

THE ACCIP ECONOMIC DEVELOPMENT REPORT:

ECONOMIC DEVELOPMENT ISSUES  
OF CONCERN TO INDIANS OF CALIFORNIA

A Report by the  
Advisory Council on California Indian Policy  
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## SUMMARY

The prospect of economic development for most California tribes is grim. Although California Indian tribes consistently express their desire to develop economically in ways that are culturally appropriate and environmentally safe, very few opportunities exist to do so. One major obstacle is that most tribes in California have land bases that are too small to support business development, are usually isolated from business centers, and lack natural resources that can be put to commercial use.

The other major obstacle is that years of inequitable funding of tribal governments in California has left them without the administrative capability and infrastructure necessary for successful economic planning. The federal government's neglect has forced many California tribes to focus on basic issues of survival, rather than on the more practical issues associated with economic development. Thus, the majority of California tribal governing bodies are not experienced in management, preparation of business plans, organizational development, legal and physical infrastructure development, critical analysis of market opportunities and project feasibility, accessing capital for enterprise development, or labor force requirements.

This combination of obstacles has left the tribes with limited options. For those tribes located near large urban centers or recreation areas, gaming operations are an alternative because they require a relatively small capital investment compared to their profit and job-generation potential. But while gaming has provided the economic mechanism through which some California tribes have dramatically reduced poverty and unemployment on their reservations, California's hostility to Class III gaming operations and the resulting lack of tribal-state Class III gaming compacts, has jeopardized this area of federally-sanctioned tribal economic development. Also, some reservations with areas of open, unproductive land located near urban areas have become targets for private waste management companies seeking new locations for municipal and industrial waste disposal.

Both of these kinds of economic development are often perceived as "undesirable" either because of the nature of the economic activity or their potential to create adverse social and environmental effects. Even when those effects have been adequately addressed by the tribe or, in appropriate circumstances, an involved federal agency, opposition to tribal development initiatives often continues.

The report's review of selected tribal case histories reveals that some federal activities have contributed to the economic well-being of tribes. First, the presence of Indian Health Service-contracted clinics has contributed to the development of the administrative capacity of contracting tribes. Second, the Bureau of Indian Affairs' (BIA) Area Credit Office has, in some cases, been able to facilitate access to managerial and technical expertise, as well as access to equity and debt financing for tribal ventures. This assistance was very valuable to the tribes that received it. Unfortunately, allocations of federal dollars to the BIA's economic development programs have declined dramatically since 1993 and tribes have found it extremely difficult or

impossible to access loans for enterprise development, even when viable market opportunities have been identified, technical assistance has been available, and enterprise feasibility has been determined. Third, there was a tendency among California tribes—after years of struggling to develop alternative kinds of enterprise development and facing ever-increasing tribal unemployment and poverty rates—to turn to gaming, as sanctioned under the Indian Gaming Regulatory Act of 1988, as the most immediate source of relief. Yet, the viability of gaming as a primary means of achieving long-term tribal economic development is now in question because of the lack of any tribal-state compact for Class III gaming in California and the Supreme Court's recent decision foreclosing any tribal remedy against the State when it refuses to make good faith efforts to negotiate such a compact.<sup>1</sup> Still, it appears that until the market for casinos becomes inundated, a significant number of California tribes will turn to the gaming industry as their only viable alternative to the growing levels of reservation poverty and unemployment, and the trend towards further reductions in federal funding for Indian programs.

The report identifies legal obstacles to tribal economic development and suggests ways in which Congress can clarify tribal taxing and regulatory authority to remove them, thereby enhancing the tribes' ability to initiate and sustain economic development, and reap the full benefit from the use of reservation lands and resources. In addition, the report discusses various models for economic development, including the creation of tribal enterprise zones and a Tribal Homelands Private Investment Corporation, similar to the Overseas Private Investment Corporation, as a means of stimulating private investment in underdeveloped and developing tribal economies in California.

## RECOMMENDATIONS

- **General Policy Guidelines**

1. Federal policy initiatives for Indian economic development in California must acknowledge and respond to the diverse and unique situations of Indians in California. Policy initiatives should not pit federally recognized tribes against unacknowledged tribes, unaffiliated Indians or the large urban Indian population.
2. Federal policy initiatives for Indian economic development in California must address the potential conflict between sovereignty and trust responsibility by accommodating tribal self-determination on the one hand and assuring that the federal trust responsibility is properly discharged on the other.

- **Base Level Funding—Development of Tribal Capacity**

3. There must be an immediate response to the needs of California tribes through a special appropriation of multi-year, base level funding to provide tribes with sufficient and stable funding to address basic governmental and programmatic infrastructure issues. Base level federal funding is necessary to develop tribal governmental capacity to initiate economic development, and multi-year funding is critical to long-range tribal planning and attainment of economic development goals.

- **Land Acquisition and Administration**

4. The Secretary of the Interior should coordinate with Interior agencies and other cabinet level officers to develop a comprehensive approach for identification of public and other federal land that could be made available for disposal to California tribes for housing, economic development and cultural and natural resource protection purposes. The policy should allow land management agencies to enter into three-party land transactions involving agencies, tribes and private landowners as a means of facilitating tribal acquisition of private lands located on or near reservations. If development of such a policy is not within the existing authority of the Secretaries, Congress should enact legislation providing authority for such transactions.
5. The Secretary of the Interior should work with the California tribes to develop a comprehensive tribal land acquisition program, similar to but more expansive than past initiatives under the Indian Reorganization Act (IRA) and other statutes. Emphasis should shift from isolated, non-productive parcels to lands that may provide viable economic development potentials.

California tribes that were parties to the 18 treaties negotiated in 1851-52 would have retained 8.5 million acres of their aboriginal homelands had the treaties been honored by the

Senate. When the Senate refused to ratify the treaties and Congress extinguished the California tribes' land claims in the California Land Claims Act of August 3, 1851,<sup>2</sup> the tribes lost claims to their entire aboriginal homeland, totaling more than 70,000,000 acres. Today, the tribal land base in California is just over 400,000 acres (about .6% of the aboriginal land base), with an additional 63,000 acres of land held in individual trust allotments. Given this history and the large number of impoverished, resource-poor tribes in California, even a modest program of land acquisition should have as its target a long-term goal of returning thousands of acres of public lands to tribal ownership.

6. Existing land acquisition programs, such as that administered by the Department of Housing and Urban Development (HUD), should be expanded and strengthened through interagency coordination and streamlining of the bureaucratic processes (e.g., by designating an agency official to coordinate BIA/IHS/HUD involvement). In addition, the existing formulas for determining grants should be revised so that they do not discriminate against small tribes.
7. The process for transfer of lands from fee-to-trust status needs to be facilitated in California by:
  - a. legislative or regulatory reform to allow identification of "land consolidation areas" (perhaps corresponding to aboriginal territories or service areas) within which acquired lands may be treated as contiguous to reservations.
  - b. a unitary, coordinated environmental review process.
  - c. a comprehensive program to address land contamination issues, including environmental review requirements related to land acquisition and the procedures for assessing and resolving contaminant issues. The program should facilitate a process for transferring or donating to tribes private lands within Indian country that have undergone environmental cleanup.

● **Off-Reservation Economic Opportunities**

8. There is a need to explore tribal economic development opportunities that are not tied to a land base or restricted to Indian country. For example, a program should be developed to provide tax or other incentives for private businesses that promote Indian participation or commit to support tribal economic development by pursuing Indian training and employment goals. Given the inadequate and geographically dispersed land bases of California tribes, such programs should not be restricted to reservation lands, although reservation-based businesses might be given greater incentives.



- **Expansion of Existing Programs/New Programs**

9. Existing Indian economic development programs should be reauthorized and expanded. For example:
  - a. The BIA Loan Guaranty Program and the administering Sacramento Area Credit Office should be funded at increased levels.
  - b. The BIA should provide training and technical assistance in tribal governance and political infrastructure development, particularly to newly recognized and restored tribes.
  - c. The BIA should strengthen enforcement of its federal trust responsibility in order to ensure the protection of natural resources held in trust (tribal and allotted). A mechanism for such enforcement might be the creation of a joint review board comprised of BIA, other federal, and tribal officials who would review plans for economic development activities that are opposed by tribal members on the basis of threats to cultural, environmental or physical health.
10. Congress should enact legislation creating a California Tribal Homelands Private Investment Corporation, similar to the existing Overseas Private Investment Corporation (OPIC), as a means of encouraging American, including Native American, private investment in underdeveloped and developing tribal economies in California, through a program of direct loans and loan guarantees that provide medium- to long-term funding to ventures involving significant equity and/or management participation by American businesses.

- **Technical Assistance—Building Tribal Capacity**

11. Funding should be made available to support training of California tribes and individual tribal members in a broad range of technical areas, including but not limited to administrative capacity building, physical and social infrastructure development, strategic planning for business and economic development, marketing and business feasibility analysis, business plan development, business management, and federal and state laws relating to tribal economic development.

- **Gaming**

12. The Secretary of the Interior, pursuant to the federal trust responsibility, should promulgate regulations establishing a procedure to allow a tribe to engage in Class III gaming if a state fails or refuses to enter into good faith negotiations to conclude a tribal-state compact under the Indian Gaming Regulatory Act (IGRA).

13. Congress, in addition to or in the absence of Secretarial action to promulgate regulations providing a remedy to tribes under the IGRA when a state fails to negotiate in good faith, should amend the IGRA to establish a fixed time period, once a tribe initiates discussion with a state on a Class III gaming compact, in which to conclude the compact, but if a compact is not concluded despite the good faith efforts of the tribe within the statutory time period (e.g., 90 or 180 days), the tribe should be able to go directly to the Secretary of the Interior for approval of its Class III gaming operation.

California has a long and ugly history of opposition to any form of tribal sovereignty. From the initial decision of the State Legislature in 1852 to oppose Senate ratification of the 18 Indian treaties negotiated by federal commissioners, and the State's resulting genocidal policies of enslavement and "extermination" of the Indian population, to the modern-day opposition to the exercise of reserved Indian fishing rights and tribal regulatory and taxing authority, California has demonstrated its hostility to tribal sovereign authority and the continued efforts of the indigenous peoples of California to chart their own political and economic destiny. Thus, the good faith negotiations that Congress envisioned would occur between the tribes and the States under IGRA immediately encountered the institutional hostility of California to tribal sovereignty. IGRA anticipated this problem and provided a federal court remedy where a state refuses or fails to engage in good faith negotiations initiated by a tribe. This remedy, however, disappeared with the Supreme Court's decision in Seminole Tribe of Florida v. Florida,<sup>3</sup> leaving the states free to flaunt the good faith provisions of IGRA without sanction.<sup>4</sup> California has taken full advantage of its immunity by resisting good faith efforts by the gaming tribes of California to conclude tribal-state compacts on Class III gaming operations. In short, the Congressional compromise of tribal jurisdiction reflected in the IGRA has not worked in California.

What are the alternatives? One would be for Congress to specifically amend the IGRA to eliminate the States' participation, through the mechanism of compacting, in the Class III approval process. In other words, to return to the "bright line" rule that existed prior to the IGRA,<sup>5</sup> modified only by a process of Secretarial review and approval similar to that which exists in the IGRA.<sup>6</sup> Such an amendment would probably not succeed because the compacting process has worked in other states, and because the States would undoubtedly oppose any process that foreclosed their involvement in decisions on Class III gaming. A more realistic and acceptable alternative for both States and tribes would be to amend the IGRA to establish a fixed time period for a tribe and a state to conclude a compact on Class III gaming once the tribe has initiated the process. Then, if a compact is not concluded despite the good faith efforts of the tribe within the statutory time period (e.g., 90 or 180 days), the tribe should be able to go directly to the Secretary of the Interior for approval of its Class III gaming operation in accordance with applicable statutory or regulatory criteria. Certainly, such an alternative would reinstall the process with the elements of state accountability and fair dealing that Congress originally intended in passing the IGRA, but which Seminole undermined through its broad interpretation of the States' Eleventh Amendment immunity.

- **Tribal Jurisdiction**

1. Enact legislation recognizing that tribal governmental powers are coextensive with the boundaries of the tribe's reservation, and that the tribe's powers are exclusive on Indian lands within the reservation boundaries and concurrent on non-Indian lands. The legislation should expressly preempt the imposition of a state possessory interest tax on non-Indian lessees of Indian trust lands within reservation boundaries.

The Supreme Court's decisions in Brendale<sup>7</sup> and Yakima<sup>8</sup> substantially undermined tribal taxing, planning and regulatory authority. Those decisions allow states to reach into the territories of sovereign tribes to implement potentially conflicting zoning and land use policies on non-Indian lands, and to derive tax revenues from Indian-owned fee lands. The approach recommended above emphasizes the "territorial" aspect of Indian sovereignty by focusing the determination of jurisdiction on the "Indian country" status of the area rather than the trust or fee status of individual parcels.

## PREFACE

The following is an excerpt from the statement of Representative Bill Richardson, former Chairman of the House Subcommittee on Native American Affairs, made in response to proposed budget cuts during the summer of 1995.<sup>9</sup>

[W]e need to seriously examine and rethink our relationship with Indian country. In order to do so, we must:

- recognize that tribes are sovereign entities and not merely another set of minority or special interest groups.
- acknowledge our moral and legal responsibility to protect and aid Indian tribes.
- adhere to a set of principles that will enable us to deal fairly and honestly with Indian tribes.

From the founding of this Nation, Indian tribes have been recognized as "distinct, independent, political communities" exercising the powers of self-government, not by virtue of any delegation of powers from the Federal government, but rather by virtue of their own inherent sovereignty. The tribes' sovereignty pre-dates the Constitution and forms the backdrop against which the United States has entered into relations with the Indian tribes.

The United States also has a moral and legal trust responsibility to Indian tribes. Since the founding of the country, the U.S. has promised to uphold the rights of Indian tribes, and serve as the trustee of Indian lands and resources. The U.S. has vowed, through treaties such as the 1868 Navajo treaty, that Indians would be housed, educated, and afforded decent health care. We have failed on nearly every count.

Perhaps we need to look to the past in order for us to understand our proper relationship with Indian tribes. More than two centuries ago, Congress set forth what should be our guiding principles. In 1789, Congress passed the Northwest Ordinance, a set of seven articles intended to govern the addition of new states to the Union. These articles served as a compact between the people and the States, and were "to forever remain unalterable, unless by common consent." Article Three set forth the Nation's policy toward Indian tribes:

The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken away from them without their consent...but laws founded in justice and humanity

shall from time to time be made, for preventing wrongs to them....

Each of us should memorize these words. Our forefathers carefully and wisely chose these principles to govern the conduct of Congress in its dealing with American Indian tribes. Over the years, but especially in this Congress, we have strayed from these principles—the principles of good faith, consent, justice and humanity. It is time for us to return to and remain faithful to these principles.

As mandated in 1992 by Public Law 102-416, Congress created the Advisory Council on California Indian Policy to conduct extensive investigations of special problems confronting Indians and tribes in California and submit policy recommendations to Congress, the Secretary of the Interior and the Secretary of Health and Human Services. The Advisory Council, each of its specialized committees and task forces, and a multitude of contracted researchers have acted to meet the legislative mandate. In reviewing the findings, conclusions and recommendations contained in this report, we implore all those in a position to facilitate needed changes to act expediently, and to return to and remain faithful to the principles of good faith, consent, justice and humanity.

## **I. Introduction**

Because of the history of California Indian relations with the federal and state governments, California Indians are now at a severe disadvantage with regard to economic development. One major obstacle to economic development for California Indians is the lack of an adequate land base. The limited trust land base in California is a direct result of the Senate's failure to ratify the treaties with California Indians made during the 1850s, and the federal government's subsequent failure to acquire sufficient lands for these same Indians.<sup>10</sup> Currently, 18 federally recognized tribes in California have no trust land base at all, and 35 more tribes have less than 200 acres of trust land.<sup>11</sup> Most tribes in California do not have enough land to provide housing to all tribal members, let alone enough land to devote to business enterprises. Moreover, the land that California Indians do hold is mostly isolated from commercial centers or local economies that could support a business. The dearth of trust land also means that most California tribes have no natural resources that can be developed.<sup>12</sup>

Another major obstacle to economic development for California tribes has been the historic and continuing under-funding of federal Indian programs in California.<sup>13</sup> The inequitable treatment of California tribes by the BIA has left most of them scrambling to maintain even minimal administrative structures.<sup>14</sup> Many do not have the infrastructure to support business development. Thus, California tribes have not had the resources, administrative capability or experience to develop business plans, market and feasibility analyses, or land use plans. Nor have they received technical assistance from the BIA to complete these necessary prerequisites to the pursuit of economic development opportunities.

The small size and isolation of most reservations and rancherias, and the absence of natural resources, capital and administrative capability, have left California Indians with almost no means to attain self-sufficiency. For most California tribes, the only businesses that can lure outside investment and have any potential for success are those that take advantage of the tribes' sovereign status and the inapplicability of state regulatory laws to trust lands. (Even these opportunities are not available to California's many unrecognized tribes because their sovereignty is not acknowledged by the federal government and they have no trust lands.) Unfortunately, these types of businesses—most notably gaming and industrial recycling—are very unpopular with neighboring non-Indian communities. The result is increased federal regulatory control over these activities, and constant challenges to tribal sovereignty by the State of California.

## **II. The Role of Tribal Sovereignty in Economic Development**

Perhaps more than in any other area of Indian Country, the economic development of most tribes in California until recently has been subject to almost exclusive federal control. This situation still exists for the majority of California tribes.

Federal control is the default mode of tribal economic organization and is inevitably what happens in the absence of the exercise of sovereignty and the institutions that back it up.<sup>15</sup> For

most of California's tribes, the better part of the last century and a half has been a struggle for survival. The mid-nineteenth century American migration to California, spurred by the discovery of gold in 1848, resulted in the mass confiscation of tribal homelands, the dismantling of tribal institutions of self-government and self-sufficiency, efforts to exterminate any Indian tribes that resisted, and widespread poverty within those Indian communities that survived. Reduced to a situation of almost total dependency, the California tribes were not in a position to exercise the types of inherent sovereign powers confirmed by early Supreme Court decisions. Even the passage of the Indian Reorganization Act (IRA) in 1934 did little to restore the institutions of tribal self-government in California because of the continuing influence of the BIA in virtually every aspect of tribal affairs.

The advent of the Self-Determination Era in the 1970s, embodied in the provisions of the Indian Self-Determination and Education Assistance Act<sup>16</sup> provided the first real opening for the exercise of *de facto* tribal sovereignty<sup>17</sup> in California. Yet, as demonstrated by the recent explosion of litigation around the Indian gaming issue, and further exemplified in the State of California's long-standing hostility to tribal regulatory jurisdiction,<sup>18</sup> the legal and *de facto* sovereignty of tribes in California, as elsewhere, has been subject to constant challenge. Still one hears the familiar refrain: if the tribes wish to be sovereign, they must first establish sound, independent economies. The evidence demonstrates just the reverse.

If tribal sovereignty is supported, it offers tribes the primary and most valuable tool for developing sound, non-federal dependent reservation economies. How? By placing those whose resources and well-being are at stake in charge and by offering distinct legal and economic market opportunities, such as reduced tax and regulatory burdens for industry. Indeed, a recent study documented the situation of a cross-section of Indian tribes that had experienced varying levels of economic success and concluded that "[o]ne of the quickest ways to bring development to a halt and prolong the impoverished conditions of reservations would be to undermine the sovereignty of Indian tribes."<sup>19</sup> The following discussion provides some examples of how judicial and legislative limitations on tribal sovereignty can inhibit tribal economic development.

### **III. Obstacles to Development of Viable Reservation Economies**

The obstacles to the development of viable tribal economies in California include: (1) the limited land and resource base; (2) the difficulties in attracting private investment and capital to impoverished communities; (3) the limited availability of alternative sources of investment financing; (4) the largely unskilled labor force; (5) the lack or inadequacy of reservation physical infrastructure in the form of roads, water and sanitation systems; and (6) the lack of adequate governmental institutions and capacity to plan and implement economic development (reflected in inadequate or nonexistent development planning and policy direction, the lack of necessary codes and ordinances, the absence of courts or other dispute-resolving bodies, and the political instability of Indian communities still mired in a pattern of dependency and hopelessness not of their choosing). The situation is complex and there is no easy, single solution or model to address problems that have their roots in more than a century of neglect, dependency and broken

promises. A comprehensive analysis of these is beyond the scope of this report and will require in-depth, targeted research to devise multi-faceted, flexible economic strategies for dealing with the wide variations in natural resources, political institutions, physical and social infrastructures, and rates of unemployment and poverty, that exist within Indian country in California today.

The following discussion is more limited in scope. It focuses on some of the legal obstacles to tribal economic development and the lack of appropriate incentives and support for California tribes to fully utilize and translate their sovereignty into viable reservation economies.

#### A. Judicial Obstacles to Tribal Economic Development

This part provides examples of the obstacles to tribal economic development presented by judicial decisions which postulate a short-sighted and unduly limited view of tribal sovereign authority to tax and regulate property rights and activities within reservation boundaries. Each of these decisions is based, to some extent, on the unique history and peculiar nature of Indian land tenure under the Allotment Policy of the late nineteenth and early twentieth centuries. While that policy, grounded in the belief that tribalism must be dismantled in order for the Indian to enter the economic mainstream of American society,<sup>20</sup> was rejected over sixty years ago, its perpetuation in these judicial decisions of a latter era have undermined full implementation of the extant federal policy of tribal self-determination and economic self-sufficiency.

##### 1. State Taxation of Non-Indian Lessees of Allotted Trust Lands

In the 1970s, the Ninth Circuit Court of Appeals decided two cases, Fort Mojave Tribe v. County of San Bernardino<sup>21</sup> and Agua Caliente Band of Mission Indians v. County of Riverside,<sup>22</sup> which upheld the levy of a possessory interest tax by two California counties on the leasehold interests of non-Indian lessees of allotted reservation trust lands. Subsequent decisions of the Ninth Circuit and the United States Supreme Court have eroded these questionable precedents, but neither has been expressly overruled. In the meantime, California counties continue to derive tax revenues from non-Indian leases of Indian trust lands.

At the time Fort Mojave and Agua Caliente were decided, the Supreme Court case law on the preemptive effect of federal statutory schemes in Indian cases was relatively undeveloped. Since then, commencing in the early 1980s, the Supreme Court has rendered a series of decisions in which the comprehensive nature of various federal regulatory schemes involving on-reservation activities were found to preempt the application of state taxes.<sup>23</sup> In addition, in 1987 the Ninth Circuit decided Segundo v. City of Rancho Mirage,<sup>24</sup> which seemed to depart from its earlier holdings in Fort Mojave and Agua Caliente. In Segundo, the Court observed that the statute and regulations governing Indian leasing left "no room" for the application of the City of Rancho Mirage's rent control ordinances to non-Indians residing on leased allotted lands.<sup>25</sup> The court compared the statutory and regulatory scheme to those involved in three other cases where the Supreme Court had held state law to be pre-empted by federal law, and found the leasing scheme to be "substantially similar" to the federal schemes involved in the other cases.<sup>26</sup> Similarly, in Gila



River Indian Community v. Waddell (Gila River I),<sup>27</sup> decided in 1992, the Ninth Circuit reversed the district court's dismissal of the Tribe's suit to enjoin the imposition of a state tax on revenues derived from non-Indian businesses located on leased tribal trust lands. In reversing the district court and remanding for further proceedings, the Ninth Circuit comprehensively reviewed the Supreme Court's decisions on federal preemption of state taxing authority in Indian cases and observed that "[t]he Tribe has thus alleged precisely the sort of federal involvement in the leasing of its . . . property that could support a claim for the preemption of the State's taxing authority."<sup>28</sup>

However, on appeal after remand in Gila River I, the Ninth Circuit in Gila River Indian Community v. Waddell (Gila River II) upheld the district court's rejection of the Tribe's claims on the merits, holding that neither the federal nor tribal interests involved were sufficient to render the state's assertion of taxing authority over non-Indian lessees of trust lands unreasonable.<sup>29</sup> In contrast to its decision in Gila River I, the Court in Gila River II downplayed the preemptive effect of the federal leasing scheme and focused on the fact that the state tax was imposed on "receipts from non-Indian, off-Reservation residents . . .,"<sup>30</sup> and that the Tribe's involvement in the reservation activities on the leased lands was "not sufficient to shift the balance in the preemption inquiry significantly."<sup>31</sup>

Taken as a whole, the Ninth Circuit decisions create uncertainty and confusion over whether the tribes, as opposed to the state or county governments, will realize the full economic benefit from non-Indian leases of Indian trust lands located within reservation boundaries. This uncertainty should be resolved by Congress in a way that ensures that the economic benefits from the leasing of such lands, whether it be revenues derived from rental income or from taxes, accrue exclusively to the Indians. The balancing test applied in Gila River II should be rejected because it minimizes the territorial aspects of tribal sovereignty in favor of an interest-based analysis which accords undue weight to state economic interests.

Moreover, although the weight of Supreme Court and Ninth Circuit authority would appear to support federal preemption of the state possessory interest tax in most cases, neither Fort Mojave nor Agua Caliente has been expressly overruled by the Ninth Circuit and now Gila River II appears to shift the burden to the tribes to demonstrate that their interests are sufficiently strong to oust state taxing authority over non-Indians. In the absence of a clear statement by the courts, counties that have enjoyed the economic benefits of taxing non-Indian lessees of Indian lands over the years will undoubtedly resist any attempt by the tribes to oust the counties' possessory interest tax. The result will be protracted litigation based on a fact-intensive balancing test. Congress can short-cut this process by enacting legislation, pursuant to its comprehensive Indian Commerce Clause power, which expressly preempts the imposition of a state possessory interest tax on the non-Indian lessees of Indian trust lands within reservation boundaries.

Such a legislative resolution would have one or more of the following effects where individual Indian lands are being leased: (1) the lease amount realized by the individual Indian lessor should increase assuming that no tribal tax equivalent to the state tax is imposed; (2) if a tribal tax equivalent to the state's tax is imposed, some or all of the economic benefit realized

from the immunity of the non-Indian lessee from the state tax will be passed on to the tribe; or (3) the economic benefit of the non-Indian immunity from the state tax could be shared under some agreed-to formula between the tribe and the individual Indian lessor. If the lands leased are tribal trust lands, the tribe would realize the full economic benefit of the non-Indian lessee's immunity from state tax in the form of either an increased lease amount or tax revenue (e.g., in a situation where a tribal tax simply replaces the possessory interest tax). In any of these scenarios or combination thereof, the economic benefit of the non-Indian's immunity from imposition of the state tax is passed on to the Indians (either the tribe or the individual Indian lessor, or both). This is where the economic benefit should go, not to the state or county coffers.

## 2. Application of Local Zoning Laws to Reservation Lands

The Supreme Court decision in Brendale v. Confederated Tribes and Bands of the Yakima Reservation,<sup>32</sup> presents a major barrier to the effective and uniform assertion of tribal zoning authority over lands within reservation boundaries.

In Brendale, the Court upheld *exclusive* county jurisdiction to zone a parcel of land owned by a non-Indian in an area of the Yakima Indian Reservation, characterized by the lower courts as an "open" area because access to it was not restricted to the general public and almost half of the land was fee land.<sup>33</sup> The effect of Brendale is to limit tribal planning and zoning authority, and to create the potential for "checkerboard" jurisdiction within reservations where there is a mix of trust and fee lands. This result invites conflict between tribes and local county governments in their respective planning and land use efforts and adds an element of uncertainty and instability that may discourage private investment in reservation economies or impede tribal efforts to protect the reservation environment.<sup>34</sup>

## 3. State Taxation of Indian-Owned Fee Lands

In County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation,<sup>35</sup> the Supreme Court upheld the imposition of a state *ad valorem* tax on Indian and tribal fee lands within the Yakima Indian Reservation. These lands were originally allotted in trust to individual Indian owners pursuant to the General Allotment Act of 1887.<sup>36</sup> Subsequent to allotment, fee patents had been issued and some of the lands had been reacquired by the tribe.<sup>37</sup> The Court interpreted the Act to require that, once a fee patent had issued, the lands became subject to state taxation regardless of the nature of the landowner (individual Indian or Indian tribe).<sup>38</sup> The effect of Yakima is to subject to state *ad valorem* taxation Indian lands held under fee patent issued pursuant to the Allotment Act. Justice Blackmun, in dissent, pointed out the irony of justifying state taxation of Indian-owned lands within reservation boundaries based on the language, ambiguous at best, and policies of a system which had "pauperize[d] the Indian while impoverishing him, and sicken[ed] his soul while pauperizing him, and cast him in so ruined a condition into the final status of a nonward dependent upon the States and counties."<sup>39</sup> Aside from the authority to impose its tax, under Yakima the state would have the authority to foreclose on lands for which taxes were past due.<sup>40</sup>

The combined effect of Brendale and Yakima is to allow the state to reach into the territories of sovereign tribes to implement potentially conflicting zoning and land use policies on non-Indian lands and to derive tax revenues from Indian-owned fee lands. Both decisions undermine the jurisdiction and authority of tribal governments to initiate and carry out the planning, regulatory, and taxing functions essential to an integrated approach to economic development on reservations with mixed land ownership patterns as a result of allotment. Some of the larger Indian reservations in California, such as the Round Valley Indian Reservation, were allotted and have situations similar to that of the Yakima Indian Reservation.

There is a need for Congress to clarify these Supreme Court decisions by expressly recognizing all tribal governmental powers as extending to the full extent of the reservation, and that such powers are exclusive on Indian lands and concurrent on non-Indian lands. This approach would emphasize the “territorial” aspect of Indian sovereignty articulated in earlier Supreme Court cases by focusing the determination of jurisdiction on the “Indian country” status of the area rather than the trust or fee status of individual parcels.

#### B. Legislative Obstacles to Tribal Economic Development—Gaming

In addition to the barriers presented by judicial decisions, Congress has sometimes limited tribal economic development options by limiting the full range of the tribes’ exercise of sovereignty. Congress’ decision to legislate in the area of Indian gaming illustrates this point.

In California v. Cabazon Band of Mission Indians,<sup>41</sup> the Supreme Court upheld the exclusive authority of Indian tribes to regulate bingo operations on tribal lands within reservation boundaries so long as the state does not prohibit such activities. While the decision involved bingo operations, its underlying rationale also precludes the States from regulating other types of gaming activities within reservation boundaries. Recognizing this, the States prevailed upon Congress to limit tribal sovereign authority by requiring that certain types of gaming activities, (such as those involving banking card games, electronic facsimiles of games of chance or slot machines) be subject to negotiated agreements between the tribes and the States. In response to the States’ arguments, Congress enacted the Indian Gaming Regulatory Act of 1988 (IGRA),<sup>42</sup> which established detailed procedures for the development and regulation of Indian gaming activities, including procedures for concluding tribal-state compacts as to those forms of gaming mentioned above and classified as “Class III” in the Act. In effect, Congress recognized the State’s interests in Class III gaming by requiring state approval, pursuant to the compacting process, before tribes could engage in this type of gaming, thus divesting the tribes of their exclusive jurisdiction confirmed in Cabazon.

The tribes initially and understandably resisted this legislative limitation of their sovereignty and the clear line drawn between state and tribal regulatory jurisdiction in Cabazon. However, with the IGRA a *fait accompli*, the tribes resigned themselves to the compromise and procedures created by statute and began the process of compacting with respect to their proposed Class III gaming activities. In many cases, the tribes eventually received a favorable response

from state authorities who recognized the potential mutual benefits to be achieved by encouraging successful, well-regulated tribal gaming operations, including jobs creation for depressed or non-existent reservation economies, reduction of the states' burden of providing social welfare services to both on and near-reservation areas, revenue and/or tax sharing agreements between the tribes and states, and the development of a climate of cooperation between the tribes and states in other areas of mutual interest. However, the IGRA's compromise of the exclusive tribal jurisdiction affirmed in Cabazon has not fared well in California.

California has a long and consistent history of opposition to any form of tribal sovereignty. From the initial decision of the State Legislature in 1852 to oppose Senate ratification of the 18 treaties negotiated between federal commissioners, and its resulting genocidal policies of enslavement and "extermination" of the Indian population, to its modern-day opposition to the exercise of reserved Indian fishing rights and tribal regulatory and taxing authority in other areas, California has repeatedly demonstrated its hostility towards tribal sovereign authority and the continued efforts of the indigenous peoples of California to chart their own political and economic destiny. Thus, the good faith negotiation process that Congress envisioned would occur between the tribes and the States under the IGRA immediately encountered the institutional hostility of California to tribal sovereignty. The IGRA anticipated this problem and provided a federal court remedy where a state refused or failed to engage in good faith negotiations initiated by a tribe. This remedy, however, disappeared with the Supreme Court's decision in Seminole Tribe of Florida v. Florida, leaving the states free to flaunt the good faith provisions of IGRA without sanction.<sup>43</sup> California has taken full advantage of its immunity from remedy by resisting good faith efforts by the tribes of California to conclude tribal-state compacts on Class III gaming operations. In short, the Congressional compromise of tribal jurisdiction reflected in the IGRA provisions has not worked in California.

What are the alternatives? One is for Congress to specifically amend the IGRA to eliminate the States' participation, through the mechanism of compacting, in the Class III approval process. In other words, to return to the "bright line" aspect of the Cabazon decision modified only by a process of Secretarial review and approval similar to that which exists in the IGRA.<sup>44</sup> Such an amendment would go nowhere because the compacting process has worked in other states, and the States would undoubtedly oppose any process that retrenched from their involvement in decisions on Class III gaming. A more realistic and palatable alternative to the States, and one probably acceptable to most tribes, would be to seek an amendment which established a fixed time period during which a tribe would be required to initiate efforts to reach a compact with the state on Class III gaming, but if the state refused or failed to respond and a compact was not concluded despite the good faith efforts of the tribe within the statutory time period (e.g., 90 or 180 days), the tribe could go directly to the Secretary of the Interior for approval of its Class III gaming operation in accordance with clearly defined statutory or regulatory criteria.

Unfortunately, the controversy over Indian gaming has provoked some additional attempts to impose legislative limits on tribal sovereignty and thereby further impeding tribal economic

development initiatives. An example is the recent introduction of H.R. 325, a bill “to amend the Internal Revenue Code of 1986 to provide that the unrelated business income tax shall apply to the gaming activities of Indian tribes.” Until now the unrelated business income tax (UBIT) applied only to certain business activities or religious organizations, charities and similar tax-exempt organizations, and not to any government—tribal, state or local. Indeed, under current law, Indian tribes themselves are not taxable entities for purposes of the Internal Revenue Code.<sup>45</sup> While some tribes have realized substantial economic benefits from gaming, including a number of California tribes, this is no justification for withdrawing the tribes’ federal tax immunity while preserving that of state and local governments. In effect, this kind of regressive tax initiative penalizes Indian tribes for using their most powerful and effective tool—tribal sovereignty—for reestablishing themselves as not only self-governing, but also self-sufficient entities.

Another recent bill, H.R. 1554, introduced on May 8, 1997, is even broader in application than H.R. 325. It would apply the UBIT to “any Indian tribal organization” defined as “any Indian tribe and any organization which is immune or exempt from tax ... solely by reason of being owned or controlled by an Indian tribe.” In other words, H.R. 1554 would impose the UBIT on essentially any activity carried on by a tribal organization for the production of income from the sale of goods or the performance of services. As one author put it, “Indian tribes would be punished for even *thinking* about succeeding in the marketplace.”<sup>46</sup>

Fortunately, H.R. 1554 never made it out of committee. The fate of H.R. 325 remains undetermined. Both bills reflect a fundamental misunderstanding of the key role of tribal sovereignty as the primary vehicle for raising Indian communities out of decades of poverty. By undermining tribal sovereignty, these short-sighted initiatives will force the tribes into increased federal dependency without other viable alternatives for development, especially at a time when everyone is looking for federal programs to cut.

Instead of attacking the exercise of tribal sovereignty, which has effected positive economic change in some reservation economies where exclusive federal control had largely failed, Congress should reaffirm and expand its support for tribal institutions and development initiatives.

C. Attempts to Limit Tribal Economic Development Based on the “Undesirability” of the Proposed Development

As the alternatives for generating revenues to support essential tribal governmental programs and services have become more limited, some tribes have begun to explore economic opportunities in commercial development that are considered “undesirable” or “unsavory” by those who have little familiarity with, or sympathy for, the grinding poverty of most reservation communities. Thus, in addition to the obstacles that the courts and Congress have placed in the path of tribes striving to create reservation economies and achieve some degree of economic equity vis-a-vis state and local governments, barriers are raised when the proposed development, regardless of its legality and true merit, is perceived as “undesirable.” The situation of the Campo

Band in southern California provides a striking illustration of this “undesirability factor” as a barrier to tribal economic development.

The Campo Band of Mission Indians is a small Southern California tribe with lands located in a semi-desert area at the California-Mexican border.<sup>47</sup> In 1978, and again in the early 1980s, the Band began to investigate the possibility of developing a commercial waste facility as a means of generating both revenue and jobs for its impoverished community. At the time, however, the idea was rejected by tribal voters in favor of exploring other economic development alternatives. Later, in 1987, the Band’s General Council reversed course and authorized the Executive Committee to pursue the idea of siting a municipal solid waste facility in an area of the Campo Reservation that was zoned for industrial development.

The Band created two principal entities to manage project development as envisioned by the General Council: (1) the tribally-owned Muht Hei Corporation to address the financial aspects of development; and (2) the Campo Environmental Protection Agency (CEPA) to provide regulatory oversight for the project. The Band implemented these measures, first and foremost, to protect the Indian people of the Campo Reservation, their lands and their legacy for future generations. The ultimate effect of the Band’s considered approach to protecting the reservation environment, however, was much broader. It also provided protection for both the near and off-reservation environments and their non-Indian communities. Unfortunately, these communities did not see it that way.

When the Band began interviewing waste companies following its nationwide request for proposals, California State Assemblyman Steve Peace introduced a bill in the State Assembly to assert state jurisdiction on Indian lands as a means of stopping the Band’s development initiative. Assemblyman Peace was assisted in this effort by an off-reservation organization, Backcountry Against the Dump (BAD). Motivations for opposition to the development were both varied and complex, but shared a common feature—a misperception of the role and integrity of the Band in the development and regulation of the project based on inaccurate stereotypes of Indian tribes, and poor people in general, as being helpless in the face of economic power asserted by third parties. Thus, the opposition was based on assumptions that the Campo Band was: (1) incapable of providing the necessary fiscal and regulatory control, (2) was the victim of “environmental racism,” (3) would not be capable of regulating facilities from which it would derive economic benefit, and (4) that the selection of the appropriate waste management company would be determined in an inequitable manner.

With little in the way of resources, the Band resisted this assault on what it had determined was a viable project. It was eventually assisted in this effort by the management company it selected, Mid American Waste Systems (MAWS). In the end, the Band prevailed in the first test of its regulatory authority when then-Governor Deukmejian vetoed the state bill, citing its conflict with federal law. Undaunted, Assemblyman Peace made another attempt in 1991 to assert state jurisdiction over Indian lands, but this time the Band had more resources at its disposal and was supported by tribes throughout California, the National Congress of American Indians, and the

Native American Rights Fund. Senator Inouye of the Senate Committee on Indian Affairs also voiced his opposition to the bill. Faced with certain defeat, Assemblyman Peace decided to compromise and the bill was subsequently rewritten to authorize voluntary cooperative agreements between State regulatory agencies and tribes, or tribal regulatory agencies, for the purpose of regulating waste facilities. This bill passed the California Legislature and was signed into law by Governor Wilson.

Thereafter, the State Water Resources Control Board and the Integrated Waste Management Board reviewed the Campo Band's regulations and permits and found them to be equal or superior to State regulation. Following these findings, in 1992 the Band became the first tribal agency in California to sign a cooperative agreement with the California Environmental Protection Agency for the purpose of solid waste regulation.

In this instance, a small tribe with limited resources but extraordinary determination and strong personnel was able to overcome an uninformed and hostile public reaction to an unpopular, but environmentally and economically sound proposal. Few tribes in California, given the resources expended in the Campo Band's fight in the courts and Legislature, would be able to prevail in a similar situation. Even Campo would have been hard-pressed without the assistance of its contractor and tribal supporters.

There are disturbing elements in this example of tribal initiative to break the cycle of poverty. One is the view of tribal governments as either helpless in the face of the promise of economic gain, or willing to pursue their economic interests without regard to the effects of development on the reservation and surrounding environments. As a corollary to this, there is an implicit assumption that because tribal governments are generally poor, they lack the integrity and capacity to regulate on-reservation development. In short, it is the public perception of tribal governments, and not their actions or intentions, which most frequently drives opposition to tribal economic development initiatives. Furthermore, if the development or activity that a tribe intends to embark upon is perceived as something undesirable, such as "waste disposal",<sup>48</sup> the prospects for conflict increase dramatically regardless of the merit of the proposal or the substantial economic benefits that would accrue to the tribal and surrounding communities.

#### **IV. Some Possible Models for Tribal Economic Development in California**

This part of the report discusses the different economic development models used by tribes in California and suggests some potential new models that might be employed to address limiting factors, such as the generally small size and widely dispersed nature of the Indian land base in California, and the difficulties that small, resource-poor tribes experience in attracting private investment capital.

As discussed earlier, the dominant model of reservation economic development in California has been and continues to be federal control, though this pattern is slowly changing as tribes realize that they have stronger incentives to make appropriate development decisions than

the BIA because they are the ones who more directly bear the costs and reap the benefits of those decisions. Passage of Pub. L. No. 93-638 and the Indian Self-Governance Law,<sup>49</sup> coupled with the recent reorganization of the BIA,<sup>50</sup> provide additional incentives for tribes to initiate and increase the exercise of tribal authority over reservation economic development.

In addition to federal control, economic development in Indian Country generally tends to follow one model or a combination of the following three: (1) tribal enterprise; (2) private business enterprise with tribal member ownership; and (3) private enterprise with non-tribal member control.<sup>51</sup> The success of all of these models depends on the effectiveness of the institutions of tribal government, including mechanisms for dispute resolution; the consistency between these institutions and tribal cultural standards and traditions;<sup>52</sup> formal decision rules, procedures, and record systems; and a clear separation of tribal policy and economic development strategy from day-to-day business decisions.

Tribes in California that have begun to break away from federal control of tribal initiatives tend to use the tribal enterprise model or the private enterprise model involving non-tribal member control. The latter model is usually implemented through a management agreement with outside investors, including provisions that insulate management decisions from political interference and are backed up by provisions for third-party arbitration and/or limited waivers of sovereign immunity. Because most California tribes have small land bases and limited resources, their primary sources of development capital are federal grant and loan programs and private investment capital. Private investors, attracted by the potential tax and regulatory advantages offered by doing business on the reservation, and the strategic proximity of some reservations and rancherias to major commercial centers, provide the largest source of development capital to California tribes. Some of the larger California tribes with significant marketable resources, such as timber or minerals, have used their own funds, or a combination of tribal and federal funds, to capitalize tribal enterprises without having to attract private investment.

A further variation on the tribal enterprise model is the tribal consortium. As an increasing number of California's smaller tribes form both regional and statewide consortia<sup>53</sup> in the areas of environmental and natural resource protection as a means of sharing and pooling expertise, it may also prove feasible for these tribes to use the consortium model as a mechanism for launching joint-tribal economic ventures. Since a number of tribes already share expertise in specific areas of resource development through these consortia, it would be logical to explore how these same cooperative arrangements might also be used to provide the capital and strategic direction to support shared interests and goals in achieving reservation economic development.

With respect to the use of the private enterprise model using non-tribal member control, the way in which the United States government subsidizes development assistance to friendly foreign countries is instructive. Some California tribes have suggested that the federal government should extend benefits, similar to those provided by the Overseas Private Investment Corporation (OPIC),<sup>54</sup> to investors who are considering investing in developing tribal economies. The purpose of the OPIC is "[t]o mobilize and facilitate the participation of United States private



capital and skills in the economic and social development of less developed friendly countries and areas, thereby complementing the development assistance objectives of the United States, ..."<sup>55</sup> The OPIC supports, finances and insures projects that have a positive effect on U.S. employment, are financially sound, and promise significant benefits to the social and economic development of the host country. Thus, OPIC's mandate is to support projects that are responsive to the development needs of the host country, and foster private initiative and competition. These purposes and goals of the OPIC seem uniquely transferable to the situation of many of California's tribes.

Either the OPIC statute could be amended to extend its coverage to eligible Indian tribes, or Congress could create a separate California Tribal Homelands Private Investment Corporation using the basic structure of the OPIC, but shaping its mandate to state that the development assistance provided is consistent with the trust responsibility of the United States government to the California Indians.

## V. Surveys of California Indian Tribes

Although one can observe over time the success or failure of tribal economic development initiatives—the barriers, the opportunities seized or lost, the latent or realized tribal potential—and from these observations reach some conclusions about why some succeeded and others failed, the inquiry would not be complete without hearing from the tribes themselves.

### A. Survey Methods

During July and August of 1995, the Center for Indian Community Development (CICD) conducted two surveys of California Indian tribes:

- (1) At the time these surveys were commenced, there were 101 federally recognized tribes in California. Since that time, three additional tribes have been recognized or restored: the Ione Band of Miwok Indians of California, the Paskenta Band of Nomlaki Indians and the United Auburn Indian Community of the Auburn Rancheria. Due to time constraints, however, these tribes could not be included in our surveys. In addition, the Alturas Indian Rancheria was inadvertently left out of the survey process. Thus, a total of 100 recognized tribes were included in the survey. Eighty-four tribes responded. Where known, data is included on the tribes that were not surveyed or did not respond (e.g., land base figures from the BIA.) An initial survey was conducted to update published information pertaining to each group included in the *1994 Field Directory of the California Indian Community*, published by the Indian Assistance Program, Department of Housing and Community Development, State of California. Of particular interest was land base and population data. The CICD sent each tribal group a copy of the "Tribal Information and Directory" page from the *1994 Field Directory* with a cover memorandum to the tribal administrator requesting confirmation if the copied

information be correct, or a notification of appropriate changes. Only one survey was sent to the Pit River Tribe, which is the federally recognized government for seven different rancherias (Big Bend, Burney, Likely, Lookout, Montgomery, Roaring Creek, and XL Ranch.)

- (2) An "Economic Development Issues Survey" was also sent to the tribal administrator of the surveyed tribes. This second survey included an explanatory cover memorandum and a questionnaire designed to identify economic development issues impacting Indian individuals and tribal communities in the state of California. Tribes were asked to complete and return the questionnaire by telefax or using a pre-addressed, postage-paid envelope, or to respond by telephone.

Specialized database programs were developed and used to compile the results of both surveys.

#### B. Survey Results

(1) Land Base and Population Data. Ninety (90%) of the surveyed tribes (representing 106 land bases) in California responded to the survey requesting updates to the directory information. These responses, however, often included land owned in fee by tribes and individual tribal members. Thus, instead of using the data from the survey responses, BIA data on the trust acreage of each federally recognized tribe located wholly within California was used in Table 1 below.<sup>56</sup> The four tribes whose land base straddles the California-Arizona border—the Chemehuevi Indian Tribe, Colorado Indian Tribes, Fort Mojave Indian Tribe, and the Quechan Tribe (Fort Yuma Reservation)—are not included in the following tables because their land lies mostly in Arizona, and they are all under the jurisdiction of the Phoenix Area Office.

**TABLE 1. CALIFORNIA TRIBAL TRUST LAND<sup>57</sup>**

Tribe	Reservation(s)	Tribal Trust Land	Allotments	Total Acreage
Agua Caliente Band of Cahuilla Indians	Agua Caliente Reservation	2,873.57	19,917.48	22,791.87
Alturas Indian Rancheria of Pit River Indians	Alturas Rancheria	20.00	0.00	20.00
Augustine Band of Cahuilla Mission Indians	Augustine Reservation	341.80	160.49	502.29
Barona Group of Capitan Grande Band of Mission Indians	Barona Reservation	5,903.52	0.00	5,903.52
Bear River Band	Rohnerville Rancheria	60.00	2.16	62.16
Berry Creek Rancheria of Maidu Indians (Tyme Maidu Band of Concow Maidu Indians)	Berry Creek Rancheria	65.04	0.00	65.04
Big Lagoon Rancheria of Smith River Indians	Big Lagoon Rancheria	20.70	0.00	20.70
Big Pine Band of Owens Valley Paiute Shoshone Indians	Big Pine Reservation	279.00	0.00	279.00
Big Sandy Rancheria of Mono Indians	Big Sandy Rancheria	76.56	52.27	128.83
Big Valley Rancheria of Pomo & Pit River Indians	Big Valley Rancheria	38.52	14.52	53.04
Blue Lake Rancheria	Blue Lake Rancheria	0.00	9.40	9.40
Bridgeport Paiute Indian Colony	Bridgeport Indian Colony	40.00	0.00	40.00
Buena Vista Rancheria of Me-Wuk Indians	Buena Vista Rancheria	0.00	0.00	0.00
Cabazon Band of Cahuilla Mission Indians	Cabazon Reservation	953.52	428.76	1,382.28
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community	Colusa Rancheria	273.22	0.00	273.22
Cahuilla Band of Mission Indians	Cahuilla Reservation	18,884.26	0.00	18,884.26
Cahto Indian Tribe of the Laytonville Rancheria	Laytonville Rancheria	200.00	0.00	200.00
Campo Band of Diegueno Mission Indians (Campo Band of Kumeyaay Indians)	Campo Indian Reservation	15,480.28	0.00	15,480.28

Tribe	Reservation(s)	Tribal Trust Land	Allotments	Total Acreage
	Capitan Grande Reservation (see Barona and Viejas Groups)	15,753.40	0.00	15,753.40
Cedarville Rancheria of Northern Paiute Indians	Cedarville Rancheria	17.00	0.00	17.00
Cher-Ae Heights Indian Community	Trinidad Rancheria	49.72	0.00	49.72
Chicken Ranch Rancheria of Me-Wuk Indians	Chicken Ranch Rancheria	2.85	0.00	2.85
Cloverdale Rancheria of Pomo Indians	Cloverdale Rancheria	0.00	0.00	0.00
Coast Indian Community of Yurok Indians of the Resighini Rancheria	Resighini Rancheria	228.13	0.00	228.13
Cold Springs Rancheria of Mono Indians	Cold Springs Rancheria	154.65	0.00	154.65
Cortina Indian Reservation of Wintun Indians	Cortina Rancheria	640.00	0.00	640.00
Coyote Valley Band of Pomo Indians	Coyote Valley Reservation	57.76	0.00	57.76
Cuyapaipe Community of Diegueno Mission Indians	Cuyapaipe Reservation	4,102.73	0.00	4,102.73
Death Valley Timbi-Sha Shoshone Band (Timbi-Sha Shoshone Tribe)	Death Valley	0.00	0.00	0.00
Dry Creek Rancheria of Pomo Indians	Dry Creek Rancheria	75.00	0.00	75.00
Elem Indian Colony of Pomo Indians	Sulphur Bank Rancheria	50.00	0.00	50.00
Elk Valley Rancheria (Elk Valley Rancheria of Smith River Tolowa Indians)	Elk Valley Rancheria	0.00	21.72	21.72
Enterprise Rancheria of Maidu Indians (Enterprise Rancheria of Estom Yumeka Maidu Indians)	Enterprise Rancheria	40.00	0.00	40.00
Fort Bidwell Indian Community of Paiute Indians	Fort Bidwell Reservation	3,304.40	0.00	3,304.40
Fort Independence Indian Community of Paiute Indians	Fort Independence Reservation	233.85	113.34	347.19
Greenville Rancheria of Maidu Indians	Greenville Rancheria	0.00	1.80	1.80
Grindstone Indian Rancheria of Wintun-Wailaki Indians	Grindstone Indian Rancheria	100.03	0.00	100.03

Tribe	Reservation(s)	Tribal Trust Land	Allotments	Total Acreage
Guidiville Rancheria (Guidiville Band of Pomo Indians)	Guidiville Rancheria	0.00	2.25	2.25
Hoopla Valley Tribe	Hoopla Valley Reservation	85,502.18	1,301.61	86,803.79
Hopland Band of Pomo Indians (Pomo Tribe of the Hopland Rancheria)	Hopland Rancheria	56.90	56.30	113.20
Inaja Band of Diegueno Mission Indians	Inaja - Cosmit Reservation	851.81	0.00	851.81
Ione Band of Miwok Indians		0.00	0.00	0.00
Jackson Rancheria of Me-Wuk Indians	Jackson Rancheria	330.66	0.00	330.66
Jamul Indian Village	Jamul Indian Village	6.03	0.00	6.03
Karuk Tribe	Karuk Reservation Orleans	279.56 6.63	0.00 0.00	279.56 6.63
Kashia Band of Pomo Indians	Stewarts Point Rancheria	40.00	0.00	40.00
La Jolla Band of Luiseno Mission Indians	La Jolla Reservation	7,957.31	583.94	8,541.25
La Posta Band of Diegueno Mission Indians	La Posta Indian Reservation	3,556.49	0.00	3,556.49
Los Coyotes Band of Cahuilla Mission Indians	Los Coyotes Reservation	25,049.63	0.00	25,049.63
Lytton Rancheria (Lytton Band of Pomo Indians)	Lytton Rancheria	0.00	0.00	0.00
Manchester Band of Pomo Indians	Manchester-Point Arena Rancheria	363.09	0.00	363.09
Manzanita Band of Diegueno Mission Indians	Manzanita Reservation	3,579.38	0.00	3,579.38
Mechoopda Indian Tribe	Chico Rancheria	0.00	0.00	0.00
Mesa Grande Band of Diegueno Mission Indians	Mesa Grande Reservation	920.00	0.00	920.00
Middletown Rancheria of Pomo Indians (Middletown Rancheria of Lake Miwok Indians)	Middletown Rancheria	108.70	0.00	108.70
Mooretown Rancheria of Maidu Indians	Mooretown Rancheria	34.76	19.69	54.45

Tribe	Reservation(s)	Tribal Trust Land	Allotments	Total Acreage
Morongo Band of Cahuilla Mission Indians	Morongo Reservation	31,075.47	1,286.35	32,361.82
Northfork Rancheria of Mono Indians	Northfork Rancheria	0.00	80.00	80.00
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony	Bishop Reservation	875.00	0.00	875.00
Paiute Shoshone Indians of the Lone Pine Community	Lone Pine Reservation	237.00	0.00	237.00
Pala Band of Luiseno Mission Indians	Pala Reservation	10,754.77	1,138.05	11,892.82
Paskenta Band of Nomlaki Indians	Paskenta Rancheria	0.00	0.00	0.00
Pauma Band of Luiseno Mission Indians	Pauma & Yuima Reservation	5,877.25	0.00	5,877.25
Pechanga Band of Luiseno Mission Indians	Pechanga Reservation	3,163.42	1,233.02	4,396.44
Picayune Rancheria of Chukchansi Indians	Picayune Rancheria	0.00	28.76	28.76
Pinoleville Rancheria of Pomo Indians	Pinoleville Rancheria	2.84	18.42	21.26
Pit River Tribe	Big Bend	40.00	0.00	40.00
	Burney	79.00	0.00	79.00
	Likely (cemetery)	1.32	0.00	1.32
	Lookout	40.00	0.00	40.00
	Montgomery	108.44	0.00	108.44
	Roaring Creek Rancheria XL Ranch	80.00	0.00	80.00
Potter Valley Rancheria of Pomo Indians	Potter Valley Rancheria	9,406.54	0.00	9,406.54
Potter Valley Rancheria of Pomo Indians	Potter Valley Rancheria	0.00	0.00	0.00
<b>Public Domain Allotments</b>			20,034.04	
Quartz Valley Reservation	Quartz Valley Reservation	0.00	24.02	24.02
Ramona Band or Village of Cahuilla Mission Indians	Ramona Reservation	560.00	0.00	560.00
Redding Rancheria	Redding Rancheria	3.33	8.76	12.09
Redwood Valley Rancheria of Pomo Indians	Redwood Valley Rancheria	159.61	14.70	174.31
Rincon Band of Luiseno Mission Indians	Rincon Reservation	3,932.04	337.48	4,269.52
Robinson Rancheria of Pomo Indians	Robinson Rancheria	123.09	9.94	133.03

Tribe	Reservation(s)	Tribal Trust Land	Allotments	Total Acreage
Round Valley Indian Tribes	Round Valley Reservation	26,094.50	5,612.34	31,706.84
Rumsey Indian Rancheria of Wintun Indians	Rumsey Rancheria	185.43	0.00	185.43
San Manuel Band of Serrano Mission Indians	San Manuel Reservation	698.88	0.00	698.88
San Pasqual Band of Diegueno Mission Indians	San Pasqual Reservation	1,379.58	0.00	1,379.58
Santa Rosa Indian Community	Santa Rosa Rancheria	170.00	0.00	170.00
Santa Rosa Band of Cahuilla Mission Indians	Santa Rosa Reservation	11,092.60	0.00	11,092.60
Santa Ynez Band of Chumash Mission Indians	Santa Ynez Reservation	126.63	0.00	126.63
Santa Ysabel Band of Diegueno Mission Indians	Santa Ysabel Reservation	15,526.78	0.00	15,526.78
Scotts Valley Band of Pomo Indians (Scotts Valley Band of Pomo Indians of the Sugar Bowl)	Scotts Valley Rancheria	0.00	0.79	0.79
Sheep Ranch Rancheria of Me-Wuk Indians	Sheep Ranch Rancheria	0.92	0.00	0.92
Sherwood Valley Rancheria of Pomo Indians	Sherwood Valley Rancheria	349.97	0.00	349.97
Shingle Springs Band of Miwok Indians (Verona Tract)	Shingle Springs Rancheria	160.00	0.00	160.00
Smith River Rancheria	Smith River Rancheria	32.54	48.70	81.24
Soboba Band of Luiseno Mission Indians	Soboba Reservation	5,915.68	0.00	5,915.68
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoc Indians	Susanville Rancheria	150.53	0.00	150.53
Sycuan Band of Diegueno Mission Indians	Sycuan Reservation	379.54	260.46	640.00
Table Bluff Rancheria of Wiyot Indians	Table Bluff Rancheria	102.00	0.00	102.00
Table Mountain Rancheria	Table Mountain Rancheria	19.30	41.63	60.93

Tribe	Reservation(s)	Tribal Trust Land	Allotments	Total Acreage
Torres-Martinez Band of Cahuilla Mission Indians (Torres-Martinez Desert Cahuilla Indians)	Torres-Martinez Reservation	18,223.16	5,699.85	23,923.01
Tule River Indian Tribe	Tule River Reservation	55,395.93	0.00	55,395.93
Tuolumne Band of Me-Wuk Indians	Tuolumne Rancheria	335.77	0.00	335.77
Twenty-Nine Palms Band of Luiseno Mission Indians	Twenty-Nine Palms Reservation	402.13	0.00	402.13
United Auburn Indian Community	Auburn Rancheria	0.00	0.00	0.00
Upper Lake Band of Pomo Indians	Upper Lake Rancheria	0.00	19.48	19.48
Utu Utu Gwaitu Paiute Tribe	Benton Paiute Reservation	160.00	0.00	160.00
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians	Viejas Reservation	1,609.00	0.00	1,609.00
Yurok Tribe	Yurok Reservation	1,141.28	4,268.22	5,409.50
<b>TOTAL</b>		405,132.98	62,851.66	468,052.46

The land bases of the 100 tribal groups located wholly within California range from no acreage at all for 18 tribes, to 86,803.79 for the Hoopa Tribe. The population bases range from zero to 4,273. As illustrated in Tables 2 and 3 to follow:

- o 18 California tribes (18%) have no land base;
- o 34 California tribes (34%) have land bases of less than 50 acres;
- o 41 California tribes (41%) have land bases of less than 100 acres;
- o 67 California tribes (67%) have land bases of less than 500 acres;
- o 74 California tribes (74%) have land bases of less than 1,000 acres; and
- o 95 California tribes (95%) have land bases of less than 20,000 acres.



**TABLE 2. CALIFORNIA TRIBAL POPULATIONS BY RANGE AND FREQUENCY**

The following figures were obtained from the 96 tribes that responded to the survey.

<b><u>Reservation residential Population Range</u></b>	<b><u>Number of Tribal Groups</u></b>	<b><u>% of Tribal Groups</u></b>
0 - 49	26	25%
50 - 99	12	11%
100 - 199	18	17%
200 - 299	18	17%
300 - 399	8	7%
400 - 499	7	7%
500 - 999	10	9%
1,000 - 1,499	2	2%
1,500 - 1,999	1	1%
2,000 - 2,999	1	1%
3,000 - 3,999	2	2%
4,000+	1	1%

**TABLE 3. CALIFORNIA TRIBAL LAND BASES BY RANGE AND FREQUENCY**

<u>Tribal/Trust Acreage Range</u>	<u>Number of Tribal Groups</u>	<u>% of Tribal Groups</u>
0	18	18%
.1 - 49.9	16	16%
50 - 99	7	7%
100 - 199	12	12%
200 - 299	7	7%
300 - 399	6	6%
400 - 499	1	1%
500 - 599	1	1%
600 - 699	2	2%
800 - 899	2	2%
900 - 999	2	2%
1000 - 1999	3	3%
2000 - 2999	1	1%
3000 - 3999	5	5%
4000 - 4999	1	1%
5000 - 5999	3	3%
7000 - 7999	1	1%
9000 - 9999	1	1%
10,000 - 19,999	6	6%
20,000 - 29,999	2	2%
30,000 - 39,999	1	1%
50,000+	2	2%

(2) Economic Development Issues. Eighty-four (84%) of the 100 surveyed tribes in California responded to the Economic Development Issues survey. The following are summary highlights:

- o 45 out of 84 responding tribes (54%) do not own any businesses;
- o 20 out of 84 responding tribes (24%) own one business;
- o 8 out of 84 responding tribes (10%) own two businesses; and
- o 11 out of 84 responding tribes (13%) own three or more businesses.
- o 7 out of 84 responding tribes own agricultural businesses, 3 own construction businesses, 4 own manufacturing businesses, 10 own retail businesses, 1 owns a wholesale business, and 34 own other kinds of businesses.

- o 22 out of 84 (26%) had started one business; 8 (10%) had started 2 businesses; and 7 (8%) had started three or more businesses.
- o 6 out of 84 (7%) had purchased one business and 2 had purchased two businesses.
- o Among the 17 tribes reporting, gross annual sales from businesses, the range in sales was from \$2,850 to \$90 million. Of these, 8 reported sales of \$50,000 or less, and 6 reported sales of \$1 million or more.
- o Reporting on the total number of tribal members employed full-time in all business enterprises, 51 tribes had none and 33 tribes had a range from 1 employee to 400; 7 tribes had 5 or fewer; 8 tribes had 6 to 10; 9 tribes had 13 to 20; 6 tribes had 26 to 50; one had 52; one had 75; one had 125; and one 400.
- o Reporting on the total number of tribal members employed part-time in all business enterprises, 65 tribes had none and 19 tribes had a range from one to 100; 9 had 5 or fewer; 6 tribes had 6 to 20; one had 25; one had 60; one had 75; and one had 100.
- o Asked to characterize their experiences with tribal business enterprises, 18 tribes considered them a "boom"; 19, a "mixed blessing"; and 4, a "bust."
- o Among tribes that do not currently operate any business enterprises, 23 previously had either started or purchased a business.
- o Asked whether specific problems or obstacles had been encountered in starting or purchasing a business enterprise:
  - 45 tribes cited lack of adequate funds;
  - 39 tribes cited problems obtaining loans;
  - 34 tribes cited lack of knowledge of basic marketing principles;
  - 34 tribes cited lack of information about consumers;
  - 32 tribes cited problems with analyzing market trends and/or forecasting sales;
  - 33 tribes cited problems with analyzing economic/financial feasibility;
  - 28 tribes cited problems with preparing business plans and financing proposals;
  - 31 tribes cited difficulties with federal laws;
  - 36 tribes cited difficulties with state laws;
  - 14 tribes cited difficulties with tribal laws;
  - 30 tribes cited lack of experience or instability of tribal governing body;
  - 39 tribes cited lack of management experience;
  - 32 tribes cited lack of adequately trained labor force;
  - 35 tribes cited lack of adequate training facilities;
  - 33 tribes cited lack of land for economic development;

- 39 tribes cited lack of adequate physical infrastructure;
  - 33 tribes cited lack of adequate social infrastructure; and
  - 24 tribes cited various other difficulties.
- o Asked to identify the three biggest obstacles to starting or purchasing a tribal business:
- lack of equity funds was cited as the biggest obstacle by 22 tribes, as the second biggest obstacle by 9 more tribes and as the third biggest obstacle by another 4 tribes; a total of 35 tribes placed lack of equity funds in the top three obstacles.
  - problems obtaining loans was cited as the biggest obstacle by 3 tribes, as the second biggest obstacle by 6 more tribes and as the third biggest obstacle by another 2 tribes; a total of 11 tribes placed obtaining loans in the top three obstacles.
  - 7 tribes placed a lack of knowledge of marketing in the top three obstacles.
  - 11 tribes placed difficulties with federal laws in the top three obstacles.
  - 10 tribes placed difficulties with state laws in the top three obstacles.
  - 17 tribes placed lack of adequate land in the top three obstacles.
- o Asked to report tribal unemployment rates:
- the reported range was from 0% to 100%;
  - 8 tribes reported 0%;
  - 5 tribes reported 2% to 10%;
  - 4 tribes reported 17% to 20%;
  - 10 tribes reported 25% to 40%;
  - 10 tribes reported 41% to 50%;
  - 15 tribes reported 57% to 70%;
  - 19 tribes reported 71% to 80%; and
  - 6 tribes reported 85% to 100%.

It should be noted that according to reports published by the State of California, Employment Development Department, annualized unemployment rates for the state ranged from 7% to 9% between 1992 and 1994. The data indicate that 64 of 77 responding tribes (83%) had significantly higher unemployment rates of 17% to 100%.

The investigators also placed follow-up telephone calls to the 17 tribes reporting sales from tribal business enterprises, to determine the sources, or specific types of enterprises, that

were generating the sales. Some tribes made only partial answers to the survey and would not provide information on dollar amounts of sales. The findings follow in Table 4.

**TABLE 4. SOURCES OF TRIBAL SALES REVENUES**

<u>Tribe/Type(s) of Enterprise(s)</u>	<u>Acreage</u>	<u>\$ Sales</u>
Big Pine Band of Owens Valley Paiute-Shoshone — Leases	300 acres	\$ 50,000
Big Valley Rancheria of Pomo Indians — Gaming	53.04 acres	\$ 700,000
Blue Lake Rancheria — Plant and Garden Nursery	14.31 acres	\$ 32,000
Cabazon Band of Mission Indians — Industrial Recycling, Entertainment, Leases	1,382.28 acres	\$90,000,000
Fort Independence Indian Community of Paiute Indians — R.V. Campground and Lease	352.24 acres	\$ 15,000
Fort Yuma Reservation — Trailer/R.V. Parks (4) and People's Market	46,000 acres	\$ 289,000
Hoopa Valley Tribe — Timber/Logging, Mini-mart, Motel, Shopping Center	89,572 acres	\$13,200,000
Karuk Tribe of California — Forest Service Contracts	400 acres	\$ 30,000
Los Coyotes Band of Mission Indians — Campground	25,049.63 acres	\$ 12,000
Paiute-Shoshone Indians of the Bishop Community —	875 acres	\$ 500,000
Pauma Band of Mission Indians — Avocado Grove	5,877.25 acres	\$ 8,000
Pit River Tribe of California — Bingo/Gaming	9,567.18 acres	\$ 3,000
Quartz Valley Indian Community —	156.02 acres	\$ 2,850
Twenty-nine Palms Band of Mission Indians — Gaming	304 acres	\$27,000,000
Viejas Tribe of Mission Indians — Gaming	1,609 acres	\$80,000,000
<b>TOTAL TRIBAL SALES REVENUES:</b>		<b>\$216,641,850</b>

Based upon the data in Table 4 it is apparent that at least \$107,703,000 (50%) of the total \$216,641,850 in tribal Sales Revenues derives from gaming enterprises, and as much as another \$90,000,000 (41%) derives from industrial recycling.

### C. Conclusions

Based upon the results of the initial survey of federally recognized California tribes, it is apparent that most California tribes have extremely limited land and human resources at their disposal. That is, 89 (89%) of California's 100 tribal communities have populations of fewer than 500, and 99 (99%) have populations of fewer than 1,000. Moreover, 64 (64%) of California's 100 tribal groups have land bases of less than 500 acres. Data indicate that land acquisition, related physical infrastructure development and human resource development are critical to the economic development capacity-building of California tribes.

Based upon the results of the Economic Development Issues Survey, it is apparent that in spite of their disproportionately high unemployment rates, about half of California's tribes (45 of 84 responding tribes) are not in business. About half of those not currently in business (23 of 45) previously had either started or purchased a business. Of the 41 tribes that ever have been in business, only 18 (44%) considered the undertaking a "boom," and 23 (56%) considered it a "mixed blessing" or "bust."

Supporting the initial survey conclusions, the second survey revealed that in the experiences of 33 tribes, the lack of land was an obstacle to economic development; and 17 tribes placed the lack of land and the location of the land in the top three obstacles to starting or purchasing a business. In addition, 39 tribes had experienced the lack of adequate physical infrastructure as an impediment to economic development. Also supporting the initial survey conclusions, the second survey revealed the need for human resource development in the 84 responding tribes' identification of various other obstacles to enterprise ownership:

- 40% identified lack of knowledge of basic marketing principles;
- 40% identified lack of information about consumers;
- 38% identified problems with analyzing market trends and forecasting sales;
- 39% identified problems with analyzing economic/financial feasibility;
- 33% identified problems with preparing business plans and financing proposals;
- 36% identified lack of experience or instability of tribal governing body;
- 46% identified lack of management experience;
- 38% identified lack of adequately trained labor force;
- 42% identified lack of adequate training facilities; and
- 39% identified lack of adequate social infrastructure (e.g., health and social services, schools, colleges, law enforcement, and child care).

In addition to the foregoing conclusions, the data also indicate that for the majority of California tribes (45 of 84 or 54%), the lack of equity financing (i.e., business financing not derived from loans or other debts) has been a major obstacle to economic development. A total of 35 tribes placed the lack of equity financing in the top three obstacles to starting or purchasing a tribal business. Another 39 of 84 tribes (46%) have experienced difficulties obtaining loans for business development, and a total of 11 tribes placed difficulties obtaining loans in the top three

obstacles to starting or purchasing a tribal business. Hence, it can be concluded that, in addition to (or perhaps as a direct result of) inadequate land bases, infrastructure development and human resource development, the ability of California tribes to access equity and debt financing has been a major impediment to enterprise ownership.

Among the minority of California tribes (17 of 84 respondents or 20%) who reported sales from tribal enterprises, the vast majority of revenues (\$197,703,000 of \$216,641,850 or 91%) derive from businesses that rely upon tribal sovereignty as the legal means for their operation in the state of California (e.g., gaming and "industrial recycling"). It would appear from the survey data that very few alternatives exist for economically viable tribal business enterprises and therefore, cultural appropriateness and environmental safety are being redefined and/or sacrificed by some tribes. Largely without land or locations near significant population sites, without essential physical infrastructure development, without opportunities for human resource development, and without access to equity and debt financing, California tribes are extremely vulnerable to those who would exploit their sovereignty, particularly while promising millions of dollars in revenues from business enterprises whose principal competitive advantage is their illegality on non-reservation lands.

## **VI. Tribal Case Histories**

### **A. Karuk Tribe of California**

One of the largest and most geographically dispersed indigenous groups in the state, the Karuk Tribe of California estimates its total population, including enrolled and unenrolled members, at approximately 5,100. The Ancestral Territory of the Tribe includes all of Siskiyou County and the northeastern portion of Humboldt County—an area of approximately 4,000 square miles and 1.2 million acres. Landless at the time that federal recognition reaffirmed and revitalized the government-to-government relationship between the Karuk Tribe and the United States in 1979, the Tribe has reacquired 400 acres of land dispersed throughout aboriginal territory, parcel by parcel, for the development of tribal community centers, health clinics and housing projects. The Karuk Tribe maintains administrative offices in Happy Camp and Yreka, both located in Siskiyou County, and in Orleans, located in Humboldt County. All land is located within the aboriginal territory of the Karuk Tribe. Only about 2,100 (41%) of the tribal population presently live on and near reservation lands.

Over the past 10 years the Karuk Tribe has grown from a fledgling organization with four employees to a mature organization with more than 80 employees and an annual operating budget exceeding \$4 million. In that same period, the Tribe has developed medical and dental clinics; Indian Child Welfare, child care, education and Headstart programs; an elders program; mental health and substance abuse counseling programs; Natural Resources, Planning and Social Services Departments; and a Tribal Housing Authority that has completed construction of 80 new units of housing. In 1994, 15 years after federal recognition, the Tribe chartered the Karuk Community Development Corporation "to develop among members of the Karuk Tribe of California the

managerial and technical capabilities to assume leadership roles in building diversified, sustainable economies by creating new business ownership and employment opportunities within the Ancestral Territory of the Karuk People.” Current community development strategies include the development of profitable tribal enterprises, recruitment of culturally, ecologically and economically sustainable businesses to locate within the Karuk Ancestral Territory, and the establishment of a business enterprise development center. In FY 1995-96, the Karuk Tribe of California became a self-governance tribe.

Despite its sizeable population base, growing land base, and significant strides in administrative, physical and social infrastructure development, the Karuk Tribe of California reported an unemployment rate of 63% in 1993, largely due to the decline in the timber industry in Northern California. The Karuk Community Development Corporation, which began managing trail maintenance and watershed restoration contracts in 1994, secured one-year funding from the BIA and federal agencies participating in the Northwest Economic Adjustment (Option 9) Initiative to operate in FY 1995-96 and is seeking additional, multi-year funding in order to continue corporate operations until it can sustain itself with profitable tribal enterprises and fee-paid services. The Corporation is in the process of purchasing and expanding a hardware store in Happy Camp with 70% equity financing provided by grants from the BIA and the Rural Economic and Community Development (formerly Farmers Home Administration), and transfers of federal equipment from the General Services Administration. The 30% financing to be provided in the form of a Small Business Administration-guaranteed bank loan will be the SBA’s first loan to a tribe in the state of California. It has taken nearly three years for the tribe and Corporation to finance the acquisition and expansion of the hardware and building supplies business. Future plans include the development of a rustic decor and furniture manufacturing business, for which prototype products already have been developed.

#### B. Redding Rancheria

The Redding Rancheria is located on approximately 31 acres of land situated along the southern border of the City of Redding in Shasta County, California. The Rancheria originally was established in 1922 but was terminated in 1958 under the authority of the California Rancheria Act. Federal recognition was restored on December 15, 1983 as a result of a class action suit entitled *Tillie Hardwick v. The United States*. Members of the Rancheria adopted a Constitution and formally reinstated their tribal government in mid-1985. The Tribe’s total land base is approximately 31 acres including fee land, and its total population is estimated at 200 (30 living on reservation lands and 170 living adjacent to the reservation).

In 1991 the Redding Rancheria began operating an Indian Health Clinic under contract with the Indian Health Services (IHS). By 1993, the Clinic was providing comprehensive health care services to approximately 8,000 eligible American Indians residing in Trinity County and the western two-thirds of Shasta County. The indirect costs associated with the IHS contract facilitated the administrative capacity-building of the Rancheria, and the revenues generated by the Clinic sustained its growth and development. In the spring of 1994, after extensive planning



efforts and financial negotiations spanning 18 months, the Rancheria secured a BIA-guaranteed bank loan and purchased the 14,000-square-foot Indian Health Clinic facility it previously had leased in the city of Redding. Most recently, Redding Rancheria developed a 38,000-square-foot gaming casino and bingo facility on the reservation. Now the 8th largest employer in Shasta County, the Rancheria employs a total of 280 people, including employees of the Win-River Casino Bingo, the tribal administrative offices and the Indian Health Clinic. In addition to comprehensive health care services, the Rancheria provides child care, child welfare, community and economic development, education, and housing services. The Rancheria's unemployment rate in 1995 was 0%.

C. Scotts Valley Band of Pomo Indians of the Sugar Bowl

Located in Lake County, California, the federally recognized Scotts Valley Band of Pomo Indians has no tribal land base, a population estimated at 108, seven employees, and an unemployment rate of 57%. The Tribal Administrator has identified the lack of adequate lands as the biggest obstacle to economic development, followed by problems preparing business plans and difficulties with state laws. Additional obstacles include lack of equity funds, problems obtaining loans, the inexperience of the tribal governing body, lack of management experience, and lack of physical infrastructure development.

D. Sycuan Band of Mission Indians

Located in El Cajon, San Diego County, California, the Sycuan Band of Mission Indians has a total land base of 640 acres set aside by an Executive Order of December 27, 1875, and a total population of 120. The Tribe owns and operates two business enterprises, one of which is a gaming casino. Although business revenues were not reported on the Economic Development Issues Survey, the Sycuan Band of Mission Indians indicated that its business enterprises have "greatly helped the Tribe" and reported an unemployment rate of 0% and 52 full-time tribal employees. The principal obstacles to business and economic development were identified as difficulties with federal and state laws.

E. Tule River Indian Tribe

The Tule River Reservation was established by an Executive Order of October 3, 1973. Located in a remote rural area approximately 20 miles from the city of Porterville in southeastern Tulare County, California, the Tule River Reservation has a land base of 55,356 acres and an estimated tribal population of 1,890 (690 living on reservation lands and 1,200 living adjacent to the reservation). The Tribe's annual operating budget is approximately \$2.1 million, and its principal sources of employment presently are an IHS clinic and tribal administrative offices.

In 1991, the Tule River Indian Tribe chartered the Tule River Economic Development Corporation to relieve the tribal administration of the additional burden of economic development projects and provide the autonomy essential to profit-making enterprise development. Funded for

the first three years by a continuing grant from the Administration for Native Americans (ANA), the Corporation's first major project was development of an industrial park site on a former airport property purchased from the city of Porterville in 1990. In 1993, with a Management and Technical Assistance Grant from the BIA, the Corporation developed a plan for construction of a 100,000-square-foot commercial/industrial building on 15 acres of the 40-acre industrial park property. The building was designed to be leased to a variety of assembly, manufacturing and warehousing businesses. The sources of funds secured for infrastructure and site development were the Tribe (equity injection of \$150,000), the Economic Development Administration (grant of \$600,000) and the Porterville Civic Development Foundation (zero-interest loan of \$153,000). A \$1.8 million federally-guaranteed bank loan was sought for construction of the commercial/industrial building.

In early 1995, the formerly timber-dependent Tule River Indian Tribe reported an unemployment rate of 58% and an estimated poverty rate of 80%. However, the Tribe also expected that the planned opening of a gaming casino on the Tule River Reservation would improve tribal employment and income data significantly—as many as 500 people could be employed by the casino. For the use of gaming revenues, the Tribe identified community infrastructure development, elders programs, housing development, scholarship funds, and youth development as priorities.<sup>58</sup>

The Tule River Indian Tribe has identified as its biggest obstacles to business and economic development (1) lack of knowledge of basic marketing principles, (2) lack of adequate funding, and (3) lack of an adequately trained labor force.

#### F. Conclusions

From the foregoing tribal case histories, it again is evident that there are no easy prescriptions for remedying the economic development problems facing California Indian tribes. The case histories include a tribe with a relatively large population (the Karuk Tribe with 5,100 members) and no land base, which nevertheless, over a period of 15 years has become a strong tribal government with significant administrative, physical and social infrastructure development, and a promising community development corporation created to address the Tribe's currently high unemployment rate. Another tribe with only 200 members and a land base of 31 acres (Redding Rancheria) has become a major employer in its home county, completely eliminating tribal unemployment through the development of a gaming casino. With an even smaller population of 120 and a land base of 640 acres, a third tribe (Sycuan Band of Mission Indians) also eliminated unemployment. A fourth tribe (Tule River) with both a significant population (1,890 members) and a relatively large land base (55,356 acres) is developing a gaming casino, hoping it will provide relief from high unemployment and poverty rates that could not be addressed satisfactorily using alternative economic development strategies.

Some common threads tie the case histories together. In the cases of the Karuk Tribe, Redding Rancheria and the Tule River Reservation, tribal administrative capacity-building was

facilitated and financially supported by the operation of Indian Health Service-contracted clinics. It is important to understand how tribal undertakings that do not purport to be of an economic development nature nevertheless have resulted in the acquisition of managerial skills and development of physical and social infrastructures that are prerequisites to business and economic development. The establishment of tribal housing authorities and multi-service organizations is another way in which California tribes have developed administrative capacity and community infrastructure. Thus, Congressional actions that eliminate or significantly reduce federal support of Indian education, health and housing programs ultimately stymie economic development efforts both directly and indirectly.

A second common thread in the tribal case histories is the participation of the BIA's Area Credit Office in the business and economic development activities of California tribes. The Karuk Tribe has utilized both the BIA's Management and Technical Assistance Grant Program and its Indian Business Development Grant Program. Redding Rancheria has used both the BIA's Management and Technical Assistant Grant Program and its Loan Guaranty Program. Tule River Reservation utilized the BIA's Management and Technical Assistance Grant Program. In terms of facilitating tribal access to (1) managerial and technical expertise and (2) equity and debt financing for tribal ventures, the BIA has been a major contributor in the state of California. In 1994, the BIA's Sacramento Area Credit Office provided 10 Technical Assistance Grants totaling \$57,108, and co-sponsored a statewide Credit Symposium with a contribution of another \$15,891 in Technical Assistance Grant funds. However, between 1993 and 1995, the allocations of federal dollars to the BIA's Sacramento Area Office for Technical Assistance Grants have declined from \$90,000 to \$59,445, the allocations for Business Enterprise Development Grants have declined from \$433,781 to \$241,658, and the allocations for Direct Loans for enterprise development have been eliminated entirely.<sup>59</sup>

A third common thread in the tribal case histories is the long and arduous journey undertaken by California Indian tribes to access capital needed for business and economic development. Even when viable market opportunities were identified, technical assistance was available and enterprise feasibility had been determined, it took the Karuk Tribe nearly three years to assemble the financing required for acquisition of a long-established business; it took the Redding Rancheria 18 months to secure a 90% guaranteed bank loan for the purchase of a well-managed health clinic; and after three years, the Tule River Indian Tribe still is seeking a loan for the development of a commercial/industrial building.

A fourth common thread in the tribal case histories is the tendency of California tribes—after years of struggling to overcome the odds against alternative kinds of enterprise development and facing ever-increasing rates of tribal unemployment and poverty—to turn to gaming casinos as the most immediate source of relief. At a Tribal Council meeting convened in September 1995, the Karuk Tribe of California approved a private developer's request for authorization to perform a feasibility study for a gaming casino that could be tribally owned and located in proximity to the Interstate 5 freeway; the Redding Rancheria developed a gaming casino in 1993 as an immediate means of providing tribal employment and income; the Sycuan

Band of Mission Indians operates a gaming casino; and the Tule River Indian Tribe expects to open a gaming casino this year. Until the market for casinos becomes inundated, or California Indian tribes can identify viable alternative strategies for economic development, it would appear that a large number of California's Indian reservations are destined to be driven economically by the gaming industry. Whether this trend represents a willful exercise of tribal sovereignty or a desperate need for relief from phenomenally high unemployment and poverty rates can only be determined by offering viable alternatives.

## ENDNOTES

1. Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996).
2. 9 Stat. 631 (1851).
3. Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114.
4. Whether a tribe, in the absence of state consent to suit, can request that the Secretary prescribe procedures (*see* 25 U.S.C. §§ 2701(d)(7)(B)(vii)) under which the tribe may engage in Class III gaming activities, is still an unsettled issue. *See, e.g., Seminole Tribe of Florida v. State of Florida*, 11 F.3d 1016, 1029 (11<sup>th</sup> Cir. 1994).
5. Prior to the IGRA, state and county gambling laws that regulated rather than prohibited gambling were not applicable to Indian reservations, even if they were enforceable by criminal as well as civil means. California v. Cabazon Band of Mission Indians, 480 U.S. 202, 210-211 (1987).
6. The Spokane Tribe in Washington State has made the argument that, even in the absence of congressional action, either a tribal remedy must be read into the IGRA or it must be declared unconstitutional. *See United States of America v. Spokane Tribe of Indians*, CS-94-0104-FVS (E.D. WA), Answer, Counterclaims And Third-Party Complaint For Declaratory Judgment, Injunctive and Declaratory Relief, at p. 7 (filed April 5, 1994), currently on appeal to the Ninth Circuit Court of Appeals. Specifically, the Spokane Tribe argued that: (1) if there is no remedy, IGRA is unconstitutional in its entirety; and (2), in the alternative, the Secretary of the Interior has a trust obligation to provide a remedy by promulgating regulations allowing Class III gaming when a state refuses to negotiate in good faith. *Id.*
7. Brendale v. Confederated Tribes and Bands of the Yakima Reservation, 492 U.S. 708 (1989).
8. County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 502 U.S. 251 (1992).
9. Bill Richardson, "The Congressional Assault on Tribal Sovereignty," Cong. Rec. (daily ed., August 3, 1995).
10. Eighteen treaties were negotiated with California tribes in 1851 and 1852. These treaties would have provided an Indian land base of over 8.5 million acres. Mining and business interests in California strongly opposed the treaties, and the California Senators were successful in preventing them from being ratified. *See* Bruce Flushman and Joe Barbieri, Aboriginal Title: The Special Case of California, 17 Pac. L.J. 390, 403-404 (1986). Because the Senate sealed the file on the treaties, the tribes were not aware of the rejection of the treaties until 1905. *See* H.R. Rep. No. 801, 103d Cong., 2d Sess. 2 (1994). In the meantime, the California Land Claims Act was enacted, requiring every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government to present their claims within two years. The Act of

March 3, 1851, 9 Stat. 631. The tribes were unaware of the existence and the implications of the Act, and were still under the belief that the treaties they had signed would be honored. Neither the State of California nor the federal government filed any land claims on behalf of the California Indians, and the notion eventually prevailed that the State's failure to appear before the special claims board on behalf of the tribes nullified their claims. See Flushman and Barbieri at 406-408. After the unratified treaties were made public in the early 1900s, Congress passed a series of appropriations acts to acquire land for California Indians. See § II of the ACCIP Termination Report for a discussion of the land acquisition program.

11. See Table 1, *infra*.

12. See § II of the ACCIP Trust and Natural Resources Report.

13. See § V of the ACCIP Community Services Report.

14. See *id.*, § IX.

15. See, Stephen Cornell and Joseph P. Kalt, "Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations" in What Can Tribes Do? Strategies and Institutions in American Indian Economic Development (1992), at p. 35.

16. Pub. L. No. 93-638.

17. By *de facto* tribal sovereignty, we adopt the meaning attributed to that term by Cornell and Kalt, i.e. "genuine decision-making control over the running of tribal affairs and the use of tribal resources." Cornell and Kalt, *supra* note 15, at 14.

18. California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) (bingo operations); Mattz v. Arnett, 412 U.S. 481 (1973) (Indian fishing), People v. McCovey, 36 Cal. 3d 517, cert. denied, 469 U.S. 1062.(1984) (Indian fishing); Rice v. Rehner, 463 U.S. 713 (1983) (liquor licensing); Rumsey Indian Rancheria of Wintun Indians v. Wilson, 64 F.3d 1250 (9<sup>th</sup> Cir. 1995) (gaming), Department of Transportation v. Naegele Outdoor Advertising, 38 Cal. 3d 509 (1985) (outdoor advertising).

19. Cornell and Kalt, *supra*, note 15, at 16.

20. The Supreme Court in Yakima observed that "the objectives of allotment were simple and clear-cut: to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into society at large." Id., 116 L.Ed.2d at 695.

21. Fort Mojave Tribe v. County of San Bernardino, 543 F.2d 1253 (9<sup>th</sup> Cir. 1976), cert. denied, 430 U.S. 983 (1977).

22. Agua Caliente Band of Mission Indians v. County of Riverside, 442 F.2d 1184 (9<sup>th</sup> Cir. 1971), cert. denied, 415 U.S. 933 (1972).

23. Central Machinery Company v. Arizona State Tax Commission, 448 U.S. 160 (1980) [Arizona's taxation of on-reservation sales of tractors to Indian enterprise by corporation not licensed as Indian trader held pre-empted by federal Indian trader statutes (25 U.S.C. §§ 261-264)]; White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980) [Arizona's application of motor carrier license and use fuel taxes to non-Indian logging company operating entirely on Indian reservation held preempted by federal legislation governing the harvesting of Indian timber (25 U.S.C. §§ 405-407, 466)]; Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico, 458 U.S. 832 (1982) [New Mexico tax imposed on gross receipts of a non-Indian construction company received from tribal school board for construction of school on reservation, held pre-empted by federal law, including the Indian Self-Determination and Education Assistance Act (25 U.S.C. §§ 450 et seq.) and the Indian Financing Act of 1974 (25 U.S.C. §§ 1451 et seq.)].
24. Segundo v. City of Rancho Mirage, 813 F.2d 1387 (9<sup>th</sup> Cir. 1987).
25. Id. at 1393.
26. Id.
27. Gila River Indian Community v. Waddell, 967 F.2d 1404 (9<sup>th</sup> Cir. 1992).
28. Id. at 1411.
29. Gila River Indian Community v. Waddell, 91 F.3d 1232 (9<sup>th</sup> Cir. 1996).
30. Id. at 1236.
31. Id. at 1238.
32. Brendale v. Confederated Tribes and Bands of the Yakima Reservation, 492 U.S. 708 (1989).
33. Id. at 415-416.
34. See, e.g., Governing Council of the Pinoleville Indian Community v. Mendocino County, 684 F. Supp. 1042 (N.D. Cal. 1988).
35. County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 502 U.S. 251 (1992).
36. 25 U.S.C. § 331 et seq.
37. Id.; 116 L.Ed.2d at 696.
38. Id. at 687.

39. Id. at 709 (citing Hearings on HR 7902 (Readjustment of Indian Affairs (Index) before the House Committee on Indian Affairs, 73d Cong., 2d Sess., 18 (Memorandum of John Collier, Commissioner of Indian Affairs)).
40. Id. at 710 (Blackmun, dissenting).
41. California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987).
42. 25 U.S.C. §§ 2701 et seq.
43. Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996). Whether a tribe, in the absence of state consent to suit, can request that the Secretary prescribe procedures (see 25 U.S.C. §§ 2701(d)(7)(B)(vii)) under which the tribe may engage in Class III gaming activities. See, e.g., Seminole Tribe of Florida v. State of Florida, 11 F.3d 1016, 1029 (11<sup>th</sup> Cir. 1994).
44. The Spokane Tribe in Washington State has made the argument that, even in the absence of congressional action, either a tribal remedy must be read into the IGRA or it must be declared unconstitutional. See United States of America v. Spokane Tribe of Indians, CS-94-0104-FVS (E.D. WA), Answer, Counterclaims And Third-Party Complaint For Declaratory Judgment, Injunctive and Declaratory Relief, at p. 7 (filed April 5, 1994), currently on appeal to the Ninth Circuit Court of Appeals. Specifically, the Spokane Tribe argued that: (1) if there is no remedy, IGRA is unconstitutional in its entirety; and (2), in the alternative, the Secretary of the Interior has a trust obligation to provide a remedy by promulgating regulations allowing Class III gaming when a state refuses to negotiate in good faith. Id.
45. See IRS Rev. Rul. 67-284 (1967).
46. See, Allogan Slagle, "Groundhog Day" column in News from Native California (Summer 1997), Vol. 10, No. 4, at 49.
47. Most of the following discussion on the Campo Band is excerpted from an article, entitled "1996 RARA Program Decision" by Michael L. Connolly, Director, Campo Environmental Protection Agency, which appears in the Winter 1997 issue of Tribal Vision, a publication of the National Tribal Environmental Council.
48. One can see this "undesirability factor" operating with respect to tribal activities that have involved tobacco, liquor, and gaming. In each of these areas, either the Supreme Court or Congress has taken steps to tightly circumscribe tribal jurisdiction. See State of Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980); Rice v. Rehner, 463 U.S. 713 (1983); Indian Gaming Regulatory Act of 1988, Pub. L. No. 100-497, 102 Stat. 2467, 25 U.S.C. §§ 2701 et seq. With few exceptions, whenever tribes move from the theoretical to the practical plane of tribal sovereignty by asserting their governmental authority in concrete economic contexts, they are faced with a windstorm of opposition from their "deadliest enemies," the States and their non-Indian citizens. See United States v. Kagama, 118 U.S. 375 (1886)



("Because of the local ill feeling, the people of the States where they [the Indians] are found are often their deadliest enemies." *Id.* at 384.)

49. See 25 U.S.C. §§ 450 et seq., as amended by Pub. L. No. 100-472, 102 Stat. 2285 (1988).

50. See Pub. L. No. 101-512 (1991); see also "Report of the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs to the Secretary of the Interior and the Appropriations Committees of the United States Congress," August 1994.

51. Cornell and Kalt, *supra* note 15, at 35-43.

52. One author points out that Indian cultures share an attitude of respect (encompassing community, inter-connectedness, future generations, and humility) for the world around us and that this necessarily has implications for economic development activities. Ronald L. Trosper, "Traditional American Indian Economic Policy," *Amer. Ind. Culture & Research Journal* 19:1 (1995), 65-95. Trosper states that the implications of this attitude "suggest that traditional Indian economic policy should be very different from what historically has been called economic development, namely high rates of increase in per capita income, combined with population growth and structural transformation." *Id.* at 76.

53. See § III of the ACCIP Trust and Natural Resources Report.

54. 22 U.S.C. §§ 2191 et seq.

55. 22 U.S.C. § 2191.

56. See Bureau of Indian Affairs, Sacramento Area Office, "Trust Acreage - Summary, CY Ending December 31, 1996." The document is attached as Exhibit 1 to the ACCIP Trust and Natural Resources Report.

57. Tribes are listed as they appear in 25 C.F.R. Part 83. If a tribe uses a different name to identify itself, that name appears in parenthesis.

58. Nancy McDarment, in responses to UCLA-administered survey entitled "Federally Recognized Tribes—California Indian Questionnaire," March 27, 1995.

59. Alsace LaFramboise, Area Credit Officer, BIA, Sacramento Area Office, in a report entitled "Summary of Economic Development Programs, Sacramento Area, FY 1991 through FY 1995," October 4, 1995.

