Bidtah Becker, IIA Oversight hearing on September 28, 2023, "Tribal Autonomy and Energy Development: Implementation of the Indian Tribal Energy and Self Determination Act" https://naturalresources.house.gov/uploadedfiles/testimony_becker.pdf.

²² IIA Staff conversation with Navajo Nation Washington Office staff. Feb. 6, 2023.

²³ 116th Congress, H.R. 8951, the Native American Land Empowerment Act. <https://www.congress.gov/bill/116th-congress/house-bill/8951/>.

²⁴ U.S. International Trade Administration. <https://www.trade.gov/travel-tourism-industry#:~:text=The%20U.S.%20travel%20and%20tourism%20industry%20generated%20%241.9%20trillion%20in,for%202.9%25%20of%20U.S.%20GDP.>

²⁵ <https://apps.bea.gov/scb/issues/2023/02-february/0223-travel-tourism-satellite-account.htm>.

²⁶ American Indian Alaska Native Tourism Association (AIANTA). Economic Impact Study Reveals Native Tourism is a \$14 Billion Industry. 2021. <https://www.aianta.org/economic-impact-study-reveals-native-tourism-is-a-14-billion-industry/>. In conversations between IIA Staff and AIANTA, it was revealed that AIANTA expects to release an updated version of this report this year.

alligator demonstrations to visitors. These demonstrations showcase tribal traditions related to alligators as well as the role alligators play in the Everglades.²⁷

Akwesasne Travel, part of the Saint Regis Mohawk Tribe's Office of Economic Development, was named the Champions of Change by the New York State Tourism Industry Association for their contributions to New York tourism and received the Tribal Destination of the Year award by the American Indian Alaska Native Tourism Association in 2022.²⁸ The Saint Regis Mohawk Tribe pursued cultural tourism as a new source of economic development and established Akwesasne Travel to cultivate this endeavor. From experiencing the art of traditional basket weaving, to tours of a traditional wooden lacrosse stick factory, and witnessing the technique used to make wampum belts, Akwesasne Travel showcases the cultural history as a form of economic development.²⁹

Alaska Natives have played an increasing role in the Alaskan tourism industry. Alaska Magazine listed the Festival of Native Arts, which showcases the culture and traditions of Alaska Natives across the state, as the number eight reason to visit Alaska.³⁰ Cultural centers and museums such as the Tsimshian Cedar Clan House in Juneau, the Totem Heritage Center in Ketchikan, the Huna Tribal House in Glacier Bay, and the Alutiiq Museum all offer visitors a unique experience and are advertised by the Alaska Travel Industry Association as tourism attractions.³¹

However, there are still challenges for tribes wanting to pursue native-led tourism, including capital investment and marketing inclusion in tourism advertisements. The Native American Tourism and Improving Visitor Experience (NATIVE) Act was passed in 2016 to ensure that Indian tribes, tribal organizations, and Native Hawaiian organizations are included in federal tourism initiatives.³² Congress could review the implementation and effectiveness of the NATIVE Act to identify any opportunities for improvement.

Tribal Economic Development Corporations

Tribes have three options when chartering corporations that will serve tribal economic interests: 1) a corporation chartered under section 17 of the Indian Reorganization Act (IRA) (a Section 17 Corporation), 2) a Tribally Chartered Corporation, or 3) a State-Chartered Tribal Corporation.³³ Each of these options has unique benefits and drawbacks, and tribes are able to self-determine the best path forward. Tribal corporations are designed to reinvest in themselves and generate profit, which is usually paid out to tribal governments through taxes or dividends. Tribal governments use these funds to provide services, particularly to supplement federal funds for self-government programs such as health care services, public safety services, and services to elders.

²⁷ Miccosukee Casino & Resort. Things to Do. <https://miccosukee.com/resort/experiences/>.

²⁸ Saint Regis Mohawk Tribe. Akwesasne Travel Named Champions of Change by New York State Tourism. 2023. <https://www.srmt-nsn.gov/news/2023/akwesasne-travel-named-champions-of-change-by-new-york-state-tourism>

²⁹ Akwesasne Travel. Browse our Cultural Tours. <https://akwesasne.travel/mohawk-cultural-tours/>.

³⁰ Alaska Magazine. 10 Reasons to Visit Alaska. 2024. <https://alaskamagazine.com/travel/10-reasons-to-visit-alaska/>

³¹ Travel Alaska. Alaska Native Cultural Tours & Experiences. <https://www.travelalaska.com/explore-alaska/articles/alaska-native-cultural-tours-experiences>.

³² P.L. 114-221.

³³ Department of the Interior. BIA. Choosing a Tribal Business Structure. <https://www.bia.gov/service/starting-business/choosing-tribal-business-structure>.

A Section 17 Corporation permits tribes to form a business corporation that is wholly owned by the tribe, but is separate and distinct from the tribal government.³⁴ This provides a beneficial tax status and also protects tribal government property through sovereign immunity.³⁵ For example, Tribal 1 was incorporated in 2011, as the Mith-ih-Kwuh Economic Development Corporation, owned by the Coquille Indian Tribe of Southwestern Oregon. Tribal 1 provides services such as contracting, construction, real estate development, and financial services.³⁶

Tribally chartered corporations are corporations organized by a tribal government pursuant to a tribal code or resolution.³⁷ While connected to the tribe, the assets, and obligations, as well as the decision-making authority of the corporation are separate from the tribal government.³⁸ These corporations effectively become the economic arm of the tribe. For example, the Winnebago Tribe of Nebraska started Ho-Chunk, Inc. in 1994 to diversify the tribe's revenue and provide jobs to its people. The Winnebago tribe had opened a casino on their reservation, but since non-tribal gaming has increased since 1994, the tribe has looked to pursue other economic avenues. Ho-Chunk, Inc. is a leading employer in the tri-state region of Nebraska, Iowa, and South Dakota with \$380 million in revenue for 2022 and various subsidiaries such as Ho-Chunk Farms, the All-Native Group, the Flatwater Group, and Ho-Chunk Capital.³⁹ Ho-Chunk, Inc. uses their revenue to reinvest into the corporation, provide Winnebago with a dividend, and fund various programs and partnerships.⁴⁰

State-Chartered Tribal Corporations do not have the same beneficial tax treatment and do not include a presumption of sovereign immunity for the corporation. An example of state-chartered corporations in a native context can be seen in Alaska Native Corporations (ANCs) that were required to be formed by the Alaska Native Claims Settlement Act (ANCSA), but are chartered under Alaska state law.⁴¹ Generally, ANCs are state-chartered, private, for-profit business corporations with the statutory mandate to provide health, education, and welfare benefits to their Alaska Native shareholders.⁴² For example, Doyon is a regional ANC headquartered in the interior region of Alaska, created the Doyon Foundation to provide Doyon shareholders educational, career, and cultural opportunities.⁴³ The Foundation has awarded over \$11.6 million in academic scholarships and is leading native language revitalization efforts in the region.⁴⁴

Tribes tend to structure their tribal economic development corporations around traditional values and beliefs. For example, Ho-Chunk, Inc. notes that the traditional name for the Winnebago

³⁴ Id.

³⁵ Id.

³⁶ Tribal 1. About Us. <https://www.tribal.one/about-us/>.

³⁷ Department of the Interior. BIA. Choosing a Tribal Business Structure. <https://www.bia.gov/service/starting-business/choosing-tribal-business-structure>.

³⁸ U.S. Department of the Interior. Office of Indian Energy and Economic Development. Choosing a Tribal Business Structure. <https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/pdf/Choosing%20a%20Tribal%20Business%20Structure%204.8.19.pdf>.

³⁹ Ho-Chunk Incorporated. 2022 Annual Report. <https://www.hochunkinc.com/wp-content/uploads/2023/08/Ho-Chunk-Inc-Annual-Report-2022.pdf>.

⁴⁰ Id.

⁴¹ P.L. 92-203.

⁴² Id.

⁴³ "The Doyon Foundation" <https://www.doyon.com/shareholders/funding/>.

⁴⁴ Id.

people is “Hochungra,” or Ho-Chunk, thus their corporation’s name is “The People, Incorporated,” and the values associated with their history are weaved throughout their corporation’s defining principles.⁴⁵ The Waséyabek Development Company, LLC (WDC), established by the Nottawaseppi Huron Band of the Potawatomi Tribe, follows the Seven Grandfather Teachings (love, respect, bravery, truth, honesty, humility, and wisdom) and the values of the tribe are present in the work it pursues.⁴⁶

Tribes and tribal economic corporations face the challenge of not knowing all of the programs or opportunities available to them. This can encompass tax incentives, established business assistance programs, or ways to receive or provide capital investment. The Indian Community Economic Enhancement Act of 2020 elevated the Office of Native American Business Development within the Department of Commerce, expanded the application of the Buy Indian Act’s procurement authority, and reauthorized the Native American Programs Act with improvements.⁴⁷ Congress could review the effectiveness of the implementation of the Indian Community Economic Enhancement Act and work with stakeholders to determine if improvements can be made.

The Government Accountability Office (GAO) found in a 2022 report that tribes had difficulty identifying and accessing federal programs. The report suggested creating a repository of information on economic development programs across federal agencies so tribal entities could access the information and identify programs best suited for their needs.⁴⁸ The recently launched Tribal Access to Capital Clearinghouse looks to meet some of these requirements.⁴⁹ However, congressional oversight could determine if further coordination between agencies on a central repository is necessary.

⁴⁵ Ho-Chunk Incorporated. <https://www.hochunkinc.com/>.

⁴⁶ Waséyabek Development Company, LLC. Who We Are. <https://waseyabek.com/who-we-are/> & <https://waseyabek.com/seven-grandfather-teachings/>.

⁴⁷ P.L. 116-261.

⁴⁸ GAO-22-1051215. <https://www.gao.gov/products/gao-22-105215>.

⁴⁹ “Access to Capital Clearinghouse” BIA <https://www.bia.gov/atc>.