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Laying the Groundwork for Real  
Estate to Meet Economic  
Development Visions for Indian  
Country

Inter-Tribal Task Force  
Tribal Real Estate Training  
April 6-7, 2017  
Rothschild, WI

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# Overview

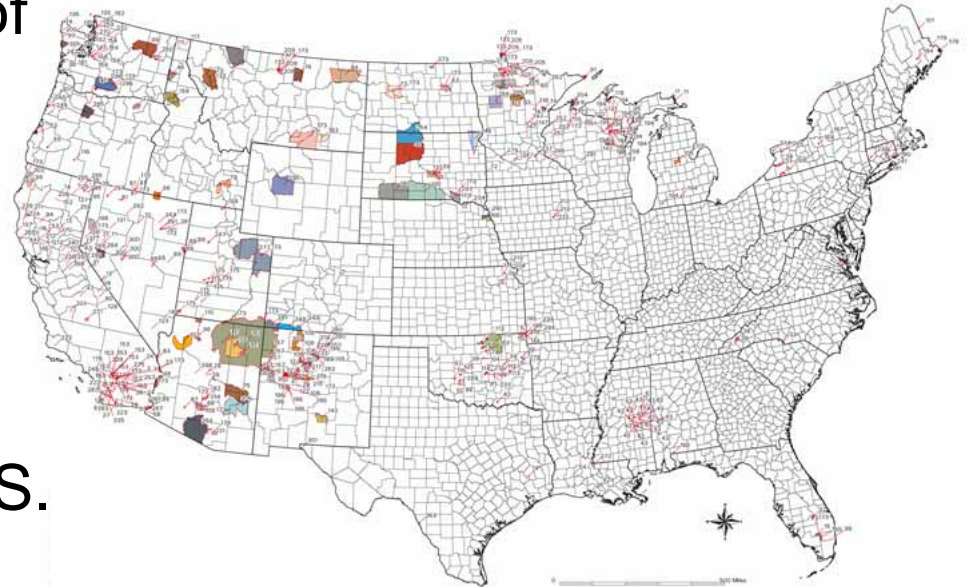
- I. What Can We Do With Our Land Resources? Legal Challenges & New Opportunities for Economic Development on Tribal Land
- II. Get Ready: Building Relationships, Building Tribal Infrastructure to Protect Tribal Interests & Attract Business
- III. How to Get There: Tribal Economic Development Success Case Illustrations

# I. What Can We Do With Our Land Resources? Legal Challenges & New Opportunities for Economic Development on Tribal Land

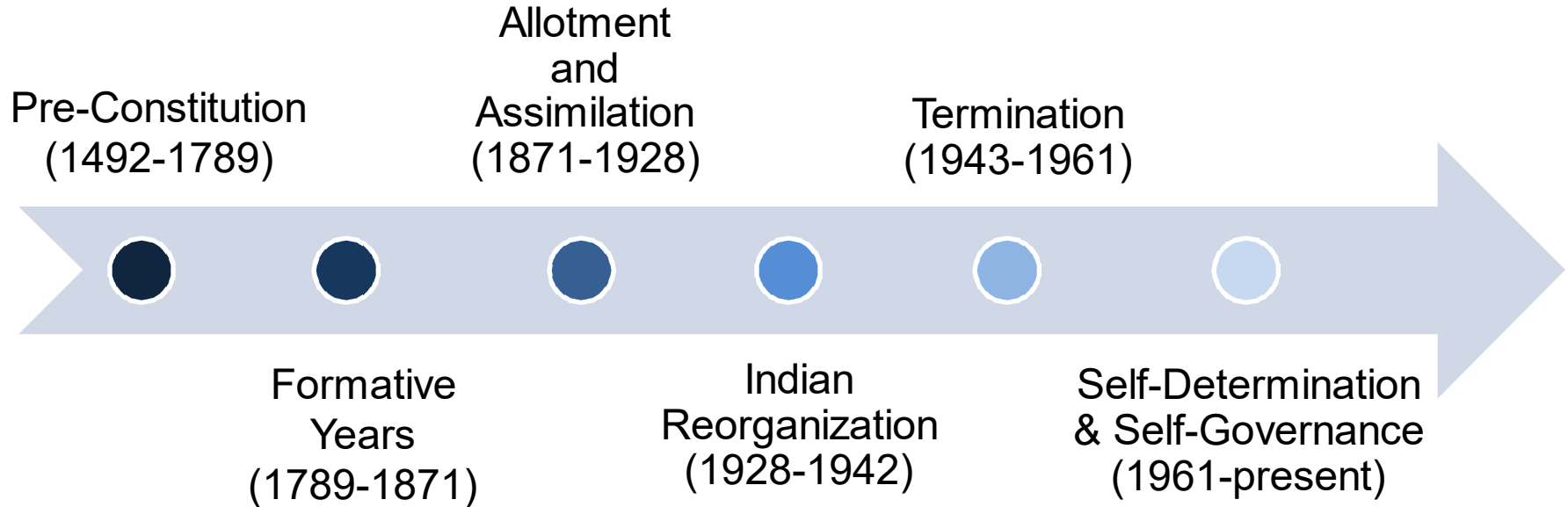


## Indian Country

- All lands within the limits of any Indian reservation, including rights-of-way running through the reservation
- All dependent Indian communities within the U.S.
- All Indian allotments



# History of Federal Indian Law Policy



## Legal Challenges to Tribal Land Use

- Non-Intercourse Act. Prohibits sale, tax or encumbrance of tribal trust land.
- Undermined effectiveness of traditional real estate mortgage.
- *“The Agent who will be appointed by the United States will be your friend and protector. He will not be suffered to defraud you, or to assist in defrauding you of your lands, or of any other thing, as all his proceedings must be reported in writing, so as to be submitted to the President of the United States.”*  
George Washington to the Seneca Nation, 1791.

## **Legal Challenges to Tribal Land Use**

- Indian Long-Term Leasing Act of 1955
  - Allowed tribes to lease trust lands to tribal entity, tribal members, or nontribal party with BIA approval.
  - Allowed leasehold interests to be assigned, encumbered and used for collateral.
  - Permits leasehold mortgages.
  - BIA approval process lengthy and complex.
  - 99 year terms (with exceptions).



## Land and Land Status

- Trust land
  - Tribe or individual Indian
- Fee land
  - Tribe or individual Indian
  - Non-Indian
- Fee to Trust
  - Indian Reorganization Act
    - Protecting and increasing Indian trust land base
    - Section 5 (25 U.S.C. § 465)





## **Are you prepared?**

- Do you have a property identified and targeted?
- Do you have a best use plan?
- Do you have expertise in carrying out best uses?
- Do you have a budget? How will you determine value?
- Do you have buy-in from the tribe/tribal community? Do you need it?
- Are your tribal codes appropriate for such business?
- Do you have a plan to attract business partners/clients?

## **New Opportunities for Economic Dvlpt.**

- Economic Growth in Indian Country is significantly higher since self-determination era in mid-1970s
- Economic growth in Indian Country is higher than the rest of the United States in same period

## **New Opportunities for Economic Dvlpt.**

- Gains in per capita income, median household gain, employment and education
- Gains vary considerably by tribe
- Tribal governments have gained business and finance expertise

## **New Opportunities for Economic Dvlpt.**

- 2012, Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act)
  - Tribal control over trust land leasing after BIA approval of tribal leasing code



## II. Get Ready: Building Relationships, Building Tribal Infrastructure to Protect Tribal Interests & Attract Business



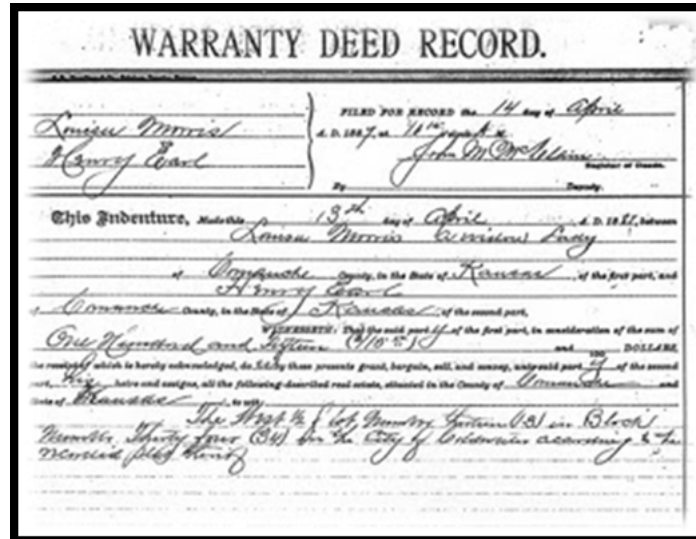
## **Building Tribal Infrastructure**

1. Constitutional Clarity (Authority, Governance, Contracts Clause)
2. Laws and Ordinances
  - Tribal Business Entities
  - Leasing
  - Real Property
  - Foreclosure
  - UCC
  - Business Entity
  - Corporate Governance (i.e., Conflicts of Interests/Ethics)

## Building Tribal Infrastructure

### 3. Property Tracking Systems

- Registry (deeds, mortgages, options, leases and memoranda)
- GIS
- UCC Tracking
- Tax Assessment



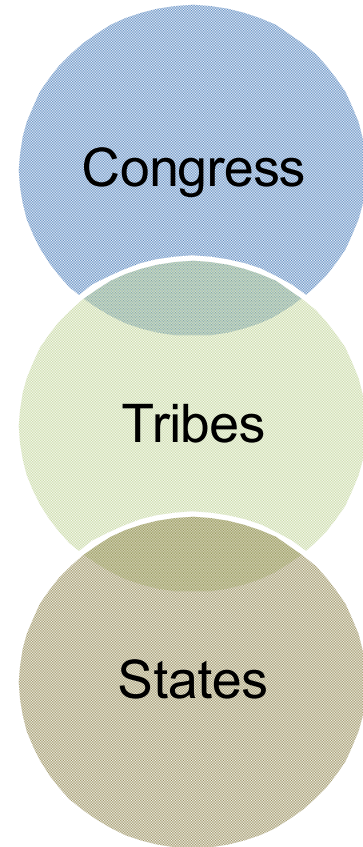


## **Building Tribal Infrastructure**

4. Access to Title Insurance
5. Political Engagement

## **Intergovernmental Agreements**

- Opportunity to coordinate authority, share resources, reduce costs
- Congressional consent
  - Indian Child Welfare, Indian Gaming
- Tribal legislation
- In Wisconsin
  - Executive Order #39
  - 2005 & 2010 Wisconsin DOT and Wisconsin Tribes Partnership Agreement



## **Intergovernmental Agreements (cont.)**

- Statutory Authority in Wisconsin (examples)
  - Tourism
  - Department of Transportation
- Wisconsin State Tribal Relations Initiative (Department of Administration) available at [www.witribes.wi.gov/section.asp?linkid=284&locid=57](http://www.witribes.wi.gov/section.asp?linkid=284&locid=57)
  - Consultation policies & contacts

# III. How to Get There: Tribal Economic Development Success Case Illustrations



## **Case Illustration: Rocket Testing Facility**

- Description: Long term lease of tribal trust property for large federal, private aerospace contractor
- Players: Federal government, federal contractor, tribe, commercial lender
- Deal Points: Environmental cleanup, rent, insurance, member educational benefits, political engagement with local government and neighborhoods

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**Deal Points: Environmental cleanup, rent, insurance, member educational benefits, political engagement with local government and neighborhoods.**



## **Case Illustration: Rocket Testing Facility**

- Tools: Ground lease; leasehold mortgage; loan and owner title insurance; Subordination, Non-Disturbance and Attornment (SNDA)
- Tribal Legal Infrastructure Implicated: Tribal Register of Deeds; Tribal GIS; Tribal Zoning; Tribal Leasing Code; HEARTH Act; Tribal plan review



## Case Illustration: Call Center

- Description: Lease building on trust land and buildout call center for pharmaceutical company; training performed by tribal non-profit; employs tribal members at call center



## **Case Illustration: Call Center**

- **Players:** Tribal development entity; call center management entity; pharmaceutical company; tribal charitable organization
- **Deal Points:** Tribal contribution; construction contract; lease agreement; call center management agreement; member employment requirements; political engagement

## **Case Illustration: Call Center**

- Tools: Ground lease; leasehold mortgage; loan and owner title insurance; Subordination, Non-Disturbance and Attornment (SNDA)
- Tribal Legal Infrastructure Implicated: Tribal Register of Deeds; Tribal Leasing Code; Tribal LLC Code; Tribal Zoning and Planning; Tribal Construction Plan Review, Tribal Judicial Rules



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Questions?

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