



FRAMING THE DISCUSSION

As the previous section illustrates, robust physical infrastructure is essential for building a self-determined economy. Equally vital, however, are other kinds of infrastructure a Tribal Nation must create or revitalize, namely its:

- **legal infrastructure** (the laws it develops to support and drive economic progress, and how it enforces them)²;
- **political infrastructure** (an effective, culturally legitimate governance system; efficient, binding tribal decision-making; clear, respected divisions of authority and responsibility; and a **bureaucracy** that gets things done in a timely fashion)³; and
- **commercial infrastructure** (governing how business is conducted on tribal lands and how tribal citizens and others can participate in tribal commerce).

These infrastructures come to life through the nation's constitution (written or unwritten), laws, codes, policies, regulations, norms of practice, and strategic plans, as well as the various mechanisms, departments, offices, and agencies used to enforce, administer, follow, and implement them.⁴ Together, they comprise the **"institutions"** the nation deploys to "mobilize and sustain community collective action for successful development to occur."⁵ Once in place, they collectively form the ecosystem within which the nation's economy takes root and grows, from the enterprises the nation and its citizens own to the commerce that occurs among those entities, tribal citizens, other Native people, and outside companies and customers.

This ecosystem's ability to nurture economic progress on tribal terms depends on institutional choices a Tribal Nation makes about where and how it wants its economy to function, whose job it is to do what within that economy, and for what purposes. This comes down to the rules the nation establishes to structure its economy, the roles it expects key contributors (leaders, employees, citizens, outsiders) to play (see pages 12-13), and the relationships it forges with local partners, other Tribal Nations, non-tribal governments, and outside entities to advance its priorities.⁶

Tribal Nations who have developed healthy institutional ecosystems for economy building – along with "strong trust and cooperation among their citizens" – greatly increase the "potential for sustainable development of their political economies, even in the face of structural challenges such as geographic isolation or lack of resources."⁷ Meanwhile, for those with unhealthy or underdeveloped ecosystems, it is virtually impossible to make

"Native nations have various pillars that support the welfare of our citizens and our homelands...One is the pillar of governance: our ability to act as a collective, to develop the rules and roles through which the nation can pursue its dreams and protect its interests."

– Jaime Pinkham, Former Treasurer, Nez Perce Tribe¹

meaningful economic headway much less sustain their progress over time because they have difficulty attracting, leveraging, keeping, and growing the various investments from tribal citizens and other key contributors their economies require.

Unfortunately, many Tribal Nations have long wrestled with unhealthy ecosystems, largely through no fault of their own.⁸ The symptoms are common and familiar: The tribal court fairly decides against tribal government in a business dispute, only to have tribal council invalidate it. The tribal government negotiates a contract with a business partner and then violates its terms, claiming **sovereign immunity** to avoid losing in court. Tribal leaders routinely interfere with personnel decisions in nation-owned enterprises. The tribal government launches enterprises to compete with citizen-entrepreneurs when they find success. A "winner-takes-all" tribal politics where new tribal leaders scrap the economic initiatives of their predecessors. And on and on. These all send the same, emphatic message: don't invest your money, talents, education, time, ideas, and resources here, because it won't pay off in the long run.⁹

However, recognizing institutions give economy building its "staying power,"¹⁰ many Tribal Nations are replacing imposed institutions that have long stunted economic growth with tribally defined institutions that bring stability, transparency, accountability¹¹, predictability, and sustainability back to tribal economies.¹² As they are demonstrating, this reclamation process takes time to do right,¹³ and should ensure the institutions created are: culturally rooted,¹⁴ capable of advancing the nation's priorities, interconnected,¹⁵ and trusted by the community.¹⁶

TRIBAL SNAPSHOTS



CONFEDERATED SALISH AND KOOTENAI TRIBES (CSKT)

In 2007, CSKT's Tribal Council adopted a set of long-range economic development goals to advance the Tribes' mission to "invest in our people [to ensure] our ability to become a completely self-sufficient society and economy."¹ These include: stimulating CSKT's private sector economy, creating business opportunities for CSKT members, and maximizing the "flow of money" in the local economy.² To achieve these goals, the Council in 2009 ratified CSKT's Indian Preference Ordinance, which provides enrolled CSKT members preference in hiring and also features a provision encouraging CSKT member hiring by CSKT vendors.³ Importantly, the ordinance also mandates that CSKT's government, departments, enterprises, and federal purchasers give preference to certified CSKT member-owned and then other "Indian-owned" businesses in purchasing goods and services.⁴ Supporting a "free and open competition," this process enables preferred vendors to submit bids for contracts and then, if they are within 10 percent of the low bid and agree to meet it, awards them the job.⁵ To ensure its full enforcement, the ordinance established CSKT's Indian Preference Coordinator position, which certifies CSKT member-owned and "Indian-owned" businesses and monitors entities covered by the ordinance to ensure compliance.⁶ CSKT's Indian Preference Office keeps a current list of ordinance-certified businesses, which in 2021 featured 85 CSKT member-owned businesses and 17 owned by other Native people.⁷ It promotes these businesses through its online Indian Preference Business List, and engages tribal entrepreneurs operating small businesses out of their homes or online to encourage them to register with the Office so they can grow their businesses.⁸ CSKT also developed a resource directory as an informational reference for existing and aspiring business owners.⁹ Meanwhile, its S&K Business Services provides technical assistance services, its Tribal Credit Program provides business loans, and Salish-Kootenai College offers degrees in business management.¹⁰ Altogether, CSKT's efforts are growing local commerce; for every dollar spent locally, two-thirds of it is staying "within the local economy."¹¹

LEARNING LINK: <http://www.ncai.org/resources/econtoolkit/INSTITUTIONS>

CONNECT: Melinda Charlo, Indian Preference Coordinator, Confederated Salish and Kootenai Tribes, Melinda.Charlo@cskt.org



TULALIP TRIBES

Prior to launching gaming in 1992, Tulalip confronted severe challenges, including an unemployment rate over 60%, inadequate housing, a low high school graduation rate among tribal members, and pervasive community health issues.¹ Discretionary gaming revenue enabled the Tribes to begin alleviating these challenges and fuel its dream of a diversified economy to support its members, which centered on attracting outside businesses to Tulalip and developing the physical infrastructure needed to provide customers easy access to those businesses. Tulalip quickly learned that to forge key partnerships with surrounding governments and corporate interests to achieve this goal, it would need to waive its sovereign immunity – the legal doctrine that prevents sovereigns from being sued without their consent. Recognizing that offering blanket waivers of its immunity would mean losing its control over where commercial lawsuits would be heard and the kinds of legal liability it could encounter, Tulalip integrated more than 50 references to the doctrine throughout its Tribal Codes governing how it will waive its immunity *in limited fashion* to advance its economic priorities, with any lawsuits arising from its use of such waivers to be resolved in Tulalip Tribal Court.² Using the Codes as protection, Tulalip developed lease agreements providing limited waivers of sovereign immunity with large national retailers to do business at its Quil Ceda Village, a uniquely structured federal city chartered under tribal law that today attracts 10,000 customers daily.³ To grow the Village, Tulalip leveraged federal funding and its own dollars to increase business access by improving three I-5 highway interchanges, which also depended on its inclusion of a limited immunity waiver in an agreement with the Washington Department of Transportation. This has fostered the growth of hundreds of construction-based careers for tribal members and other area residents as well as enhanced access and services for Tulalip's members, businesses, and visitors.⁴

LEARNING LINK: <http://www.ncai.org/resources/econtoolkit/INSTITUTIONS>

CONNECT: Lisa Koop Gunn, Attorney and Federal Advocate, Tulalip Tribes, lkoop@tulaliptribes-nsn.gov

ASK YOURSELF

1. Have you completed the "Quick Check" exercise on page 11? If not, do so now!
2. Are the institutions our nation currently relies on to build its economy effective? Do they reflect us culturally? How can we reform them to meet those tests? What other institutions must we develop/revitalize?¹⁷
3. Does our tribal constitution foster self-determined economy building, or hinder it? If the latter, what provisions are holding us back and how should we amend them? What should we add?¹⁸
4. Does our nation have an ethics code or other type of oversight mechanism (e.g., a council of elders) that holds those who politically interfere in enterprise management or local commerce accountable? Are our ethics rules fairly and consistently enforced?¹⁹
5. Does our nation have a non-politicized forum to resolve commercial disputes that our citizens and others who do business locally and with the nation trust as fair?²⁰
6. How does our nation currently charter corporations? If federal (Section 17) or state, is that serving our best interests, or does the tribally chartered route make more sense given our economy-building priorities?²¹
7. Does our nation's governmental bureaucracy effectively and efficiently administer the regulations and processes it has established to support business and economic growth? If not, why not, and how do we fix it?

POLICY TIPS

1. Conduct a "360 degree" assessment of your current institutions to determine whether they: (1) are *tribal*, (2) can create the economy you seek, and (3) have critical gaps that need filling. Develop an action plan identifying the resources you have and those you will need.
2. Create an independent economic development corporation that takes its *strategic* direction from tribal government but is insulated from political interference in its *day-to-day* management of your nation's enterprises.²²
3. Develop a tribal secured transactions code (i.e., **uniform commercial code**) governing how business transactions are regulated on tribal lands; ensure it is consistently enforced and tailored to your nation's particular needs and priorities.²³
4. Create and codify in tribal law your nation's policy governing if, when, and how it will issue *limited* waivers of sovereign immunity to foster economic growth (with cases heard by the dispute resolution system of your choice).²⁴
5. Build your judicial system's independence and capacity to fairly resolve commercial/business disputes in an efficient manner.²⁵
6. Create and enforce tribal environmental laws – including setting Clean Water Act and Clean Air Act standards – to ensure economic activities protect community and ecological health and your nation's resources.²⁶
7. To build trust, launch a permanent initiative educating tribal citizens and other stakeholders about your nation's laws, policies, and processes governing how business is done on tribal lands.