

2015 White House  
Tribal Nations Conference  
Washington, DC

Tribal Leader  
Briefing Book



National  
Congress of  
American  
Indians



National  
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American  
Indians

# **TRIBAL LEADER BRIEFING BOOK**

## **2015 WHITE HOUSE TRIBAL NATIONS CONFERENCE**



# TRIBAL LEADER BRIEFING BOOK

## TABLE OF CONTENTS

### **Schedule of Events for the Seventh Annual White House Tribal Nations Conference**

The schedule includes White House events, NCAI events, and other events occurring around the Conference.

### **Framing Paper: Building On Our Progress**

This framing paper discusses the progress tribal nations have achieved in partnership with the Obama Administration, and identifies top transformative priorities that can be advanced with the support of President Obama before the end of this Administration.

### **Special Message from the President to Congress on the Nation-to-Nation Policy**

President Barack Obama has pledged to respect our nation-to-nation relationship with the United States, to respect our sovereignty, and honor our treaties. The membership of tribes in the National Congress of American Indians adopted a resolution in 2009 that encourages President Obama to systematize this nation-to-nation policy. It is a foundational tenet for the success and prosperity of Indian Country.

### **Honoring the Trust Responsibility in the Federal Budget**

The federal government has a trust, treaty, and statutory obligation to tribal nations. The underpinning of federal spending in Indian Country is based in the treaties that Indian tribes' ancestors signed with the US government. This budgetary section highlights recommendations to the Administration and federal government to uphold that obligation through funding within the federal budget. It includes recommendations on Contract Support Costs and highlights the importance of Data for Effective Tribal and Federal Policymaking.

### **Breakout Session Briefing Papers**

A series of papers that provide an introduction and concrete recommendations that align with key areas to be addressed in the breakout sessions.

#### **1. Protecting and Advancing Nation-to-Nation Relations: Tribal Sovereignty, Self-Governance, and Self-Determination**

- Trust Modernization
- Tax
- Tribal Self-Governance
- Consultation
- White House Council and High Level Engagement
- Election Reform and Voting Rights

## **2. Strengthening Tribal Economies**

- Jobs and Workforce Development
- Energy
- Housing
- Transportation
- Broadband
- Access to Capital
- Trade Opportunities
- Native Contracting

## **3. Resilience: Prevention, Intervention, and Wellness**

- Wellness and Mental Health
- Healthcare and Affordable Care Act
- National Institutes of Health
- Veterans
- Native Youth Resilience

## **4. A Strong Future: Education Opportunities for Native Youth**

- Education
- Mascots
- Indian Child Welfare Act

## **5. Federal and Tribal Partnerships in Law Enforcement and Public Safety Initiatives**

- Public Safety and Criminal Justice
- Homeland Security and Emergency Management

## **6. Protecting Our Future: Environmental, Natural and Cultural Resources**

- Land Into Trust
- Natural Resources and Environment
- Marijuana and Hemp Policy
- Agriculture and Nutrition
- Climate Change
- Alaska Native Subsistence
- Cultural Protection and Sacred Places

## **7. International Affairs**

- Promote Indigenous Peoples' Rights



# 2015 WHITE HOUSE TRIBAL NATIONS CONFERENCE

## SCHEDULE OF EVENTS FOR NCAI AND WHITE HOUSE

*Current as of October 30, 2015*

### NOVEMBER 4

#### **Pre-registration for the White House Conference**

**Time:** 1:00 -5:00pm

**Location:** Amphitheater Foyer  
Ronald Reagan Building and International Trade Center  
1300 Pennsylvania Ave NW  
Washington, DC 20004

#### **Tribal Leaders Preparatory Meeting**

*Hosted by NCAI and our regional intertribal partner organizations – closed to press*

**Time:** 8:30am – 1:00pm

**Location:** Amphitheater  
Ronald Reagan Building and International Trade Center  
1300 Pennsylvania Ave NW

RSVP: [jlowther@ncai.org](mailto:jlowther@ncai.org) or call (202) 466-7767

8:30am Tribal leader discussion of top priorities

10:00am Key Issue Updates

11:00am Regional Strategy Session

1:00pm Lunch Mentoring with Youth  
*box lunch provided, donations welcome*

#### **White House Tribal Nations Conference - Supplementary Breakout Sessions with Administration Officials**

*by White House Invitation Only*

**Time:** 2:00pm – 3:30pm

**Location:** Ronald Reagan Building and International  
Trade Center  
1300 Pennsylvania Ave NW

#### **Tribal Leader Reception**

*Hosted by NCAI and NMAI*

**Time:** 6:30pm – 8:30pm

**Location:** National Museum of the American Indian  
4<sup>th</sup> St and Independence Avenue, SW  
Washington, DC 20560

RSVP: [asteale@ncai.org](mailto:asteale@ncai.org) or call (202) 466-7767

### NOVEMBER 5

#### **White House Tribal Nations Conference**

*by White House Invitation Only*

**Time:** 8:30am – 4:00pm

**Location:** Ronald Reagan Building and International  
Trade Center  
1300 Pennsylvania Ave NW

6:30-8:30am Registration & Seating

8:30am Opening Session

9:45am Town Halls

11:00am Breakout Sessions/Lunch

1:00pm Closing Session

#### **VIEWING of the White House Tribal Nations Conference**

*Open to all, hosted by NCAI*

Coffee and light breakfast

**Time:** 8:30am – 4:00pm

**Location:** Embassy of Tribal Nations  
1516 P Street NW  
Washington, DC 20005

RSVP: [jlowther@ncai.org](mailto:jlowther@ncai.org) or call (202) 466-7767

*Unless otherwise noted, all events are open as long as you follow RSVP procedures noted above.*



# 2015 WHITE HOUSE TRIBAL NATIONS CONFERENCE

## SCHEDULE OF EVENTS FOR OTHER EVENTS

*Current as of October 30, 2015*

### NOVEMBER 2-4

#### **National Indian Gaming Association Mid-Year Conference & Expo**

**Location:** Seminole Hard Rock Hotel & Casino, Hollywood, FL

For more information [www.indiangaming.org/niga-events/](http://www.indiangaming.org/niga-events/)

### NOVEMBER 4

#### **National Indian Child Welfare Tribal Leader Meeting**

*Hosted by Casey Family Programs and Indian Child Welfare Programs*

**Time:** 9:00am – 4:30m

**Location:** Marriott Metro Center, 775 12<sup>th</sup> Street, NW

For more information [NRDevents@mail.house.gov](mailto:NRDevents@mail.house.gov)

#### **DOI Tribal Consultation on proposed rule to create an administrative procedure and criteria for reestablishing a government-to-government relationship of the Native Hawaiian Community**

**Time:** 1:30pm – 4:30m

**Call in number:** 1-888-947-9025

**Passcode:** 1962786

#### **House Natural Resources Committee Democrat Forum on Protecting Native American Sacred Sites**

**Time:** 2:30pm – 4:00pm

**Location:** 2226 Rayburn House Office Building

For more information [NRDevents@mail.house.gov](mailto:NRDevents@mail.house.gov)

#### **Senate Committee on Indian Affairs Staff Listening Session on Taxation**

**Time:** 4:00pm – 5:30pm

**Location:** 628 Senate Dirksen Office Building

This Listening Session will focus on solutions to the tax issues facing Indian Country including dual taxation, new market tax credits, low income housing tax credits, employer mandate, and general tax proposals.

For more information: Emily Newman at

[Emily\\_newman@indian.senate.gov](mailto:Emily_newman@indian.senate.gov) or

202-224-2251

### NOVEMBER 5-7

#### **Native American Rights Fund 45<sup>th</sup> Anniversary**

**Location:** Denver, CO

For more information [www.narf.org](http://www.narf.org)

### NOVEMBER 6

#### **Listening Session of Broadband Challenges on Tribal Lands**

**Time:** 9:00am – 11:00am

**Location:** South Interior Building Auditorium, Department of the Interior

#### **EPAs Third Annual Tribal Leaders Listening Session with EPA Administrator Gina McCarthy**

**Time:** 9:30 AM - 11:00 AM

**Location:** EPA Headquarters, William Jefferson Clinton South Entrance, 13th and Pennsylvania, NW

**RSVP:** Rosalva Tapia at [Tapia.Rosalva@epa.gov](mailto:Tapia.Rosalva@epa.gov) or call 202-564-5197.

#### **Homelessness Among Native Americans Multi Agency Listening Session**

**Time:** 10:30 am - 12:00 pm

**Location:** Department of the Interior, 1849 C Street, NW in the North Penthouse (enter through E St)

Youth are welcome to attend.

For more information Kathryn Isom-Clause, [kathryn\\_isom-clause@ios.doi.gov](mailto:kathryn_isom-clause@ios.doi.gov)

(202) 208-3254.

POC on 11/6/15: Faith Begay, [faith.begay@bia.gov](mailto:faith.begay@bia.gov) (202) 208-6682

*Unless otherwise noted, all events are open as long as you follow RSVP procedures noted above.*



## BUILDING ON OUR PROGRESS

### CEMENTING A LEGACY THAT EMPOWERS INDIAN COUNTRY'S FUTURE

The leaders of tribal nations journey to the seventh annual summit with President Obama both grateful for the extraordinarily successful partnership we have cultivated with this Administration and determined to build on the positive momentum we have generated together in order to leave a legacy that empowers Indian Country's future.

#### RESPONDING TO TRIBAL PRIORITIES

On the heels of President Obama's election in 2008, Indian Country crafted a comprehensive transition plan that identified top priorities for the new Administration. Many of these priorities have been enthusiastically adopted by our federal partners. Tribes called for the federal government to **act on key legislative priorities** and the Obama Administration worked on a bipartisan basis with Congress to secure passage of critical legislation, including the:

- Tribal Law and Order Act
- Indian Health Care Improvement Act
- Stafford Act Amendments
- Violence Against Women Act 2013
- Tribal General Welfare Exclusion Act

Tribes also urged important **executive action to advance our nation-to-nation relationship** and the Administration responded by:

- instituting the White House Tribal Nations Conference as an annual convening.
- reaffirming the commitment to tribal consultation.
- supporting the UN Declaration on the Rights of Indigenous Peoples.
- creating the White House Council on Native American Affairs.
- developing a sacred places policy.
- issuing an Executive Order improving educational opportunities and strengthening tribal colleges and universities.
- providing guidance on the Per Capita Act.
- developing guidance for full implementation of the Indian Child Welfare Act.
- opening criminal databases to tribal governments.
- amending regulations for federal recognition of Indian tribes, and providing regulations for recognition of a Native Hawaiian Nation.

Tribes urged prompt action to **settle claims** and the Obama Administration worked with tribal nations and the Congress to finalize historic settlements, including:

- *Cobell* Settlement and Land Buy Back Program – \$3.4 billion
- Tribal Trust Settlements – over \$1.7 billion
- Water Settlements – 9 tribes – \$2 billion
- *Keepseagle* Settlement – \$780 million
- *Ramah v. Jewell* Contract Support Settlement – \$940 million

Tribes also emphasized the economic potential of our nations and urged the federal government to **remove barriers to economic development and partner with tribes to secure our homelands**. The Obama Administration acted to:

- pass the HEARTH Act – leasing under tribal regulations.
- include tribes in the Recovery Act.
- implement new leasing regulations and permanent improvements.
- restore tribal lands – more than 325 square miles.
- fix appeals of land to trust through the *Patchak* Patch.
- finalize the rule for taking land into trust for federally recognized tribes in Alaska.

## **CEMENTING A LEGACY FOR INDIAN COUNTRY’S FUTURE**

While we have seen remarkable progress in recent years, federal Indian policy features more than two centuries of accumulated problems, and much work remains. Even with some of the successes noted above, realizing the promise of this progress requires full implementation of the achievements listed above as well as ongoing diligence to achieve a stronger tribal-federal partnership.

When President Obama visited the Standing Rock Sioux Tribe in 2014, he articulated a strong commitment to a brighter future for Native youth. His experience there led to the Administration’s launch of Generation Indigenous, an initiative designed to create that future. It also prompted the President to require that all of his Cabinet secretaries visit Indian Country to learn more about tribal nations and their challenges, priorities, successes, and aspirations.

This year, President Obama deepened his commitment to Indian Country, traveling to both Oklahoma and Alaska to meet with tribal leaders and share how his Administration is working with tribal nations in concrete ways to “improve communication, consultation, collaboration and participation in dealing with the issues that face Native communities.”

As tribal leaders, we urge the President to consider the following questions as he works to grow this commitment during his remaining time in office:

1. What can be done to systematize the nation-to-nation advancements made between tribes and the federal government during this Administration? and,
2. How can we ensure a legacy of engagement that takes our nation-to-nation relationship to the next level for Administrations to come?



This briefing book presents a comprehensive list of tribal leader priorities to advance our nation-to-nation relationship now and in the future. Drawn from this list, the following *top* priorities hold the greatest potential to cement this Administration's legacy of empowering Indian Country – not just over the course of the next 15 months, but for generations to come:

- **Achieve Administration's Goal of Taking 500,000 Acres of Tribal Land into Trust.** The Administration can achieve its stated goal of taking 500,000 acres of tribal land into trust by the end of its term by: prioritizing and staffing land acquisition in 2016, taking administrative action to determine eligibility for Indian Reorganization Act land restoration, and taking land into trust for federally recognized tribes in Alaska.
- **Quickly Appoint Replacement for Senior Policy Advisor for Native American Affairs, White House Domestic Policy Council.** This position is vital to the nation-to-nation relationship between tribes and the federal government, and needs to be filled immediately.
- **Address Dual Taxation through the Indian Trader Laws.** The imposition of state taxes in Indian Country on sales, personal property, and natural resources extraction causes great harm because it prevents tribal governments from implementing their own tax policies and raising revenue for tribal programs and services. This issue is one of the most pressing issues facing Indian Country, and the Administration can and should address it without the need for any additional action from Congress.
- **Finalize Modernization of the BIA Right of Way Regulations.** The Department of the Interior must finalize the proposed rule on Rights-of-Way on Indian Land, integrating the comments provided by NCAI and Indian Country.
- **Finalize the Department of Interior's Regulations for State Courts and Agencies in Child Custody Proceedings.** Finalizing the Bureau of Indian Affairs (BIA) proposed regulations designed to help state courts and agencies fully and effectively enforce the Indian Child Welfare Act is vital to protecting our children, families, nations, and futures.
- **Require Federal Agencies to Follow Tribal Employment Rights Laws.** Affirming the inherent sovereign rights of tribal nations, President Obama should issue an Executive Order mandating that all federal agencies recognize and adhere to the employment rights laws of tribal governments.
- **Exempt Tribal Employers from the ACA Employer Shared Responsibility Mandate.** The mandate violates the federal trust responsibility because it requires tribes to subsidize IHS services, and Native people to pay for the cost of their own health insurance. Native people are exempt from the individual mandate and should not be required to pay for private insurance offered by their employer.
- **Ensure the Safety of Native Women and Children.** The Administration should immediately consult with tribal governments to develop a legislative proposal fulfilling the promise of the Violence Against Women Act 2013 by reaffirming tribal authority to prosecute non-Indians for abuse or endangerment of Indian children, and for crimes co-occurring with domestic violence and those committed within the criminal justice system.

- **Address Tribal Arrest Authority and Protection and Exclusion Orders.** The Administration should initiate consultation with tribal governments about options to strengthen federal penalties and deterrence for Natives and non-Natives who violate tribal exclusion orders and protection orders, those who cause serious threats to persons and damage to property in Indian Country, and repeat offenders of tribal hunting, fishing and trespass laws. Tribes also greatly need clarification of arrest authority.
- **Engage in Meaningful Consultation with Tribes Regarding Proper Implementation of the Department of Justice “Wilkinson Memorandum.”** Tribal governments have the sovereign right to establish laws and policies governing marijuana and hemp on tribal lands. Meaningful consultation between tribes and the federal government would help to eliminate the confusion caused by conflicting stances taken by U.S. Attorneys on this subject.
- **Implement the Recommendations of the Task Force on Climate Preparedness and Resilience Report for Indian Country.** With all due haste, the Administration should adopt and implement the tribal recommendations for action on climate change that have emerged from the Task Force on Climate Preparedness and Resilience, including: providing tribes greater access to federal data on climate change, removing barriers prohibiting tribal access to federal programs, increasing federal funding to tribes to address climate change, and establishing a permanent federal government Climate Adaptation Task Force.
- **Increase Capacity of Tribal Education Agencies.** Enhancing the capacity of tribal education agencies and allowing them access to tribal student data will enable them to take over the roles currently assigned to Local Education Agencies and State Education Agencies for those schools that reside on or contiguous to tribal lands.
- **Create an Associate Director for Native Programs position in the Office of Management and Budget (OMB).** This position would coordinate tribal priorities across the federal government and ensure that OMB budgets and policies provide stable funding for tribal governments.
- **Lift the Department of the Interior’s Secretarial Moratorium on Approving Tribal Water Codes.** Since 1975, the Secretary of the Interior has upheld a moratorium on the approval of tribal laws regulating water use on reservations. Tribes that, by their Constitution, require Secretarial approval of major laws and ordinances have been unable to adopt tribal water codes to regulate water use on their lands. Until the moratorium is lifted, tribes requiring Secretarial approval will be unable to implement water codes.
- **Pardon Leonard Peltier.** We request that President Obama exercise Executive Clemency for Leonard Peltier and grant him a pardon without any further delay, which would right a longstanding wrong and send a statement to Indian Country and the world that America will not sanction injustice and unfairness towards Indigenous peoples going forward.

*NCAI welcomes ongoing feedback on the content of this briefing book and encourages tribal leaders and federal partners to send all input/questions to Nicole Hallingstad, NCAI Director of Operations ([nhallingstad@ncai.org](mailto:nhallingstad@ncai.org) or 202.466.7767) and John Dossett, NCAI General Counsel, at ([jdossett@ncai.org](mailto:jdossett@ncai.org) or 202.466.7767).*



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## TRIBAL LEADER REQUEST FOR SPECIAL MESSAGE FROM THE PRESIDENT TO CONGRESS ON THE NATION-TO-NATION POLICY

Indian nations and tribes are recognized by the U.S. Constitution as prior sovereigns, with treaty protected rights to self-government and self-determination. President Barack Obama has pledged to respect our nation-to-nation relationship with the United States, to respect our sovereignty, and honor our treaties.

The membership of tribes in the National Congress of American Indians adopted a resolution in 2009 that encourages President Obama to systematize this nation-to-nation policy. The recognition of tribal governments as sovereign, and deserving of the rights and respect of this status, is the foundational tenet to the success and prosperity of Indian Country.

Tribal leaders request a Special Message from the President to Congress that should:

- Recognize that our Indian tribes are the original Native American nations endowed with inherent natural rights to self-government, self-determination, and territorial integrity.
- Persuade and encourage Congress to respect the inherent sovereignty retained by Indian tribes pursuant to treaties, Executive Orders and course of dealings; and explain the functions of tribal governments, including public safety, police and fire protection, administration of justice, domestic relations, education, health care, housing, land use, environmental and natural resource management, economic development, and regulation of trade and commerce.
- Explain that through the Treaty, Commerce, Supremacy and Apportionment Clauses, the Constitution treats Indian tribes as sovereigns with rights to self-government guaranteed by treaty, establishes a nation-to-nation relationship based upon mutual consent, and acknowledges Native Americans as tribal citizens.
- Explain that the 14th Amendment affirms the original recognition of Indian tribes as sovereigns and status of tribal citizens through the Citizenship and Apportionment clauses.
- Request that Congress direct Executive Departments and Agencies to work with Indian tribes within the framework of a nation-to-nation relationship, which gives due deference to our inherent and treaty protected rights to self-government and affirms the constitutional principle that the United States and its Agencies shall work with Indian nations and tribes on the basis of mutual consent in accord with our sovereignty.
- Request that Congress establish a Special Court of Appeals designed to recognize, protect and enhance the sovereign authority of Indian Nations.
- Encourage Congress to enact legislation in furtherance of our nation-to-nation relationship.
- Underscore the advances he has led and establish the legacy of his leadership to advance our nation-to-nation relationship.

*For additional information, please contact Colby Duren, NCAI Staff Attorney & Legislative Counsel, at 202.466.7767 or [cduren@ncai.org](mailto:cduren@ncai.org).*



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## HONORING THE TRUST RESPONSIBILITY IN THE FEDERAL BUDGET

The federal government has a trust, treaty and statutory obligation to tribal nations. The underpinning of federal spending in Indian Country is based in the treaties that Indian tribes' ancestors signed with the US government. This assistance and goodwill between nations derives from the trust relationship, and is engrained within Article I, Section 8, of the US Constitution. Tribes ceded millions of acres of land that made the United States what it is today, and in return tribes have the right of continued self-government and the right to exist as distinct peoples on their own land. A significant part of this trust responsibility includes funding for basic tribal governmental services, which is appropriated in the discretionary portion of the federal budget.

As governments, tribes must deliver a wide range of critical services to their citizens, such as education, workforce development, first-responder and public safety services, and many others. As a consequence of federal actions and sequestration, Indian tribes across the nation have been forced to spend large amounts of scarce tribal funds to support the services that should have been provided or paid for by the United States. Tribal leaders appreciate recent support from the Administration in requesting increases in the FY 2016 budget. The FY 2016 President's budget included the largest increases in decades for tribal behavioral health programs, Bureau of Indian Affairs accounts overall, and tribal youth and family initiatives. While tribes are grateful for these encouraging proposed increases, tribal nations are still recovering from the effects of longstanding disparities in resources relative to similarly situated governments, especially for core governmental resources.

Congress and federal agencies, moreover, have improperly imposed reductions in the levels of funding for trust obligations that the United States owes the tribes. Due to insufficient funding and services by federal agencies, Native communities have suffered severe social, economic, and environmental harms at a rate far in excess of other communities, including inequitable incidence of disease, unemployment, suicide, substance abuse, domestic abuse, violence, flooding, and wildfires. Tribal leaders urge the following actions for the federal government to fully meet its trust responsibility in the federal budget.

### *Recommendations*

#### **1. Continue to Support Increases for Core Tribal Governmental Resources**

- As referenced above, tribal governments are working to address dire shortfalls in core governmental functions. In recent analyses, most Indian-related spending areas continue to lag behind their non-Indian counterparts, as examined from FY 1977 to FY 2016 (proposed) as well as from FY 2000 (enacted) to FY 2016 (proposed). The FY 2016 President's budget traces out an excellent start to reversing the trend of inequitable resources made available for tribal governments. While the FY 2016 President's budget proposed a 12 percent increase for BIA, if the full increase were enacted, funding would be at the FY 2010 level (adjusted for inflation) and less than the FY 1979 level (inflation adjusted). Across each budget area, NCAI recommends that Indian-related spending should receive at least equitable increases relative to the comparable spending for the general population.
- NCAI urges the White House, Office of Management and Budget (OMB), and the White House Council on Native American Affairs to allocate and budget sufficiently increased

federal funding for all Indian programs to fully satisfy all essential and ongoing Indian Country needs under applicable treaties, statutes, Executive Orders, and agreements. Tribal leaders have provided direction through the IHS Tribal Budget Formulation Workgroup, Department of Health and Human Services Budget Consultations, the Tribal Interior Budget Council, and other agency consultation bodies with specific recommendations on program levels.

- While overall increases were sought in FY 2016, some core governmental services remain critically underfunded. For example, the BIA roads maintenance program is responsible for preserving roads systems and protecting trust assets, funding for which has been flat-lined for over 40 years at a level of \$25-26 million. Long term inadequate maintenance funding for the Indian Reservation roads program has resulted in a national problem of dilapidated Indian roads, crumbling roadways, and an escalating back log of Indian road projects. Many other basic public services and infrastructure remain underfunded throughout Indian Country. *Tribes urge the Administration to build on the proposed investments offered in the FY 2016 budget and provide equitable support for core tribal governmental services in future budget requests.*

## **2. Create an Associate Director for Native Programs position in the Office of Management and Budget (OMB).**

- This position would act to coordinate priorities across the federal government and ensure that OMB budgets and policies provide stable funding for tribal governments. Tribal leaders encourage interdepartmental coordination to ensure the federal trust responsibility is upheld across all agencies.

## **3. Continue to Support Intergovernmental Coordination**

- The President's FY 2016 Budget provided useful recommendations for interagency coordination to support Indian self-determination and honor tribal sovereignty. For example, the President's Budget proposed a Tribal Support Center to assist tribes in accessing various services across the federal government. Many of the tribes that need assistance the most have had difficulty accessing federal resources. While Congress may have not supported the proposal, the overall concept is a good one for Indian Country.

## **4. Ensure Direct Funding**

- As the Administration fights for equitable funding for tribal governments, NCAI urges that funding go directly to tribes versus through competitive, time-limited grants or as state pass-through funding. When tribes lack dedicated funding streams, Indian tribes access funds either via pass-through grants from states, or applying for competitive grants from federal agencies, which are often time-limited. Neither method provides the stable or continuous funding required to adequately address the public service needs throughout Indian Country. This means federal funds must be distributed via tribal base funding instead of through grants to tribal governments. Grant funding, particularly inside the BIA, is not consistent with the intent of Indian self-determination. Tribal leaders have grown increasingly frustrated by the increase in Indian Affairs funding offered through grants. Allocating new funds via grant opportunities impedes the exercise of tribal self-determination. New BIA funding should be distributed via formulas developed through consultation with all tribes.

## **Assess Fulfillment of Trust Obligations Government-Wide**

- All agencies that distribute funds for American Indian/Alaska Native (AI/AN) programs must be required to regularly assess unmet obligations to tribes and Native peoples. Such an assessment would compare community needs with available resources and identify gaps in service delivery. Agencies must establish benchmarks for the elevation of AI/AN living conditions to those of other Americans, and create attainable resource-driven goals. Each agency that administers tribal programs must accurately document AI/AN participation in its programs and account for all projects and initiatives.
- The Indian Health Service's Federal Disparity Index assessment which assesses unmet health needs is a model that must be replicated by other agencies. Congress must require and review unmet trust obligations analyses annually as a component of each agency's budget justification. Federal funding must support the exercise of Indian self-determination so that Indian nations can govern their own resources.
- A full-scale evaluation must be conducted to include an analysis of the spending patterns of every federal agency that supports Native American programs and the trust responsibility.
- A review must be conducted and include a comprehensive, cross-cutting assessment of program efficiency; an analysis of how agencies test or evaluate programs for effectiveness; and solutions for more efficient coordination among agencies.
- The Office of Management and Budget (OMB) must develop government-wide, uniform standards for tracking and reporting spending on Native American programs, OMB must maintain comprehensive spending logs for Indian programs, including actual grant disbursements, numbers of beneficiaries, and unfunded programs to facilitate future short-term and longitudinal analyses.

**5. Exempt Tribal Programs from Future Sequestration.** When Congress failed to enact legislation negating the implementation of a government-wide sequestration of FY 2013 appropriations, the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) FY 2013 budgets took an across-the-board cut of \$353 million dollars. The ongoing disparity in funding to tribal services compared to similar non-tribal governmental services continues to grow at an alarming rate. While the Administration supports avoiding all sequestration, Indian trust obligations should be exempted from any future budget sequestration as a matter of honoring the promises made to tribes in treaties.

**6. Urge Congress to Provide Advance Appropriations for Indian Health Service.** Tribes are working with Congress to achieve Advance Appropriations for the Indian Health Service (IHS). Advance appropriations would allow the IHS to receive its budget a year ahead of time. Without advance appropriations, tribal health programs are left to make long-term decisions with only short-term money guaranteed. Often programs must determine whether and how they can enter into contracts with outside vendors and suppliers, plan programmatic activities, or maintain current personnel. This makes the Indian health system less efficient and more expensive to operate. In 2009, the Administration supported the enactment of advance appropriations for the Veterans' Health Administration. *Tribes are also asking this Administration to support Advance appropriations in its FY 2017 budget so that tribal leaders can work with Congress to enact this important change.*

*For additional information, please contact Amber Ebarb, Budget and Policy Analyst, at 202.466.7767 or [aebarb@ncai.org](mailto:aebarb@ncai.org).*



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## CONTRACT SUPPORT COSTS

The Indian Self-Determination and Education Assistance Act has represented the cornerstone of this nation's federal policy toward tribes for the last forty years. Under the Indian Self-Determination Act, the United States enters into inter-governmental contracts with tribes under which tribes administer federal programs, either through contracts or self-governance compacts, for the benefit of tribal members. In amending the 1975 Act, Congress in 1988 observed that the single greatest impediment to successful implementation of the Indian Self-Determination Policy was the consistent failure of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) to pay full contract support costs associated with the administration of transferred programs. Congress recognized that the failure of the BIA and IHS to pay full fixed contract support costs has often led to reductions in programs, amounting to partial termination of the federal government's trust responsibility.

### *Recommendations*

1. **Update the Contract Support Costs Policies of the Department of the Interior and the Indian Health Service to support recent judicial, legislative and funding changes**

After years of tribal advocacy for full funding of Contract Support Cost (CSC), we applaud the Administration for continuing to support tribes' requests in the FY 2016 budget proposal to Congress. Given the recent CSC judicial, legislative and funding activity, the respective Department of the Interior (DOI) and IHS CSC Tribal-Federal Workgroups have been intensely engaged in collaborations to identify, assess, and recommend modifications to their agency CSC policies to ensure that: (1) tribal program funding is protected and that tribal priorities are included; (2) requirements of the law are addressed; and, (3) current negotiation practices are accurately reflected. Yet, progress in revising these CSC policies has been burdensomely slow. Tribes request that the White House issue an Executive directive to DOI and IHS to be more expeditious with continued tribal consultation and complete these policy updates. This will go far to alleviate the CSC conundrum.

2. **Continue Support for Making Contract Support Costs Mandatory**

Mandatory Contract Support Costs: The FY 2016 budget included a legislative proposal to reclassify contract support costs as permanent funding beginning in FY 2017. NCAI and tribes have called for this in resolutions across Indian Country and in NCAI's tribal budget requests.

*For additional information, please contact Amber Ebarb, NCAI Budget and Policy Analyst, at 202.466.7767 or [aebarb@ncai.org](mailto:aebarb@ncai.org).*



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## DATA THAT SUPPORTS EFFECTIVE TRIBAL AND FEDERAL POLICYMAKING

Access to quality data and information is an essential element of tribal sovereignty and a core component of the federal government's ability to honor the trust responsibility to tribal nations. Tribal, federal, state, and local policymakers, presidential campaigns, business leaders, and individuals are increasingly using data and information management to make a variety of decisions, ranging from national security to market development to personal finance. Similarly, tribal leaders need access to quality data in order to make the best decisions for their citizens and develop effective community development initiatives. In what follows, we present recommendations on three priority areas, including the need to: 1) Ensure Tribal Consultation on Census Initiatives; 2) Ensure Tribal Consultation on all Data Sharing Policies; 3) Require Federal Agencies to Report Data on Both American Indians/Alaska Natives Alone and In Combination with Other Races/Ethnicities; and 4) Invest in Building Tribal Capacity for Data Collection and Management.

### *Recommendations*

- 1. Ensure Tribal Consultation on Census Initiatives.** The US Census Bureau is considering a range of policy changes that will impact American Indian and Alaska Native peoples and communities, including the Race and Hispanic Origin Alternative Questionnaire Experiment (AQE), increased use of the internet for Census data collection, and expanded use of administrative data in federal policy planning. It is imperative that the Census Bureau conduct tribal consultation alongside their efforts to outreach broadly to American Indian and Alaska Native people and organizations.
- 2. Ensure Tribal Consultation on all Data Sharing Policies.** Data sharing is being advanced by a range of federal agencies given the President's priorities around Big Data. Some federal agencies compel data sharing as part of funding proposals or when a certain funding threshold is reached (e.g., grants funded over \$500,000). This trend should not take precedence over agencies' responsibilities to consult with tribes on whether and how data sharing of tribal data will be managed. There are useful models of oversight, such as that in use by the Alaska Area Specimens Bank, that affirm tribal sovereignty and provide transparent direction to investigators.
- 3. Require Federal Agencies to Report Data on Both American Indians/Alaska Natives Alone or In Combination with Other Races/Ethnicities.** Each federal agency has taken a unique approach to reporting data they are responsible to steward. For instance, the US Department of Education issued its *2007 Final Guidance on Maintaining, Collecting and Reporting Racial and Ethnic Data* that creates a major barrier in accessing data already collected on American Indian/Alaska Native students. This is particularly important in relation to youth data as AI/AN youth make up a significant proportion of the Native population and planning to address their needs is a priority. Data on AI/AN students who are also Hispanic/Latino is only reported as Hispanic/Latino ethnicity; and data on those AI/AN students who select an additional race category is only aggregated as part of the multiracial category rather than reported as AI/AN in combination as the Census does. It is imperative that data that can be reported ethically on AI/AN students be reported by both AI/AN alone and AI/AN in combination categories to ensure maximum access to federal data.



4. **Invest in Building Tribal Capacity for Data Collection and Management.** Federal policy efforts to support tribal self-governance are important. The federal trust responsibility requires that the federal government define its role as part of supporting tribal self-governance. One key role is investing in building tribal capacity to govern, which includes strengthening tribal data collection and management. As part of this work, there needs to be federal investment in tribal data systems and training in health, education, infrastructure, and economic domains, amongst others. These data systems need to be integrated across tribal departments and able to align with state and federal data systems. There also needs to be a commitment to develop and use methods designed to measure small populations – it is not sufficient to note in federal reports that American Indian and Alaska Native sample sizes are too small to be measured. Further, the federal government has a Congressionally-mandated responsibility to collect and report data on the American Indian population and labor force at a *tribal level* instead of relying on individual-level aggregations of Census data as the most recent *American Indian Population and Labor Force Report* did. If tribally-reported data does not meet OMB data quality standards, there needs to be a federal investment in strengthening tribal data quality and capacity for data collection. Lastly, it is imperative that federal efforts to expand the STEM and biomedical workforce include specific outcomes for increasing the numbers of American Indian and Alaska Natives trained in demographic and scientific data arenas. The BIA Data Initiative is an admirable start towards this in its effort to improve federal data quality and availability, to foster work with the US Census Bureau to address data gaps for Indian Country, and to create a capability within DOI's Office of Policy Analysis to support effective, data-driven, tribal policy making and program implementation. Efforts such as these to produce data that is meaningful and usable by tribal nations in their planning efforts are essential as part of the federal trust responsibility.

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## **Protecting and Advancing Nation-to-Nation Relations: Tribal Sovereignty, Self-Governance, and Self-Determination**

- Trust Modernization
- Tax
- Self-Governance
- Consultation
- White House Council and High Level  
Engagement
- Election Reform and Voting Rights



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## A 21ST CENTURY TRUST FOR 21ST CENTURY TRIBES: MODERNIZING THE TRUST ASSET MANAGEMENT SYSTEM AND TRUST RESPONSIBILITY

In return for Indian tribes ceding millions of acres of land making the United States what it is today, the United States has recognized the tribal right to self-government, to exist as distinct peoples on their own lands, as well as the federal responsibility to protect Indian trust assets. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize the United States' fundamental trust relationship with tribal nations and shape our nation-to-nation relations.

In the past six years, this Administration has taken many steps to update policies to support tribal self-governance and self-determination. The Department of Interior and other federal agencies must continue to build on the momentum of recent tribal trust settlements and laws like the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act to further empower tribes to make direct decisions regarding their lands and assets.

Tribal leaders urge this Administration to eliminate burdensome regulations that stifle economic development in Indian Country, provide tribes with more flexibility and the option of greater control over decision making, and prevent the reoccurrence of the mismanagement problems of the past. Indian Country needs a comprehensive overhaul to modernize federal Indian policy in a manner that is consistent with self-determination and rooted in retained inherent sovereign authority to create a 21st Century trust for 21st Century tribes.

### *Recommendations*

1. **Finalize the Rights of Way Regulations.** The Department of the Interior (DOI) must finalize the proposed rule on Rights-of-Way on Indian Land incorporating the comments provided by NCAI and Indian Country, and in particular address dual taxation of Indian lands by states.
2. **Expedite Probates and Appraisals.** Probate of individual Indian lands continues to be a bottleneck for many trust transactions, not the least of which is the Buy-Back program. Many problem areas in the probate process can be fixed through administrative actions or technical amendments to the Indian Land Consolidation Act. The Department of the Interior should also develop alternatives to probate, including will writing, gift deeds as estate planning, transfer upon death, etc. Further, nearly every trust transaction requires an appraisal from the Office of Special Trustee (OST), and this is the most significant bottleneck in the trust system. We need to eliminate unnecessary appraisals, and permit tribes to rely on independent certified appraisals.
3. **Memorandum of Opinion on the Scope of the Federal Trust Responsibility.** After proper consultation with Indians, the DOI Solicitor should issue a new Memorandum to update the 1978 letter by DOI Solicitor Krulitz on the nature and scope of federal trust responsibilities, and the Interior should promulgate regulations to implement recommendations of the AIPRC and the SCITAR and to codify 303 DM 2 and Secretarial Orders 3175, 3215, and 3335.

4. **Special Message to Congress on Federal Indian Policy.** The President should issue a special message to Congress advancing principles for Federal Indian policy and Indian trust responsibility, similar to messages from President Johnson and President Nixon, but modernized to emphasize jurisdiction and infrastructure initiatives in the modern self-determination era. See the section in this book on Special Message.
5. **Executive Order Creating the Council on Indian Trust Responsibility.** The President should establish by Executive Order the Council on Indian Trust Responsibility under the White House Council on Native American Affairs. The President's Council on Indian Trust Responsibility (CITR) would coordinate Federal Indian policy efforts and work closely with agencies and other White House offices in the development of American Indian and Alaska Native policies and initiatives. CITR would be established within the Executive Office of the President as part of the Council on Native American Affairs. The CITR would assist and advise the President in developing policies and initiatives.
6. **Create an Office on Indian Trust Responsibility within the Office of Management and Budget.** The President should establish by executive order in the Office of Management and Budget (OMB) the Office on Indian Trust Responsibility (OITR). The OITR would review Federal agency draft and proposed final regulatory actions that may potentially affect the Federal Indian trust responsibility to American Indian and Alaska Native tribal governments. The objectives of the Executive Order would be to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of the Federal Indian trust responsibility for agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; to make the process more accessible and transparent to tribal governments; and further improve rulemaking and regulatory review to support tribal governments interests and self-determination.
7. **Executive Order Affirming Trust Obligations.** The President should issue a corresponding Executive Order that affirms federal trust responsibility obligations for all federal agencies and that affirms the "best interests" determination in favor of tribes in all environmental and administrative determinations.
8. **DOI Regulations on Land Management.** The Department of the Interior should promulgate regulations based on Secretarial Orders 3206 and 3225 beyond the Endangered Species Act to recognize that Indian tribes are the appropriate governments to manage their lands and resources, which are separate and not generally subject to federal public lands laws.
9. **Invest in and Support Tribal Land Use Planning/Strategic Development.** Tribal planning processes tend to silo into grant-driven plans for housing, transportation, water, power, and sewage. Tribes need resources to integrate planning for economic development and jobs, education, agriculture and natural resources, climate change adaption and mitigation, and the development of healthy communities. There is a growing emphasis on planning for rural development. Tribal industries tend to cluster in certain areas, and the Administration should initiate support and technical assist in developing land use/strategic development plans to fit needs of their particular community.
10. **Clarify Regulations on the Status of Permanent Improvements to Indian Lands.** The current regulations governing permanent improvements to Indian lands have created confusion

and inconsistent probate decisions. We request that the Bureau of Indian Affairs align its probate regulations, 43 CFR 30, to the 25 CFR 162 regulations, specific to treatment of permanent improvements. In addition, the status of permanent improvements should be clarified for the purposes of appraisals and acquisition for the Land Buy-Back Program. Finally, the BIA must take a more active role in protecting Indian tribes from state taxation.

11. **Improve Communication between the BIA Realty and OST.** The lack of communications and inconsistent forms and policies seem to be a great source of frustration with OST on a range of practical issues, everything from minors' accounts to appraisal requirements to land transfer requirements. By improving communication, creating uniform guidance documents and forms, the Department of the Interior can greatly improve and expedite the processing of these important trust functions.
12. **Lease Compliance and Trespass.** Indian tribes have very significant problems with lessees who violate lease terms and with outright trespass on Indian lands. We need to improve enforcement mechanisms.
13. **Conflict-of-Interest Issues at DOI.** The Department of the Interior (including the Solicitor's office) oversees a vast range of federal land issues that can come into conflict with their trust responsibility to protect Indian land. We need to create clearer divisions of responsibility.
14. **Continue to Implement the HEARTH Act and Support Trust Asset Management.** The Administration should focus on implementation of the HEARTH Act by providing technical assistance and encouraging tribes to take over resource management on their reservations. Direct service tribes also can be encouraged to engage in planning to identify trust assets, establish objectives and priorities, and allocate the available funding. Contracting and compacting tribes should be empowered to establish their own management systems consistent with federal laws. This renewed focus on comprehensive trust resource planning offers land use and economic development benefits.
15. **Fully Fund the Trust Responsibility.** The President and all federal agencies should propose budgets that fully fund all aspects of the federal trust responsibility, and to classify those functions as mandatory components of the federal budget. Also, the U.S. Commission on Civil Rights should issue a follow up report on its 2003 Quiet Crisis Report on Federal Funding and Unmet Needs in Indian Country, and President Obama should develop an action plan to address and respond to that report.
16. **Land Consolidation and the Cobell "Buy-Back" Program.** The \$1.9 billion fractionated land buy-back program authorized and funded through the *Cobell* settlement legislation has the potential of greatly increasing the efficiency of trust land management and freeing up resources to facilitate economic development.. Because this money must be spent within the next 8 years or be returned to the Treasury, it is critical that the program be implemented expeditiously and efficiently. The cooperative agreements with tribes should allow greater flexibility to fit local reservation needs, accommodate more meaningful tribal participation in key aspects of the program, and provide tribes with adequate funding to carry out their responsibilities under the agreements.

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## TAX

In order to ensure long-term stability of tribal communities, there is an ongoing need for development of tribal authority to provide government revenue independent of federal appropriations. Tribal governments receive hugely inadequate federal funding for roads, schools, police, health care and all vital government services promised by treaty and the federal trust responsibly. All remaining revenue must come from tribal natural resources or enterprises, and even these limited resources are frequently tapped by unconscionable dual state taxation.

State governments provide few services on Indian reservations, but impose taxes on severance of natural resources, retail sales, and increasingly on property such as wind generation facilities. Tribal governments retain inherent authority to regulate and tax commerce on tribal land, but tribal authority is crowded by dual state taxation. Tribal governments face a losing proposition when forced to collect state taxes: either impose a dual tax and drive business away, or collect no taxes and suffer inadequate roads, schools, police, courts and health care. To add insult to injury, reservation economies are funneling millions of dollars into state treasuries who spend the funds outside of Indian Country. This dilemma undermines the Constitution's promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation. NCAI recently passed Resolution SD-15-045: *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities.*

In addition, last year tribes were successful in urging Congress to pass the Tribal General Welfare Exclusion Act to assure that programs and services provided by tribal governments to their citizens will not be taxed. Implementation of this new law is a key priority for tribes and the Internal Revenue Service. We urge Treasury and IRS to continue building government-to-government relations with tribes, finalizing the Treasury Tribal Advisory Committee, and extensively consulting with tribal governments as required under the Tribal General Welfare Exclusion Act.

### ***Recommendations***

- 1. Address Dual Taxation through the Indian Trader Laws.** 25 U.S.C. 262 states that “Any person desiring to trade with the Indians on any Indian reservation shall...be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians.” The imposition of state taxes in Indian country on sales, personal property, and natural resources extraction causes great harm because it prevents tribal governments from implementing their own tax policies and raising revenue for the programs and services that are so greatly needed on reservations. Dual taxation is one of the mostly fundamental problems in Indian country, as highlighted by NCAI Resolution SD-15-045, and the Administration has the opportunity to address it without the need for any additional action from Congress.

2. **Appoint Tribal Advisory Committee and schedule a tribal meeting with the Commissioner of the Internal Revenue Service.** In 2005, the IRS Division of Tax Exempt and Governmental Entities began an audit campaign of every Indian tribal government, and this campaign continued under the Obama Administration. Although tribes gained some relief from Congress with the General Welfare Exclusion Act, there remain concerns with IRS field examiners and their unfamiliarity with federal tax law regarding tribal governments. The practice has been uninformed decisions are made at the local level, and become a local “enforcement” action where government-to-government relations are denied. As we did in the 2014 Tribal Leaders Briefing Book, we request a direct tribal leaders meeting with Commissioner of the IRS.
3. **Implement the Tribal General Welfare Exclusion Act after Consultation with the Treasury Tribal Advisory Committee and Tribal Governments.** Treasury and IRS recently called for comments regarding implementation of the Tribal General Welfare Exclusion Act provisions through Notice 2015-34. NCAI, jointly with the Native American Finance Officers Association and the Affiliated Tribes of the Northwest Indians, submitted a letter to Treasury and IRS emphasizing that Treasury and IRS’s call for comments on implementation of the Act are inappropriate until after establishment of the Treasury Tribal Advisory Committee and extensive consultation with tribes.
4. **Issue Further Guidance Regarding Trust Per Capita Payments.** Tribes greatly appreciate Notice 2015-67 confirming that tribal trust per capita payments are not taxable, but the scope of the guidance is limited to only funds held in an account by the Secretary of the Interior, and does not address funds acquired through direct pay leases. Funds acquired through direct pay leases are funds derived from tribal trust resources, as defined at 25 CFR § 115 and authorized by BIA leasing regulations at 25 CFR §162. The funds are entitled to the same status as OST tribal trust accounts. Direct pay leases are often preferable for both tribes and the federal government because they enable faster payments, eliminate the need for Interior to handle trust funds, and promote greater self-governance. Tribes urge the Internal Revenue Service to issue further guidance clarifying that tribal funds derived from direct pay leases are also nontaxable. See, NCAI Resolution SD-15-046.
5. **Continue Development on a Series of Tax Policy Issues.** These would include:
  - **Access to Capital** – As noted in the accompanying paper of that name.
  - **Pre-empt Taxation of Improvements** – Also mentioned in accompanying paper on Trust Modernization. 25 CFR 162 leasing regulations were a strong step. There is a great need to finalize the Part 169 Right of Way regulations, particularly regarding dual taxation. In addition, probate and Buy Back issues linger.
  - **Comprehensive Tax Reform and Principles of Tax Parity for Tribal Governments:**
    - Tribal governments must be treated with parity in all areas of tax policy.
    - The Constitution recognizes tribal governments; treaty and trust obligations.
    - Tribes have a responsibility to govern and regulate activities on tribal lands.
    - Tribes provide governmental services: education, health, public safety, and transportation.
    - Like states, Indian tribes are not taxable in recognition of their status as governments.

- **Recognition of Tribal Governments' Authority is Needed:**
  - to raise tax and other revenue free from overlapping state taxation.
  - to create incentives for business and jobs.
  - to access government financing tools and the capital markets.
  - to make decisions regarding citizens' needs.
  - to gain certainty of jurisdiction to sustain economic growth.

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## TRIBAL SELF-GOVERNANCE

Self-Governance enables tribes, as sovereign nations, to exercise their right to sovereignty and self-sufficiency and to take program funds and manage them in ways that best fit the needs of their citizens and tribal communities. It places the federal government's Indian Country programs firmly in the hands of the people who are served by them, enhancing and empowering tribal governments and their institutions, all while reducing the federal bureaucracy. As a tribally-driven initiative created through Congressional legislation, it allows tribal governments to negotiate annual appropriated funding and to assume management and control of programs, services, functions, and activities – or portions thereof – that were previously managed by the federal government.

As of 2015, there are 254 Self-Governance tribes within the Department of the Interior-Bureau of Indian Affairs (DOI-BIA) and 341 Self-Governance Tribes within the Department of Health and Human Services-Indian Health Service (DHHS-IHS). Over the past 35 years, the Indian Self-Determination and Education Assistance Act (ISDEAA) has been one of the most successful mechanisms empowering tribes to develop the capacity for government-building activities. Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress for more than 25 years regarding ways to improve and advance tribal self-governance.

### *Recommendations*

1. **Fully implement the Title IV regulations of the ISDEAA to identify Inherent Federal Functions and Tribal Shares.** The number of participating tribes within the Department of the Interior is lower than that of Indian Health Service, we request that the Title IV regulations requiring the identification of Inherent Federal Functions and Tribal Shares be fully implemented.
2. **Increase opportunities for tribes to leverage non-BIA Self-Governance agreements.** There is a growing interest among Tribes to increase the number of non-BIA Self-Governance agreements, and the Department should make a greater effort to promote Self-Determination and Self-Governance in non-BIA programs.
3. **Expand Tribal Self-Governance within HHS.** The expansion of Self-Governance within Title VI of the ISDEAA would greatly aid tribes in serving their citizens. Tribes would have more flexibility to redesign programs within the DHHS such as the Administration on Aging, Administration on Children and Families, Substance Abuse and Mental Health Administration, and Health Resources and Services Administration. Tribes urge the Administration to work with us to advance a Self-Governance Demonstration Project to be implemented in HHS in FY 2016.

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## CONSULTATION

Throughout American history, tribal nations have been recognized as governments that pre-dated the United States and have maintained the right to govern their own people and their own lands. The United States Constitution specifically recognizes the status of tribal nations as sovereign governments. From this legal recognition stems a nation-to-nation relationship between tribes and the federal government – a relationship that is documented in historical treaties and affirmed by subsequent laws, policies, and Supreme Court opinions. We commend President Obama and his Administration for their demonstrated commitment to the nation-to-nation relationship, the cornerstone of which is meaningful consultation and coordination.

Since President Obama issued his November 5, 2009, Executive Memorandum on consultation and coordination with tribal governments in line with President Clinton's Executive Order 13175, many federal agencies have increased their consultation activities with tribes. There are several agencies, however, that have never finalized the consultation policies required by President Obama's Executive Memorandum. These agencies should be required to finalize consultation policies as soon as possible. There are also agencies who have been conducting effective and meaningful consultations, while others continue to prioritize process over substance or look for reasons to avoid consultation at all. The recommendations below will help ensure that consultation occurs more uniformly across the Executive branch and that the advancements made during this Administration continue into the future.

### *Recommendations*

1. **Focus on substance.** Despite increased consultation sessions, many agencies continue to place too much emphasis on process, rather than on the substantive requirements of E.O. 13175. We urge more agencies to focus their consultation sessions, just as the Department of Justice has done with its “framing papers” on the Violence Against Women Act and voting rights, so that the time and energy of tribal leaders and federal officials is used effectively.
2. **Ensure release of Annual OMB Report to establish accountability.** The Administration should focus on the immediate development and implementation of accountability mechanisms and a reporting system to track progress. Tribal leaders often spend a great deal of time and resources providing feedback to a federal agency, only to receive little response directed toward their recommendations and concerns. The President's direction in his 2009 Executive Memorandum on E.O. 13175 laid out an important accountability mechanism by requiring OMB to prepare a report on consultation. We urge OMB to fulfill the President's directive by preparing – and publically releasing – an annual report that tracks agency actions to address the issues raised during tribal consultation, reports back to tribes on the status of these issues, and identifies promising practices in consultation.

3. **Make consultation enforceable.** Tribes need equal bargaining power on issues that impact their lands and their people. The President should support legislation to institutionalize consultation and make it legally enforceable.
4. **Clarify how the Federal Advisory Committee Act interacts with tribal consultation.** Different agencies interpret the Federal Advisory Committee Act (FACA) in extremely inconsistent ways to limit consultation or exclude participants. For example, agencies often use FACA to limit participation to only elected government leaders, when the guidance on the issue clearly includes tribal government employees and tribal organizations.<sup>1</sup> OMB should issue additional guidance to the agencies clarifying how FACA-related issues and should ensure that information on tribal consultation is included in trainings for FACA compliance personnel at the various agencies.
5. **Modernize the consultation process.** While specific, in-person consultations are necessary, there is an opportunity to use technology and other strategies to streamline consultation. This would include the creation of a system for tribes to electronically engage in consultation – to monitor issues, schedule follow up meetings, and effectively coordinate comments.
6. **Facilitate stronger interagency communication and coordination.** As appropriate, agencies should explore opportunities for joint consultation sessions on similar issues to maximize tribal leader input and advance coordinated responses to tribal leader concerns.

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<sup>1</sup> OMB Memorandum 95-20, Implementing Section 204 as related to FACA, (September 21, 1995), 60 Fed. Reg. 50651 (Sept. 29, 1995); see Delegation of Authority to Issue Guidelines or Instructions to Federal Agencies on Consulting with State, Local and Tribal Governments, 60 Fed. Reg. 45039 (August 29, 1995).



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## WHITE HOUSE COUNCIL & HIGH LEVEL ENGAGEMENT

During his first campaign, President Obama's commitment to host an annual summit with tribal leaders at the White House was transformative. His fulfillment of that promise and support of tribal consultation has had a noticeable effect on his Administration and its relationship with tribes. In addition to the annual White House Tribal Nations Conference, the White House has co-hosted forums in partnership with the White House Rural Council and White House Business Council, and several Cabinet secretaries have made unprecedented efforts to engage with tribal leaders. To advance and institutionalize this high level engagement with tribal leaders, we recommend the following additional steps in the remaining two years of the President's Administration.

### *Recommendations*

1. **Enhance existing high level meetings.** Tribal leaders are encouraged by the President's creation of the White House Council on Native American Affairs and his commitment to the annual Tribal Nations Conference. However, we have specific recommendations that should guide future high-level meetings, including elevating their status to that of a "Nation-to-Nations Summit."
2. **Tribal leaders must be directly engaged in the work of the White House Council.** The creation of the White House Council was an important response to a top priority of tribal leaders. The leadership of Secretary Jewell and high-level engagement across the agencies offers the potential to effectively respond to tribal concerns and work energetically to streamline federal programs. However, tribal leaders strongly urge the Council to engage directly and regularly with tribal leaders to shape the work of the Council. The Council will not be successful if its work is not guided by true nation-to-nation dialogue.
3. **Tribal leaders must have the option for staff support comparable to that afforded to senior Administration officials.** The regional meetings at the 2011 White House Tribal Nations Conference and several White House forums since have shown promising trends toward including technical experts and staff to support tribal leaders. However, the White House Tribal Nations Conference itself, and many agency level committees, must provide tribal leaders with support comparable to that offered to senior federal officials. If federal technical experts and support staff participate in the meetings, tribal leaders should have the same option to ensure that the nation-to-nation dialogue is as informed and productive as possible.
4. **White House Conferences and agency advisory councils enhance but cannot supplant consultation.** These mechanisms cannot replace specific and meaningful consultation. In general, the meetings do not provide adequate time – or sufficient representation – to supplant consultation.
5. **Sustain Engagement with Tribal Nations Throughout the Year.** While the annual White House Tribal Nations Conference is a helpful "flagship" meeting between tribes and President Obama, true nation-to-nation engagement must be sustained on an ongoing basis. The White

House Council on Native American Affairs holds that promise. Tribal leaders urge Secretary Jewell, and other key leaders of the White House Council, to consider following a model like the White House Rural Council, where regular meetings and events are hosted by the President and Cabinet officials. As with the Rural Council, these meetings should be hosted both at the White House and in conjunction with key Indian Country meetings around the nation.

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## ELECTION REFORM AND VOTING RIGHTS

Native people are US citizens with the right to vote in all federal and state elections. However, there are significant and unique difficulties in accessing the right to vote within Indian reservations and Alaska Native Villages. Due to the rural location of many Indian reservations, high poverty rates, and the related barriers to transportation, Native voters face significant disadvantages. Out of the public eye, Native voters also encounter language barriers and animosities in reservation border towns that inhibit Native voting. As a result, American Indians and Alaska Natives have the lowest voter turnout rate of any other racial or ethnic group.

Tribal leaders have identified five major challenges for Native voters that guide the recommendations below. These include: (1) barriers to accessing the polls for American Indians and Alaska Natives; (2) a lack of resources for enforcing the Voting Rights Act in Indian Country; (3) voter intimidation and harassment; (4) a lack of access to ballots in Indigenous languages and on-site language assistance for Native language speakers; and (5) discrimination against tribally-issued identification where voter ID is required. NCAI recently adopted Resolution MSP-15-030 supporting the Department of Justice legislative proposal and Resolution ATL 14-054, which includes the following recommendations.

### *Recommendations*

1. **Increase enforcement of the Voting Rights Act in Indian Country.** The isolation of Indian reservations and Alaska Native villages, coupled with a lack of access to legal services, has left many blatant violations of the Voting Rights Act unaddressed. Indian Country needs the Department of Justice's continued support and effort to ensure American Indians and Alaska Natives can exercise their right to vote. NCAI encourages the Department of Justice to hold annual tribal consultations on voting rights issues in Indian Country and commit to increasing enforcement efforts to combat Native voter disenfranchisement, including enforcement of the minority language assistance provisions of the Voting Rights Act.
2. **Promote the location of registration and polling places on reservations.** The most common and serious concern consistently raised by Native Voters is distance to polling locations. Some Alaska Native Villages, for example, are assigned to polling places that are a 150-mile roundtrip and accessible only by plane or boat. Similarly, compared to other voters, many Native people have less access to early voting and voter registration opportunities. The Administration should promote the location of voter registration and polling place on tribal lands, including through the use of its enforcement and monitoring powers.

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## Strengthening Tribal Economies

- Jobs and Workforce Development
- Energy
- Housing
- Transportation
- Broadband
- Access to Capital
- Trade Opportunities
- Native Contracting



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## JOBS AND WORKFORCE DEVELOPMENT

For generations, Native peoples have faced harsh economic conditions that are more pronounced than those generated by the Great Recession. Today, while unemployment rates across the country hover around 5.5 percent, tribal governments and Indian communities continue to wrestle with widespread unemployment that has well exceeded 10 percent and beyond for decades. The lack of employment opportunities in Native communities has had a far-reaching impact, affecting all aspects of life. While tribal governments have successfully supported job creation both in government and the private sector, a remaining challenge is ensuring that job growth keeps pace with the growing Native youth population. Considering that Indian Country has one of the youngest populations in the nation, with about 32 percent of Native people under the age of 18 compared to 24 percent of the total US population, workforce development opportunities and building capacity for the growing workforce are of critical importance.

Job growth in Indian Country relies on responsible legislative and regulatory policies that support economic development by expanding access to capital, allowing tribes the ability to move quickly and utilize available resources, and maintaining parity between tribal, state, and local governments. As industries change and new ones emerge, there is a major need for job training and re-training. The Administration should focus on initiatives which include and equip tribal citizens with the necessary technical skills to make them competitive applicants for jobs in fields such as health, business and finance, technology, and energy. The Administration's agenda for the advancement of Native American workforce services must enable grantees to use federal resources in a way that fit the cultural economic, educational, and social circumstances.

The 11-year absence of WIA reauthorization finally ended in July 2014 when Congress passed the Workforce Innovation and Opportunity Act (WIOA) and President Obama signed the bill into law. The Administration is currently charged with carrying out implementation of the WIOA through rulemakings.

### *Recommendations*

1. **Require Federal Agencies to Follow Tribal Employment Rights Laws.** President Obama should issue an Executive Order calling for all federal agencies to recognize and follow the tribal employment rights laws of the tribal government. Current tribal employment rights laws have not been consistently recognized and followed by federal agencies which either manage or contract for projects or other programs on tribal land, limiting opportunities for employment of qualified tribal members and contributing to high rates of unemployment and poverty.
2. **Support the unique needs of Native American Programs in WIOA implementation.** Implementation efforts should take into account tribal priorities such as addressing the need for sufficient funding to meet the economic, financial, and infrastructural barriers facing Native communities (e.g., requesting that the Secretary of Labor grant a blanket waiver provision of performance measures for Native American workforce programs, as the



Mandated Common Measures and new primary indicators of performance are not realistic for Native communities).

3. **Include tribal leaders on any Secretary-level Advisory Council in the Department of Labor (DOL).** The Administration should ensure that any DOL Secretary-level supervisory body has at least one appointee that is familiar with the unique nature of Native American workforce programs and is proficient in working with Native populations. Should the creation of a Secretary-level supervisory body not be possible, it is requested that the Secretary make an organizational change that elevates the Native American Employment and Training Council (NAETC) authority to the Secretary or the Assistant Secretary. It is further recommended that the Secretary of Labor convene a summit of the NAETC and Native American Program grantees to reinvigorate the DOL's commitment to its Native American programs and to develop strategies for bringing these programs up to their full potential in the 21st century.
4. **Ensure Native American representation on State workforce investment boards.** The WIOA eliminated the mandatory Indian seat on local workforce investment boards but allows a representative of an Indian tribe or tribal organization to be appointed to the State board. The inclusion of a Native representative on state boards will be essential if WIOA programs are to effect positive change in Native communities. It is recommended that the Administration designate a seat for a Native representative on state workforce investment boards, particularly in states with significant Native populations.
5. **Direct the Department of Labor, the Department of the Interior, and the Office of Management and Budget to produce the statutorily required American Indian Population and Labor Force report.** Include new provisions that gather specific workforce and occupational data using tribal capacity to measure job market needs for Indian Country.
6. **Emphasize the development of technical expertise.** Programs offered by federal agencies that are available to tribal schools and tribal members should emphasize technology-specific curricula and training. The Administration should provide access to job training initiatives that will promote technical skill development for tribal members to work in emerging industries – for instance, by expanding the Energy Education & Workforce Development programs offered by the Department of Energy to include tribal governments, TCUs, and tribal businesses in its education, training, and technical assistance programs that are a critical part of the national effort to create green jobs. It is recommended that tribal provisions be included for technical training in all federal agency education and job training programs.
7. **Partner with federal agencies, universities, tribal colleges, and community and vocational colleges.** The Administration should create these partnerships to invest in developmental education and academic bridge programs, so that tribal members can succeed in college-level courses and qualify for federal workforce programs.

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## INDIAN ENERGY DEVELOPMENT

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy development is integral to tribal efforts to generate jobs and to improve tribal members' standard of living. The Department of the Interior estimates that undeveloped traditional energy reserves on Indian lands could generate up to \$1 trillion for tribes and surrounding communities. Further, the Department of Energy estimates that tribal wind resources could provide 32 percent and solar energy two times the total amount of electricity the United States currently generates per year.

However, developing energy resources on tribal lands, not unlike other trust resources, continues to be a challenge as tribes face barriers to energy development which do not exist elsewhere. Cumbersome bureaucratic processes, disincentives for tribal financing, Applications for Permit to Drill fees, inequitable exclusion from federal programs, and the requirement that tribes and tribal businesses obtain approval from the Department of the Interior for almost every step of energy development on tribal lands – including the approval of business agreements, leases, rights of way, and appraisals – continue to delay energy development in Indian Country. Since the last major update to Indian energy policy was over 10 years ago, Congress and the Administration must work with tribes to remove the unnecessary barriers that persist in energy development, bolster tribal self-determination, and help create careers and capital in Indian Country.

The Administration must work with tribes and other federal agencies to:

- eliminate the application fees for permits to drill on Indian lands;
- prioritize infrastructure development, such as transmission and electrification investment;
- consult with tribal governments when developing regulations that may impact tribal energy development;
- undertake a comprehensive review to streamline approval processes relating to Indian energy development; and
- affirm and protect exclusive tribal taxing authority over energy development activities on Indian lands.

### *Recommendations*

1. **Include tribes in clean energy development under Executive Order 13423.** As the largest energy consumer in the U.S. economy, the federal government was directed to lead by example and support clean energy development when President Bush signed Executive Order 13423 on January 24, 2007, enacted into law as part of the 2009 Omnibus Appropriations Act. Agencies must include tribes when working to achieve the goals outlined in Executive Order 13423. Federal agencies should include tribal renewable energy products as part of their annual sustainability plans and identify how they will utilize their authority to prefer tribal energy products to meet those

goals. Additionally, the Department of Defense and cooperating agencies should identify plans to engage tribes with potential energy products that meet their procurement goals.

2. **Invest in the development of both conventional and renewable energy resources in Indian Country.** In the past few years, there has been notable improvement in federal efforts to develop renewable energy in Indian Country; however much more needs to be accomplished. The Department of Energy's new tribal leader and staff training programs need to be expanded. Additionally, the Department of the Interior's resources should be focused to support tribe's evaluation of, and entrance into Tribal Energy Resource Agreements (aka TERAs), as well as tribal capacity evaluations and related governance needs for TERA programs. DOI should also engage in a parallel effort to support HEARTH Act applications relating to renewable energy projects on tribal lands. DOE Office of Indian Energy's technical assistance for tribes should be continued as well as leveraging competitive technical assistance and financial assistance. Additionally, DOE's authority to provide loan guarantees for tribal energy projects should be effectuated and coordinated by the Office of Indian Energy.
3. **Increase tribal energy funding.** The Administration *must* request and advocate for the maximum statutory amount available under the 2005 Energy Policy Act for the DOE Office of Indian Energy and the Indian energy loan guaranty programs.

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## INDIAN HOUSING

Native Americans face some of the worst housing and living conditions in the United States. According to the U.S. Census Bureau's 2006-2010 American Community Survey, there are an approximate 142,000 housing units in Indian Country, and those homes frequently lack utilities and basic infrastructure. The survey shows that approximately 8.6 percent lack complete plumbing facilities, 7.5 percent lack kitchen facilities, and 18.9 percent lack telephone service. Close to 30 percent of Indian homes rely on wood for their source of heat. These challenges facing tribal communities will continue to increase without sufficient resources and coordination with the U.S. Department of Housing and Urban Development (HUD).

The Native American Housing and Self-Determination Act (NAHASDA) is the main authorization of tribal programs. Tribal programs under NAHASDA have been successful in allowing tribes the self-determination necessary to provide effective programs for tribal citizens. NAHASDA effectively replaced the various Indian housing programs under the 1937 Housing Act and consolidated federal housing funds through direct block grants to the tribes and their housing authorities. Tribes are now exercising their right of self-determination to design and implement their own housing and other community development infrastructure programs. NAHASDA has resulted in tens of thousands more housing units being constructed as well as increased tribal capacity to address related infrastructure and economic development challenges. Since the enactment of NAHASDA in 1996, tribal housing programs have been making great strides for housing and community development by using sustainable building practices and leveraging their NAHASDA and other federal funding. Today there are close to 500 Tribally Designated Housing Entities in Indian Country.

### *Recommendations*

- 1. HUD's Office of Native American Programs must improve coordination and outreach with Indian tribes regarding HUD policies and regulations to honor the government-to-government relationship.**
- 2. Establish an Assistant Secretary for Native American Programs within HUD.** Elevate the position of Deputy Assistant Secretary for Native American Programs to a political position as the Assistant Secretary for Indian Housing and Community Development. This elevated position will be important to adequately reflect the government-to-government relationship between tribes and the U.S. Department of Housing and Urban Development (HUD) which administers the bulk of federal housing programs for American Indians and Alaska Natives.
- 3. Completion of Housing Needs Assessment Study.** HUD should complete the Housing Needs Assessment Study so that accurate and timely data on the need for housing in Indian Country is available to tribal governments, the Administration and Congress.
- 4. Streamline the National Environmental Policy Act (NEPA) for Housing Development in Indian Country.** HUD should continue to work on an inter-agency process that allows for a more streamlined and efficient NEPA review to enable housing development and realty

infrastructure in Indian Country to proceed in a more efficient manner to meet the housing needs of tribal members.

- 5. Establish a Tribal Advisory Committee at HUD.** Like other federal agencies, HUD should establish a Tribal Advisory Committee, made up of elected tribal leaders that can advise the Secretary on issues of importance to tribal nations related to housing and community development.

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## TRIBAL TRANSPORTATION

Transportation infrastructure is essential for the economic development for tribes, and it includes many modes such as roads, bridges, ferries, trails, air and transit. These modes need to be safe, adequate, and well-maintained because these modes are what Indian children rely on to get to school; what all tribal members and surrounding non-tribal communities need to get their destination; law enforcement and emergency personnel to respond to emergency situations; and for businesses on tribal lands to bring and sell goods. According to the latest National Tribal Transportation Facility Inventory (NTTFI), there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribes, the Bureau of Indian Affairs (BIA), states and counties. Of those, Indian tribes own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3 percent) are paved – 12,650 miles are gravel, earth, or primitive. These 12,650 miles of roadways are still among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access to American Indian and Alaska Native communities by Native and non-Native residents and visitors alike. Of the 29,400 miles owned and maintained by the BIA, 75 percent of them are graveled, earth, or primitive. These roads are the primary means of travel for Native peoples across the nation, but they remain the most underdeveloped road system in the United States.

The current authorization, Moving Ahead for Progress in the 21st Century (MAP-21), administers highway, bridge, transit, and safety programs within the Department of Transportation. Particularly for tribes, MAP-21 comprises the Tribal Transportation Program (TTP) and Public Transportation Program on Indian Reservations (Section 5311 (c), also known as the Tribal Transit Program). Currently tribes receive \$450 million for TTP for the construction and maintenance of highways, roads, and bridges; and \$30 million for Public Transportation on Indian Reservations. This funding represents the majority of all funding available to tribes for development and maintenance of transit systems that serve tribal communities. Adequate funding is crucial to enable tribal governments to ensure that tribal transportation programs can provide for the economic and social well-being of their tribal members and members of the surrounding communities.

### *Recommendations*

1. **To ensure the Bureau of Indian Affairs and the Federal Highway Administration engage tribes as the Administration promulgates regulation regarding the Tribal Transportation Program.**
2. **Fill the position the Deputy Assistant Secretary of Transportation for Tribal Government Affairs within the U.S. Department of Transportation.** This position was authorized in 2010 and position has not been filled since. The intent of the position is to serve as a liaison for tribal nations within the Office of the Secretary.

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## **BROADBAND: DEVELOPING A DIGITAL HIGHWAY FOR INDIAN COUNTRY**

Market forces have failed to deploy telecommunications services to rural and tribal lands. While the U.S. continues to be recognized as a telecommunications leader in the global arena, rural and tribal areas domestically lack parity with urban centers in accessing these vital services. Earlier this year the Federal Communications Commission (FCC) released its, “2015 Broadband Progress Report”, which stated that 68 percent of tribal lands in the lower 48 states, and 63 percent of Alaska Native Villages lack access to broadband services. The Administration should expedite broadband services to rural and tribal lands to support public safety, economic development, education, and healthcare.

### **CONSULTATION WITH TRIBAL NATIONS SHOULD REMAIN PARAMOUNT IN ALL TELECOMMUNICATIONS ISSUES**

The Federal Communications Commission (FCC) established the Office of Native Affairs and Policy (FCC-ONAP) in August 2010, yet tribes must rely on Congress to ensure FCC-ONAP is funded to consult with tribal nations. While the FCC established FCC-ONAP in 2010 to carry out its consultation efforts and develop a tribal agenda to improve telecommunications regulatory deployment in Indian Country, there seems to be little influence from the Administration to ensure tribal issues are included. The White House should direct the FCC – through the Office of Management and Budget – to ensure a fully dedicated budget is requested to Congress since the FCC has not submitted a tribal consultation budget in its annual budget request for the past three fiscal years. Ongoing and meaningful consultation with tribal nations is critical as the FCC continues to reform and modernize the High Cost Fund, the Lifeline and Link-Up programs, and the E-rate program.

### ***Recommendations***

1. **Establish the Office of Native Affairs and Policy as an independent office at the FCC.** The FCC has already established a procedural framework for stand-alone offices, such as the Office of General Counsel and Office of Engineering and Technology to name a couple. These offices were created to directly advise the FCC Chair and Commissioners as specific subject matter experts. When the FCC Office of Native Affairs and Policy (FCC-ONAP) was established it was placed under the Consumer and Governmental Affairs Bureau. Elevating FCC-ONAP to operate as a stand-alone office will ensure that it has unfettered access needed to address tribal concerns and advise the FCC Chair, Commissioners, and the Commission’s Bureaus and Offices on all tribal matters.

### **PRESERVE HIGH COST SUBSIDIES FOR BROADBAND DEPLOYMENT**

Section 254 of the Telecommunications Act of 1996 ensures that all Americans, regardless of where they live, will have access to communications services at reasonable and affordable rates. The Universal Service Fund (USF) has provided capital and operating support to telecommunications companies providing service to rural and insular areas. Such costs to provide service to tribal and non-tribal consumers could not otherwise be achieved at affordable rates. The FCC has established rules to provide this support through various mechanisms including the High Cost Loop Support program,

ongoing critical capital and operating support to price cap and rate of return telecommunications companies must be retained and supported. Last year the FCC proposed reforms to the High Cost Loop Support mechanism, which included a proposal to freeze the National Average Cost Per Loop Support – reforms that would drastically reduce support for approximately half of all current companies serving tribal lands. Some carriers serving tribal lands may see an increase in their support levels, but the FCC must take into consideration how these proposals will affect all consumers in Indian Country.

### *Recommendations*

1. **The Federal Communications Commission and its Office of Native Affairs must consult with tribal nations and carriers to preserve and, or expand funds for high cost areas.** Only through consultation can the FCC gain critical insight and recommendations on how to preserve and protect universal service high cost subsidies for tribal lands. This is critical to ensure that all consumers residing on tribal lands will receive access to affordable telecommunications services. The FCC must develop rules that will provide parity for carriers that need ongoing capital and operating support to connect tribal lands to broadband services. Ongoing reforms to the universal service High Cost programs must take into consideration tribal carriers and those serving tribal lands.

### **INCREASE TRIBAL NATION ACCESS TO SPECTRUM LICENSES**

As the demand for commercial mobile services increases the federal government is working to free up more spectrum to support and expand wireless networks nationwide. However, due to previous auctions of spectrum licenses by the FCC many non-tribal telecommunications providers hold spectrum licenses over tribal lands but don't necessarily serve all tribal lands within a license area. In past and present circumstances tribes are unable to participate in spectrum auctions due to the vast amount of capital the telecommunications industry leverages to bid on these licenses. This has resulted in a comprehensive spectrum grab by industry without any new deployment or improvements to existing networks supporting wireless services over tribal lands. As the government continues to free up government held spectrum for commercial mobile use, tribes must receive a priority to licenses over tribal lands.

### *Recommendations*

1. **Request the FCC act on WT Docket No. 11-40 to increase tribal nation access to spectrum licenses** since action on this docket has not occurred since March 3, 2011. Due to regulatory changes and implementations since adoption of WT 11-40, the FCC should initiate a Further Notice of Proposed Rulemaking, and a Report & Order to adopt still relevant proposals from commenters.
2. **The FCC should implement a Tribal Priority in the rules inclusive of commercial mobile radio services,** and wireless spectrum that can be utilized to deploy critical important and robust broadband services.
3. **Create regulatory rules that strengthen the structure of negotiations with existing licensed companies and strengthen the ability of tribal nations to initiate and participate in these**



**negotiations.** Access to currently licensed spectrum is absolutely necessary as many communities and tribal nations have never received the full benefit of services that could and should be provided on these licenses. Adoption and utilization of broadband services cannot occur until these services are available on tribal lands.

4. **Rules should ensure that there is good faith, responsiveness, and continuity in negotiations between tribal nations and service providers.** As part of the fiduciary trust responsibility that exists between the federal government and tribal nations, it is critical that the FCC act in accordance with the best interest of tribes. While NCAI supports FCC initiatives to ensure that industry entities must “meaningfully engage” with tribal governments, the FCC should remain involved in these negotiations to ensure tribes are receiving fair treatment and deployment of broadband infrastructure is occurring in accordance with tribal sovereignty and community needs.

#### **FOCUS ON SCIENCE AND ENGINEERING PATHWAYS IN INDIAN COUNTRY**

According to U.S. Bureau of Labor Statistics labor force projections, STEM jobs are expected to grow 19 percent between 2008 and 2018, which is almost double that of all other occupations. Although these projections are nationwide estimates, Indian Country could contribute immensely to this vital workforce if given the opportunity. Tribal perspectives in STEM-related fields could also further contribute to the development of sound policies related to renewable energies, telecommunications, education, and other areas.

#### ***Recommendations***

1. **Develop mentorship and academic bridge programs** that include Native students with the Departments of Agriculture, Commerce, and Labor, the National Institute of Standards and Technology, and other federal agencies with programs that include STEM related fields.

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## ACCESS TO CAPITAL

For any economy to be healthy and productive, governments, businesses and individuals need access to capital of varying types. Capital is necessary to promote economic growth, support infrastructure development and create jobs. Tribal nations are no different in this area than other governments working to build a strong economy, but they face more barriers than others because of their unique legal status and often rural locations of their communities. However, when provided with access to capital and the tools to engage in economic development, tribal nations have demonstrated that they can rebuild their own economies and strengthen regional economies.

To promote economic growth in the surrounding regional economies with resulting job creation, the Administration must support initiatives that increase tribal access to traditional financing tools (*e.g.*, Low Income Housing Tax Credits, the New Markets Tax Credit, the CDFI Fund Bond Guarantee Program, Section 1603 grants).

### *Recommendations*

- 1. Ensure that Indian Country is included in the New Markets Tax Credit (NMTC) Program.** Since the inception of the NMTC program in 2000, the Community Development Financial Institutions (CDFI) Fund has made 836 competitive awards allocating \$40 billion in tax credit authority to specialized financial institutions called Community Development Entities (CDEs) to spur new or increased investments into operating businesses and real estate projects located in low-income communities. Yet, in the last two funding cycles of 2013 and 2014, no tax credit allocations were given to Native CDEs, leaving Indian Country behind. To ensure that Indian Country has the opportunity to realize the immense potential of the NMTC to significantly increase economic growth, the Administration should take the following three actions: (1) Ensure that tribal applicants are given a fair review process by reviewers well-versed in the complexities of Indian Country; (2) Amend the program's definition of "rural" to include Indian Country to allow tribes to apply for the less competitive NMTC rural set-aside; and (3) Change the prescribed service areas of CDEs to an American Indian Tribes service area to enable the use of allocations to any tribal project nationally. In addition, the Administration should support the legislative fix in the 2014 Expiring Provisions Improvement Reform and Efficiency Act to create a 10 percent set-aside for all NMTC, for economic development projects on Indian lands, Alaska Native Claims Settlement Act lands, or Native Hawaiian lands.
- 2. Improve the chances of tribal applicants receiving Low Income Housing Tax Credit (LIHTC) allocations.** The LIHTC Program provides a viable source of economic development for tribal communities; however, as allocations pass through state agencies and are based on population, there is no incentive or regulation requiring state agencies to consider tribal projects in their Revenue Allocation Plans, which are approved annually by the Internal Revenue Service (IRS). The Administration should mandate a direct Indian housing allocation without a state pass-through. Until this mandate is enacted or in lieu of a mandate, the Administration should create incentives for states to include preferences for considering Indian housing needs in their allocation plans or create a mandated preference for tribal applicants. Additionally, the IRS should reject the Revenue Allocation Plans for those state authorities that fail to consider Indian housing needs.

3. **Amend the capital distribution guidelines for the CDFI Bond Guarantee Program to overcome barriers to tribal applicants.** The Bond Guarantee Program guaranteed up to \$325 million in bonds in 2013 and will guarantee up to \$750 million in 2014 to be deployed by pre-selected Eligible CDFIs for the purpose of stimulating development in economically distressed communities. Although touted as a valuable source of credit and capital to tribes, the Bond Guarantee Program's strong regulatory emphasis on land-based collateral has failed to consider the nuances of Indian Country, such as the trust status of land, leaving tribal applicants at a disadvantage. The Administration should ensure that the Treasury Department, and specifically the CDFI Fund, works diligently and expeditiously on solutions to include alternative forms of collateral.
4. **Include a proposal to reinstate and make permanent the waiver for the non-federal match requirement for the CDFI Fund's Native American CDFI Assistance (NACA) Financial Assistance program in the President's budget request.** Congress waived non-federal match requirements for NACA from FY09 to FY13 during the recession. While there have been some signs of recovery in Indian Country, many tribal communities are in persistent poverty counties where ongoing investment and opportunities are necessary. The ability of Native CDFIs to access NACA without a non-federal match is a budget-neutral strategy that was working well to overcome significant economic barriers and to increase the flow of capital and credit to Native businesses, homebuyers, and consumers. It should be reinstated and made permanent.
5. **Provide access to capital, credit, and other financial products that meets the needs of tribes and Native communities.** As demonstrated in the three above examples, tribes and Native communities present unique challenges for their financial needs because of location, distance and history of being unbanked and underbanked. Financial regulators and government programs focused on access to capital and credit beyond the specific programs referenced above, must allow for tailoring of products and flexible regulations.
6. **Create more funding opportunities that support economic activity through local resources.** Native CDFIs, with more than 70 certified, have been a boon to economic development in Indian Country, including access to capital and credit for business development and job growth and financial education. Yet, insufficient resources through the CDFI program and other places is now causing these proven programs to cut back on their essential services and credit access.
7. **Publish and widely distribute the updated Native American Lending Study.** The long-overdue update to the 2001 study is soon to be completed by the Community Development Financial Institution (CDFI) Fund. It is envisioned that the findings will provide data and recommendations to further document the barriers and improve access to capital and credit in Native communities. The Administration should assure that this critical report is released early in 2016 and that it is distributed widely and in a timely fashion.
8. **Support efforts to expand financial education programs in Native communities.** Resources to support building of financial capability in Native communities are key to long-term development. Government programs, across agencies, should support these efforts to provide Native people in unbanked or under-banked communities an opportunity to build their financial skills, which would work to reduce one of the barriers to business development.

9. **Establish interagency collaboration for tribal outreach and funding notifications.** Tribal outreach is important as tribes search for ways to leverage available federal resources in their communities.
10. **Ensure tribal governments, through Section 17 Corporations or other wholly owned tribal entities, are eligible for Section 1603 grants.** These grants are important as they help offset certain renewable energy project production costs. Tribal renewable energy projects have enormous potential and tribal entities should be allowed to participate.

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## INTERNATIONAL AND INTER-TRIBAL TRADE OPPORTUNITIES<sup>2</sup>

As the Administration seeks to partner with tribes to expand economic opportunities, now is an opportune time for tribal businesses to revitalize inter-tribal trade networks and expand into new international markets. While burgeoning tribal enterprises now have increased access to resources for exploring international markets, Indian Country also has the ability to support its own economies by participating in inter-tribal trade networks. At the 2013 NCAI Annual Convention, the membership of NCAI passed a resolution calling for the Administration and Congress “to promote and secure the enactment of Indian Commerce Legislation that acknowledges the authority of Indian nations and tribes to regulate all Indian Commerce on Indian reservations and lands and between Indian reservations and lands, acknowledges the authority of Indian nations and tribes to re-establish our National Native Trade Network without interference from Federal or state laws, and pre-empts contrary state laws, regulations and taxation authority.” Tribal nations look forward to further dialogue with the Administration on how inter-tribal trade networks can be strengthened and utilized to benefit Indian Country economically.

There has also been an increase in the availability of financial and non-financial assistance for both minority businesses and small to mid-size enterprises (SMEs) planning to grow internationally. Although small tribal businesses have seen significant domestic gains recently, participation in the global marketplace has been minimal. Tribes face many unique challenges in entering the international export market. These challenges include difficulty in accessing capital, receiving proper training, and the almost total lack of federal programs that specifically cater to the needs of potential exporting tribal nations or members. Tribes have demonstrated that when they possess the proper tools, they can successfully develop businesses in Indian Country and for the domestic market. Additionally, tribal 8(a) businesses have had success in providing goods and services to US government entities overseas. If federal agency programs create a focus on building the technical and financial capacity required for tribes to enter and succeed in the international export market, Indian Country will go even further in living up to its revenue-generating potential through SMEs.

### **CAPACITY BUILDING**

Federal agencies have an array of programs that can serve – or be adapted to serve – tribal and Native citizen-owned businesses. The US Department of Commerce has many programs to help prepare small businesses for international export. Under the umbrella of the SBA, Small Business Development Centers (SBDCs) offer low-cost advice and training to help individuals develop their businesses and provide a variety of focus areas, including export assistance. Even more specifically under the SBA, US Export Assistance Centers (USEACs) are dedicated entirely to assisting SMEs with their international exporting needs. Although these non-financial assistance programs are great

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<sup>2</sup> A portion of this paper is based on NCAI’s “International Markets & Tribal Enterprises: A Guide to Entering the International Market.” Copies of the full report can be downloaded at [NCAI.org](http://NCAI.org).

resources, there are no tribal-specific programs. USEACs are geographically distant from much of Indian Country, and neither the SBDCs nor USEACs maintain tribal points-of-contact. A serious program to prepare tribal businesses for international export operations requires both geographic proximity and programs designed to educate and assist the tribal business owner.

Federal programs also offer financial assistance to SMEs interested in exporting. Unlike the SBA 8(a) program, which provides non-financial assistance to Native businesses, the SBA also has the 7(a) loan program that provides financial aid to businesses with special requirements, such as those that export to foreign countries. The US Department of Treasury works with Native Community Development Financial Institutions (CDFIs) to provide low-interest financing to tribal businesses. Native CDFIs are able to work together to provide the required capital for loans in the millions of dollars to tribal business, depending on size and needs, where an individual CDFI could not. As with other non-financial programs, these loan programs either do not specifically address tribal needs or, in the case of Native CDFIs, have not received an adequate amount of resources.

### ***Recommendations***

1. **Promote inter-tribal trade by supporting Indian commerce legislation** that acknowledges the authority of tribal nations to regulate commerce on Indian lands and between tribes.
2. **Develop technical advice and training programs** that specifically address the unique challenges of international exporting from Indian Country.
3. **Create SBDCs and USEACs in areas and with programs and materials that will better serve Indian Country.**
4. **Offer modern (web-based) and more traditional (phone-and-paper-based) tribal points of contacts,** specifically for tribes located great distances from SBDCs and USEACs.
5. **Provide more resources to Native CDFIs** to help develop them as export financing hubs for tribal SMEs.
6. **Include representatives from tribes and ANCSA corporations in trade missions with the Secretary of Commerce and other Department of Commerce Officials and participate in Department of Commerce Export Trade events and networks.**

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## **NATIVE CONTRACTING: A SUCCESSFUL TOOL FOR JOB CREATION AND ECONOMIC GROWTH IN INDIAN COUNTRY**

During the last 25 years, one of the most successful economic tools for Indian Country has been participation in the federal procurement marketplace. Tribes, Alaska Native Corporations, and Native Hawaiian Organizations can participate in this market regardless of geographic location or legal structure. The profits earned by providing goods and services to the federal government are used to provide services and benefits to tribal members, shareholders, and community members.

Congress and the Administration have recognized government contracting as a critical tool for Indian Country and have responded by creating programs to facilitate Indian Country participation in government contracting in a manner that recognizes the unique needs and purpose of these community-owned entities. Further, these programs are based not only on small business policy, but equally in federal Indian policy. These programs include: the “Native 8(a)” business development program; the Indian Incentive Program at the Department of Defense; the Buy Indian Act; and unique participation in the HUBZone program.

These programs have produced significant measurable results. In a 2012 report, the Native American Contractors Association stated that its members are responsible for 109,000 jobs in all 50 states. These companies have also contributed more than \$111 million in profits for services and benefits to their communities.

However, these programs have become the subject of scrutiny in recent years. Much of this has waned, with a greater understanding of the purpose of the programs and with certain changes to the regulatory structure of the 8(a) Business Development program. However, the Administration needs to take active steps to urge continued support for government contracting opportunities for Native contractors. This will send a clear message that Native contracting programs are important tools for both the federal government and Native contractors and should not be viewed in a negative light.

### ***Recommendations***

1. **Affirm and support Native contracting programs based on the government-to-government relationship and the federal trust responsibility.** Existing unique programs for Native contractors need demonstrated support by the Administration. Agencies need to hear from senior Administration officials, in addition to the Small Business Administration, that the programs are important for economic growth and job creation within tribal communities. Native contracting should be part of the Administration’s effort to create jobs and grow the economy.
2. **Take regulatory action where possible to achieve parity among Native contractors.** The statutory authority for various Native contracting programs is disparate and at times inconsistent. To qualify for the Native 8(a) program, tribes, Alaska Native Corporations, and Native Hawaiian Organizations each have different standards to meet for participation in the program. Absent Congressional action to achieve parity, the Administration should take regulatory steps when possible to bring consistency amongst the various programs.

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## **Resilience: Prevention, Intervention and Wellness**

- Wellness and Mental Health
- Healthcare and Affordable Care Act
- National Institutes of Health
- Veterans
- Native Youth Resilience





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## WELLNESS AND MENTAL HEALTH

The health and wellness of tribal communities depends on a network of health, education, and wellness service providers, prevention coordination, and tribally-driven initiatives. This Administration has worked collectively with tribal leaders to identify opportunities for increased tribal control over the programs and services that can increase wellness in tribal communities. However, barriers still exist and American Indians and Alaska Natives continue to experience the greatest health disparities in the United States.

Tribal leaders are working to institute a holistic approach to the health of their citizens and recognize that the responsibility for the wellness of their communities lies with the tribal government working in concert with their citizens and with agencies across the federal government. For tribes, the approach to wellness is not just centered on being treated at a health facility, it also encompasses quality education incorporating Native language and culture, access to cultural and sacred places, and ensuring quality care for our elder citizens. Wellness is also not just about improving the health of individuals, but requires a focus on families and extended relations. In this way, investments in infrastructure, such as those for improved housing and transportation, can improve the health and safety of families and households. Similarly, communities that have a strong public safety and violence prevention system, are better equipped to advance wellness. Tribes who are able to create their own approach to wellness are those that experience the great gains in the overall wellness of their communities.

### *Recommendations:*

- 1. Support the Tribal Behavioral Health Agenda.** Support the Substance Abuse and Mental Health Services Administration's (SAMHSA) creation and implementation of the Tribal Behavioral Health Agenda to advance the behavioral health for all American Indian and Alaska Natives. The high rates of behavioral health challenges among American Indian and Alaska Natives creates urgency for tribes, federal agencies, and other stakeholders to partner in a manner that seeks to improve the health of all American Indians and Alaska Natives. There is currently no one single, national document that elevates the importance of behavioral health for American Indians and Alaska Natives, identifies the collective priorities of tribal communities related to behavioral health, and guides the development of/or incorporation of behavioral health-related actions intended to improve the well-being of American Indian and Alaska Native youth, families, and communities. In order to create a blueprint for effectively addressing behavioral health, tribal leaders, tribal members and stakeholders from diverse sectors need to be meaningfully engaged so as to garner input and feedback on behavioral health priorities, goals, and recommendations.
- 2. Encourage agencies to coordinate across the Administration to improve the quality of life for American Indians and Alaska Natives.** Many times several programs aim to achieve the same goals or simply correct one piece of a larger healing process in tribal communities. However, individuals need services that are flexible and meet their unique circumstances. Tribal governments are best situated to respond to these needs but often federal grants are too restrictive and uncoordinated among agencies. The Administration must work with tribes to

develop coordinated responses to pressing issues like domestic violence, substance abuse, or suicide.

3. **Promote successful prevention and treatment programs.** Addressing health disparities in Indian Country requires programs that support tribal governments in improving the health of entire communities. The Administration must support and promote prevention and treatment programs such as the Methamphetamine and Suicide Prevention Initiative, the Domestic Violence Prevention Initiative, and similar programs.
4. **Enforce P.L. 102-477 Compliance.** Public Law 102-477 lists HHS as an affected organization, noting specifically the tribal Temporary Assistance for Needy Families (TANF) program. Many tribes are unable to operate under the 477 process because of recent changes in interpretation of the application of the 477 process with tribal programs by the Administration for Children and Families. The ACF must comply with 477 guidelines in order to allow federally recognized tribes and Alaska Native entities to combine formula-funded federal grant funds, which are employment and training-related, into a single plan, budget, and reporting system. This change will offset burdensome reporting requirements.
5. **Establish a Tribal Advisory Committee in the Administration of Children and Families.** To improve all ACF programs, including TANF, ACF should develop a Tribal Advisory Committee that represents all of the tribal regions. TANF experts and administrators should be represented on this committee as well.

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## TRIBAL HEALTH CARE AND THE AFFORDABLE CARE ACT

American Indians and Alaska Natives (AI/AN) continue to experience the most significant health disparities in the nation. AI/AN encounter several barriers to adequate health care, including a lack of access to specialized care, long distances to Indian Health Service (IHS) and/or tribal facilities, and a lack of culturally competent care. AI/AN also suffer from higher rates of obesity and diabetes than the general population.

### *Recommendations:*

#### Improve Quality and Access to Health Care.

1. **Support Advance Appropriations for the Indian Health Service in the FY 2017 Budget Request to Congress.** Advance appropriations will ensure that the Indian Health Service and tribal health care providers have adequate advance notice of the amount of federal appropriations to expect to administer health programs and services to AI/AN and thus not be subjected to the uncertainties of late funding and short-term continuing resolutions.
2. **Increase funding for the Indian Health Service to \$6.2 billion in FY 2017.** FY 2017 represents a landmark opportunity for this Administration to turn the corner in its Indian health treaty and trust obligations, and to finally fulfill the promises made to tribes. It is time to write a new future for AI/AN, one which eliminates the gross health disparities experienced in Tribal communities, and one that offers hope for a better life for our Native youth. Indian Health Service Appropriations have increased 23 percent since FY 2009, but the majority of these increases have only provided a stopgap measure for inflation, staffing for new facilities, payment of Contract Support Cost (CSC) obligations, population growth, and facilities. This leaves very little funding, if any, to target the alarming disparities facing Indian communities. For FY 2017, presenting a strong budget to Congress will help set a strong future path for IHS appropriations. Priority IHS budget areas for tribes are Purchased/Referred Care; Hospitals and Clinics; Alcohol & Substance Abuse Services; Mental Health; and Dental Services.
3. **Support permanent reauthorization of the Special Diabetes Program Initiative (SDPI).** SDPI is a proven program that is making a difference in tribal communities. Correlative data has shown that SDPI is lowering rates of diabetes and heart-related diabetes in tribal communities.
4. **Engage in meaningful consultation with Indian nations as to the development and implementation of evaluation programs and studies.** The Secretary of the Department of Health and Human Services should engage in meaningful consultation with tribes in the development and implementation of national evaluation outcomes, methods, tools, data analysis and interpretation; to investigate the outcomes and impacts of federally-sponsored grant research programs on AI/ANs and/or tribes; and to adopt an agency-wide policy for engaging tribal grantees in the development and implementation of evaluation programs and studies.

## Implementation of the Affordable Care Act

1. **Request an extension of transition relief in implementation of the employer mandate through January 1, 2017.** The employer shared responsibility mandate (“employer mandate”) violates the federal trust responsibility. For all tribes, whether they have provided comprehensive health insurance coverage to their employees as a standard business practice or not, making payments to the federal government for the health care needs of tribal members is in direct conflict with the federal government’s trust responsibility to meet the health care needs of tribes and their citizens. Providing an extension of relief will not disadvantage employees of tribes. Coverage decisions have already been made by tribes for the 2015 coverage year. The additional time will provide the administration with more opportunity for tribal consultation, which is required via the President’s memorandum of November 5, 2009, and for tribes and the federal government to devise a plan providing effective and permanent relief for tribes from the mandate.
2. **Provide permanent relief to tribal employers from the ACA employer mandate.** Find a permanent solution to the employer mandate that provides relief for tribal employers from the significant penalties and reporting requirements, and allows enrolled members of federally recognized tribes and Alaska Native Claims Settlement Act (ANCSA) shareholders (collectively “members”) to take advantage of the premium tax credits and special benefits and protections available to members even if the members are provided with an offer of coverage by a tribal employer.
3. **Continue to improve the implementation of key ACA provisions impacting AI/AN through tribal consultation.** There are several provisions of the Affordable Care Act that still require work from the Administration, including the definition of Indian, the lack of knowledge of Marketplace call center representatives on the AI/AN special benefits and protections and need for an AI/AN call center, the lack of more recent and comprehensive data on AI/AN enrollment, and ensuring proper implementation of cost sharing reductions. Additionally, the Administration still needs to work out a process that allows for AI/AN to use electronic verification for purposes of the IHS eligibility and exemption from the individual shared responsibility payment.
4. **Extend 100% Federal Medical Assistance Percentages (FMAP) to all services provided through the IHS System.** The Center for Medicare and Medicaid Services is currently seeking tribal consultation to extend 100% FMAP to better support the delivery of care and access to Medicaid services delivered through the Indian Health Service, tribal, and urban Indian health facilities and programs. Tribes support the expansion of FMAP to address some of the inequities created between states that have chosen to expand Medicaid under the ACA and those that have not. Further, tribal leaders also support an extension for Purchased and Referred Care at the State’s regular FMAP rate.
5. **Request funding to expand direct services under the IHCA.** More than twenty provisions of the IHCA remain unfunded. As one of the cornerstone pieces of legislation for the Obama Administration, it is important that those provisions which expand direct services in IHS, tribal, and urban health facilities be funded. A direct request of funding from the Administration to support long-term or mental health service provisions of IHCA would support continual advocacy for these key areas.

6. **Pursue/support uncompensated care waivers in states that have expanded Medicaid, and states and have not yet expanded Medicaid; and ensure consultation with tribes on any uncompensated care waiver.** The ACA provides an opportunity to address the significant gap in Indian health care funding through third party billing of Medicaid, CHIP and qualified health plans of Indian Health Service, tribal or urban health facility users. These waivers provide critically important resources for Indian Health Service, tribal or urban health facility users to continue serving Medicaid beneficiaries effectively.

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## NATIONAL INSTITUTES OF HEALTH

Organized as part of the US Department of Health and Human Services (HHS), the National Institutes of Health (NIH) is made up of 27 Institutes and Centers, each with a specific research agenda focused on particular diseases, body systems, or types of research, such as the National Institute on Minority Health and Health Disparities (NIMHD). Federal funds are appropriated annually by Congress to NIH, which funds research globally and in every state. The current Director, Dr. Francis Collins, has served since 2009 and previously led the Human Genome Project as director of the National Human Genome Research Institute (NHGRI, an institute within NIH).

In this past year, NIH has:

- Convened the first meeting of the NIH Tribal Consultation Advisory Committee (TCAC);
- Announced an updated Diversity Statement that describes interests in the diversity of the NIH-funded workforce;
- Released a Request for Information regarding improvement of mental health outcomes, with a focus on suicide prevention, in Alaska Native communities;
- Released a request for comments on a draft NIH policy to promote the use of a single Institutional Review Board (IRB) of record for multi-site studies funded by the NIH;
- Formed a team of experts, requested input on strategies to address community engagement and health disparities, and developed a framework for building a national research cohort in response to the President's Precision Medicine Initiative;
- Launched the National Institute of Child Health and Human Development (NICHD) Data and Specimen Hub (DASH), a centralized resource for researchers to store and access de-identified data from NICHD-funded research studies for secondary research use;

### *Recommendations*

1. **Ensure Tribal Consultation on NIH Policy.** The NIH Guidance on the Implementation of the HHS Tribal Consultation Policy identifies the process for initiating tribal consultation at NIH. However, there has been at least one major instance of NIH policy development with implications for tribal nations (i.e., the 2014 Genomic Data Sharing Policy) that did not employ tribal consultation. Similar to development of the Genomic Data Sharing Policy, NIH issued a request for public comments on the draft policy to promote use of a single IRB for multi-site studies, but it is essential that the process of consulting with tribes on issues of significance to tribal health and data be used by NIH.
2. **Ensure the Tribal Consultation Advisory Committee (TCAC) has Government-to-Government Status.** There is a need to foster government-to-government discussions on research policy, investments, and outcomes. It is encouraging that NIH established the TCAC and detailed a staff member with demonstrated experience with tribal research at the level of the Office of the Director. It is imperative that NIH engagement with the TCAC occur at the level of the NIH Director just as the HHS Secretary's Tribal Advisory Committee advises the HHS Secretary directly and receives extensive support from technical advisors.

3. **Engage Existing Networks of American Indian and Alaska Native Investigators and Leaders for Guidance on Large-Scale NIH Initiatives.** American Indian/Alaska Native (AI/AN) communities face multiple health disparities and the benefits of advances in health research and technology can take decades to reach tribal communities. To prevent further widening and close the gap in health status between AI/ANs and other groups in the US, NIH should purposefully engage with networks of AI/AN investigators and leaders to ensure that AI/AN populations and perspectives are incorporated within potentially groundbreaking research efforts such as the Precision Medicine Initiative. Existing groups, such as the TCAC, can be an important resource and point of contact for stakeholder engagement.
4. **Develop American Indian and Alaska Native Investigators.** The 2012 Draft Report of the Working Group on Diversity in the Biomedical Research Workforce indicated an underrepresentation of American Indian/Alaska Native (AI/AN) investigators on research project grants (0.2 percent in 2010 compared to 0.9 percent representation in the 2010 US Census) and echoed findings of Donna Ginther published in *Science*, which indicated that even underrepresented minority investigators with advanced training in the biomedical sciences are less likely to secure NIH grants compared to majority researchers. The January 2015 updated NIH Diversity Statement and October 2014 release of funding to enhance diversity in the biomedical research workforce is encouraging. Yet, it is imperative that the NIH assess internal mechanisms that drive disparate success and retention of AI/AN researchers and demonstrate improved outcomes in developing AI/AN investigators.
5. **Improve Training for Program Officers and Reviewers of NIH Proposals Involving American Indian and Alaska Native Research.** A significant part of demonstrating outcomes in the development of American Indian/Alaska Native (AI/AN) investigators is improved training for NIH staff responsible for the solicitation, review, and stewardship of research proposals. Program staff play an important role in the design of funding opportunity announcements, which include provisions for ethics review and data sharing. It is essential that NIH invest in improved training for program officers and reviewers in order to ensure a basic understanding of tribal sovereignty in research and best practices for stewarding research of significance to AI/AN peoples and nations.

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## VETERANS

American Indians and Alaska Natives have proudly served in the United States military since the Revolutionary War. From earlier struggles such as the Spanish-American War to the present-day conflicts in Iraq and Afghanistan, Native people continue to serve at higher percentages than any other ethnic group. It is estimated that over 150,000 veterans identify as American Indian and Alaska Native, with over 24,000 active duty Native service members currently serving in the Armed Forces. With their warrior tradition and the sacrifices that have been made, it is vital to create sound policies and programs to promote the overall wellbeing of our Native veterans. NCAI seeks fair and dignified treatment of all veterans while advocating for federal support and funding for Native veteran programs and services that are greatly needed and deserved.

Native veteran issues are similar to those of non-veteran tribal community members including the need for adequate health care to address increases in the incidence of diabetes, various types of cancer, neurological and auto-immune disorders; unemployment; domestic violence; substance abuse; criminal activity; and suicide. Native veterans are the single most underserved group of veterans of the American Armed Forces. Geographical distances present challenges for many veterans to access resources and programs not only for compensation and pensions, but for economic and educational benefits through the Department of Veterans Affairs (VA), the Department of Labor, the Small Business Administration, and other federal agencies and entities. This is particularly true of those who live on reservations and in tribal communities where there are considerable distances between clinics and medical centers operated by the Department of Veterans Affairs Health Administration.

### HEALTH CARE

The right of veterans to the health care of their choice and reimbursement to tribes has not been resolved. VA/IHS and Tribal collaboration and MOUSs designed to help in providing quality health care continue to be discussed by all parties.

#### *Recommendations*

1. **Direct the VA to reimburse tribal health programs for all services provided to veterans, both direct and purchased/referred care.** The Indian Health Care Improvement Act was permanently reauthorized under Title X of the Affordable Care Act (ACA). Included in Title X was a provision mandating that the VA reimburse tribes, the IHS, and tribal organizations for services provided to veterans. Under the current VA/IHS MOU Agreement, however, the VA is only reimbursing tribes that agree to enter into a model agreement the VA has developed. The model agreement does not allow for reimbursement of purchased/referred care provided through tribal health programs to veterans, limiting reimbursement to only direct service care. The VA's implementation of the provision of law must be done in a manner that is streamlined and focuses on providing the quickest and best care to veterans.

### HOUSING



It is common knowledge and distressing that there remains a severe housing shortage throughout Indian Country. Native veterans are less likely to own their own home than other veterans, 63 percent compared to 74 percent. Some efforts to address this problem have been made but the results are not yet dramatic. Many Native veterans are likely to benefit greatly from the recent passage of the Indian Veterans Housing Opportunity Act that excludes income received by a veteran or his/her family for a service-related disability, under the definition of income in the Native American Housing Assistance and Self Determination Act.

The VA Housing Loan program for tribal members is specifically for veterans but housing loan applications processing is less than 30 per year. This program requires tribes to have a signed agreement with the VA before a veteran tribal member is eligible to submit a home loan application. Several tribes do not have signed agreements with the VA, and not all tribal officials and veterans understand how the program works.

### ***Recommendations***

- 1. Undertake targeted outreach to tribal governments to increase awareness of VA home loan programs that can serve Native veterans.**
- 2. Revise the 184 housing form to record veteran status of the applicant.** The Housing and Urban Development Native American 184 Programs is a nationwide loan program for tribal members to buy, build, or refinance housing. The processing form for 184 housing, however, does not contain information on the applicant's veteran status. This information will be helpful in determining whether veterans housing needs are being addressed through this program. A simple fix by HUD and OMB could increase data about how this program is serving Native veterans.
- 3. Prioritize the collection of data on Native veteran homelessness and ensure these data are an integral part of the Homeless Veterans Outreach Initiative.** Native veterans, both male and female, generally do not consider themselves as homeless since they may think of a relative's home as their own home even though they may be only sleeping there occasionally. This perspective can obscure the real rate of homelessness among Native veterans, given they are less likely to utilize homeless facilities. In rural areas, homelessness is even harder to discern since the population is dispersed and again the homeless veteran may be living in tents or vacant buildings so they do not self-identify as homeless.

### **UNEMPLOYMENT**

A 2013 Government Accountability (GAO) Report (GAO-13-664), stated that the unemployment rate for all veterans has risen since the beginning of the economic downturn and that the unemployment rate for Native Americans living on tribal lands has been higher still. The Department of Labor (DOL) submitted a report to Congress in 2010 stating the agency would take actions to increase employment and training opportunities for Native American veterans living on tribal lands. While DOL has made an effort to follow up on some of the report's recommendations: improving interagency collaboration, creating an advisory subcommittee for Native American veterans, and conducting a needs assessment, more needs to be done. According to the GAO report, "DOL has taken little to no action on recommendations to increase outreach, pursue program flexibility, and boost economic development."

We strongly urge the DOL to develop and implement an across the board strategy to fulfill its obligation to this nations veterans including Native American veterans.

### *Recommendations*

- 1. Ensure the Department of Labor develops a strategy to address American Indian and Alaska Native veteran employment and training services in tribal communities.**

## **IMPROPER STATE TAXATION OF RESERVATION-DOMICILED SERVICE MEMBERS**

Federal law prohibits states from taxing the pay of military service members who are not a domiciliary of that state, however, for years the US Department of Treasury improperly withheld military pay for states from American Indian service members domiciled on reservations in 26 states. It is imperative that the federal trust responsibility be upheld to honor the dedication of American Indian service members and veterans.

### *Recommendations*

- 1. Address improper state taxation of veterans through a Secretarial level meeting between the Department of Defense, Department of Veterans Affairs, Department of the Treasury, and Department of Justice.** This issue can be remedied by changing the appropriate enlistment form(s) such as the SF-86 to provide American Indian and Alaska Native service members the opportunity to indicate their true domicile when it is on a reservation.

## **TRIBAL VETERANS SERVICE OFFICERS**

Tribal veterans should have the benefit of representation before the Department of Veterans Affairs by Tribal Veterans Service Officers (TVSOs) designated by the tribal leadership to function in that capacity on the same basis as state and county veterans service officers pursuant to 38 C.F.R. Sect. 14.628. Current use of Tribal Veterans Representatives (TVRs) is insufficient for that purpose as the Power of Attorney is held by a third party which rarely if ever meets the veteran and has no knowledge or awareness of the culture. TVRs are trained by VA personnel; they are not trained as advocates, but only as providers of information.

The two primary reasons for the establishment of TVSOs are first, sovereignty; the tribe is a sovereign entity. As such, its veterans are entitled to its own representation before the Agency with the concomitant increased ability to bring tribal concerns about its veterans to the attention of the Agency as well as to provide tribal veterans with complete claims and seamless representation before the Regional Offices as well as the Board of Veterans Appeals.

The second reason is cultural competency in the pursuit of claims arising from psychic trauma and to some extent traumatic brain injuries that affect behavior. There a very limited number of mental health professionals that are culturally competent to provide the appropriate assessment and/or treatment of psychic trauma in Native veterans. The institution of TVSOs will provide for cultural competent mental health evaluations and facilitate the use of traditional healing practices in that process. TVSOs would meet the same employment/appointment, training and certification standards that apply to State & County VSOs in every respect.

## *Recommendations*

1. **Advocate for the establishment of Tribal Veteran Service Officers (TVSOs) in tribal communities that are designated by tribal leadership to represent Native veterans before the VA.** Current use of Tribal Veteran Representatives (TVRs) is insufficient for that purpose as the Power of Attorney is held by a third party which rarely if ever meets the veteran and has no knowledge or awareness of the culture. TVRs are trained by VA personnel; they are not trained as advocates – merely as disseminators of information to the veterans.

## **TRIBAL VETERANS TREATMENT COURTS**

The incidence of criminal involvement of veterans who are afflicted with post-traumatic stress disorder (PTSD), often exacerbated by traumatic brain injuries (TBIs) is increasing at a rapid rate in Native communities. It is estimated that the incidence of PTSD in the veteran population as a whole after Vietnam was 30-35 percent. This estimate increases to 50 percent and higher among veterans who served in Southwest Asia. The types of criminal behavior attributable to this population include petty crimes, assault, domestic violence, substance abuse (from self-medication), and suicidal risk-taking behavior. Within the family structure these behaviors are extremely destructive, resulting in broken homes and all too frequently, suicide.

Veteran Treatment Courts integrated into the Tribal Justice System under the Tribal Law and Order Act would provide a further resource for justice involved veterans. The Courts would be, as they are elsewhere, cooperative efforts between tribal courts, prosecution (including DOJ and Federal Defenders where appropriate), defense bar and community social services. We believe that judicious use of existing funding and resources (such as physical structures currently unused and re-allocation of funds currently used for similar activities) pooled by participating agencies would prove in the long run to be highly cost effective.

## *Recommendations*

1. **Provide sufficient resources for tribal justice systems interested in establishing a veterans treatment court.** Alternatives to incarceration should always be a key objective for tribal justice systems – as iterated in the recently-adopted Tribal Law and Order Act. Federal agencies such as the Department of Justice should ensure resources are readily available for tribal justice systems to maintain and operate veterans treatment courts as a viable option for tribal community's service members to receive the appropriate help they need. In addition, federal agencies should be able to pool together existing funds and resources for support programs and services (including rehabilitation, substance abuse treatment centers, employment and training, etc.) to ensure this happens across Indian Country.

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## NATIVE YOUTH RESILIENCE

In 2010, Native youth under the age of 25 made up 42 percent (or 1.2 million) of the total American Indian and Alaska Native single-race population of 2.9 million, whereas youth under the age of 25 make up only 34 percent of the total US population.<sup>3</sup> This sizeable young population represents an unprecedented moment of opportunity and hope. At the same time this demographic reality poses some formidable challenges to those striving to meet the needs of our Native youth.

### Challenges we face:

- *Suicide* – Data show that these young people have the highest suicide rate of any cultural or ethnic group in the United States.<sup>4</sup> Tribal youth between the ages of 15 and 24 commit suicide at a rate of more than three times the national average.<sup>5</sup>
- *Alcohol and Drug Abuse* – The rates of binge alcohol and illicit drug use were higher among Native Americans than the national averages (30.6 percent vs. 24.5 percent and 11.2 percent vs. 7.9 percent, respectively).<sup>6</sup>
- *School Dropout* – “Forty-four percent of all American Indian students drop out of high school, more than any other group in the country – the rate varies between 25 percent and 93 percent, depending on region.”<sup>7</sup>
- *Incarceration Rates* – Accounting for one percent of the US youth population, Native youth make up two percent of the total juvenile population in custody and three percent of the juvenile status offenders in custody.<sup>8</sup> In 2006, more than 60 percent of incarcerated young offenders under federal jurisdiction were American Indian.<sup>9</sup>

These statistics stand as a call to action for all of us to make sure our Native youth know how precious and valuable they are, to teach them how to care for themselves and one another, and to ensure they have the opportunities and skills they need to thrive. Fortunately, Tribes and Tribal organizations have been successful in identifying and demonstrating promising pathways forward.

### **Recommendations**

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<sup>3</sup> 2010 Census, Summary File 1.

<sup>4</sup> ICTMN Staff. (Dec 28, 2010). “Alaska Natives See ‘Heartbreak’ in Suicide Rate.” *Indian Country Today*.

<sup>5</sup> Alaska Injury Prevention Center, (2007) *Alaska Suicide Follow-back Study Final Report*. Anchorage, AK: Author.

<sup>6</sup> Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (June 24, 2010). *The NSDUH Report: Substance Use among American Indian or Alaska Native Adults*. Rockville, MD.

<sup>7</sup> Cross, T. (November/December 2008). *Native Americans and juvenile justice: A hidden tragedy. Poverty & Race*.

<sup>8</sup> Cross, T. (November/December 2008). *Native Americans and juvenile justice: A hidden tragedy. Poverty & Race*.

<sup>9</sup> Office of Juvenile Justice and Delinquency Prevention. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC.

- 1. Ensure Access to Behavioral Health Care for Native Youth and Their Families.** In order to raise healthy children, communities need access to comprehensive quality health care delivered in a culturally appropriate and sensitive manner. While the federal trust responsibility is incumbent on all of the operating divisions of the Department of Health and Human Services (HHS), Indian Health Service (IHS) (through direct services, contracting and compacting with tribes, and through funding to urban health centers) assumes a primary role in the delivery of services in the Indian health system. Of particular importance to Native youth are behavioral health services that can help to address mental health and substance abuse conditions, which are often the co-occurring conditions that precede completed suicide. Although IHS has worked to incorporate a greater array of behavioral health services, it is still far from the goal stated in the HHS/IHS National Behavioral Health Strategic Plan “to establish a comprehensive plan for Indians...to provide, where feasible, a comprehensive continuum of behavioral health prevention, intervention/ treatment, outpatient and aftercare programs, and services for the AI/AN population.” Making behavioral health services in Indian Country a priority, and continued oversight of IHS, will help to ensure that Native youth have the services they need, which in turn may begin to reverse the incidence of suicide in Indian Country.
- 2. Promote Native Youth Resilience Initiatives.** While so much of the emphasis in federal programs emphasizes ending Native youth disparities, tribal nations consistently emphasize the importance of investing in resilience. The Administration can help promote strength-based efforts by calling for agencies to prioritize and support Native youth resilience efforts such as regional and national tools; curricula built on strong, local insights; and provider, family, and youth training tools.
- 3. Invest in Tribal Child Welfare Systems.** Given the importance of family in child development, it is imperative that communities have structures to support troubled families and systems in place that can provide children with loving and supportive homes if their parents cannot care for them. Family reunification services are an important part of this, as are non-family placement options that reflect traditional child-rearing practices, such as placement with relatives and flexible permanent placement options. Tribal child welfare systems are particularly important because they can offer placement options that better reflect traditional child-rearing practices and allow Native children to remain connected to family, tribe, and culture. The Administration can help ensure needed support to tribes by sustaining and improving technical assistance offered to tribes developing and/or administering Title IV-E programs.
- 4. Promote Agency Coordination and Alternatives to Incarceration for Native Youth.** Supportive communities also have structures in place to intervene and provide assistance to children and families when youth get into trouble. Intermediate sanctions and alternatives to detention are not widely available in tribal communities. These policies result in Native youth overrepresentation in detention and waived into the adult criminal system, despite these acts being mostly low-level offenses. Another consequence is that Native youth are often forced to leave their communities in order to receive rehabilitative services, a practice that is reminiscent of the era when Native youth were sent away to federal boarding schools. Programs that rehabilitate, treat, and redirect justice-involved youth in their communities are critical to ensuring that youthful misbehavior does not lead to dysfunction and criminality in adulthood.

The Administration can support alternative to incarceration by encouraging the Department of Justice (DOJ) to exercise prosecutorial discretion in treatment of juvenile offenses, and to make use of alternative and restorative justice systems when those options are available. The Administration can also foster continued coordination of DOJ, IHS and the Substance Abuse and Mental Health Services Administration (SAMHSA) activities to better address behavioral health issues which often underlie delinquency.

5. **Implement the Recommendations of the Attorney General's Advisory Committee on Native Children Exposed to Violence.** The US Census Bureau is considering a range of policy changes that will impact American Indian and Alaska Native peoples and communities, including the Race and Hispanic Origin Alternative Questionnaire Experiment (AQE), increased use of the internet for Census data collection, and expanded use of administrative data in federal policy planning. It is imperative that the Census Bureau conduct tribal consultation alongside their efforts to outreach broadly to American Indian and Alaska Native people and organizations.
6. **Foster Native Youth Employment Initiatives.** A portion of these disparities in socioeconomic status likely stem from differences in labor market opportunities and outcomes. The unemployment rate for American Indian/Alaska Native workers in the twelve months ending in September 2014 was 12.4 percent, which was 4.4 percentage points higher than the equivalent unemployment rate for Hispanic workers and 0.5 percentage points higher than the rate for black workers. For young workers, the gaps are even more pronounced: 23.9 percent of American Indian/Alaska Native workers ages 16-24 were unemployed compared to 14.6 percent for Hispanic youth and 23 percent for black youth.

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## **A Strong Future: Education Opportunities for Native Youth**

- Education
- Mascots
- Indian Child Welfare Act



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## INDIAN EDUCATION

No resource is more important to the continued success and growth of our nation and Indian Country than our children. It is vital that we all work together to strengthen our human capital in all tribal communities across America. Ensuring equal educational opportunities is not simply a matter of fairness, but even more importantly in today's challenging economic climate, it is an essential strategy for creating jobs and securing the nation's future prosperity especially in tribal communities. Education also drives personal advancement and wellness, which in turn improves social welfare and empowers communities – elements that are essential to protecting and advancing tribal sovereignty and maintaining tribes' cultural vitality.

Approximately 620,000, or 93 percent, of Native children are currently enrolled in public schools, both urban and rural, while 45,000, or 7 percent, attend schools within the Bureau of Indian Education (BIE) system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 34 accredited Tribal Colleges and Universities (TCUs) in the United States serving more than 30,000 Native students. TCUs are unique institutions that generally serve geographically isolated populations and combine personal attention with cultural relevance as a means for students – especially American Indian students living on reservations – to overcome the barriers they face to higher education.

Regardless of where they attend school, the majority of Native students are not receiving a high-quality education that is also rooted in their language or culture – the core of their identity. They are also very unlikely to receive instruction or be taught in a classroom/school climate that is appropriate for them. Tribes, Native parents and families, and communities are best suited to influence these critical factors for academic success. Effectively reaching all Native students requires a concentrated effort from multiple partners: tribes, the federal government, and state and local education agencies.

### *Recommendations*

1. **Native Language and Culture.** Support the preservation and revitalization of Native languages and culture in public schools by ensuring the accurate portrayal of Native history and culture and ensuring that courses or programs are offered either in school or after school that accommodate the language and culture of local tribes.
2. **Increase Capacity of Tribal Education Agencies.** Increase capacity of tribal education agencies to enable those entities to take over the roles currently assigned to Local Education Agencies and State Education Agencies on those schools that reside on or contiguous to tribal lands. One way to increase capacity and establish parity among tribal education agencies and Local/State Education Agencies is to allow access to tribal student data.
3. **Physical Condition of Schools.** Create a plan for addressing the deficient condition of BIE schools which are not conducive to student learning and achievement at the highest levels.



4. **Equity between Federally-Run Schools Systems.** Tribes seek equity between the two federally run school systems – Bureau of Indian Education schools and Department of Defense schools. Tribes seek equity in funding, commitment to student achievement, physical condition of schools and teacher recruitment and retention between these two school systems.
5. **Teacher Recruitment and Retention.** Tribes seek incentives to recruit and retain teachers at public and BIE schools with a large population of Native students. The issues of recruiting and retaining are complex and involve several federal agencies including BIE, ED and HUD.
6. **Elevate the Role of Indian Education.** The Administration must establish key positions in both federal departments that oversee the education of Indian Country’s most precious resource – their children. The issues and concerns facing Indian education are often unable to reach the Secretarial level where effective change can truly occur. Having senior positions in both the Departments of Education and Interior will ensure greater active participation in the formation of Indian education policy in both the BIE and the public education system.
7. **Reissue the Executive Order on Tribal Colleges and Universities.** Executive Order 13592, which established the White House Initiative on American Indian and Alaska Native Education, was a step in the right direction for Native education. However, tribal colleges and universities (TCUs) previously had a stand-alone Executive Order and their own initiative, which Executive Order 13592 rescinded and folded into a single Executive Order on Native education. Tribal leaders and Native educators did not request this change, and the net result has been less effort focused on strengthening TCUs. This Administration should reissue the separate Executive Order and Initiative on TCUs, sufficiently fund both programs so they may meet their mandates, and direct that the two Initiatives work together. Current Executive Orders on African American education and historically black colleges and universities already do this for other students. American Indian and Alaska Native students deserve no less.

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## “INDIAN” MASCOTS: ENDING A LEGACY OF RACISM

The use of racist and derogatory “Indian” sports mascots, logos, and symbols has perpetuated negative stereotypes of America’s first peoples. Rather than honoring Native peoples, these caricatures and stereotypes contribute to a disregard for the diverse cultural heritages of Native peoples. In 1968, NCAI launched a campaign to end negative and harmful stereotypes perpetuated by media and popular culture. These efforts have since been rooted in an attempt to achieve social justice and racial equality for Native people. Stereotypes significantly affect how Native people view the world and their place in society, and also perpetuate inaccurate – many times disrespectful and racist – perceptions of Native people by society. NCAI’s position is directly linked to ongoing efforts to build a healthy and nurturing environment for Native youth to flourish and become the next generation of leaders and Native citizens.

### *Recommendations*

1. **Urge the Secretary of Education to eliminate race-based “Native” logos, mascots, and names from state educational institutions, especially those receiving federal funds.** The Secretary of Education should also issue guidance to schools regarding the history of these mascots, logos, and names, and how these practices have led to bullying Native students. Additionally, the Secretary of Education in coordination with other federal entities should conduct listening sessions to gather information on the use of “Native” themed mascots, logos, and names. The information collected from these Listening Sessions should be compiled in a draft conclusion and recommendations document and shared with tribes for further input.
2. **Issue an Executive Order banning the display of racist paraphernalia in the federal workplace.** The racist and denigrating name and logo of the Washington NFL team – and other sports franchises that denigrate Native peoples – have no place in federal government agencies and personnel activities including displays on walls or wearing of paraphernalia and clothing by federal agency employees or contractors. The American Indian and Alaska Native employees in federal service should not have to confront racist and offensive images in the workplace. As the nation’s largest employer, a ban on racist sports images in the workplace by the federal government would set an example for other employers to follow. In particular, the Departments of Justice and Education share the important responsibility of ensuring that students are protected from discrimination, harassment, and bullying in our nation’s schools. For Native youth, racist sports images can create a hostile environment that negatively impacts their self-esteem.

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## INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act (ICWA) requires state child welfare agencies to provide active efforts to support Native families so that children can safely remain in their homes. When removal is necessary, ICWA mandates that states place Native children in family and tribal foster care. ICWA also provides tribes, like states, the opportunity to participate in child welfare decisions involving their citizen children and families. Where ICWA is appropriately applied it has been integral in keeping countless Native children out of foster care and safely in their families. ICWA is not just considered good practice for Native children, but the principles and processes it embodies have recently been described as the “gold standard” for child welfare practice generally by a wide variety of leading national child welfare organizations. Nonetheless, the available data and anecdotal experience shows widespread noncompliance with the Act.

In order to address misapplication of the Act, on February 25, 2015, the Bureau of Indian Affairs (BIA) released guidelines to assist agencies and state courts in implementation of ICWA’s provisions. The guidelines provide best practices for state courts and agencies in complying with ICWA’s mandates, as well as clarification of scenarios that would trigger ICWA’s application to child custody proceedings.

Shortly thereafter, on March 20, 2015, the BIA proposed substantially similar regulations that, once finalized, will bind state courts and agencies in applying these best practices. The proposed regulations were fashioned after consultation with tribal and child welfare stakeholders, who stressed the need for binding procedures to ensure uniform compliance with ICWA as originally intended by Congress. Absent these regulations with the force of law, state courts have largely ignored, misapplied, and misinterpreted ICWA’s mandates.

### *Recommendations*

1. **Finalize the Department of Interior’s Regulations for State Courts and Agencies in Child Custody Proceedings.** We commend the BIA’s promulgation of proposed regulations designed to help state courts and agencies effectively implement ICWA. While the final Guidelines will be extremely helpful in guiding courts and agencies, there are numerous case law examples of courts disregarding the best practices, definitions, and interpretation delineated in the Guidelines. Regulations, which carry different legal authority, cannot be so readily ignored. NCAI strongly supports Interior’s promulgations of final Regulations, in line with NCAI Resolution SD-15-011, and will work tirelessly with the Administration to defend those protections for our children and families.
2. **Direct the Department of Health and Human Services to require that states collect and report baseline ICWA data through the Adoption and Foster Care Analysis and Reporting System (AFCARS) that can be the basis for improvements in**

**implementation through technical assistance and efforts to enhance tribal-state relations.** States are already required to report a variety of measures on the children in their care. Requirements pertaining to ICWA, including a determination of ICWA eligibility, tribal notification, active efforts provided, placement according to placement preference, and other concerns related to AI/AN child welfare, should be added to these requirements. Including ICWA information in state reporting requirements would provide the information necessary to improve federal assistance to states and tribes, monitor challenges in implementation, and effectively support improved tribal-state relations in child welfare. NCAI recently passed Resolution SD-15-071 calling for inclusion of ICWA data elements in AFCARS.

3. **Consult with Tribes to develop a plan for implementing recommendations contained in the 2015 GAO study of Tribes preparing to operate the Title IV-E program.** (*Foster Care: HHS Needs to Improve the Consistency and Timeliness of Assistance to Tribes*, GAO-15-273). This study revealed the deficiencies in assistance provided by the Children's Bureau for the purposes of supporting tribes preparing applications to operate the Title IV-E program. These deficiencies have led, in part, to fewer numbers of tribes applying to operate the Title IV-E program. HHS must take these recommendations to heart and collaborate with tribes to map out a plan to improve support services for tribes seeking to operate the Title IV-E program.
4. **Create a Special Counsel for Indian Child Welfare in the Civil Rights Division of the Department of Justice.** In the wake of *Adoptive Couple v. Baby Girl*, and in light of the general widespread misinterpretation and misapplication of ICWA, the Department of Justice should be alert to cases across the country that extend *Baby Girl* beyond the facts, circumstances, and provisions of the law and that perpetuate misinterpretations of ICWA generally. Currently, the Department of Justice engages in ICWA litigation via *amicus curiae* briefs which are written and filed by the Environment and Natural Resources Division of the Department of Justice. This department, however, lacks necessary expertise in Family Law and in ICWA specifically. For these reasons, the Department of Justice should create a Special Counsel position for Indian Child Welfare. Furthermore, because ICWA violations are themselves civil rights violations as well as intricately entwined with larger issues of bias in the child welfare system this position should be placed in the Civil Rights Division so that DOJ can investigate, litigate, and remedy circumstances and situations of ICWA noncompliance nationwide. This position, therefore, should be placed in the Civil Rights Division where they can both monitor and engage in ongoing litigation as well as affirmatively investigation, litigate, and remedy ICWA noncompliance.
5. **Pursue a Department of Justice Investigation into ICWA Noncompliance.** Statistics about placement rates, media coverage of state child welfare and private adoption attorney practices, and recent court cases have shed light on widespread ICWA noncompliance and civil rights violations of Native families in state court proceedings. However, no federal agency has taken action to formally examine ICWA noncompliance. The U.S. Department of Justice Civil Rights division should launch a formal investigation on civil rights violations including ICWA noncompliance and broader claims of biased treatment in both involuntary and voluntary placements of American Indian and Alaska Native children. This investigation should be led by the newly created Special Counsel for Indian Child Welfare.

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## **Federal and Tribal Partnerships in Law Enforcement and Public Safety Initiatives**

- Public Safety and Criminal Justice
- Homeland Security and Emergency  
Management



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## PUBLIC SAFETY & CRIMINAL JUSTICE

The public safety problems that continue to plague tribal communities are the result of decades of gross underfunding for tribal criminal justice systems; a uniquely complex jurisdictional scheme; and a centuries-old failure by the federal government to fulfill its public safety obligations on American Indian and Alaska Native lands. Residents and visitors on tribal lands deserve to enjoy the safety and security that is taken for granted outside of Indian Country.

The Administration, Congress, and tribal governments have together taken historic steps in recent years to address these issues. The Tribal Law and Order Act in 2009, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), and most recently the TAP and Purpose Code X Programs, which are aimed at improving tribal access to federal criminal information databases, begin to address some of the structural barriers to public safety in tribal communities. We thank the Administration for its support in getting these laws and programs enacted. For the promise of these laws and programs to be fully realized, however, they must be fully implemented, which requires sufficient resources for tribal justice systems and ongoing coordination and consultation between various federal agencies and tribal governments.

### *Recommendations*

1. **Safety for Native American Women & Children.** The experience of the tribes who have implemented criminal jurisdiction over non-Indians pursuant to VAWA clearly demonstrates how important tribal jurisdiction is for the safety of Native women and also how much more needs to be done. Even after implementing VAWA 2013, tribal prosecutors are unable to charge defendants for crimes related to abuse or endangerment of a child, which have occurred in the majority of the domestic violence incidents the tribes have prosecuted under VAWA. Similarly, the tribes who are exercising jurisdiction over non-Indians are unable to hold offenders accountable for non-domestic violence crimes that frequently co-occur with domestic violence like, drug and alcohol crimes. Of grave concern is the fact that tribes also are unable to hold a non-Indian defendant accountable for crimes that occur within the criminal justice system, such as assault of an officer, resisting arrest, obstruction of justice, or perjury. This gap undermines the ability of the tribe to protect the integrity of its criminal justice system. The Administration should immediately initiate consultation with Indian tribal governments about the development of a legislative proposal that would fill the gaps left by VAWA 2013 by reaffirming tribal authority to prosecute non-Indians for abuse or endangerment of Indian children, for crimes that co-occur with domestic violence, and for crimes committed within the criminal justice system.
2. **Department of Justice (DOJ) Grant Funding.** For the past several years, the Administration has requested a flexible 7 percent tribal set-aside across Office of Justice Programs (OJP) grant programs. While the set-aside has not been included in congressional appropriations, Congress has given OJP the increased flexibility it requested by appropriating \$30 million for “tribal assistance” and directing DOJ to consult with tribes about how this \$30 million should be spent. We are concerned, however, that OJP has not initiated consultation with tribal governments. This should happen immediately.

3. **Continue and Expand the Intertribal Technical Assistance Working Group.** DOJ created an Intertribal Technical Assistance Working Group on Special Domestic Violence Criminal Jurisdiction that has proven to be a valuable collaborative effort among tribal governments to improve tribal justice systems. We recommend that this Working Group be continued and expanded to include additional tribes and further meetings. It should also be a model for other topics, including the TAP program recently launched by DOJ.
4. **Violation of Protection, Exclusion Orders, and Arrest Authority.** Tribes issue protection and exclusion orders to ensure the public safety of their members. These have included exclusion orders for individuals who have committed crimes related to drugs, tenants who overstay agricultural and residential leases, or sportsman hunting or fishing without a license. Additionally, tribes issue protection orders against non-natives for stalking and sexual assault offenses. However, tribes have a limited ability to enforce these orders in most cases. The Administration should initiate consultation with tribal governments about options to increase federal penalties and deterrence for Native and non-Natives who violate tribal exclusion orders and protection orders, those who cause serious threats to persons and damage to property in Indian country, and repeat offenders of Indian country hunting, fishing and trespass laws. Tribes also greatly need clarification of arrest authority. See, NCAI Resolution SD-15-053.
5. **Require the Bureau of Indian Affairs, US Attorneys, and FBI to issue guidance and engage in local coordination with Indian tribes.** Implementation of VAWA 2013 requires improved guidance and policies for investigation, prosecution, and detention. Tribes need headquarters direction as well as local coordination between federal and tribal criminal justice personnel on a series of important issues:
  - a. Arrest and Detention Guidance for All Persons
  - b. Clarified Policies for Detention Centers and 638 Contracting
  - c. DV Training for Tribal Police and Prosecutors
  - d. Stronger Coordination with AUSAs on Federal Prosecution, including Improved Appointments of Tribal Special AUSAs in some districts.

The Secretary of the Interior and Attorney General should direct field personnel to convene local implementation working groups.

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## HOMELAND SECURITY and EMERGENCY MANAGEMENT

Consultation and collaborative efforts have increased with many Department of Homeland Security (DHS) components but more efforts need to be launched. The responsibility and positioning of the national tribal liaison has become more critical and will play a significant role in order for DHS to fulfill the DHS Secretary's commitment that internal policies ensure tribal liaisons in all components, and to fill tribal representation in vacancies where they exist including formal and informal working groups.

Tribal governments are more cognizant of and focused on increasing homeland security and emergency management infrastructure capacity partly because of the assistance provided by the DHS Federal Emergency Management Agency's (FEMA) Emergency Management Institute's (EMI) tribal emergency management planning, operations, and other tribal-specific training courses. EMI developed the courses in conjunction with native emergency management specialists and are conducted primarily by native instructors. Many unfulfilled expectations linger based on administration commitments, including equitable tribal governmental access to DHS grants and funding levels, the release of the tribal federal disaster and emergency declarations process guidelines, and a promised tribal border security summit has not been scheduled.

Tribal governments play a very important role in homeland security and emergency response. Tribal departmental responsibilities encompass non-native citizens and neighboring jurisdictions where sometime they are more than the first responders, but also the only responders in many locations. Inclusion of tribes in the national strategies is critical if the current threats of manmade and natural phenomenon emergency situations are to be managed in a safe and secure manner.

### **Recommendations:**

Establish a Tribal Task Force to the Secretary's Homeland Security Advisory Council. The Secretary of the Department of Homeland Security has a Homeland Security Advisory Council that advises the Secretary and senior leadership on homeland security issue. This committee often drives positions and provides points of view that are not seen from inside the organization and is a valuable tool. A Tribal Task Force would serve to strengthen security of the homeland and provide an avenue for the Secretary and his Homeland Security Advisory Council to hear directly from tribal leaders, tribal homeland security advisors, tribal emergency management professionals, tribal subsistence resource managers, tribal first responders, and tribal cybersecurity professionals; etc. This task force would also be a resource for existing task forces and departmental offices interested in strengthening the collaboration and coordination between the tribes and the department.

Establish an Assistant Secretary for Tribal Affairs. Currently the Assistant Secretary for Intergovernmental Affairs is the Department of Homeland Security leadership position responsible for implementation of Executive Order 13175, Consultation and Coordination with Tribal Governments, and President Obama's 2009 Memorandum on tribal consultation. Congress is currently considering legislation that will move this position under an undersecretary and moving the tribal government interests further away from the Secretary of Homeland Security and immediate leadership (H.R. 3572). The department should establish a position that has direct access to the Secretary and senior leadership with the ability to speak to tribal leaders on behalf of the



Department of Homeland Security Secretary. This should be a high-level political appointee or a senior career employee with experience working in Indian Country further strengthening the programs that are established without congress minimizing the position. Such an appointment also would strengthen the department's tribal affairs program and support implementation of E.O. 13175.

Anti-Human Trafficking Support. The department should fund and charge its Blue Campaign (anti-human trafficking campaign) with the development of culturally responsive training for Indian country. This training should be initiated by reaching out to Indian Country and determining needs and desires of tribal staff and tribal leaders. Providing training to tribal elders, tribal law enforcement, tribal health care professionals, tribal court personnel, tribal homeland security professionals; etc. will support tribal self-reliance and support the Department of Homeland Security's anti-human trafficking efforts.

Establish department wide standards of training for all Department of Homeland Security personnel and tribal liaisons. As a means to support the department's work with Indian tribal governments, DHS must develop a curriculum and standards for personnel who work with tribes, both routinely and occasionally, and train the staff. With over 200,000 employees and a wide mission, the department should be leading the way in its implementation of E.O. 13175, Consultation and Collaboration with Tribal Governments. This would strengthen the government-to-government relationship and give department staff exposure and some of training they need to work successfully in Indian Country. These courses should be developed in a consultative approach in coordination with tribal representatives on the development team.

Initiate an unmet homeland security needs request campaign. The Department of Homeland Security sends mixed messages to tribes in providing funding for homeland security efforts. There has not been significant evaluation of homeland security needs and funding in Indian Country. Most tribes that apply do so based on their potential to receive an award rather than their true needs. While tribes appreciate the Secretary's acknowledgment that the congressional minimum of funding for Indian Country is not enough there have been no efforts to increase the low funding level. The department should actively seek input from all Alaskan Native and American Indian tribes as to what their homeland security needs are. As the department develops standards and updates its grant guidance to states, which have been funded by the federal government since the 1950s for civil defense and homeland security, it is leaving out the tribes' potential to develop the most needed and base level of capacity to work with the federal government as true partners. Asking tribes what their needs are and sharing what efforts the department is undertaking to address these will support Executive Order 13175, Consultation and Collaboration with Tribal Governments and increase homeland security.

Update DHS tribal consultation policy. The Department of Homeland Security's tribal consultation policy does not address the requirements of Section 6 of Executive Order 13175, Consultation and Collaboration with Tribal Governments to establish processes for department staff to consider tribal waiver requests regarding statutory or regulatory requirements. The Department of Homeland Security should consider the rulemaking process for its tribal consultation policy and promulgation of a tribal policy. All too often tribal leaders seek assistance from the U.S. government, through its Department of Homeland Security, and contrary to senior leadership statements about nation-to-nation relationships, tribes are told to work with states—another sovereign, another layer of

bureaucracy and often unfriendly. The history of coercing assimilation by providing federal grants though states should remain history and the department should not force tribes to work through states for grant funding. By strengthening and being more congruent on the department's tribal messaging this action will improve homeland security efforts between all governments.

Establish a DHS senior leadership tribal affairs group: In response to a Department of Homeland Security, Office of the Inspector General report, the Federal Emergency Management Agency established an internal senior level tribal advisory group that provides FEMA leadership recommendations on internal decisions and consultations. While tribes have been unsuccessful at being a part of this group, we are appreciative of the reports we receive from these senior leaders. This effort appears to have had significant influence on FEMA's tribal programs and the department should create the same with leadership from its major components. This would support the department's Unity of Effort posture and its tribal affairs programs.

Initiate legislative requests to eliminate "directly eligible tribes" from the Homeland Security Act. Since the Homeland Security Act was amended and congress established risk methodologies, or the department proposed legislation affecting Indian tribal governments without consultation to develop relatively arbitrary risk methodologies in the Tribal Homeland Security Grant program, FEMA has adopted a cumbersome risk methodology and requires tribal grant awardees to complete the Threat and Hazard Identification and Risk Assessment. The creation of this directly eligible requirement creates two classes of tribal nations and does not recognize the government-to-government relationship between each and all. The department should make a recommendation to Congress to amend the Act to exclude this requirement acknowledging that it could exclude a potential risk to the homeland. This could be similar to the Federal Emergency Management Agency's effort in seeking a congressional fix to the Robert T. Stafford Act to allow tribes to directly request emergency and disaster declarations.

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## **Protecting Our Future: Environmental, Natural and Cultural Resources**

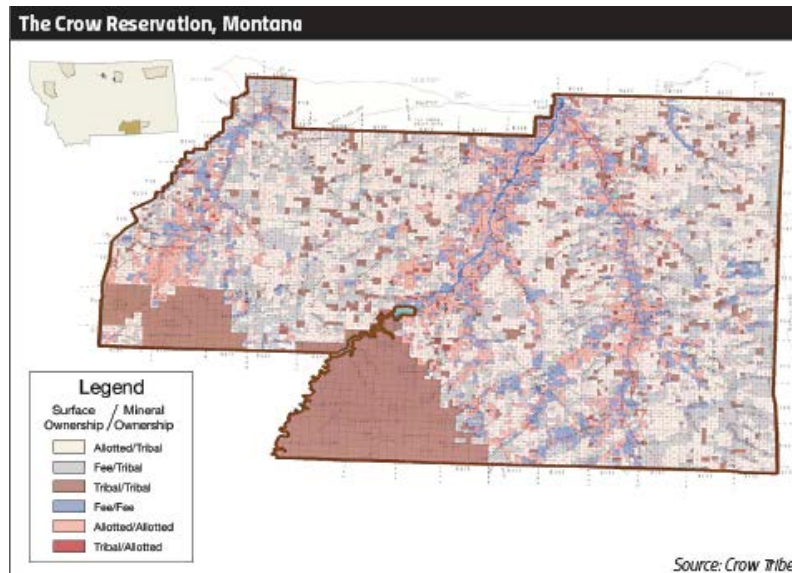
- Land Into Trust
- Natural Resources and Environment
- Marijuana and Hemp Policy
- Agriculture and Nutrition
- Climate Change
- Alaska Native Subsistence
- Cultural Protection and Sacred Places



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## TRIBAL LAND RECOVERY

AT THE 2013 WHITE HOUSE TRIBAL NATIONS CONFERENCE, SECRETARY OF INTERIOR JEWELL SET A GOAL OF ACQUIRING 500,000 ACRES OF LAND FOR INDIAN TRIBES IN THE TERM OF PRESIDENT OBAMA'S ADMINISTRATION. WE NEED ACTION IN 2016 TO MEET THIS IMPORTANT GOAL.



*A common example of how fractionated interests impact tribal self-government within reservation boundaries.*

### **Background on Federal Trust Land Acquisition Policy**

During the "Allotment Era" initiated by passage of the Dawes Act in 1887 and continuing until the policy was discontinued in 1934, the federal government took away over 90 million acres of tribal lands that were previously guaranteed to tribes by treaties and federal law. This amounted to more than two thirds of the tribal land base (and over 80 percent of its value) as the most productive lands were taken first. The remaining tribal lands are often discontinuous, fractionated, and difficult to use for economic purposes or for the exercise of tribal self-government. The devastating effects of the Allotment Era to tribal communities are still apparent today, both economically and socially.

Similarly unjustified tribal land grabs occurred regionally throughout American history and into the 1970s. Every tribe has a different history of land loss, but the theme is the same harm to tribal culture, resources, self-government, and economic development. In 1934, Congress passed the Indian Reorganization Act (IRA), comprehensive legislation intended to rebuild tribal governments, tribal economies, and the tribal land base. Section 5 of the IRA provides the authority for the Secretary of the Interior to acquire and restore the tribal land base.

However, since 1934 the BIA has maintained a conservative policy for putting land in trust. Only 8 million acres have been returned to the tribes, most of this was unallotted, sub-marginal lands held by the federal government. Meanwhile, land is going out of trust every day in Indian Country, with allotments going out of trust status and onto state tax rolls. Still today, many tribes have no land base or their limited lands are insufficient to support housing needs and self-government. Section 5 clearly imposes a continuing active duty on the Secretary, as the trustee for Indian tribes, to take land into

trust for the benefit of tribes. We strongly support and encourage Secretary Jewell to exercise this duty to achieve the goal of 500,000 acres of new trust land for Indian Country.

### **Action Needed to Meet Secretary Jewell's 500,000 Acre Goal**

#### **1. Prioritize and Staff Land Acquisition During 2016**

The vast majority of trust land acquisitions take place within reservation boundaries, in rural areas, and are not controversial in any way. These acquisitions are necessary to consolidate allotted lands, most often for grazing, forestry, or agricultural purposes. Other typical acquisitions include land for Indian housing, health clinics, and land for Indian schools.

Despite the high priority of restoring tribal lands, there are many acquisitions that have been pending for years or even decades. While trust land applications tend to stall on land title or environmental review, most often it's simply a lack of staffing. We strongly encourage the Department of the Interior to focus resources and personnel on meeting the goal established by Secretary Jewell by the end of Obama Administration.

#### **2. Take Administrative Action on Eligibility for IRA Land Restoration**

The Supreme Court's decision in *Carciari v. Salazar* in 2009 has created roadblocks for tribal land recovery. Congress has been slow to act on this issue, but the Secretary of the Interior has a great deal of authority. Tribes were encouraged by the recent action to acquire land for Mashpee Wampanoag. From the beginning, tribal leaders have asserted that because the US Constitution vests jurisdiction over tribal matters in the federal government, the presumption is that all tribes are "under federal jurisdiction." See *U.S. v. Nice*, 241 U.S. 591, 600 (1916), overturning *Matter of Heff* 197 U.S. 488 (1905): "That was a continuing power of which Congress could not divest itself. It could be exerted at any time and in various forms during the continuance of the tribal relation...." We urge the Department of the Interior to issue findings that tribal nations that have maintained tribal relations were under federal jurisdiction in 1934.

#### **3. Take Land to Trust in Alaska**

Last year, the Department of the Interior announced an amendment to the trust land acquisition regulations to remove the exclusion for Alaska tribes. With the regulations now final, we request that the Administration implement the new policy and take land into trust in Alaska enabling Alaska tribal governments to protect lands for future generations and improve the exercise of governmental authority for the protection of their citizens.

Two recent blue ribbon panels, the Congressionally-created Indian Law and Order Commission and the Secretarial Commission on Indian Trust Administration and Reform, have recommended that the prohibition on land into trust in Alaska be removed, and land taken into trust for the benefit of Alaska tribes. The Obama Administration has set up an historic opportunity to change policy regarding Alaska Native lands, and this opportunity must be taken, along with tribal lands, into trust.

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## NATURAL RESOURCES AND ENVIRONMENT

American Indians and Alaska Natives, as first stewards of this land, have nurtured, lived, and thrived off their homelands since time immemorial. Native peoples continue to rely on their natural resources to sustain themselves as key elements of their culture. Through the Constitution, federal laws, and various agreements with tribal nations, the federal government has treaty and trust responsibilities to Indian tribes to protect, manage, and allow access to tribes' natural resources.

Tribes have nearly 100 million acres of land collectively with vast and diverse natural resources, and have protected rights of traditional and customary uses to significantly more land and resources. First and foremost, the treaty rights of tribes and the trust responsibility to tribes to access their own resources must be upheld. It is vitally important that the agreements allowing for the hunting, fishing, gathering, and use of natural resources be honored.

Native peoples have cared for the land for millennia, managing resources for generations yet unborn and using knowledge, traditions, and practices handed down by their ancestors. Still today, the physical, cultural, social, economic, and spiritual well-being of Native peoples depends upon the health of our natural resources. Full tribal participation during the discussions on the management of Native resources at the federal level and the tribal management of natural resources in traditional and culturally appropriate methods is necessary as the vitality of tribal natural resources continues to be threatened by a diverse array of threats and inequalities.

### TREATY RIGHTS AND TRUST RESPONSIBILITY

The federal government has treaty obligations and a trust responsibility to tribes to protect, manage, and allow tribes to access their natural resources. By not honoring these responsibilities, the federal government places tribes' cultures, communities, economies, treaty rights, and the trust responsibility at risk.

#### *General Natural Resources Recommendations*

1. **Establish a Natural Resources Subgroup within the White House Council on Native American Affairs (WHCNAA).** Despite the WHCNAA being one of the five pillars listed in Executive Order 13647, which established the Council, there is no subgroup specifically dedicated to natural resources issues. The creation of a Natural Resources Subgroup would provide tribes with a forum for addressing natural resources issues which impact trust resources and treaty rights throughout Indian Country, including but not limited to: water quality; toxics; traditional foods; range management; fisheries and game; water supply; timber and forest lands management; sacred places; marine eco-systems; and, restoration partnerships and natural resources protection strategies.
2. **Direct each federal agency that manages natural resource programs to identify funding that is provided to states, local governments, and municipalities – but not to tribal governments – and implement a plan to provide equal access for tribes.**

3. **Ensure tribal inclusion and consultation in the development and implementation of laws, programs, and policies that affect tribal interests in natural resources.**
4. **Establish and advance the role of tribal wisdom and beliefs, Traditional Ecological Knowledge, in natural resources research and management.**
5. **Protect treaty-reserved rights and the federal trust responsibility by ensuring the federal government controls and maintains responsibility over the implementation of natural resource protection and recovery plans.**
6. **Establish federal oversight and coordination to align agency actions to better protect habitat and achieve recovery goals. An accountability mechanism is necessary to allow for the resolution of issues that are impeding successful natural resource protection and recovery.**
7. **Include tribes as eligible entities for all conservation programs and measures.**
8. **Provide for coordinated policy direction and prioritized funding support directed at resource protection and restoration.** Agencies need to prioritize in their budgets the funding necessary to accomplish their obligation to protect treaty and trust-reserved natural resources and for tribes to fully participate in resource protection and restoration activities.

## **ENVIRONMENTAL PROTECTION**

Tribes are heartened by the meaningful commitment and actions that the Administration has taken in carrying out the Environmental Protection Agency (EPA) Indian policy to improve the environmental and health conditions of tribal lands, water, natural resources, and communities. To take EPA's successes to the next level, we urge the Administration to address historic unmet needs.

### ***Recommendations***

1. **Ensure the EPA's General Assistance Program (GAP) funding for all tribes regardless of jurisdictional circumstances.**
2. **Create a federal agency task force to examine strategies to harmonize similar and related environmental programs provided to tribes by consolidating funding requirements, enabling more flexible use of that funding, and eliminating duplicative requirements.**
3. **Implement within the EPA a four-year pilot project that could demonstrate the success of self-governance in addressing the environmental policy needs of Native communities.**

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## MARIJUANA AND HEMP POLICY

In 2011, the Department of Justice released what has come to be known as the Cole Memorandum. The Cole Memorandum directs US Attorneys to prosecute marijuana and hemp related activities in states that have legalized those activities only when state regulation fails to account threats to public health and welfare. So, while the federal prohibition of marijuana and hemp stands and can only be modified by Congress, states that have regulated with sufficient precaution can allow marijuana-related activities free from federal interference.

On October 28, 2014, in response to a number of tribes requesting guidance on the Cole Memorandum's impact on prosecution of marijuana and hemp related activities on Indian lands, the Department of Justice issued the Wilkinson Memorandum, a "Policy Statement Regarding Marijuana Issues in Indian Country." Contrary to media coverage at the time, the Wilkinson Memorandum does not legalize marijuana or hemp on Indian reservations. Instead, the memorandum provides an overview of states that have legalized, and indicates that US Attorneys will not prosecute federal criminal marijuana laws on tribal lands of tribes that regulate in a manner that meets the same important policy goals required of states. In short, marijuana and hemp remain illegal in Indian country under federal law, but the Wilkinson Memorandum indicates that the Obama Administration will not prioritize enforcement those laws if a tribal government decides regulate in a manner consistent with the Memorandum.

However, even with the release of the Wilkinson Memorandum, application of the Department of Justice non-enforcement policy has been inconsistent in Indian Country and, absent adequate government-to-government consultation, lacks clear guidance for Indian tribes and US Attorneys seeking to carry out the policy. Further, it remains unclear how the Department of Justice policy operates on Indian lands, which are sometimes confused with federal public lands, as well as lands within Public Law 280 states. NCAI recently passed Resolution SD-15-047, which calls on the Administration to consult regarding proper implementation of the Wilkinson Memorandum.

### *Recommendations*

1. **Engage in Meaningful Consultation with Tribes Regarding Proper Implementation of the Department of Justice Wilkinson Memorandum.** Tribal governments have the sovereign right to establish their own laws and policies on tribal lands, and this includes marijuana and hemp policy. There is increasing confusion based on conflicting views from US Attorneys, and it would be very helpful to increase consultation on this subject.
2. **Support Policies and Regulations Reflecting Tribes' Inherent Right to Regulate Marijuana and Hemp.** NCAI Resolution SD-15-047 calls on the Administration to support policies and regulations reflecting Indian tribes' inherent right as sovereign governments to set local laws addressing marijuana and hemp according to the public health and economic needs of their unique tribal communities.

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## AGRICULTURE AND NUTRITION

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold \$3.3 billion of agricultural products, including more than \$1.4 billion of crops and \$1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, “American Indian farm operators are more likely than their counterparts nationwide to report farming as their primary occupation . . . to derive a larger portion of their overall income from farming . . . [and] to own all of the land that they operate.” As a result of the huge agricultural footprint across Indian Country and the fact that more than 35 percent of American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to partnerships throughout the Department of Agriculture to advance common interests across the broad array of services that this federal agency provides to tribal governments.

With 24 percent of American Indian and Alaska Native households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribes administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of American Indian and Alaska Native children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally-grown food in their food packages. Traditional and locally-grow foods from Native American farmers, ranchers, and producers encourages healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. Below is a look at the agriculture and nutrition policies that will be a focal point in the final year of this Administration.

### *Recommendations*

1. **Promptly enact all remaining provisions of the 2014 Farm Bill to support Native food production and to provide food assistance to tribal citizens.** The 2014 Farm Bill created many new opportunities for Indian Country. As we have seen in the past year alone, the importance of food production and food assistance in Indian Country cannot be overstated. With the cuts to the Supplemental Nutrition Assistance Program, there is a reported 10 percent increase on the Food Distribution Program on Indian Reservations (FDPIR) food packages. The following remaining provisions should be enacted:

- Maintain funding of the Supplemental Nutrition Assistance Program (SNAP) and provide support to the Food Distribution Program on Indian Reservations (FDPIR) to fulfill the necessary food packages.
- Ensure that the feasibility study for tribes to administer their own federal food assistance programs is conducted in a fair manner and follows with the intent of the law: to determine whether legislative action or administrative action is necessary to allow tribes to take over

federal food programs, particularly SNAP. So far, the outreach and questions proposed by the USDA's Food and Nutrition Service are troubling at best. They seek to review whether tribes have the current capacity to administer these programs. Instead, the study must look at the federal framework necessary for tribes to take over the program administration with the proper funding and support from the federal government since tribes are in the best position to determine how to these programs should serve their citizens.

- Draft regulations to implement Section 4004 of the Farm bill—a demonstration program that would allow for purchase of traditional and locally-grown food in the Food Distribution Program on Indian Reservations.
  - Draft the regulations to implement Section 4033 of the 2014 Farm Bill to allow for the service of traditional food in public facilities.
2. **Create effective guidance and support programs to promote traditional Native food sources and related nutrition and tribal distribution programs.**
  3. **Reform the Food Distribution Program on Indian Reservations** to permanently include traditional Native foods and eliminate asset tests that do not align with requirements under the Supplemental Nutrition Assistance Program (SNAP).
  4. **Allow tribes to administer the SNAP and other federal food assistance programs.**
  5. **Expand the Federally Recognized Tribal Extension Program (FRTEP) from the current 30 extension agents on Indian reservations to at least 100 extension agents over the next four years.** To facilitate such expansion, reference the Congressional mandate for research and extension services in every county in the nation.
  6. **Establish a single office based in USDA for tribal agriculture.** This office would serve as the primary point of contact for all federal agriculture programs.
  7. **Continue and expand support for the Intertribal Agriculture Council to maintain its current outreach and education programs.** Also expand those programs to provide education, technical assistance, and export guidance to tribal agriculture operations.
  8. **Provide additional training on the federal programs that are available for food and agriculture and the application processes for each.** Face-to-face training programs may be required in many instances to ensure that applications are submitted for grant and loan funding, especially with family-operated farms and ranches.

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## CLIMATE CHANGE

American Indians and Alaska Natives are disproportionately impacted by climate change due to the geographical areas in which they reside and their direct connection to their surrounding environments. Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon many natural resources and they are disappearing faster than they can be restored. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly impacted. Specifically, the well-established plight of those in Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused, high priority attention from the federal government.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. Climate change is reducing the natural ecosystems and biodiversity on which Native peoples have come to rely. The traditional time to gather plants is changing, and the migration patterns of animals are being altered. Wildland fires on Indian lands and federal lands are significantly increasing in size, intensity, and cost. In California and the Southwest, many tribes are experiencing prolonged drought which is having an effect on their water resources and rights while some villages in Alaska that are located near rivers or streams now find the water at their front door.

The increased frequency and intensity of wildfires, higher temperatures, ecosystem changes, ocean acidification, forest loss, and habitat damage intensified by climate change are threatening Native access to traditional foods such as salmon, shellfish, wild and cultivated crops, and marine mammals. These foods have provided sustenance as well as cultural, economic, medicinal, and community health for countless generations.

A significant decrease in water quality and quantity are affecting American Indian and Alaska Native drinking water supplies, food, cultures, ceremonies, and traditional ways of life. Native communities' vulnerabilities and lack of capacity to adapt to climate change are exacerbated by land-use policies, political marginalization, legal issues associated with tribal water rights, and poor socioeconomic conditions.

Declining sea ice in Alaska is causing significant impacts to Native communities, including increasingly risky travel and hunting conditions, damage and/or loss of homes and settlements, food insecurity from changing availability of wild food sources, and socioeconomic and health impacts from loss of cultures, traditional knowledge, and homelands. Alaska Native communities are increasingly exposed to health and livelihood hazards from permafrost thawing and increasing temperatures, which are causing damage to roads, water supply, sanitation systems, homes, schools, ice cellars, and ice roads – threatening traditional lifestyles.

Accelerated sea level rise, erosion, permafrost thaw, and increased intensity of weather events are forcing relocation of entire tribal and indigenous communities in Alaska, Louisiana, the Pacific Islands, and other coastal locations. These relocations and the lack of governance mechanisms or funding to

support them are causing loss of community and culture, health impacts, and economic decline, further exacerbating tribal impoverishment.

The United States' responsibility toward tribes goes beyond simply supporting prior agreements, it must allow for full tribal participation, particularly during discussions on addressing and preventing further climate change impacts at the federal-level, because tribes are best suited to address the issues facing their communities. Further, Traditional Ecological Knowledge must also be included, as each tribe sees fit, into the framework of developing and implementing adaptation and mitigation plans.

### ***Recommendations***

1. **Fully and Swiftly Implement the Task Force on Climate Preparedness and Resilience Report Recommendations for Indian Country.** NCAI commends the Administration for establishing a Task Force on Climate Preparedness and Resilience and for appointing two tribal leaders to ensure the inclusion of important issues relating to the impacts climate change is having on tribes. In order to continue the momentum, we believe the Administration must continue the efforts of the Task Force to begin adopting the recommendations that have come from tribes for action on climate change, including:

- Provide tribes with more access to federal agencies' data and information related to climate change;
- Remove barriers that prohibit tribal access to federal programs;
- Increase direct access to federal funding; and
- Establish a permanent federal government Climate Adaption Task Force.

2. **Establish a high level interagency-tribal government task force to examine existing problems and propose solutions to help address climate change.** This group could be a working group of the White House Council on Native American Affairs or could function as a stand-alone effort. This task force would: (1) recommend, develop, and implement tribal-specific solutions, enabling the agencies to support and foster tribal climate-resilient planning and investment; (2) work to ensure that there is meaningful funding and technical support to implement recommendations; and (3) provide oversight/connectivity to the President's Climate Action Plan to ensure that implementation of the Plan is addressing tribal concerns. In order to ensure federal government commitment, the Administration must support the task force in efforts to:

1. Ensure equitable financial resources for tribes to carry out assessments and implementation of preparedness planning;
2. Provide assistance to tribes for climate vulnerability assessments; and
3. Recognize the role and interaction of multiple knowledge systems. Traditional Knowledges can be useful in defining earlier environmental baselines, identifying impacts that require mitigation, providing observational evidence for modeling, and identifying culturally appropriate values for protection from direct impacts of adaptation measures.

3. **Maintain current funding for tribal climate adaptation efforts and increase levels to meet demand.** NCAI applauds the BIA for increasing the budget for tribal climate adaptation efforts to \$9.947 million. Given that tribal natural resource programs have been historically underfunded and

no federal programs or funding streams specifically support tribal climate adaptation efforts, this is a welcome and exciting change for tribes. However, this funding must at least remain at the current level and increase to meet the demand for tribes to address, develop, and establish climate change adaptation measures.

4. **Strengthen Tribal Sovereignty in the Climate Change Era.** Indian tribes must be partners with full and effective participation in assessing and addressing the problems of climate change at the local, regional, national, and international levels and accorded the status and rights recognized in the UN Declaration on the Rights of Indigenous Peoples and other international standards relevant to Indigenous Peoples.
5. **Equal Access for Tribal Governments.** Tribes must have fair and equitable representation on all federal climate committees, working groups, and initiatives in which states, local governments, and other stakeholders are represented. This entails including tribes when during the Coordination of disaster preparedness, response and recovery planning, and implementation with local and regional entities, as well as appropriate funding to address the threats to life and safety with prioritization being provided to communities that have been identified as being in imminent danger.
6. **Support Tribes Facing Immediate Threats from Climate Change.** Indigenous Peoples must have direct, open access to funding, capacity-building, and other technical assistance, with their free, prior and informed consent, to address the immediate and long-term threats from climate change. For example, many Alaska Native communities need protective structures, such as seawalls and evacuation roads, built in their communities to protect against to climate change-related disasters. Not only should their support provided for by the federal government, Native peoples should have priority for contracting to do this work in close proximity to tribal communities.
7. **Ensure Tribal Access to Climate Change Resources.** Tribes must have fair and equitable access to federal climate change programs.
8. **Parity in Climate Change Funding.** Tribes must be made eligible for existing and future federal natural resource funding programs for which states are eligible, but from which tribes are currently, or might be, excluded. A fair and equitable set-aside of direct monies or allowances must be made available for distribution to tribes through legislation, administrative actions, and existing and future federal natural resource funding programs.
9. **Traditional Knowledges and Climate Change.** Indigenous traditional knowledges, with the free, prior, and informed consent of Indigenous Peoples, must be acknowledged, respected, and promoted in federal policies and programs related to climate change.

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## ALASKA NATIVE SUBSISTENCE: PROTECTING TRADITIONAL AND CUSTOMARY LIFEWAYS

The term “subsistence,” as it is used today, refers to our traditional and customary ways of life – hunting, fishing, and gathering – to sustain ourselves in the same ways our ancestors have since time immemorial. Federal laws protecting American Indian and Alaska Native hunting, fishing, and gathering rights apply throughout the United States, but nowhere are they more critical than in Alaska, where hunting, fishing, and gathering remain an economic necessity. Subsistence resources constitute a substantial majority of the nutritional needs of Alaska Native peoples, especially in rural areas where the need for subsistence resources for daily nutritional, spiritual, and cultural sustenance is the greatest. The indigenous peoples of Alaska have a basic human right to their subsistence way of life and to maintain their cultural beliefs and practices and must be full partners in the co-management of their subsistence resources.

Indian Country strongly supports the efforts of Alaska Natives to obtain stronger federal protections for Alaska Native subsistence hunting, fishing, and gathering rights. The federal government has a trust responsibility to Alaska Natives to honor the commitment it made to them in the Alaska Native Claims Settlement Act of 1971 (ANCSA) and in Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). This commitment is to establish and implement a comprehensive federal program that will protect their way of life. Fulfilling this commitment is central to the survival of this and future generations of Alaska Natives.

### *Recommendations*

1. **Support the Federal Recognition of Alaska Native Hunting and Fishing Rights and Allow for Tribal Co-Management of Subsistence Resources.** The hunting and fishing practices of Alaska Natives are essential to their social, cultural, spiritual, and economic well-being and survival. The current federal and state dual management – without Alaska Native participation – fails to provide a sustainable yield for critical traditional and customary species, resulting in a harmful reduction of Alaska Native hunting and fishing practices. It is important for the Administration to uphold its mandate to provide for meaningful tribal consultation and equal participation by Alaska Natives in the co-management of traditional and customary resources for the continued well-being of their peoples.
2. **Convene a High-Level Interagency Meeting with Key White House Officials, Including the Domestic Policy Council and Departments with Jurisdiction over Subsistence Uses.** Subsistence management and the legal rights of Alaska Natives cut across a number of departments within the Administration, including Interior, Agriculture, Justice, and Commerce. If meaningful protections are to be provided for subsistence hunting and fishing in Alaska, there must be an ongoing dialogue between Alaska Native leaders and the agencies with jurisdiction over the various aspects of Alaska Native ways of life. This is a critically important moment in history for Alaska Natives with respect to hunting and fishing, the foundation of a subsistence way of life, and a mainstay of Native nutrition and economies. Presidential involvement has been a

hallmark of all of the major federal laws affecting Alaska, including the Alaska Statehood Act; ANCSA; and ANILCA, including Title VIII of that Act, which was intended to provide protection for subsistence hunting and fishing rights and to fulfill the promises of ANCSA. The same level of White House commitment and involvement is needed today.

3. **Take Interim Administrative Measures to Increase Protections for Subsistence.** In addition to convening a high-level interagency meeting on subsistence, the President should issue an Executive Order to advise federal agencies and the Federal Subsistence Board that Title VIII of ANILCA is “Indian Legislation,” enacted under the plenary authority of Congress over Indian Affairs. The President should also direct the Office of Subsistence Management to implement a subsistence management program in accordance with the Executive Order. Title VIII was enacted to protect the subsistence way of life of rural Alaska residents, including residents of Native villages. In implementing the statute, Congress expressed its long-standing concern, and obligation, to protect subsistence uses of Alaska Natives and fulfilling the purposes of ANCSA. Although the statute provides for a “rural” preference, it is important to remember that the subsistence title would never have been added to ANILCA had it not been for the efforts of Alaska Natives.

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## CULTURAL PROTECTION AND SACRED PLACES

The protection of Native cultures spans across complex statutory and regulatory aspects of the federal government. Success in navigating these complex structures has resulted in the repatriation of cultural items, guidance regarding tribal member possession of eagle feathers, and increased access to sacred places for religious and spiritual practices. The Administration must continue to prioritize its advocacy and education efforts to protect the religious freedoms of Native peoples while supporting cultural preservation efforts.

### *Recommendations*

1. **The President should exercise his authority to declare National Monuments under the 1906 Antiquities Act.** There are many areas across the country that has cultural, historical, and environmental significance to American Indians and Alaska Natives. However, many of these areas are under threat from natural resource extraction, cultural vandalism, recreational activities, and activities that harm the wildlife and plant habitats important to traditional and cultural practices. The President should work with tribal nations to designate National Monuments to provide additional protections for tribal cultural, historical, and environmentally significant lands.
2. **Support tribal efforts to repatriate items of cultural patrimony internationally and domestically.** The Secretaries of the Department of the Interior, the Department of Justice, the Department of State, and the Attorney General of the United States should consult with tribal nations in addressing issues regarding the theft and illegal sale of tribal cultural patrimony domestically and abroad, and take affirmative actions to prevent such illegal practices.
3. **Identify existing confidentiality standards and develop actual policies and guidance to address their lack of effectiveness.** To protect and ensure the confidentiality of culturally sensitive information, the federal government should develop guidance for staff to protect sacred places without requiring specific information; develop detailed guidance on applicable disclosure laws and exceptions; direct staff to explain such laws prior to collecting information; and develop an overarching policy of a presumption to protect the confidentiality of information.
4. **Revise Executive Order 13007 “Indian Sacred Sites”** to replace the mentions of “Where appropriate,” with language stating “to the maximum extent” in the sentence referring to confidentiality. This was initially recommended by the USDA Office of Tribal Relations and USDA Forest Service Draft Report to the Secretary of Agriculture USDA Policy and Procedures Review and Recommendations: Indian Sacred Sites in 2011.
5. **Require that all federal staff attend a mandatory training on working effectively with tribal governments,** and develop a comprehensive training on sacred places protection with the assistance of Native subject matter experts and extensive Native involvement within the timeline presented in the draft



6. **Sustain tribal consultation alongside streamlined energy projects.** As the United States continues to focus on job creation and growth through the extraction of natural resources and the production of clean energy, the federal government must maintain consultation with tribes. Additionally, the Administration must continue to adhere to the laws, policies, and regulations already in place. The Administration must stay actively engaged with tribes who may be affected by proposed developments, especially if those areas hold cultural significance. Tribes must be guaranteed a “seat at the table” early and often so they can weigh in on all development proposals which may affect their citizens or their lands. The Administration should look to amend Executive Order 13604, “Improving Performance of Federal Permitting and Review of Infrastructure Projects” to affirm its commitment to government-to-government consultation and recognition of tribal sovereignty. Executive Order 13604 expedites energy projects and places tremendous burdens on tribes by precluding government-to-government consultation, and thereby endangering tribal sacred places, burial grounds, and other cultural rights.

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## **International Affairs**

- Promote Indigenous Peoples' Rights in International Forums



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## PROMOTE INDIGENOUS PEOPLES' RIGHTS IN INTERNATIONAL FORUMS

Consistent with its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2010, the United States government should work to advance and protect indigenous peoples' rights when important policy decisions are under discussion at the international level. There are two on-going conversations taking place at the United Nations where it is particularly important that the United States take immediate action to ensure that the rights of indigenous peoples are appropriately considered and upheld.

In December of this year, the 21st Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21) will take place in Paris, France, with the aim of achieving a universal "protocol, another legal instrument, or an agreed outcome with legal force" that addresses climate change. As explained in the briefing paper on climate change, this is an issue with significant impact on tribal communities and addressing climate change is a high priority for tribal leaders.

Tribal representatives and indigenous peoples from around the world have participated in the negotiations and preparations leading up to COP21, but have repeatedly been shut out of negotiations and stymied in their efforts to ensure that the needs of indigenous communities and the rights of indigenous peoples are specifically addressed in the draft agreement. The present draft, which will provide the basis for negotiation in Paris, is severely deficient. It will be an uphill battle in Paris to protect what positive language the draft does contain and to attempt to get specific language protecting indigenous rights back into the Agreement to be finalized in Paris.

### *Recommendations*

1. **The US government should support and advocate for language addressing human rights, including the rights of indigenous peoples.** Specifically, the US should support:
  - the reinsertion of language drafted by the indigenous caucus in operative paragraph 2 of the Agreement;
  - the removal of the brackets concerning indigenous peoples' rights presently in the preamble to the Agreement;
  - the insertion of the word "peoples" into the phrase "traditional and indigenous peoples' knowledge" in draft Article 4; and
  - removal of the brackets from paragraph V. 28 in the draft "Work Stream II" document.

## **World Conference on Indigenous Peoples Follow-up**

On September 22-23, 2014, the United Nations (UN) hosted the High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (WCIP). During the opening session of the WCIP, the UN General Assembly adopted an Outcome Document that includes reaffirmation of the UNDRIP.

The Outcome Document sets forth requirements and timeframes for actions by the UN and by member states. Consistent with priorities outlined by tribal nations, the outcome document requires additional and ongoing work by the UN to (1) propose rules or procedures to enable participation by indigenous governments within the UN; (2) ensure that there is a mechanism for monitoring and implementation of the UNDRIP by states and by the UN; 3) develop mechanisms for access to and repatriation of ceremonial objects and human remains, nationally and internationally; and (4) take actions to address violence against indigenous women. The United States has an opportunity to play a leadership role in ensuring that these recommendations are acted upon in a timely and meaningful manner.

### ***Recommendations***

- 1. Work with member states, indigenous governments, and others to create a permanent, appropriate, and dignified status for indigenous peoples' representatives and governing institutions at the UN.** Paragraph 33 of the Outcome Document commits states to consider during the current session of the General Assembly ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant UN bodies on issues affecting them. Presently, there are no UN rules to enable the participation of indigenous governments in the UN. Consequently, tribes are often relegated to working through ad hoc or unclear procedures or, even worse, applying for certification as non-governmental organizations (NGOs) or associating with other NGOs if they wish to participate in UN bodies and processes. The US should support the full and direct participation of indigenous peoples' representatives and governing institutions, including tribal governments, in any procedural and substantive discussions on this issue, through a fair and democratic consultation process. Indigenous governments must have the opportunity to provide their views and proposals as well as to respond to the views and proposals of member states and others, regarding the participation of indigenous governments in the UN. There should be, at minimum, two consultations organized by the UN, in conjunction with indigenous peoples, in 2016 to develop rules to enable the participation of indigenous governments in the UN.
- 2. Advocate for the establishment of a strong and effective UN body to monitor implementation of the UNDRIP.** Paragraph 28 of the Outcome Document invites the Human Rights Council (HRC) to review the mandates of existing mechanisms, in particular, the Expert Mechanism on the Rights of Indigenous Peoples, or EMRIP, for the purpose of more effectively promoting respect for the Declaration, and assisting member states in monitoring, evaluating, and improving the achievement of the ends of the Declaration. An implementing and monitoring body has the potential to improve respect for indigenous rights, encourage and foster implementation of UNDRIP at the state level, and help to achieve the objectives of the UNDRIP. The HRC has decided to invite submissions on the matter from indigenous peoples, states, and others, and to convene a two-day expert workshop in early 2016, with a possible decision by the HRC as early as September 2016. As the review of EMRIP's mandate is considered, the U.S. should push for a

monitoring and implementation body with an expanded membership of independent experts and with a mandate to receive relevant information, to share best practices, to make recommendations and guiding interpretations, conduct country visits, and otherwise to work toward the objectives of the UNDRIP.

3. **Promote measures and mechanisms for access to and repatriation of ceremonial objects and human remains, nationally and internationally.** Paragraph 27 of the Outcome Document affirms and recognizes the importance of indigenous peoples' religious and cultural sites and of providing access to and repatriation of their ceremonial objects and human remains in accordance with the ends of the Declaration. It commits the UN to develop, in conjunction with indigenous peoples, fair, transparent, and effective mechanisms for access to and repatriation of ceremonial objects and human remains at national and international levels. The United States should continue to promote measures to respect and protect indigenous peoples' sacred sites and ceremonial objects.
4. **Work to ensure positive outcomes from follow-up actions by the UN to address the issue of violence against indigenous women and children.** Paragraph 19 of the Outcome Document invites the Human Rights Council and the Commission on the Status of Women to consider the issue. The Human Rights Council will hold a panel on the causes and consequences of violence against indigenous women and girls in September 2016. This is a unique and rare opportunity to elevate the voices of indigenous women in the United States in global discussions and to develop useful and positive outcomes from the panel. The U.S. should collaborate with indigenous women in order to facilitate their participation in the panel.

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2015 White House  
Tribal Nations Conference  
Tribal Leader Briefing Book