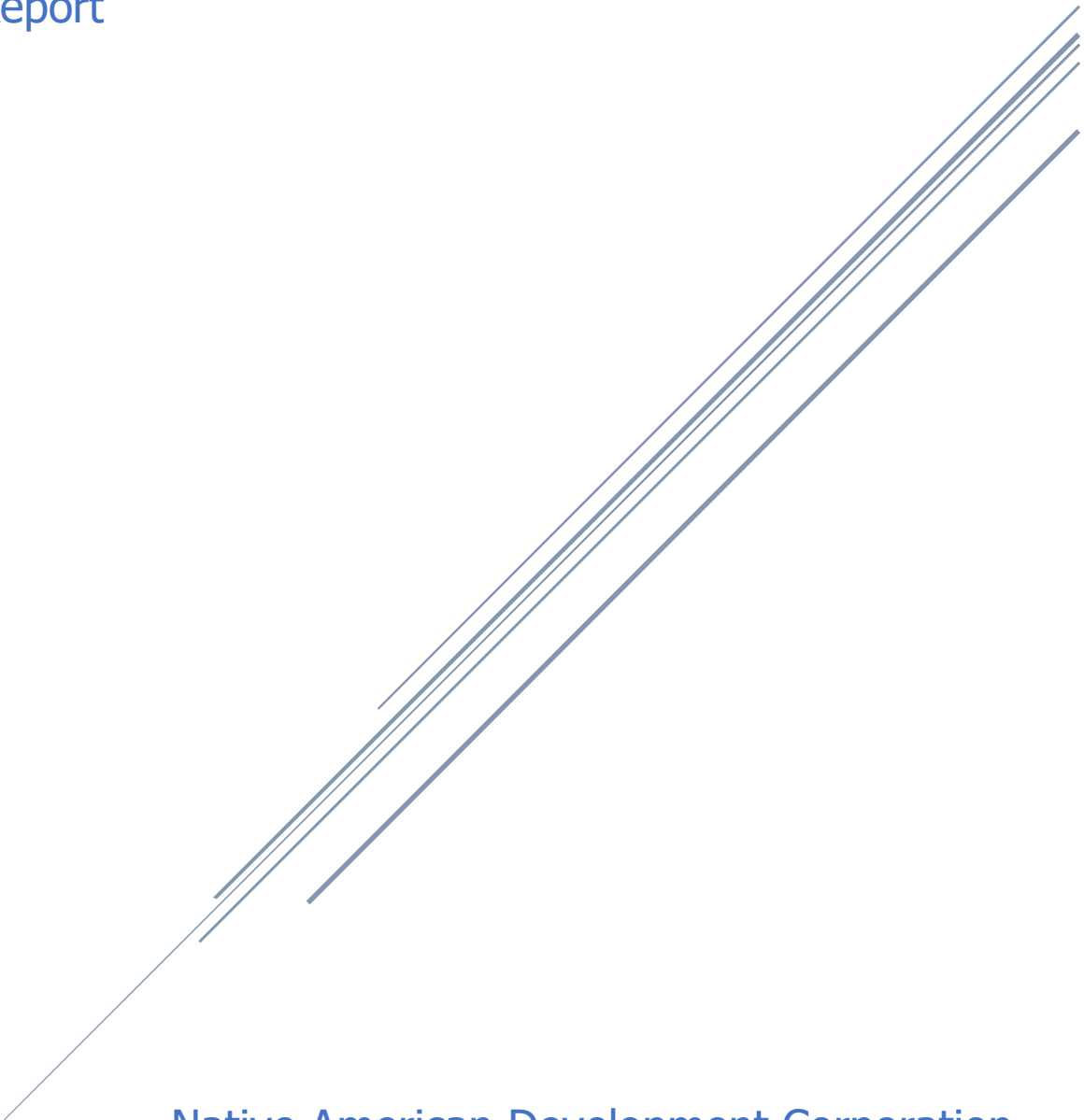


# COMMERCIAL LENDING OPPORTUNITIES AND BARRIERS IN INDIAN COUNTRY SUMMIT AND ACTION PLAN

Final Report



Native American Development Corporation  
July 2022

# Table of Contents

**Executive Summary**..... 3

**Project Background**..... 3

**Phase 1 Summary**..... 4

    Law Clinic Project Summary ..... 5

    1A – Commercial Code Research ..... 8

    1B – Business and Cooperative Code Research .....11

    2A – Interview Questions .....25

    3A – Business and Cooperative Code Presentation .....26

    3B – Draft Summit Agenda ..... 104

**Summit** ..... 106

    Invitation Letter..... 107

    Summit Presentation ..... 108

    Summit Report ..... 147

**Project Conclusion** ..... 152

    Law Clinic Cover Letter..... 153

    Summary of Findings/Recommendations..... 154



MARGERIE HUNTER BROWN INDIAN LAW CLINIC in collaboration with the  
NATIVE AMERICAN DEVELOPMENT CORPORATION

Research sponsored by a USDA Rural Business Development Grant

## **Executive Summary**

In July of 2019, the Native American Development Corporation (NADC) was awarded a grant by the U.S. Department of Agriculture's Rural Business Development Grant (RBDG) program to research existing Tribal commercial codes, conduct a Legal Summit, and prepare an Action Plan to increase the frequency and amount of commercial lending in Indian Country.

This work was severely disrupted and delayed by COVID-19 impacts that began in March of 2020. These impacts were especially detrimental to Native American people and Tribes. As a result of these circumstances, NADC was granted extensions by USDA to complete the work in the best way possible. The Margery Hunter Brown Indian Law Clinic at the University of Montana has been engaged and participating in the project since the fall of 2019. Law Clinic students and Clinic professors have been responsive and willing to adapt to the changes brought about by a set of circumstances that none of us could have foreseen.

Even now, more than two years after the initial public health emergency declaration, we continue to have delays and disruptions to business operations and priorities. Our Tribes are responding to the critical daily needs of their people, and have little capacity to be deeply engaged in longer-term strategic planning. "Business as Usual" is no longer a part of our vocabulary. Economic recovery is starting to take place, but many of our stakeholders wonder how to sustain positive growth once the federal recovery dollars are no longer available.

NADC and the Law Clinic believe this is still a viable project and the need exists to better understand the current and potential future opportunities to increase commercial lending, but we have experienced difficulty in completing the Action Plan portion due to Tribal priorities shifting since March of 2020. The Summit was postponed two times, the Law Clinic made an attempt to conduct one-on-one phone interviews with Tribal leaders, and an abbreviated Summit took place in October of 2021. The event was held in conjunction with the 12<sup>th</sup> Annual NADC Conference, was promoted through various channels, and individual invitations were sent to a list of attendees. Remote options were also made available, but participation was lower than anticipated.

This report summarizes the activity that has taken place and provides recommendations for additional work that should be undertaken in order to continue to reduce the risks and increase the confidence in commercial lending across Indian Country.

## **Project Background**

Commercial lending in general is lending to businesses. This can include account receivable loans, letters of credit, construction loans, equipment and vehicle loans, and real estate loans. Commercial lenders generally include commercial banks, credit unions, community development loan funds, and private lending institutions.

Commercial lending in Indian Country may require special arrangements, largely because of the sovereign status of Tribes and the unique status of Indian lands. The sovereign status means that Tribes are responsible for defining and upholding the rules for commercial activities and organizing the Tribal legal structure, including Tribal court systems. Regarding land ownership, the relationship between the US government, on one hand, and Tribal governments and individual Native Americans, on the other is referred to as “trust responsibility” for Indian assets. The trust responsibility extends to lands, natural resources, money, and other assets held by the federal government on behalf of Tribes and members of Tribes. Tribes and members hold beneficial ownership interests in these assets. Tribal trust lands generally may not be sold, taxed, or encumbered, making it a challenge to perfect a bank’s mortgage lien(s) on real property.

Some banks are uncertain about lending to businesses and individuals in Indian Country, because they generally offer loans backed by hard collateral, in many cases real estate. This project was designed to explore strategies and methods that could potentially be adopted by Tribal court systems and commercial lenders to work around these issues.

The pre-summit research, summit activities and post-summit report with action plan were intended to assist in the identification and understanding of the current state of commercial lending in Indian Country. This would potentially lead to feasible strategies that could be implemented by Tribal Court systems and commercial lenders to further increase commercial lending and build a stronger reservation economy.

### **Phase 1 Summary**

NADC submitted a Revised Scope of Work and Revised Timeline to USDA and the Law Clinic was able to complete their initial research as well as attempt phone interviews. The Law Clinic provided an Interim Report on progress to date. Those materials can be found on the following pages.

Margery Hunter Brown Indian Law Clinic  
32 Campus Drive  
Missoula, MT 59812-6552  
indianlawclinic@umontana.edu

## MEMORANDUM

To: Sue Taylor, NADC  
From: Ali Bronsdon, Clinical Student, and Monte Mills, Director, MHBILC  
Re: Commercial Lending Opportunities & Barriers in Indian Country Summit and Action Plan  
Date: May 3, 2021

---

### Background and Summary of Work

In 2019, the United States Department of Agriculture (USDA) approved a Rural Business Development Grant (RBDG) for the NADC's proposed project entitled "Commercial Lending Opportunities and Barriers in Indian Country Summit and Action Plan" ("Project"). *See* Appendix A. As proposed, the Project aimed to "support the development of small and emerging private business enterprises in rural areas" in Indian country. *Id.* at 2.

Initially, a 2-day summit was planned for Spring 2020 which invited tribal administrations, tribal legal departments, tribal court judges, tribal CDFIs, and commercial lenders in Indian country to a series of in-person presentations and roundtable discussions. The MHBILC was to research and prepare a draft report to share with attendees at the summit, which would provide a "snapshot" of current issues to "contextualize the summit discussions and provide a baseline from which to work." *Id.* Additionally, after the summit, NADC proposed collaborating with the MHBILC to complete a comprehensive report of the summit findings that provided concrete action items and feasible next steps for Montana tribes and their partners. *Id.* at 3. Unfortunately, the summit was cancelled due to the COVID-19 pandemic.

After negotiating a revised scope of work with NADC in Fall 2020, the MHBILC attempted to mirror the roundtable discussions planned for the summit through remote surveys and interviews. The MHBILC also envisioned a possible webinar presentation of findings for Spring 2021.

The MHBILC will continue to support NADC efforts to organize and host a future summit. However, even after altering the original proposal to achieve its goals remotely, COVID-19 health risks and restrictions severely hindered this year's clinical students' efforts for remote outreach to tribal leaders, finance professionals, and lenders. Therefore, this report will summarize the MHBILC's efforts and findings to date.

## Revised Scope of Work

### Task 1

Initial collaboration with the MHBILC at the Alexander Blewett III School of Law at the University of Montana:

- a. Initial research documenting the current state of tribal commercial codes and commercial code implementation has been completed. Research to date has focused on tribal adoption of uniform commercial codes, an overview of regional tribal corporate code provisions, and the extent to which regional tribal constitutions and codes enable cooperative formation under tribal law. This research provides a baseline “snapshot” of current opportunities and barriers. *See* Appendix 1(A) for the commercial code research memo and Appendix 1(B) for the business and cooperative code research memo.
- b. MHBILC translated its commercial code research into an accessible PowerPoint document for easy review and to potentially share with participants via a webinar presentation prior to the engagement interviews. This was intended to substitute for the summit presentations, to contextualize the engagement interviews, and to prepare interview participants to discuss opportunities, challenges, and an action plan.

### Timeline

1. Nov.-Dec. 2020 – Reviewed, updated, and synthesized previous research
2. Jan. 2021 – Finalized interview preparation document for distribution to participants

### Task 2

The MHBILC drafted a list of engagement interview questions (*see* Appendix 2(A)), which included general questions about business development and commercial lending opportunities and barriers for tribal businesses on the reservation. Additionally, students identified tribal stakeholders in Indian country and those specifically working on economic development on Montana’s eight reservations. The Clinic reached out to potential interviewees via email and work phone numbers as listed online. Students were able to conduct one in-depth engagement interview via Zoom with a tribal stakeholder regarding the current state of commercial lending opportunities, challenges, and initiatives on her reservation. However, due to pandemic-related challenges, no additional interviews were conducted.

While a handful of tribal stakeholders responded to initial email contacts, students were largely unsuccessful in scheduling times to meet remotely with tribal representatives. Issues related to the cognitive and time demands of more pressing pandemic-related issues, as well as limited access to internet tools, complicated making arrangements. Additionally, more clarity about the entities behind the survey, the ways data would be collected and shared, and clearer “rollout” or advertisement of the project were needed to build trust in and response to the interview requests. Therefore, these engagement interviews, which were intended to serve as a substitute for the facilitated table discussions originally scheduled for the summit, are on hold until more logistically feasible.

By way of example, one stakeholder quickly responded with interest and then had questions about the outcome and benefits to the tribe for participating, as well as the project's data sharing protocol. The Clinic contact communicated two more times via email, and then left two voice messages, answering the stakeholder's questions and providing assurances that the project's aim was to help all Montana's tribes. However, the tribal stakeholder did not respond to further communication. This stakeholder's initial response email stated: "Commercial lending is definitely a challenge for most if not all of our local small business and entrepreneurs and interested homeowners at [the reservation] for sure." Thus, the MHBILC hypothesizes that this individual, or another representative from this tribe, would happily be involved in a more widely publicized or logistically-simple outreach campaign, particularly one that takes place in-person after COVID-19 health concerns subside.

The sole tribal stakeholder interview, which was conducted over Zoom, confirmed the need to address many of the issues identified in the project's scope. Notably, the interviewee talked about the limited availability of capital, available storefronts, and manufacturing facilities, as well as a general lack of training opportunities on the reservation for tribal business enterprises. They mentioned that many tribal businesses are residentially-based and suggested building mini-mall type spaces to make it possible for new tribal entrepreneurs to either buy or rent commercial spaces. Further, this tribal representative identified poor internet access and outdated technology as major hurdles to tribal businesses.

#### Timeline/Proposed Timeline

1. Nov.-Dec. 2020 – Created a list of questions for engagement interviews
2. Jan. 2021 – Identified tribal stakeholders and compiled a list of possible engagement interview contacts
3. Jan.-Feb. 2021 – Contacted tribal stakeholders to schedule remote engagement interviews and shared questions via email with potential interviewees
4. Mar. 2021 – Conducted one engagement interview over Zoom
5. April 2021 – Met with NADC and decided to put remaining interview efforts on hold until more logistically feasible

#### **Task 3**

The MHBILC had originally agreed to assist with organizing, scheduling, and finalizing the format of a webinar presentation of the commercial code research and the information compiled from tribal and stakeholder engagement interviews. The webinar was meant to facilitate discussion of the research and the interviews with the goal of developing an action plan for enhancing the availability, effectiveness, and potential for commercial lending in Indian country.

However, due to scheduling and other logistical complications with the interview campaign, the MHBILC has postponed the interviews and the webinar. To wrap up this year's research, MHBILC students created a draft PowerPoint to summarize and share the MHBILC's commercial code research.

#### Proposed Timeline

1. Jan.-Feb. 2021 – Draft PowerPoint presentation based on tribal code research (*see* Appendix 3(A)) and summit agenda (*see* Appendix 3(B))

## MEMORANDUM

TO:  
FROM: Marissa Mahkuk Compton, MHBILC student  
RE: Tribal UCC codes  
DATE: February 10, 2020

---

In order to strengthen the foundation for economic development in Indian Country, many tribes have begun adopting tribal law that is meant to encourage business expansion. To date, a number of tribes have adopted Uniform Commercial Codes that provide law and guidelines on organizing and creating business organizations, tax status, and conducting secured transactions. The National Conference of Commissioners on Uniform State Laws (NCCUSL) was the originating sponsor of the Uniform Commercial Code for the United States. Since its introduction in 1951, the UCC has been enacted into law by the 50 states with only minor variation. There have been recommendations that the Indian tribes adopt the UCC or a similar variation in order to harmonize with state business laws.

There are nine articles included in the Uniform Commercial Code. Each article is meant to address a different area of business transaction law. Below is a brief description for each article.

Article 1-General definitions and provisions

Article 2-Sales and leases- Governs the sale of goods. Article 2A governs leases of personal property.

Article 3-Negotiable Instruments-Covers drafts and notes representing a promise to pay a sum of money.

Article 4-Bank Deposits and Collections- Provides rules for check processing and automated inter-bank collections, including fund transfers.

Article 5-Letters of credit-typically issued by a bank or other financial institution.

Article 6-Bulk Sales, auctions and liquidations of assets.

Article 7-Documents of title-includes bills of lading, and other documents used for commercial trade.

Article 8-Investment Securities-Provides the system for holding securities through intermediaries.

Article 9-Addresses secured transactions and generally provides laws that help the financing and recovery of loans made on property.

Years ago, coupled with the efforts of the University of Montana Indian Law Clinic as supported by the Indian Tribes located within Montana and by the Montana-Wyoming Tribal Code Development Task Force, model codes were drafted to assist tribes in creating code that respected



tribal goals and needs, resembled states' UCC's and most importantly, helped to provide an adequate legal foundation that would support commercial activities in Indian Country.

This memo seeks to provide a simple summary of each Montana tribe's current commercial codes, and whether it is unique, modeled after, or verbatim to the Uniform Commercial Code of the United States. Also, specifically how each tribe has created exceptions to follow custom and tradition under tribal law. Finally, the purpose of this gathering of information is to provide a recommendation going forward for tribes to further strengthen their ability to support economic development. Each nation located within the State of Montana is discussed below:

Blackfeet Nation: Blackfeet Nation has a variety of codes that cover UCC issues. Ordinance 81 covers remedies and enforcement of judgments. There is a section on consumer protection that details consumer credit, sales practices, equal credit opportunity and truth in lending. Blackfeet Nation has also adopted a Title III code that "is based upon article 9 of the Uniform Commercial Code with the exception of changes where noted." It is also noted that in the presence of any issue related to interpretation, the Official Comments of Title 9 can be utilized. However, "where the code does not address a particular issue or right, the Tribal Court may apply customs and usages of the Tribe, or federal laws and regulations, or State law in that order".<sup>1</sup> The code addresses secured transactions in Indian Country much like the UCC does, however, the code takes into account that the Blackfeet Tribe does not have a system for issuing certificates of title. There are, however, clear rules in Title III for determining where and under what law a security interest should be perfected and the effect of perfection or non-perfection. Different from the UCC, there is also an additional section added to Blackfeet Code to address deposit accounts.

Confederated Salish and Kootenai Tribe: Currently, there is no published version of a commercial code for CSKT.

Crow: Crow has adopted in their entirety Articles I and 9 of the Uniform Commercial Code. "Article I of the Crow UCC is substantially identical to the 1995 Official Text with the exception of several changes recommended by the University of Montana Indian Law Clinic and those made by the Crow Tribal Council."<sup>2</sup> Crow also explicitly declares in the code their recognition "that it would be useful to adopt other articles of the Uniform Commercial Code, including Article 2 on sales, Articles 3 and 4 on commercial paper, etc. However, in some instances, Crow Tribal UCC goes further than the model code to regulate more transactions familiar to the tribe".<sup>3</sup> In the adoption of the codes, it was intended that the Tribe would expand the formal body of commercial law as soon as practicable. The tribe provided that "until such time, if ever, that this 13CC can settle all questions in commercial law, it is the Tribe's intent that any court called upon to decide a controversy under this law apply the code's provision in a manner consistent with its policy which includes a desire to promote strong and stable economic development within the Crow Indian Tribe Reservation".<sup>4</sup> Also, the State of Montana Security of State website lists the Crow Tribe as having an active agreement with the SOS office to register and maintain security interests.

<sup>1</sup> Blackfeet Tribal Law and Order Code, Title III, Section 3

<sup>2</sup> Crow Tribe Uniform Commercial Code, Chapter 2, Article I

<sup>3</sup> Crow Tribe Uniform Commercial Code, Chapter 2, Preamble

<sup>4</sup> Crow Tribe Uniform Commercial Code, Chapter 2, Article 9

Fort Peck Tribes, Assiniboine & Sioux: Fort Peck has adopted Articles 2, 3, 4, 5, 6, 7 and 9. The code authorizes the tribal court to “apply the General Provisions and Official Comments., except where those provisions conflict with another provision of the Tribes’ Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof<sup>5</sup>. The Fort Peck Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC.

Fort Belknap, Assiniboine & Gros Ventre: Currently, there is no published version of a commercial code for Fort Belknap.

Northern Cheyenne: Northern Cheyenne’s code makes clear that “while the laws and procedures developed herein do not mirror the corresponding Montana UCC provisions verbatim, the state statute was relied upon for guidance, in order to maintain internal consistency and promote uniformity to the degree possible, between tribal and state law.”<sup>6</sup>

Rocky Boy/Chippewa Cree: Rocky Boy provides a short section of their code that outlines applying for a business license within the reservation boundaries. Any individual, group of individuals, sole proprietorship, partnership, joint venture or corporation that wishes to do business within the exterior boundaries must file with the Chippewa Cree Tribal Secretary/Treasurer<sup>7</sup>. The Business License code is meant to assist tribal authorities with monitoring and regulating business development on the Rocky Boy’s Indian reservation. They have not adopted any UCC provisions besides the quoted sections that are detailed above. However, the State of Montana Security of State website lists the Rocky Boy Chippewa Cree Tribe as having an active agreement with the SOS office to register and maintain security interests.

While it is clear that most tribes have modeled their UCC codes from State and Federal example, they have wisely expressed deference for exceptions to be addressed under tribal custom and tradition and tribal law first. It is recommended that tribes have at the very least adopted a basic commercial code that addresses secured transactions as well as sales and leases within their reservation boundaries. This will support the desire for businesses to not only want to come into tribal areas to do business, but a protection for all parties involved to have explicit guidelines and possible remedies when problems arise.

<sup>5</sup> Fort Peck Tribal Code, Title XXIV, Commercial Law, Chapter 1, Sec. 101

<sup>6</sup> Northern Cheyenne Uniform Commercial Code, Introduction

<sup>7</sup> Chippewa Cree Tribe, Business License Code, adopted under ordinance 2-91, Chapter 1

Margery Hunter Brown Indian Law Clinic  
32 Campus Drive  
Missoula, MT 59812-6552  
indianlawclinic@umontana.edu

MEMORANDUM

To: Sue Taylor, NADC  
From: Amy Johns, Clinical Student & Monte Mills, Director, MHBILC  
Re: Cooperatives in Indian Country  
Date: May 21, 2021

---

Q: Are there tribes that have adopted a formal process specifically designed to establish cooperatives (Co-ops) under tribal law?

A: Generally, many tribes have adopted some form of business or corporation code designed to aid economic development within their respective tribal boundaries. In the alternative, other tribes rely solely on language within their respective constitutions to authorize the creation and/or regulation of business entities within tribal boundaries.

SUMMARY:

In an effort to identify tribes that have established codes governing business and/or corporation creation, initial research will be limited to tribes within the states of Montana, North Dakota, South Dakota and Wyoming.

To date, there are currently eight (8) tribes within the state of Montana, nine (9) tribes within the state of South Dakota (two of which straddle North Dakota), five (5) tribes within the state of North Dakota (two of which are the same tribes straddling South Dakota), and one (1) reservation in Wyoming that is home to two tribes.

The information below shows the results of our initial research and identifies the state, lists the tribes in each (in no particular order), excerpts pertinent constitutional language, business and/or corporation code provisions, if any, and provides a brief analysis of how those constitutions or codes may impact the creation of cooperatives under tribal law.

## **MONTANA**

1. Fort Peck Assiniboine & Sioux Tribes -- Poplar, MT

### **CONSTITUTION:**

#### **ARTICLE IV – GOVERNING BODY**

Section 1. The governing body of the Tribes shall be known as the Tribal Executive Board, subject to the powers of the General Council.

#### **ARTICLE X - BUSINESS AND FISCAL AUTHORITIES**

The Tribal Executive Board shall exercise the following powers subject to any limitations imposed by the Constitution or Statutes of the United States and subject further to all expressed restrictions upon such powers contained in this Constitution and Bylaws.

Section 6. To borrow money from the Federal Government, or other sources, and to direct the use of such funds for productive purposes, or to loan money thus borrowed to members of the Tribes, with the approval of the Secretary of the Interior, or his authorized representative.

### **TRIBAL CODE:**

Title 24 (Commercial Law) Subchapter B at Sec. 1107 – 1122: Governs corporations established under tribal law.

Sample:

Chapter 11. Corporation Code Sections:

Sec. 1101. Citation.

Sec. 1102. Definitions.

Sec. 1103 Reserved.

Sec. 1104. Reservation of Right.

Sec. 1105. Corporations Wholly Owned by the Tribe.

Sec. 1106. Sovereign Immunity of the Tribe Not Waived.

Sec. 1107. Purposes.

Sec. 1108. Incorporators.

Sec. 1109. Articles.

Sec. 1110. Corporate Name.

Sec. 1111. Reserved Name.

Sec. 1112. Registered Office; Registered Agent.

Sec. 1113. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

Sec. 1114. Amendment of Articles.

Sec. 1115. Procedure for Amendment Before Issuance of Shares.

Sec. 1116. Procedure for Amendment After Issuance of Shares.

Sec. 1117. Class or Series Voting on Amendments.

### **ANALYSIS:**

Article X, section 6 of the Fort Peck constitution is common language often found in other tribal constitutions that typically allows for federal funding provided by the United States direct loan program under 25 CFR §101 (LOANS TO INDIANS FROM THE REVOLVING LOAN FUND).

For your reference and for purposes of this query, pertinent sections of 25 CFR §101 are as follows:

25 CFR § 101.1 - Definitions.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

25 CFR § 101.2 - Kinds of loans.

Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.

(a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon.

25 CFR § 101.3 - Eligible borrowers under United States direct loan program.

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner.

Portions of the above language are often found in tribal ordinances authorizing tribal loan programs. The purpose for including this portion of the analysis is to generally provide the language some tribes might utilize for purposes of defining cooperatives (i.e. Pine Ridge Revolving Loan Fund).

The Fort Peck Commercial Law does establish the parameters for which a cooperative might be formed under tribal law. The above sample is but a small outline of what is a substantial and comprehensive code governing the creation of corporations chartered under tribal law.

## 2. Fort Belknap Indian Community -- Harlem, MT

### **CONSTITUTION:**

#### ARTICLE IV - ORGANIZATION OF COMMUNITY COUNCIL

Section 1. Composition. The Community Council shall be composed of [...].

#### ARTICLE V - POWERS OF THE COMMUNITY COUNCIL

Section 1. Enumerated Powers. The Council of the Fort Belknap Community shall have the following powers, the exercise of which shall be subject to popular referendum as provided hereafter:

(n) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Community.

### **ANALYSIS:**

Initial research suggests that the Fort Belknap Indian Community does not currently have tribal laws specifically governing corporate charters or other economic development entities. However, as the above Section 1, subsection (n) suggests, the governing body of the Fort Belknap Community is authorized under its constitution to specifically regulate cooperative associations within its boundaries and potentially charter them as well.

The Fort Belknap Community Economic Development Corporation (*DBA "Nakoda Aaniiib Economic Development Corporation"* NAEDC) was established on July 10, 2014, by the Fort Belknap Indian Community Council—the governing body of the Fort Belknap Indian Reservation—as a nonprofit business corporation under the laws of the Fort Belknap Indian Community.

## 3. Blackfeet Tribe -- Browning, MT

### **CONSTITUTION:**

#### AMENDMENT IV

Section 1. The governing body of the Blackfeet Tribe shall consist of a council known as the Blackfeet Tribal Business Council.

#### ARTICLE VI - POWERS OF THE COUNCIL

Section 1. Enumerated Powers -The council of the Blackfeet Reservation shall exercise the following powers, subject to any limitations embodied in the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and the attached by-laws.

(m) To encourage and foster Indian arts, crafts, culture and traditions.

(r) To delegate to subordinate boards or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to review any actions taken by virtue of such delegated powers.

### **TRIBAL CODE:**

Blackfeet Commercial Code – Remedies and Enforcement, Secured Transactions and Consumer Protection.

**ANALYSIS:**

Initial research suggests that the Blackfeet Tribe has not established codes specifically governing corporate charters. Business laws which are currently in place are only for the purpose of regulating commercial transactions of personal property and fixtures, equal credit opportunity and procedures for attachment/garnishment of property and execution of judgments.

However, the Blackfeet Tribal Business Council has the discretion to potentially approve cooperatives pursuant to Article VI, Section 1, subsection (m) of its constitution, and the Blackfeet Nation operates a number of economic enterprises on the Reservation for the benefit of the Tribe. Most likely, the Constitution’s language may be sufficient to initiate a tribal resolution that would approve the establishment of cooperatives on a case-by-case basis. Further, although subsection (r) does not specifically speak to the creation of cooperatives; the specific reference to cooperative associations read in conjunction with subsection (m) suggests a desired role for cooperative associations within the tribal community.

4. Chippewa Cree Tribe (Rocky Boy’s) -- Box Elder, MT

**CONSTITUTION:**

ARTICLE III-ORGANIZATION OF GOVERNING BODY

SECTION 1. The governing body of the Chippewa Cree Tribe shall be known as the "Business Committee."

ARTICLE VI-POWERS OF THE COMMITTEE

SECTION 1. The Business Committee of the Chippewa Cree Tribe of the Rocky Boy’s Reservation shall exercise the following powers subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject further to all express restrictions on such powers contained in this Constitution and the attached Bylaws.

(g) To charter subordinate organizations for economic purposes and regulate the activities of all cooperative associations of members of the Chippewa Cree Tribe.

(n) To encourage and foster the arts, crafts, culture, and traditions of the Chippewa Cree Tribe.

(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

**TRIBAL CODE:**

Title X – Corporation’s Act of the Chippewa Cree Tribe

V. Permissible Purposes for Incorporation:

Corporations may be organized under this chapter for any lawful purpose or purposes.

**ANALYSIS:**

The Chippewa Cree Tribe is authorized to charter corporations under both its Constitution and Title X of its tribal code. It is likely, though not definitive, that prospective organizations would follow procedures outlined under Title X and then the charter would be approved via resolution by the Business Committee.

5. Little Shell Tribe of Chippewa Indians -- Great Falls, MT

**CONSTITUTION:**

ARTICLE I – GOVERNING BODY

SECTION II. The governing body of the Little Shell Tribe of Chippewas Indians of Montana shall be known as the Executive Board.

ARTICLE III – POWERS OF THE EXECUTIVE BOARD

SECTION I. The Executive Board of the Chippewa Indians of Montana shall exercise the following powers, subject to the limitations imposed by the statutes of the Constitution of the United States and subject further to all express restrictions upon such power contained in the Constitution and By-Laws.

SECTION VIII. To encourage and foster the Arts, Crafts, Culture and traditions of the Pembina Band of Chippewa Indians.

**TRIBAL CODE:**

Not yet applicable.

**ANALYSIS:**

The Little Shell Tribe of Chippewa Indians were federally recognized on January 25, 2020. It is anticipated that the Little Shell Tribe will develop its tribal codes as needed and as it acquires and expands a much-needed land base.

6. Confederated Salish and Kootenai Tribes of the Flathead Reservation -- Pablo, MT

**CONSTITUTION:**

ARTICLE III – THE TRIBAL COUNCIL

SECTION 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

ARTICLE VI – POWER AND DUTIES OF THE TRIBAL COUNCIL

SECTION 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaw;

o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution

**TRIBAL CODE:**

The Confederated Salish and Kootenai Tribes of the Flathead Reservation unanimously adopted the Confederated Salish and Kootenai Limited Liability Company Ordinance #104A on July 25, 2006. Its stated purpose is for “developing and implementing the processes and procedures for the formation and operation of limited liability companies under tribal law.” Additionally, in February 2021, the Tribes released a draft Comprehensive Economic Development Strategy (CEDS) or Strategic Economic Development Plan, which includes goals, objectives and action steps for the next five years and beyond to improve the Flathead Reservation economy. Goal #3 includes the adoption of the Uniform Commercial Code-Tribal Secured Transactions Act. Objective #9 for Goal #2 provides: “Providing training on the Cooperative model of business organization, targeting sectors where this form of organization has the potential to create economic benefit in the form of revenues, cost-sharing, job/work experience, and community building for addressing social issues.”

**ANALYSIS:**

The Confederated Salish and Kootenai Tribes have an extensive history of economic development and successful tribal enterprises; including six tribal enterprises, which are governed by a board of directors who report to shareholder tribal members, who are represented by the Tribal Council; and tribal affiliates. The CSKT Tribal Council is authorized pursuant to Article IV, Section 1(o) of its Constitution to charter organizations. The Tribes have a robust Economic Development Office focused on four main areas: jobs and workforce enhancement, corporate development, small business and entrepreneur support, and planning and development. The Tribal Credit Program was established in 1936 to “improve the social and economic condition of [the] CSKT membership by providing sound, equitable and accessible loans through a sustainable revolving loan program,” providing farm, ranch, and business loans to tribal members.

7. Crow Tribe – Crow Agency, MT

**CONSTITUTION:**

ARTICLE I - GOVERNING BODY

The traditional name of the government of the Crow Tribe of Indians of the Crow Indian Reservation shall be the Apsaalooke Nation Tribal General Council hereinafter known formally as the Crow Tribal General Council.

ARTICLE IV - EXECUTIVE BRANCH OF GOVERNMENT

Section 1. Executive Officers. The Crow Tribal General Council shall elect from its membership by secret ballot an Executive Branch of Government...

Section 3. Enumerated Powers. The Executive Branch shall exercise the following powers and responsibilities herein provided, subject to any limitations imposed upon such powers by the statutes and laws of the United States:

(g) enforce all laws, ordinances, resolutions, regulations or guidelines passed by the Legislative Branch providing for the levying of taxes and licensing of members and non-members for various purposes; Section 4. General Duties. The general duties of the Executive Branch Officials shall be:

(a) to implement all laws, resolutions, codes, and policies duly adopted by the Legislative Branch;  
**ARTICLE V - LEGISLATIVE BRANCH OF GOVERNMENT**

Section 1. Membership. The Crow Tribal General Council shall elect three members from each of the established districts within the Crow Reservation...to serve as legislators comprising the Legislative Branch of the Crow Tribal Government. [...] The Legislative Branch of the Crow Tribe shall operate as a separate and distinct branch of the Crow Tribal government and shall exercise a separation of powers from the other branches of the Crow Tribal government.

Section 2. Powers and Duties. The powers and duties of the Legislative Branch shall be

(c) to adopt legislation chartering instrumentalities of the Crow Tribe for the purposes of economic development, housing, education or other purposes not inconsistent with this Constitution;

**TRIBAL CODE:**

April 2014 CROW TRIBAL LEGISLATURE - BILL NO. CLB 14-03. " AN ACT TO AMEND TITLE 18, BUSINESS ORGANIZATIONS, OF THE CROW LAW AND ORDER CODE BY ADOPTING CHAPTER 1, PURPOSE, POLICY AND ADMINISTRATION, AND CHAPTER 5, THE APSAALOOKE CORPORATION CODE, AND RESCINDING CLB 05-16."

Title 18. Business Organizations

Part 2. Formation of Corporations.

18-3-201 Scope of Chapter.

A. Unless otherwise provided, the provisions of this Chapter apply to all corporations formed or authorized under the sovereign powers of the Apsaalooke Nation.

B. Parts 1 through 9 of this Chapter shall not apply to Tribally-Owned Corporations, or to nonprofit corporations chartered as instrumentalities of the Crow Tribe, except as otherwise provided in such corporations' Articles of Incorporation or in Part 10 of this Chapter.

**ANALYSIS:**

The Crow Tribe has adopted formal procedures for chartering corporations.

8. Northern Cheyenne -- Lame Deer, MT

**CONSTITUTION:**

**ARTICLE III – GOVERNING BODY AND OFFICERS**

SECTION 1. The governing body of the Northern Cheyenne Tribe under this Constitution and Bylaws shall be a council which shall hereafter be known as "The Tribal Council of the Northern Cheyenne."

**ARTICLE IV – POWERS OF THE TRIBAL COUNCIL**

Section 1. Enumerated Powers. The Tribal Council of the Northern Cheyenne shall exercise the following powers, subject to any limitations imposed by the applicable statutes of the United States and subject further to all express restrictions upon such powers contained in the Constitution and the attached Bylaws:

(m) To cultivate and preserve native arts, crafts, culture and Indian ceremonials.

(o) To establish subordinate organizations of members of the Tribe for economic purposes.

**TRIBAL CODE:**

The Northern Cheyenne has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

**ANALYSIS:**

In the alternative, the Tribal Council of the Northern Cheyenne is authorized pursuant to their Constitution to potentially authorize cooperatives.

**WYOMING**

1. Wind River Indian Reservation (Eastern Shoshone and Northern Arapaho) - Fort Washakie, WY

**CONSTITUTION:**



The Wind River Intertribal Council is the duly elect governing body within the Wind River Indian Reservation who is authorized under the laws of the Tribes and federal law to manage affairs relating to laws on the Wind River Reservation.

**TRIBAL CODE:**

**NORTHERN ARAPAHO CODE - TITLE 2. BUSINESS ORGANIZATIONS**

Section 101 - Authority. The Northern Arapaho Tribe is a sovereign, federally recognized Indian Tribe. The Northern Arapaho Business Council is authorized under tribal law to enact tribal codes. This Code is enacted pursuant to the Tribes' inherent powers of self-government, which includes the power to charter corporations, limited liability companies, or other business entities.

**ANALYSIS:**

A Constitution governing the Shoshone and Arapaho Indians of the Wind River Reservation was adopted October 7, 1938. In furtherance of the goals of their original Constitution, laws impacting the Wind River Reservation in general are passed by joint resolutions of the Wind River Intertribal Council (WRITC). The WRITC is made up equally of representatives from each tribe.

Separately, the Eastern Shoshone and Northern Arapaho each promulgate laws under their respective Business Councils. Initial research failed to locate documents related to the governance structure for each respective tribe.

The Northern Arapaho tribe has adopted its own code governing Business Organizations. Initial research suggests that the Eastern Shoshone may not have adopted the same. However, past actions by the Eastern Shoshone reveal the tribe created a Limited Liability Company under the authority of its Business Council in order to facilitate the development of the Eastern Shoshone Business Park.

Therefore, while the Northern Arapaho have established specific procedures governing the creation and regulation of business organizations; it initially appears that the Eastern Shoshone may authorize the creation of business entities under authority of its Business Council. More research should be conducted to determine with certainty, the Eastern Shoshone's business organization process.

NOTE: Both tribes are under the jurisdiction of the Wind River Tribal Court.

**NORTH DAKOTA**

1. MHA Nation (Mandan, Hidatsa, and Arikara Nation) - New Town, ND

**CONSTITUTION:**

**ARTICLE III – GOVERNING BODY**

SECTION 1. The governing body of the Three Affiliated Tribes of the Fort Berthold Reservation shall be known as the Tribal Business Council.

**ARTICLE VI - POWERS**

SECTION 3. The people of the Fort Berthold Reservation hereby grant to the Tribal Business Council of the Three Affiliated Tribes all necessary sovereign authority - legislative and judicial for the purpose of exercising the jurisdiction granted by the people in Article 1 of this Constitution. Further the people hereby delegate to the Tribal Court such jurisdictional power and authority as may be necessary to realize the jurisdiction granted by the people in Article I of this Constitution.

**TRIBAL CODE:**

Title VII - Business and Licenses

Chapter 1 – Business Enterprises

Articles of Incorporation (11-126-VJB – Corporation Act)

**ANALYSIS:**

The MHA Nation Constitution specifically grants to the Tribal Business Council the legislative authority to grant a corporate charter. Prospective organizations seeking a corporate charter under the laws and jurisdiction of the MHA Nation are advised to follow the procedures outlined under the Corporation Act of the Tribal Code. Once all preliminary measures have been satisfactorily completed, a resolution seeking a corporate charter shall be submitted to the Tribal Business Council for final approval. To date the MHA Nation has chartered over 70 for-profit and non-profit organizations operating within tribal boundaries.

2. Spirit Lake Nation – Fort Totten, ND

**CONSTITUTION:**

ARTICLE IV - GOVERNING BODY

Section 1. The governing body of the Spirit Lake Tribe shall be the Tribal Council.

ARTICLE VI - GOVERNMENTAL AUTHORITIES

The Tribal Council of the Spirit Lake Tribe shall exercise the following powers, subject to any imitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government.

Section 3. To regulate and license where permitted by law, all business and professional activities conducted upon the Reservation, provided that any assessment upon nonmembers, trading or residing within the jurisdiction of the tribe, shall be subject to review of the Secretary of the Interior or his duly authorized representative, where required by law.

**TRIBAL CODE:**

Spirit Lake Sioux Law and Order Code

Title 10: Corporations and Tribal Entities.

§10-1-102. Scope.

The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Spirit Lake Sioux Tribe, whether before or after the enactment hereof.

§10-1-103. Purpose and Construction.

(1) The purposes of this Title are:

(a) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;

(b) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;

(c) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors;

and

(d) to simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Tribe.

(2) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

**ANALYSIS:**

The Spirit Lake Nation has adopted comprehensive codes governing Corporations and Tribal Entities.

3. Standing Rock Sioux Tribe – Fort Yates, ND

**CONSTITUTION:**

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Standing Rock Sioux Tribe shall be known as the Standing Rock Sioux Tribal Council.

ARTICLE IV - POWERS OF THE STANDING ROCK SIOUX TRIBAL COUNCIL

Section 1. The Tribal Council shall exercise the following powers by appropriate motion, resolution or ordinance, subject to any limitation imposed by the Constitution or applicable statutes of the United States.

c. To promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members.

g. To encourage and foster the arts, crafts, traditions, Sioux language, and culture of the Sioux Indians.

**TRIBAL CODE:**

The Standing Rock Sioux Tribe has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

**ANALYSIS:**

In the alternative, the Standing Rock Sioux Tribal Council is authorized pursuant to their Constitution to potentially authorize cooperatives. Approval of cooperatives would further the goals of Article IV, Section 1 (c) & (g).

4. Turtle Mountain Band of Chippewa Indians (Ojibwe & Metis) Belcourt, ND

**CONSTITUTION:**

ARTICLE IV - GOVERNING BODY

Section 1. The governing body shall be the Tribal Council...

ARTICLE IX - POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall exercise the following powers, subject to any limitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government:

(a) Governmental Powers

Section 3. To regulate and license where permitted by law all business and professional activities conducted upon the reservation, provided that any assessment upon non-members trading or residing within the jurisdiction of the Band shall be subject to review of the Secretary of the Interior, or his duly authorized representative, where required by law.

**TRIBAL CODE:**

TITLE 29 TURTLE MOUNTAIN TRIBAL CODE OF CORPORATIONS

CHAPTER 29.01 Tribal Entities

29.0101 Scope. The provisions of this Chapter Four shall apply to all corporations which are Tribal Entities formed under the laws and sovereign power of the Turtle Mountain Band of Chippewa Indians, whether formed before or after the enactment hereof.

29.0102 Purpose and construction.

1. The purposes of this Chapter are:

a. To encourage commerce by providing limitations of the liability of the Tribe as owner in incorporated enterprises;

b. To reform the laws of business corporations by allowing greater flexibility in the organization and operation of corporations;

c. To ensure that corporate assets, but not those generally of the Tribe, are available for the satisfaction of valid claims of corporate creditors; and

d. To simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Tribe.

2. The provisions of this Chapter shall be liberally construed and applied to promote its underlying purposes and policies

**ANALYSIS:**

The Turtle Mountain Tribe of Chippewa have adopted formal procedures for chartering corporations.

5. Sisseton Wahpeton Oyate of the Lake Traverse Reservation – Agency Village, SD

**CONSTITUTION:**

ARTICLE III - ORGANIZATION

SECTION 1. The Sisseton-Wahpeton Oyate (people) of the Lake Traverse Reservation shall be governed by a Council... The Chairman, Vice-Chairman and Secretary of the Council shall be elected at large, which Officers shall constitute an Executive Committee.

SECTION 2. The Executive Committee, in formal session, shall have the power to speak and act for the Tribe when the Council is not in session and to carry into effect all properly enacted resolutions and ordinances of the Council...

ARTICLE VII - POWERS

SECTION 1. The Council shall have the following powers as outlined in this revised Constitution, which may be exercised pursuant to the tribe's inherent sovereignty, treaties and applicable federal statutes, rulings or regulations. (As amended by Amendment No. III, effective November 15, 2006.)

(h) To promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate.

ii. The Council is hereby authorized to recognize any district committees, associations or other organizations open to the members of the Sisseton-Wahpeton Oyate and to approve such organizations, subject, however, to the provision that no such committee, association or organization may assume authorities specifically granted to the Council unless by a proper delegation of authority by the Council.

**TRIBAL CODE:**

Sisseton Wahpeton Oyate Codes of Law

Ch. 8 – Sisseton-Wahpeton Sioux Business Corporation Ordinance

08-03-01 PURPOSES

Corporations may be organized under this Ordinance for any lawful purpose or purposes, except for the purpose of banking or insurance.

**ANALYSIS:**

The Sisseton-Wahpeton Sioux have adopted formal procedures for chartering corporations.

**SOUTH DAKOTA**

1. Cheyenne River Sioux Tribe – Eagle Butte, SD

**CONSTITUTION:**

Article III – Governing Body

Section 1. The governing body of the Cheyenne River Sioux Tribe shall consist of a council, known as the Cheyenne River Sioux Tribal Council.

Article IV – Powers of Self-Government

Section 1. The tribal council of the Cheyenne River Reservation shall exercise the following powers...

(f) To select subordinate boards, officials, and employees not otherwise provided for in this constitution and to prescribe their tenure and duties and to establish district councils; to authorize and establish any association or organization having for its purpose and sole object the benefit of the members of the Cheyenne River Sioux Tribe. Such association or organization shall have the right to engage in collective or cooperative bargaining or marketing, or purchasing of supplies, crops, equipment, seed, machinery, building or livestock, the council reserving the right to establish ordinances covering the activities of such association or organization, and to enforce the observance of such ordinances.

**TRIBAL CODE:**

The Cheyenne River Sioux Tribe has adopted a Corporations Ordinance.

**ANALYSIS:**

Initial research indicates that the Cheyenne River Sioux Tribe has authority under both its Constitution and Corporation Ordinance to charter corporations.

2. Crow Creek Sioux Tribe – Fort Thompson, SD

**CONSTITUTION:**

ARTICLE III-THE GOVERNING BODY

SECTION 1. The governing body of the Crow Creek Sioux Tribe shall be the Tribal Council.

ARTICLE VI-POWERS AND DUTIES OF THE TRIBAL COUNCIL

SECTION 1. The Council of the Crow Creek Reservation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached by-laws.

(f) To adopt resolutions and ordinances subject to the approval of the Commissioner of Indian Affairs governing the management of all economic affairs and enterprises of the tribe, including tribal lands, tribal timber, tribal livestock enterprises; tribal community store, or any other tribal activity.

(s) To delegate to subordinate boards or to cooperative associations which are open to all members of the Tribe any of the foregoing powers reserving the right to review any action taken by virtue of such delegated power.

**TRIBAL CODE:**

As of 2005, the Crow Creek Sioux Tribe has not adopted a Corporations Ordinance.

**ANALYSIS:**

Of special note is the existence of several “Mom & Pop” businesses on the Crow Creek reservation. Approximately half of the businesses located on the reservation are incorporated under the state of South Dakota, while the other half are not. This suggests that the Crow Creek Sioux Tribe may have mechanisms in place authorizing the establishment of businesses within its tribal boundaries. In depth research will need to be conducted to verify with certainty that this is the case.

In the alternative, and as the above excerpt suggests, the Tribal Council is authorized under its Constitution to establish laws regulating the economic affairs and enterprises within the tribe.

3. Flandreau Santee Sioux Tribe – Flandreau, SD

**CONSTITUTION:**

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Flandreau Santee Sioux Tribe shall be the Executive Committee.

ARTICLE VIII - POWERS OF THE EXECUTIVE COMMITTEE

Section 1. Enumerated powers. The Executive Committee of the Flandreau Santee Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States.

(g) To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the Tribe, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers.

**TRIBAL CODE:**

TITLE 25 CORPORATION ORDINANCE

CHAPTER 1 TITLE, POLICY, CONSTITUTIONAL AUTHORITY AND PURPOSE OF THIS ORDINANCE

Section 25-1-2. Policy.

Indian Tribes have been consistently recognized as sovereign throughout the history of the United States of America, and to retain as governmental powers, where consistent with the trusteeship of the United States, all powers necessary to commercially utilize their undivided resources for the economic benefit of the Tribe, and to possess the power to charter corporations to do so. It is the policy of the Flandreau Santee Sioux Tribe in the enactment of this Ordinance to exercise its retained inherent sovereign governmental authority to implement Tribal corporate, economic, and commercial powers, as it exercises all other inherent governmental authority pursuant to the provisions of the Flandreau Santee Sioux Tribal Constitution.

**ANALYSIS:**

The Flandreau Santee Sioux has adopted formal procedures for chartering corporations.

4. Lower Brule Sioux Tribe – Lower Brule, SD

**CONSTITUTION:**

ARTICLE III – GOVERNING BODY

SECTION 1. The governing body of the Lower Brule Sioux Tribe shall consist of a Council, known as the Lower Brule Sioux Tribal Council, hereinafter designated as the “Tribal Council”.

ARTICLE VI – POWERS OF THE TRIBAL COUNCIL

SECTION 1. Enumerated Powers. The Tribal Council of the Lower Brule Sioux Reservation shall exercise the following powers, subject to any limitations imposed by the statues applicable to Indian tribes or the applicable provisions of the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

e. To safeguard and promote the peace, safety, morals, and general welfare of the Lower Brule Sioux Tribe and to regulate the conduct of trade and the use and disposition of property upon the reservation provided

that any ordinance directly affecting non-members of the reservation shall be subject to review by the Secretary of the Interior.

**TRIBAL CODE:**

Initial research suggests the Lower Brule Sioux Tribe has not adopted a Corporations Ordinance.

**ANALYSIS:**

In the alternative, the Lower Brule Sioux Tribal Council is authorized pursuant to its Constitution to potentially authorize cooperatives. Approval of cooperatives would further the goals of Article IV, Section 1 (e).

5. Oglala Sioux Tribe - Pine Ridge, SD

**CONSTITUTION:**

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Tribe under this constitution shall be a council which shall be composed of councilmen chosen by secret ballot by qualified voters of the tribe, which council shall hereafter be known as "The Oglala Sioux Tribal Council".

ARTICLE IV - POWERS OF THE COUNCIL

Section 1. Enumerated Powers. The Oglala Sioux Tribal Council shall exercise the following powers; subject to any limitations imposed by the statutes or the Constitution of the United States and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

(o) To charter subordinate organizations for economic purposes and to regulate the activities of associations thus chartered by the tribal council, or any other associations of members of the tribe, which are indebted to the tribe.

**TRIBAL CODE:**

Oglala Sioux Tribe Law and Order Code

Chapter 44 – OST Business Code

**ANALYSIS:**

As Article IV, Section 1 (o) suggests, the Tribal Council is authorized under its Constitution to charter organizations for economic purpose. However, in 2018, Chapter 44 of the Oglala Sioux Tribe Law and Order code was updated to, “foster local employment of attorney and lay advocates who are members of the Bar of the Oglala Sioux Tribe, and to empower Lakota entrepreneurs and business owners at minimal cost reducing barriers to entry for Lakota business start-ups,” per the Oglala Lakota Nation.

Several modern corporate laws within the U.S. were utilized as the basis to draft the new OST Business Code. Interested parties seeking to submit Business filings should contact the Oglala Sioux Tribe Department of Revenue. Important note: Foreign entities must maintain a registered agent who is a member of the Bar of the Oglala Sioux Tribe.

6. Rosebud Sioux Tribe – Rosebud, SD

**CONSTITUTION:**

Article III – Governing Body

Section 1. The governing body of the Rosebud Sioux Tribe shall consist of a Council known as the Rosebud Sioux Tribal Council.

Article IV - Powers of the Rosebud Sioux Tribal Council

Section 1. Enumerated powers -The Council of the Rosebud Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and attached By-Laws. (Amendment I effective June 19, 1962, Yes-346; No-296)

(n) To charter subordinate organization for economic purposes and to regulate the activities of all cooperative associations of members of the Tribe.

**TRIBAL CODE:**

TITLE 15: CORPORATIONS AND TRIBAL ENTITIES

CHAPTER ONE: General Provisions

§15-1-101. Short Title

This Title shall be known and may be cited as the Rosebud Law and Order Code - Corporations and Tribal Entities.

§15-1-102. Scope

The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Rosebud Sioux Tribe, whether before or after the enactment hereof.

§15-1-103. Purpose and Construction

(a) The purposes of this Title are:

(1) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;

(2) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;

(3) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and

(4) to simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Rosebud Sioux Tribe.

(b) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

**ANALYSIS:**

The Rosebud Sioux Tribal Council have adopted formal procedures for chartering corporations.

7. Sisseton Wahpeton Oyate of the Lake Traverse Reservation – Agency Village, SD

**CONSTITUTION:**

ARTICLE III - ORGANIZATION

SECTION 1. The Sisseton-Wahpeton Oyate (people) of the Lake Traverse Reservation shall be governed by a Council... The Chairman, Vice-Chairman and Secretary of the Council shall be elected at large, which Officers shall constitute an Executive Committee.

SECTION 2. The Executive Committee, in formal session, shall have the power to speak and act for the Tribe when the Council is not in session and to carry into effect all properly enacted resolutions and ordinances of the Council...

ARTICLE VII - POWERS

SECTION 1. The Council shall have the following powers as outlined in this revised Constitution, which may be exercised pursuant to the tribe's inherent sovereignty, treaties and applicable federal statutes, rulings or regulations. (As amended by Amendment No. III, effective November 15, 2006.)

(h) To promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate.

ii. The Council is hereby authorized to recognize any district committees, associations or other organizations open to the members of the Sisseton-Wahpeton Oyate and to approve such organizations, subject, however, to the provision that no such committee, association or organization may assume authorities specifically granted to the Council unless by a proper delegation of authority by the Council.

**TRIBAL CODE:**

Sisseton Wahpeton Oyate Codes of Law

Ch. 8 – Sisseton-Wahpeton Sioux Business Corporation Ordinance

08-03-01 PURPOSES

Corporations may be organized under this Ordinance for any lawful purpose or purposes, except for the purpose of banking or insurance.

**ANALYSIS:**

The Sisseton Wahpeton Oyate have adopted formal procedures for chartering corporations.

8. Standing Rock Sioux Tribe – Fort Yates, ND

**CONSTITUTION:**

**ARTICLE III - GOVERNING BODY**

Section 1. The governing body of the Standing Rock Sioux Tribe shall be known as the Standing Rock Sioux Tribal Council.

**ARTICLE IV - POWERS OF THE STANDING ROCK SIOUX TRIBAL COUNCIL**

Section 1. The Tribal Council shall exercise the following powers by appropriate motion, resolution or ordinance, subject to any limitation imposed by the Constitution or applicable statutes of the United States.

c. To promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members.

g. To encourage and foster the arts, crafts, traditions, Sioux language, and culture of the Sioux Indians.

**TRIBAL CODE:**

The Standing Rock Sioux Tribe has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

**ANALYSIS:**

In the alternative, the Standing Rock Sioux Tribal Council can potentially authorize cooperatives pursuant to their Constitution. Approval of cooperatives would further the goals of Article IV, Section 1 (c) and (g).

9. Yankton Sioux Tribe – Wagner, SD

**CONSTITUTION:**

**ARTICLE II - NAME**

Section 1. The Executive organization existing under this Constitution shall be known as the Yankton Sioux Tribal Business and Claims Committee wherever the word committee is used it shall mean the Yankton Sioux Tribal Business & Claims Committee, hereafter.

**ARTICLE V. Officers**

Section 3 - The judicial power shall remain in the Tribal membership and upon request of five members of any just cause, such cause shall be submitted at any regular Tribal meeting for action. The legislative branch shall be comprised of the nine Committee members; however, any legislative action shall first be submitted to a General Tribal Council and subject to Tribal amendment, repeal or ratification.

**ARTICLE IX - DEMOCRATIC FORM OF GOVERNMENT**

Section 1 - All operations under this Constitution shall be free from any system of collectivism and/or socialism under any and all circumstances.

Section 2. This Constitution shall stress to the fullest extent of its authority at all times, recognition of and operation under the private enterprise system and democratic way of life.

**TRIBAL CODE:**

Initial research indicates that the Yankton Sioux Tribe has not adopted a corporation code.

**ANALYSIS:**

Of particular note, the excerpts from the above amended tribal Constitution reflect a full democratic system of governance. Any legislative action taken by the Yankton Sioux Tribal Business and Claims Committee must be approved by the General Tribal Council. The General Tribal Council consists of ALL tribal members over the age of eighteen.

The Yankton Sioux Tribe Economic Development Department is currently implementing the Comprehensive Economic Development Strategy (CEDS) Plan (2018-2021), of which the scope of work includes assistance in writing and implementation of business codes and corporation codes, and to implement guidelines for formation of corporations (for profit and non-profit). Further, the tribe is aggressively seeking certification of its Ihanktonwan Development Fund, LLC. (CDFI). Therefore, initial research indicates an updated series of tribal laws, including a corporation code will be forthcoming.



NADC Questions

**General questions**

1. What do you think are some of the biggest challenges facing business development on the reservation?
2. What improvements or changes would you like to see?
3. If you could suggest one action item for a tribal economic development plan, what would it be?
4. What training, investment, networks, community support, government support or other tools and capacities do you think might be needed to make that action item a reality?

**Business development questions**

1. In your mind, what are the primary goals/benefits of a successful tribal business? What does it contribute to the community? What does a successful tribal business (or economy) look like to you?
2. What opportunities for business formation are you aware of under current tribal laws or programs?
3. How do tribal laws help support or interfere with business opportunities? What about state laws? Federal laws?
4. What opportunities would you like to see (that maybe don't currently exist)?
5. What is missing from tribal law or government that you would like to see developed in order to better address tribal priorities?
6. What are examples of successful tribal businesses you are aware of?
7. Do these businesses face any particular challenges or problems you are aware of?

**Commercial lending questions**

1. What is your experience with *obtaining financing from* commercial lenders?
2. Where did that financing come from? Was it a private lender? A federal, state, or tribal program? Who helped, if anyone, with navigating through that process?
3. What were the biggest challenges in obtaining such financing? What could be improved from that experience?
4. What has been the role of commercial lending in the success of tribal entities/corporations?
5. What challenges have you experienced in dealing with commercial lenders?
6. What do you think could be done to improve access to financing for tribal entities?

MARGERY HUNTER  
BROWN INDIAN LAW  
CLINIC

*in collaboration with*

*the* NATIVE AMERICAN  
DEVELOPMENT  
CORPORATION

# FACILITATING BUSINESS COOPERATIVES: A TRIBAL CODE ANALYSIS

*Research sponsored by a USDA  
Rural Business Development  
Grant*



# OVERVIEW

Many tribes have adopted some form of business or corporation code designed to aid economic development within their respective tribal boundaries. Other tribes rely solely on language within their respective constitutions to authorize the creation and/or regulation of business entities within tribal boundaries.

---

Herein, excerpts of pertinent tribal constitutional language and business and/or corporation code provisions for 21 regional tribes are provided. Each is followed by a brief analysis of how those constitutions or codes may impact the creation of cooperatives under tribal law.



# TRIBAL CODES SURVEYED

## Montana

- Fort Peck Assiniboine & Sioux Tribes  
Poplar, MT
- Fort Belknap Indian Community  
Harlem, MT
- Blackfeet Nation  
Browning, MT
- Chippewa Cree Tribe  
Box Elder, MT
- Little Shell Tribe of Chippewa Indians  
Great Falls, MT
- Confederated Salish and Kootenai Tribes  
Pablo, MT
- Crow Tribe  
Crow Agency, MT
- Northern Cheyenne Tribe  
Lame Deer, MT

## Wyoming

- Wind River Indian Reservation (Eastern Shoshone and Northern Arapaho Tribes)  
Fort Washakie, WY

## North Dakota

- MHA (Mandan, Hidatsa, and Arikara) Nation  
New Town, ND
- Spirit Lake Nation  
Fort Totten, ND
- Standing Rock Sioux Tribe  
Fort Yates, ND
- Turtle Mountain Band of Chippewa Indians (Ojibwe & Metis)  
Belcourt, ND

# TRIBAL CODES SURVEYED CONT.

## South Dakota

- Sisseton Wahpeton Oyate of the Lake Traverse Reservation  
Agency Village, SD
- Cheyenne River Sioux Tribe  
Eagle Butte, SD
- Crow Creek Sioux Tribe  
Fort Thompson, SD
- Flandreau Santee Sioux Tribe  
Flandreau, SD
- Lower Brule Sioux Tribe  
Lower Brule, SD
- Oglala Sioux Tribe  
Pine Ridge, SD
- Rosebud Sioux Tribe  
Rosebud, SD
- Yankton Sioux Tribe  
Wagner, SD

# FORT PECK ASSINIBOINE & SIOUX TRIBES

*Poplar, Montana*

# PROVISIONS

*Fort Peck Assiniboine & Sioux Tribes*

## **CONSTITUTION:**

### ARTICLE IV – GOVERNING BODY

Section 1. The governing body of the Tribes shall be known as the Tribal Executive Board, subject to the powers of the General Council.

### ARTICLE X - BUSINESS AND FISCAL AUTHORITIES

The Tribal Executive Board shall exercise the following powers subject to any limitations imposed by the Constitution or Statutes of the United States and subject further to all expressed restrictions upon such powers contained in this Constitution and Bylaws.

Section 6. To borrow money from the Federal Government, or other sources, and to direct the use of such funds for productive purposes, or to loan money thus borrowed to members of the Tribes, with the approval of the Secretary of the Interior, or his authorized representative.

# PROVISIONS CONT.

*Fort Peck Assiniboine & Sioux Tribes*

## **TRIBAL CODE:**

Title 24 (Commercial Law) Subchapter B at Sec. 1107 – 1122: Governs corporations established under tribal law.

Sample:

Chapter 11. Corporation Code Sections:

Sec. 1101. Citation.

Sec. 1102. Definitions.

Sec. 1103 Reserved.

Sec. 1104. Reservation of Right.

Sec. 1105. Corporations Wholly Owned by the Tribe.

Sec. 1106. Sovereign Immunity of the Tribe Not Waived.

Sec. 1107. Purposes.

Sec. 1108. Incorporators.

Sec. 1109. Articles.

Sec. 1110. Corporate Name.

Sec. 1111. Reserved Name.

Sec. 1112. Registered Office; Registered Agent.

Sec. 1113. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

Sec. 1114. Amendment of Articles.

Sec. 1115. Procedure for Amendment Before Issuance of Shares.

Sec. 1116. Procedure for Amendment After Issuance of Shares.

Sec. 1117. Class or Series Voting on Amendments.



# ANALYSIS

## *Fort Peck Assiniboine & Sioux Tribes*

Article X, section 6 of the Fort Peck constitution is common language often found in other tribal constitutions that typically allows for federal funding provided by the United States direct loan program under 25 CFR §101 (LOANS TO INDIANS FROM THE REVOLVING LOAN FUND).

For reference, pertinent sections of 25 CFR §101 are as follows:

### 25 CFR § 101.1 - Definitions.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

### 25 CFR § 101.2 - Kinds of loans.

Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.

(a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon.

### 25 CFR § 101.3 - Eligible borrowers under United States direct loan program.

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner.

# ANALYSIS

## *Fort Belknap Indian Community*

Portions of the 25 CFR §101 language are often found in tribal ordinances authorizing tribal loan programs. This is language some tribes might utilize for purposes of defining cooperatives (i.e. Pine Ridge Revolving Loan Fund).

The Fort Peck Commercial Law does establish the parameters for which a cooperative might be formed under tribal law. The sample provisions provide only a small outline of what is a substantial and comprehensive code governing the creation of corporations chartered under tribal law.

# FORT BELKNAP INDIAN COMMUNITY

*Harlem, Montana*

# PROVISIONS

*Fort Belknap Indian Community*

## **CONSTITUTION:**

### ARTICLE IV - ORGANIZATION OF COMMUNITY COUNCIL

Section 1. Composition. The Community Council shall be composed of [...].

### ARTICLE V - POWERS OF THE COMMUNITY COUNCIL

Section 1. Enumerated Powers. The Council of the Fort Belknap Community shall have the following powers, the exercise of which shall be subject to popular referendum as provided hereafter:

(n) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Community.

# ANALYSIS

## *Fort Belknap Indian Community*

Initial research suggests that the Fort Belknap Indian Community does not currently have tribal laws specifically governing corporate charters or other economic development entities. However, as Section 1, subsection (n) suggests, the governing body of the Fort Belknap Indian Community is authorized under its constitution to specifically regulate cooperative associations within its boundaries and potentially charter them as well.

# BLACKFEET NATION

*Browning, Montana*

# PROVISIONS

## *Blackfeet Nation*

### **CONSTITUTION:**

#### AMENDMENT IV

Section 1. The governing body of the Blackfeet Tribe shall consist of a council known as the Blackfeet Tribal Business Council.

#### ARTICLE VI - POWERS OF THE COUNCIL

Section 1. Enumerated Powers -The council of the Blackfeet Reservation shall exercise the following powers, subject to any limitations embodied in the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and the attached by-laws.

(m) To encourage and foster Indian arts, crafts, culture and traditions.

(r) To delegate to subordinate boards or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to review any actions taken by virtue of such delegated powers.

### **TRIBAL CODE:**

Blackfeet Commercial Code – Remedies and Enforcement, Secured Transactions and Consumer Protection.

# ANALYSIS

## *Blackfeet Nation*

Initial research suggests that the Blackfeet Nation has not established codes specifically governing corporate charters. Business laws which are currently in place are only for the purpose of regulating commercial transactions concerning personal property and fixtures, equal credit opportunity, and procedures for attachment/garnishment of property and execution of judgments.

However, the Blackfeet Tribal Business Council has the discretion to potentially approve cooperatives pursuant to Article VI, Section 1, subsection (m) of their constitution. Most likely, the language here may be sufficient to initiate a tribal resolution that would approve the establishment of cooperatives on a case-by-case basis. Further, although subsection (r) does not specifically speak to the creation of cooperatives, the specific reference to cooperative associations, read in conjunction with subsection (m), suggests a desired role for cooperative associations within the tribal community.



# CHIPPEWA CREE TRIBE

*Box Elder, Montana*

# PROVISIONS

*Chippewa Cree Tribe*

## **CONSTITUTION:**

### ARTICLE III-ORGANIZATION OF GOVERNING BODY

SECTION 1. The governing body of the Chippewa Cree Tribe shall be known as the "Business Committee."

### ARTICLE VI-POWERS OF THE COMMITTEE

SECTION 1. The Business Committee of the Chippewa Cree Tribe of the Rocky Boy's Reservation shall exercise the following powers subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject further to all express restrictions on such powers contained in this Constitution and the attached Bylaws.

(g) To charter subordinate organizations for economic purposes and regulate the activities of all cooperative associations of members of the Chippewa Cree Tribe.

(n) To encourage and foster the arts, crafts, culture, and traditions of the Chippewa Cree Tribe.

(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

# PROVISIONS CONT.

*Chippewa Cree Tribe*

## **TRIBAL CODE:**

Title X – Corporation’s Act of the Chippewa Cree Tribe

### V. Permissible Purposes for Incorporation:

Corporations may be organized under this chapter for any lawful purpose or purposes.

# ANALYSIS

## *Chippewa Cree Tribe*

The Chippewa Cree Tribe is authorized to charter corporations under both its constitution and Title X of its tribal code. It is likely, though not definitive, that prospective organizations would follow procedures outlined under Title X and then the charter would be approved via resolution by the Business Committee.

# LITTLE SHELL TRIBE OF CHIPPEWA INDIANS

*Great Falls, Montana*

# PROVISIONS

*Little Shell Tribe of Chippewa Indians*

## **CONSTITUTION:**

### ARTICLE I – GOVERNING BODY

SECTION II. The governing body of the Little Shell Tribe of Chippewas Indians of Montana shall be known as the Executive Board.

### ARTICLE III – POWERS OF THE EXECUTIVE BOARD

SECTION I. The Executive Board of the Chippewa Indians of Montana shall exercise the following powers, subject to the limitations imposed by the statutes of the Constitution of the United States and subject further to all express restrictions upon such power contained in the Constitution and By-Laws.

SECTION VIII. To encourage and foster the Arts, Crafts, Culture and traditions of the Pembina Band of Chippewa Indians.

## **TRIBAL CODE:**

Not yet applicable.

# ANALYSIS

## *Little Shell Tribe of Chippewa Indians*

The Little Shell Tribe of Chippewa Indians were federally recognized on January 25, 2020. It is anticipated that the Little Shell Tribe will develop its tribal codes as needed and as it acquires and expands a much-needed land base.

# CONFEDERATED SALISH & KOOTENAI TRIBES

*Pablo, Montana*



# PROVISIONS

*Confederated Salish & Kootenai Tribes*

## **CONSTITUTION:**

### ARTICLE III – THE TRIBAL COUNCIL

SECTION 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

### ARTICLE VI – POWER AND DUTIES OF THE TRIBAL COUNCIL

SECTION 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaw;

o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution

## **TRIBAL CODE:**

Initial research suggests the CSKT Tribal Council has no Corporation Ordinance readily available.

# ANALYSIS

## *Confederated Salish & Kootenai Tribes*

The Confederated Salish and Kootenai Tribes have an extensive history of economic development and successful tribal enterprises. In light of this history, it is probable that the CKST does have some form of a Corporation Ordinance that has not been publicly disseminated to date.

The CSKT Tribal Council is authorized pursuant to Article IV, Section 1(o) of their constitution to charter organizations.

# CROW TRIBE

*Crow Agency, Montana*

# PROVISIONS

## *Crow Tribe*

### **CONSTITUTION:**

#### ARTICLE I - GOVERNING BODY

The traditional name of the government of the Crow Tribe of Indians of the Crow Indian Reservation shall be the Apsaalooke Nation Tribal General Council hereinafter known formally as the Crow Tribal General Council.

#### ARTICLE IV - EXECUTIVE BRANCH OF GOVERNMENT

Section 1. Executive Officers. The Crow Tribal General Council shall elect from its membership by secret ballot an Executive Branch of Government...

Section 3. Enumerated Powers. The Executive Branch shall exercise the following powers and responsibilities herein provided, subject to any limitations imposed upon such powers by the statutes and laws of the United States:

(g) enforce all laws, ordinances, resolutions, regulations or guidelines passed by the Legislative Branch providing for the levying of taxes and licensing of members and non-members for various purposes;

Section 4. General Duties. The general duties of the Executive Branch Officials shall be:

(a) to implement all laws, resolutions, codes, and policies duly adopted by the Legislative Branch;

# PROVISIONS CONT.

*Crow Tribe*

## CONSTITUTION CONT.:

### ARTICLE V - LEGISLATIVE BRANCH OF GOVERNMENT

Section 1. Membership. The Crow Tribal General Council shall elect three members from each of the established districts within the Crow Reservation...to serve as legislators comprising the Legislative Branch of the Crow Tribal Government. [...] The Legislative Branch of the Crow Tribe shall operate as a separate and distinct branch of the Crow Tribal government and shall exercise a separation of powers from the other branches of the Crow Tribal government.

Section 2. Powers and Duties. The powers and duties of the Legislative Branch shall be (c) to adopt legislation chartering instrumentalities of the Crow Tribe for the purposes of economic development, housing, education or other purposes not inconsistent with this Constitution;

# PROVISIONS CONT.

*Crow Tribe*

## **TRIBAL CODE:**

April 2014 CROW TRIBAL LEGISLATURE - BILL NO. CLB 14-03. " AN ACT TO AMEND TITLE 18, BUSINESS ORGANIZATIONS, OF THE CROW LAW AND ORDER CODE BY ADOPTING CHAPTER 1, PURPOSE, POLICY AND ADMINISTRATION, AND CHAPTER 5, THE APSAALOOKE CORPORATION CODE, AND RESCINDING CLB 05-16."

Title 18. Business Organizations

Part 2. Formation of Corporations.

18-3-201 Scope of Chapter.

A. Unless otherwise provided, the provisions of this Chapter apply to all corporations formed or authorized under the sovereign powers of the Apsaalooke Nation.

B. Parts 1 through 9 of this Chapter shall not apply to Tribally-Owned Corporations, or to nonprofit corporations chartered as instrumentalities of the Crow Tribe, except as otherwise provided in such corporations' Articles of Incorporation or in Part 10 of this Chapter.

# ANALYSIS

*Crow Tribe*

The Crow Tribe has adopted formal procedures for chartering corporations.

# NORTHERN CHEYENNE TRIBE

*Lame Deer, Montana*



# PROVISIONS

## *Northern Cheyenne Tribe*

### **CONSTITUTION:**

#### ARTICLE III – GOVERNING BODY AND OFFICERS

SECTION 1. The governing body of the Northern Cheyenne Tribe under this Constitution and Bylaws shall be a council which shall hereafter be known as "The Tribal Council of the Northern Cheyenne."

#### ARTICLE IV – POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The Tribal Council of the Northern Cheyenne shall exercise the following powers, subject to any limitations imposed by the applicable statutes of the United States and subject further to all express restrictions upon such powers contained in the Constitution and the attached Bylaws:

- (m) To cultivate and preserve native arts, crafts, culture and Indian ceremonials.
- (o) To establish subordinate organizations of members of the Tribe for economic purposes.

### **TRIBAL CODE:**

The Northern Cheyenne has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

# ANALYSIS

## *Northern Cheyenne Tribe*

The Tribal Council of the Northern Cheyenne Tribe is authorized pursuant to their constitution to potentially authorize cooperatives.

# WIND RIVER INDIAN RESERVATION

*Fort Washakie,  
Wyoming*

# PROVISIONS

*Wind River Indian Reservation (Eastern Shoshone and Northern Arapaho Tribes)*

## **CONSTITUTION:**

The Wind River Intertribal Council is the duly elected governing body within the Wind River Indian Reservation who is authorized under the laws of the Tribes and federal law to manage affairs relating to laws on the Wind River Reservation.

## **TRIBAL CODE:**

NORTHERN ARAPAHO CODE - TITLE 2. BUSINESS ORGANIZATIONS

Section 101 - Authority. The Northern Arapaho Tribe is a sovereign, federally recognized Indian Tribe. The Northern Arapaho Business Council is authorized under tribal law to enact tribal codes. This Code is enacted pursuant to the Tribes' inherent powers of self-government, which includes the power to charter corporations, limited liability companies, or other business entities.

# ANALYSIS

## *Wind River Indian Reservation (Eastern Shoshone and Northern Arapaho Tribes)*

A Constitution governing the Shoshone and Arapaho Indians of the Wind River Reservation was adopted October 7, 1938. In furtherance of the goals of their original constitution, laws impacting the Wind River Reservation in general are passed by joint resolutions of the Wind River Intertribal Council (WRITC). The WRITC is made up equally of representatives from each tribe.

Separately, the Eastern Shoshone and Northern Arapaho each promulgate laws under their respective Business Councils. Initial research failed to locate documents related to the governance structure for each respective tribe.

The Northern Arapaho tribe has adopted its own code governing Business Organizations. Initial research suggests that the Eastern Shoshone may not have adopted the same. However, past actions by the Eastern Shoshone reveal the tribe created a Limited Liability Company under the authority of its Business Council in order to facilitate the development of the Eastern Shoshone Business Park.

Therefore, while the Northern Arapaho Tribe have established specific procedures governing the creation and regulation of business organizations, it initially appears that the Eastern Shoshone Tribe may authorize the creation of business entities under authority of its Business Council. More research is needed to determine with certainty the Eastern Shoshone's business organization process.

NOTE: Both tribes are under the jurisdiction of the Wind River Tribal Court.

# MHA (MANDAN, HIDATSA, AND ARIKARA) NATION

*New Town, N. Dakota*

# PROVISIONS

*MHA Nation*

## **CONSTITUTION:**

### ARTICLE III – GOVERNING BODY

SECTION 1. The governing body of the Three Affiliated Tribes of the Fort Berthold Reservation shall be known as the Tribal Business Council.

### ARTICLE VI - POWERS

SECTION 3. The people of the Fort Berthold Reservation hereby grant to the Tribal Business Council of the Three Affiliated Tribes all necessary sovereign authority - legislative and judicial for the purpose of exercising the jurisdiction granted by the people in Article 1 of this Constitution. Further the people hereby delegate to the Tribal Court such jurisdictional power and authority as may be necessary to realize the jurisdiction granted by the people in Article I of this Constitution.

## **TRIBAL CODE:**

Title VII - Business and Licenses

Chapter 1 – Business Enterprises

Articles of Incorporation (11-126-VJB – Corporation Act)

# ANALYSIS

## *MHA Nation*

The MHA Nation Constitution specifically grants to the Tribal Business Council the legislative authority to grant a corporate charter. Prospective organizations seeking a corporate charter under the laws and jurisdiction of the MHA Nation are advised to follow the procedures outlined under the Corporation Act of the Tribal Code. Once all preliminary measures have been satisfactorily completed, a resolution seeking a corporate charter shall be submitted to the Tribal Business Council for final approval. To date the MHA Nation has chartered over 70 for-profit and non-profit organizations operating within tribal boundaries.



# SPIRIT LAKE NATION

*Fort Totten, N. Dakota*

# PROVISIONS

*Spirit Lake Nation*

## **CONSTITUTION:**

### ARTICLE IV - GOVERNING BODY

Section 1. The governing body of the Spirit Lake Tribe shall be the Tribal Council.

### ARTICLE VI - GOVERNMENTAL AUTHORITIES

The Tribal Council of the Spirit Lake Tribe shall exercise the following powers, subject to any imitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government.

Section 3. To regulate and license where permitted by law, all business and professional activities conducted upon the Reservation, provided that any assessment upon nonmembers, trading or residing within the jurisdiction of the tribe, shall be subject to review of the Secretary of the Interior or his duly authorized representative, where required by law.

# PROVISIONS CONT.

## *Spirit Lake Nation*

### **TRIBAL CODE:**

Spirit Lake Sioux Law and Order Code

Title 10: Corporations and Tribal Entities.

#### §10-1-102. Scope.

The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Spirit Lake Sioux Tribe, whether before or after the enactment hereof.

#### §10-1-103. Purpose and Construction.

(1) The purposes of this Title are:

- (a) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;
- (b) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
- (c) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
- (d) to simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Tribe.

(2) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

# ANALYSIS

*Spirit Lake Nation*

The Spirit Lake Nation has adopted comprehensive codes governing Corporations and Tribal Entities.

# STANDING ROCK SIOUX TRIBE

*Fort Yates, N. Dakota*

# PROVISIONS

## *Standing Rock Sioux Tribe*

### **CONSTITUTION:**

#### **ARTICLE III - GOVERNING BODY**

Section 1. The governing body of the Standing Rock Sioux Tribe shall be known as the Standing Rock Sioux Tribal Council.

#### **ARTICLE IV - POWERS OF THE STANDING ROCK SIOUX TRIBAL COUNCIL**

Section 1. The Tribal Council shall exercise the following powers by appropriate motion, resolution or ordinance, subject to any limitation imposed by the Constitution or applicable statutes of the United States.

c. To promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members.

g. To encourage and foster the arts, crafts, traditions, Sioux language, and culture of the Sioux Indians.

### **TRIBAL CODE:**

The Standing Rock Sioux Tribe has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

# ANALYSIS

## *Standing Rock Sioux Tribe*

The Standing Rock Sioux Tribal Council is authorized pursuant to their constitution to potentially authorize cooperatives. Approval of cooperatives would further the goals of Article IV, Section 1 (c) & (g).

# TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

*Belcourt, N. Dakota*



# PROVISIONS

*Turtle Mountain Band of Chippewa Indians*

## **CONSTITUTION:**

### ARTICLE IV - GOVERNING BODY

Section 1. The governing body shall be the Tribal Council...

### ARTICLE IX - POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall exercise the following powers, subject to any limitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government:

#### (a) Governmental Powers

Section 3. To regulate and license where permitted by law all business and professional activities conducted upon the reservation, provided that any assessment upon non-members trading or residing within the jurisdiction of the Band shall be subject to review of the Secretary of the Interior, or his duly authorized representative, where required by law.

# PROVISIONS CONT.

*Turtle Mountain Band of Chippewa Indians*

## **TRIBAL CODE:**

TITLE 29 TURTLE MOUNTAIN TRIBAL CODE OF CORPORATIONS

CHAPTER 29.01 Tribal Entities

29.0101 Scope. The provisions of this Chapter Four shall apply to all corporations which are Tribal Entities formed under the laws and sovereign power of the Turtle Mountain Band of Chippewa Indians, whether formed before or after the enactment hereof.

29.0102 Purpose and construction.

1. The purposes of this Chapter are:

- a. To encourage commerce by providing limitations of the liability of the Tribe as owner in incorporated enterprises;
- b. To reform the laws of business corporations by allowing greater flexibility in the organization and operation of corporations;
- c. To ensure that corporate assets, but not those generally of the Tribe, are available for the satisfaction of valid claims of corporate creditors; and
- d. To simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Tribe.

2. The provisions of this Chapter shall be liberally construed and applied to promote its underlying purposes and policies and Bylaws or the laws and regulations of the Federal Government:

# ANALYSIS

## *Turtle Mountain Band of Chippewa Indians*

The Turtle Mountain Tribe of Chippewa Indians have adopted formal procedures for chartering corporations.

**SISSETON  
WAHPETON OYATE  
OF THE LAKE  
TRAVERSE  
RESERVATION**

*Agency Village,  
South Dakota*

# PROVISIONS

## *Sisseton Wahpeton Oyate of the Lake Traverse Reservation*

### **CONSTITUTION:**

#### **ARTICLE III - ORGANIZATION**

SECTION 1. The Sisseton-Wahpeton Oyate (people) of the Lake Traverse Reservation shall be governed by a Council... The Chairman, Vice-Chairman and Secretary of the Council shall be elected at large, which Officers shall constitute an Executive Committee.

SECTION 2. The Executive Committee, in formal session, shall have the power to speak and act for the Tribe when the Council is not in session and to carry into effect all properly enacted resolutions and ordinances of the Council...

#### **ARTICLE VII - POWERS**

SECTION 1. The Council shall have the following powers as outlined in this revised Constitution, which may be exercised pursuant to the tribe's inherent sovereignty, treaties and applicable federal statutes, rulings or regulations. (As amended by Amendment No. III, effective November 15, 2006.)

(h) To promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate.

ii. The Council is hereby authorized to recognize any district committees, associations or other organizations open to the members of the Sisseton-Wahpeton Oyate and to approve such organizations, subject, however, to the provision that no such committee, association or organization may assume authorities specifically granted to the Council unless by a proper delegation of authority by the Council.

# PROVISIONS CONT.

*Sisseton Wahpeton Oyate of the Lake Traverse Reservation*

## **TRIBAL CODE:**

Sisseton Wahpeton Oyate Codes of Law

Ch. 8 – Sisseton-Wahpeton Sioux Business Corporation Ordinance

## 08-03-01 PURPOSES

Corporations may be organized under this Ordinance for any lawful purpose or purposes, except for the purpose of banking or insurance.

# ANALYSIS

## *Sisseton Wahpeton Oyate of the Lake Traverse Reservation*

The Sisseton-Wahpeton Sioux have adopted formal procedures for chartering corporations.

# CHEYENNE RIVER SIOUX TRIBE

*Eagle Butte, S. Dakota*



# PROVISIONS

## *Cheyenne River Sioux Tribe*

### **CONSTITUTION:**

#### Article III – Governing Body

Section 1. The governing body of the Cheyenne River Sioux Tribe shall consist of a council, known as the Cheyenne River Sioux Tribal Council.

#### Article IV – Powers of Self-Government

Section 1. The tribal council of the Cheyenne River Reservation shall exercise the following powers...

(f) To select subordinate boards, officials, and employees not otherwise provided for in this constitution and to prescribe their tenure and duties and to establish district councils; to authorize and establish any association or organization having for its purpose and sole object the benefit of the members of the Cheyenne River Sioux Tribe. Such association or organization shall have the right to engage in collective or cooperative bargaining or marketing, or purchasing of supplies, crops, equipment, seed, machinery, building or livestock, the council reserving the right to establish ordinances covering the activities of such association or organization, and to enforce the observance of such ordinances.

### **TRIBAL CODE:**

The Cheyenne River Sioux Tribe has adopted a Corporations Ordinance.

# ANALYSIS

## *Cheyenne River Sioux Tribe*

Initial research indicates that the Cheyenne River Sioux Tribe has authority under both its constitution and corporation ordinance to charter corporations.

# CROW CREEK SIOUX TRIBE

*Fort Thompson,  
South Dakota*

# PROVISIONS

## *Crow Creek Sioux Tribe*

### **CONSTITUTION:**

#### ARTICLE III-THE GOVERNING BODY

SECTION 1. The governing body of the Crow Creek Sioux Tribe shall be the Tribal Council.

#### ARTICLE VI-POWERS AND DUTIES OF THE TRIBAL COUNCIL

SECTION 1. The Council of the Crow Creek Reservation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached by-laws.

(f) To adopt resolutions and ordinances subject to the approval of the Commissioner of Indian Affairs governing the management of all economic affairs and enterprises of the tribe, including tribal lands, tribal timber, tribal livestock enterprises; tribal community store, or any other tribal activity.

(s) To delegate to subordinate boards or to cooperative associations which are open to all members of the Tribe any of the foregoing powers reserving the right to review any action taken by virtue of such delegated power.

### **TRIBAL CODE:**

As of 2005, the Crow Creek Sioux Tribe has not adopted a corporations ordinance.

# ANALYSIS

## *Crow Creek Sioux Tribe*

Of special note is the existence of several “Mom & Pop” businesses on the Crow Creek reservation.

Approximately half of the businesses located on the reservation are incorporated under the state of South Dakota, while the other half are not. This suggests that the Crow Creek Sioux Tribe may have mechanisms in place authorizing the establishment of businesses within its tribal boundaries. More research is needed to verify with certainty that this is the case.

As the above excerpt suggests, the Tribal Council is authorized under its constitution to establish laws regulating economic affairs and enterprises within the Tribe.

**FLANDREAU  
SANTEE SIOUX  
TRIBE**

*Flandreau, S. Dakota*

# PROVISIONS

*Flandreau Santee Sioux Tribe*

## **CONSTITUTION:**

### ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Flandreau Santee Sioux Tribe shall be the Executive Committee.

### ARTICLE VIII - POWERS OF THE EXECUTIVE COMMITTEE

Section 1. Enumerated powers. The Executive Committee of the Flandreau Santee Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States.

(g) To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the Tribe, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers.

# PROVISIONS CONT.

*Flandreau Santee Sioux Tribe*

## **TRIBAL CODE:**

TITLE 25 CORPORATION ORDINANCE

CHAPTER 1 TITLE, POLICY, CONSTITUTIONAL AUTHORITY AND PURPOSE OF THIS ORDINANCE

Section 25-1-2. Policy.

Indian Tribes have been consistently recognized as sovereign throughout the history of the United States of America, and to retain as governmental powers, where consistent with the trusteeship of the United States, all powers necessary to commercially utilize their undivided resources for the economic benefit of the Tribe, and to possess the power to charter corporations to do so. It is the policy of the Flandreau Santee Sioux Tribe in the enactment of this Ordinance to exercise its retained inherent sovereign governmental authority to implement Tribal corporate, economic, and commercial powers, as it exercises all other inherent governmental authority pursuant to the provisions of the Flandreau Santee Sioux Tribal Constitution.



# ANALYSIS

## *Flandreau Santee Sioux Tribe*

The Flandreau Santee Sioux have adopted formal procedures for chartering corporations.

# LOWER BRULE SIOUX TRIBE

*Lower Brule, S. Dakota*

# PROVISIONS

## *Lower Brule Sioux Tribe*

### **CONSTITUTION:**

#### ARTICLE III – GOVERNING BODY

SECTION 1. The governing body of the Lower Brule Sioux Tribe shall consist of a Council, known as the Lower Brule Sioux Tribal Council, hereinafter designated as the “Tribal Council”.

#### ARTICLE VI – POWERS OF THE TRIBAL COUNCIL

SECTION 1. Enumerated Powers. The Tribal Council of the Lower Brule Sioux Reservation shall exercise the following powers, subject to any limitations imposed by the statutes applicable to Indian tribes or the applicable provisions of the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

e. To safeguard and promote the peace, safety, morals, and general welfare of the Lower Brule Sioux Tribe and to regulate the conduct of trade and the use and disposition of property upon the reservation provided that any ordinance directly affecting non-members of the reservation shall be subject to review by the Secretary of the Interior.

### **TRIBAL CODE:**

Initial research suggests the Lower Brule Sioux Tribe has not adopted a corporations ordinance.

# ANALYSIS

## *Lower Brule Sioux Tribe*

The Lower Brule Sioux Tribal Council is authorized pursuant to their constitution to potentially authorize cooperatives. Approval of cooperatives would further the goals of Article IV, Section 1(e).

# OGLALA SIOUX TRIBE

*Pine Ridge, S. Dakota*

# PROVISIONS

## *Oglala Sioux Tribe*

### **CONSTITUTION:**

#### ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Tribe under this constitution shall be a council which shall be composed of councilmen chosen by secret ballot by qualified voters of the tribe, which council shall hereafter be known as "The Oglala Sioux Tribal Council".

#### ARTICLE IV - POWERS OF THE COUNCIL

Section 1. Enumerated Powers. The Oglala Sioux Tribal Council shall exercise the following powers; subject to any limitations imposed by the statutes or the Constitution of the United States and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

(o) To charter subordinate organizations for economic purposes and to regulate the activities of associations thus chartered by the tribal council, or any other associations of members of the tribe, which are indebted to the tribe.

### **TRIBAL CODE:**

Oglala Sioux Tribe Law and Order Code  
Chapter 44 – OST Business Code

# ANALYSIS

## *Oglala Sioux Tribe*

As Article IV, Section 1(o) suggests, the Tribal Council is authorized under its constitution to charter organizations for economic purpose. However, in 2018 Chapter 44 of the Oglala Sioux Tribe Law and Order code was updated to “foster local employment of attorney and lay advocates who are members of the Bar of the Oglala Sioux Tribe, and to empower Lakota entrepreneurs and business owners at minimal cost reducing barriers to entry for Lakota business start-ups,” per the Oglala Lakota Nation.

Several modern corporate laws within the U.S. were utilized as the basis to draft the new OST Business Code. Interested parties seeking to submit business filings should contact the Oglala Sioux Tribal Department of Revenue. Important note: foreign entities must maintain a registered agent who is a member of the Bar of the Oglala Sioux Tribe.

# ROSEBUD SIOUX TRIBE

*Rosebud, South Dakota*



# PROVISIONS

## *Rosebud Sioux Tribe*

### **CONSTITUTION:**

#### Article III – Governing Body

Section 1. The governing body of the Rosebud Sioux Tribe shall consist of a Council known as the Rosebud Sioux Tribal Council.

#### Article IV - Powers of the Rosebud Sioux Tribal Council

Section 1. Enumerated powers -The Council of the Rosebud Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and attached By-Laws. (Amendment I effective June 19, 1962, Yes-346; No-296)

(n) To charter subordinate organization for economic purposes and to regulate the activities of all cooperative associations of members of the Tribe.

# PROVISIONS CONT.

## *Rosebud Sioux Tribe*

### **TRIBAL CODE:**

#### TITLE 15: CORPORATIONS AND TRIBAL ENTITIES

#### CHAPTER ONE: General Provisions

##### §15-1-101. Short Title

This Title shall be known and may be cited as the Rosebud Law and Order Code - Corporations and Tribal Entities.

##### §15-1-102. Scope

The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Rosebud Sioux Tribe, whether before or after the enactment hereof.

##### §15-1-103. Purpose and Construction

(a) The purposes of this Title are:

- (1) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;
- (2) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
- (3) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
- (4) to simplify, clarify and modernize the laws applicable to for-profit and, non-profit. corporations created under the sovereign powers of the Rosebud Sioux Tribe.

(b) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

# ANALYSIS

*Rosebud Sioux Tribe*

The Rosebud Sioux Tribal Council have adopted formal procedures for chartering corporations.

# YANKTON SIOUX TRIBE

*Wagner, South Dakota*

# PROVISIONS

## *Yankton Sioux Tribe*

### **CONSTITUTION:**

#### ARTICLE II - NAME

Section 1. The Executive organization existing under this Constitution shall be known as the Yankton Sioux Tribal Business and Claims Committee wherever the word committee is used it shall mean the Yankton Sioux Tribal Business & Claims Committee, hereafter.

#### ARTICLE V. Officers

Section 3 - The judicial power shall remain in the Tribal membership and upon request of five members of any just cause, such cause shall be submitted at any regular Tribal meeting for action. The legislative branch shall be comprised of the nine Committee members; however, any legislative action shall first be submitted to a General Tribal Council and subject to Tribal amendment, repeal or ratification.

#### ARTICLE IX - DEMOCRATIC FORM OF GOVERNMENT

Section 1 - All operations under this Constitution shall be free from any system of collectivism and/or socialism under any and all circumstances.

Section 2. This Constitution shall stress to the fullest extent of its authority at all times, recognition of and operation under the private enterprise system and democratic way of life.

### **TRIBAL CODE:**

Initial research indicates that the Yankton Sioux Tribe has not adopted a corporation code.

# ANALYSIS

## *Yankton Sioux Tribe*

The excerpts from the Yankton Sioux amended tribal constitution reflect a full democratic system of governance. Any legislative action taken by the Yankton Sioux Tribal Business and Claims Committee must be approved by the General Tribal Council. The General Tribal Council consists of all tribal members over the age of eighteen.

The Yankton Sioux Tribe Economic Development Department is currently implementing a Comprehensive Economic Development Strategy (CEDS) Plan (2018-2021), of which the scope of work includes assistance in writing and implementation of business codes and corporation codes, and to implement guidelines for formation of corporations (for-profit and non-profit). Further, the Tribe is aggressively seeking certification of its Ihanktonwan Development Fund, LLC (CDFI).

Therefore, initial research indicates an updated series of tribal laws, including a corporation code, will be forthcoming.

## Contact:

Margery Hunter Brown

☎ (406) 243-2544

Indian Law Clinic

✉ [indianlawclinic@umontana.edu](mailto:indianlawclinic@umontana.edu)

🌐 [www.umt.edu/law/academics/clinics/mhb.php](http://www.umt.edu/law/academics/clinics/mhb.php)

Native American

☎ (406) 259-3804

Development

✉ [staylor@nadc-nabn.org](mailto:staylor@nadc-nabn.org)

Corporation

🌐 [www.nadc-nabn.org](http://www.nadc-nabn.org)

# Learn. Share. Lead.

## Commercial Lending in Indian Country 2-Day Summit for Tribal Leaders and Commercial Lenders

The summit will be used to identify and understand the current state of commercial lending in Montana Indian Country. We will examine factors that can make lending attractive, and factors that are a challenge for financial institutions. Participants will be actively engaged in crafting appropriate and acceptable strategies that can be applied in their communities to increase both the number of loans and the amount of commercial lending from all sources, resulting in job growth, increased private investment and improved economic conditions throughout Montana.

Who should attend? Tribal Administration, Tribal Legal Department, Tribal Court Judges, Tribal CDFIs, and commercial lenders who either currently provide financing, or desire to provide financing.

### Day 1

10:00 – Registration

10:30 – Welcome (NADC and MIBA)  
Opening Prayer

10:45 – Summit overview and goals  
Setting the stage – critical perspectives  
Tribal Court Representatives  
U of M Law School  
Commercial Lender(s)

11:45 – Lunch and Keynote (Federal Reserve)  
What is commercial lending?  
Why is it of interest to banks?

1:00 - 2:00 – Presentations  
Common contributors/barriers and Debunking the myths (STED?)  
  
Benefits of UCC and Secured Transaction Law (UM Law School)

2:00 – 2:30 – Table discussions (break out by Tribe and lenders)  
Prompting questions for Tribe – (from Albuquerque Forum)  
Prompting questions for lenders – reality versus myth and opportunity versus barrier

2:30 – Break

2:45 – 3:45 – Presentations  
Options for adoption and implementation (MIBA)



Tribal Courts  
Business Courts  
Secured Transaction Filing System

3:45 – 5:00 – Facilitated table discussions (by Tribe and lender table(s))  
Digging deeper into prompting questions – begin to examine appropriate options  
Lenders – deeper discussion regarding reality and opportunities/possibilities

Dinner

## Day 2

8:00 – Prayer  
Breakfast  
Summary of Day 1  
Goals for Day 2

8:30 – 10:00 – Facilitated table discussions for each group to continue a plan of action  
What needs to change?  
What are we willing to explore further? Adopt?  
What tools do we need?

10:00 – Break

10:15 – 11:30 – Report Out, Wrap Up and Next Steps

Box Lunch

## **Summit Goals**

- Plans of Action for each Tribe (new or update)
  - New plan of Action
  - Examination of existing plans to determine updates or modifications
- Identify needs/gaps that exist which are creating barriers
- Identify opportunities to reduce and/or eliminate barriers
  - Adoption or modification of existing UCC
  - Secured transaction filing system
  - New programs or Tools
  - New partnerships

## **Summit**

The abbreviated Summit was held on October 12, 2021 from 11:00 until 6:00. Four students from the Law Clinic attended in person, two others participated remotely, as did Professors Mills and Stark. The students led the conversation and posed the questions that would have been addressed during phone interviews.

This group of students modified and shortened the Business and Cooperative Code Presentation from Phase 1 as the basis for the Summit presentation.

Since the group in attendance was rather small, we did not conduct break-out sessions as was indicated on the Draft Summit Agenda. Materials from that event and the Summit Report can be found on the following pages.

September 30, 2021

The Native American Development Corporation (NADC) is pleased to invite you to its Learn. Share. Lead. Legal Summit, taking place on the Pre-Conference Day of their 12<sup>th</sup> annual Economic Development, Procurement and Healthcare Conference, October 12, 2021! For the past eleven conferences, NADC has brought relevant speakers and topics to the region to promote self-sufficiency and economic stability within our Indian communities.

**The Legal Summit** will take place from 11:00 until 6:00 on October 12<sup>th</sup> at the Billings Hotel and Convention Center.

The summit will be used to identify and understand the current state of commercial lending in Montana Indian Country. We will examine factors that can make lending attractive, and factors that are a challenge for financial institutions. Participants will be actively engaged in crafting appropriate and acceptable strategies that can be applied in their communities to increase both the number of loans and the amount of commercial lending from all sources, resulting in job growth, increased private investment and improved economic conditions throughout Montana.

**Who should attend?** Tribal Administration, Tribal Legal Department, Tribal Court Judges, Tribal CDFIs, and commercial lenders who either currently provide financing, or desire to provide financing.

**Summit Goal:** *Identify opportunities to reduce and/or eliminate barriers to commercial lending.* To reach the goal, we will have open discussion on what needs to change, what are we willing to explore further, and what tools do we need?

There is no cost to attend the Summit, and there is a possible speaker stipend for each reservation. Please contact Sue Taylor at 406-259-3804 or [staylor@nadc-nabn.org](mailto:staylor@nadc-nabn.org) for more information.

If you are able to stay for the entire conference experience, NADC is offering a group rate for Summit attendees. Please contact Cali Walks Over Ice at 406-259-3804 or [cwalksoverice@nadc-nabn.org](mailto:cwalksoverice@nadc-nabn.org) for more information on the registration. A room block has been reserved at the government rate of \$96 + tax per night. Please reserve your room as soon as possible.

Attached is the proposed agenda for the Legal Summit and a Conference Invitation Letter for your review.

We hope to see you in Montana in October! For any questions, please do not hesitate to reach out!

Sincerely,

Leonard Smith Jr.  
Chief Executive Officer

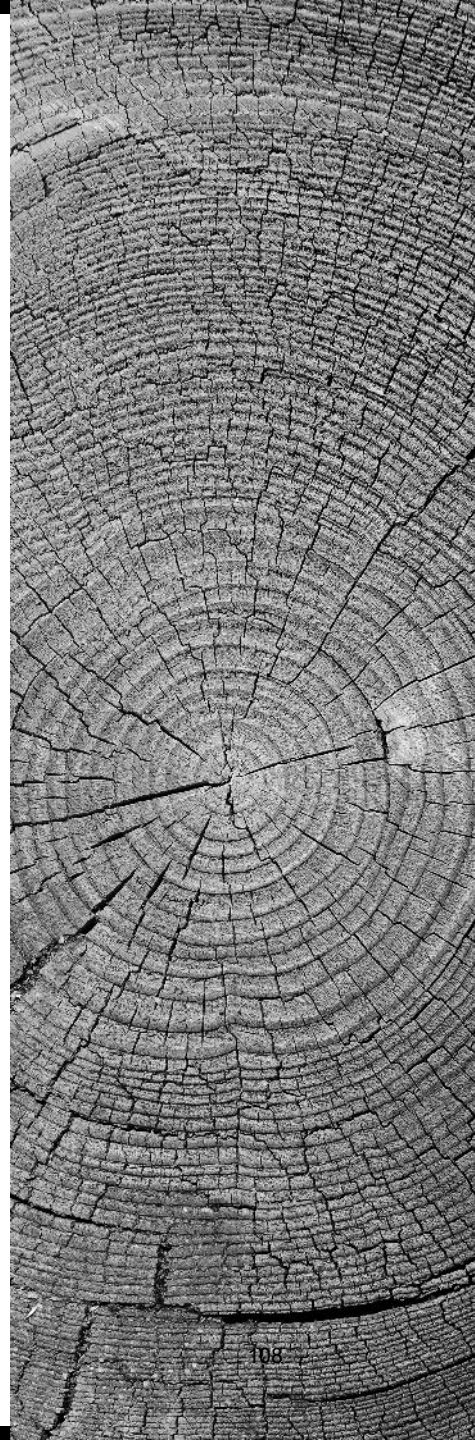
MARGERY HUNTER  
BROWN INDIAN LAW  
CLINIC

*in collaboration with*

*the* NATIVE AMERICAN  
DEVELOPMENT  
CORPORATION

# FACILITATING BUSINESS COOPERATIVES: A TRIBAL CODE ANALYSIS

*Research sponsored by  
USDA Rural Business  
Development Grant*



## MARGERY HUNTER BROWN INDIAN LAW CLINIC:

Established in 1980, the Clinic's goal is to provide students with practical experience regarding Indian law issues. Clinic projects commonly focus on issues and problems affecting tribal governments, justice systems and Indian people. Students work on a variety of projects promoting tribal sovereignty, cultural preservation, access to justice and economic development within Indian Country.

### CLINIC FACILITATORS

- Haleigh Thrall
- Daniel Webster
- Kegan Shea
- Grace Singh
- Online: Jacqueline Baldwin-leclair, Alex Dreussi

- **CLINIC ANALYSIS OUTCOMES:**
  - Last year, the MHB Indian Law Clinic was asked to provide a tribal code analysis regarding various ways tribe's facilitate business cooperative in Indian Country.
  - Examples of Corporate Formation, Cooperative Associations, and tribal codes encompassing the Uniform Commercial Code
- **GROUP DISCUSSIONS:** What does Economic Development mean to you, your community, and your tribe?
- **GROUP DISCUSSIONS:** Tribal Structures Attracting Investors
  - What are the reasonable expectations for claim adjudication?
    - Independent Justice Systems
    - Waivers of Sovereign Immunity
    - Choice of Venue



# TRIBAL CODES SURVEYED

## Montana

- Fort Peck Assiniboine & Sioux Tribes  
Poplar, MT
- Fort Belknap Indian Community  
Harlem, MT
- Blackfeet Nation  
Browning, MT
- Chippewa Cree Tribe  
Box Elder, MT
- Little Shell Tribe of Chippewa Indians  
Great Falls, MT
- Confederated Salish and Kootenai Tribes  
Pablo, MT
- Crow Tribe  
Crow Agency, MT
- Northern Cheyenne Tribe  
Lame Deer, MT

## Wyoming

- Wind River Indian Reservation (Eastern Shoshone and Northern Arapaho Tribes)  
Fort Washakie, WY

## North Dakota

- MHA (Mandan, Hidatsa, and Arikara) Nation  
New Town, ND
- Spirit Lake Nation  
Fort Totten, ND
- Standing Rock Sioux Tribe  
Fort Yates, ND
- Turtle Mountain Band of Chippewa Indians  
(Ojibwe & Metis)  
Belcourt, ND

# TRIBAL CODES SURVEYED CONT.

## South Dakota

- Sisseton Wahpeton Oyate of the Lake Traverse Reservation  
Agency Village, SD
- Cheyenne River Sioux Tribe  
Eagle Butte, SD
- Crow Creek Sioux Tribe  
Fort Thompson, SD
- Flandreau Santee Sioux Tribe  
Flandreau, SD
- Lower Brule Sioux Tribe  
Lower Brule, SD
- Oglala Sioux Tribe  
Pine Ridge, SD
- Rosebud Sioux Tribe  
Rosebud, SD
- Yankton Sioux Tribe  
Wagner, SD



# FORT PECK ASSINIBOINE & SIOUX TRIBES

*Poplar, Montana*

# PROVISIONS

*Fort Peck Assiniboine & Sioux Tribes*

# ANALYSIS

## *Fort Peck Assiniboine & Sioux Tribes: 25 CFR §101*

### 25 CFR § 101.1 - Definitions.

- Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.
- Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

### 25 CFR § 101.2 - Kinds of loans.

- Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.
- (a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon.

### 25 CFR § 101.3 - Eligible borrowers under United States direct loan program.

- (a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner.

# ANALYSIS

## *Fort Belknap Indian Community*

### 25 CFR §101

- Portions of the language are often found in tribal ordinances authorizing tribal loan programs.
- This is language some tribes might utilize for purposes of defining cooperatives
  - Pine Ridge Revolving Loan Fund
- The Fort Peck Commercial Law does establish the parameters for which a cooperative might be formed under tribal law.
- The sample provisions provide only a small outline of what is a substantial and comprehensive code governing the creation of corporations chartered under tribal law.

# COMMERCIAL CODE

*Fort Belknap Indian Community*

- Fort Peck has adopted Articles 2, 3, 4, 5, 6, 7 and 9 **of the Universal Commercial Code????**
- The code authorizes the tribal court to “apply the General Provisions and Official Comments.., except where those provisions conflict with another provision of the Tribes’
- Code of Justice or are inconsistent with a custom of the Tribes demonstrated by clear proof.
- The Fort Peck Tribal Court shall give binding effect to and utilize only the most recent copyrighted version of the UCC.

# BLACKFEET NATION

*Browning, Montana*

# PROVISIONS

*Blackfeet Nation*

# ANALYSIS

## *Blackfeet Nation*

Initial research suggests that the Blackfeet Nation has not established codes specifically governing corporate charters.

- Business laws which are currently in place are only for the purpose of regulating commercial transactions concerning personal property and fixtures, equal credit opportunity, and procedures for attachment/garnishment of property and execution of judgments.

However, the Blackfeet Tribal Business Council has the discretion to potentially approve cooperatives pursuant to Article VI, Section 1, subsection (m) of their constitution.

- Most likely, the language here may be sufficient to initiate a tribal resolution that would approve the establishment of cooperatives on a case-by-case basis.
- Further, although subsection (r) does not specifically speak to the creation of cooperatives, the specific reference to cooperative associations, read in conjunction with subsection (m), suggests a desired role for cooperative associations within the tribal community.



# COMMERCIAL CODE

*Blackfeet Nation*

- Ordinance 81 covers remedies and enforcement of judgments with a section on consumer protection that details consumer credit, sales practices, equal credit opportunity and truth in lending.
- Title III “is based upon article 9 of the Uniform Commercial Code with the exception of changes where noted.”
- It is also noted that in the presence of any issue related to interpretation, the Official Comments of Title IX can be utilized.
  - However, Title III Section 3 “where the code does not address a particular issue or right, the Tribal Court may apply customs and usages of the Tribe, or federal laws and regulations, or State law in that order”.
- Clear rules in Title III for determining where and under what law a security interest should be perfected and the effect of perfection or non-perfection.
  - Different from the UCC, there is also an additional section added to Blackfeet Code to address deposit accounts.
- The code addresses secured transactions in Indian Country much like the UCC
  - However, the code also considers the Blackfeet Tribe does not have a system for issuing certificates of title.

# CROW TRIBE

*Crow Agency, Montana*

# PROVISIONS

## *Crow Tribe Constitution*

- (g) enforce all laws, ordinances, resolutions, regulations or guidelines passed by the Legislative Branch providing for the levying of taxes and licensing of members and non-members for various purposes;
- (a) implement all laws, resolutions, codes, and policies adopted by Legislative Branch;
- Section 2. Powers and Duties. The powers and duties of the Legislative Branch shall be (c) to adopt legislation chartering instrumentalities of the Crow Tribe for the purposes of economic development, housing, education or other purposes not inconsistent with this Constitution;

# PROVISIONS CONT.

*Crow Tribe* Tribal Code

# COMMERCIAL CODE

*Crow: Apsaalooke Nation*

Crow has adopted in their entirety Articles I and IV of the Uniform Commercial Code.

- “Article I of the Crow UCC is substantially identical to the 1995 Official Text with the exception of several changes recommended by the University of Montana Indian Law Clinic and those made by the Crow Tribal Council.”
- Crow also explicitly declares in the code their recognition “that it would be useful to adopt other articles of the Uniform Commercial Code, including Article 2 on sales, Articles 3 and 4 on commercial paper, etc.

Crow’s Tribal UCC goes further than the model code to regulate more transactions familiar to the tribe

- In the adoption of the codes, it was intended that the Tribe would expand the formal body of commercial law as soon as practicable. The tribe provided that “until such time, if ever, that this 13CC can settle all questions in commercial law, it is the Tribe’s intent that any court called upon to decide a controversy under this law apply the code’s provision in a manner consistent with its policy which includes a desire to promote strong and stable economic development within the Crow Indian Tribe Reservation”
- Also, the State of Montana Security of State website lists the Crow Tribe as having an active agreement with the SOS office to register and maintain security interests

# MHA (MANDAN, HIDATSA, AND ARIKARA) NATION

*New Town, N. Dakota*

# PROVISIONS

*MHA Nation*

# ANALYSIS

## *MHA Nation*

- The MHA Nation Constitution specifically grants to the Tribal Business Council the legislative authority to grant a corporate charter.
- Prospective organizations seeking a corporate charter under the laws and jurisdiction of the MHA Nation are advised to follow the procedures outlined under the Corporation Act of the Tribal Code.
- Once all preliminary measures have been satisfactorily completed, a resolution seeking a corporate charter shall be submitted to the Tribal Business Council for final approval.
- To date the MHA Nation has chartered over 70 for-profit and non-profit organizations operating within tribal boundaries.



# SPIRIT LAKE NATION

*Fort Totten, N. Dakota*

# PROVISIONS

*Spirit Lake Nation*

# PROVISIONS CONT.

*Spirit Lake Nation*

# ANALYSIS

*Spirit Lake Nation*

Spirit Lake Nation have adopted formal procedures for chartering corporations.

**SISSETON  
WAHPETON OYATE  
OF THE LAKE  
TRAVERSE  
RESERVATION**

*Agency Village,  
South Dakota*

# PROVISIONS

*Sisseton Wahpeton Oyate of the Lake Traverse Reservation*

# CHEYENNE RIVER SIOUX TRIBE

*Eagle Butte, S. Dakota*

# PROVISIONS

*Cheyenne River Sioux Tribe*



# ANALYSIS

## *Cheyenne River Sioux Tribe*

Initial research indicates that the Cheyenne River Sioux Tribe has authority under both its constitution and corporation ordinance to charter corporations.

# OGLALA SIOUX TRIBE

*Pine Ridge, S. Dakota*

# PROVISIONS

*Oglala Sioux Tribe*

# ANALYSIS

## *Oglala Sioux Tribe*

- As Article IV, Section 1(o) suggests, the Tribal Council is authorized under its constitution to charter organizations for economic purpose.
- However, in 2018 Chapter 44 of the Oglala Sioux Tribe Law and Order code was updated to “foster local employment of attorney and lay advocates who are members of the Bar of the Oglala Sioux Tribe, and to empower Lakota entrepreneurs and business owners at minimal cost reducing barriers to entry for Lakota business start-ups,” per the Oglala Lakota Nation.
- Several modern corporate laws within the U.S. were utilized as the basis to draft the new OST Business Code.
- Interested parties seeking to submit business filings should contact the Oglala Sioux Tribal Department of Revenue.
- Important note: foreign entities must maintain a registered agent who is a member of the Bar of the Oglala Sioux Tribe.

# YANKTON SIOUX TRIBE

*Wagner, South Dakota*

# PROVISIONS

*Yankton Sioux Tribe*

# ANALYSIS

## *Yankton Sioux Tribe*

- The excerpts from the Yankton Sioux amended tribal constitution reflect a full democratic system of governance.
  - Any legislative action taken by the Yankton Sioux Tribal Business and Claims Committee must be approved by the General Tribal Council. The General Tribal Council consists of all tribal members over the age of eighteen.
- The Yankton Sioux Tribe Economic Development Department is currently implementing a Comprehensive Economic Development Strategy (CEDS) Plan (2018-2021), of which the scope of work includes assistance in writing and implementation of business codes and corporation codes, and to implement guidelines for formation of corporations (for-profit and non-profit).
- Further, the Tribe is aggressively seeking certification of its Ihanktonwan Development Fund, LLC (CDFI).
- Therefore, initial research indicates an updated series of tribal laws, including a corporation code, will be forthcoming.

What does Economic Development mean to you, your community, and your tribe?

- Locally Based Economies
- Food Sovereignty
- Investments in Revenue:
  - Language and Culture
  - Supplement 638 programs: Indian Child Welfare

Tribal Structures Attracting Investors

- What are the reasonable expectations for claim adjudication?
- Independent Justice Systems
- Waivers of Sovereign Immunity
- Choice of Venue





## MHB Indian Law Clinic's Assistance in Group Discussions

- Listen
- Learn
- Record
- Research
- Draft
- Deliver



## Contact:

Margery Hunter Brown

☎ (406) 243-2544

Indian Law Clinic

✉ [indianlawclinic@umontana.edu](mailto:indianlawclinic@umontana.edu)

🌐 [www.umt.edu/law/academics/clinics/mhb.php](http://www.umt.edu/law/academics/clinics/mhb.php)

Native American

☎ (406) 259-3804

Development

✉ [staylor@nadc-nabn.org](mailto:staylor@nadc-nabn.org)

Corporation

🌐 [www.nadc-nabn.org](http://www.nadc-nabn.org)

## Native American Development Corporation (NADC) Commercial Lending in Indian Country Conference Report

Facilitated and prepared by NADC representatives and Margery Hunter Brown Indian Law Clinic (MHBILC) students summarizing the October 5, 2021, NADC Commercial Lending in Indian Country Legal Summit for Tribal Leaders.

### Attendees

Sue Taylor, NADC Development Director	Loretta Bell, Credit Officer - Fort Belknap Economic Development Credit
MHBILC student representatives	Eleanor YellowRobe- Fort Belknap Credit Agency Board President
Maria Valandra, Program Manager - Office of Indian Country Economic Development	Valda Shelby, Director- Confederated Salish and Kootenai Tribe (CSKT) Economic Development Office
Janet Camel, Planning Director - Economic Development Office (CSKT)	Jordan Thompson, Deputy Executive Officer - Special Projects and Planning (CSKT)
Sydney Fitzpatrick - Bighorn County Commissioner, business owner, and former Crow Tribal Council Member.	Billie LeDeau, Program Manager - Montana Department of Commerce
Leonard Smith- NADC Chief Executive Officer	Roger Fragua, President - COTA Holdings, LLC and NDN Energy, LLC

NADC representatives and MHBILC law students presented information regarding tribal code and tribal constitutional provisions related to lending and economic development while highlighting examples that encourage commercial lending in Indian Country. Then NADC and MHBILC facilitated discussions among attendees in these general categories related to economic development and commercial lending in Indian Country: Best Practices for Economic Development, Existing Areas of Economic Development, Challenges to Economic Development, and Potential Areas of Economic Development. MHBILC mostly served a fact-gathering role. All suggestions, ideas, criticisms, opportunities, challenges, solutions, and examples were provided by tribal member attendees and NADC representatives.

### Discussion questions included:

- What does success in tribal business mean to your tribe and community?
- What are some examples in Indian Country of best practices for tribal economic development?
- What are some existing areas of tribal economic development on your reservations?
- Untapped Markets on Reservations? Do you have any ideas on how to reach those markets?
- What do you think are some of the biggest challenges facing business development on the reservations?
- Does your tribe have an existing Plan of Action?
- What improvements or changes would you like to see on a federal level?
- What improvements or changes would you like to see on a state level? Local?
- What improvements or changes would you like on tribal code/rules/regulation level?

This Report summarizes main points of these discussions by noting some of the Main Challenges and Opportunities of economic development and commercial lending in Indian Country, as put forth by the attendees, followed by a more detailed summary of the discussions. Report is intended for use by STED Commissioners, tribal leaders, tribal economic developers, tribal businesses, commercial lenders, and others engaged in promoting economic development and commercial lending in Indian Country, by provided a summary of attendees' discussions and by creating a starting point for additional research by interested parties and MHBILC.

## **Main Challenges and Opportunities**

- **Develop Long-Term Strategic Economic Development Plan:** All tribes have an SED (Strategic Economic Development) Plan, but there are diverse perspectives among tribal leaders on what successful economic development looks like: e.g., whether a Tribe takes over as a tribal enterprise or encourages individual businesses. Maria Valandra commented that the most important factors contributing to successful economic development include: planning, human resources to follow through-capacity building, and political will at tribal level. Economic development areas to provide for in a SED and implement included: identification of tribal self-determined priorities; tribal-run training programs; survey and communication with tribal member entrepreneurs and businesses; positive PR messaging to outside lenders and investors; methods preventing leakage of capital from reservations; identifying and applying for grants, contracts, and other funding opportunities; potentially adopting resolutions and changing tribal codes and constitutions to better promote lending and attract investors; forming economic coalitions and partnerships with other tribes and non-Indian businesses location on reservation; etc.
- **Provide Tribal Guidance Document for tribal leaders, tribal member businesses and entrepreneurs:** Attendees suggested a need for this describing funding mechanisms available to Tribes and tribal businesses; how to access these funding mechanisms; and best practices for accessing them.
- **Provide One-Page Document Summarizing Tribal Laws Relevant to Economic Development and Commercial Lending:** Help ensure continuity among incoming council members and tribal employees, so everyone has the same understanding of these laws, and how these laws impact economic development and commercial lending.
- **Public Relations Messaging:** Tribes should message about the positives of doing business on reservations and with tribal business entities. Encourage lenders and business developers to come and do business on the reservation.
- **Obtain Funding and Lending Opportunities:** Tribes and their STED representatives should identify and work to obtain economic development opportunities, financing, and lending from sources such as: 638 Contracts, Section 17 Corporations, CDFI's; Opportunity Zones, Grants, New Market Tax Credits. For more information on this topic, please see the Community Developments: Insights article titled Commercial Lending in Indian Country: Potential Opportunities in Growing Market, February 2016 (Office of the Comptroller of the Currency).

## **Detailed Summary of Discussions**

### **I. Best Practices for Economic Development:**

**Summary of discussion points put forward by attendees included:**

- **The importance of creating a sustainable economic development structure to keep capital within reservations.** To accomplish this goal, attendees suggested tribal governments actively seek input from tribal membership on their needs as entrepreneurs and investors; create a formal strategic economic development plan by identifying priorities; and forming partnerships and relationships with local job services, tribal human resources, and non-tribal development organizations.
  - **Tribal Government Support:** Tribal Council seeks input from tribal membership on supports entrepreneurs need (training, access to capital, better tribal laws for purchasing from tribal members) and actively develops the infrastructure to meet those needs. For example, the Confederated Salish and Kootenai Tribes created a small grant program using state of Montana grant to provide seed money to start and grant to train entrepreneurs.
  - **Economic Development Coalition:** Entrepreneurs partner with local job service, non-tribal development organizations, Tribal Human Resources, etc. Meet monthly to identify available resources for tribal entrepreneurs.
  - **Creation of Tribe Owned Utility Providers:** Example of Fort Peck's water Project and Power Company- Tribe owns the power company and placed in own lines for distribution of water within both on and off reservation communities
- **Utilizing federal, state, county, and non-profit funding and development opportunities on reservations**
  - Utilize STED commissioners to identify and apply for funding opportunities
  - Creating 8A SBA for-profit companies to take advantage of government contracts. Attendees stressed there are funding opportunities out there that tribal representatives should apply for.
  - **Community Development Corporations:** National or Regional organization promoting stronger negotiation position with the federal government.
- **Promoting a smooth transition between tribal council administrations on economic development strategies**
  - Stagger Tribal Council terms to maintain historical knowledge of economic development plans
  - Create tools, such as guidance documents, to support new Tribal Councils and Leadership in progression on long-term economic development plans to avoid stalling or substantially changing the existing economic development plan.
- **Creating a designated Economic Development Board, separate from tribal government, responsible for overseeing tribal enterprises**
  - Maria pointed to the Blackfeet's designated Economic Development Board.

## II. Existing Areas of Economic Development in Indian Country

### Summary of discussion points put forward by attendees included:

- **638 Contracts and Section 17 Corporations:** Leonard Smith commented on tribes' effective use of 638 contracts and Section 17 Corporations as economic development tools. Sydney Fitzpatrick commented on novel applications of 638 contracts, such as road maintenance, and highlighted the need for best-practices and working with BIA on transitions from state/county management to tribal management.

- **Community Development Financial Institutions (CDFIs):** Leonard commented that CDFIs are an important source of capital in Indian Country, providing financing for microprojects.
- **Tribal Bank Commercial Lending:** Janet Camel commented on the effectiveness of tribal banks, particularly in the context of housing equity and the Section 184 Indian Home Loan Guarantee Program.
- **Tribal Training Programs:** Attendees provided examples of training programs that Tribes could implement to create businesses on reservation, thus keeping capital and industry from leaving the reservation. Attendees stated there are grants available for such programs.

### III. Challenges to Economic Development in Indian Country

#### Summary of discussion points put forward by attendees included:

- **Culturally Appropriate Economic Development Planning:** Tribal economic development goals will vary between tribes and other sovereigns. Creating a strategic plan specifically tailored to a tribe's unique values and strengths will be most successful. Furthermore, Federal and State funding often furthers development priorities of those sovereigns, and not individual tribes.
- **Public Relations and Messaging:** Many non-Indian entities lack understanding of tribal sovereignty and sovereign immunity, partly because lack of clear and concise messaging. Furthermore, competition from non-tribal business on reservations requires a strong commitment to a public relations strategy.
- **Inter-Tribal Competition:** Roger Fragua proposed inter-tribal trade and cooperation as an alternative to competition, including the trade of foods, e.g., Pacific tribes trade shellfish to inland tribes for bison. He commented on a successful meat packing plant project undertaken by the Osage, and many participants indicated their support for an inter-tribal meat packing plant to provide jobs, training, and food security to Montana's tribes. Participants indicated the location of the plant was crucial to ensuring equitable access and cooperation between tribes.
- **Over Regulation:** Tax schemes that result in a higher tax burden for tribal entities or non-Tribal entities within Indian Country.

### IV. Potential Areas of Economic Development in Indian Country

#### Summary of discussion points put forward by attendees included:

- **Industrial Hemp and Marijuana:** Requires an ongoing evaluation of current federal and/or state policies.
- **Intertribal Partnerships:** Creating trade agreements with other tribes related to Areas of Scarcity (Housing, Water, Energy, Healthcare, Broadband Access, Food). Creating tourism partnerships with other tribes to increase visibility and marketing power. Sharing the costs and benefits of large capital investments to provide jobs, training, and value to tribes such as an inter-tribal meat packing plant in Montana.
- **Private Sector Partnerships:** Private sector agreements with limited waivers of sovereign immunity to increase capital potential and improve public relations.
- **Infrastructure Development:** Build broadband and cellphone towers to increase tele-health availability and distance learning opportunities. Install electric car charging stations and fund training programs for solar panel insulation and maintenance. Invest in infrastructure for manufacturing to fill supply-chain shortages exposed by the COVID-19 pandemic. Invest in

food sovereignty infrastructure such as meat processing. Develop and fund training programs to prepare tribal members for changing industry opportunities.

- **Tourism:** Janet Camel commented that Tribe's in Montana should cooperate on tourism projects to increase visibility, marketing power, and funding availability. Participants noted the effects of the Covid-19 pandemic on outdoor recreation and indicated tribes were missing out on those opportunities.
- **New Market Tax Credits:** Better utilize tax breaks/credits and incentives.
- **Improve Messaging:** Create and implement intentional marketing campaigns with positive tribal economic relations messaging to reinforce the narrative that Indian Country is a desired place to do business. Support non-Indian businesses within the reservation to improve public relations, resulting in business-to-business support and increased employment opportunities for tribal members.
- **Statewide SED plans**

## **Project Conclusion**

Even though we were not able to complete the project in the exact way it was proposed, the team felt that the information gathered was valuable and will form a basis for future work. We anticipate that the research and conclusions will be useful as the Montana Tribes compile their state-wide Comprehensive Economic Development Strategy.

NADC will utilize the Summit Report and the Recommendations to generate an Action Plan at some point in the future.

Materials provided by the law Clinic and their recommendations can be found on the following pages.



July 28, 2022

Sue Taylor  
Development Director  
Native American Development Corporation (NADC)  
17 N. 26th St.  
Billings, Montana 59101  
VIA EMAIL ONLY: [staylor@nadc-nabn.org](mailto:staylor@nadc-nabn.org)

Re: Tribal Economic Development/Investment Summit – Close Out.

Dear Sue:

We are pleased to provide you with the final documents summarizing and closing out our work with you on last fall's tribal economic development and investment summit. Along with this cover letter, I am transmitting some of the background research materials that we previously prepared, our final summit report, a list of recommendations excerpted from that report, and an expense report/in-kind invoice. Please let me know if you have any questions about these documents or need additional information.

It was our pleasure to work with you on this important venture and, on behalf of our school and our students, we are deeply grateful for the opportunity to assist. Thank you and please do not hesitate to reach out to the Clinic in the future.

Sincerely,

Monte Mills & Kekek Stark

## **Native American Development Corporation (NADC) Tribal Investment/Economic Development Summit**

### **Summary of Findings/Recommendations**

The following (drawn from the MHBILC's final summit report) summarizes input and feedback from participants during the Summit:

- **Develop Long-Term Strategic Economic Development Plan:** All tribes have an SED (Strategic Economic Development) Plan, but there are diverse perspectives among tribal leaders on what successful economic development looks like: e.g., whether a Tribe takes over as a tribal enterprise or encourages individual businesses. Maria Valandra commented that the most important factors contributing to successful economic development include: planning, human resources to follow through-capacity building, and political will at tribal level. Economic development areas to provide for in a SED and implement included: identification of tribal self-determined priorities; tribal-run training programs; survey and communication with tribal member entrepreneurs and businesses; positive PR messaging to outside lenders and investors; methods preventing leakage of capital from reservations; identifying and applying for grants, contracts, and other funding opportunities; potentially adopting resolutions and changing tribal codes and constitutions to better promote lending and attract investors; forming economic coalitions and partnerships with other tribes and non-Indian businesses location on reservation; etc.

- **Provide Tribal Guidance Document for tribal leaders, tribal member businesses and entrepreneurs:** Attendees suggested a need for this describing funding mechanisms available to Tribes and tribal businesses; how to access these funding mechanisms; and best practices for accessing them.

- **Provide One-Page Document Summarizing Tribal Laws Relevant to Economic Development and Commercial Lending:** Help ensure continuity among incoming council members and tribal employees, so everyone has the same understanding of these laws, and how these laws impact economic development and commercial lending.

- **Public Relations Messaging:** Tribes should message about the positives of doing business on reservations and with tribal business entities. Encourage lenders and business developers to come and do business on the reservation.

- **Obtain Funding and Lending Opportunities:** Tribes and their STED representatives should identify and work to obtain economic development opportunities, financing, and lending from sources such as: 638 Contracts, Section 17 Corporations, CDFI's; Opportunity Zones, Grants, New Market Tax Credits. For more information on this topic, please see the Community Developments: Insights article titled Commercial Lending in Indian Country: Potential Opportunities in Growing Market, February 2016 (Office of the Comptroller of the Currency).