

**ECONOMIC DIVERSIFICATION TO  
CREATE PROSPEROUS  
TRIBAL ECONOMIES**

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**OVERSIGHT HEARING**

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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**OVERSIGHT HEARING ON ECONOMIC  
DIVERSIFICATION TO CREATE PROSPEROUS  
TRIBAL ECONOMIES**

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**Thursday, February 15, 2024  
U.S. House of Representatives  
Subcommittee on Indian and Insular Affairs  
Committee on Natural Resources  
Washington, DC**

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The Subcommittee met, pursuant to notice, at 10:18 a.m., in Room 1324, Longworth House Office Building, Hon. Harriet M. Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, Carl; Leger Fernández.

Also present: Representative Huffman.

Ms. HAGEMAN. The Subcommittee on Indian and Insular affairs will come to order.

Without objection, the Chair is authorized to declare a recess the Subcommittee at any time.

The Subcommittee is meeting today to hear testimony on economic diversification to create prosperous tribal economies.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I ask unanimous consent that the gentleman from California, Mr. Huffman, be allowed to sit and participate in today's hearing.

Without objection, so ordered.

I will now recognize myself for an opening statement.

**STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING**

Ms. HAGEMAN. I want to first thank all of our witnesses for making the trip here and being willing to discuss these important issues.

Today's hearing is entitled, Economic Diversification to Create Prosperous Tribal Economies. Today, we will hear from tribal stakeholders on ways tribes have diversified their economies to create jobs, revenue, and opportunities that benefit tribes, tribal members, and their communities.

Every local, state, Federal, and tribal government knows that a diverse economy is healthy and resilient and will encourage entrepreneurship, innovation, and ultimately human flourishing.

Since the 1970s, the Federal Government has embraced a tribal policy of self-determination, which supports tribal governments to

self-direct both services provided to their people and economic development plans that support tribal government services.

Tribes have consistently sought to diversify their tribal economies through various means so that they can expand services to tribal members and build sustainable economies to benefit current and future generations.

Many tribes have pursued agriculture, gaming, natural resource development, business ventures, tourism, and other avenues to build their economies. These ventures have impacted not only tribes and tribal members, but also the surrounding communities.

In January 2020, estimates showed that tribal governments and tribal economic enterprises provided over 1.1 million jobs within the U.S. economy, with most jobs held by non-tribal members.

In many places, particularly our rural communities where tribes are present, the tribe or tribal enterprises are the leading employer in the area. For example, the collective Tribal Nations of Oklahoma contribute \$15.6 billion to the economy and 113,442 jobs in 2019 alone.

Over the years, they also contributed over \$1.8 billion to public education and mental health services, with an additional \$84 million going to support schools, municipalities, and other community initiatives.

All that said, the overall impact of tribes on the U.S. economy is expansive and generally under-reported. However, there continues to be many barriers for tribes when it comes to economic development and diversification.

Real property is one of, if not the most, important economic resource that our tribes have. Yet, there are still a multitude of restrictions and requirements that could dictate how and when land can be used, depending on its status.

This Subcommittee has held several hearings that have highlighted how bureaucratic red tape can stymie land use and natural resource development. Streamlining regulatory requirements so they are not duplicative or burdensome is crucial.

Tribal Nations and enterprises have also engaged in the recreation and tourism industries to tell their own stories and to develop unique experiences for domestic and international tourists.

In 2021, American Indian Alaskan Native and Native Hawaiian owned tourism businesses provided 117,852 jobs across 40,618 businesses. These Native tourism businesses contributed \$14 billion to the total \$1.7 trillion U.S. tourism related industry.

Tribes have had to overcome the challenge of not having a property tax base and have sought diverse revenue streams through business ventures. They have developed corporate structures that are sophisticated and innovative to enable incomes to tribal governments so that governmental services can be provided to tribal members and supplement the Federal funds that already support health and human services to our tribal members.

I look forward to hearing all about how economic diversification has benefited tribes and where we can go from here.

I again want to thank the witnesses for being with us today, and I look forward to hearing your testimony.

The Chair now recognizes the Ranking Minority Member for her statement.

**STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO**

Ms. LEGER FERNÁNDEZ. Thank you so very much, Madam Chair, and I am always grateful for the wisdom and knowledge that our witnesses bring to this hearing room and bring to our efforts to improve issues and to address the issues that face Indian Country and today to help us learn how to best diversify and grow tribal economies.

Diversifying tribal economies and developing and expanding economic opportunities for your communities is critical for tribal self-determination and sovereignty.

Economic sovereignty is an essential element of tribal sovereignty and the manner in which tribes have experienced and grown that economic sovereignty is vast and growing. It is innovative.

You are thinking out of the box, and you are getting things done that benefit not just your communities, but as noted, the rural communities within which you are located, the urban communities that we must remember, many tribes are adjacent to and located within.

Our work in this Subcommittee and in Congress should focus on what do we do to remove the barriers to address the injustices that may limit the manner in which you can grow your tribal economic endeavors.

Over the last Congress in the last few years, we have made progress with historic legislation like the Inflation Reduction Act, which was intended to lower energy costs and open up new areas of possibility for tribal growth.

The Infrastructure Law, because if we do not have the broadband, the electricity, the water, you cannot have business. The Chips and Science Act because we need to start manufacturing in America what we need in America.

It can be done on tribal lands just as well, and oftentimes, with better results and better opportunities than off tribal lands because of unique situations that tribes bring to the equation.

The Inflation Reduction Act increased funding for the tribal Energy Loan Guarantee Program from \$2 billion to \$20 billion to support tribal investment in energy-related projects.

It also provided tribes access to direct pay tax incentives, which will support tribal energy projects being built more quickly and affordably through clean energy tax incentives.

This was a priority of mine because I realized and recognized that we were not able to monetize the traditional tax incentives provided to the industry as we looked at renewable energy. It was something, an oversight that existed for decades, and now we are starting to change that.

The Infrastructure Law set aside \$13 billion for tribal infrastructure to fund essential services for tribes, from broadband to transportation to water wide settlement. Once again, without water you cannot grow a business.

And the Chips and Science Act required the National Science Foundation to award grants through the Tribal Colleges and

Universities Program to increase participation in computer science and education programs.

These historic investments made important projects possible, such as \$200,000 from the Infrastructure Law for the Choctaw Nation of Oklahoma to install electric vehicle charging infrastructure to serve the larger Durant, Oklahoma area, or the \$4.7 million for Zia Pueblo in New Mexico to connect over 200 unserved Native American households and small businesses to high-speed broadband.

As we continue to implement this historic funding, I look forward to attending groundbreakings where we are putting up solar panels, buying infrastructure lines, and building essential facilities.

This funding is all a step in the right direction and can be essential for tribes to provide the economic stability in their communities and in the surrounding communities. But we know the work doesn't stop with the funding, and funding is not the only answer.

Once these programs are out there, funding and new resources must be accessible to tribes, and programs should be developed and implemented in coordination and with tribes in the lead.

We need technical assistance to access the funds so we don't leave a dime in DC when it can be put into the ground and into projects in your communities. We need to make sure that we address the complexities and the overlapping and multiplicity of requirements to be able to use your very own land for these projects, the leasing, the right-of-way. We need to get it down and get it down so it is working and working quickly.

Otherwise, we really are not upholding our trust and treaty obligations to Tribal Nations. Time and time again, this Committee has heard how difficult it can be to get funding on the ground and concerns regarding the lack of consultation in expanding projects in their areas.

This cannot remain the status quo. While unemployment, limited housing, limited workforce housing and undeveloped infrastructure remain real issues in Indian Country, we in the Federal Government, we in Congress, need to do more to make sure these resources we are developing and implementing are reaching your communities.

I look forward to hearing from each of you about how we can get that done, about what we need to do to remove these obstacles. We need to know how do we get the great things that you are already doing from river restoration, tourism, clean energy, natural resources project, all the businesses, the manufacturing.

How can we make sure that this is not the end, but the beginning as we build the blocks of economic sovereignty for your communities?

Thank you once again for being here today. With that, I yield back.

Ms. HAGEMAN. Thank you. And I will now introduce our witnesses for our panel.

Mr. Justin Ahasteen, how did I do with that?

Mr. AHASTEEN. OK

Ms. HAGEMAN. He is the Executive Director for the Navajo Nation Washington Office, Washington, DC; Ms. Sherry Rupert, CEO, American Indian Alaska Native Tourism Association,

Albuquerque, New Mexico; and I also would like to recognize Mr. Huffman for 1 minute to introduce the witness from his district.

Mr. HUFFMAN. Madam Chairman, thank you. I am proud to introduce Raymond Bacon. He is the Executive Director of economic development for the Yurok Tribe in my district.

It is California's largest Native American tribe. Ancestral lands of the Yurok are on the beautiful north coast. And the Yurok have supported countless strategic investments in innovative strategies in our region.

They have a portfolio that includes 13 businesses, with four sister corporations. They have carefully developed a variety of revenue streams for economic resilience and expanded their business operations to encompass several different sectors: hospitality, of course, with their golf course; cutting edge technology, with their aviation lidar mapping; and a fuel mart division.

Their forward-thinking approach extends beyond traditional sectors and is exemplified by the Telecommunications Corporation the Tribe has, which is expanding broadband accessibility in our region.

All of these are success stories that I think will contribute to this important conversation today. So, welcome, Mr. Bacon.

Ms. HAGEMAN. Thank you, Mr. Huffman.

And finally, Mr. Lance Morgan, President and CEO, Ho-Chunk, Inc., Winnebago, Nebraska.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the record.

To begin your testimony, please press the "talk" button on the microphone. We use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow, and at the end of 5 minutes, the light will turn red, and I will ask you to please complete your statements.

I will also allow all witnesses on the panel to testify before Member questioning.

The Chair now recognizes Mr. Justin Ahasteen for 5 minutes.

**STATEMENT OF JUSTIN AHASTEEN, EXECUTIVE DIRECTOR,  
NAVAJO NATION WASHINGTON OFFICE, WASHINGTON, DC**

Mr. AHASTEEN. Yá'at'ééh, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee.

My name is Justin Ahasteen. I am Bilagáana born for Tótsohnii. My maternal grandfather is Bilagáana, and my paternal grandfather is Kiis'áanii.

I am the Executive Director of the Navajo Nation Washington Office, providing testimony on behalf of Dr. Buu Nygren, President of the Navajo Nation.

Thank you for the opportunity to testify before this Subcommittee on the topic of economic diversification in Indian Country.

If I were to summarize the history of the Navajo economy in just a few words, I would probably say interrupted progress.

The Navajo Nation was one of the largest Native American tribes in the country, with over 400,000 enrolled members, with a

reservation stretching over 27,000 square miles in Arizona, New Mexico, and Utah.

Even though the land has challenges, like limited water resources, it also has enormous potential to sustain our people.

For generations our people thrived, building homes, raising livestock, and planting orchards until the United States destroyed everything in the 1860s. We returned to our lands after the long walk and began to rebuild.

But yet again in the 1930s, our wealth was taken away through the livestock reduction program, which slaughtered two-thirds of our livestock.

With limited water resources, the Federal Government told us the only way to prosperity was through mineral extraction. One of the largest jobs created by the Federal Government was uranium mining, which employed thousands of Navajo citizens during the Cold War, but left behind a legacy of radiation poisoning, death, and open mines that have yet to be remediated.

The Black Mesa Coal Mine generated millions of dollars in revenue for the Navajo government, but ultimately depleted over 44 billion gallons of water from our aquifers, drying up springs that our people relied on to provide water to their families and to their livestock.

The most recent blow was probably when the Navajo generating station near Page, Arizona, was permanently shut down. The Navajo generating station had 538 employees, a majority of whom were Navajo, and paid about \$52 million in wages every year.

The loss of that income severely damaged the Navajo economy and the local community has yet to recover. Time and time again, the Federal Government promised us jobs and prosperity, but the promise was often illusory, and the jobs were a devil's bargain.

For over 50 years, we have known that we need to diversify our options, and we have worked tirelessly towards that goal. We now have a dozen tribal enterprises that bring revenue to the Navajo Nation government and provide good jobs to our people, but it clearly isn't enough.

Despite an educated and talented workforce, we struggle to make progress. Many citizens still lack basic infrastructure, such as running water, sanitation, housing, and paved roads.

And our unemployment rate sits at about 57 percent. The fact of the matter is, the Navajo Nation is not a small casino tribe with a few hundred citizens that can live off the gaming revenues.

We have a casino, but it is located far from major population centers and only generate modest revenue. Even our most successful enterprises cannot employ all of our citizens directly, and they shouldn't have to.

We need a variety of businesses operating in the Navajo Nation, representing all sorts of industries. We need to empower our entrepreneurs to dream big and take risks that will create the industries for tomorrow.

But sadly, this isn't happening. No company wants to invest in a community with a dirt road that is effectively impassable for weeks at a time. But we can't pave our roads without gravel, and we can't dig our gravel pits without getting permission from the Department of the Interior.

Many entrepreneurs use a mortgage to secure startup funds, but our people don't own their homes, which means there is no equity to leverage to start a new business.

I don't mean to sound overly pessimistic. There have been great strides to help Indian Country since the self-determination era began.

We have been the beneficiaries of many Federal programs meant to help tribes start their own enterprises, and we hope to benefit from even more.

Though my written testimony identifies problems with many of the recent programs, one of these programs is the State Small Business Credit Initiative, which we hope will provide a perpetual infusion of capital to empower small businesses to compete on and off the reservation.

But one thing that we do need is for the Federal Government and state governments to get out of the way. The Diné people are hardworking, creative, and we are ready to take on any opportunity. But those opportunities will only come when tribes are given exclusive jurisdiction over their lands and not beholden to the Federal Government or the state governments to dictate how business is done.

In conclusion, I would like to reaffirm our unwavering commitment to building a diverse and sustainable Navajo economy and creating opportunities for all members of our community.

I look forward to collaborating to improve the lives of the Navajo people, and it is my sincere hope that our efforts will be able to remove the barriers that stand in the way for a prosperous Navajo economy.

I am happy to answer any questions that you may have, and thank you.

[The prepared statement of Mr. Ahasteen follows:]

PREPARED STATEMENT OF JUSTIN AHASTEEN, EXECUTIVE DIRECTOR, NAVAJO NATION  
WASHINGTON OFFICE

*Yá'át'ééh* Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee.

My name is Justin Ahasteen. I am *Bilagáana* (White), born for *Tótsohnii* (Big Water). My maternal grandfather is *Bilagáana* (White) and my paternal grandfather is *Kiis'áanii* (Hopi). I am the Executive Director of the Navajo Nation Washington Office, providing testimony on behalf of Dr. Buu Nygren, President of the Navajo Nation ("Nation").

Thank you for the opportunity to testify before the Subcommittee on Indian and Insular Affairs on the topic of economic diversification in Indian Country. The Navajo Nation is one of the largest Native American tribes in the country and provides critical governmental services to over 400,000 members, half of whom reside on our lands. The Navajo Nation encompasses over 27,000 square-miles or just over 17.5 million acres, stretching across 11 counties in three states—Arizona, New Mexico, and Utah.

In 1868, the United States entered into a treaty with the Navajo Nation, promising health care, education, agricultural assistance, and to improve the wellbeing of the Navajo people in perpetuity. As such, the United States government is legally and morally bound with a treaty responsibility and a sacred trust obligation, to support the Navajo Nation in addressing the many challenges we face, including in developing our economy, which is proven to be one of the most effective ways to increase the overall wellbeing of a people.

Given our land and population size, the social and economic needs of the Navajo people are heavy in many of our communities, including a lack of basic infrastructure such as running water, sanitation, housing, electricity, paved roads, as well as

a high unemployment rate of 57% across the Nation. The strain on our tribal government is large, making it difficult to provide adequate services to our *Diné* people. The Navajo Nation is pursuing new and innovative ways to create economic prosperity for our citizens, and we look forward to working with this Subcommittee to advance tribal sovereignty, self-determination, and the economic well-being of the Navajo Nation and all of Indian Country.

### **Early Development of the Navajo Economy**

With a population spread out across one of the more arid regions of the American Southwest, life has never been easy for the Navajo people. Despite the harsh living conditions of our environment, we adapted, and we slowly built an economy that could sustain us. But as anyone familiar with economics knows, capital is built slowly over generations, but it can be destroyed in an instant.

In 1864, following a series of conflicts with American military forces, thousands of Navajo men, women, and children were forcibly removed from our ancestral homelands in what would become the states of Arizona and New Mexico, and sent on a forced march of 300 miles, which came to be known as the “Long Walk.” Hundreds of our people died on the journey, and thousands more, approximately one in four, died during the subsequent internment at Bosque Redondo.

Prior to the Long Walk we had spent centuries perfecting an agricultural system that was suited to the conditions available. Then Colonel Kit Carson and his men were ordered to force the Navajo people into starvation by razing everything to the ground. As part of their scorched earth policy, his men destroyed everything, burning our villages, chopping down the peach orchards that once covered the floor of Canyon de Chelly, and slaughtering our livestock, all of which providing our people with shelter and a reliable source of sustenance.

Once we were allowed to return to our lands, we had nothing and had to build our lives again from scratch. Most Navajo families maintained small herds of sheep, cattle, and other livestock to provide a meagre income through end of the 19th and the first half of the 20th centuries. Just as the Navajo people began to accumulate some wealth in the form of their herds, the federal government initiated the livestock reduction program, citing concerns about the impact of the growing herds on the local vegetation as a justification. The program led to the slaughter of as many as two-thirds of our sheep, forcing a strict quota on the number of animals we could own. This program devastated the already-weak Navajo economy, throwing many families who were already living in poverty into even greater hardship. It quickly became clear that our people would have to look to outside sources for additional income.

Shortly before the livestock reduction program was enacted, oil and gas were discovered on the Navajo Nation. Anxious to gain access to these precious resources, the Department of Interior established the Navajo Business Council (the eventual primary legislative body of the Nation in the form of the Navajo Nation Council) to certify mineral leases on Navajo lands. Navajo leaders were not given much choice but to allow outsiders to come and extract their natural resources. In time these industries proved to provide some benefit in the form of jobs for the Navajo people, but the jobs were often dangerous and while they provided significant revenues, the harm caused by the industry often outweighed the benefits.

Uranium mining employed thousands of Navajo citizens during the Cold War, but left behind a legacy of radiation poisoning, death, and open mines that have yet to be fully remediated, more than thirty years after most of the mines ceased operations. The Black Mesa coal mine generated millions of dollars in revenue for the Navajo government, but ultimately depleted over 44 billion gallons of water from our aquifers, drying up springs that our people relied on to provide water to their families and livestock. The aquifer may take decades to fully recover, assuming it ever does. The only saving grace of these operations is that they provided jobs, but one by one each of them was shutdown, leaving us with few viable alternatives. The most recent blow was probably when the Navajo Generating Station (“NGS”) near Page, Arizona was permanently shut down. NGS had 538 employees, a majority of whom were Navajo, and paid about \$52 million in wages every year. The loss of that income severely damaged the Navajo economy, and the local community has yet to recover.

Long before the NGS shutdown, we recognized that we could not rely on a single industry forever to provide the growth and stability that our economy needs. Rather than place all our proverbial eggs into one basket, we have worked tirelessly for over 50 years to diversify our economy. We have a dozen tribal enterprises that bring varying amounts of revenue to the Nation, including a hospitality enterprise focused on increasing our tourism industry; a newspaper and radio station; four casinos; the Navajo Tribal Utility Authority; the *Diné* Development Corporation—

which for over 20 years have provided IT, professional, and other support to governmental agencies and commercial organizations—the Navajo Arts and Crafts Enterprise, as well as many others. The *Diné* people are hardworking and creative, and ready to take on any opportunity.

However, the fact of the matter is none of our enterprises makes up for the revenue lost from our waning economy based on mineral extraction. Despite our efforts to seize every opportunity, we find that many opportunities are illusory. In many instances, the Nation faces bureaucratic red tape which prevents us from accessing the opportunities afforded to us or from creating opportunities for ourselves. In other instances, the opportunity to create economic development is fleeting and more time and money is needed from Congress.

Below are examples of areas where the Navajo Nation and other tribes have experienced difficulties in creating economic development, as well as potential solutions on how this Subcommittee can assist us—and all Indian Country—in overcoming them.

#### **Gravel Pits and Unpaved Roads**

Given the size and rural nature of our reservation, it is important to the safety and well-being of our people—as well as for their economic prosperity—that we have paved roads. Unfortunately, 77% of our roads are unpaved roads, which equates to approximately 13,000 miles of unpaved roads. During poor weather, our unpaved roads can become muddy and impossible to practically or safely traverse, which forces drivers to either abandon their trips or find other ways around. It is not uncommon for an unpaved road in poor weather conditions to add over 2 hours to a trip.

The current cost per mile of pavement is over \$3 million in the Nation, three times higher than the cost per mile to pave a road in a major metropolitan area like Phoenix. Much of this cost is due to restrictions created by the Department of the Interior (“DOI”) which have prohibited the Navajo Nation from using its own gravel pits. Instead, we have been forced to import road materials from off the reservation significantly driving up costs. Most recently, DOI has informed the Nation that we would need to develop our own regulations in order to access and use our own gravel pits. We have requested technical assistance from DOI and the Bureau of Indian Affairs for what specifically is needed in these regulations and have not received a response.

*Potential Solution:* Amend the legislation and/or call on DOI to make itself immediately available to provide technical assistance or to reduce its regulatory requirements so we can access and use our gravel pits on our reservation.

#### **Fractionalization and Economic Development**

Another barrier to paving our roads has been fractionalization. As this Subcommittee knows, the Navajo Nation was able to make some of the largest recoveries under the Land Buy-Back Program. This was important for many reasons, including for the construction of paved roads. One of the successes that we were able to achieve through the Land Buy-Back Program was the paving of a road in our Casamero Lake Chapter. This was impossible before because we were unable to locate the approximately 400 landowners needed to approve the construction. Through the Land Buy-Back Program we were able to consolidate our interests without having to locate these landowners and move forward with the construction. The impact on the Casamero Lake Chapter has been dynamic. Our people out there now have safer roads and improved access to school, work, commerce, health, and emergency services.

Despite that success, there are still 1,200 fractionated parcels held by nearly 15,000 landowners checkerboarded across our reservation. These fractionated parcels prevent us from exercising our jurisdiction over the lands and from providing critical resources such as water, electricity, and other utility services. The result of these fractionations is a substantial hardship on our people, which is exacerbated by the chilling effect that these fractionations produce on outside investors.

*Potential Solution:* Continue to fund and support the Land Buy-Back Program.

#### **Non-Metropolitan Statistical Area Designations**

The Department of Treasury’s Internal Revenue Service (“IRS”) uses statistical areas defined by the Bureau of Labor Statistics (“BLS”) to distort the economic circumstances of the Navajo Nation, which results in our being ineligible for various tax credit programs. The distortion is that the Navajo Nation is not considered a stand-alone non-metropolitan statistical area (“non-MSA”) and is instead evaluated

with consideration to counties in Arizona, New Mexico, and Utah. The use of employment and other economic data from areas outside the Navajo Nation to determine the economic health of the Navajo Nation distorts the economic reality faced by our citizens and creates negative effects.

An example of the negative effect our BLS statistical areas classification is our ineligibility to use certain tax credits. Under the Inflation Reduction Act (“IRA”), for instance, energy projects can enjoy an Energy Community Tax Credit bonus when located in Energy Communities for the purpose of supporting and revitalizing the economies of coal and power plant communities. The Navajo Nation is a coal and powerplant community, yet through the Department of Treasury’s interpretation of Section 13702 of the IRA, projects located on the Navajo Nation will not necessarily enjoy the Energy Community Tax Credit Bonus because the criteria for determining if a project developed on the Navajo Nation is located in an Energy Community will be reviewed using economic data from areas far beyond the Navajo Nation. This result seems inconsistent both with Congress’ general intentions under the IRA and this Administration’s focus on racial equity and environmental justice through Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities), Executive Order 14008 (Tackling the Climate Crisis at Home and Abroad), Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All), and the Justice40 Initiative.

*Potential Solution:* Call on BLS to revisit their non-MSA statistical determinations through consultation with tribes.

### **Jurisdictional Issues**

While fractionalization can create areas within our reservation where we lack jurisdiction, our jurisdiction on our own lands is limited due to dual compliance and taxation. Having to share our authority and jurisdiction with outside governments not only harms our sovereignty but also greatly reduces our ability to attract outside investment onto our reservation.

Economics teaches us that to be competitive, communities need to identify areas where they can establish a competitive advantage over other communities. One way poorer countries have successfully built a competitive advantage over the years has been to offer generous tax rates that attract business investment. So long as non-Native companies have to pay both tribal and state taxes, it is impossible for tribes to offer competitive rates, leaving us with the option of either making the business climate on the reservation less competitive than doing business off-reservation in the state, or charging no tax at all, eliminating an important revenue source that supports our tribal government and services to our people. The same is true of environmental and other clearances. We often find that a business needs twice as many clearances to build on a reservation as they do off the reservation, which can mean the difference of millions of dollars and years to establish a large enterprise.

The fact of the matter is the Navajo Nation is not a small casino tribe with a few hundred citizens that can all live off gaming revenue. We cannot employ all of our citizens directly, nor is it advisable that we do so. Central planning rarely works on a large scale, so we need a variety of employers operating in the Nation representing a variety of industries. Such diversity will enable us to build a more resilient economy that can weather the changing economic climate in an uncertain world. But building that kind of economy is going to require outside capital and investment, and that is currently difficult given the unfavorable business climate on most reservations due to the jurisdictional overlap between tribal and state governments.

This is particularly true of our entrepreneurs. The beauty of a market economy is that individual entrepreneurs can innovate and produce new ventures that a central government planner could never have dreamed of. We need to empower our entrepreneurs to dream and to take risks, knowing that even failed ventures help pave the way for future innovations and growth. That is why we have worked with the Department of the Treasury to set up our State Small Business Credit Initiative (“SSBCI”) program discussed in more detail below. By making loans to small Navajo-owned businesses, we can help fill the credit gap that exists on many reservations. But providing credit is not enough. Our small business owners and entrepreneurs will face many of the same challenges, if not more, that currently prevent larger investments on tribal lands. That is why it is so important to eliminate some of the barriers to entry that exist because of the jurisdictional overlap.

*Potential Solution:* End dual taxation and dual compliance requirements for environmental and other clearance processes.

### **Tribal Energy Loan Guarantee Program**

The Department of Energy's ("DOE") Tribal Energy Loan Guarantee Program ("TELGP") was established by the Energy Policy Act of 2005. The intention behind TELGP was to support tribal investment in energy-related projects by providing loan guarantees to tribes seeking financing for capital intensive energy projects to prevent tribes from being shut out of capital markets due to a lack of commercial credit histories or ratings. Recently, the funding for the program was increased under the IRA from \$2 billion to \$20 billion, with an additional \$75 million allocated to the Department of Energy to run the program. Despite Congress' intent to create important opportunities through TELGP for Indian Country, not a single dollar has been used from this program to guarantee a tribal loan for an energy-related project.

Here are three examples of issues with the TELGP program and a potential solution for each.

#### **1. The DOE requirement that a tribe or tribal entity first obtain a credit rating from a nationally recognized rating agency defeats the entire purpose of the loan guarantee program and is burdensome and costly.**

Obtaining and maintaining a rating can cost over \$100,000 per year. This is a significant cost for a tribe or tribal entity who has no guarantee of obtaining the subsidy from the TELGP. Also, in many cases misperceptions concerning the riskiness of lending to Native borrowers hampers the ability of tribes and tribal entities to receive the rating requirement. Again, this was the very problem this program was intended to solve.

*Potential Solution:* Amend the legislation and/or call on DOE to eliminate the need for a tribal credit rating and instead require that DOE rely on the bank's loan review and monitoring process. A tribal entity can demonstrate its ability to repay loans of this size through its history of doing so and its forward cash flow projections. This has worked with the Bureau of Indian ("BIA") loan guarantee program and Small Business Administration loan guarantee program.

#### **2. Expand the Number and Type of Qualified Financial Institutions.**

DOE uses an approval process for financial institutions that is overly restrictive, sidelining specialized lending institutions that are seeking to support tribal energy projects. DOE's Financial Institution Partnership Program works for large national banks and projects with utilities and well-financed publicly traded energy corporations, but it does not work for tribes and tribal entities.

*Potential Solution:* Amend the legislation and/or call on DOE to allow specialized lenders and other types of lenders who issue credit and finance projects as a regular course of business. DOE could achieve this by modeling procedures developed and implemented by the BIA loan guarantee program to monitor and approve loan guarantees.

#### **3. DOE Due Diligence Is Unnecessarily Burdensome and Redundant.**

Rather than relying on and confirming the due diligence of the lending institution, DOE has developed a separate internal process that requires additional review and documentation unnecessary to the program.

*Potential Solution:* Amend the legislation and/or call on DOE to streamline the due diligence process so that the diligence effort falls on the bank or lending institution. DOE and tribes will benefit by simplifying the process and providing certainty: If the borrower can meet payment obligations, then DOE issues the loan guarantee.

### **Elective Pay to Tribes Under the Inflation Reduction Act**

The IRA added significant potential benefits for tribal entities to the Internal Revenue Code. Specifically, qualifying tribal entities are eligible for 12 years of elective (direct) pay on projects under IRC Section 45Q (carbon capture), 45V (hydrogen) and 45X (renewable) projects. I understand that the Department of the Treasury is working to finalize the IRS rules to allow elective pay to tribal entities for a "Project" if the tribal entity has an equity position in the project. If the intention is for public and/or private entities to include tribes in new energy projects on tribal lands, or for tribal entities to invest in energy projects, the regulations need to allow for lower tribal equity ownership in order to qualify for benefits.

As discussed above, tribes do not have easy access to the significant amounts of capital that are necessary to plan, develop, build and maintain medium or large-scale energy projects. Additionally, tribes and tribal entities lack the experience and

expertise to solely develop energy projects of this magnitude. If the elective pay benefits under IRC Section 45 are only available to entities that have a controlling (51% or greater) interest in a “Project”, it is highly unlikely that any tribal entity would have the financial wherewithal to take advantage of the newly created elective pay benefits.

*Potential Solution:* Amend the legislation and/or call on Treasury to promulgate regulations requiring either a threshold of a 10% ownership interest or \$100 million investment in a qualifying project to qualify for elective pay. Investment at this level would ensure that any project investment was above a nominal threshold, while incentivizing private industry to invest in the advancement of tribes and tribal entities, thus enabling a much-needed economic boost to tribes.

As these rules are finalized, IRS must be very mindful of the objective these incentives were created for and very thoughtful on what the rules need to be to create these outcomes. Energy projects in the tens of millions of dollars are nice, but they do not provide the indirect benefits needed to help stimulate additional development. Energy projects in the hundreds of millions of dollars and, even more so, in the billions of dollars create significant long-term direct and indirect benefits that have real, meaningful impact. The rules must be finalized to incentivize private industry to include tribes and tribal entities in projects of this magnitude. With respect to the amount of financial benefit provided by the federal government, there is no difference between a tax credit or direct payment. There is, however, a massive difference in where that benefit lands. Direct payment provides an opportunity for those benefits to incentivize private industry to include tribes and tribal entities as well as ultimately providing additional benefits to the underdeveloped communities on tribal lands; whereas tax credits predominantly require the developer to monetize the tax credits allowing a significant percentage of the financial benefit to go, once again, to large corporations and financial institutions.

#### **Office of Clean Energy Demonstration**

In May 2023, the Navajo Transitional Energy Company (“NTEC”) was one of eight projects awarded a funding opportunity by DOE’s Office of Clean Energy Demonstration (“OCED”). NTEC’s project is for a carbon capture front-end engineering design (“FEED”) study at the Four Corners Power Plant (“FCPP”) on the Navajo Nation. The funding will cover 50% of the cost of the study, or approximately \$7.5 million. To underscore the significance of this potential project to the Navajo Nation, the FCPP and adjoining Navajo Mine provide over 40% of the annual revenue into the Navajo Nation General Fund.

Upon announcement of being selected, OCED provided a list of the initial required documents and a description of the negotiation process. The negotiation process was stated to take up to three months to complete and had a deadline of August 31, 2023. The only items requested were responses to a Pre-Award questionnaire and an Organization and Financial Management review; and a project kickoff meeting was held where all parties were introduced, a high-level roadmap was provided by OCED, and a weekly progress meeting was set with OCED, NTEC, and Enchant Energy (“EE”).

NTEC and EE submitted the required documents on May 19, 2023. Over the next five months, OCED failed to provide a schedule for negotiations and instead demanded additional documentation without guidance on what was required and provided additional limitations on the grant. For example, OCED requested an updated Statement of Project Objectives (“SOPO”) and then later informed NTEC and EE for the first time that no grant money could be used for assessing Enhanced Oil Recovery and that the SOPO would need to be revised.

With still no definitive schedule or detailed scope provided, a joint meeting between OCED, including Acting Director Kelly Cummins, and representatives from the Navajo Nation, EE, and NTEC was held on November 2, 2023. During this meeting, NTEC informed OCED that they must start the FEED Study by December 15, 2023, or risk losing resources from their project partners. OCED agreed to have the FCPP Carbon Capture Integrated FEED cooperative agreement fully executed by December 15, 2023. As of February 1, 2024, NTEC is not under contract and OCED is still requesting new and additional information.

NTEC started the FEED Study on December 15, 2023, but due to the erratic and poor communications with OCED, NTEC is currently working at its own financial risk to fund the entirety of the FEED Study.

*Potential Solution:* Call on DOE to simplify the approval process for this grant and to honor the original schedule and conditions.

### State Small Business Credit Initiative

The Navajo Nation's journey toward economic diversification and stability has been fraught with challenges, historical setbacks, and environmental impacts from industries that, while once lucrative, have left damaging legacies. As we look to the future, it is imperative that we support the entrepreneurial spirit of the *Diné* people and nurture small businesses that can contribute to a robust, diversified economy.

SSBCI funding, made available for the first time ever to tribes under the American Rescue Plan Act ("ARPA"), represents a critical opportunity for the Navajo Nation to invest in its small business ecosystem. Access to capital is a critical component to the growth of every successful company. Small businesses are the backbone of the American economy, and for the Navajo Nation, they do not only represent income and jobs, but also the preservation and advancement of Navajo culture, values, and community. By effectively utilizing the SSBCI funds, the Navajo Nation can provide the needed financial support to overcome this hurdle, enabling small businesses to thrive, innovate, and create jobs for our people.

The anticipated receipt of our first payment from the SSBCI under ARPA is a step in the right direction, but admittedly it will not be enough. States have benefited from the SSBCI program for over a decade, but it was only in the last few years that the opportunity to participate has been extended to tribes, despite the fact that our needs are so much greater. We have higher unemployment than the off-reservation economy, currently at 57% in the Navajo Nation, and our entrepreneurs have less access to capital as they are unable to leverage resources like the equity in their homes, that is frequently a source of start-up capital off the reservation. We hope this program will prove to be a good start, but as has been true of so many federal programs meant to empower tribal economies, we worry that the bureaucratic complexities and red tape will hinder our ability to reap the full benefits.

*Potential Solution:* As the SSBCI program continues to roll out for tribal participants, the Navajo Nation urges the Subcommittee to be vigilant and to keep an open mind. As challenges with the full implementation of the SSBCI program are identified, we will need this Subcommittee to work with tribal governments and other committees to come up with solution in a timely manner. By doing so, Congress will be playing a pivotal role in promoting the economic resilience and prosperity of the Navajo Nation to empower our entrepreneurs and small businesses with the resources they need to succeed.

### Conclusion

In conclusion, I would like to reaffirm our unwavering commitment to building a diverse and sustainable Navajo economy and creating opportunities for all members of our community. While we are fully dedicated to this endeavor, it is essential to acknowledge the formidable barriers that obstruct our path at every turn. Despite these challenges, we remain steadfast in our determination to overcome them and forge ahead towards a future of economic resilience and prosperity for all Navajo citizens. I would once again like to express my thanks to this Subcommittee for the opportunity to testify on behalf of the Navajo Nation. I look forward to working with you to continue to improve the lives of the Navajo people and all of Indian Country, and it is my sincere hope that through our efforts we will be able to remove some of the barriers that stand in the way of the blossoming of the Navajo economy.

*Ahéhee'* and thank you.

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QUESTIONS SUBMITTED FOR THE RECORD TO MR. JUSTIN AHASTEEN, EXECUTIVE  
DIRECTOR, NAVAJO NATION WASHINGTON OFFICE

### Questions Submitted by Representative Westerman

*Question 1. In your written testimony, you noted that the Navajo Nation recognized the need to diversify its economy approximately 50 years ago. Can you further expand on the need for economic diversification and how Navajo Nation has overcome obstacles regarding current and past diversification efforts?*

Answer. For most of our history, we have had just two major industries on the Nation: Agriculture and Mining. Agriculture struggles during a drought, which happens frequently in our region, and demand for our natural resources, especially

coal, fluctuates widely and is no longer a reliable source of long-term growth. So, we need to diversify to ensure there are still jobs if one industry is struggling.

To help diversify our economy, we first set up our business office, now housed in the Division of Economic Development, to help potential entrepreneurs and investors navigate the administrative hurdles to doing business on a reservation, including applying for a business site lease. Unfortunately, the process is not straight forward, and it can take a lot of time and money to get all the permissions to start a business. Add to this some of our infrastructure challenges, and it's hard to convince a lot of companies to open up shop in the Nation.

To help bring in outside capital and expertise, we will also frequently partner with other companies. By operating as a partnership, we are able to help companies navigate the complexities of operating on tribal land, and they will also get some of the benefits available to tribal businesses.

Finally, we invest directly in the economy through our tribal enterprises. By setting up our tribal enterprises we can at least guarantee some economic activity in the Nation that will hopefully act as an anchor to the economy and spur secondary economic development.

*Question 2. Your testimony mentioned the various jurisdictional barriers the tribe has had to fight when pursuing economic growth, such as the duplicative environmental reviews needed for paving roadways. What other duplicative regulations or compliance concerns would you highlight for the committee to look at?*

Answer. Absolutely. Taking the environmental reviews as an example, the National Environmental Policy Act (NEPA) covers three areas: Environmental Assessments (EA), Environmental Impact Statements (EIS) and Categorical Exclusions (CatEx). Inter-federal departmental deference is given by federal departments to each other but not to Navajo Nation departments.

For example, the Navajo Department of Transportation (Navajo DOT) is currently required to complete two environmental documents to address the federal action of funding the project (as required by Federal Highway Administration (FHWA)) and the federal action of granting a right-of-way (as required by the Bureau of Indian Affairs (BIA)). The Bureau of Indian Affairs—Navajo Regional Office's Realty Office will not accept the FHWA CatEx document because it is not considered to be in a BIA format. However, the FHWA CatEx is an acceptable document to complete the NEPA process. It would be helpful if the BIA Regional Director would honor and accept Navajo DOT's environmental documents that are approved by FHWA.

Now assume we got the Right of Way approved to build the road, we then have to go through the same process to get a Right of Way to lay power lines, water lines, internet, etc. Every project requires a separate Right of Way, even though whatever processes were good enough for the first Right of Way should be good enough for all of them.

*Question 3. In previous hearings, restricted fee status land models have been discussed, specifically whether that model could enable tribal development of land and natural resources at a faster pace. Would Navajo Nation be open to a process that would let the Nation place some trust land into restricted fee status for economic development purposes? Why or why not?*

*3a) What unintended consequences should Congress seek to avoid if establishing more processes for tribes to move land into restricted fee status?*

Answer. I'm going to have to answer that question with a "probably". We have discussed the possibility internally, and there are definitely members of our current administration and the Navajo Nation Council who like the idea. But anyone familiar with tribal politics knows how messy it can be. Liking something in theory doesn't mean it gets full support in practice and I imagine there will be debates in Council and in each local chapter community to determine what, if any, land they would want to move to restricted fee status. I will say though, that more options are better than fewer options. Even if we don't take advantage of the program, I would rather we have the option to take part than be stuck without any options.

*Question 4. Entrepreneurship can help with creating job opportunities, innovating, and diversifying local marketplaces, and many other positive results. How specifically has the Navajo Nation benefited from its interest in tribal entrepreneurship?*

Answer. Every successful Navajo entrepreneur helps the Nation. Obviously from an economic perspective it means we have more money coming into Navajo hands, providing for our people. But it also provides a sense of pride, knowing that our people built something, and that we didn't just rely on outside investors to get things done. I can't tell you how happy I am to go to a restaurant owned by a

Navajo businesswoman, or to buy a hat made by a Navajo artist. I know of one Navajo entrepreneur who owns nine successful businesses.

When she was just starting it was a family affair with her children and the occasional niece or nephew helping out. As one business grew, others were hired, and new ventures were started until she built the successful life that she now has. But what is perhaps more important is that her success has inspired other in her family and her community to get an education and to get experience and to start businesses of their own.

*Question 5. In your experience, what is the difficulty level for tribes to identify and access federal economic developmental programs, and how could Congress alleviate any issues?*

Answer. For example, the Department of Energy's Tribal Energy Loan Guarantee Program was established by the Energy Policy Act of 2005 to help tribes build a stronger energy sector. This is a great idea. A strong energy sector can be a boon to a tribal economy. We should know. Energy was our primary source of income for years and remains an important part of our economy. So, the Tribal Energy Loan Guarantee Program seems like exactly the type of program that should be able to help us and many other tribes. The only problem is that, as far as we can tell, not a single dollar has been used from this program to guarantee a tribal loan for an energy-related project in the almost 20 years of operating the program.

This is not to say that there is no benefit from any of these federal programs. Clearly that program is more the exception than the rule. There are lots of programs that have provided immense benefit to Indian Country, and we are grateful to Congress for the attention it has given to Indian Country over the years. But sometimes a competitive grant program expects tribes to be operating at a level of sophistication that the states sometimes struggle with. How can we be expected to compete for development grants when we literally don't have reliable internet in half of our government buildings? Or cell calls drop when you drive five minutes out of town?

If we want tribes to really benefit from these programs, I will say formula grants are always preferred to competitive grants and technical assistance is essential. But if these programs are really going to be useful to us, they need to be made available to us on our level, in a form that is truly accessible. And that is going to take some work, and it might mean visiting tribes where they live to really understand how things work.

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Ms. HAGEMAN. Thank you for your testimony. And I don't think I could have said it better.

The Chair now recognizes Ms. Sherry Rupert for 5 minutes.

**STATEMENT OF SHERRY RUPERT, CEO, AMERICAN INDIAN ALASKA NATIVE TOURISM ASSOCIATION, ALBUQUERQUE, NEW MEXICO**

Ms. RUPERT. Madam Chair and honorable members of the Committee. My name is Sherry Rupert, and I am a proud Paiute and Washoe from Nevada.

I am honored to appear before you today as the CEO of AIANTA, the American Indian Alaska Native Tourism Association.

For over 25 years, AIANTA has been steadfast in its commitment to advancing cultural tourism for American Indians, Alaskan Natives, and Native Hawaiians.

Our mission is clear, to support economic development and ensure cultural perpetuation through the growth of cultural tourism.

Tourism holds immense potential for Native Nations and communities, providing not only economic opportunities, but also a means to preserve our cultural identity and share our rich cultural heritage.

However, despite this potential, many Native enterprises face significant challenges in developing their tourism programming. From lack of access, to financing, to basic infrastructure needs, the road to building sustainable tourism enterprises can be arduous.

AIANTA has been at the forefront of addressing these challenges, providing tailored training, marketing resources, and outreach efforts to support cultural tourism development.

From Fiscal Year 2019 to 2022 alone, AIANTA directly reached nearly 2,700 cultural tourism partners, providing them with the necessary tools and resources for economic growth and cultural perpetuation.

The economic impact of Indigenous tourism businesses in the United States is substantial, as evidenced by data from the U.S. Census Bureau.

In 2019, American Indian Alaskan Native and Native Hawaiian hospitality businesses contributed nearly \$15.7 billion to the U.S. economy, a 13 percent increase from 2017, providing 188,524 jobs across the nation.

Despite the challenges posed by a COVID-19 pandemic, recovery is underway, albeit slow, with overseas visitors to American Indian communities increasing from 321,000 in 1921, during COVID to just over a million in 2022, and in 2019, there were over 2 million that were coming to our American Indian communities, so it is slow.

Yet, despite the undeniable impact of Indigenous tourism in the U.S. economy, Native Nations and communities remain largely excluded from mainstream tourism support structures. This exclusion has been particularly evident in the distribution of relief funding during the COVID-19 pandemic, where Native entities received disproportionately little support compared to the other sectors of the industry.

The Native American Tourism and Improving Visitor Experience Act, or NATIVE Act, was a crucial step forward in recognizing the importance of Native tourism and improving collaboration between Federal agencies and Native Nations and communities.

However, its full potential has yet to be realized. Clarifications and revisions are needed to ensure that the Act's appropriations are utilized effectively and that Native voices are truly heard and are leading the effort in tourism initiatives.

AIANTA recommends a renewed commitment to equity and inclusion in the tourism industry, with a focus on direct investments in technical assistance and training specific to cultural tourism.

We also advocate for greater support of the Department of the Interior and the Department of Commerce in the implementation of the NATIVE Act, ensuring that Native Nations and communities have a seat at the table in one of the largest industries in this country.

Tourism, when done well, has the power to uplift communities, preserve cultural identity and traditions, and drive economic growth. AIANTA stands ready to work alongside you to build a brighter future for Native Nations and communities through the full implementation of the NATIVE Act.

Thank you for your time today, and I am here to answer any questions.

[The prepared statement of Ms. Rupert follows:]

PREPARED STATEMENT OF SHERRY L. RUPERT, CHIEF EXECUTIVE OFFICER, AMERICAN INDIAN ALASKA NATIVE TOURISM ASSOCIATION

Subcommittee Chair Hageman, Vice Chair González-Colón and members of the committee, thank you for receiving testimony on behalf of the American Indian Alaska Native Tourism Association, Inc. (“AIANTA”). We appreciate the opportunity to express our priorities to meet the needs of tourism and economic development across Native Nations and communities across the United States. We would particularly like to address the Native American Tourism and Improving Visitor Experience Act (“NATIVE Act”).

#### **TOP LINES**

Revision to the Native American Tourism and Improving Visitor Experience (NATIVE) Act is being requested to support a permanent role for cultural tourism to support economic diversification for American Indian Tribes and Native Hawaiian organizations.

#### **AMERICAN INDIAN ALASKA NATIVE TOURISM ASSOCIATION**

AIANTA is the only national organization specifically dedicated to advancing cultural tourism for American Indians, Alaska Natives and Native Hawaiians. For over 25 years, AIANTA has provided technical assistance and training to American Indians, Alaska Natives and Native Hawaiians to support economic development and to ensure cultural perpetuation through the development and growth of cultural tourism. AIANTA works with American Indians, Alaska Natives and Native Hawaiians to develop, grow and sustain cultural tourism enterprises, businesses and organizations.

AIANTA, an all Native-led nonprofit, serves all 574 federally recognized tribes, tribal organizations and Native Hawaiian organizations to support cultural tourism development and growth nationwide. We are the only organization specifically dedicated to advancing Native cultural tourism as a tool to perpetuate and protect our cultural identity while providing economic opportunities within Native Nations and communities.

For many Native Nations and communities, tourism is a new and emerging industry and Native Nations and communities do not have a robust, fully trained workforce to meet the demand. Without inclusion in the existing, layered tourism support structures, each sovereign native nation, village and community is forced to develop tourism plans, programming and infrastructure from scratch. This process is happening in a world where tourism is already occurring with ramifications both cultural, environmental and economic. Even for those tribes with casinos, the infrastructure and planning are not always in place to diversify funding and/or to fully develop tourism opportunities that reflect, protect and perpetuate culture and Native landscapes.

AIANTA’s priorities are (1) to provide technical assistance and training, research, and publications to American Indian, Alaska Native and Native Hawaiian communities engaged in tourism and hospitality; 2) to facilitate conversations with the Native communities, federal agencies, non-profit associations, and elected officials on the economic and cultural importance of a healthy hospitality industry; (3) to highlight the importance of visiting authentic Native destinations, including cultural, heritage, historic, and artistic sites; and (4) to generate awareness, interest and demand for these destinations with domestic and international travelers, the travel trade and the media.

#### **BUILDING TOURISM IN NATIVE NATIONS AND COMMUNITIES**

Native enterprises and businesses face layered challenges in building out their cultural tourism programming ranging from lack of access to financing to basic infrastructure needs. For the last 25 years, AIANTA has provided outreach, tailored trainings, marketing and resources alongside elevating cultural tourism to the national level and to the industry. This includes AIANTA’s support and role as facilitator (2019) of the Native American Tourism and Improving Visitor Experience (NATIVE) Act (Section 4d). From FY 2019–2022, AIANTA provided direct outreach and resources to 2,665 individual contacts, electronic outreach with 2,095,252 sent and 3,677 participants in training supporting economic development and cultural

perpetuation. (AIANTA's Report to Congress as provided to the Office of Indian Economic Development).

Native Nations and communities also face inconsistent inclusion in the tourism infrastructure designed to support tourism development. Tourism marketing and support is funded in the United States through taxes, fees and general fund allocations. Due to the unique status of American Indians and Alaska Natives in the United States, tourism systems are not fully and consistently in place to support cultural tourism destinations and product. Specifically, Native Nations are not supported by local, regional or national destination marketing organizations and/or the tourism industry because they often do not contribute to the fees and tax support systems that fund tourism development and growth. This is despite the significant economic impact of Native Nations and communities on the economy.

In 2021, AIANTA, in partnership with SMS Research, released a report on the economic impact of Indigenous tourism businesses in the United States based on analysis of 2017 Census Data. <https://www.aianta.org/research/economic-impact/>. This data points to the economic impact, with American Indian, Alaska Native and Native Hawaiian hospitality businesses contributing nearly \$14 billion to the U.S. economy (2017 U.S. Census data) and based on preliminary review of 2019 Annual Business Survey, the economic impact grew:

- In 2019, the 120,869 recorded AIANNH firms in the tourism sector was three times more than in 2017.
- Of the 120,869 AIANNH-owned tourism firms, most (94%) were self-employed individuals (113,200 firms without paid employees), while 7,669 (6%) were firms with paid employees.
- AIANNH-owned firms in the tourism sector directly provided 188,524 jobs across the U.S. in 2019.
- In 2019, annual sales of AIANNH-owned tourism firms contributed \$15.7B to the U.S. economy, a 13% increase from 2017.

As demonstrated by the above data, prior to the COVID-19 pandemic, tourism was a leading opportunity for jobs and economic development in Native Nations and communities. In some rural and remote communities, it is one of the only viable opportunities for household income.

Although Census data is not yet available specifically detailing the impact of COVID-19, the international visitation data points to the decline in visitation. According to U.S. Department of Commerce, approximately 1.7 million overseas visitors (4.4% of total market share) traveled to an American Indian Community in 2019. International visitors are good for the Native Nations and communities they visit and for the entire tourism economy because they stay longer in the U.S. than the average overseas traveler and visit more destinations (2019 U.S. Travel and Tourism Statistics, National Travel and Tourism Office, U.S. Dept of Commerce). In 2020, the impact of COVID-19 was felt dramatically in Native Nations and communities with approximately 251,000 overseas visitors (3.3% of market share)—an 85% drop in visitors.

Significantly, the ramifications of lack of inclusion in U.S. Tourism systems became painfully clear when the EDA's 2021 non-competitive Travel, Tourism and Outdoor Recreation Recovery Act funding, designed to aid recovery from COVID-19 shutdowns, went to States and territories to support tourism marketing, infrastructure, workforce and projects to rejuvenate leisure, business and international travel ***with none of the \$510 million of the relief funding being set aside for Native Nations and communities*** (TTOR\_Fact Sheet.pdf (eda.gov). While the rest of the tourism industry is in full recovery mode with the pandemic fully in the rear-view mirror, Native Nations and communities are left to rebuild on their own. Based on the U.S. Department of Commerce Visitation to American Indian Community data, recovery is slowly underway with 321,000 overseas visitors in 2021 (3.5% of market share) and 1,006,000 overseas visitors in 2022 (4.2% of market share).

By being consistently left out of the tourism support structures, including relief funding, Native Nations and communities are not on an even playing field with the entirety of the U.S. tourism infrastructure. Through educational forums and outreach, AIANTA is working to ensure the systems gap is addressed through industry access, capacity building and marketing support for full participation in tourism.

Tourism is not a go it alone endeavor—it is inherently reliant on connected, collaborative systems. AIANTA is working to fundamentally shift and improve the operating environment for underrepresented entrepreneurs—specifically Native-owned and Native-led cultural tourism operations and enterprises. AIANTA is the only organization specifically dedicated to advancing Native cultural tourism as a

tool for cultural perpetuation. We work across the cultural tourism continuum—from product development and partnership building to marketing and promoting Native tourism destinations and product, domestically and internationally.

**NATIVE AMERICAN TOURISM AND IMPROVING VISITOR EXPERIENCE  
(NATIVE) ACT**

***This committee is critical to helping build Native tourism economies.***

Clarification on the intent of the NATIVE Act is needed to ensure that the Appropriations designated by Congress are being utilized for their intended purposes.

The purpose of the Native American Tourism and Improving Visitor Experience (NATIVE) Act, Public Law 114-221, is “To enhance and integrate Native American tourism, empower Native American communities, increase coordination and collaboration between Federal tourism assets, and expand heritage and cultural tourism opportunities in the United States.” The NATIVE Act outlines how federal agencies engaged in recreation and tourism shall include Indian Tribes, tribal organizations and Native Hawaiian Organizations in management plans and tourism initiatives in Section 2:

The purposes of the Native American Tourism and Improving Visitor Experience (NATIVE) Act, Public Law 114–221, as listed in Section 2, are as follows:

- (1) to enhance and integrate Native American tourism—
  - (A) to empower Native American communities; and
  - (B) to advance the National Travel and Tourism Strategy;
- (2) to increase coordination and collaboration between Federal tourism assets to support Native American tourism and bolster recreational travel and tourism;
- (3) to expand heritage and cultural tourism opportunities in the United States to spur economic development, create jobs, and increase tourism revenues;
- (4) to enhance and improve self-determination and self-governance capabilities in the Native American community and to promote greater self-sufficiency;
- (5) to encourage Indian tribes, tribal organizations, and Native Hawaiian organizations to engage more fully in Native American tourism activities to increase visitation to rural and remote areas in the United States that are too difficult to access or are unknown to domestic travelers and international tourists;
- (6) <<NOTE: Grants. Loans.>> to provide grants, loans, and technical assistance to Indian tribes, tribal organizations, and Native Hawaiian organizations that will—
  - (A) spur important infrastructure development;
  - (B) increase tourism capacity; and
  - (C) elevate living standards in Native American communities; and
- (7) to support the development of technologically innovative projects that will incorporate recreational travel and tourism information and data from Federal assets to improve the visitor experience.

The NATIVE Act also identifies the role of “an entity or organization with a demonstrated record in tribal communities of defining, introducing, developing and sustaining American Indian, Alaska Native and Native Hawaiian tourism and related activities in a manner that respects and honors native traditions and values” to enter into a memorandum of understanding or cooperative agreement with the Secretary of the Interior and the Secretary of Commerce to identify areas where technical assistance is needed and to provide a means of delivery and coordinate delivery of the assistance. (130 STAT 849, Sec 4).

In September 2018, AIANTA signed a memorandum of understanding with the Department of Interior and the Department of Commerce “to formalize a role for AIANTA, pursuant to section 4(d) of the [NATIVE] Act, and strengthen collaboration and coordination related to travel and tourism on Federal and Tribal Lands.” (See MOU\_final.pdf (aianta.org))

In March 2019, AIANTA entered into a five-year Cooperative Agreement A19AC00017 with the Bureau of Indian Affairs (BIA). A collaborative workplan was developed by the DOI, DOC and AIANTA in August 2019 for implementation of the NATIVE Act specific to the following goals:

Goal 1: Identify areas where technical assistance is needed

Goal 2: Coordination and delivery of technical assistance

To support implementation of the NATIVE Act, Congress has appropriated \$19,500,000 through the BIA/Office of Indian Economic Development for the coordination of the identification and delivery of technical assistance to Indian Tribes, Tribal Organizations and Native Hawaiian Organizations and to provide grants (see NATIVE Act, Section 2(6) above).

Although listed as a grantee, AIANTA is the organization designated to facilitate the NATIVE Act and is not a grantee, but rather a partner in implementation efforts. AIANTA received FY2018 and FY2019 appropriation funding totaling \$4,400,000 for implementation of the goals set in support of the NATIVE Act and as outlined in the five-year Cooperative Agreement for the identification and delivery of technical assistance. From March 2019-July 2022, AIANTA has distributed over 2.45 million electronic messages/outreach and resources; provided direct outreach and resources to 2,665 cultural tourism partners; and developed and provided 139 tailored, responsive cultural tourism trainings to 1,418 cultural tourism partners. (AIANTA's Report to Congress provided to OIED).

The breakdown of how the appropriated funds were spent as detailed in the Report to the Senate Committee on Indian Affairs and the Committee on Natural Resources of the House of Representatives FY 2020–2022 provides insight on how the funds have gone beyond the intent of the NATIVE Act. Including Administration Costs utilized internally by the BIA/OIED totaling \$4,624,000—***more funding than was dedicated to the non-profit agency identified by the Department of Interior and the Department of Commerce to act to identify and provide technical assistance and training as required in the NATIVE Act.***

Additional BIA/OIED funding went to Pilot Projects totaling \$3,928,002 with \$1,725,011 going to an academic institution for projects in North Dakota, South Dakota and for an International Forum for Indigenous tourism (North and South America); \$818,022 went to an additional academic institution for projects in Virginia and Montana; \$500,000 went to a tribal organization to provide technical assistance (duplicating efforts of AIANTA); with the remaining \$884,000 going to other tribal entities. BIA/OIED also provided \$7,088,553 for their Tribal Tourism Grant Program.

AIANTA recommends a full and consistent commitment to equity and inclusion of American Indians, Alaska Natives and Native Hawaiians in the United States tourism system. AIANTA encourages equitable distribution of tourism funding through direct investments in the identification and delivery of technical assistance and training specific to cultural tourism facilitated by “an entity or organization with a demonstrated record in tribal communities of defining, introducing, developing, and sustaining American Indian, Alaska Native, and Native Hawaiian tourism and related activities in a manner that respects and honors native traditions and values” (Public Law 114-221, Sec. 4(d)(1)).

Revision/clarification to the NATIVE Act is being requested. AIANTA is requesting that additional language be added to support the implementation of the NATIVE Act to be added modeled after NAHASDA to support consistent support of the growth of economic opportunities in Native Nations and communities through engagement in the cultural tourism/hospitality/ recreation sector. ***It is also critical that both the Department of Interior and the Department of Commerce are actively involved in implementation of the NATIVE Act.***

Further, it was known that the federal government does not have expertise in the tourism industry, but it does however have expertise in giving out grants. The NATIVE Act was intended to ensure that a Native non-profit with experience and the expertise in cultural tourism collaborate with Tribes, Tribal Organizations and Native Hawaiian Organizations across the country so they could determine themselves what they would be willing to share. That non-profit would be better positioned in the industry and within the Native communities to do this work; adept at navigating the intricate and complex systems and relationships that make up the tourism industry. This model was to play a critical role in ensuring Native voices are included in the economic opportunities created by one of the largest service sectors in the world.

Replacement language for Section 4(d) as noted in Section (d)(3):

d) TECHNICAL ASSISTANCE.—

- (1) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary of Commerce, shall enter into a memorandum of understanding or cooperative agreement with an entity or organization with a demonstrated record in tribal communities of defining, introducing, developing, and sustaining American Indian, Alaska Native, and Native Hawaiian tourism and related activities in a manner that respects and honors native traditions and values.
- (2) COORDINATION.—The memorandum of understanding or cooperative agreement described in paragraph (1) shall formalize a role for the organization or entity to serve as a facilitator between the Secretary of the Interior and the Secretary of Commerce and the Indian tribes, tribal organizations, and Native Hawaiian organizations—
  - (A) to identify areas where technical assistance is needed through consultations with Indian tribes, tribal organizations, and Native Hawaiian organizations to empower the Indian tribes, tribal organizations, and Native Hawaiian organizations to participate fully in the tourism industry; and
  - (B) to provide a means for the delivery of technical assistance and coordinate the delivery of the assistance to Indian tribes, tribal organizations, and Native Hawaiian organizations in collaboration with the Secretary of the Interior, the Secretary of Commerce, and other entities with distinctive experience, as appropriate.
- (3) FUNDING.—**There are authorized to be appropriated through each of the named agencies, including but not limited to, the Department of the Interior and the Department of Commerce, for assistance for the organization or entity in paragraph (1) such sums as may be necessary for each of the fiscal years of allocation.** In addition, subject to the availability of appropriations, the head of each Federal agency, including the Secretary of the Interior, the Secretary of Commerce, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Health and Human Services, and the Secretary of Labor shall obligate any funds made available to the head of the agency to cover implementation incurred by the organization or entity described in paragraph (1) in carrying out programs or activities of the agency.

**CONCLUSION**

When done well, tourism and related economic development provide social and economic stability to the most remote rural communities and mainstream city neighborhoods, complementing the effort of American Indian, Alaska Native and Native Hawaiian enterprises, businesses, organizations, and agencies working to build economies and contribute to the growth of the U.S. tourism industry. Tourism, including agritourism, outdoor recreation, eco-tourism, astro-tourism and more brings revenue to Native Nations and communities providing jobs, localized investments and the perpetuation of cultural practices; all of which contributes to the resiliency of Native Nations and communities. AIANTA stands ready to help rebuild Native Nations and communities and supports full implementation of the NATIVE Act to build a brighter future.

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QUESTIONS SUBMITTED FOR THE RECORD TO MS. SHERRY RUPERT, CEO, AMERICAN INDIAN ALASKA NATIVE TOURISM ASSOCIATION

**Questions Submitted by Representative Westerman**

*Question 1. Please list and describe the changes that need to be made to any federal program to ensure that tribal-led tourism and the larger U.S. tourism industry are working together to promote tourism in the United States.*

Answer. In response to your inquiry regarding changes needed in federal programs to facilitate collaboration between tribal-led tourism and the broader U.S. tourism industry, several key adjustments are warranted.

Firstly, with regard to the Native American Tourism and Improving Visitor Experience (NATIVE) Act, it is imperative that the designated entity providing technical assistance and training to tribes in Indigenous tourism be an expert in the field. This ensures that tribes receive tailored support and guidance from knowledgeable professionals who understand the unique challenges and opportunities within Indigenous tourism.

Additionally, within the Department of the Interior, cultural tourism should be recognized and treated as a partner rather than solely as a grantee. This shift in perspective acknowledges the valuable contributions of cultural tourism initiatives and fosters a collaborative approach between tribes, cultural tourism entities, and other stakeholders. By treating cultural tourism as a partner, federal programs can better leverage tribal expertise and resources to promote tourism in the United States effectively.

Furthermore, it is essential for federal programs to prioritize meaningful engagement and collaboration with tribal communities throughout the development and implementation of tourism initiatives. This includes consulting tribes on decision-making processes, incorporating traditional knowledge and cultural perspectives into tourism strategies, and ensuring that tribal voices are heard and respected.

Overall, by implementing these changes and fostering genuine partnerships between tribal-led tourism and the larger U.S. tourism industry, federal programs can enhance their effectiveness in promoting tourism in the United States while respecting and honoring Indigenous cultures and traditions.

*Question 2. Can you expand on your written testimony where you mentioned how you've seen the Department of Commerce and Department of the Interior work together—or not work together—on Native tourism. Are there any areas or programs where Congress should instruct them to work together?*

Answer. In response to your inquiry regarding the collaboration between the Department of Commerce and the Department of the Interior in native tourism initiatives, it is evident that both agencies play pivotal roles in implementing the Native American Tourism and Improving Visitor Experience (NATIVE) Act. However, we have observed challenges in their collaboration, particularly concerning the allocation of resources.

It has come to our attention that the Department of Commerce has not received appropriations to facilitate the implementation of the NATIVE Act, despite its designation as one of the primary agencies responsible for this task. This deficiency in funding hampers the effective execution of the Act and impedes the collaborative efforts between the two departments.

To address this issue, we recommend that Congress instructs both the Department of the Interior and the Department of Commerce to work together more closely, particularly in securing appropriations for native tourism initiatives. Specifically, we advocate for an amendment to Section 4(d)(3) of the NATIVE Act, which pertains to funding, to include appropriations for both agencies. By ensuring adequate funding for both departments, Congress can foster stronger collaboration and enhance the implementation of the NATIVE Act to benefit native tourism initiatives.

*Question 3. Your written testimony mentioned that further technical assistance is needed for tribes that are working to establish tourism businesses in their communities. Can you expand on that?*

*3a) What technical assistance does AIANTA currently provide and what expertise does AIANTA want to provide for the future?*

Answer. In alignment with our previous testimony, we emphasize that the American Indian Alaska Native Tourism Association (AIANTA) stands as the singular national Native organization exclusively devoted to advancing cultural tourism for American Indians, Alaska Natives, and Native Hawaiians. For a span exceeding 25 years, AIANTA has diligently furnished technical aid and training to these communities, fostering economic development, and safeguarding cultural heritage through the fostering and expansion of cultural tourism initiatives.

Throughout this duration, AIANTA has cultivated partnerships, forged relationships, and established an extensive network within the United States tourism sector, traversing the realms of travel trade, media, and now extending globally as a founding collaborator in the establishment of Destination Original International Tourism, a Global Indigenous Collective. Guided by international Indigenous tourism leaders, this collective endeavors to assert leadership in the cultivation and promotion of authentic Indigenous tourism destinations via innovative partnerships.

Presently, AIANTA actively engages with the 574 Tribal Nations nationwide, alongside tribal organizations and small Native-owned enterprises operating within the Indigenous tourism sector. We provide vital training, technical assistance, and resources, including both training opportunities and funding avenues, through direct outreach, webinars, training sessions, and an annual conference dedicated to Indigenous Tourism. Additionally, AIANTA offers a professional certificate in sustainability, empowering stakeholders to implement sustainable practices within their tourism enterprises.

Our immediate focal point revolves around evaluating the readiness of these enterprises for market and export endeavors. It is our earnest desire to persist in offering training programs tailored to bridge the existing gaps for those businesses not yet primed for the visitor marketplace. Furthermore, upon achieving readiness for engagement with the visitor marketplace, these enterprises necessitate robust promotion both domestically and internationally, to apprise potential visitors of their presence and the transformative experiences and destinations they offer.

Thank you for your attention to our ongoing efforts in advancing Indigenous tourism initiatives.

*Question 4. In your written testimony, you touched on Native nations and communities slowly recovering from the impact COVID-19 shutdowns had on tourism. How can Congress support Tribal Nations and communities to ensure resiliency in the future?*

Answer. In response to your inquiry regarding the recovery of Native nations and communities from the adverse impacts of COVID-19 shutdowns on tourism, we appreciate the opportunity to provide insights on how Congress can extend support to ensure resilience in the future.

Congress can further aid Native Nations and communities in their post-COVID recovery by maintaining appropriations for tourism capacity building. Such funding should be comprehensive, encompassing support for program development and tourism projects to bolster tourism infrastructure.

Moreover, a crucial aspect that warrants attention is the need for robust promotion, both domestically and internationally, to raise awareness among potential visitors of the rich cultural experiences offered by Native Nations and communities. Therefore, we urge your support for a legislative solution that integrates Indigenous Tourism into federal funding mechanisms in the event of similar crises in the future.

The travel and tourism sector demonstrated unprecedented mobilization efforts to safeguard travel infrastructure and prevent systemic collapse in the face of the profound disruptions caused by COVID-19. Historically, this industry has shown adeptness in acknowledging and addressing the inherent challenges of tourism, exemplified by initiatives like the establishment of Brand USA. Recognizing the imperative for the United States to maintain competitiveness in the multi-billion-dollar visitor market, Brand USA was developed to foster collaborative and cohesive branding and marketing strategies on a global scale. Funded by Travel Promotion Fund visitor fees, Brand USA has yielded a substantial annual economic impact of \$56 billion.

In line with these successful models, AIANTA proposes the enactment of separate legislation, akin to Brand USA and the Travel Promotion Act of 2009, to support a sustainable, centralized approach to marketing and nurturing tourism businesses and employment opportunities within Native Nations and communities. This legislation would address the distinctive challenges faced by American Indians, Alaska Natives, and Native Hawaiians in fostering and enhancing cultural tourism programs and products.

The envisioned legislation would establish a native-led nonprofit entity with the mission to define, introduce, grow, and sustain American Indian, Alaska Native, and Native Hawaiian tourism, while also providing direct funding for cultural tourism development. By instituting a dedicated revenue source, such as the Travel Promotion Fund visitor fee, Native Nations and communities will receive tailored support for cultural tourism initiatives alongside marketing assistance to promote their offerings domestically and globally.

Thank you for considering our recommendations to fortify the resilience of Native nations and communities in the tourism sector.

*Question 5. In your experience, what is the difficulty level for tribes to identify and access federal economic developmental programs, and how could Congress alleviate any issues?*

Answer. In our experience, tribes often encounter significant challenges in identifying and accessing federal economic development programs. These difficulties

stem from various factors, including complex eligibility criteria, bureaucratic barriers, and limited resources for navigating the application process. One notable obstacle is the requirement for matching funds, which poses a significant barrier for tribes with constrained financial capacities. As a result, many tribes are unable to leverage federal economic development programs to their full potential.

To alleviate these issues, Congress could implement measures such as establishing set-aside funding specifically designated for tribal economic development initiatives. This approach would provide tribes with dedicated resources tailored to their unique needs, eliminating the burden of matching funds and ensuring equitable access to economic development opportunities. Additionally, streamlining application procedures, enhancing technical assistance and outreach efforts, and fostering partnerships between federal agencies and tribal entities could further facilitate access to federal programs for tribes.

By implementing these measures, Congress can empower tribes to overcome barriers and effectively utilize federal economic development programs to promote sustainable economic growth and prosperity within their communities.

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Ms. HAGEMAN. Thank you for that very informative testimony.  
The Chair now recognizes Mr. Bacon for 5 minutes.

**STATEMENT OF RAYMOND BACON, EXECUTIVE DIRECTOR OF  
THE YUROK TRIBE ECONOMIC DEVELOPMENT CORPORATION,  
KLAMATH, CALIFORNIA**

Mr. BACON. Chairman Hageman, Ranking Member Leger Fernández, members of the Subcommittee, thank you for inviting me to speak on behalf of the Yurok Tribe's Economic Development Corporation.

My name is Raymond Bacon. I am an enrolled member of the Yurok Tribe. I have served as Director of Economic Development Corporation for 4 years and have worked in the tribal gaming industry for approximately 30.

Economic diversification is critical for developing prosperous tribal economies. Through strategic investments, tribal communities can leverage our unique cultural heritage, natural resources, and local expertise to explore new industries.

This diversification not only reduces reliance on volatile markets, but also creates employment opportunities, stimulates local economic growth, and empowers tribal communities to achieve greater self-sufficiency.

In utilizing public and private partnerships to access technical assistance, funding, and market opportunities, we can focus on creating long-term prosperity for generations to come.

As California's largest Native American tribe, we operate 13 businesses with four sister corporations, and the success of earlier investments like our hotel has allowed the Tribe to pivot to several other economic development projects. So, I have firsthand knowledge of the benefits a diverse tribal economy can bring.

Recently, we expanded our business operations to diversify even further. These new initiatives include a golf course, LiDAR mapping via Yurok Aviation, and our fuel mart division.

The fuel mart division is a prime example of how we can successfully partner with other agencies and entities to accomplish shared goals. Here, we leverage the EDA funding to help the realization of an \$8 million fuel mart travel center in the heart of Yurok ancestral territory.

This significant investment both demonstrates our commitment to economic growth and emphasizes our dedication to preserving and revitalizing our ancestral lands.

Another exciting venture for the corporation is the successful developing of our ecotourism infrastructure. In Yurok country, our visitor center serves as a hub and a platform to educate visitors on Yurok culture, affirming our presence in our ancestral territory.

On average, thousands of travelers pass through our visitor center each year. Through this, we have been able to establish a business allowing visitors to take a journey back in time in a traditional Yurok dugout canoe.

This immersive experience offers guests a firsthand look at our cultural heritage and deep connection to the Klamath River while also promoting ecotourism.

And again, our partnership with the Federal Government played an important role in the success of this initiative. Our center received direct funding from the Scenic Byways Program.

In addition to sharing our heritage and lands through ecotourism, harnessing our natural resources into renewable energy also plays a significant role in supporting our economic diversification.

For example, the Yurok Tribe has recently partnered with CalFresh to install solar energy systems for enhancing food storage capacity in the upper region of our reservation.

And beyond renewable energy, tribes can also continue to leverage their fish and wildlife. Salmon from the Klamath River has long been a vital subsistence resource for our Tribe, serving as a primary food source and holding significant cultural importance.

Ensuring ongoing access to salmon and preserving the Klamath River are central components of our Tribe's diversification efforts.

We are proud of our Tribe's long history as experts in river restoration. And due to the decline in salmon populations in our waterways, we have directed great focus and resources to the Yurok Construction Corporation to conduct vital restoration work on the Klamath and the Sacramento Rivers and Redwood Creek.

Tribes need economies that can quickly adapt to ever-changing economic conditions, sustain and employ their communities, and help preserve their people's cultural identities.

In focusing on building diverse tribal economies, we can create a resilient foundation that can weather the otherwise turbulent impact of single market failures and foster sustainable growth for the future of our Native communities.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Bacon follows:]

PREPARED STATEMENT OF RAYMOND BACON, EXECUTIVE DIRECTOR, YUROK TRIBE  
ECONOMIC DEVELOPMENT CORPORATION

## **I. Introduction**

Chairman Hageman, Ranking Member Leger Fernandez, members of the Subcommittee, thank you for inviting me to speak on behalf of the Yurok Tribe's Economic Development Corporation.

My name is Raymond Bacon. I am an enrolled member of the Yurok Tribe. I have served as Director of the Economic Development Corporation for 4 years and have worked in the tribal gaming industry for approximately 30 years.

Economic diversification is critical for developing prosperous tribal economies. Through strategic investments, tribal communities can leverage our unique cultural heritage, natural resources, and local expertise to explore new industries such as eco-tourism, renewable energy, and fisheries.

## **II. Prioritizing Economic Diversification Has Broad Positive Impacts On Tribal Communities And Their Neighbors**

By prioritizing infrastructure and entrepreneurial initiatives, tribes can attract outside investment while simultaneously preserving our cultural identity and environmental integrity. This diversification not only reduces reliance on volatile industries but also creates employment opportunities and stimulates local economic growth, thereby empowering tribal communities to achieve greater self-sufficiency and resilience against economic downturns.

Moreover, economic diversification in tribal economies stimulates intergenerational wealth accumulation and promotes social cohesion within communities. By developing a spirit of innovation and entrepreneurship, tribes can empower our youth to explore new career paths and contribute to the sustainable development of our ancestral lands. Education and vocational training programs tailored to local needs and opportunities can equip tribal members with the skills and knowledge needed to thrive in emerging industries.

Partnerships with government agencies, private businesses, and nonprofit organizations can help provide tribes with access to technical assistance, funding, and market opportunities. Through these collaborative efforts and strategic planning, our tribal economies can focus on creating long-term prosperity and well-being for future generations.

Additionally, the benefits resulting from diversification efforts transcend the reservation and allows for positive economic impact to snowball into local economies. For example, our Tribe's economic feats have allowed for additional spending in the local communities of Del Norte and Humboldt counties. So, not only is diversification a financially prudent agenda for the tribe, but it also allows us to be good neighbors to adjacent communities as well.

## **III. The Yurok Tribe Has Benefited Greatly From Diversification Efforts**

I would like to offer a few examples of the benefits diversification offers my own Tribe, to help demonstrate the opportunities that are unlocked when tribes pursue diverse economic strategies and initiatives. As California's largest Native American Tribe, we have been diligent in creating and operating 13 businesses with four sister corporations to provide our people with several revenue sources. The success of earlier investments, such as with our brewery, has allowed the tribe to pivot to other economic development projects. So, I have first-hand knowledge of the benefits that a diverse tribal economy can bring.

Recently, we have expanded our business operations to diversify even further. These new initiatives include a golf course, LiDAR mapping (Yurok Aviation), and, notably, our fuel mart division. The fuel mart division is a prime example of how we successfully partner with other agencies and entities to accomplish important shared goals. Our fuel mart will enhance economic development with support from EDA funding. The realization of an \$8 million fuel mart travel center in the heart of Yurok ancestral territory not only demonstrates our commitment to economic growth but also emphasizes our dedication to preserving and revitalizing our ancestral lands.

This venture provides essential services for our community and travelers while also creating jobs and generating revenue. It sets the stage for further economic development initiatives, showcasing the potential for sustainable growth within Indigenous territories. The success of this endeavor underscores the importance of strategic partnerships and funding support from organizations like the EDA in achieving our goals.

Additionally, I should highlight the ongoing efforts of the Yurok Telecommunications Corporation in significantly expanding broadband accessibility in the region. Through leveraging support from the National Telecommunications and Information Administration, we are working to deploy 62 miles of middle-mile fiber optic cable from Orrick to Crescent City. This represents one of the largest technological advancements in the region, as we expect the project to bring high speed broadband to nearly 1,000 homes, 110 businesses, and 18 anchor institutions. This groundbreaking project is a testament to our tribe's historical endeavor, made possible through strategic partnerships and our tribe's economic stability and sophistication.

#### **IV. The Tribe Continues To Leverage Eco-Tourism**

Another exciting development for the Corporation has been the success of our investments in developing our eco-tourism infrastructure. Eco-tourism can be a way for Indigenous communities to showcase their culture, traditions, and natural resources to visitors while promoting conservation and sustainable practices.

In Yurok Country, our visitor center serves as a hub and platform to educate visitors on Yurok culture, affirming our presence in our ancestral territory. And again, our partnership with the federal government played an important role in the success of that initiative: our center received direct funding from the scenic byways program.

On average, thousands of travelers pass through our visitor center each year, providing us with a unique opportunity to educate them about Yurok Country. Additionally, we've established a business allowing visitors to take a journey back in time in a traditional redwood dugout canoe. This immersive experience offers guests a firsthand look at our cultural heritage and deep connection to the Klamath River, while also promoting eco-tourism.

#### **V. Renewable Energy And The Environment Are Integral To The Tribe's Economic Strategy And Cultural Identity**

In addition to sharing our heritage and lands through eco-tourism, harnessing our natural resources into renewable energy also plays a significant role in supporting economic diversification for many tribes. Effectively utilizing wind, solar, and hydropower is both environmentally friendly and a source of positive economic development. The Yurok Tribe has recently partnered with Cal Fresh to install solar energy systems for enhancing food storage capacity in the upper region of our reservation.

Beyond embracing renewable energy sources, tribes can also continue to leverage their fish and wildlife to encourage sustainability and self-sufficiency. For example, salmon from the Klamath River has long been a vital subsistence resource for the Yurok Tribe, serving as a primary food source and holding significant cultural importance. Ensuring ongoing access to salmon and preserving the Klamath River are essential components of our tribe's diversification efforts. We are proud of our Tribe's long history as experts in river restoration, and due to the decline in salmon populations in our waterways, we have trained our focus and significant resources on the Yurok Construction Corporation to conduct vital restoration work on the Sacramento and Klamath rivers and Redwood Creek. For these reasons, maintaining access to Klamath River salmon remains pivotal to our diversification endeavors.

#### **VI. Conclusion**

Tribes need economies that can quickly adapt to ever-changing economic conditions, sustain and employ their communities, and help preserve their people's cultural identities. Reliance on one, or few, industries can undermine tribal economic health and unnecessarily leave tribes vulnerable to external market fluctuations and stressors. In focusing on building diverse tribal economies, we can create a resilient foundation that can weather the otherwise turbulent impact of single market failures and foster sustainable growth for the future of our native communities.

Thank you. I look forward to answering your questions.

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QUESTIONS SUBMITTED FOR THE RECORD TO MR. RAYMOND BACON, EXECUTIVE  
DIRECTOR, YUROK ECONOMIC DEVELOPMENT CORPORATION

#### **Questions Submitted by Representative Westerman**

*Question 1. In your written testimony, you mentioned the various partnerships tribes can form with outside businesses, government agencies and nonprofits. Could you please elaborate on the partnerships that Yurok has?*

Answer. The Yurok Tribe greatly values the external partnerships it has developed over the years with governments and private organizations. Some of our most recent partnerships have included working with government agencies such as the Economic Development Administration (EDA), the Treasury Department, and the National Telecommunications and Information Administration. We have also leveraged many private partnerships, such as with CalFresh and others. Each partnership has benefited the tribe and tribal members in its own way, and we continue

looking for ways to engage and further develop these external relationships and others.

Last fall, the tribal Economic Development Corporation collaborated with the EDA to fund and create an \$8 million fuel mart. The fuel mart is located in Orick, California, right in the heart of Yurok ancestral lands. We are proud of this project and its dual significance. That is, the fuel mart will serve as a vital revenue-generating venture for the tribe, and, by acquiring fee-to-trust status for the land upon which the development sits, we can offer fuel to our community at a lower cost, leveraging our exempt status and sovereignty to save our members money.

The Yurok Tribe also secured State Small Business Credit Initiative (SSBCI) funding through the Treasury Department for our Community Development Financial Institution (CDFI) program. The CDFI was initially created to help our government address tribal entities' and members' historically low levels of access to financial services, and the SSBCI funding has been helpful as the tribe works to realize this goal. That said, while the program has proven successful, its impact was limited by our fledgling lending capacity in the finance sector coupled with the program's requirement for match funding.

Despite the evident need for expanded resources, acquiring matching funds posed a formidable challenge due to the tribe's restricted discretionary budget.

Additionally, as I mentioned in my written testimony, our tribe worked with the National Telecommunications and Information Administration through the Department of Commerce to deploy broadband services to thousands of homes and has partnered with CalFresh to help increase food storage and food security on our reservation.

These are just some of the partnerships the tribe has been fortunate enough to successfully leverage in recent years to both grow and develop the tribe as well as improve the quality of life for tribal members. We are pleased with the results thus far and look forward to continuing to leverage public and private partnerships.

*Question 2. In your experience, what is the difficulty level for tribes to identify and access federal economic developmental programs, and how could Congress alleviate any issues?*

Answer. We are aware of, and have been pleased to participate in, several federally sponsored economic development programs. However, in my experience, tribes generally encounter a high level of difficulty with identifying and accessing available resources. On a scale of 1 to 10, I would rank the difficulty of navigating these federal economic developmental programs as an 8.

Several factors contribute to these hardships. First, there is a strong need for community development and knowledge of government opportunities for Indian Country. At times, we lack experience on the tribal side that unnecessarily prevents, or delays, access to economic development programs and funding.

However, even when the tribe has the appropriate experience and resources for navigating application processes, requirements for certain programs often prove to be too cumbersome. For example, some programs require matching funds similar to the SSBCI example mentioned above. Match requirements overly burden the tribe's budget and limit the positive economic impact that well-intentioned programs can make. Most tribes are not casino tribes, and thus they lack plentiful discretionary funding. Accordingly, in the majority of cases, it is challenging for the tribe to provide the necessary match.

Congress can help address these issues by simplifying and excluding harmful requirements and through offering additional training to native tribes to assist with navigating federal government program applications for accessing economic development dollars. The government should also think of ways to work with tribes to address accessibility to housing for the professionals and talent we wish to attract. While, at times, our tribe may receive proper training or have trainers come to our area to help develop our staff and community, we continue to lack adequate housing for those professionals which we rely on for identifying and navigating government opportunities.

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Ms. HAGEMAN. I thank the witness for your testimony, and it is wonderful to hear of the successes of your Tribe.

The Chair now recognizes Mr. Lance Morgan for 5 minutes.

**STATEMENT OF LANCE MORGAN, CEO, HO-CHUNK, INC.,  
WINNEBAGO, WISCONSIN**

Mr. MORGAN. It is a pleasure to be here. I represent the Winnebago Tribe of Nebraska's development corporation, Ho-Chunk, Inc.

We are a small to mid-sized tribe, 5,000 members, relatively modest reservation, not a lot of natural resources. We are small, but we punch above our weight. We always have, so if anyone's watching back home.

The Tribe had a casino in 1992, and the state of Iowa authorized competition surrounding us, so we could see our future being built to crush us. And during that 2-month period of time, the Tribe organized a tribal corporation and set up an investment fund. And Ho-Chunk, Inc. was formed in 1994. Our first year, we didn't have any revenues. We were brand new. We had \$400,000 revenues. I was the only employee, so I made myself CEO.

I am a strong believer in starting at the top. And last year, we had revenues of \$419 million, both on and off the reservation, and we have 1,800 employees. And this is from a small rural tribe.

We do agriculture, government contracting, construction, and real estate development. More recently, ironically, we just got into gaming. We are taking over gaming off reservation in Nebraska, in the cities of Omaha, Lincoln and South Sioux City.

We changed the state's constitution to make it legal for us. That is new, by the way.

That is going to grow us by another couple of hundred million dollars and 1,500 employees. I think what is great, though, is the numbers are fine, but you have to think about what it does to the community.

My people don't care if we are an international company, they only care if their lives are better. And we have grown the median income on our reservation from around \$30,000 to \$59,000 over the last 20 years.

And the number of people who now live below the median income has dropped by 6, the number of families. The number of families above it have grown by 188. So, we created a middle class out of nothing.

Another statistic we are proud of is the number of college graduates has quadrupled. We also built an entire town from scratch called the Ho-Chunk village and we built 200 some housing units, which is really hard to do in a rural community on our reservation.

Ironically, we did it by creating a town that was not in trust land status. If you look at the roles that tribes have to play, we have really been dealt the worst hand possible. We don't have control; our governments are imposed on us.

The legal precedents really are designed to take from us and the trust land economic system. I wrote a paper called, The Curse of Trust Land, if you are curious what I think about it. It really limits the tribe's ability to tax and fund its own revenue.

It also greatly limits individual entrepreneurs and their ability to access capital. So, the only entity with any money is the tribe itself. And the tribe itself is a social service delivery entity, not a development corporation.

So, the role tribal corporations play is pretty critical in developing tribal economies. We have to gather capital and put it out there. I once joked that I can't believe we are Karl Marx's last hope, but the government itself has to develop these things.

The primary impact, because time is short, is it gives tribes a flexible source of capital. Every time we get money from you guys, which we are thankful for and we will take it, but there are some sort of parameters around it, some sort of limitation, or it is focused on low income only.

Where we are really trying to develop an economic middle class, it doesn't help us. So, we need the Federal dollars, but it is not very flexible. If you look at what tribes have done, we have gotten super sophisticated.

We are getting smarter, in terms of how we invest the money and how we structure ourselves, how we use tribal advantages. We have really gotten sophisticated.

We are an international company because we do SBA 8(a) contracting for you guys. So, we appreciate that. There are a lot of financial investments being made, banks, credit lines, credit unions, and community development institutions. Tribes are using corporations to move up the value chain on natural resource development, which is pretty critical.

Trust land sort of forces you to just be the lessor and get the royalties. But if you can move up to the driller of the pipeline, and some tribes have used the tribal structure to do that, it has been very helpful in terms of developing these things.

A couple of suggestions. The BIA Loan Guaranty Program has to stay in place. That is really the only way to access capital on trust land on the reservation.

Please allow rule on the IRS failure to rule on the tax status of tribal corporations. I wrote a letter in 1997 on this issue, and they were going to do it before COVID, then they are going to do it after.

Creating uncertainty in the taxation of our entities is really a problem. The 8(a) program is the best way for a rural tribe to go from zero to 60. You can speed it up. You can get development, you can get sophisticated quickly. That is very important.

Another pet peeve of mine. Well, I think Ms. Fernández solved one of my pet peeves. I hated that we couldn't really monetize tax credits, but I would like tribes to make an S-Corp election. We can't just because it is not on the list.

If we can make an S-Corp election, then a lot of businesses that we bought off reservation or we bought on reservation that have to stay as state corporations because of regulatory reasons, could be solved.

The last thing I want to mention is new market tax credits. Give us a direct allocation. For 3 years, the feds did not allocate anything. After much complaining, three tribal entities got one, including an entity we partly own, the Native American Bank.

And if you have to understand the new market tax credits, it is a cash grab by these big entities, and they sell them off as fast as possible. And there is nobody who is lined up to do deals on Indian reservations because they are the hardest possible deals.

So, you have to allocate money directly to entities that are focused on tribal, or it will never happen.

All right. Thank you very much, I look forward to questions.

[The prepared statement of Mr. Morgan as follows:]

PREPARED STATEMENT OF LANCE MORGAN, CEO, HO-CHUNK, INC.

Good morning, Chair Hageman, Ranking Member Leger Fernández and Members of the Subcommittee. My name is Lance Morgan, and I am the Chief Executive Officer of Ho-Chunk, Inc., a tribal economic development corporation owned by the Winnebago Tribe of Nebraska (“Winnebago Tribe” or “Tribe”). Thank you for the opportunity to testify at today’s hearing on “Economic Diversification to Create Prosperous Tribal Economies.”

**I. DEVELOPMENT OF HO-CHUNK, INC.**

Throughout the 20th century, times were hard on the Winnebago Reservation in northeast Nebraska. After Congress enacted the Indian Gaming Regulatory Act, the Tribe opened a casino on tribal land near the town of Sloan, Iowa in 1992. The casino was an immediate success, but in 1994 Iowa expanded gaming in the Tribe’s primary markets. The Tribe then realized that gaming revenues would not be a long-term solution to the Tribe’s overall goal of prosperity.

The Tribe started Ho-Chunk, Inc. in 1994 to help its people by creating jobs and diversifying the Tribe’s revenue. The name derives from the traditional name for the Winnebago people, “Hochungra,” which is often shortened to Ho-Chunk. The translation of Ho-Chunk, Inc. is “The People, Incorporated.” The Tribe and Ho-Chunk, Inc. set out with the intention of transforming our community from one of extreme poverty, to one with an emerging middle class with a variety of employment options.

Ho-Chunk, Inc. has grown tremendously since its inception and has made a significant economic and social impact on the Tribe. We started with no revenues and one employee. Now, Ho-Chunk, Inc. has 1,800 employees and reached a record \$419 million in revenue in 2023. We anticipate adding another 1,500 employees and adding another \$200 million in revenue in the next 18 months.

Ho-Chunk, Inc. has measurably improved the lives of tribal citizens in less than a generation. We recently completed a community-wide economic impact study which showed several remarkable results. In the last 20 years, the median household income has risen 78% to \$58,240 per household. The number of families below the median household income has dropped by 6, and the number of families above the median household income has grown by 188 families. Additionally, the number of tribal members with a college degree has quadrupled.

The Winnebago Tribe has also committed significant corporate resources to building an entirely new community, called Ho-Chunk Village. Ho-Chunk Village is an 80-acre, new urban style, walkable, healthy community with a wide variety of housing, cultural and entrepreneurial activities. The Tribe has also added over 220 housing units to our small rural community in the last 7 years.

**II. TRIBAL ECONOMICS AND THE ROLE OF TRIBAL CORPORATIONS**

The successes of Ho-Chunk, Inc. and the Winnebago Tribe are despite the challenging economic development environment we must navigate. Government systems were often imposed on tribes, and the federal Indian law system is built on precedents that were designed to limit or outright take tribal legal and economic rights away from tribes.

Most tribal land is held in federal trust which limits a tribe’s ability to develop or use it to create traditional tax revenues. The limited ability to create a viable taxation system forces tribes to be dependent upon the federal government for funding basic services that would typically be funded by locally generated tax revenues. Federal trust land has also made homeownership, wealth creation, and entrepreneurship very difficult for individual tribal members.

Federal funding alone is not enough to tackle the typical tribes’ social and economic issues, so tribes are compelled to create additional revenue sources. The economic limitations created by legal restrictions and the side effects of trust land limits tribes to just a few economic development options—primary gaming and natural resource-based development. The trust land system also greatly limits the ability of individuals to access capital.

Given all the legal and economic restrictions in Indian Country, tribes are often the only entity with any ability to raise significant capital and are forced to try and directly develop their economies. However, tribes are governments, not development

companies, and are far more comfortable delivering social services than managing complex corporations.

Over the last 30 years, tribes have increasingly established quasi-independent tribal corporate entities that allow them to bypass some of the limitations of being a government-owned entity to evolve into highly reactive and efficient tribal corporations.

### **III. IMPACT OF TRIBAL CORPORATIONS**

Tribal corporate entities do have some economic, tax, and legal advantages, but it takes time to accumulate the capital and knowledge to maximize those advantages. Once a tribal corporation reaches a certain level of success, it impacts the community in several ways: it will create jobs; it will generate a flexible source of income to the tribe that does not carry the restrictions of federal funding; and it will also serve as a primary driver of community and social development.

The tribal corporations are increasingly using complex business structures to develop opportunities both on and off tribal reservations. This combination of developing economic and legal skill sets is increasingly setting tribes on the path of being able to dictate how to invest in their own communities and has the potential to create a virtuous cycle of expectation and opportunity for success for tribal members.

Some examples of tribal corporate growth include the following:

1. Creation of complex tribal and federally chartered holding company structures to consolidate corporate management functions over a broad base of businesses.
2. Complex real estate development both on and off tribal reservations.
3. Creating sophisticated holding companies to perform high level government contracting under the SBA 8(a) program.
4. Expansion of gaming off reservation and state regulated gaming opportunities.
5. Ownership of several banks, credit unions and Community Development Financial Institutions.
6. Moving up the more profitable economic value chain of natural resource development and not limiting themselves to just royalties.
7. Increasingly sophisticated financial investments.

### **IV. SUGGESTIONS TO HELP TRIBAL CORPORATE GROWTH**

Tribal corporations are key sources of flexible capital, job creation and social and community development. Anything that helps tribal corporations helps tribes become more economically independent and self-determined. Therefore, we make the following recommendations:

1. Federal trust land greatly impacts the ability for tribal entities to access capital, especially for reservation-based development. The B.I.A. Loan Guaranty Program is one of the only ways that a tribe or tribal corporation can access capital for difficult on reservation development and it needs to be fully funded and expanded.
2. The IRS has not formally ruled on the taxation status of wholly-owned tribal corporations. This issue has been on-going for over 25 years. This ambiguity has created long term uncertainty and has resulted in tribes being forced to form federal corporations or tribally own limited liability entities instead. However, this long-term uncertainty could carry over to any tribally chartered entity and is not helpful for long term tribal development and planning.
3. Protect and promote the SBA 8(a) program. Government contracting has grown remarkably over the last 20 years and is one of the best ways for tribes without natural resources or significant gaming revenues to expand their economies. Most tribes create tribally chartered holding companies to conduct their government contracting activities which makes the lack of certainty for tax treatment even more of a long-term problem.
4. Tribes are currently not allowed to make an S-Corp election in the tax code. Tribal corporations will often acquire a company that must maintain its current status for regulatory or licensing reasons. The inability for a tribal corporation to make a S-Corp election takes away one of the primary tools a tribal company utilizes to impact its community.

5. The New Markets Tax Credit Program is an excellent source for tribal communities and corporate development. Indian Country projects are complex and harder to do because of trust land capital restrictions, so most entities who have an allocation do not want to take the time to invest in them. The program went three years without allocating any tax credits to Indian Country. Recently three tribal affiliated entities received an allocation, however, it would be good if a small percentage of the allocation were set aside for Indian Country.

Thank you again for the opportunity to discuss the importance of diversifying tribal economies. I would be happy to answer any questions.

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QUESTIONS SUBMITTED FOR THE RECORD TO LANCE MORGAN, CEO, HO-CHUNK, INC.

### Questions Submitted by Representative Westerman

*Question 1. Can you further expand on the impact of trust land on economic development plans and whether transitioning to restricted fee status, or another alternative would alleviate economic concerns?*

Answer. Trust land is a major impediment to Indian Country's economic growth as it cannot be sold, taxed, mortgaged, or used as collateral. Trust land status severely restricts a tribe's ability to use our largest asset, our land and its natural resources. Ultimately, it leaves tribes more dependent upon the federal government.

If title to trust land were returned to tribes and individuals in fee under a new tribal status, it could help liberate Indian Country economically. This new tribal status must confer permanent jurisdiction, complete with full taxation powers, to the tribe. This would ensure that the land will always be subject to tribal jurisdiction, regardless of the race or political classification of the landowner.

*1a) What unintended consequences should Congress seek to avoid if establishing more processes for tribes to move land into restricted fee status?*

Answer. The federal government must uphold its general trust and treaty obligations to Indian Country that encompasses health, education, and housing. However, this obligation does not need to include controlling all of our land. Tribes often chose to have their lands held in trust because of concerns about losing jurisdiction over those lands. As Congress seeks to assist tribes with expanding economic development opportunities through increasing the flexibility of tribal lands, it must ensure that this is not a prelude to some kind of back-door termination.

*Question 2. Your written testimony mentioned that it takes time for tribal corporate entities to gain capital and knowledge to provide an impact on their communities as well as others. Can you expand on the path Ho-Chunk Inc. has taken to develop that expertise and instances where Ho-Chunk Inc. may have assisted other tribal corporations in developing that capacity?*

Answer. Ho-Chunk, Inc. started small and with a simple mission to use the Tribe's various economic and legal advantages to develop and operate successful tribally owned businesses and to provide jobs and opportunities for tribal members. We have utilized a "learn by doing" approach that has resulted in creating long-serving, effective business managers with vast institutional knowledge. Ho-Chunk, Inc. has shared that knowledge and expertise with over 100 tribes who have visited our headquarters. We have also made investments in the future generation of leaders through a multitude of internship, apprentice, scholarship, Ambassador, and other education programs.

*Question 3. In your written testimony, you brought up the difficulties surrounding the taxation status for tribal corporations solely owned by the tribe, mainly their ambiguous nature. Could you elaborate further on those difficulties and how Congress could end that uncertainty?*

Answer. Uncertainty regarding tax treatment is a major impediment to tribal growth across Indian Country. We urge the IRS to clarify the taxation status of wholly owned tribal corporations.

*Question 4. In your written testimony, you mentioned the BIA Loan Guarantee Program and how it needs to be expanded. Please elaborate further, especially with any policy changes the program may need from a tribal perspective.*

Answer. Considering the difficulty obtaining a loan on trust land, the BIA's Loan Guarantee Program ("Program") has proven to be a reliable resource for tribes. However, the Program could be made more efficient as it often takes a lot longer than it should to obtain a loan. We have found that some regions are far more efficient than others. Streamlining the Program and expanding the loans available would have far-reaching impacts for Indian Country.

*Question 5. In your experience, what is the difficulty level for tribes to identify and access federal economic developmental programs, and how could Congress alleviate any issues?*

Answer. Over the years, Ho-Chunk, Inc. has learned of and taken advantage of many federal economic developmental programs. However, we acknowledge that not all tribal nations have the capacity to identify and access these programs. Congress and the Administration should work to ensure that tribes are aware of existing economic developmental programs, allow for flexible capital, and give tribes the opportunity to manage those programs.

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Ms. HAGEMAN. Again, your successes are impressive, and the ideas that you have provided us with today are very helpful. So, I thank you for your testimony.

The Chair will now recognize Members for 5 minutes for questioning. And I am going to begin with myself.

I would like to ask Mr. Ahasteen, Ms. Rupert, and Mr. Bacon, because I think, Mr. Morgan, you have given us some good ideas in terms of this next question I am going to ask.

I am going to ask each of you to respond to this question. What have you found is particularly helpful for rural communities to expand tribal economic diversification, and what challenges and opportunities particularly exist in the more rural areas?

Mr. Ahasteen?

Mr. AHASTEEN. I think what you really have to understand is that in rural areas, the cost of anything is about doubled. And without taking that into consideration, I will give you an example.

In order for us to pave 1 mile of road, it is \$3 million. And that is insane because we have to literally purchase materials that are off the Nation. We don't have access to our own resources because it has just become a bureaucratic nightmare in trying to request, even for technical assistance from the Department of the Interior at times to develop the mineral and leasing regulations that it requires.

And as we have stated in a previous testimony, one of the other challenges involved is if we start going the route to exercise our self-determination, then we lose all access to some of the Federal resources, including the data sets.

And that is really concerning to us. Because Navajo Nation, when we requested to start implementing some of our leasing regulations for minerals, we wanted to start off with one or two minerals.

We don't want to adopt the entire thing, but it just seems that the position of the Federal Government is you have to adopt all of it.

And that causes problems for us because there are different minerals that require us to really think about how we are going to develop a comprehensive, essentially an environmental policy within our own Nation.

So, if we could figure out a way to reduce some of those bureaucratic red tapes to access some of our resources, to help reduce construction costs for infrastructure, that would really help out.

Ms. HAGEMAN. Wonderful, good ideas. And, Ms. Rupert, what are some of the challenges and what are some of the things that you have found particularly helpful?

Ms. RUPERT. So, challenges, this is all connected, right? Economic development, and we talked about roads. You have to have roads in order for visitors to come out and experience your attraction or your destination.

So, that is always a huge barrier as well. But I look at cultural tourism as an opportunity for our rural communities, for our rural tribes.

There is not too much infrastructure that is needed for cultural tourism. It is all about our people, our stories, and our places. And that is what I always tell tribes that are struggling.

Well, who would want to come see us? And it is the international market that is very interested in coming and experiencing our culture. So, it is us, it is our people that people want to come and see.

Ms. HAGEMAN. I like that story. I don't think anyone else has ever said it the way that you have, and I appreciate the way that you have put that. And maybe there are ways that we can help from the tourism standpoint.

Very quickly, Mr. Bacon, if you have some ideas on this, and then I am going to give a challenge to all four of you before we leave today.

So, Mr. Bacon, some of the challenges and some of the things that have worked.

Mr. BACON. Thank you for that question. With Yurok Economic Development, particularly helpful for us is developing our own workforce. And that is the main focus, is developing our staff.

As we describe it, it is grow your own because no one really wants to live in the rural areas or move to the rural areas.

The challenge that we have in the rural area is the lack of adequate housing that is not HUD funded. In order to attract these individuals that are highly qualified, we need adequate housing within our area.

Development would be a beneficial factor.

Mr. MORGAN. And, Mr. Morgan, you have also given us some ideas of both the challenges and the things that have actually worked.

So, here is my challenge to all four of you. Have you identified the top five things that we could do as Congress within your particular areas?

I know that every one of your reservations and the areas that you represent are very different from each other. But what I would like to do is find a way to legislatively address the barriers that you them.

When we develop in Wyoming, whether it is oil and gas on the reservation, it is oil and gas off the reservation, on BLM lands, we have challenges with those barriers as well.

What I would like to do is every one of you have brought a very interesting story today about what your needs are and what has worked for your individual members.

What I would like you to do is bring to us the legislative solutions you think that we could do to help you to address the fact that you have an enormous reservation, the fact that you might have more of an urban area, the fact that you have the challenges with the tourism and not being able to access some of the resources that other people can. Help us to help you.

Help us to come up with ideas for legislation. Because I am all ears if you want to come to my office and sit down and talk about ways that we can draft bills that will work for you, I want to talk about it.

With that, I am going to call on the Ranking Member, Ms. Leger Fernández, for her 5 minutes of questioning. Thank you.

Ms. LEGER FERNÁNDEZ. Thank you so much for bringing the distinct stories, successes, and challenges on each of your reservations.

Mr. Bacon, your testimony and what your Tribe is doing is just amazing. The range of activities that you are engaged in, which I think really is key. And each of you have described the importance of the diversification.

One thing I want to touch on, because it is something that is looming is the Affordable Connectivity Program and funding for that which we know is essential, especially in Indian Country, where there is such a gap with regards to access.

That is set to expire at the end of April. There are those, the entire Democratic Caucus wants to renew it. We know we have some Republicans who want to see it renewed.

But tell us, what would it mean if that were to expire? Since you are in that business.

Mr. BACON. Yes. Thank you for the question, Ranking Member.

Currently, we are still in the development phase of our telecommunications corporation. We are looking to provide access to approximately 1,000 households within our service area.

One thing that we have seen and we acknowledge is the service area is a checkerboard of classified as low income. It is kind of mixed in between. I do see that there would be a negative effect on tribal communities if that were to expire.

Ms. LEGER FERNÁNDEZ. Thank you.

And Mr. Ahasteen, thank you as always, for coming and sharing the stories of your very large reservation, your very large and wonderful, diverse Diné experiences.

You pointed out that, I liked this interrupted progress that you described. And that some of the policies and resource development has left a bad legacy.

I will continue to fight for the RICO amendments. We are not giving that up because the uranium mining needs, we need to address that. You pointed out that oil and gas has been a mixed bag, has maybe left more bad than good.

But we are looking forward, what do we do next? Even as we try to address some of what is left behind. The forward looking. I really appreciated that you gave us very specific examples of a solution right in each of yours of what do we do with DOE.

You had that in your written testimony. But can you sort of share with us a little bit of what you would like us to focus on?

You had, I think, maybe five different proposals, but what do you want us to hear this morning?

Mr. AHASTEEN. Thank you, Ranking Member Leger Fernández.

Really, what we want to address are the jurisdictional barriers that limit our progress in being able to exercise our full self-determination. And that is, again, focusing on giving tribes the exclusive jurisdiction to manage their affairs.

It seems a little redundant that we have to obtain three different environmental clearances for the same project and that the Federal agencies are not talking or working with one another.

And one of those specific examples is with a lot of our road projects with the Navajo Department of Transportation. The Federal Highways Administration will go through their clearance processes, but then the BIA will require processes on their own and will not accept Federal Highways as environmental clearance documents.

So, that is just a barrier. And on top of that, we have tribal law. The Navajo Nation does its own environmental clearance review as well.

So, having to go through three different environmental clearance processes, three different right-of-ways, is sometimes challenging, depending on a lot of the jurisdictional barriers.

Ms. LEGER FERNÁNDEZ. Right. And some of the potential solutions that each of you actually set and gave us in your written testimony, I think, are things that we can work on from the why don't they include the entire Navajo Nation in the MLS, right?

There are certain ways in which we can address issues. You also point out the importance of credit. And Mr. Morgan, I did about a billion dollars' worth of financing, which doesn't sound like a lot, but New Mexico is very small, and access to credit is so essential.

And you pointed that out as well. If we don't get credit into Indian Country, you can't build the businesses. And the concept of the new markets tax credit set aside, I think, is something we have all thought a lot about and would like to push.

And the fact that we don't have the IRS actually telling us what to do with tribal corporations when we have been begging them for it, and they have been promising that to us.

So, there are both legislative changes that we will definitely take on. These are things we are very interested in doing, but also pushing for those clarifications that we should be getting out of Treasury that they have promised us for decades.

We will join in on pushing them at that, and we will follow up with you because we ran out of time. And thank you so very much, and I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Mr. Carl for 5 minutes of questioning.

Mr. CARL. Thank you, Madam Chair, and thank you to all the folks that took time from their lives to come in to speak today. Your words are not falling on deaf ears.

Mr. Ahasteen, I said it better, didn't I? Tell Madam Chairwoman that I said it better.

Mr. AHASTEEN. All I say is that you just fake laugh and add Steen at the end.

Mr. CARL. OK. I have been a county commissioner for 8 years prior to this job. I have built many a mile of road, and I am telling you, \$3 million for a mile of road is outrageous.

And if nothing else comes out of this meeting, I understand your frustrations with that. So, I am open to help you in any way I can.

With that said, thank you for joining us today. It is really great to have someone who understands, I am still talking to you, sir, understands the challenges facing the tribal communities firsthand.

As I often say, only those who live it truly understand it. And I think everyone in this room understands what I am saying there. For decades, the Federal Government has been working towards self-determination of the tribes, allowing them to manage their own services and economic plans.

Tribes have been trying different ways to diversify their economy to benefit their members, create a substantial system, but you know that there is a lot of red tape and unclear rules that make it tough for them to start businesses and to grow.

Mr. Ahasteen, how can Congress do more to support tribes in making their own development, especially when it comes to broadening their economics and dealing with all the regulations? What can we do to help that?

Mr. AHASTEEN. One of the priorities of President Nygren has been to really identify and address what specific jurisdictional barriers are preventing us.

I think one of the main issues is, again, the exclusive authority to actually conduct our businesses free of restrictions by the Federal Government and at times state governments, depending on, again, which project that you are working on.

But even a lot of the funding that has come out that is supposed to benefit tribes, we find it based off of policies that haven't been updated in 20 plus years that really restrict the tribes' abilities to access those dollars.

And one of the examples is the tax credits that were made available under the Inflation Reduction Act and the Navajo Nation not being able to utilize that because of a non-metropolitan statistical area or a metropolitan statistical area definition that actually includes counties with tribal data.

And some of the border towns are doing well. Flagstaff, Coconino County has probably the highest income for the Arizona region, but yet that is grouped in with some of the reservation territories like Loop, who is significantly economically disadvantaged.

So, being disqualified from the tax credits that were meant to actually benefit tribal communities is something that I think is an unintended consequence.

I think really just taking a look back at all of the regulations and having appropriate consultation with the Federal agencies to updating a lot of those statistical area mappings, I think would very well benefit tribes in helping us move forward in securing our future, especially in the energy sector.

Mr. CARL. Thank you.

Mr. Bacon, real quick. Yesterday, I had one of the tribes come in my office and talk to me about the small business loans and the fear of where this is going on the small business side.

They basically were rating a particular tribe as no longer as a small business. Can you give me some idea what the impact is going to be from that?

Mr. BACON. Congressman, you are referring to the SSBCI?

Mr. CARL. Yes.

Mr. BACON. Absolutely. We were one of the tribes that received the SSBCI. Actually, we were one of the first to receive that funding source.

One of the challenges in receiving that funding source was there was a requirement of match funds, and most tribes are new to the lending capacity side of things. So, you are subject to what your lending capacity is from previous. With the Yurok Tribe, our lending capacity was at \$1.2 million, which is not much.

But part of that is we had to have discretionary funds to match that \$1.2 million. So, really, we didn't build a big giant fund, but we are trying to leverage that to be successful in funding other tribal initiatives.

There is a bit of a challenge with it. If the matching funds didn't exist, it would be quite successful.

Mr. CARL. Would you reach out to my office and see what we can do to work together and see if we can get that addressed?

Mr. BACON. Absolutely.

Mr. CARL. Thank you.

Madam Chair, thank you.

Ms. HAGEMAN. Thank you, Mr. Carl.

And the Chair will now recognize Mr. Huffman for 5 minutes of questioning.

Mr. HUFFMAN. Thank you, Madam Chair.

I am really impressed with this panel of witnesses. I appreciate the testimony and the ideas from all of you.

I want to go back to Mr. Bacon from my district, of course, because I have a special interest in tribal economic development that also embraces sustainability that is good for the environment and our natural resources.

And the Yurok Tribe has been a real leader in this space, of course. We want to see, as we move forward with things like offshore wind and renewable energy transition, not just consultation with tribes, but a seat at the table for tribes.

And you have become leaders in broadband, construction, and so many other things. I would love to see tribal expertise and inclusion in this energy transition as we go forward.

And I am definitely committed to working with the Yurok Tribe to make sure that that happens. But I want to bring it back to climate change and its impact on fisheries. Something that is not only culturally significant for the Yurok and other tribes, but very economically significant.

And I want to just ask you if you could speak to how funding from programs like the Scenic Byways Program has actually helped facilitate some of your work at this intersection of economic development and natural resource protection?

Mr. BACON. Thank you for that question, Congressman.

The Scenic Byways Program has been a real benefit to the Yurok Tribe. We are fortunate enough to have a strong relationship with Federal and state agencies.

We are able to acquire the funds through the Scenic Byways Program, which we used to develop a visitor center.

The center provides an opportunity to tell our story for the Yurok people and our members to express their artistic talents and sell goods within that visitor center.

This also is a platform for ecotourism. We are fortunate enough to be able to run a business of redwood Yurok canoe tours. And this is a scenic ecotourist business that takes you on a journey down the Klamath River and connects you with what really the Yurok people are about, which is the Klamath River.

So, we like that relationship with the Federal and state agencies, and we continue to maintain that relationship.

Mr. HUFFMAN. And I have seen some of the great work that the Yurok Construction Company is doing. And I have also seen young people who have come up through your workforce development efforts and are operating heavy equipment, restoring Redwood Creek and other areas in ways that will enhance that fishery. Build on the ecotourism.

Could you speak a little bit about how that construction enterprise is contributing to your economic development and also the issue of food sovereignty?

I know that we haven't talked a lot about that yet, but you have a unique partnership with CalFresh that is doing some interesting and innovative things that are helping address food sovereignty.

Mr. BACON. Absolutely. We know the Klamath salmon is a vital source of subsistence for the Yurok Tribe. As we say, the Yurok Tribe doesn't exist without salmon. It is who we are as a people.

With the decline of the salmon population, we have made a strong pivot towards the restoration efforts in the preservation of salmon. It has always been a priority of our Tribe.

The restoration effort is spearheaded by the Yurok Construction Corporation and our fisheries division for the Tribe.

Currently, they are working on replanting and reseeded as the waters come down from the dams and the reservoirs are exposed.

So, there is a massive effort going on right now to plant traditional plants, native plants within that area, trees, oak trees, the shrubbery that takes place and holds the banks stable for the river to ebb and flow.

The benefits of this is we hope to see that the salmon return immediately, and the long-term benefit is our effort to restore an entire ecosystem to thrive as it once did in the beginning.

You had mentioned the relationship with CalFresh. Since COVID had come into play here, we recognized that there was a shortage of food storage in the upper part of our reservation.

So, we were fortunate enough to partner with CalFresh to install a small solar grid that supported refrigeration. In that effort, the refrigeration units allowed us to partner with our Food Sovereignty Program.

Our Food Sovereignty Program grows fresh vegetables that are seasonal. In return, that allows us to distribute those healthy foods back to our tribal membership. So, we were really appreciative to have that relationship.

Mr. HUFFMAN. Thank you, Madam Chair. I yield back.

Ms. HAGEMAN. Thank you.

I want to thank the witnesses for your valuable testimony and the Members for your questioning. I also want to reiterate what I said, which is that I really encourage you to contact us, contact the staff, contact my office, and talk to us, help us to draft the types of legislation that you are talking about.

I think if there has been one primary issue that I have focused on as Chairman of this Subcommittee, it is autonomy and sovereignty.

I think it is absolutely critical that our tribes take responsibility for their circumstances, and that we also make sure that they have the freedom, the ability, and the resources to do what you need to do in terms of taking care of your members.

I truly believe that that is where the success for our tribes and our tribal members are going to come from, it is going to come from you, not the Department of the Interior or the bureaucracy back here.

I love the idea of giving you more autonomy to make the decisions that you need to make for your members so that you can succeed.

The members of the Committee may have some additional questions for the witnesses and we will ask you to respond to these in writing if they are submitted.

Under Committee Rule 3, members of the Committee must submit such questions to the Committee Clerk by 5 p.m., on Wednesday, February 21, 2024, and the hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned. Thank you.

[Whereupon, at 11:15 a.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

**Submission for the Record by Rep. Grijalva****Statement for the Record****United South and Eastern Tribes Sovereignty Protection Fund**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Subcommittee on Indian and Insular Affairs (SIIA, or Subcommittee) with the following testimony for the record of the February 15, 2024 oversight hearing, “Economic Diversification to Create Prosperous Tribal Economies.” This hearing focused on the diversification of Tribal economies to expand services to Tribal citizens and build sustainable economic systems to benefit current and future generations. It also focused on how Tribal Nations have sought to develop our natural resources, unique Tribal-centric tourism opportunities, and establish Tribally chartered corporations to increase economic opportunities. USET SPF supports the efforts of Tribal Nations to exercise our sovereignty and self-determination to create viable and sustainable economic opportunities and job creation for our communities. However, many federal programs’ management and funding systems operate under an archaic model of paternalism that does not support Tribal Nation sovereignty and self-determination.

In addition to the focus of SIIA’s February 15, 2024 hearing, USET SPF offers several additional priorities that must also receive the same consideration from Congress and the Subcommittee to empower Tribal Nations to pursue efforts in Nation rebuilding. These include the removal of bureaucratic and legal barriers to Tribal Nations pursuing economic development, tax parity, support for the restoration of Tribal homelands, and the expansion of self-governance contracting and compacting across the federal government. These areas must be addressed to ensure that we have economic parity and equitable opportunities to pursue initiatives that support our economic growth and create jobs for our Tribal citizens. We also anticipate, and support, forthcoming guidance from the U.S. Department of the Treasury to clarify the tax status of Tribally chartered corporations (TCCs), which has been an issue that has long stifled the economic progress of our Tribal Nations and our further pursuits and priorities of Nation rebuilding. In addition to Treasury’s clarification of the tax status of TCCs we strongly recommend that Congress and SIIA explore other legal clarifications of the Internal Revenue Service’s (IRS) tax code to ensure legal permanency of the tax status of our TCCs. This issue is critically important and timely so that Tribal Nations can fully take advantage of the numerous tax credits authorized under the Inflation Reduction Act.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

**Economic Development in Indian Country and the USET SPF Region**

Prior to European contact, Tribal Nations, including USET SPF members, had a long history of dynamic economies and governance structures. Robust trade networks connected Tribal Nations and the goods we produced. As with other aspects of Tribal governance and infrastructure, the removal, termination, and assimilation policies of the United States government negatively impacted our traditional economic trade. Over the course of centuries, Tribal Nations ceded millions of acres

<sup>1</sup>USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), , Mi’kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

of land and extensive resources to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. Because of this historic and ongoing diplomatic relationship, the federal government has trust and treaty obligations to support Tribal self-governance and self-determination, along with rebuilding Tribal Nations and economies. Unfortunately, at no point has the federal government fully delivered upon and upheld these obligations.

In addition to being relegated to fractions of our original homelands, which can be in remote areas, Tribal Nations lack governmental parity in economic development opportunities and treatment under the U.S. tax code. All Tribal Nations, especially USET SPF member Tribal Nations, vary in levels of economic activity, capacity, and development. Some Tribal Nations have decades of experience and familiarity with economic development initiatives, while some are just starting to pursue these initiatives. This diversity demands that federal policy not adopt a one-size-fits all approach in supporting Tribal Nations and businesses to pursue economic development initiatives to support our communities and engage in Nation rebuilding. With nearly every aspect of economic development regulated by the federal government, economic progress in Indian Country is often stymied by burdens on Tribal Nations and businesses. These burdens have contributed to a perpetual cycle of social and economic hardship in our communities and are a remnant of paternalism that continues to exist today, despite an evolution away from past policies of termination and assimilation toward greater Tribal self-determination and self-governance.

In 2012, the Federal Reserve Board of Governors issued a report on, *Growing Economies in Indian Country*, that outlined eight issues as fundamental challenges to realizing economic growth in Indian Country. USET SPF's member Tribal Nations, with few exceptions, still disproportionately contend with these same challenges, such as:

1. Insufficient access to capital;
2. Capacity and capital constraints of small business;
3. Insufficient workforce development, financial management training, and business education;
4. Tribal governance constraints;
5. Regulatory constraints on land held in trust and land designated as restricted use;
6. Underdeveloped physical infrastructure;
7. Insufficient research and data; and
8. Lack of regional collaboration.

Though this report is over a decade old, its relevancy today on the current state of economic challenges in Indian Country highlights the failures of the federal government in upholding its trust and treaty obligations to Tribal Nations. Congress and the Administration must work to free Tribal Nations from over-burdensome laws and regulations that impede our social and economic success. This is especially important in an environment of the federal government's failures to uphold trust and treaty obligations to fully fund programs and services for Indian Country. Similar to other governments, Tribal Nations provide vital economic, social, health, and public safety services to our people. As it is for any other sovereign, economic sovereignty is essential to our ability to be self-determining and self-sufficient. **While our economic success in no way diminishes or eliminates the United States' moral and legal trust and treaty obligations to Tribal Nations, it remains critical to our continued Nation rebuilding.** Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive. And when Tribal Nations and our citizens have economic success, surrounding communities and their citizens share in the benefits. This results in stronger Tribal Nations and a stronger America.

#### **Ensure Tribal Nation Economic Parity**

The federal government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our sovereign governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties, and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside

our borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. This largely prevents Tribal Nations from achieving an economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. The failure of the federal government to recognize Tribal Nations in a manner consistent with our sovereign governmental status has hindered our efforts to rebuild and grow our economies.

USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations. These efforts included support in previous Congresses for the Tribal Tax and Investment Reform Act. This bill specified the treatment of Tribal Nations as states with respect to bond issuance and modified the treatment of pension and employee benefit plans maintained by a Tribal Government. It also aimed to modify the treatment of Tribal foundations and charities, improve the effectiveness of Tribal child support enforcement agencies, and recognize Tribal governments for purposes of determining whether a child has special needs eligible for the adoption tax credit. USET SPF continues to urge the Subcommittee to support similar legislative efforts in the 118th Congress to increase Tribal Nation economic parity.

#### **Address Dual Taxation in Indian Country**

Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax non-citizens doing business in Indian Country, when other jurisdictions can tax those same non-citizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically unfeasible. Dual taxation undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian business entities onto our lands to create jobs and stimulate Tribal economies. As long as outside governments tax non-Indian businesses on our lands—even if a Tribal government offers complete Tribal tax immunity to attract a new non-Indian business—that business is subject to the same state tax rate that is applicable outside our jurisdictional boundaries. As a matter of economic fairness, we ask SIIA to work with us to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal Lands by confirming the exclusive, sovereign authority of Tribal governments to assess taxes on all economic activities occurring within our jurisdictional boundaries.

#### **Support Responsible Development in the Energy Sector**

USET SPF member Tribal Nations, and our respective Tribal Lands and energy resources, are located within a large region that presents diverse geographical environments and opportunities for both conventional and renewable energy development. Our member Tribal Nations could benefit from the unlocked potential of those energy resources and realize energy development goals, through appropriate Congressional action and investment in Indian Country; and further actions by the Administration, particularly to promote balanced geographical representation and inclusion of USET SPF member Tribal Nations in energy programs.

USET SPF has established its energy priorities, as follows:

- **Tribal self-determination** and control of natural resources and energy assets, to make conservation and development decisions to preserve Tribal sovereignty, protect Tribal assets, and to achieve economic independence, creation of jobs, and improvement of Tribal citizens' standard of living.
- **Tribal capacity building** effort involving multiple federal agencies, universities, and the private sector.
- **Reform core federal programs**, expertise, and funding to support Tribal energy resource development and market access.
- **Remove barriers to the deployment of Tribal energy resources**, such as bureaucratic processes, insufficient access to financial incentives, and interconnection and transmission on power grid.

We remain concerned, however, with ongoing efforts to streamline energy development by bypassing requirements under the National Environmental Policy Act (NEPA). We do not oppose conventional or renewable energy development, and many of USET SPF's member Tribal Nations pursue these activities. However, such development occurring outside of Tribal Nation jurisdictional boundaries must not come at the expense of our cultural resources and natural environments or Tribal consultation. Tribal Nations have already experienced immense land loss, theft, and the destruction and desecration of our cultural and environmental resources and

aboriginal homelands. We should not be subjected to such actions again in order to further a domestic energy policy agenda.

In addition to our concerns with scaling back NEPA provisions, several USET SPF member Tribal Nations have had to contend with federal agencies failing to properly consult with Tribal Nations on proposed energy projects. This includes wind energy development projects under the oversight of the Bureau of Ocean Management that have been proposed for construction, and some of which are currently undergoing construction, on the Outer Continental Shelf. Several of our member Tribal Nations were not properly consulted about the permitting of these wind energy project sites and have not received the resources and technical assistance required to properly and adequately review environmental, geological, and other assessments related to these projects. Furthermore, funding remains stagnant and inadequate for Tribal Historic Preservation Officers (THPOs) to conduct reviews of proposed projects in order to appropriately ascertain the potential cultural and environmental impacts. We continue to urge the Subcommittee to support increased funding for THPOs and ensure that efforts to streamline environmental review process are not implemented at the expense of the destruction of our cultural resources, sites, and natural environments.

**Clarify the Tax Status of TCCs and Recognize that the Tax Exempt Status of Sec. 17 Corporations Cannot be the Sole Alternative or Solution for Tribal Nations**

As mentioned by the witnesses testifying before SIIA during the February 15, 2024 hearing, the uncertainty regarding the tax status of TCCs is a major federal policy barrier faced by Tribal Nations as we seek to rebuild our economies and generate our own governmental revenues. As we stated in our 2022 USET SPF publication, “Marshall Plan for Tribal Nations: A Restorative Justice and Domestic Investment Plan”:

“Historic and modern federal policies have created barriers and inequities for Tribal Nations’ attempts to rebuild and grow our own economies, as well as generate our own government revenues. Today’s federal economic policies continue to fail to support Tribal Nations’ modern efforts to revitalize our economies. The hampering of Tribal Nations’ abilities to generate Tribal government revenues has compounded the harms done by the United States’ failure to fully fund its trust and treaty obligations . . .”<sup>2</sup>

Most Tribal Nations in the United States continue to endure a long history of asset deprivation, colonization, forced removal, war, loss of our homelands, and restricted access to traditional lands and resources, which has pushed Tribal Nations “into a near-assetless state for at least a century.”<sup>3</sup> The many consequences of this sustained economic deprivation persist to this day. They manifest themselves in the form of obstacles to economic development that include, but are not limited to, insufficient access to capital; lack of small business capacity; insufficient workforce development, financial management training, and business education; regulatory constraints on land held in trust and land designated as restricted use (prohibiting such land from being used as collateral or as property subject to Tribal taxes); and underdeveloped physical infrastructure.<sup>4</sup> Some Tribal Nations have succeeded in producing economic growth and improved per capita incomes in the past few decades by employing self-determined economic development approaches. Even so, estimates indicate that at current rates of growth the per capita income of Tribal citizens will not achieve parity with the rest of the United States for at least four more decades.

The result of depressed economies has a circular effect. Without the ability to stimulate economic growth, diversify economic activities, and generate revenues to fund governmental programs and services, Tribal Nations lack the resources to invest in building the essential physical and human infrastructure necessary to attract the capital investment needed for Tribal economies to compete in the

<sup>2</sup>United South and Eastern Tribes Sovereignty Protection Fund, *Marshall Plan for Tribal Nations: A Restorative Justice and Domestic Investment Plan*, 2022. <https://www.usetinc.org/wp-content/uploads/2022/11/USET-SPF-Marshall-Plan-for-Tribal-Nations.pdf>.

<sup>3</sup>*Id.*, quoting Native Nations Inst., Access to Capital and Credit in Native Communities 5 (2016). [https://nni.arizona.edu/application/files/8914/6386/8578/Accessing\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities.pdf](https://nni.arizona.edu/application/files/8914/6386/8578/Accessing_Capital_and_Credit_in_Native_Communities.pdf).

<sup>4</sup>BD. of Governors, Fed. Rsrv., Growing Economies in Indian Country: Taking Stock of Progress and Partnerships 3 (2012), <https://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf>.

regional, national, and global marketplace. By clarifying the tax status of TCCs, the federal government would take a critical step in reversing some of the harms caused by its failure to adopt economic growth policies that enable Tribal Nations to create conditions to build our economies on a broader scale. Clarification of the tax status of TCCs is also critically important and timely so that we can fully take advantage of the recent tax credits authorized by the Inflation Reduction Act.

Tribal governments are different than other governments in the federal system in that we do not have a significant tax base. Given the United States' failure to fully fund its trust and treaty obligations, and reflecting Tribal Nations' commitment to self-determination, it is essential that Tribal governments generate revenues for programs and services by establishing corporations, limited liability companies, and other business structures to engage in economic development. Although these Tribally owned entities function like commercial enterprises in the marketplace, their purpose is to generate revenues to enable program and service delivery to Tribal citizens.

Tribal Nations require new and authoritative tax guidance that supports and promotes our sovereign authority, assists us in providing for our Tribal citizens, and helps us restore our economies. Tribal Nations should no longer be treated differently than state and local governments that regularly engage in business activities to fund their citizen programs and services (such as golf facilities, convention facilities, tourism, etc.), which the IRS deems exempt. Indeed, the unique government-to-government and trust relationship that Tribal Nations have with the federal government demands that the solution not limit, in any way, but rather expand the tax exemption for Tribal economic activity.

IRS guidance, to date, as it relates to Tribal government businesses has recognized exempt status only in limited and confining circumstances. In Revenue Ruling 81-295, the IRS ruled that Section 17 corporations shared the immunity from federal income tax enjoyed by Indian tribes themselves. That ruling was reiterated in Revenue Ruling 94-16, though in the ruling, the IRS also determined that a Tribally owned corporation chartered under state law was not exempt from federal corporate income tax. For Section 17 corporations, both rulings essentially applied the reasoning set out in the 1996 Treasury Regulation § 301.7701-1(a)(3), which provides that “[a]n entity formed under local law is not always recognized as a separate entity for federal tax purposes . . . tribes incorporated under Section 17 of the Indian Reorganization Act . . . are not recognized as separate entities for federal tax purposes.” This reasoning is sound, and it should apply to TCCs that serve Tribal purposes; TCCs should not be treated as separate entities from the Tribal government for tax purposes.

The IRS appeared to recognize this logic when, after the 1994 revenue ruling, it issued several private letter rulings concerning Tribally owned and chartered corporations, concluding, in each case, based on several factors, that they were “integral parts” of the Tribal governments that created them, notwithstanding their separate corporate status, and were thus entitled to share in each Tribal government's tax immunity. For example, in IRS. Priv. Ltr. Rul. 200148020 (November 30, 2001), the IRS concluded that a Tribally chartered college was an integral part of the Indian tribe that created it. The ruling looked to “the Indian tribe's . . . degree of control over the enterprise and the Indian tribe's . . . financial commitment to the enterprise.” It identified eight factors that it viewed as pertinent to its determination: (1) the Indian tribe's power to appoint and remove directors; (2) Tribal representation on the board; (3) Tribal action to establish the entity to conduct business on Tribal land, and Tribal control over its activities; (4) Tribal power to terminate the entity; (5) the Indian tribe having the sole proprietary interest in the entity; (6) the entity's obligation to remit profits to the Indian tribe; (7) the entity's obligation to submit financial reports to the Indian tribe; and (8) Tribal control over audits of the entity.<sup>5</sup>

The IRS, however, declared a moratorium on private letter rulings raising the “integral part” test in 2007. This moratorium has prevented Tribal governments from ensuring that a TCC is not considered a separate taxable entity. That said, USET SPF does not advocate for the resurrection of the integral part test for evaluating the tax status of TCCs. The integral part test is cumbersome and results in

<sup>5</sup> See also I.R.S. Priv. Ltr. Rul. 200112013 (March 23, 2001); I.R.S. Priv. Ltr. Rul. 200409033 (February 27, 2004); I.R.S. Priv. Ltr. Rul. 199909013 (March 5, 1999) (in which the IRS upheld the “integral part” status of an enterprise created by a Tribal government for the purpose of managing Tribal property and acting as the Tribal government's business arm, on the grounds of the Tribal government's power to remove directors and terminate the existence of the enterprise, the Tribal government's substantial financial stake in the enterprise, and the substantial rights to its profits, and the absence of any private ownership of the enterprise).

disparate and uneven results, and it does not go far enough to provide the certainty that Tribal governments require to secure revenue for the benefit of our citizenry. Tribal Nations require a categorical rule as to the tax status of TCCs, and not a case-by-case determination. Without a categorical rule, there will be continuing uncertainty over the tax status of TCCs, which negatively impacts the ability of Tribal Nations to plan for and realize economic development opportunities.

In addition, the tax-exempt status of Section 17 corporations does not provide Tribal governments with a productive vehicle for economic development. Although Revenue Rulings 81-295 and 94-16 and Treasury Regulations § 301.7701-1(a)(1)(3) provide clarity on the tax consequences for Section 17 corporations, these federally chartered entities lack the flexibility and agility needed when Tribal Nations seek to seize economic opportunities. The process of adopting and amending the charters of federally chartered Section 17 corporations is cumbersome, time consuming and often precludes Tribal Nations from nimbly capturing economic opportunities. Further, the structural limitations of Section 17 corporations are a barrier to economic development in many instances. For example, under the terms of 25 U.S.C. § 5124, a Section 17 corporation may not lease Tribal Land (to a third party) for a period longer than 25 years. That limitation frequently prevents Section 17 corporations from being able to profitably develop Tribal Lands for commercial purposes, as sublessees often insist on much longer lease terms to justify substantial investments in improvements.

We submit there is sound and sufficient legal authority and reasoning to align the tax treatment of TCCs with that of Section 17 corporations. The legal and policy underpinnings for exempting economic development corporations from tax under 26 U.S.C. § 501(c)(3) may also provide a rationale for exempting TCCs from tax. Further, there is constitutional and treaty support for exempting Tribal government economic development activity from taxation. More to the point, the sovereign authority of Tribal Nations to engage in whatever business necessary to provide for our citizens should not be undermined by either the lack of Treasury guidance or issuance of restrictive guidance. Further, outside of the context of Tribally chartered entities, the IRS has long recognized that sole proprietorships, partnerships, S-corporations, and limited liability companies are not to be taxed at the business entity level. Instead, these businesses possess “pass through” tax treatment and are taxed at the ownership level. The same principle should apply to Tribally chartered entities and Congress and SIIA should direct the IRS to adopt and implement this principle.

Tribal governments have become increasingly sophisticated in the structuring of business operations and transactions. Some Tribal governments have created not just corporations and limited liability companies, but general codes allowing the general public to obtain such a corporate entity for purchase.<sup>6</sup> Other Tribal governments have utilized Section 17 corporations in conjunction with TCCs, with Tribal entities as subsidiaries, and others have utilized Tribally chartered entities as pooled investment instruments with non-Indians to share equity participation and corresponding economic benefit. Policy must favor maximum flexibility and support for Tribal Nations through the utilization of Tribally chartered entities.

We strongly urge that Congress and SIIA direct Treasury and IRS to uphold its trust and treaty obligations and align the tax treatment of our TCCs in a manner that empowers and supports the advancement of our economic development priorities. Tribal Nations have established TCCs for the sole purpose of rebuilding our Tribal economies and advancing our economic priorities for Nation rebuilding to support the economic and social well-being of our citizens and communities. Although USET SPF anticipates the issuance of forthcoming guidance from Treasury on the tax status of TCCs, we encourage Congress and SIIA to explore additional legal opportunities to establish permanence in clarifying the tax status of TCCs.

#### **Support the Restoration of Tribal Homelands and Enact a ‘Carciari Fix’**

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government’s economy. This is no different for Tribal Nations. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government’s objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which

<sup>6</sup> See e.g., MILLE LACS BAND STATUTES ANNOTATED, Title 16 Corporations, § 1102 (“One or more natural persons of full age may act as incorporators of a corporation by filing with the Commissioner articles of incorporation for the corporation.”).

fundamentally includes the restoration of lands to all federally recognized Tribal Nations, as well as the legal defense of these land acquisitions.

No Tribal Nation should remain landless. All Tribal Nations, whatever their historical circumstances, need and deserve a stable, sufficient land base—a homeland—to support robust Tribal self-government, cultural preservation, and economic development. The federal government must ensure that every Tribal Nation has the ability to restore its homelands, regardless of the concerns of other units of government, private citizens, or other interests. This is a necessary function of the U.S. government in delivering upon its trust and treaty obligations to Tribal Nations and regaining a land base is essential to the exercise of Tribal self-governance. Jurisdiction over territory is a bedrock principle of sovereignty, and Tribal Nations must exercise such jurisdiction in order to fully implement the inherent sovereignty we possess. While USET SPF member Tribal Nations ultimately seek full jurisdiction and management over our homelands without federal government interference and oversight, we recognize the critical importance of the restoration of our land bases through the land-into-trust process. We further recognize that the federal government has a trust responsibility and obligation to Tribal Nations in the restoration and management of trust lands. With this in mind, it is vital that the land-into-trust process be available to and applied equally to all federally recognized Tribal Nations. This parity is central to the federal government's legal and moral obligations to all of Indian Country.

As Congress (and other branches of the federal government) approaches the restoration of Tribal homelands, USET SPF continues to repeat that this basic correction is simply that. It returns us to the status quo prior to 2009—a rigorous process for the acquisition of trust land for **ALL** federally recognized Tribal Nations. This long overdue fix does not confer any additional benefits or supersede any existing law, nor is it about anything other than the rightful restoration of Tribal homelands. USET SPF continues to call upon Congress to enact a fix to the 2009 Supreme Court decision in *Carcieri v. Salazar*. For too long, this decision has impeded our ability to rightfully restore our land bases and pursue Nation rebuilding efforts. Congress must enact legislation that: (1) reaffirms the status of current trust lands; and (2) confirms that the Secretary of the Interior has authority to take land into trust for all federally recognized Tribal Nations.

#### **Support the Expansion of ISDEAA Contracting and Compacting Across the Federal Government for Tribal Nations**

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. The U.S. Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services.

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon the principles of self-governance and self-determination. An expansion of ISDEAA authorities to all programs across the federal government would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflect its full commitment to Tribal Nation sovereignty and self-determination. The expansion of self-governance contracting and compacting will not only empower us to better serve our citizens and communities, but it will enhance our abilities to manage our lands. It would empower Tribal Nations to administer federal programs in co-management, stewardship, agriculture, deployment and maintenance of critical infrastructures, and pursue economic development on our lands. It is time for Congress to enact legislation that expands our self-governance capabilities across the federal government so that we may fully exercise our inherent sovereign rights to manage our affairs and resources.

#### **Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Tribal Nations**

For generations, the federal government—despite abiding trust and treaty obligations—has substantially under-invested in Indian Country's infrastructure and engaged in hostile actions against Tribal Nations to destroy our Tribal economies and undermine our efforts to pursue Nation rebuilding. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure access. Much like the U.S. investment in the

rebuilding of European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the U.S. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the U.S. should make this strategic investment domestically. We strongly encourage and recommend that SIIA, and Congress as a whole, review USET SPF's 2022 publication, "Marshall Plan for Tribal Nations: A Restorative Justice and Domestic Investment Plan", and enact legislation that upholds the federal government's trust and treaty obligations, advances Tribal self-determination, and supports our Nation rebuilding efforts.

**Congress and SIIA Must Incorporate the Directives of E.O. 14112 into Legislation**

USET SPF stresses to Congress and the Subcommittee that legislative efforts must be pursued to incorporate the directives of Executive Order 14112, "Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination." This will support our inherent sovereignty and self-determination to advance economic growth, pursue Nation rebuilding, and directly address the specific economic, social, and public health priorities of our citizens. The current service model of federal funding allocation, administration, and oversight remains a paternalistic, pre-self-determination era mechanism that stifles the proper management and use of federal resources in Indian affairs. In order to usher in a new era of Tribal self-determination, federal laws and regulations must be rescinded or revised to truly advance our sovereign efforts to pursue economic development and Nation rebuilding for the improved economic, social, and public health of our communities. **We remind Congress and the Subcommittee, however, that no level of economic success attained by Tribal Nations diminishes or eliminates the United States' moral and legal trust and treaty obligations to fully fund Tribal programs and services.**

**Conclusion**

The diversification of Tribal economies to create increased economic opportunities for Indian Country must take into consideration several issues and priorities to support Tribal Nation rebuilding efforts. The historic and ongoing injustices that have contributed to economic insecurity in Indian Country are symptomatic of the larger issues we face as Tribal Nations. Development and implementation of policies and programs that recognize and uphold our inherent sovereignty and fulfill trust and treaty obligations are necessary to alleviate economic hardship, rebuild Tribal Nations, and improve the quality of life for our citizens and communities. Congress and the Subcommittee must continue to support and fully fund federal programs and services that encourage economic sovereignty through tax parity, responsible energy development, clarification of the tax status of TCCs, the restoration of Tribal homelands, expansion of self-governance contracting and compacting across all federal programs, and enactment of a Marshall Plan for Tribal Nations. Further, we strongly urge Congress and the Subcommittee to incorporate into legislation the directives of Executive Order 14112, "Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination." This will ensure that all federal economic development dollars available to Tribal Nations have the greatest degree of flexibility in uses and reduced administrative burdens to support our self-determined efforts to advance economic growth, pursue Nation rebuilding, and address the specific economic, social, and public health priorities of our citizens. We welcome the opportunity to collaborate with the Subcommittee on economic policies that better honor federal trust and treaty obligations and uphold our inherent sovereignty to pursue our Nation rebuilding priorities to support economic opportunities for our Tribal Nations and citizens. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org.

Sincerely,

*Chief Kirk Francis,*  
President

*Kitcki A. Carroll,*  
Executive Director

