

Native American Tribes and Economic Development

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In the Native American world, where life is viewed as interconnected, every decision has physical, economic, social, and spiritual consequences, and all these impacts must be carefully considered.

Unlike corporate newcomers such as high-tech industries, American Indian tribes are underrepresented on the national political and economic scene and have very limited participation in the major financial markets, including Wall Street.

Tribes are investing on and off their Native lands in ventures such as hotels, golf courses, manufacturing, entertainment venues, solar and wind technology, tourism and the hospitality industry, health care, and gambling enterprises, all of which have begun to generate significant revenues, particularly compared with tribes' past economic conditions and the lack of resources, infrastructure, market, and economic opportunity.

In the past few decades, some of the 500-plus tribes in North America have made strides to diversify their economies and improve the quality of life for their people, but challenges remain. Even in their government role—tribes are legally sovereign nations—they have not always been afforded the same or similar authority and rights as state, county, or other municipal governments. In the absence of a tax base, market, and infrastructure, tribes have had to become more entrepreneurial in creating sustainable economies to support their governments and provide basic services to their people,

Although some of the most successful Native American enterprises qualify as Fortune 500 companies, tribes are virtually invisible politically and economically. Few people know the extent of tribal lands. They are scattered throughout the United States, with tribes, nations, communities, and bands holding over 50 million acres (20 million ha), or about 2 percent of U.S. land. These lands are mostly concentrated in rural areas, away from population centers. In the western United States, nearly all tribal land was once remote, but as the populations of cities grew, some tribes found themselves surrounded by urban sprawl.

Tribal Land

The concept of tribal land is a modern one. Since before the arrival of the Spanish explorers, Native American people hunted, farmed, and traded over all of what is now the United States, as well as the rest of North and South America. Believing he had sailed to India, Columbus called the indigenous people "Indians," setting the course for the misunderstanding that tribal communities continue to face today. As explorers began to arrive in North America, European countries competed for political and military

alliances with North American tribes through nation-to-nation treaties that are the basis of U.S. Indian law today.

Just like Columbus, each successive wave of newcomers judged Native American people by their own standards of civilization, missing the essence of the indigenous society and culture. One of the fundamental and lasting errors is a failure to recognize the unique culture of each tribal group. While Native American people share values, each nation, tribe, band, or community has its own culture, language, history, and traditional belief system. In the United States, "Indian country" is a unique world, composed of individual tribal nations with different levels of needs and varying resources. Some tribes are rich in natural resources like fish and game, livestock, coal, timber, and natural gas. Others, now surrounded by growing metropolitan areas, capitalize on their location by developing retail, hospitality, and gambling businesses that are conducive to areas of greater density. However, most tribes remain isolated in remote areas without sufficient natural resources and infrastructure to build a strong economy. For many tribes, location still remains a major challenge in attracting commerce.

It was not until the U.S. government imposed its control over the land that Native American people were introduced to the concept of private property. Privatization in America began with the doctrine of discovery, which said that title to the land vested in the discoverer while inhabitants held the right to occupy the land.

Like life, land is sacred to Native American people. The land has an intrinsic spiritual and cultural value and does not require manmade infrastructure or improvements to give it value. Most important, these lands are homelands—where the ancient stories took place, passed down to children in songs and dances so that each generation can learn about its culture and traditions. Land is what ensures continuity because it is not only where ancestors once lived, but also where future generations will be born; it constitutes a fundamental component of life. For all Native American people, the land where they reside today is the only land they have remaining to hand down to future generations of their tribe. Land is also a means to preserve their cultural identity separate and apart from mainstream society.

In addition to its spiritual and cultural significance, tribal land plays an important practical role. Many nations rely on their land for their livelihood, which may be based on hunting, fishing, or agriculture. Tribal land also has political relevance because a land base helps tribes exercise tribal self-governance and self-determination. This is one reason why tribes without a federally or state-designated land base continue to try to claim rights to their aboriginal lands.

An essential but misunderstood fact is that tribes are governments—sovereign governmental bodies that have jurisdiction over their lands. As governments, tribes create their own tax structures, pass laws, provide public safety, regulate business and industry, and perform other functions identical to those typically provided by a

combination of the state, county, city, and town. Federal laws do apply to tribal land, so those who do business on reservations must comply with both tribal and federal law.

Reservations

As early American settlers moved west to establish farms and towns, they looked to the federal government to protect them and their homesteads from warring tribes that were, in turn, trying to protect their homelands. The federal government responded with policies aimed at containing or, in some cases, exterminating the indigenous populations. Many tribes fought back, and many were simply overwhelmed. The federal government often signed treaties that were negotiated agreements and concessions that placed tribal people on designated reserves, or "reservation land," where they were expected to stay. In exchange for giving up rights to their vast ancestral lands and natural resources, tribes were promised assistance with health care, education, and welfare in perpetuity.

Not every tribe relinquished its claim to its homelands; a number insist, even today, that they never conceded. Nor did every tribe go to war against the United States. Some, like the Salt River Pima-Maricopa Indian Community, were allies and aided the U.S. military when it fought the Apaches, who were the traditional enemy of the Pima and Maricopa. In 1879, President Rutherford B. Hayes signed an executive order designating land reserved for the tribes that encompassed the entire Salt River Valley in Arizona and the Salt River upstream to its headwaters. Six months later, though, Hayes bowed to political pressure from settlers who thought the tribes had gotten too much land, and the executive order was rescinded and a second one was signed that sharply reduced the community's holdings from a good part of central Arizona to just 53,000 acres (21,000 ha).

Removing land from reservation holdings was not an isolated event. Between 1887 and 1934, when tribes were subject to the General Allotment Act (or Dawes Act), the U.S. government allotted 41 million acres (17 million ha) of tribal reservation land. Under this act, a period of 25 years was established during which the U.S. government held title to the allotted lands in "trust" for individual Indian owners. The primary effect of the Dawes Act was to severely reduce the amount of land that tribes held. Landholdings plummeted by two-thirds—from 138 million acres (56 million ha) in 1887 to 48 million acres (19 million ha) in 1934, the year Congress ended the allotment system by passing the Indian Reorganization Act.

Land was often removed from tribal status without any compensation and opened to settlers and gold prospectors. During the termination era of the 1940s and 1950s, whenever the trust relationship with a tribe was terminated, any land not privately owned was restored to the public domain.

In addition to treaties and executive orders, tribal land has also been designated by court decree and legislative action. Tribes, both recognized and not recognized by the federal government, continue to file suits in federal courts to claim their ancestral lands.

Currently, the Tohono O’odham Nation, located in southern Arizona, is embroiled in a battle to claim trust status for land in the Greater Phoenix area. The nation obtained the land in question as part of an agreement to replace trust land lost to a federal flood control project with new tribal land.

By segregating Native American people on lands reserved for them, the federal government thought it had solved what it referred to as the "Indian problem." It set aside the largest reservation for the Navajo Nation, an area the size of West Virginia, with a land base that extends over northern Arizona and parts of New Mexico and Colorado. Other reservations are as small as a few acres, and some tribes have no land at all. The Hopi tribe is entirely surrounded by the Navajo reservation. In many instances, individual tribal groups were forced to locate on a designated reservation with multiple tribes. The Colorado River Indian Tribes includes four distinct groups—the Mohave, Chemehuevi, Hopi, and Navajo tribes.

Federal Trust Land

Further complicating the picture is the trust responsibility the U.S. government has over tribal lands. Title to tribal lands is held by the federal government in trust for the benefit of current and future generations of tribal members. This trust responsibility—which is at the heart of the relationship between tribes and the federal government—has been upheld through treaties, federal statutes, and regulations, and is a power delegated in the U.S. Constitution under the Commerce Clause. Because the land lies in trust status for tribes, tribal governments exercise sovereign authority within their boundaries and are generally not subject to state laws. However, trust status also creates limitations on the use of these lands, and most actions affecting the land must be consistent with federal law and ultimately require federal approval.



Both the federal government and tribes can acquire additional land in trust, with land purchased by a tribe or acquired from other government entities. Only the secretary of the interior or the U.S. Congress can confer trust land status. The ability of the U.S. Department of the Interior to take land into trust was created in the 1934 Indian Reorganization Act, passed in order to begin compensating tribes for unjust takings of their land bases so that they could begin to rebuild their own economies. The interior secretary has taken about 9 million acres (3.6 million ha) back into trust status since 1934, which represents only about 10 percent of the total acreage tribes have lost.

The interior secretary is required to consult the state and local governments before making a determination about taking land into trust for a tribe and must specifically consider the impact on the state and local government if land will be removed from a nontribal entity's tax base. To ensure that the state and local government are protected, other government entities have the right to appeal the secretary's decision, both at the Interior Department and in the federal courts.

The rules get much tougher if the land under consideration is going to be used by a tribal government for gambling. The Indian Gaming Regulatory Act of 1988 prohibits gambling on off-reservation lands acquired in trust after 1988 unless the governor of the state concurs and the interior secretary determines it would not be detrimental to the surrounding communities.

The use of tribal land is further complicated by its legal status. Indian land is owned one of two ways: either wholly by the tribal government or through a combination of tribal jurisdiction and individual tribal landowners that received a land allotment. In Arizona, land is held both as tribal and allotted land. Allotted land was originally granted by the federal government to specific individuals who, it was thought, would farm the land and assimilate into mainstream American culture. But Native Americans generally do not believe in selling tribal land because it is considered sacred, so it was instead handed down through generations. As a result, a ten-acre (4-ha) allotment today on Salt River Pima-Maricopa Indian Community land may have 200 to 300 owners—heirs to those who received the original allotment—which presents a challenge for developers because of complex landowner approval processes required in order for development to occur.



Recently, when the Salt River Pima-Maricopa Indian Community decided to build the first major league baseball spring training complex on tribal land, the community's Economic Development Department had to obtain enough signatures from multiple landowners to approve the plan. Department officials were successful, and the 143 acres (58 ha) needed were assembled to build the complex.

Land: Part of a Complex Web

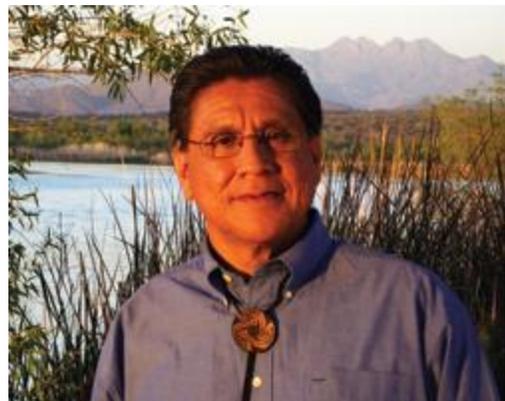
In the non-Native American world, a land deal is based on economics: the highest and best use of land is a computation usually based on the use that brings in the most money. In the Native American world, where life is viewed as interconnected, every decision has physical, economic, social, and spiritual consequences, and all these impacts must be carefully considered. This interconnectedness is what Native American

people refer to as "seven generation thinking," says Ivan Makil, former president of the Salt River Pima-Maricopa Indian Community and a partner in Generation Seven, a consulting firm based in that community that specializes in advising tribes on appropriate economic development considerations.

"We are taught to think about how a decision we make about our land will affect the next seven generations," he says. "It is all about sustainability—about making decisions that ensure that our land, air, and water can support all forms of life for generations to come. While each American Indian tribe is unique, all tribal people believe in balancing the economic impact of a decision with its physical, economic, social, and spiritual implications."

Tribal people believe that everything, including mortgages and investments, affects the delicate scale of their lives, notes Makil. "We understand the universe as massive but still requiring this constant, delicate balance. Seven-generation thinking means... considering the responsibilities that come with opportunities. It's long-term thinking, which is valuable for anyone who is making a decision."

Most developers are not prepared to assess decisions from this holistic perspective, but this is an essential philosophy for a native people. Makil says this concept is sacred in many ways to Native American communities and is integral to achieving sustainability and developing a truly viable seven-generation economy.



Not surprisingly, more thought, due diligence, and consideration are required to close a deal with a tribal government or Native American business than for a business transaction off reservation. This and the occasional lack of resources cause non-Native Americans sometimes to misinterpret the extended decision-making period as inefficiency.

An instance of this is the Scottsdale Pavilions, now the Pavilions at Talking Stick, a thriving 1.4 million-square-foot (130,000-sq-m) retail center built as a commercial land lease on Salt River Pima-Maricopa Community land. It opened in 1988 after two years of development—longer than it would have taken on nonreservation land. In 2008, the lease was sold to De Rito Partners Inc., which to date has invested over \$32 million in improvements, renovation, and expansion. The Pavilions at Talking Stick is located in what is now part of an expanding entertainment and cultural center in a high-visibility spot along Loop 101, which encircles much of the Phoenix metropolitan area, and Pima Road, and is near Talking Stick Resort and the newly developed Salt River Fields. Martin W. De Rito, chief executive of De Rito Partners, and Chuck Carlise, president of De Rito Partners Development Inc., decided to invest in the Pavilions because they believe in the potential of this development and the area.

"We are delighted to be able to collaborate with the Salt River Pima-Maricopa Indian Community on this exciting project," said Martin de Rito. "We have found that our vision for long-term success fits well with the community's commitment to sustainable development. We are always mindful, however, that we are essentially guests in another country and are respectful of the process. Taking the necessary time to get to know and understand the culture, traditions, and the community's definition of economic success is imperative to long-term rewards and mutual respect."

Adjacent to the Pavilions at Talking Stick and across the street from Salt River Fields is the \$400 million Riverwalk Arizona mixed-use office/retail complex, developed in 2005 by the Alter Group. Riverwalk Arizona is one of the largest developments on Native American lands, covering 2 million square feet (186,000 sq m). Kurt Rosene, senior vice president of the Alter Group, believes that any dialogue regarding future development begins by first asking how his firm can add value to the projects it is considering. "We are selective about what we decide to build, and that is why we considered it a privilege to be granted the commercial land lease for Riverwalk by the community and council," he says. "We understand the role we play in the community's efforts to forge a strong future economy."

The 187-acre (76-ha) site is characterized by a mile of frontage along Loop 101 and full interchanges at Via de Ventura and Indian Bend. Riverwalk Arizona is visible to both north- and southbound traffic on Loop 101, which is one of the busiest freeways in the valley, carrying an estimated 170,000 vehicles daily.

Doing Business Today

For many reasons, it is different to develop a project on reservation land than it is elsewhere. In addition to the philosophical and land ownership issues, financing can be a challenge. According to Makil, tribal leaders and nontribal entities have generally used 65-year leases—a 55-year lease with a ten-year renewal option—to create a leasehold interest that can be legally used to secure outside financing. In many cases, tribes lack the capital to provide needed infrastructure, such as water, power, and sewage, so developers must consider including infrastructure buildout in the lease agreement. Also, the U.S. Bureau of Indian Affairs requires annual rent equal to at least 10 percent of the land's appraised value—a fact developers should know when calculating land costs.

Tribes also vary widely in their development experience and sophistication. Some have sound design review standards in place and can move a project through the necessary steps with efficiency; others lack appropriate tax and zoning codes necessary to facilitate smooth development of any commercial project.

Most tribes will consider almost any development, with the exception of those that bring environmental problems, says Vince Lujan, chief executive of Salt River Devco, an asset and corporate management company created in 2000 to oversee the Salt River Pima-Maricopa Indian Community's enterprises. The firm is a proponent and vocal

advocate of the community's commitment to a thoughtful and balanced approach to all economic development decision making and its impacts on the community.

"Because tribes are inherently environmentally conscious and want their development to reflect who they are and what they believe in, building green is a good way to align a project with traditional tribal belief systems," he says. "Tribes are committed to making the decisions that will enhance the value of the development for the long term. When you do the right thing, the rewards will follow and the quality of life is improved."

Another Native American tradition makes doing business different on tribal land. Long before the federal government deemed tribes government entities, tribal leaders knew and accepted their responsibilities to their people. Commitments extend well beyond any term in office. At its heart, tribal communities are communal and decisions are made with the consensus of the membership, often after long and deliberate discussions. If a vote on a decision is close, it is rarely settled, said Makil.

The effort to reach consensus requires that a tribal government reach out to tribe members and bring them into the decision-making process. This is very different from how decisions are made by city councils, where municipal and county governments decide the land use after listening to planners, lawyers, or lobbyists. In these instances, if residents object, they have to find their own way into the decision-making process.

Although tribes have many cultural and bureaucratic restrictions, many have successfully developed their land. In the Phoenix metropolitan area, the four metropolitan tribes—the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, the Ak-Chin Indian Community, and the Fort McDowell Yavapai Nation—have all leveraged their semiurban and rural locations with developments that are benefiting their governments and people. For example, Fort McDowell has used revenues from its enterprises to dramatically cut the dropout rate among students. The Gila River Indian Community built a resort complex that showcases its cultural values for visitors and its own people. The Salt River Pima-Maricopa Indian Community is developing an entertainment and cultural center that provides jobs and opportunities for community members. And the Ak-Chin Indian Community has used revenues from its enterprises to provide improved housing opportunities for its community members.

While doing business on tribal land can be challenging, successful projects are uniquely rewarding because tribal people are taught they must use their resources to help others. Developments on tribal lands pay dividends in many ways because they provide employment opportunities and result in better education, health care, social services, and improved infrastructure.

According to Makil, if tribes take a long-range view, they also forge longstanding personal relationships. Successful partners can expect to work with them and share the benefits for many years. "Our philosophy about development begins with the fact that tribes are not going anywhere," Ivan Makil says. "Our souls are embedded in the lands in which we live."