



NATIONAL CONGRESS OF AMERICAN INDIANS

HOUSE SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY OF
HOUSE COMMITTEE ON FINANCIAL SERVICES
"REAUTHORIZATION OF NATIVE AMERICAN HOUSING ASSISTANCE SELF-
DETERMINATION ACT OF 2007"
2129 RAYBURN HOUSE OFFICE BUILDING

June 6, 2007

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Good Afternoon. On behalf of the National Congress of American Indians (NCAI), I would like to thank Chairwoman Maxine Waters, and other distinguished members of the Subcommittee for this opportunity to provide testimony on an issue that is critical to the future of our tribal communities. NCAI is the oldest and largest national organization representing American Indian and Alaska Native tribal governments in the United States. We are steadfastly dedicated to protecting the rights of tribal governments and the achievement of self-determination and self-sufficiency. We look forward to working with this Subcommittee to ensure that the recommendations coming out of the Subcommittee's hearing process take into account the unique needs of Indian Country.

This critical reauthorization legislation addresses the majority of the Indian housing programs in Indian Country. NAHASDA revolutionized how Native American housing funds are provided by recognizing tribes' authority to make their own business decisions. Tribes have increased capacity to address the disturbing housing and infrastructure conditions in Indian Country through developing and managing their own programs and in many cases leveraging NAHASDA dollars with tribal dollars. NCAI has diligently worked with the National American Indian Housing Council, and tribal governments to find solutions for improving the housing infrastructure of Indian Country.

COMMENTS AND RECOMMENDATIONS ON DISCUSSION DRAFT:

NCAI would like to provide comments and recommendations on the third version of the discussion draft of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007:

SECTION 2: BLOCK GRANTS

Federal supply sources:

NCAI supports the tribes' eligibility to utilize the General Services Administration to procure property and services for Indian housing, as it could greatly assist tribes with lowering their costs for housing activities. However, NCAI is very concerned with the way this section is drafted. The way the current language is written, it could be interpreted as a mandatory requirement that all tribes use GSA. This proposed language would be counterproductive and contrary to the fundamental purpose of NAHASDA. Tribes should have flexibility in procurement so that they can get the lowest costs, and also address other variables such as geography, timing, and reliability. Depending on the location of the tribe, there may not be certified vendors within close proximity. As a result, the tribe would have to look elsewhere for a

certified vendor and would take away business from local companies who may be within the tribe's area. Again, we urge the Subcommittee to review this provision so it more closely tracks a similar provision in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450j(k), "at the request of an Indian tribe the Secretary shall enter into an agreement."

Tribal Preference in Employment and Contracting:

NCAI supports the inclusion of this provision because it will comply with the tribes' own tribal preference laws regarding employment and will provide consistency in hiring practices. Such a policy is consistent with supporting tribal sovereignty and will help to address the staggering unemployment numbers in Indian country.

Indian Housing Plans:

This provision requires tribes to include a description of the amount of grant funding under Section 101 from prior fiscal years in their Indian housing plans. NCAI supports this provision because it will allow tribes to plan for use of unexpended funds from prior years and provide consistency for tribes to show how past funding is being obligated and expended. This is particularly important for small tribes who build up reserve funds over a period of several years in order to take advantage of the economies of scale in building larger housing projects.

Program Income-Exclusion from Program Income of Regular Developer's Fees for Low-Income Housing Tax Credit Projects:

NCAI supports the inclusion of this provision because it does not penalize tribes for income derived from low-income tax credit projects and gives the tribes flexibility to use the funds for other housing purposes. This helps provide incentives to tribes and tribally designated entities to leverage their NAHASDA funding.

Essential Families:

NCAI would like to reinforce support for broadening the "essential families" definition regarding affordable housing activities. The lack of housing availability for essential personnel such as public safety, educational instructors, and health care providers creates a problem for tribes to recruit and retain these necessary personnel to support tribal efforts to provide various services and protect their tribal community.

Eligibility of Local Law Enforcement Officers for Residency:

NCAI very much supports the expansion of the definition of local law enforcement officers in order to make all appropriate public safety officials eligible to receive housing assistance. This encourages public safety officers to live in tribal communities and tribal housing development. Having public safety officers living within a tribal community brings a sense of safety.

Reserve Funds:

NCAI has serious concerns about this provision. In particular, we are concerned that the 20 percent cap remains unchanged, that it includes a limitation under the Housing Act of 1937, and that any income from the reserved accounts are to be considered program income. As previously stated in our earlier comments, the capped amount of

20 percent for grant amounts under Section 101 would make it even more difficult for smaller tribes to accumulate a significant reserve account.

For example, under the current language, the Chignik Lagoon Alaskan Native Village would be capped at \$5,000 for reserve accounts. This would make it extremely difficult for tribe to accumulate the \$446,002 needed to construct one home for a tribal member. This cap does not meet the needs of smaller tribes and increases disparities with larger tribes. NCAI recommends the Subcommittee look into using a scale method instead of placing a cap on the amount.

The limitation under the Housing Act of 1937 and counting income from reserves as program income both limit the ability of tribes to be flexible in designing programs for their communities. NCAI questions the intent of including this language within subsection (9) because it places more restrictions on the amount tribes can place in reserve accounts and is even more restrictive than current requirements. NCAI recommends striking Line 13 through 22 from the word "Amount" until the end of the sentence.

Fixed-Income Families:

NCAI supports the goal of eliminating the burdensome administrative requirement of conducting annual recertification for fixed income families such as the elderly and disabled persons.

Use of Grant Amounts Over Extended Periods:

NCAI supports this provision allowing flexibility for tribes to obligate and expend funds from prior fiscal years, as long as it is resourcefully obligates such funds for current housing activities.

De Minimis Exception for Procurement:

NCAI supports this new proposed language because it is burdensome and costly for tribes to have to send out bids and receive bids on every procurement purchase totaling under \$5,000.

Availability of Records:

The ability of tribes and tribally-designated entities to have access to criminal records for potential employees with the tribe or tribally designated housing entity would ensure safety for tenants' and their families.

SECTION 3: SELF-DETERMINED MODEL ACTIVITIES FOR THE LOW-INCOME HOUSING COMMUNITY PROGRAM

NCAI is seriously concerned with the latest proposed language of the Self-Determined Model Activities for the Low-income Housing Community Program, within the NAHASDA reauthorization. The purposes section of this subtitle states that it is to establish self-determined housing activities for the tribal communities program and to provide Indian tribes with the flexibility to use their NAHASDA funds in manner that is self-determined for housing activities relating to construction, acquisition, or rehabilitation of housing that benefits the tribal community. NCAI questions whether

the prohibited activities under this section are so broad as to undermine its purpose and effectiveness for tribal communities. The uniqueness of various tribes and their geographic location mean many tribes do not have access to common and essential services such as laundry and shower facilities that the rest of general public have in their own homes. Under this current language tribes would not have the ability to develop and build such facilities, which would be considered a commercial and economic development activity.

NCAI recently participated with HUD and other federal agencies in a National Native American Economic Policy Summit. At this forum participants consistently identified a need for comprehensive planning as a critical component for improving the quality of life in tribal communities (please see attached White Paper for an additional discussion of the role of comprehensive community planning). Currently, planning as an activity comes under the twenty percent administrative cap making it difficult for tribes to engage in a long term comprehensive planning process.

As tribes expand, they are figuring out what works favorably for their community, and it is important that federal programs have the flexibility to allow tribes to provide for the infrastructure and planning needs of their tribal communities. Tribes and tribally designated housing entities need to have the discretion to determine what model activities can best be used for their communities, and including a prohibition of commercial and economic development activities goes against the purposes of this subsection.

Section 235 Review and Report:

Lastly, NCAI is concerned with the procedures for HUD's report to Congress regarding the outcome and achievements of this program. According to Section 235 (b) (2) (B), it states HUD shall provide recommendations of standards and procedures by which tribes can be barred from participating in the program. This raises the question of who will develop these standards and procedures. NCAI encourages meaningful tribal consultation pursuant to the U.S. Department of Housing and Urban Development Tribal Government-to-Government Consultation Policy to ensure standards and procedures are fair and in the best interests of tribes.

SECTION 4: EFFECT OF NAHASDA ON HOME INVESTMENT PARTNERSHIP ACT

NCAI supports this provision because it reinforces tribes and tribally designated entities eligibility for participation in the HOME Investment Partnership Act

SECTION 5: FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

NCAI firmly supports the extension of authorization of appropriation for the aggregate fiscal year limitation and credit subsidies over the next four years.

SECTION 6: TRAINING AND TECHNICAL ASSISTANCE

NCAI strongly supports the extension of appropriation of fiscal years 2008 through 20012, regarding the Training and Technical Assistance of national organizations that provide critical training and technical support to tribes.

SECTION 7: HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

NCAI strongly supports the extension of the Housing Assistance for the Native Hawaiians for fiscal years 2008 through 2012.

ADDITIONAL COMMENTS:

As the Subcommittee considers the reauthorization of NAHASDA, NCAI encourages the Subcommittee to consider adding to the NAHASDA reauthorization a data collection method that would allow HUD and the tribes to gather accurate needs assessment data on a tribe by tribe basis. This type of data would enable tribes and HUD to justify budget requests for federal appropriations.

CONCLUSION:

In order for tribal governments to meet the needs of their people, developing and improving housing and infrastructure is vital. The reauthorization of NAHASDA needs to give tribes the ability to improve the housing condition for their tribal communities.

Again, I would like to thank the Subcommittee for holding this hearing today. We all appreciate the value of self-determination and self-governance and we remain committed to the vision set-forth in NAHASDA.

TRACK 3: INFRASTRUCTURE FOR ECONOMIC DEVELOPMENT



PHYSICAL INFRASTRUCTURE AND ECONOMIC DEVELOPMENT

Authored by

Ted Jojola

Prepared for the

National Congress of American Indians Policy Research Center

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This paper was commissioned for the National Congress of American Indians Policy Research Center (Center) for the purpose of stimulating discussion at the National Native American Economic Summit (Summit) to be held in Phoenix, Arizona on May 15-17, 2007. The paper is not intended to be comprehensive, but to provide an introduction to relevant issues and policies and some preliminary thoughts about the appropriate role of federal and tribal policy-makers. The positions and opinions found within this paper are the views of the authors only and are not representative of the views of the Center or the Summit participants.

Physical Infrastructure and Economic Development

By Ted Jojola¹

Introduction

Physical infrastructure and economic development are interwoven. Indeed, it is often a matter of contention as to whether it is the construction of new infrastructure that is a prelude to development or whether the pressures of underserved development are the prelude to infrastructure. The old adage, “build a road and they will come” often typifies the trailblazing nuance of economic development. Yet, for most Native communities, something as basic as road building or maintenance is more of a reactive decision that is leveraged against other basic domestic needs.

Physical infrastructure can serve two major development roles. The first is to reinforce and shape the socio-cultural and political milieu of the community. The second is the role it plays in competitively positioning the economy of its enterprises for capital gain.² Although mainstream America is driven by an economic market built on physical infrastructure, Native America has yet to regard such infrastructure as capital investment.³

Due to the scale, length of time and complexity of the work necessary to construct infrastructure projects, they require the infusion of enormous amounts of capital. In addition to the cost of construction, they also require continued investment and maintenance. Infrastructure projects are never “finished” per se. Rather, ongoing infrastructure projects are considered to be add-on segments of a “trunk” system. These expansive systems require interconnected branches to function in a comprehensive fashion.

Typically, public-works are grouped into three basic categories: (1) transportation (highways, roads, streets, bridges, and mass transit); (2) utilities (water, sewer and electricity); and, (3) housing and telecommunications (TV, radio, phone, computer networks and wireless technologies).

In the realm of transportation infrastructure alone, there are 55,724 miles in the Bureau of Indian Affairs (BIA) Indian Reservation Road system that currently exist within lands of the 562 Federally-recognized tribal governments. They are under the authority of numerous entities

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² *Overcoming Challenges and Seizing Opportunities in Indian Country*, Remarks by Governor Mark W. Olson, At the System's Sovereign Lending Conference: Banking Opportunities in Indian Country, Scottsdale, Arizona, Federal Reserve Board, November 18, 2002, <http://www.federalreserve.gov/boarddocs/Speeches/2002/default.htm>.

³ *Commercial Lending in Indian Country: Potential Opportunities in an Emerging Market*, Insights: Community Developments, March 2006 Community Affairs Department, US Department of the Treasury, pg. 7.

including federal, tribal, state and local jurisdictions.⁴ In 2003, it was estimated that there existed a \$11.8 billion backlog of improvement needs for BIA and selected state and local tribal roads.⁵ Whereas states spent an average of \$4,000 to \$5,000 per mile for road maintenance annually, the federal government spent only \$500 per mile for roads in Indian Country.⁶

Similarly, the provision and placement of basic utilities for the adequate provision of drinking water, sanitation, and electricity are considered fundamental for the physical and mental health of communities as well as being a measure of the overall quality of life.⁷ The disparities, however, in Indian Country are enormous. Tribal lands continue to be underserved by electricity services. 14.2 percent—nearly a sixth—of Indian households have no access to electricity.⁸ For specific Native nations, that disparity is even more pronounced. The Navajo Tribal Utility Authority estimates that 18,000 homes throughout the Navajo Nation are without utility services.⁹ The cost of expanding the gridline to these houses is about \$27,000 per mile.¹⁰ In the region of Alaska, of the 4,757 occupied housing units among the Yu'pik, 48% were reported to lack complete plumbing facilities.¹¹

Telecommunications infrastructure is considered integral to work productivity, personal safety and personal advancement.¹² In particular, wireless technologies have been seen as integral to surmounting barriers such as geographic isolation and low population densities as well as bridging the need for training, technical assistance and education.¹³ Compared with the rest of America, however, native communities lag behind. Whereas 95% of all White households had phones, regardless of where they lived, rural-dwelling American Indians/Eskimos/Aleuts

⁴ Senate Report 108-150 - *Amending The Transportation Equity Act For The 21st Century To Make Certain Amendments With Respect To Indian Tribes, To Provide For Training And Technical Assistance To Native Americans Who Are Interested In Commercial Vehicle Driving And For Other Purposes*, Calendar No. 284, 108TH CONGRESS, September 22, 2003.

⁵ Ibid.

⁶ *The State of Indian Nations Today: Mapping a Course for the Next Seven Generations*,

Presented by the National Congress of American Indians, Tex Hall, President, January 31, 2003.

⁷ *The Human Right to Adequate Housing*, Office of the High Commissioner for Human Rights, Fact Sheet No. 21, <http://www.unhchr.ch/html/menu6/2/fs21.htm>

⁸ Tex Hall, *The State of Indian Nations Today*, op. cit.

⁹ Navajo Tribal Utility Authority website, <http://www.ntua.com/>.

¹⁰ *Light-bringer Debby Tewa Provides Advice About Solar Power To People On Indian Reservations*, News Release, December 13, 2005, Sandia Labs, <http://www.sandia.gov/news-center/news-releases/2005/renew-energy-batt/tewa.html>.

¹¹ *Physical Housing Characteristics of Housing Units With an American Indian and Alaska Native Householder for Selected American Indian and Alaska Native Tribes (One Tribe Reported)*, Characteristics of AIAN by Tribe & Language, US Dept. of the Census, Table 53, pg 763.

¹² *Lines In the Sand: A Four Corners Regional Perspective*, Greg Anesi, David Eppich, and Thomas Taylor. Economic Review (Kansas City), 2004, pg 101.

¹³ *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, GAO-06-189, (Washington, D.C., Jan. 11, 2006). Available through GAO's Web site (www.gao.gov).

only had a telephone penetration rate of 76.4%.¹⁴ In Arizona, some residents on reservations had been quoted prices as high as \$70,000 for the installation of simple local telephone service.¹⁵ The Federal Communications Commission estimated that broadband penetration on Indian lands was less than 10%.¹⁶

Background: Role of Planning and Physical Infrastructure

The role of infrastructure in Indian Country has been critically understated. Perhaps no single aspect of community development requires that leadership balance the immediacy of action (short-term) with a precise plan of development (long term).

The basic premise behind planning is the orderly progression of development as well as the anticipation of future needs for a place. Usually, the two conditions that provoke governments to enable planning are: (1) the need to manage growth; and, (2) the need to regulate land-use in a manner that protects public health.

Few tribes grasp the significance of planning in Indian Country. Even fewer understand the role it plays in choosing appropriate infrastructure. Together, the coordination of land-use and infrastructure planning should forward the public goals of sustainability in a manner that balances the ecology, economic development and the value system of its community.

Indeed, the planning for sustainable development is even more critical for Native America. As articulated by the Karuk Nation of California, "Purely rational and technical approaches, unaugmented by a sense of the sacred or by the sensibilities specific to place, will necessarily become destructive and irrational over time ..."¹⁷

Planning in Indian Country has largely taken place in response to sporadic governmental funding.¹⁸ As such, tribal communities, at best, represent a quilted patchwork of projects that may or may not be culturally relevant for them.¹⁹ The following brief historical overview represents planning approaches that have shaped tribal communities over the generations.

Context: Pre WWII

When planning was first introduced in the United States at the turn of the 20th Century, it was a consequence of rapid urban growth and industrialization. Substandard housing conditions,

¹⁴ *Falling through the Net: Defining the Digital Divide*. National Telecommunications & Information Administration, 1999. <http://www.ntia.doc.gov/ntiahome/fttn99/index.html>

¹⁵ *Arizona's Telecommunications Infrastructure*, A Report Prepared for the Arizona Department of Commerce, Jerry Conover, Ph.D., Bureau of Business and Economic Research Northern Arizona University, July 2002, pg. 6.

¹⁶ *Testimony of the National Congress of American Indians before the Senate Committee on Indian Affairs*, Oversight Hearing on Economic Development, presented by President Joe Garcia May 10, 2006.

¹⁷ *Environmental Management: American Indian Knowledge & The Problem of Sustainability*, Leaf Hillman & John F. Salter, Ph.D., in *Forest, Trees & People: Newsletter # 34, 1997*. <http://www.magicriver.net/karuk.htm>.

¹⁸ Joe Garcia, *Testimony*, May 10, 2006, op.cit.

¹⁹ *Housing in Four Case Studies*, National American Indian Housing Council, 2004, http://naihc.net/NAIHC/files/ccLibraryFiles/Filename/000000000537/2004_Economic_Dev_Report.pdf, pg.10.

unsanitary waterworks and overcrowding in cities created health emergencies. In addition, the unregulated placement of polluting industries within residential areas created hazardous situations for the public.²⁰

The premise for organizing the cityscape into defined zones was simple—separate parcels with similar uses into the same contiguous area. This practice accomplished two things. First, it created a decidedly homogeneous radial ordering of land-usage (sometime called the concentric-zone model) and, secondly, it matched the infrastructure to the type of land-use activities being developed.²¹

The indigenous experience was both part of and not part of this urban history. When the U.S. population began its rapid rise from rural to urban habitations around the 1880s, tribes were being subjected to the confines of reservation life.²² The most prevalent practice for the development of rural lands was the land apportionment concept called the “Section.” Promulgated by the U.S. Congress with the passage of the Land Ordinance of 1785, it specified that open lands had to be surveyed before they could be distributed. Roads were generally placed along section lines.²³

This survey system was applied in the General Allotment (Dawes) Act of 1887. Treaty lands were divided into 160 acre fee-simple properties, allocated to each adult male in the tribe and the surplus opened up for homesteading.²⁴ With the advent of federal initiatives in education (Indian boarding school era) and health (Public Health Service), basic facilities and infrastructure were introduced into tribal lands. In essence, the first Indian Agencies were designated as “section townships.”

The local school and/or the local clinic became the nexus whereupon tribal villages or proto-towns emerged. In some cases, township-style master plans were created to facilitate the influx of housing needs for administrators, teachers and health practitioners. In other instances, the federal government made arrangements with religious groups like the Friends of the Indians

²⁰ It is no surprise that two of the densest industrial cities, New York and Chicago, were the first to craft ordinances to regulate land-use. The milestone for the urban planning tradition of the US is considered to be the 1909 Plan of Chicago (Burnham Plan). See the Encyclopedia of Chicago, www.encyclopedia.chicagohistory.org, 4/7/07.

²¹ *The Nature of Cities*, Harris & Ullman, The Annuals of the American Academy of Political and Social Science, Nov. 1945.

²² For the districts that had the most populous settlements that occurred in 1920 (51.4% were urban). *Growth of Urban Population in the United States*, Rosalind Tough, Journal of Land and Public Utility Economics, 1925, pg. 227.

²³ A good discussion of this system is found in a map entitled *Surveyors and Homesteaders, 1880-1940*, Jerry L. Williams, *New Mexico in Maps*, 2nd Edition, UNM Press, 1986, pg. 126.

²⁴ In one fell-swoop, the land base of Indian tribes declined from 139 million acres to 34.2 million acres.

to employ charity and churches as the center place of tribal communities. As parcels were subdivided even further, Euclidean zoning (the grid), became commonplace.²⁵

Post WWII

The advent of World War II shifted the whole nature of planning in the US from voluntary to required compliance. It was first instituted under U.S. statutes in 1958 as 701 Comprehensive Planning and was seen as necessary for regulating the growth and development of urban communities. American cities experienced unprecedented growth. Demand for new housing and commerce outstripped the capacity of local towns. Infrastructure that radiated outward from urban cores necessitated the establishment of systems that were coordinated in a manner that linked metropolitan regions. Regional planning, coordinating growth across multiple jurisdictions and involving local governments came into vogue. Demographics became the powerbase for funding capital improvement projects.

Native communities were similarly caught up in the tide of mainstream planning reforms. In 1968, the statutes were amended to encompass tribal governments and were implemented under a newly formulated 601 Comprehensive Planning mandate.²⁶ Under this authority, the Secretary of Interior was designated to implement this for its wards and comprehensive planning became mandatory under services provided by the BIA.

The earliest examples of 601 tribal comprehensive planning were largely reminiscent of inventory approaches. These were designed to comply with objectives issued by the Office of Economic Opportunity (OEO).²⁷ Because the economic base of many tribes was basically limited to their natural resources, the application of the planning approach was mixed and uneven.²⁸ Most plans were not grounded in the immediacy of meeting community needs, but were driven by unrealistic assumptions of social behavior modeled after non-native approaches to economic development. During this period, new ventures were seeded in recreational tourism, adventure destination amenity businesses and other enterprises intended to capitalize on the cultural aspects of a given tribe. Another strategy was to partition desirable parcels for lease-hold residential arrangements among non-Native amenity seekers.²⁹

²⁵ Named after the township of Euclid, Ohio, a milestone Supreme Court decision upheld the authority of its government to impose a pattern of development that was based on the imposition of a grid. *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926)

²⁶ Title IV, *Urban Planning and Facilities Comprehensive Planning*, sec. 601 amended in 1968 from Section 701, Housing Act of 1954 (40 USC 461).

²⁷ *One Generation of Self Determination: Native American Economic Self-Reliance in New Mexico*, chapter in *Proceedings of the Annual Conference*, National Rural Center. Theodore Jojola and Herman Agoyo, coauthors, 1993.

²⁸ *Indigenous Planning and Resource Management*, in *Trusteeship in Change: Toward Tribal Autonomy in Resource Management*, edited by Richmond L. Clow and Imre Sutton, University of Colorado Press, 2001, pg. 308.

²⁹ For example, in 1969, the Pueblo of Cochiti signed a lease with Great Western Cities, Inc. to create a 6,500 acre housing development called Cochiti Lake. It had such amenities as a golf course and a marina fronting the water reservoir. This "master-planned community" was designed for 50,000 residents and afforded non-native residents a 99-year lease-hold on their properties. In 2000, the US Census Bureau tabulated the population of the Cochiti

A second wave of planning was implemented by the Department of Housing and Urban Development (HUD). In 1961, the 1937 Housing Act was amended to allow HUD to establish Tribal Housing Authorities under the provisions of “self-help” and “turnkey” programs.³⁰ These HUD houses, as they are popularly called, ushered in suburban-style, cluster subdivisions and fundamentally changed the rural and social character of Indian Country. HUD requirements for individually apportioned land-deeds, zoning for residential areas and the provision of public infrastructure for electricity, roadways, water and sewer created a master plan approach to housing. Intended to alleviate substandard housing, the shoddy construction practices and culturally mismatched projects tended to introduce as many social problems as they alleviated.³¹ Nevertheless, the tribal subdivisions that evolved from the massing of these houses continue to dominate the landscape of many reservations.

Indian Self Determination

The present-day practice of comprehensive planning was ushered in with the issuance of the 1975 Indian Self Determination and Educational Assistance Act.³² Under the same contractual provisions afforded to the Secretary of Interior and the tribes, major trust responsibility provisions in education, public health, housing, etc., were amended through public laws to empower tribes to take over their own planning efforts.³³ Most importantly, the Act allowed tribal governments to assume or delegate planning authority on par with surrounding local governments.

Within a decade of the passage of this Act, infrastructure needs for many tribes mushroomed. As tribes opted to contract their own services in health, government and education, capital intensive programs spurred building construction. New local jobs became available and many Native white-collar employees who had worked at centralized urban programs were enticed to return back to their communities. Due to the multiplicity of tribal

Lake subdivision at 507 residents. In 1985, the corporation went bankrupt and management was assumed by a Pueblo-owned corporation, the Cochiti Community Development Corporation. *Stopping the Flood of Damages from Cochiti Dam*, Sandra Lee Pinel, Cultural Survival Quarterly, Issue 12.2, June, 1988.

³⁰ By 1988, over 65,000 housing units had been built under the aegis of 183 Indian housing authorities. *Housing*, Vernon Harragarra, *Native America in the 20th Century: An Encyclopedia*, Mary B. Davis, Edtr., Garland, pg. 245.

³¹ Ironically, it was the contentious provision of a HUD house to a female Pueblo Indian member who was married to a Navajo that set the challenge in the *Pueblo of Santa Clara v. Martinez* [436 US 49, 69 (1978)]. The ruling is considered a touchstone US Supreme Court decision for the affirmation of tribal sovereign authority in matters pertaining to membership and its privileges. *Memoirs of an American Indian House: US Federal Indian Housing*, Theodore S. Jojola, Unpublished Master Thesis in City Planning, MIT, 1973.

³² Public law 93-638

³³ Examples include, Indian Sanitation Facilities Act (PL 86-121; the Contracting Transportation Programs Under the Indian Self-Determination Act and SAFETEA-LU (Public Law 109-59); and the Native American Housing and Self-Determination Act (NAHASDA— 25 U.S.C. 4101), among others.

operations that were created as result of building local capacity, tribal government became a full-time business.³⁴

A second wave of local development occurred with the advent of casino gaming. The boom economies and consequent net revenues generated by successful Indian gaming enterprises significantly boosted those tribes' ability to leverage federal trust projects.³⁵ Many tribal operations used gaming funds to supplement the remodeling or construction of new buildings and utilities. School, health, recreational and elder centers became showcase projects. In contrast, tribes that either chose not to pursue gaming as a tribal enterprise or whose locations were not suitable for successful gaming operations, continued to depend on federal trust allocations and struggled with meeting basic social needs.

The advent of gaming as an enterprise also served to create a new type of planning approach. Strategic planning, an enterprise business model, gained widespread application in Indian Country.³⁶ A basic paradigm shift occurred as tribal business operations shifted community discussions away from problem-solving to strategic "wants" or "needs." "Visioning" became synonymous with 601 Comprehensive Planning.

Types of Tribal Planning

Tribal planning is unique from mainstream America. Today, many tribal communities bear the imprint of successive waves of reform and development. Unlike the radial patterns that characterized early American cities, tribal development is a mosaic of land uses that are often noncontiguous and mixed use. Although, theoretically, tribal governments have been vested with the authority to manage themselves like townships, they have not opted to do so. Tribes continue to exercise their sovereignty and shape their governments under the aegis of the 1934 Indian Reorganization Act (IRA). They have not organized as township governments as defined by state statute. The generation of local taxes for capital infrastructure and the enforcement of land use through a permit system is still a remote concept.

This is not to say, however, that the role of state government has become increasing important. It is probably because state/Indian gaming compacts have allowed state governments a share of casino revenues that tribal governments have become poised to leverage funding

³⁴ A very interesting chronology of such growth for the Zuni Tribe can be found in an article on *Twentieth Century Zuni Development: 1965-1985*, T.J. Ferguson, E. Richard Hart & Calbert Seciwa, in *Public Policy Impacts on American Indian Development*, C. Matthew Snipp, et.al, Institute for Native American Development, Development Series #4, University of New Mexico, 1988.

³⁵ *Indian Gaming as Community Economic Development*, Theodore S. Jojola & Paul Ong, chapter in *Jobs and Economic Development in Minority Communities*, Paul Ong and Anastasia Loukaitou-Sideris, editors, Temple University Press, 2006

³⁶ *Public Participation and the Choice of Casinos as Development Strategy in Iroquois Nations*, unpublished Ph.D. dissertation, Eve L. Baron, Rutgers University, 1998.

through state legislation for capital improvement projects.³⁷ Similarly, many casino-revenue tribes have purchased private property for the specific goal of keeping it fee-simple. In cases where a tribe shares boundaries with a city, they have used these parcels as a strategy for creating buffers, thereby distancing competing urban development.³⁸ This has prompted regional entities like the Council of Governments (COGs) to invite tribes to become equal and active members in regional planning efforts.

The newest face of tribal/state-based authority has tremendous and untested powers for self-governance. Among the most immediate is the implementation of land-use regulation and codes used to oversee the public health conditions of its residents. Land-use regulation contains provisions for the exercise of eminent domain. Tribal planning also has the potential of unleashing extra-territorial jurisdiction along buffer zones contiguous and adjacent to reservation boundaries. Indeed, planning requires tribes to build their legal capabilities in the realm of local planning enforcement. The following are the main types of planning being practiced by tribes today.

Comprehensive Planning

Comprehensive planning is an all-inclusive approach intended to provide guidance for the future growth of a community. A comprehensive plan (comp plan) is complex document that is legislated and carries the power of enforcement. The approved plan is intended to be a policy instrument first and a technical instrument second.³⁹ It is not static and may be periodically updated. The substance of a comp plan relates physical design to the social and economic goals of a community.

The main tool of comprehensive planning is zoning. Zoning assumes that the interests of private property owners must yield to the interests of the public.⁴⁰ For tribes, this is an unreasonable assumption. At the root level, most reservation land is held in trust and there may be no clear process for tribal governments to determine and/or control its usage. Authoritarian governmental regimes as typified by IRA-style tribes do not generally square well with public-participation processes. Tribal comp plans tend to be driven more by technicians who respond to or comply with federal or state initiatives.

As is the case with most comprehensive land-use models, property is designated into six basic zoning designations: agricultural, commercial, industrial, public, residential and other

³⁷ In New Mexico alone, in 2006 the 22 tribes were able to leverage 33.5 million dollars for capital infrastructure projects on reservation lands. This was a 3-fold increase from 2004. *Comprehensive Planning in New Mexico*, Powerpoint prepared for the NM Office of Indian Affairs, 2006.

³⁸ *Economic Development*, Sandia Pueblo website, <http://www.sandiapueblo.nsn.us>.

³⁹ *Principles and Practices of Urban Planning*, William I. Goodman, Ed., and Eric C. Freund, Assoc. Ed., Chicago, Ill. International City Managers Association, 1968.

⁴⁰ *Foreword: Zoning at Sixty—A Time for Anniversary Reckonings*, Charles M. Haar and Jerold S. Kayden, *Zoning and the American Dream*, from Haar and Kayden, Chicago: Planners Press, 1989, pp. ix-xi.

special-uses. Most reservation lands fall into only four types of usage—agricultural, public, residential and special-use. Commercial and industrial, which is considered to be the mainstay of business development, is minimal or often not present in Indian Country.

In general, zoning has delivered less on keeping incompatible land uses separate and more on designating cultural buffer zones to distance incompatible enterprises from their main population centers. This has created a type of “leap-frogging” where infrastructure may not bridge domestic and commercial zones. This practice often results in producing high-quality business environments, sometimes at the cost of high-quality living environments.

In particular, zoning as applied to tribal housing has created suburban-style, cluster communities that segregate and isolate extended families into nucleated households. As evidenced by reports critical of mainstream planning practices, the Center for Disease Control has implicated exclusionary zoning for contributing to unhealthy community lifestyles and neighborhood designs that are totally dependant on the automobile.⁴¹ The continued rising incidence of early onset diabetes and child obesity among Native populations is linked to such patterns.⁴²

Comprehensive planning has been applied in Indian Country with mixed results. Most tribes have been hindered in fully implementing such plans because of their complexity and inordinate timeframe for implementation. The lack of qualified tribal planners who are authorized to manage planning offices in tribes has also added to their lack of implementation.⁴³

Strategic Planning

Strategic planning is not comprehensive planning. It can be one integrated aspect of comprehensive planning, but it does not necessarily fulfill the intent of the law. Whereas comprehensive planning is based on an inventory approach—that is, what can you do with the resources you currently have—strategic planning is based on formulating a plan for attaining stated economic development objectives.⁴⁴

⁴¹ *How Land Use and Transportation Systems Impact Public Health: A Literature Review of the Relationship Between Physical Activity and Built Form*, Lawrence D. Frank & Peter Endelke, ACES: Active Community Environments Initiative Working Paper, Centers for Disease Control and Prevention, n.d.

⁴² *New Mexico American Indian Health Status*, Dawn McCusker, *New Mexico Epidemiology*, vol. 2005, no. 12, Nov. 12, 2005.

⁴³ It is not know how many comprehensive plans have been officially adopted by each respective tribe. A few tribes like the Pueblo of Jemez and Ohkay Owingeh have recently adopted theirs after lengthy consultancies with their tribal members.

⁴⁴ The difference in comprehensive planning and strategic planning can be easily demonstrated by drawing on a simple analogy. Suppose a group of individuals decided to go to lunch together. One choice would be to select from the restaurants that were in the immediate vicinity, thereby tempering one’s pallet on what was available. This is the comprehensive planning approach. Another strategy would be to agree on what type of cuisine everyone wanted and then figure out the resources necessary to get everyone to a restaurant that served such food, even if it meant going across town and getting a ride to get there. This is the strategic planning approach.

It was only after a few tribes operating gaming businesses received windfall profits that they began to pursue economic development in this manner. When the resource base did not exist within their lands, tribes expanded their economic base through outside capital ventures. Capital infrastructure plays a central role in this strategy. These are types of infrastructure projects that are treated as long-term investments and leveraged for the revenues that new development may generate. Revenues are the primary source for capital infrastructure.

Strategic planning has hastened the transformation of community development from BIA dependency toward tribal-local and state government capital investment strategies. Strategic planning, above the rest, has been the most responsible for linking infrastructure to economic development and capital gain.

Performance Zoning

Performance zoning, like that of land-use zoning, is also considered to be a tool of comprehensive planning. Unlike land-use approaches, the primary objective of performance-based land-use is to tailor land to its site characteristics.⁴⁵ Performance standards are based on criteria such as carrying capacity, threshold of safety and environmental impacts. The most important aspect of this approach is that each site is evaluated separately from another site. It is assessed for land-use compatibility and has been applied to protect agricultural lands, unique habitats and historic places.

McHargian analysis is the basic paradigm used in this approach. It creates models for deconstructing the complexity of physical characteristics by generating “layers” of geographic-based information.⁴⁶ Evaluation of criterion was considered complex and administratively unmanageable. With the advent of microcomputers and GIS software a means for generating complex land-use maps, an in-house capacity was established.

The extent of performance zoning practiced by tribes is unknown.⁴⁷ The use of GIS was introduced by agencies like the Bureau of Land Management for developing extensive inventories of natural resources on tribal lands. As the local GIS capacity became more established, mapping products began to drive how tribes made decisions for locating basic infrastructure like roads, water systems and electrical lines.

Indigenous Planning

⁴⁵ *Performance Based Planning: Perspectives from the United States, Australia, and New Zealand*, Douglas C. Baker, Neil G. Sipe & Brendan J. Gleeson, *Journal of Planning Education and Research* 2006, vol 25, pg. 396.

⁴⁶ The pioneer work in this area is still considered to be *Design with Nature*, Ian L. McHarg, Natural History Press, Garden City, N.Y., 1969

⁴⁷ One of the best examples of performance zoning is practiced by the Oneida Nation of Wisconsin. Designated as the LUTU (Land Use Technical Utilization) process, it is driven by GIS data products produced by their Geographic Land Information System.

Indigenous Planning is a new emerging paradigm among tribal planners.⁴⁸ What distinguishes Indigenous Planning from the mainstream application of comprehensive planning is its reformulation of planning approaches in a manner that incorporates ‘traditional’ knowledge and cultural identity. Unlike the Western approach, which has its focus primarily upon the regulation of land-use and the protection of private-property rights, the indigenous planning approach was formulated on values associated with land tenure and the collective rights associated with inheritance.

The problem as seen by indigenous planners is that simply “putting more eggs into the economic development basket” does not necessarily resolve the enormous cultural, social, political problems that contemporary tribes continue to face. Foremost to this effort, is to adopt a community development process that is informed and driven by the respective indigenous world-views. World-views are endowed with cultural ideals that integrate the past, the present and the future. Central to a world-view are values associated with cultural identity, land-tenure and stewardship. These values have and continue to be the hallmark of tribal survival. Simply put, without that philosophical construction, humankind’s community planning role and its balanced relationship to the natural world cannot evolve.

Indigenous planning is heavily invested in consensus building and the community participatory approach. Concepts to describe the value and meaning of place are taken from the local language and qualitative approaches like place-naming and cognitive mapping are used to explore the deeper philosophical roots of identity and culture. Vernacular architecture and physical symbolism become central to organizing key planning concepts.⁴⁹

Challenges Still Facing Indian Country

In many ways, indigenous principles used to sustain tribal communities for millennia are now being embraced by mainstream society. Wrongly or rightly, the advent of global warming has pushed the concept of sustainability to the forefront. Sustainability has been described as an approach to thinking that focuses on the long term and the interrelationships between human and natural systems.⁵⁰ For tribes that have long been recognized as “stewards of the earth,” such practices validate their community philosophies.

According to the 2000 U.S. census, only about one-third (34%) of American Indians and

⁴⁸ In 2005, a new Division of Indigenous Planning was created in the American Planning Association. This division superseded the United Indian Planners Association (UIPA) which became inactive. UIPA was established in the early 70s as a component of the Economic Development Administration (EDA). This organization provided technical assistance and shared the experiences of tribes as they attempted to comply with the federal mandate for the submission of comprehensive plans.

⁴⁹ An example of this process is the evolution and successful construction of the Turtle School on the Oneida Nation of Wisconsin. The case study can be downloaded from the APA Indigenous Planning Division website [<http://www.planning.org/indigenous/>]. *Indigenous Planning and Community Development*, Theodore Jojola, 7th IASTE Conf, The End of Tradition?, Trani, Italy, 2000.

⁵⁰ *Thinking Like a Sustainable Community*, Minnesota Office of Environmental Assistance, October 2000, www.mocea.state.mn.us.

Alaska Natives (AIAN) lived on reservations or in tribally designated statistical areas.⁵¹ The percentage of those that lived in rural areas for all reservations and designated statistical areas was between 71% and 79%. This was roughly the inverse of the percent of all Americans (21%) that lived in rural places.⁵² For the majority of AIANs, this means that the rural way of life is dominant in their community development patterns. For the poorest tribes, they will not be able to sustain basic infrastructure needs without federal or state assistance. The scales of economy often attributed to dense populations cannot be assumed in rural areas.

The ten largest American Indian tribes as a group comprise roughly 46% of the entire population that reported AIAN alone.⁵³ For the rest, their reservations can be largely characterized as rural with a small population base. As such, tribal communities are not subject to the same boom and bust cycles that result from high labor force migration.⁵⁴ Rather, they sustain their population grown from their high fertility.

Similarly, the population composition of Native America shows an imbalance among age groups. Although AIAN populations generally tend to exhibit high fertility at birth, by ages 15, both male and female out-migrate in significant proportions to seek education and employment opportunities. This tends to even out by the mid-30 age groups with their gradual return. By age 60, though, there is a rapid decline in population due to poor health and mortality. Such shifts pose even more challenges to the provision of infrastructure as need-based by age.

Ultimately the provision of utilities may be shared by tribal ventures or by the private-sector. As major utility lines crisscross over reservation lands, many tribes have negotiated special privileges for its citizens. Overall, land-use is becoming increasingly regulated. Tribal utility authorities now assume additional responsibilities including regular trash pick-up and environmental waste-hazard monitoring and enforcement. Emergency services now require tribes to provide unique street addresses.

For those communities that are more isolated, basic utility infrastructure tends to favor systems that are self-reliant. Technologies like fuel cells, solar and wind have begun to make important strides in electrical generation. These have spurred the development of a few tribally-

⁵¹ *We the People: American Indians and Alaskan Natives in the United States*, Stella U. Ogunwole, Census 2000 Special Reports, US Bureau of the Census, Washington, DC, Feb. 2006, pg. 14.

⁵² *American Indians on Reservations: A Databook of Socioeconomic change between the 1990 and 2000 Censuses*, Jonathan B. Taylor & Joseph P. Kalt, Harvard Project on AI Development, Harvard University, 2005, pgs. 4-5.

⁵³ *The American Indian and Alaska Native Population: 2000: Census 2000 Brief*, US Census Bureau, Feb. 2002, pgs. 10-11.

⁵⁴ It should be noted that the standard Components of the Population Equation ($P_2 = P_1 + \text{births} \pm \text{deaths} \pm \text{migrants}$) does not factor in the same way as communities that exhibit high mobility. Because tribal populations are basically fixed at birth (tribal membership) very few, if any, adopted members are added to tribal enrollment. *Census 80: Continuing the Factfinder Tradition*, Charles P. Kaplan & Thomas L. Van Valey, Bureau of the Census, Jan. 1980, pg 194.

headed enterprises and tribal utility companies.⁵⁵ They have also resulted in cooperative ventures with utility companies and tribal governments.⁵⁶ Others have begun to integrate natural riparian efforts with state entities to improve domestic water and wastewater management.⁵⁷ Still such systems require existing antiquated, outmoded and/or overstressed systems to be improved.

Transportation infrastructure continues to be problematic. Funds for road improvement are chronically under-funded by the federal government. This has led to third-world type interventions by non-profit organizations.⁵⁸ Yet as tribal communities continue to grow, they will be faced with urbanization. Many reservation areas that were once rural and isolated are now bisected by interstate highways that pass-through and bypass their townships. Major intersections provide motorists access to one-stop services and recreation (e.g., gaming). Feeder roadways link tribal housing HUD-type clustered subdivisions and government operations. Building construction along main thoroughfares tends to favor a point-to-point linear style development. There is still little or no consideration for the separation of pedestrians, autos and farm equipment. This lack of differentiation gives a semblance of congestion even through the local population itself may not be large.

Telecommunications infrastructure pins its highest hope on the penetration of wireless technologies. Among the major impediments though, have been the regulation of services within reservation areas and the role of leadership in the incorporation of new technologies.⁵⁹ This has spurred some communities to form their own tribally-controlled telecommunications enterprises.⁶⁰ Others are working with nationwide providers to provide reduced fees and access to reservation members.⁶¹ Still others are taking on their own local solutions.⁶²

Nonetheless, the telecommunications divide is largely along socio-economic lines. Those that can afford to subscribe and pay monthly fees, often do. Moreover, even when cable

⁵⁵ An example is NativeSUN, a Hopi-managed non-profit organization that installs photovoltaic units for remote and isolated houses. <http://www.nativesun.biz/>

Since 1993, the Navajo Utility Authority with the collaboration of the Department of Energy and Sandia National Labs has installed over 300 homes with photovoltaic systems. News Release, December 13, 2005, Sandia Labs, <http://www.sandia.gov/news-center/news-releases/2005/renew-energy-batt/tewa.html>

⁵⁷ *Native Nations, The Environment, and The State Of California: Tribal-State Relationships and Environmental Quality*, U.S Environmental Protection Agency, Region 9, Native Nations Institute, Udall Center for Studies in Public Policy, The University of Arizona, April 14-15, 2003

An example is the Walking Shield American Indian Society. Recipients of the Maxwell Award of Excellence from the Fannie Mae Foundation, they provide funding for road improvement. www.walkingshield.org.

⁵⁹ *Native American Access to Technology Program: Progress Report*, A Report to the Bill & Melinda Gates Foundation, John E. Sirois, et.al., Public Access to Computing Project, Daniel J. Evans School of Public Affairs, University of Washington, December 2001.

⁶⁰ Examples in Arizona include Gila River Telecommunications, Inc., Fort Mojave Telecommunications, Inc., Saddleback Communications (Salt River Pima-Maricopa), San Carlos Apache Telecommunications, Inc., and Tohono O'odham Utility Authority. Jerry Conover, *Arizona's Telecommunications Infrastructure*, 2002, pg. 6, op. cit.

⁶¹ Mescalero Apache Telecom, Inc, works with Cellular One to provide low-cost access. <http://www.matisp.net/>

⁶² Wireless WALRUS (Web Access Links for Remote User Services) in Alaska utilizes advanced wireless and satellite earth station technology to accomplish its mission. <http://www.kawerak.org/walrusProject/index.html>

TV, cellular subscription and high-speed internet services can be had, its educational intent is questionable. Little or no programming with cultural or tribal language content is accessible. Local schools may or may not have community curriculum to make such access culturally relevant.

In conclusion, despite the enormous needs that tribes face in meeting infrastructure needs, they are best positioned to adapt self-reliant technologies and best-practices for their communities. Unencumbered by local regulations, there is still a great amount of latitude for experimentation and innovation in Indian Country.