

Community Dividend Encore

Community Affairs • Federal Reserve Bank of Minneapolis

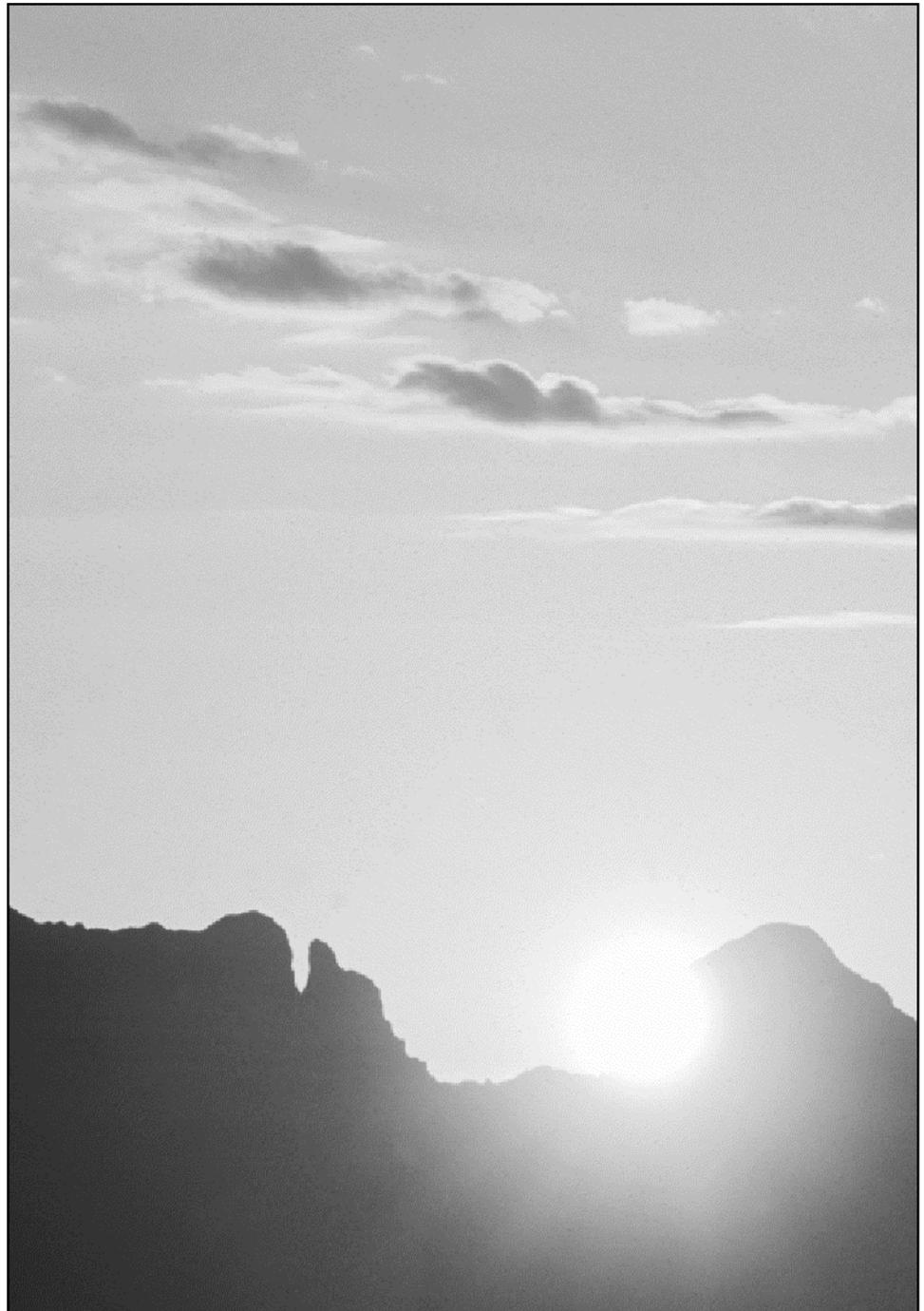
**SUMMER 1998
COMMUNITY
DIVIDEND
REVISITED**

Table of Contents

U.S. banks offered
historic opportunity
in Indian
Country...**Page 3**

Tribal sovereign
immunity:
Obstacle for
non-Indians doing
business in Indian
Country?...**Page 7**

Model code
addresses economic
development in
Indian Country...**Page 10**



Community Affairs Officer's note

Welcome to *Encore*

Welcome to *Community Dividend Encore*, where we reprint popular *Community Dividend* articles of the past and update others as needed. In this edition, we revisit our Summer, 1998 issue, which focused on economic development in Indian Country and the related challenges and opportunities for lenders in Indian communities.

Our first feature advances the idea that banks have an unprecedented opportunity to participate in and profit from the recent growth in Indian-owned businesses throughout the nation. The author, Patrick Borunda, is a Pacific Northwest-based advocate of culturally appropriate economic development. In an addendum to his original article, Borunda reports on Native American economic development in his region since 1998. The increase in Indian gaming and nongaming enterprises in Oregon and Washington is indicative of an overall increase in the economic vitality of Indian Country over the past few years.

Next, two articles address the tribal legal infrastructure needed to support the type of boom in economic activity Borunda describes. One

discusses tribal sovereign immunity and what it means for bankers entering into commercial relationships with tribes. This article is written by Susan Woodrow, assistant vice president and assistant branch manager at the Helena, Mont. Branch of the Federal Reserve Bank of Minneapolis. The other article, written by Maylinn Smith, director of the Indian Law Clinic of the University of Montana's School of Law, discusses an initiative that resulted in drafting a model secured transaction law for Montana and Wyoming reservations.

Part of our mission is to help people understand the value and complexity of economic development in Indian Country. We hope you find this edition of *Community Dividend Encore* informative and useful in your work.

JoAnne F. Lewellen
Federal Reserve Bank
of Minneapolis

WestScript Pictorial CD 9th District

Community Dividend Encore is published by the Federal Reserve Bank of Minneapolis, 90 Hennepin Ave., P.O. Box 291, Minneapolis, MN 55480-0291; (612) 204-5000. It covers topics relating to community development, reinvestment and neighborhood lending. It reaches financial institutions, community-based and development organizations and government units throughout the Ninth Federal Reserve District.

Community Affairs Officer
JoAnne Lewellen
(612) 204-5064
joanne.lewellen@mpls.frb.org

Community Affairs Manager
Margaret Tyndall
(612) 204-5063
margaret.tyndall@mpls.frb.org

Community Affairs Staff
Nikki Foster
nikki.foster@mpls.frb.org

Leslie Krueger
leslie.krueger@mpls.frb.org

Thomas Moore
thomas.moore@mpls.frb.org

Paula Woessner
paula.woessner@mpls.frb.org

Editor: Paula Woessner
Design/Production:
Straight River Media

For address changes or additions,
call (612) 204-5074 or e-mail
Mpls.CommunityAffairs@mpls.frb.org

We welcome your questions and concerns. Please write or call any of the Community Affairs staff members listed above.

Community Dividend Encore
is available on the
World Wide Web at
www.minneapolisfed.org.

Articles may be reprinted if the source is credited and we are provided copies of the reprint. Views expressed do not necessarily represent those of the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of Minneapolis.

U.S. banks offered historic opportunity in Indian Country

BY PATRICK BORUNDA

Indian tribes and individual Indians across the country are now poised to share in the benefits of the American economic system. In many cases, this is due to direct or indirect benefits from casino revenues, which are infusing money into reservation economies and thereby enabling many tribes and some tribal members to invest in business opportunities.

Participation in the American economic system requires access to capital, usually in the form of credit, as well as a likely source of repayment for that credit. Many tribes and tribal members — especially those located in rural areas — will look to local banks for this capital. And while banks are providing the debt capital, bankers can also serve as an important resource for tribal communities by providing technical expertise and other services that will ensure that borrowers are poised to take full advantage of the opportunities now open.

To serve this emerging market, bankers should understand the structure of the economies of tribal communities and the size of the potential market. Toward that end, this article discusses the structure of the economies in Indian Country before 1988, the effects of gaming on economic development in Indian Country and the emergence of the private sector in Indian Country.

STRUCTURE OF THE ECONOMY IN INDIAN COUNTRY BEFORE 1988

The post-World War II economic structure of Indian Country has had three elements: tribal governments, tribal enterprises and private enterprises.

Tribal governments have tended to be distorted in their economic-development functions relative to state governments, to which they are somewhat parallel. This distortion stems from the lack of economic alternatives in reservation communities. For example, control of a tribal government often re-

resented control of the largest source of jobs on a reservation and tribal governments too often became battlegrounds to control this source of jobs. In a state government situation, the majority of jobs are not controlled by the head of government and a state's nongovernment jobs strongly outnumber its government jobs.

To improve their economies, tribal governments often sponsored various enterprises such as manufacturing facilities or businesses that used a tribal resource, for example, timber or mineral deposits. Unfortunately, these enterprises were all too often noncompetitive since their primary purpose was to create employment in a setting where jobs were rare. The lack of competitiveness often disqualified these enterprises as sources of cash to collateralize borrowing.

Furthermore, plants and equipment were often not maintained adequately, leading to further loss of competitiveness and credit access. Those few young Native Americans able to acquire higher education were drawn by off-reservation opportunities, resulting in a "brain drain" on reservations. Tribal enterprises may be a legitimate use of tribal assets, but most of these enterprises were unable to stop the downward spiral of reservation communities and their economies.

Just as tribal enterprises were suffering, Indian Country's private sector was anemic. The U.S. Census Bureau counted only 13,600 Indian-owned private businesses in the United States in the 1982 Economic Census. Their total revenues were a mere \$495 million. While the number of businesses grew 57 percent to 21,380 as of the 1987 Economic Census, the ownership rates were still very small. In 1987, the per capita ownership rate for Native Americans was approximately 10 percent of the rate of their white fellow citizens, less than 20 percent of the rate for Asian-Pacific Islander citizens and far below the rates for black and Latino citizens. The many benefits of business



Indian-controlled cash flowing into tribal governments has restored options in gridlocked communities.

ownership — including job generation, employment training and keeping money on the reservation — were not being enjoyed in Indian Country.

Contributing to the lack of business success was the lack of infrastructure. It is generally recognized that many reservations, particularly those in remote rural areas, do not have the necessary transportation, power and communication infrastructure to support businesses in the 1990s.

EFFECTS OF GAMING ON ECONOMIC DEVELOPMENT

In the late 1970s, tribes began generating revenues from various types of gaming activities. In 1987, the Supreme Court confirmed tribes' authority to operate gaming establishments on trust lands independent of state regulation. To resolve outstanding issues among tribes and states, the U.S. Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988. Gaming expanded with breathtaking speed.

Only a few casinos account for most of the gaming revenues, however. The General Accounting Office reported that 184 tribes were operating 281 gaming facilities as of December 31, 1996. The report examined

financial statements from 178 facilities owned by 126 tribes. Just eight of the 178 facilities accounted for 40 percent of the total revenues. Furthermore, of the \$1.6 billion in net income transferred from these facilities to their tribes in 1995, more than 50 percent went to just 10 tribes. Twenty tribes, 16 percent of the sample, indicated there were no income transfers.

While the profits of Indian-owned gaming facilities are not making Indian people wealthy, Indian-controlled cash flowing into tribal governments has restored options in gridlocked communities and wages from the increased employment have created modest buying power. This new cash flow and buying power can be leveraged into material changes not only for Indian individuals and communities, but for the surrounding non-Indian communities as tribal members become more active in the regional economy.

Tribal governments are challenged to create the tangible and intangible infrastructures that underlie sustainable economic development. Tangible infrastructure comprises roads, water and power systems and schools. Intangible infrastructure consists of uniform commercial codes,

court systems and commitments to consistent policy between successive administrations. This infrastructure is necessary to preserve economic gains over time.

EMERGENCE OF A PRIVATE SECTOR

Perhaps the single most exciting development in Indian Country is the creation of wealth among tribal members through owning and operating private enterprises. The number of Native American-owned businesses (NAB) increased nearly fourfold between 1987 and 1992, according to the U.S. Census Bureau. In some areas of the country, Native American private enterprise is approaching critical mass, that is, able to sustain a chain reaction of growth.

Revenues from these businesses totaled \$8 billion in 1992, which means that Indian-owned small businesses collectively contributed the same amount to the national economy as did individual large companies such as General Mills, Colgate-Palmolive, or Time Warner. Clearly, NABs are making a substantial and growing contribution to the well-being of Indian communities across America.

A business contributes to the economy by purchasing labor and materials and converting them into goods and services. In 1992, Indian-owned private enterprise purchased at least \$6 billion worth of materials and paid out \$820 million in employee income. Additionally, owners of these businesses drew \$732 million for their own income. Contrary to common perception, this income is taxable at the state and federal levels. In many states, these businesses



also collect a state sales tax, which benefits the state government.

There is enormous untapped, but measurable, potential for entrepreneurship in Native American communities. In the state of Oregon, ONABEN — A Native American Business Network (headquartered in Portland) has analyzed business-ownership rates per thousand population. The Native American rate of business ownership, at less than 15 per thousand in the 1992 Economic Census, is the lowest rate of any cultural community in the state and well short of the white rate of 82-plus per thousand. If Indian people had ownership rates equal to those of whites, there would be an additional 2,800 Indian-owned businesses in Oregon with attendant benefits to the general community through increases in gross state product, taxable wages and taxable busi-

ness income. This situation is mirrored throughout the Northwest. There is no reason to believe that the situation is much different in other states.

OPPORTUNITIES FOR BANKS

The opportunities for the banking community in the growth of Native American private enterprise are similar to the opportunities associated with all small business lending. These are profitable loans and a source of future customers. To play a role, bankers must tailor their products to the economic realities of these emerging businesses or invest in organizations that can tailor products. For their part, Indian entrepreneurs must be prepared to acquire a full range of business skills. What's more, they must learn what motivates and what frightens bankers. They must strive to minimize the apparent risks bankers try to avoid.

The United States is at a historic moment in the relationship between its First Nations and the rest of the country. The economies of Indian Country were already evolving when IGRA passed. However, passage increased the pace. Tribes and their members are ready to be full economic partners. The banking community can play a significant role as a provider of credit capital and source of financial expertise.

Many non-Indian citizens will benefit from healthy reservation economies. Those living on and near the reservations will benefit from the fact that the reserva-

tions are poised to be a regional economic engine. All Americans — regardless of their proximity — will benefit from these durable Indian communities being restored to economic health. These communities are becoming full partners in the economy of the United States, and their potential contributions are enormous.

ADDENDUM: DEVELOPMENTS SINCE SUMMER, 1998

An Economic Census was performed in 1997, the year before the preceding article originally appeared in *Community Dividend*. Data from the 1997 census are not yet available, so we are unable to authoritatively report the actual increase in the numbers of Native American-owned businesses since 1992. However, information collected since 1998 indicates changes in the potential size of the emerging reservation capital market and in the impact of reservation economies on their regions' economic life.

Studies of specific needs for

Use of 'Indian Country'

The term "Indian Country" is commonly used to refer to tribal lands. Congress defined it first in 1948 in a federal criminal statute. See 18 U.S.C. § 1151. The Supreme Court also borrowed this definition for several civil cases. See *DeGoteau vs. District County Court*, 420 U.S. 425, 427 n. 2 (1975). Generally, the courts have defined Indian Country broadly to include formal and informal reservations, dependent Indian communities and Indian allotments, whether restricted or held in trust by the United States.

capital have been conducted in the past several years by sources as diverse as the Federal Housing Finance Board, Department of Housing and Urban Development and the Department of Commerce. When placed on a common basis by The Navigator Group, the studies suggest reservation communities constitute a market for \$27 billion to \$30.6 billion of financing every year for the next decade. Demands include at least \$1.8 billion for infrastructure and community facilities, \$3.4 billion for housing, \$3.6 billion for private-enterprise financing, \$16 billion for nongaming tribal enterprises and up to \$2.4 billion in consumer credit.

Although each Federal Reserve District is different, events in one can be expected to illuminate events in another. Specifically, in the Pacific Northwest, the impacts of Indian gaming in Oregon and nongaming enterprises in Washington suggest what may be happening in the Ninth District. In early 2000, Dean Runyon Associates of Portland was retained by the Oregon Tourism Commission to evaluate Oregon's top attractions and the relationships between tourism and economic development activities. The Commission reported that tribal casinos comprised four of Oregon's eight top tourism attractions in 1999.

The Confederated Tribes of the Grand Ronde Community's Spirit Mountain Casino took over from Multnomah Falls as the state's top attraction. It had more than 3 million visitors compared to the Falls' 2.5 million (a 20-percent difference). The Siletz Tribe's Chinook Winds Casino, which brought

In Oregon and Washington, reservations in rural areas have become their region's number-one or number-two employer.

1.3 million visitors to Lincoln City last year, held the number three position. Number six, the Coquille Tribe's Mill Resort and Casino, and number eight, Umatilla's Wildhorse Casino Resort, bracketed the Oregon Museum of Science and Industry in Portland. The Klamath Tribes Kla-Mo-Ya Casino was in 17th place, just behind the renowned Oregon Shakespeare Festival and Portland Art Museum.

According to the study, tourist spending is growing faster in the eight Oregon counties with tribal casinos than in the state's remaining 28 counties without casinos. The growth of jobs parallels the growth of gaming. Oregon tourism grew at a 5.6 percent annual rate between 1993 and 1998 — higher than the national average of 4 percent. Tourist spending in Oregon counties with casinos grew at 8.4 percent per annum between 1993 (when the first casino opened) and 1998. Elsewhere, spending grew at 5 percent. In the eight casino counties, employment grew at 6.4 percent, compared to 2.7 percent for the balance of the state. The Oregon Department of Employment reported that employment in Indian tribal establishments increased from 2,200 in January 1996 to 5,900 in the summer of 1997. In 1998,

tourist gaming expenditures generated approximately 2,500 additional jobs (in excess of 8,400 total).

In the fall of 1997, Tiller Research Inc. of Albuquerque, N.M., was retained by Washington Governor Gary Locke to assess the economic impact of Washington tribes on the state's economy. In a nutshell, Washington's 27 federally recognized tribes contribute over \$1 billion per year to the state's economy, mostly from nongaming enterprises and activities. In 1997 they spent \$865.8 million for supplies, equipment and services. Tribal governments paid \$51.3 million in federal and \$5.3 million in state employment/payroll taxes. In Oregon and Washington, reservations in rural areas have become their region's number-one or number-two employer. 

Patrick Borunda is strategic management counsel of The Navigator Group, a management-consulting firm he founded in 1983. Borunda has held executive directorships at ONABEN — A Native American Business Network and the Oweesta Corporation and is a director of the Portland Branch of the Federal Reserve Bank of San Francisco.

Tribal sovereign immunity: Obstacle for non-Indians doing business in Indian Country?

BY SUSAN WOODROW

Native American tribes consider sovereign immunity to be crucial for the protection of tribal resources and the promotion of tribal economic and social interests. Because of the uncertainties surrounding this doctrine, however, this very same tool of self-determination may be viewed as a significant obstacle to the non-Indian investor, lender or developer who otherwise may be interested in doing business in Indian Country. Accordingly, questions that have long been asked are what is sovereign immunity and what does it mean in the tribal context?

DEFINING TRIBAL SOVEREIGNTY?

A sovereign state is one that is independent from all other authority, retaining the right and power to regulate its internal affairs without foreign interference. Sovereign immunity is the doctrine that precludes the assertion of a claim against a sovereign without the sovereign's consent.

Indian tribes are sovereign entities. The exact nature of tribal sovereignty, however, is not clear. One theory holds that tribal sovereign status is inherent. Tribal sovereignty is not granted to tribes by the United States but rather *reserved* as inherent in their status as governments predating the formation of the United States. The fact that the colonizing nations and, subsequently, the U.S. government entered into treaties with tribes supports this view.

A competing theory holds that notwithstanding original sovereignty, tribes today are only "quasi-sovereign." Tribes retain the attributes of sovereignty over their members and territory but only to the extent that sovereignty has not been limited or withdrawn by the federal government. In other words, tribes have been permitted to retain their sovereign status subject to the federal government's authority to revoke, limit or otherwise modify tribal immunity at its discretion.

Not surprisingly, over time the federal government has defined and redefined the breadth of



tribal sovereignty. For example, the Supreme Court in 1832 characterized tribes as distinct, independent political communities, retaining their original natural rights, with the exception of the ability to deal with foreign nations.¹ Contrast this rather broad interpretation with the Supreme Court's later assertion in 1978 that Native American nations are only quasi-sovereign authorities whose powers are restricted consistent with their domestic dependent status.²

Without need to discuss further the merits of either theory, the law of tribal sovereignty as it has developed in the federal courts and by federal statutes, executive orders and treaties over the last two centuries now rests on several fairly well-settled tenets: 1) tribes have virtually unlimited authority over internal tribal affairs; 2) tribes are subject to the plenary, or absolute, power that Congress has over them; 3) tribes are presumptively immune from state law; 4) tribes cannot be sued absent their express consent or a waiver of their immunity; and 5) tribal sovereign immunity does not extend to individual tribal members except to the extent that tribal officials act within the scope of their official capacities.

Although these principles are well established, how they (or any exceptions to them) apply in any

It is likely that the perception of tribal sovereign immunity as a barrier to the non-Indian seeking to do business in Indian Country will *lessen*.

given situation often is not clear, whether with respect to regulatory or taxation authority matters or to criminal or civil jurisdiction. The interests of the tribes, states and federal government all factor into any analysis, the variables of which make any determination of jurisdiction dependent on the specific case. Some of the uncertainty regarding the relationship between tribes and states, in particular, and thus the reluctance on the part of many nontribal entities to conduct business with tribes, can be attributed in part to the confusion surrounding the various legal roles a tribe may play or the legal status of a tribe. The federal government, through court decisions and legislation, has introduced numerous laws, rules and tests (and exceptions to those) that have further faded the bright line that originally delineated tribal sovereignty. The confusion is compounded by the variety of ways in which land in Indian Country may be owned or held, and the nature of the particular tribal, federal or state interests that may be involved. In brief, it is often difficult for a nontribal entity to know with whom it is dealing, with whom it is best to deal, and with what it is dealing.

To illustrate just some of the complexities, a tribe may or may not be organized under Section 16 of the Indian Reorganization Act of 1934 (IRA). A Section 16 IRA tribe will be organized

under a constitution that defines the governing body, its powers and authority. Non-IRA tribes have their own governing structures. Whether a tribe is organized under Section 16 or not, it may also be incorporated under Section 17 of the IRA as a federal corporation, creating a legal entity distinct from the governmental entity of the tribe, that may, among other things, have the power to sue or be sued or to waive immunity without affecting the status of the tribal governmental entity. A tribe may also form business entities under tribal code or custom or under a state law charter.

Whether a nontribal entity does business with a tribal governmental entity, a Section 17 tribal corporation, a non-Section 17 tribal business entity or a business entity chartered by the tribe under state law will have significant bearing on a business transaction. For example, if a business venture is operated by or as part of the tribal government, the sovereign immunity of the tribe will extend to the tribal business. If a tribe operates a business as a separate entity, however, the business may be open to adverse legal action in state court and under state law.

OBSCURING BOUNDARIES

In addition to the organizational intricacies that obscure the boundaries of tribal immunity are the regulatory authority and jurisdictional issues.

As a general principle of tribal sovereignty, state laws have no force in Indian Country, and state courts are without jurisdiction to hear lawsuits brought by non-Indians against tribes, tribal entities and tribal members with respect to transactions arising on reservations. Of course, there are numerous exceptions. Whether a tribe, state or the federal government has regulatory or civil jurisdiction over Indians or non-Indians on or off reservation lands depends on a variety of factors, including whether Congress has expressly granted authority to one or more sovereigns in a particular area.

For example, in 1953, Congress gave six states³ authority under Public Law 280⁴ to assume state criminal and civil jurisdiction over tribal members in Indian Country, and it authorized all other states to assume civil jurisdiction, of which 10 did. Although the act only authorizes state courts to assert jurisdiction and not the application of state regulatory law,⁵ it signifi-



cantly diminished tribal immunity.

Fifteen years later, in a partial reversal, Public Law 280 was amended to provide that thereafter, no state could assume civil jurisdiction under the act without the approval of tribal membership at an election. In addition to jurisdictional rights granted under Public Law 280, the Supreme Court has applied several tests when making regulatory or civil jurisdictional determinations, such as the pre-emption or infringement tests, under which states have been given, for example, specific taxation rights, rights to regulate on-reservation fishing and rights to require tribal members to acquire licenses to sell liquor on reservations.

Sovereignty issues involving land interests in Indian Country present similar challenges in proposed business transactions between tribes and nontribal entities. Ownership may include tribal trust lands, tribal fee

lands, allotted trust lands held by individual Indians, fee land held by non-Indians, federal public land, and county and state lands, often resulting in adverse and competing tribal, state and federal interests.

Tribal, state and federal jurisdictional authority varies with each. The nature of the property involved in a business transaction will determine whether, for example, a state court judgment can be enforced against real property in Indian Country.

This discussion illustrates some of the sovereignty issues the non-Indian investor, lender or developer may face when doing business in Indian Country. But perhaps the real obstacle posed by tribal sovereignty is not the uncertainty that state or federal law will apply or that disputes will be resolved in state or federal court but rather the lack of understanding of or confidence in tribal law and the tribal court systems. As tribes increasingly demonstrate capa-

ble self-governance through the continued development of their tribal courts and adoption of commercial and other regulatory codes, it is likely that the perception of tribal sovereign immunity as a barrier to the non-Indian seeking to do business in Indian Country will correspondingly lessen. 

Susan Woodrow is assistant vice president and assistant branch manager at the Helena, Mont., branch of the Federal Reserve Bank of Minneapolis and an active volunteer at the Pine Ridge Indian Reservation in South Dakota.

¹ Worcester v. Georgia, 31 U.S. 515, 559 (1832).

² Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 208 (1978).

³ Minnesota, Wisconsin, Oregon, California, Nebraska and Alaska.

⁴ Act of Aug. 15, 1953, 67 Stat. 588 (1953); codified as amended at 18 U.S.C.A. §§1321-1326 and 28 U.S.C.A. §1360 (1988).

⁵ The Supreme Court, in Bryan v. Itasca County, 426 U.S. 373 (1976), made it clear that the intent of the law was to grant states jurisdiction over private civil litigation involving tribal members in state law matters such as contract, tort, marriage, divorce and so on. *Id.* at 384 n. 10.

Model code addresses economic development in Indian Country

BY MAYLINN E. SMITH

Historically, Indian Country has not been viewed as a Mecca for economic development. Except for natural resource-extraction companies, non-Indian entities frequently overlook business opportunities in Indian Country. As a result, the vast majority of revenue-generating enterprises or activities in Indian Country are established through the efforts of tribal governments. Non-Indian developers or investors often cite concerns over the unknown and uncertain state of business laws in Indian country as a primary barrier to economic development in this area.

DRAFTING A NEW CODE

Over the last five years, a variety of local, regional and national activities have focused on addressing the perceived barriers to economic development in Indian Country. In 1995, the Montana Regional Strategies Initiatives began exploring the issues that contributed to low levels of economic development in Montana. Indian and non-Indian participants addressed strategies for improving business opportunities in the economically depressed regions of Montana, including the seven Indian reservations located within the state. Meeting participants identified several key factors that were viewed as significant barriers

to economic development in Indian Country. The lack of tribal laws relating to commercial transactions was repeatedly cited as an investment barrier. Ultimately, the development of a Model Tribal Secured Transaction Code (MTSTC) became a significant component in the attempt to increase economic development prospects in Indian Country.

With funding from a variety of tribal and nontribal entities, the Indian Law Clinic at the University of Montana drafted an MTSTC. Drafting this model law was a multistep process, similar to other tribal code development projects the clinic has undertaken. The Indian Law Clinic reviewed all known tribal commercial laws and noted the areas in commercial law that tribes generally considered important. During the drafting process, many of the shared commercial concepts and principles found in multiple tribal codes were incorporated into the MTSTC. The final draft of the

MTSTC set forth a variety of options for tribal consideration. This format allows tribes to customize their tribal commercial codes to meet their unique needs. Based on discussions with various tribal entities and interests, the Indian Law Clinic considered tribal needs and specifically included provisions for handling many of the problems that are frequently encountered in commercial dealings in Indian Country. Although many of the concepts and provisions of the Uniform Commercial Code (UCC), as drafted by the National Conference of Commissioners on Uniform State Laws, were incorporated in some form into the MTSTC, the model tribal code is not identical to the UCC.

MODEL CODE PROVIDES UNIFORMITY, CERTAINTY

The final product is intended to be a culturally responsive document. The MTSTC recognizes and preserves the sovereign aspects of tribal govern-

The Model Tribal Secured Transaction Code recognizes and preserves the sovereign aspects of tribal governments, while providing avenues for greater economic development.

What is a Uniform Commercial Code?

The Uniform Commercial Code (UCC) is a set of standardized laws drafted by the National Conference of Commissioners on State Laws that govern most, if not all, aspects of commercial transactions. The various laws, or articles, that comprise the UCC cover substantive areas of commercial law which deal separately with sale of goods, leases, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, warehouse receipts and bills of lading, investment securities and secured transactions. The UCC provides the primary means by which risk will be allocated among parties in commercial dealings. Because the various jurisdictions that have adopted the UCC operate under substantially the

same set of commercial laws, financial institutions and commercial entities are able to do business across jurisdictional boundaries with a large degree of certainty as to the rules that apply and the way risk will be allocated in the event something goes wrong.

In Indian Country, one hoped-for outcome of the model tribal law discussed in this article is that economic development will be promoted by providing a sound economic environment in which businesses and banks can operate. The model tribal law is modeled after Article Nine of the UCC, Secured Transactions; Sales of Accounts and Chattel Paper (the shortened title for which is "Uniform Commercial Code-Secured Transactions").

ments, while providing avenues for greater economic development. In its current form, the MTSCCT can either stand on its own or be successfully integrated into broader commercial law. Several tribes have used this MTSCCT to develop their own secured transaction codes. Some tribes have simply adapted the MTSCCT to their needs, with minor adjustments in the provisions. Tribes may also find this document to be a helpful starting point for a variety of commercial codes. The Hoopa Valley Tribe, for instance, incorporated parts of the MTSCCT into a more comprehensive tribal commercial code.

As tribal governments and business entities become increasingly interested in enhancing economic opportunities in Indian Country, the

MTSCCT is a tool they can utilize. The MTSCCT is a fairly straightforward way of providing a degree of uniformity and certainty in commercial dealings in Indian Country. Many of the perceived risks associated with doing business in Indian Country can be minimized, if not completely eliminated, through the enactment of this type of tribal legislation. Although they are not the ultimate solution to economic development concerns in Indian Country, tribal commercial codes appear to be a very cost-effective tool for improving the Indian Country business climate.

ACCESSING THE MTSCCT

Even after three years, the MTSCCT remains one of the Indian Law Clinic's most requested documents. Given current interest in this area of

Indian law, model tribal codes focusing on other commercial areas may be an important resource for tribes looking to attract business to their communities.

To download a free copy of the MTSCCT, visit the University of Montana Law School web page at www.umt.edu/lawinsider/library/lawbysub/ucc.htm. Individuals may also request a copy by writing to Indian Law Clinic, School of Law, The University of Montana, Missoula, MT 59812. A modest fee will be assessed to cover copying and postage costs. 

Maylenn E. Smith is director of the Indian Law Clinic of the University of Montana's School of Law.



Community Affairs, BSD
Federal Reserve Bank of Minneapolis
P.O. Box 291
Minneapolis, MN 55480-0291