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Finding True North: Using Compass Points for Guidance

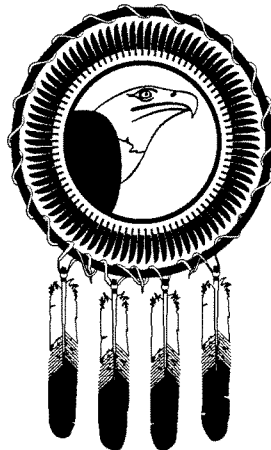
A Project Selection Framework
for the Northern Cheyenne Tribe of Montana

by

Andrea K. Freeman and Marc L. Moore

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EXECUTIVE SUMMARY

The Northern Cheyenne Indian Tribe will receive in excess of twenty-one million dollars (\$21.5M) as a result of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, a compact between itself and the State of Montana. The funds are to be disbursed in two components: ten million dollars (\$10M) appropriated by Congress directly to the Tribe and the remaining \$11.5 million as a no-interest loan to the State of Montana, to be repaid to the Tribe over the next forty years. The settlement money cannot be distributed to the Tribe on a per-capita basis as has been customarily done in the past, yet the Compact leaves the use of this payment to the Tribe's discretion. **The Tribe must decide how to allocate these funds to further the Tribal goals of the Northern Cheyenne Reservation.** These goals have been identified as the following:

Goals of the Northern Cheyenne Tribe
<ul style="list-style-type: none">•Political Sovereignty•Economic Independence•Economic Development•Cultural Integrity

In terms of long-term planning, **\$10 million (plus an annual interest of almost \$300K) is NOT a lot of money.** **The Tribe must be extremely wary of how it chooses to spend it.** Unless the Tribe decides to develop coal in the future, it is unlikely that it will receive such a lump-sum payment again. **At the same time, the Tribe must begin to formalize an institutional framework as it pertains to huge infusions of money, whatever the source.**

This paper simply seeks to provide the Tribe with a standardized, objective, reproducible selection framework by which to assess alternatives, and thus maximize the contribution of these resources to the Tribe.

We have devised a framework for the Tribe which incorporates seven essential principles in strategic planning. Given the latitude which the Settlement provides, the Tribe has the opportunity to choose from a wide array of options. With the needs of the Northern Cheyenne people in mind, we have applied these criteria to the following potential areas of investment:

- | |
|---|
| <ul style="list-style-type: none"> •Social Investment •Business Development •Physical Infrastructure •Investment Fund |
|---|

Each of these paths, however, fulfills different goals and generates a unique set of benefits and costs. Whether or not the proposals are viable will depend on the degree to which they satisfy these aims. The table below summarizes our findings:

Criteria: Do the following approaches fulfill the Tribe's goals of:

OPTIONS:	Increased Political Sovereignty	Decreased Economic Dependence on Federal Government	Promotion of Overall Economic Development	Maintenance of Cultural Values
Social Project	No	Yes	Yes	Yes
Small Business Project	No	No	Yes	?
Phys. Infra. Project	No	Yes	Yes	Yes
Investment Fund	Yes	Yes	Yes	Yes

The Tribe should seek to maximize the project's contribution to its deep goals. The exact disbursement and use of the settlement funds cannot be expected to be successful unless these primary issues are weighted in the final decision process.

Given these considerations, as well as many others that we uncovered during our analysis of the Northern Cheyenne Reservation, we make the following recommendations for the use of the funds received from the Water Compact.

- 1) **Do not spend any of the \$21.5M on projects that do not advance the goals of the Tribe.** The Tribe should not use the funds on any project (development, maintenance, or otherwise) without considering how these new projects relate to the overall Tribal mission.

2) **The lump sum received from the federal government (\$10 million) should be placed in a Restricted Endowment Fund**, subject to regulations concerning such a classification. This is intended to remove the duplicity in functions performed by the present Tribal government and the local Bureau of Indian Affairs (BIA). It also allows (under P.L. 638), the ability for the Tribe to acquire control over essential policy planning positions.

3) The forty equal annual payments from the State of Montana, totaling \$11.5 million, should be allocated specifically for operating expenses. **Since loan repayment by the State of Montana is virtually assured, the Tribe can use this steady income to achieve its goal of economic independence.**

4) **An improved water system is also highly congruent with Tribal aims, and can be accomplished along with the Restricted Endowment Fund.** This project accomplishes several core aims, is highly feasible, and is greatly desired by the community-at-large. This project would embody the spirit of the Water Rights Settlement Act and at the same time improve the delivery of a crucial service to the Northern Cheyenne people.

I.

INTRODUCTION

The Challenge

While faced with the prospect of diminished cutbacks from the Federal Government, the Northern Cheyenne Tribe has recently received a windfall sum of money, the use of which has been left to the Tribe's discretion. Under the *Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992* with the State of Montana and the Federal Government, the Tribe will receive a total of \$21.5 million for the water rights to the Tongue River forming the eastern boundary to the Reservation (See Appendix A). Unlike previous unrestricted appropriations to the Tribe, this disbursement of money *cannot* be executed on a per capita basis. Instead, **the Tribe has the broad mandate of using the fund as a means to promoting economic development on the Reservation.**

Paradoxically, despite the potential offered by this large influx of money, its proper management has become the latest crisis for the Tribe. This sum represents a **one-time, 500%** increase in annual revenues to the Tribe. The Tribe has previously experienced two similar major inflows of cash: from oil and gas leases in the late 1970s with the Atlantic-Richfield Company, and from exploratory permits with outright option to lease by a group of coal companies in the late 1960s and early 1970s. Promises (new health facility) and large per capita payments made these lease arrangements initially look appealing. Per capita dissemination of these funds to Tribal members has been the traditional form of income redistribution.

However, because the Settlement prohibits this choice, **the problem is to determine how this money is to be allocated within the Tribe and what projects upon which the members should focus.**

**The Challenge:
How should the Tribe spend a boon of \$21.5 million?**

The Context

Since its incorporation as a reservation in the late 1800's, the Northern Cheyenne, like other tribes, has endured over a century of debilitating federal policy. Despite this fact, the Tribe has been able to maintain a cohesive cultural and organizational unit. **Ironically, this show of unity and strength is in fact maintained by the same federal policy which fostered the present cycle of dependency.**

**The Northern Cheyenne Reservation
at a Glance**

- 440,000 acres (703 square miles) of Trust lands
- Approximately 5500 residents¹
- 50% unemployment rate²
- \$4280 average per capita income
- Undiversified economy (grazing, timber and farming)
- 49% of tribal income originated from Federal Government sources in 1994³
- IRA Constitution affords Tribe little control over internal affairs⁴

Only recently, with a federal government confronting a scarcity of resources, have tribes experienced greater autonomy, flexibility and opportunities to plan their future. Over the past thirty years, the Tribe has tested the political and legal waters to effectively pursue its

¹Northern Cheyenne Reservation Extension Program, *Northern Cheyenne Reservation Agent Renewal (2nd Year) Proposal*, December 1994.

²Ibid.

³Northern Cheyenne Tribe, *Combined Budget Reports*, FY 1994.

⁴*The Indian Reorganization Act of 1934* was written and passed without the consultation of Indian people. Approved by the Northern Cheyenne Tribe shortly after its ratification by the U.S. Congress, the IRA outlined the return of the right to make decisions to the Tribe. Although it clarified self-determination rights, it also put the Bureau of Indian Affairs in a supervisory role. Because the agency has the power of approval over almost anything a tribe does, "it has been instrumental in perpetuating the subordinate, colonized status of Indian reservations. The BIA is blamed for actively cultivating Indian dependencies and for being a willing accomplice to their economic exploitation." (C. Matthew Snipp, *American Journal of*

own agenda, independent of the mandate established by Federal law regarding Native American tribes and monitored by the Bureau of Indian Affairs. As a result, the Northern Cheyenne have been able to retain considerable control over their resource base, projects, and the influence of outside interests that would threaten the sovereignty of the Reservation. **However, this outcome is more the result of heroic individual and group efforts rather than a coherent organizational development strategy.** It is our belief that this lack of a prescient strategic plan will be one of the major barriers to the many interests of the Northern Cheyenne Tribe.

Therefore, before the Tribe spends \$21.5 million, it must consider how this sum of money matches the overall development plan. Without a long-term strategy, the value of this money will be diminished.

The Challenge Redefined: How to Get the Bang for Your Buck

Ten million dollars (plus annual payments of almost \$300,000) is NOT much money in terms of long-term planning. The one-time nature of this money creates other problems. Only the prospect of coal development offers the same potential for large influxes of resources. **The Tribe must learn how to incorporate new sources of money, whether they be isolated or constant.** Deciding how to spend this money is not a simple task. The only way to do so is to have an institutional plan.

While considering the many economic development projects that can be implemented with the money, the Tribe must also integrate its concerns of sovereignty, sustainable growth, education, quality of life issues, and cultural integrity. These pressures can and should become effective evaluation gauges by which to assess the viability and usefulness of proposed projects. **The Water Right Settlement Act of 1992 may prove to be *the window of opportunity* to address and maximize**

the contribution to these interests. With this in mind, this paper WILL NOT BE ABLE TO:

- solve specific economic development problems of the Tribe.
- reveal a panacea for the Tribe.
- create jobs for the Tribe.
- endorse specific activities as sources of income for the Tribe.

Rather, it simply seeks to provide the Tribe with a selection framework by which to assess alternatives. We believe this will be much more useful to the Tribe than proposing specific potential projects. The focus of this paper is to assess the present and future interests of the Northern Cheyenne Indian Reservation and ways in which the Settlement can be used to further the objectives and interests of the Tribe.

This lump-sum infusion of money provides the Northern Cheyenne Tribe with the unique opportunity to genuinely address the needs and concerns of the Reservation. How this one-time disbursement of funds can be used in a manner which will have a sustained impact on the community must be considered along with other interests vital to the welfare of the Tribe. The influx of money has created an atmosphere of change, which the Tribe can creatively exploit to further its true goals. Therefore, the payment must be viewed as a primary vehicle for, and NOT an end result in, achieving the Tribe's interests.

What are the Tribe's Goals?

Under its mission of bringing about "a productive, diversified, relatively self-sustaining economy on the Northern Cheyenne Reservation," the Tribe's Overall Economic Development Program identifies 11 goals as a means to guiding reservation

development.(see Appendix B)⁵ We have grouped these various goals into four major objective areas which are critical to the economic, political, and social progress of the Tribe:

Goals of the Northern Cheyenne Tribe

- Increase Political Sovereignty
- Decrease Economic Dependence from the Federal Government
- Promote Economic Development
- Protect and Maintain Cheyenne Cultural Integrity

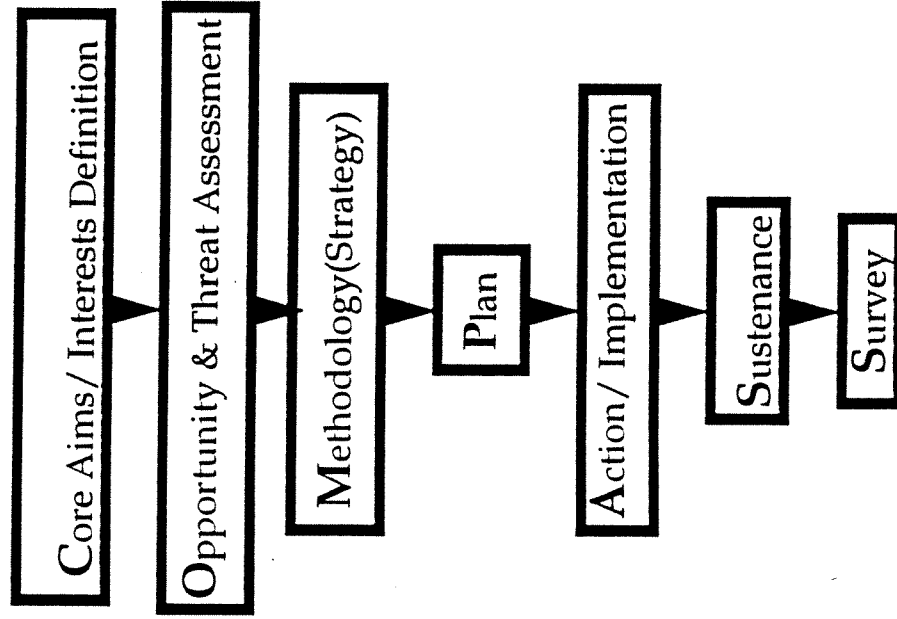
Adherence to these core aims will provide guidance in the use of any resource, cash or otherwise. Every asset must support and not subvert the goals the Tribe has stated. Only this type of goal integration will secure the *welfare of the Tribe's posterity*.

⁵E.D.A. Tribal Planner. *Update: Overall Economic Development Plan of the Northern Cheyenne Economic Development Area*. (Lame Deer, MT: Northern Cheyenne Tribe, March 1995). See Appendix.

Despite the explicit enumeration of the Tribe's mission and goals, the Planner recognizes in the Foreword, that "20 pages could have been added to [the chapter on Program and Project Selection] to discuss how each priority item would be contributed to the achievement of Tribal goals. It was decided not to go through this exercise, partly because most of such contributions are self evident and also that much additional...verbiage might well dissipate the impact of the priorities themselves by discouraging leadership." (p.i) Without this crucial link, it will be difficult for the Tribe to make effectively make decisions regarding project proposals.

The COMPASS Framework

Decision Framework for Strategic Planning



II.

THE COMPASS FRAMEWORK: CRITERIA FOR PROJECT SELECTION⁶

The Settlement's unconditional funding provides the Tribe with the opportunity to choose from a broad array of options. This selection process should not be arbitrary. For this reason, it is necessary for the Tribe to develop a framework through which it can systematically evaluate project alternatives. We have devised the following framework which incorporates the seven essential principles in strategic planning:

- Core aim/interests definition
- Opportunity and threat assessment
- Methodology (Strategy)
- Plan
- Action/Implementation
- Sustenance (Maintenance)
- Survey (Review)

The importance and significance of each step of the COMPASS framework is explained below, as it pertains to the Tribe.

Step 1: Define Core aims/interests

⁶Framework adapted from R. Blackwill and P. Zelikow, Professors of Public Policy, John F. Kennedy School of Government, Harvard University.

Core aims and interests are issues which are deemed vital or pertinent to the well-being Tribe. The Northern Cheyenne have listed the following interests as most important:

- ***Sovereignty:*** The Northern Cheyenne, like other tribes, enjoys a special relationship with the Federal, state, and local governments. The advantages conferred upon the Tribe due to this special relationship, however, have been historically hindered by the custodial role of the BIA. **Sovereignty, or more simply, the ability to determine and pursue an independent agenda, has long been perceived as necessary to the well-being of the Tribe but scarcely been heeded.** Lack of a coherent plan or strategy for sovereignty has created duplication within the Tribal governmental structures and a corresponding loss of resources and efficiency. Failure to consider the role of sovereignty in any development effort will diminish the effectiveness of the plan.
- ***Federal Dependency:*** Diametrically opposed to the issue of sovereignty, the Tribe has long maintained a relationship of dependency with the Federal Government. Beginning with the consolidation of Native Americans on reservations during the late 1800s and subsequent institutionalization of this relationship with the Indian Reorganization Act (IRA) of 1934, the cycle of dependency has only begun to be dissolved at the request of individual tribes. With the present shift in Washington, signaled by the Republican Party's Contract With America, the mood is towards reduced aid from the federal government. **The impending swing in funding availability will create severe problems for those institutions that find themselves wholly dependent on federal funding.**

- ***Economic Development:*** The economic health of the Tribe and its members are major factors and indicators as to the success of a given program. The question remains to what extent the Tribe (in this instance, expressly the Tribal Government) will become an active player in the economic development of the Reservation or merely serve as a conduit for development. The distinction made between the role the Tribe assumes will affect how successful the Tribe will be in meeting its objectives. **Previous advancements made by the Tribe have largely been the result of entrepreneurial initiative instead of institutional planning.**⁷ Due to this fact, the successes of past developments were unable to be reproduced. Previous economic development focused on the specific as a means to obtaining the general. Long term plans are most effective when they go from general aims to specific projects. Economic development needs to be perceived as a tool towards achieving the Tribe's goals. In addition to the creation of jobs and more income, economic development for the Tribe also encompasses other less tangible benefits such as improved health indicators and other overall improvements in the quality of life.
- ***Cultural Integrity:*** The Northern Cheyenne have long prided themselves on their culture and traditions and how they have been able to maintain them despite many changes in other Native American populations. However, these customs and traditions depend heavily on the existence of communication channels normally maintained by the Tribal government. Due to the overall dependency on outside sources of funding, the health of the Tribe's cultural agenda may be subjected to the will of others:

When money is made available to tribes from the larger society the amount of tribal influence in determining the use of the funds and the direction of the process for such

⁷For example, the healthy survival of Morningstar Industries, a local contracting company, has largely been due to the shrewd leadership of its director, Suzanne Trusler. Faced with a myriad obstacles, including the lack of financial capital to begin the business and a reluctant Tribal Council, the business is only one of a handful which have not failed.

use depends on the willingness of the larger society to allow tribal discretion. If this is self determination, it is a dependent "self-determination."⁸

Any choices for development must respect or strengthen this cultural integrity, which is the foundation of Tribal way of life. Without the proper forums, the cultural norms may be unable to survive.

Step 2: Opportunity and Threat Assessment

Opportunity and threat assessment is defined as the identification of the Tribe's strengths and weaknesses, allowing the Tribe to act on those over which it has control and to minimize the effect of unwanted interactions. Thus, the Tribe can "reload the dice" and take a more secure hold over its future.⁹ **The key ingredients for development can be divided into three components: external opportunities, internal assets, and development strategy.** In essence, these criteria point to the need of having healthy political and economic institutions through which development strategies can be successfully enacted and sustained.

I. External Opportunities: This is defined as the place that the Tribe has in relation to the organizations outside of its structure. Simply put, it may be stated as the Tribe's place in the larger market or market share. Thus the relationship that the Tribe possess in the larger community is a result of prior business transactions, cultural environment, political power and expression, and geographic location.

⁸Theodore W. Taylor, *The Bureau of Indian Affairs*. (Boulder, CO: Westview Press, 1984), pp.94-95.

⁹This is a modified version of a framework identifying the essential ingredients for development presented by Joseph P. Kalt and Stephen Cornell in "Reloading the Dice: Improving the Chances for Development on American Indian Reservations." *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (Los Angeles: University of California, American Indian Studies Center, 1992), pp.1-59.

- **1. Political Sovereignty:** This is the amount of control that the Tribe has over its decision-making process and the use and allocation of its resources. The more sovereignty the Tribe has, the better the chances are for development.
- **2. Market Opportunities:** This refers to the competitive nature of the market (economic/ social/ political), the niche which the organization has secured, and the unique opportunities that these two conditions afford. These can come from particular assets or attributes or supportive federal policies. The greater number of market opportunities, the greater the chance for economic development.
- **3. Access to Financial Capital:** This includes the Tribe's ability to obtain investment dollars from private, governmental, and philanthropic sources. This access depends on tax policy, tribal reputation, private sector knowledge and experience, and public funding. The greater the access to capital, the more resources the Tribe will have at its disposal for development.
- **4. Distance to Markets:** The closer the Tribe is to the market for its product/service, the cheaper and easier it is to attend to that market.

II. Internal Assets: These are defined as Tribal characteristics (population, demographics, etc.) and the resources the Tribe controls. These assets can be used towards a given development project.

- **1. Natural Resources Endowment:** While natural resources enhance the chances of successful development, they are not necessarily the key. On the whole, however, it has been shown that reservations with significant energy sources are marginally better off than other reservations.
- **2. Human Capital:** This category measures the skills, knowledge and expertise of the labor force, usually acquired through education or work. As human capital increases, so do the chances of economic development.

- **3. Institutions of Governance:** These are the structure, laws and organizations (committees) of the Council, the constitutionally appointed authority of the Tribe. The Council is responsible for the business codes, legal codes, and amendments that govern the members of the Tribe. Strong institutions of governance foster stability, promote investment in the community, and improve the odds for successful ventures.
- **4. Culture:** This is defined as the ways which are viewed as normal and proper regarding the interaction between people and the overall behavior of members in society.

III. Development Strategy: Although not commonly considered a resource, the approach toward economic development that the Tribe chooses to take is important. Among the choices the Tribe must make:

- **1. Economic System:** An economic system is established by the type of ownership, the type and form of business law, regulation and taxation, and the provision of basic social services. Where there is a match between paths pursued by the Tribe and the social and cultural organization of the Tribe, development prospects improve.
- **2. Development Activity:** The success of specific projects is predicated on the capitalization of the Tribe's market opportunities, the specialized utilization of the Tribe's most abundant resources (natural and/or human), and the consistency with Tribal culture.

Tables A, B, and C summarize the Tribe's standing in each of these three areas:

TABLE A

SUMMARY OF TRIBE'S "EXTERNAL OPPORTUNITIES"

<p>Political Sovereignty</p>	<ul style="list-style-type: none"> • BIA approval still required for most decisions made by the Tribal Council. • Tribe has legal means to assume added governance capability. (through P.L.93-638, see Appendix C). • Total control over reservation resources <ul style="list-style-type: none"> * Owns 98% of the land originally allotted to the Tribe * Class I air quality classification allows the Tribe stricter controls on the types of businesses and industries locating in the area * Reversal of BIA coal development decision. * Final settlement of the Tribe's water rights to the Tongue River in 1992. * Resolution of a thirty year battle with the State of Montana to build and fund the only public high school on the Reservation ended in August 1994.
<p>Market Opportunities</p>	<ul style="list-style-type: none"> • Located near tourist attractions. Little Big Horn Battlefield and national recreational areas, such as Yellowstone National Park in close proximity. • Enjoys supportive tax policies. The Northern Cheyenne, like other federally designated reservations, receive several benefits from the local, state, and federal government: <ul style="list-style-type: none"> * They do not pay federal income tax on income derived from trust lands. * Do not pay state income tax on income earned on the federal reservation. * Do not pay state sales taxes on transactions occurring on federal reservations. * Do not pay local property taxes on reservation land. * Can impose its own taxation system. • Is subject to other legislation. The Tribe is able to offer gambling under the Indian Regulatory Gaming Act of 1988. The state of Montana has not given the Tribe any unique advantages; these must be negotiated on Tribal basis. • Rich in low-sulfur coal. The reservation sits on an estimated 33 billion tons of low-sulfur, stripable coal, which complies with the 1990 Clean Air Act requirements. • Unique, culturally-based products. Beaded Cheyenne arts and crafts. • Surrounding areas are undeveloped. Sparsely populated, rural region is not a viable market base.
<p>Access to Financial Capital</p>	<ul style="list-style-type: none"> • BIA Funding: Scholarships, General Assistance, PL 93-638 Contracts, Loans • Banks have been accused of "redlining" practices on the Reservation. • The federal trust relationship prohibits the use of land as collateral. • The Tribe lacks any significant private sector experience or knowledge. The Tribe has historically operated in a non-capitalist fashion with few members venturing out of the culturally accepted norms. In fact, Tribal members recognize that there has been severe resentment towards other members who have succeeded in this area.
<p>Distance to Markets</p>	<ul style="list-style-type: none"> • Isolation discourages investment by businesses on the reservation. Split by two counties, the reservation is located in a "frontier population" where the average population density is two people per square mile. Billings (pop. 80,000), 130 miles away, is the largest market. There is no direct access to railways or bus service. The only access to and from the Reservation is the highway, but this mode of transportation suffers during the winter, making travel on this region highly seasonal.

TABLE B

SUMMARY OF "INTERNAL ASSETS"¹⁰

<p>Natural Resource Endowment</p>	<p>• Is rich in natural resource endowment. The Reservation is over 30% covered by forestlands (70% of which are harvested commercially), and has access to water through the Tongue River and Rosebud Creek. As well, the grass-covered hills of the reservation are excellent grazing lands. Wildlife resources such as deer and antelope are over-hunted and scarce in the absence of Tribal management. All these resources pale in comparison to its huge coal reserve that has yet to be mined.</p>
<p>Human Capital</p>	<p>• High dropout rate. Tremendous commuting distance as well as racial tensions in surrounding communities, contribute to the high drop-out rates. The high level of secondary school dropouts contrast sharply with the same statistics among the region's non-Indian population.¹¹</p> <p>• Post-secondary education is low. In 1989, 40% of Cheyenne adults had attended college (compared to 60% of non-Indians), 80% of whom failed to complete it (compared to 30% of non-Indians).</p> <p>• Much of the labor force lacks the skill or educational level needed for most kinds of employment.</p>
<p>Institutions of Governance* (Present)</p> <p><i>(After proposed revisions to Tribal Constitution)</i></p>	<p>• No true separation of Tribal powers (Judicial branch subject to political control)</p> <p>• High turnover rate among elected officials</p> <p>• Strong Executive branch</p> <p>• Factionalism (Progressive versus Traditional)</p> <p>• Lack of continuity between political regimes</p> <p>• Skeptical voting public</p> <p>• IRA Constitution subjects high degree of BIA control</p> <p>• No consistent business or legal code (everything subject to political control)</p> <p>-----</p> <p>• True separation of Tribal powers (Executive/ Judicial/ Legislative branches)</p> <p>• Reduced (low to non-existent) BIA control</p> <p>• Primary elections</p> <p>• Reduction of size in Tribal Council</p> <p>• Staggered political terms (greater continuity)</p> <p>• Separation of business concerns from political functions of the Tribe</p>
<p>Culture</p>	<p>• Society values community-based over capitalistic development. Cheyenne values do not endorse the personal accumulation of wealth.</p>

¹⁰Note: The Tribe has considerable control over these internal assets. We have formulated two scenarios for the "Institutions of Governance" pending the results of the Constitutional revision process. We believe that this section is vitally important to any economic development. When a development system is dependent upon the political system, it is also subject to the changes inherent in such a system. The degree of political control could undermine the feasibility of or wrongfully endorse a project regardless of its inherent merits. The Tribe recognizes this and has begun to institute revisions to limit the unwanted effects of political tinkering.

¹¹In 1994, Cheyenne dropout rates were 53% at Busby, 42% at St. Labre, and 33% at Colstrip. Non-Indian rates at these school averaged 7%. The state-wide average for Indian population is 8%. Northern Cheyenne Reservation Extension Program, *Northern Cheyenne Reservation Agent Renewal (2nd Year) Proposal*, December 1994.

TABLE C:
SUMMARY OF "DEVELOPMENT STRATEGY"

Economic System	<ul style="list-style-type: none"> •Business on the Reservation is dominated by service and product providers. Major employers are the Tribal Government, St. Labre Indian School, the Federal Government, Montana Power Company, Bechtel Power Company, Western Energy Company, and the Northern Cheyenne Pine Company.
Choice of Economic Development Activity	<ul style="list-style-type: none"> •The Tribe is the primary developer on the Reservation. Ideally in this scenario, the Tribe is responsible for the planning, financing, implementation, maintenance, and review of any given project. However, the past track record of the indicates that projects chosen by the Tribe have not followed these guidelines. Instead, they seem to be shaped by political dynamics. •To some extent, choices reflect Cheyenne values: <ul style="list-style-type: none"> *Private enterprise presence is weak. This is compatible with the cultural prohibitions against accumulations of wealth and the endorsement of redistribution of wealth. To a certain extent, the Tribe has retained traditional, cultural, and societal practices which influences the operation of the tribal government. •Human resources are underutilized.

Threats to the Tribe's Goals

The assets and liabilities inventory of the Northern Cheyenne Tribe, as depicted in Tables A, B, and C, helps identify some key threats to the successful achievements of Tribal goals (see Appendix D). If these particular threats are not addressed, previously approved programs are likely to fail, and the resources will have been wasted.

The process of determining which factors are threats provides highly useful information in that, not only does it force the planner to think about those things which may prevent successful implementation, but it also helps to determine if the unwanted influence of these factors can be minimized or overcome with successful planning. It reduces to simple terms whether the reduction in these factors is discretionary or not. The following section addresses several major factors, all discretionary, that the Tribe will wish to monitor in order to assure the successful completion of its objectives.

•Constitutional Revision: The Tribe is currently modifying its Constitution. The original document, ratified in 1936, was a uniform document drafted by the U.S. Government and accepted in an unmodified, generic form by many tribes. This lack of customization has created problems for the Northern Cheyenne. (See Appendix E)

Initially, the document was intended to represent the interests of a quasi-sovereign entity with existing institutions of governance. At its ratification, the Northern Cheyenne did not have the capacity to support these institutions. As a result, many of the functions that would normally fall within the control of the Tribal government were carried out by the local BIA office. Historically, Federal policy maintained most, if not all, of the Reservation infrastructure and consequently, the Tribe lacked the motivation to develop the necessary independent institutional structures. Today, despite the greater autonomy afforded to tribal governments, many key facets of the Tribe still remain entrenched under the control of the BIA.

Unfortunately, the BIA's mandates are set by the Federal government, and not by the Tribe. Independently formed objectives result from different organizational priorities, thus exacerbating natural divisions between the BIA and the Tribe over what is considered acceptable policy.

The proposed amendments to the Tribal Constitution indirectly address this issue by seeking to internally strengthen the Tribal government. The present Constitution creates a representative form of government with a President elected at-large and a pre-set number of Council members elected in the five districts of the Reservation. Current interpretation calls for one President and twenty-one Council members. The Presidential term of office is four years while Council members are elected every two years (non-staggered terms). The President has the power to appoint all members to the Tribal Court as well as to rescind the appointments of previous judges. The President also has the power to veto any Council decision. This creates a governmental system where much of the power resides in the strong leader figure (President).

The proposed revisions would increase the length of the Council member term from two years to four years. Their terms would also be staggered, to prevent the normal inertia that accompanies an entirely new governing body. The appointment of judges, while still made by the President, could only be rescinded by the majority of the Council and President. All of these would be implemented to prevent the President from being the sole factor in driving or halting the agenda of the Tribe. It is clear that these changes will have a major effect on policy formation in the Tribe. It serves to reduce, but cannot necessarily eliminate the effects of politics and factionalism in the government process.

One of the main problems that this form of government poses is the absence of any separation of powers among governing bodies. **Separation of powers is an institutional response to reasonably expected abuses of government authority.** In this way, the separate branches of government serve as a series of check and balances against the abuses of the others. Normally the division occurs along distinct functional lines (executive-legislative-judicial), yet it is clear that no such line exist with the Tribal governmental structure. Thus the other branches, judicial (by the direct appointment/dismissal feature) and the legislative branch (two year terms) fall under the control of the executive branch. The entire governance process then revolves around the Presidential agenda. The Constitutional revisions would focus on these concerns.

The lack of a true court system, residents state, has frightened away most entrepreneurs. The possibility that an investor could lose all of his/ her investment is great, especially given the present accountability of the judicial system to the executive branch. Even with the restrictive nature on ownership placed of Tribal lands, many foreign investors would be willing to invest given the proper safeguards. Lack of a credible means to redress financial and commercial disputes makes these proposition highly unfavorable.

•Politics and Factionalism: As is evidenced by the Constitutional structure, often the goals of the Tribe rank secondary to the concerns of individual members. Much of this

factionalism is inherent to the present political system. Historically, Council positions have been seen as a license to promote nepotism. In fact, it is frowned upon when a Council member does not use his/her influence to promote the aims/ interests of their constituents. Since the Tribe is so small, this often means promoting family interests. This can be reduced through institutional means, as listed above. By defining the rules of conduct, roles, and responsibilities more clearly for elected members, the Tribe may be able to decrease the levels of nepotism.

•Relationship with the Federal Government/ BIA: The relationship between the Tribe and the Federal government has long been one of dependency. This is acknowledged by all parties involved: the recipients of the federal policies (Tribe), the designers of these policies (U.S. Government/ Department of the Interior), and the executor and implementers of this policy (Bureau of Indian Affairs).

Despite increased autonomy imparted on the Tribe through legislative means like PL 93-638, the oversight structures have not changed accordingly. Dependency has become so ingrained in the bureaucracy that the BIA's supervisory function still engenders this subservient relationship. While this association exists primarily at the economic level, it also pervades all aspects of Tribal life.

•Financial Management/ Stress: One main considerations before using any Settlement funds revolves around the Tribe's system of financial management. Careful consideration must be given to the present financial conditions of the Tribe before the money is used. By determining which projects are essential to the mission of the Tribe, the planners may eliminate those projects which do not add value to the overall goals. Financial management is one of the tools and monitors to assure that the Tribe is meeting its intended goals.

Financial management, often performed in periodic fashion by auditors, analysts, and accountants, provides an existing culture based on information-gathering and analysis.

Truly effective financial management also uses these inherent characteristics (institutional/professional) to further the Tribe's review process. This involves using the information collected towards providing organizational guidance and not merely monitoring. More specifically, any financial review of Tribal functions should answer the following questions:

- Does it keep track of what is happening with the Tribe financially?
- Does it show clearly the costs of services or activities?
- Is it used to measure performance against expected Tribal standards?
- Does it show what the Tribe is doing with its resources?

This analysis helps identify financial trends within the Tribe, whether in comparison to benchmark standards or goals which the Tribe has predetermined. This analysis is crucial to illustrating the sources and uses of resources, whether they be human capital, natural resources, depreciation of existing resources, or simply cash. In doing so, the Tribe can review all the functions that it currently performs and link these to the long-term vision.

Previously, with funding streams fairly constant, better financial stability in the larger funding community, and consistent operating surpluses, the need to critically examine the individual components of the Tribal budget did not exist. Since long-term health was viewed as merely a continuation of short-term solvency, there was no need to formulate an overall strategy and thus the direction of the Tribe was determined by the aggregation of short-term projects. This situation may have been exacerbated by the close link between development projects for the Tribe and the political system.

Unfortunately, financial health is also integrally dependent on external environment and trends suggest that this favorable environment is about to change. Financial analysis will be one tool in gathering information about how the Tribe is performing and also a way to monitor what effects certain projects have had on the repositioning of the Tribe in its larger environment.

A brief analysis of the Tribal financial statements for the past five fiscal years indicates several trends which may signal stress or impending financial stress for the Tribe (see Appendix F):

- The Indirect Cost Proposal submitted every year to the BIA and the Federal government constitutes the basic operating budget for the Tribe for any given fiscal year. However, this procedure is mandated by the Federal Government and its relevance has not been incorporated into the governance structure of the Tribe. Normally, budgets serve as a strict limit on expenditures or uses of cash during a specified time period (usually a year). When a budget is truly institutionalized, each level of the organization understands that resources must be managed until the next funding period. There is no such restriction on the access of funds to components of the Tribe during the fiscal year. The Tribe, after setting its yearly agenda, has the ability to incrementally alter the funding of the Tribe without any coherent plan. **These draw-downs deplete the financial resources of the Tribe without any control given to the financial planners.** In FY94, there was a nine hundred thousand operating shortfall (\$900K) which was financed through the Tribal fund balance. These operating procedures work against sound financial and development planning.

- Strong revenues and positive fund balances do not tell the entire picture of an organization. In fact, especially with such a large increase in revenue from the Settlement, the Tribe may believe that they are out of any financial trouble. This is not necessarily the case. While large numbers may show financial strength, sheer volume only tells part of the story. **Rather it is the flow of resources (erratic inflow, steady or increasing outflows) that should be a source of concern to the Tribe.**

- Although the Tribe follows GAAP (Generally Accepted Accounting Principles), using both an accrual and cash base system of accounting, there are still some questions about the manner in which it records transactions. One glaring omission is the failure to

consider investments in plant (the tangible, physical resources of the Tribe) or the depreciation of these assets. Plant is one of the major classifications of assets on a balance sheet. **Failure to depreciate assets creates a false sense of well-being because the Tribe does not monitor the use of these assets through time.** Depreciation provides a schedule for the renewal/ replacement of assets as they are depleted.

•Institutions such as the Tribe, which are highly dependent on one or few sources for resources, are subject to the same funding stream as these supporting agencies. Based on the FY94 Balance Sheet, over forty-nine percent (49%) of Tribal revenue originated from the Federal government. **Diversification of the financial stream will be necessary or the Tribe will suffer whenever the Federal government decides to restrict its funding.**

These are just several indicators of financial stress that may be gleaned from the financial analysis of Tribal records. Consistent monitoring/ analysis of the Tribal financial statements can be a powerful tool for organizational guidance.

•Attention to Human Resources: Any attempt to promote economic development will fail if the Tribe is unable to attract or retain qualified workers. Human capital has long been neglected as a potential asset of the Reservation. This is a cycle in itself, which leads to other problems such as substance abuse, high rates of unemployment, or simply lack of useful skills in the working age population. Looking at the indicators for the Tribe, we see that this has been the case. In the long term, neglect of human capital will undermine the future well-being of the Tribe.

It is clear to see that threat assessment can continue indefinitely, to any level of specificity. This section identifies the major threats to be expected in any project. With

these main threats in mind, evaluation may proceed to the development of credible strategies.

Step 3: Methodology (Strategies)

This stage requires the Tribe to answer the following question: **If we implement this project, then we can expect_____.** Thus, methodology expresses the theory and rationale behind the project. In other words, the choice in economic development projects will have considerable ramifications on how successful the Tribe is in achieving its long and short-term goals. The merit of a given strategy is determined by how well it matches Tribal interests, and how successful it is in achieving those aims.

EXAMPLE:

The Tribe is having a meeting in Colstrip. Attendance is mandatory, and the meeting must begin on time or the Tribe will lose money. Given these constraints, the Tribe has three main options to arrive in a timely fashion:

- 1) Each Tribal member can get there on his own.
- 2) Tribe arranges a series of carpools.
- 3) Tribe rents a bus to take all members.

All three are legitimate strategies for the Tribe to embrace. Options 1 and 2 do not require the Tribe to pay any money, whereas Option 3 requires a rental. Yet Options 1 and 2 increase the possibility that individual members will be late and thus cost the Tribe money from lost time. Depending on the risk, the Tribe must choose the option which will maximize the benefits and minimize the costs. This is an example of good strategic planning.

The choice of an economic development strategy will have considerable ramifications on how successful the Tribe is in achieving its long and short-term goals. **The Tribe must determine which strategies will promote and manage the majority of new development ventures.**

The Tribe must also acknowledge the dependency of such strategies on political considerations. Lacking an economic development body independent of the political stream, the Tribe will find that the projects forwarded will be directly related to the re-election efforts of public officials and only tangentially related to the welfare of the Tribe as a whole. **Methodology (Strategy) must always be directly linked to the goals of the Tribe and its institutions, not to individuals.**

Step 4: Plan/ Program Design

This step details the actual design elements (people, organizations, resources, etc.) involved in managing the project. **This is the last step over which the Tribal government should exercise control. At this stage, the project becomes a technical issue as opposed to a political one.** Crafting (designing) a development strategy must consider limiting political influence, without removing ultimate accountability to the Tribal leadership and its members.

Despite this fact, the Tribe currently operates as the primary developer in the region. As opposed to project management, it is the task of the Tribal government to nurture a healthy environment which will sustain the project. Currently, the Tribe is responsible for the planning, financing, implementation, maintenance, and review of any given project. Subjecting the entire development agenda to the political leadership will lead to disastrous outcomes. **The Tribal Council should instead focus its efforts on establishing a healthy atmosphere for economic development, such as necessary codes, laws and governing institutions.** A healthy political system establishes the explicit "rules of the game."

However, also crucial to success is the compatibility of such a system to the Tribe's traditions. For example, in choosing the appropriate direction for economic activity, the

Northern Cheyenne must take into account cultural norms. It must also weigh the importance of its aversion to non-Indian businesses ownership, management and control by outsiders. The consideration of these factors will help select a system which is best suited to the political and cultural context of the Tribe.

Step 5: Action (Implementation)

At this stage of the Tribe's strategic planning, the intended policy (or goals/ objectives) is given to project managers. **This stage transfers responsibility from the politicians to the managers.** The communication between the planning stage (COM) and the implementation stage (PASS) will be crucial in the overall success of the policy. The manager at this stage (ex., Morningstar Industries) is responsible for the use of resources allocated by the previous stage, to maximize their effectiveness under the mandate outlined by the policy planners (Tribal Council). Key aspects of this stage are:

- The Manager must craft programs that satisfy the mandate given in the previous stages of planning.
- The Manager is often the crucial informational link between vague interests and concrete policies.
- The Manager does not have the authority to define the interests of the Tribe merely the scope of the specific project.

Step 6: Sustenance (Maintenance)

This stage of development involves the continuation of the initiatives begun in the Action/Implementation phase. Very similar to Step 5 (Action), maintenance involves long term projections of how the project will be supported. **Maintenance provides a**

systematic way of viewing the resources necessary to sustain a project.

Questions asked at this stage are:

- Has the project changed since implementation?
- Who is responsible for making sure the project works?
- Who keeps the project running smoothly/ daily tasks?
- What is needed to keep it running?

Good maintenance lowers the cost of instituting new programs. Good maintenance also provides information to other stages of planning so that adjustments can be made to projects to ensure the intended result. Maintenance includes minor process improvements and other procedural alterations that make projects more efficient.

Step 7: Survey (Review)

Review describes the process where managers (ex., Morningstar Industries) and planners (Tribal Council) assess how effective a given policy/project has been. **Without review, it is impossible to determine whether a policy or project has been or is successful in achieving its intended objective.** Review entails **systematic, timely monitoring** of several indicators, such as financial solvency. Review must occur at three distinct levels:

- At the most basic level, review must occur within each stage, by the individual managers (Morningstar reviews construction phase, Tribal Planner reviews overall economic development feasibility, Tribal Council reviews policy in relation to public goals and approval). Using standards related to their specialties, each stage manager must determine whether they are meeting the standards set by their roles. This review is extremely specific and is directed to a given task.

- The next stage of review occurs within the distinct stages of strategic planning, policy formation (COM) and implementation (PASS). **Different organizational loyalties (politicians to constituents; managers to employees) will create different outlooks.** On the planning stage, a review process monitors whether planners have been able to coherently state their objectives into a consistent design. This entails reviewing whether there is internal consistency between the objectives, strategy, and design. At project implementation, the emphasis is to ensure that the physical or operational aspects have met internally (organizational benchmark) recognized standards of competency.
- The final stage, overall policy review, entails determining whether a stated policy has been effective in meeting its goals in the external environment. **The Tribal Planner must critique each stage in relation to the total Tribal plan. The Planner is responsible for the transfer of information between the two stages, guaranteeing alignment between goals and performance.**

Using COMPASS: Heading, Destination, Now on Track. . .

Since core Tribal interests do not (nor should not) change every day, the entire COMPASS framework is rarely used in its entirety. However, it is an excellent tool which the Tribe can use periodically (yearly) to guarantee adherence to intended goals. In the following section, Project Analysis, we introduce two frameworks (DOR, OPS) which are designed to be applied to every project under consideration by the Tribe.

III.

PROJECT ANALYSIS

The DOR Criterion (Quick Feasibility Plan):

Before a project is even considered under an operational plan (OPS), the Tribe should subject each project to a set of criteria which specifically asks whether the project should even be attempted. This framework (template) is much less involved than the COMPASS framework. It includes the following three steps:

- **Defined Interests:** Stated Tribal interests: Political Sovereignty, Economic Independence, Economic Development, Cultural Integrity
- **Objective Considered:** What, specifically, is the project?
- **Reconciliation with Goals:** How does the project:
 - a) Match or address any of the stated interests?
 - b) Can it be reasonably expected to achieve this interest?
 - c) Is the project feasible (realistic)?

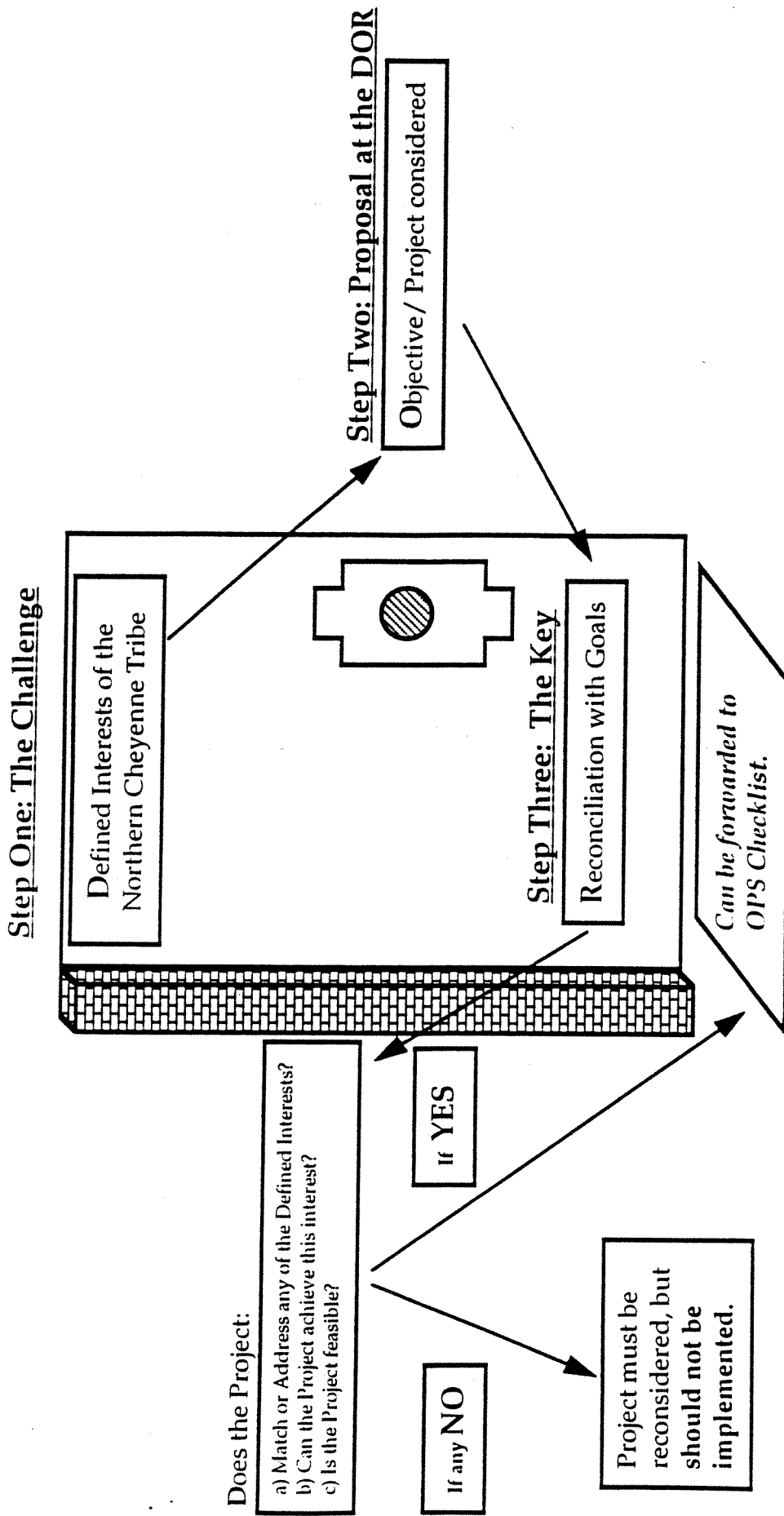
Simply put, this template is designed to prevent “mission creep” in the Tribe’s objectives.¹² “**If it doesn’t pass the DOR test, it doesn’t get in**” is a phrase to help the project evaluator determine whether a project is feasible. **All projects, before they reach the operational phase (OPS), must pass this test.** A project passes this test if it has shown to satisfy the three Reconciliation criteria listed above.

Normally, it is assumed that every project considered somehow relates to the mission and core aims. Unfortunately, they do not. Some represent marginal or peripheral issues that, once they reach the planning phase, receive the same consideration as more

¹²“Mission creep” occurs when capacity, instead of core aims, drives policy objectives. Thus planners do what they *want* to do, rather than what they *should* do.

THE DOR MODEL

QUICK FEASIBILITY PLAN FOR THE NORTHERN CHEYENNE TRIBE



vital projects. Others may represent desires instead of true Tribal interests. Either way, they become part of the Tribal agenda, confusing decision-making or other concerns.

EXAMPLE:

An airport and a truck stop are options considered to meet the Tribe's growing travel needs. However, it is clear after the **DOR** test, only one is actually feasible. It can be argued that both would satisfy the stated interests of the Tribe because each would spur economic development. They even could be reasonably expected to achieve this interest, based on the generation of new income and jobs that each project would create. However the truck stop is clearly more feasible due to lower start-up costs. Not only would an airport cost more, but it is uncertain whether there is a sufficient market to maintain an airport in the region.

The **DOR** framework provides a reproducible, standardized test for program evaluators to use to gain a quick measure of project feasibility. After a project passes the **DOR** test, the Tribe has satisfied one criterion towards identifying projects which align with its interests. The second framework (**OPS**) involves a more detailed look at each individual project.

The OPS Framework: Ready for Action.

The OPS template (Objectives to Plans through Strategy), as the acronym suggests, is merely a limited version of the **COMPASS** framework. This abbreviated version consists of an operational checklist designed to give the project evaluator objective criteria with which to judge a specific proposal. The checklist contains elements (financial, economic. It is not all-inclusive. The project evaluator should use this checklist as a basis for

Once the Tribe has completed the first two checklists (**COMPASS** and **DOR**), which assess whether a project: 1) aligns with Tribal interests and 2) meets a feasibility criterion, the project is finally ready for operational considerations. **UNLIKE COMPASS. THIS IS A COMPARATIVE FRAMEWORK.** It is intended to compare the relative desirability of each project, based on other available options. This checklist

includes questions that must be asked of each project. In approaching each project in a systematic way, the Tribe can institutionalize the manner in which it makes economic development issues, in general, and how it uses the money from the Settlement specifically. We have ranked these questions in two ways based on their importance: vital and important. All listed questions are important. **However, it is the pervading nature of the vital questions (designated with a "V" in the chart below), which if left unsatisfied, may condemn the project to failure.**

The O-P-S Checklist (Strategically Linking Objectives to Plans)

Questions to Ask:	Project
Opportunities and Threats Assessment	
<i>Financial Concerns</i>	
• Does it require initial investment?	
• Does the Tribe have the funding stream (short-term/construction)?	
• Does the Tribe have the funding stream (long-term/maintenance)?	
• Does the Tribe have sufficient resources to cover both streams?	V
• Will it generate more income?	
• When will the project make returns on investment? (# years to realization)	
• What is the life of the asset? (Long-term vs. Short-term)	
• Does the financing available match the life of the asset?	V
<i>Political Considerations</i>	
• Is the project subject to political control by:	V
• Individual?	
• Coalition/Interest Group?	
• BIA?	
• Referendum/Tribal majority?	
• Is the project subject to favoritism/nepotism?	
• Are the necessary governmental structures in place? (Regulation, Codes)	V
<i>Economic Considerations</i>	
• Will the Tribe have to forego other projects if it implements this one?	V
• Does the project harm other vital interests (industries, resources)?	V
• What is the project's potential for employment: (High/Low; Permanent/Temporary; Year-round/Seasonal)?	
• Does the project have the potential to foster other businesses (multiplier effect)?	V
• Is there local demand for the project?	
• Is there larger demand for the project?	
• Are there competitors to this project?	
• Does the Tribe have a competitive advantage in this area?	
• Are there barriers to entry? (Technical, Financial, Legal)	
<i>Cultural Considerations</i>	
• Will the project receive community/ cultural approval?	
• Does the project require community/cultural approval to be successful?	
• Is the project in agreement with cultural interests?	V
• Does the project harm the environment?	
<i>Other Considerations</i>	
• Has the Tribe done this successfully in the past?	- V
Methodology/Strategy	
• If this project is implemented, will it meet the Tribe's four goals of:	
• Political Sovereignty	V
• Economic Independence from the Federal Government	V
• Economic Development	V
• Cultural Integrity	V
Plan/Design	
• Is there an existing model which the Tribe can follow?	V
• Does the Tribe have the technical capacity to do this?	V
• Does the Tribe have the management leadership necessary?	V

Example One: Social Project (Nursing Home Case)

Opportunities and Threats Assessment		
Financial Concerns		
• Does it require initial investment?		YES
• Does the Tribe have the funding stream (short-term/construction)?		YES
• Does the Tribe have the funding stream (long-term/maintenance)?		?
• Does the Tribe have sufficient resources to cover both streams?	V	NO
• Will it generate more income?		NO
• When will the project make returns on investment? (# years to realization)		2 YRS
• What is the life of the asset? (Long-term vs. Short-term)		L
• Does the financing available match the life of the asset?	V	NO
Political Considerations		
• Is the project subject to political control by:	V	YES
• Individual?		
• Coalition/Interest Group/Faction?		
• BIA?		
• Referendum/Tribal majority?		
• Is the project subject to favoritism/nepotism?		YES
• Are the necessary governmental structures in place? (Regulation, Codes)	V	?
Economic Considerations		
• Will the Tribe have to forego other projects if it implements this one?	V	YES
• Does the project harm other vital interests (industries, resources)?	V	NO
• What is the project's potential for employment: (High/Low; Permanent/Temporary; Year-round/Seasonal)?		P, Y
• Does the project have the potential to foster other businesses (multiplier effect)?	V	YES
• Is there local demand for the project?		YES
• Is there larger demand for the project?		NO
• Are there competitors to this project?		NO
• Does the Tribe have a competitive advantage in this area?		?
• Are there barriers to entry? (Technical, Financial, Legal)		F
Cultural Considerations		
• Will the project receive community/ cultural approval?		YES
• Does the project require community/cultural approval to be successful?		YES
• Is the project in agreement with cultural interests?	V	?
• Does the project harm the environment?		NO
Other Considerations		
• Has the Tribe done this successfully in the past?	V	NO
Methodology/Strategy		
• If this project is implemented, will it meet the Tribe's four goals of:		
•Political Sovereignty	V	NO
•Economic Independence from the Federal Government	V	YES
•Economic Development	V	YES
•Cultural Integrity	V	YES
Plan/Design		
• Is there an existing model which the Tribe can follow?	V	YES
• Does the Tribe have the technical capacity to do this?	V	YES
• Does the Tribe have the management leadership necessary?	V	?

Example Two: Small Business Project (Marina)

Opportunities and Threats Assessment		
Financial Concerns		
• Does it require initial investment?		YES
• Does the Tribe have the funding stream (short-term/construction)?		YES
• Does the Tribe have the funding stream (long-term/maintenance)?		YES
• Does the Tribe have sufficient resources to cover both streams?	V	YES
• Will it generate more income?		YES
• When will the project make returns on investment? (# years to realization)		?
• What is the life of the asset? (Long-term vs. Short-term)		L
• Does the financing available match the life of the asset?	V	YES
Political Considerations		
• Is the project subject to political control by:	V	YES
• Individual?		
• Coalition/Interest Group?		
• BIA?		
• Referendum/Tribal majority?		
• Is the project subject to favoritism/nepotism?		YES
• Are the necessary governmental structures in place? (Regulation, Codes)	V	YES
Economic Considerations		
• Will the Tribe have to forego other projects if it implements this one?	V	NO
• Does the project harm other vital interests (industries, resources)?	V	NO
• What is the project's potential for employment: (High/Low; Permanent/Temporary; Year-round/Seasonal)?		L.T.S
• Does the project have the potential to foster other businesses (multiplier effect)?	V	NO
• Is there local demand for the project?		?
• Is there larger demand for the project?		?
• Are there competitors to this project?		YES
• Does the Tribe have a competitive advantage in this area?		?
• Are there barriers to entry? (Technical, Financial, Legal)		NO
Cultural Considerations		
• Will the project receive community/ cultural approval?		?
• Does the project require community/cultural approval to be successful?		?
• Is the project in agreement with cultural interests?	V	?
• Does the project harm the environment?		NO
Other Considerations		
• Has the Tribe done this successfully in the past?	V	NO
Methodology/Strategy		
• If this project is implemented, will it meet the Tribe's four goals of:		
•Political Sovereignty	V	NO
•Economic Independence from the Federal Government	V	NO
•Economic Development	V	YES
•Cultural Integrity	V	?
Plan/Design		
• Is there an existing model which the Tribe can follow?	V	YES
• Does the Tribe have the technical capacity to do this?	V	YES
• Does the Tribe have the management leadership necessary?	V	NO

Example Three: Physical Infrastructure Project (Water System)

Opportunities and Threats Assessment		
Financial Concerns		
• Does it require initial investment?		YES
• Does the Tribe have the funding stream (short-term/construction)?		YES
• Does the Tribe have the funding stream (long-term/maintenance)?		YES
• Does the Tribe have sufficient resources to cover both streams?	V	YES
• Will it generate more income?		NO
• When will the project make returns on investment? (# years to realization)		0 YRS
• What is the life of the asset? (Long-term vs. Short-term)		L
• Does the financing available match the life of the asset?	V	YES
Political Considerations		
• Is the project subject to political control by:	V	YES
• Individual?		
• Coalition/Interest Group?		
• BIA?		
• Referendum/Tribal majority?		
• Is the project subject to favoritism/nepotism?		YES
• Are the necessary governmental structures in place? (Regulation, Codes)	V	YES
Economic Considerations		
• Will the Tribe have to forego other projects if it implements this one?	V	YES
• Does the project harm other vital interests (industries, resources)?	V	NO
• What is the project's potential for employment:		H.T
(High/Low; Permanent/Temporary; Year-round/Seasonal)?		
• Does the project have the potential to foster other businesses (multiplier effect)?	V	YES
• Is there local demand for the project?		YES
• Is there larger demand for the project?		NO
• Are there competitors to this project?		NO
• Does the Tribe have a competitive advantage in this area?		N/A
• Are there barriers to entry? (Technical, Financial, Legal)		NO
Cultural Considerations		
• Will the project receive community/ cultural approval?		YES
• Does the project require community/cultural approval to be successful?		NO
• Is the project in agreement with cultural interests?	V	YES
• Does the project harm the environment?		NO
Other Considerations		
• Has the Tribe done this successfully in the past?	V	YES
Methodology/Strategy		
• If this project is implemented, will it meet the Tribe's four goals of:		
•Political Sovereignty	V	NO
•Economic Independence from the Federal Government	V	YES
•Economic Development	V	YES
•Cultural Integrity	V	YES
Plan/Design		
• Is there an existing model which the Tribe can follow?	V	YES
• Does the Tribe have the technical capacity to do this?	V	YES
• Does the Tribe have the management leadership necessary?	V	YES

Example Four: Endowment Fund (Restricted Use)

Opportunities and Threats Assessment		
Financial Concerns		
• Does it require initial investment?		NO
• Does the Tribe have the funding stream (short-term/construction)?		YES
• Does the Tribe have the funding stream (long-term/maintenance)?		YES
• Does the Tribe have sufficient resources to cover both streams?	V	YES
• Will it generate more income?		YES
• When will the project make returns on investment? (# years to realization)		0 YRS
• What is the life of the asset? (Long-term vs. Short-term)		L
• Does the financing available match the life of the asset?	V	YES
Political Considerations		
• Is the project subject to political control by:	V	NO
• Individual?		
• Coalition/Interest Group?		
• BIA?		
• Referendum/Tribal majority?		
• Is the project subject to favoritism/nepotism?		NO
• Are the necessary governmental structures in place? (Regulation, Codes)	V	YES
Economic Considerations		
• Will the Tribe have to forego other projects if it implements this one?	V	NO
• Does the project harm other vital interests (industries, resources)?	V	NO
• What is the project's potential for employment: (High/Low; Permanent/Temporary; Year-round/Seasonal)?		N/A
• Does the project have the potential to foster other businesses (multiplier effect)?	V	YES
• Is there local demand for the project?		N/A
• Is there larger demand for the project?		N/A
• Are there competitors to this project?		N/A
• Does the Tribe have a competitive advantage in this area?		N/A
• Are there barriers to entry? (Technical, Financial, Legal)		NO
Cultural Considerations		
• Will the project receive community/ cultural approval?		YES
• Does the project require community/cultural approval to be successful?		NO
• Is the project in agreement with cultural interests?	V	YES
• Does the project harm the environment?		NO
Other Considerations		
• Has the Tribe done this successfully in the past?	V	YES
Methodology/Strategy		
• If this project is implemented, will it meet the Tribe's four goals of:		
•Political Sovereignty	V	YES
•Economic Independence from the Federal Government	V	YES
•Economic Development	V	YES
•Cultural Integrity	V	YES
Plan/Design		
• Is there an existing model which the Tribe can follow?	V	YES
• Does the Tribe have the technical capacity to do this?	V	YES
• Does the Tribe have the management leadership necessary?	V	YES

Having analyzed a group of potential projects, we were able to complete the preceding charts. Such checklists should be used for any project and can be tailored to each concern. Several of the proposals that we considered contained more information than was able to be conveyed through this analysis. On those projects, we have listed some comments underneath. These comments should serve as a guide to further evaluate the value and feasibility of each project:

Do the following approaches fulfill the Tribe's goals of:

OPTIONS:	Increased Political Sovereignty	Decreased Economic Dependence on Federal Government	Promotion of Overall Economic Development	Maintenance of Cultural Values
Social Project	No	Yes	Yes	Yes
Small Business Project	No	No	Yes	?
Phys. Infra. Project	No	No	Yes	Yes
Investment Fund	Yes	Yes	Yes	Yes

•Social Project Example: In this case, we considered a nursing home/ community center plan in which the Tribe would focus more on providing a facility as opposed to advanced services (dialysis/ advanced medical care, etc.). In our analysis, this project received a favorable rating overall, yet several results would preclude this development at this time.

Initially, using the Settlement funds as the vehicle to advance this project, there would be sufficient money to start the project. However, it is uncertain whether the Tribe possesses sufficient resources to sustain the project indefinitely. This uncertainty proved a warning signal because Tribe should only start projects that they feel reasonably secure in funding at all stages of development. The initial cash outlay, in terms of construction and other projects which the Tribe would have to forgo, would have an extremely high opportunity cost.

This is not to say that this project lacks any benefits. The ability to generate new business throughout the community (food service, landscaping, custodial, health care attendants) would be one way that the nursing home would foster the goals of economic development. **However, at the present time, the political situation presents a developmental obstacle that may preclude a successful completion. In addition to this fact, the project will require a large amount of funding and will require the Tribe to forgo other opportunities, suggesting that a final decision on the nursing home be reserved until greater control can be exercised over development.**

•Small Business Example: The scope of these projects would include the following: hotels, truck stops, convenience stores, and other enterprises that would be run locally, by Tribal members, as either franchise operators or owners. For our example, we considered a marina, which the Tribe is presently considering on Trust lands along the Tongue River south of the Reservation.

Using the Settlement funds, this project is highly feasible, based on cost estimates contained in the Tribal report. The Tribe could fund this project easily. However this only seems marginally related to true economic development on the Reservation. As figures show, investing in small businesses is very risky because they suffer from high failure rates. (See Appendix G) This project is highly seasonal in scope and thus has limited employment and income generation potential. They may also expect stiff competition in the region with other marinas and recreational areas (Yellowtail Dam Reservoir, Big Horn Canyon National Recreational Area, and the Tongue River State Park). In this development strategy, the Tribe loses considerable control over risk because ultimate profitability will be based on larger market conditions beyond its control. **Such projects, where control is not assured, are acceptable when they are part of**

discretionary uses of funds. They are problematic when they are used as the primary vehicles for a development strategy.

•Physical Infrastructure Project Example: These projects would consider investment in the physical plant of the Reservation. These projects improve the quality of life and the delivery of other services. A healthy infrastructure system includes roadways, public transportation and utility services. For our example, we considered improvements to the Reservation water system. The improved water system would satisfy the demand on the parts of the Reservation which still suffer from poor-quality water or no water at all. Currently, the Tribe must resort to deliver of water by truck to satisfy these needs. While the initial capital outlay may be large for an overhauled system, the project thereafter would only incur maintenance costs. Greater are the benefits to the population, which would enjoy the benefits well into the future. Although small in scale, this project relates directly to the Tribe's core interests. It is both feasible and sound, and our indicators show that the probability for success are extremely high. **While a new water system does not directly enhance the Tribe's political autonomy, it is sure to provide a base for future development at minimal cost.**

The final example under consideration, the endowment fund, proves to be the most feasible and prudent of the options according to the OPS criteria. Based on the criteria created, this option is preferred to the other alternatives.

Restricted Endowment Fund: The Prudent Choice

Our analysis has demonstrated that, of the four options examined, only two appear viable in both the long- and short-term outlook; especially when linked with the funds received from the Settlement. This does not suggest that the Tribe should not attempt the other two

options (Social Project, Small Business). However, as the OPS checklist demonstrates, there are several factors involved in those two projects which may preclude their successful completion at this time. **This fact actually strengthens our recommendation for the Restricted Endowment Fund.**

One goal of our analysis was to institutionalize procedures to ensure the long-term viability of the Northern Cheyenne Tribe. This entails that the Tribe base all development decisions on their stated aims (COMPASS) and then judge each project on whether the project meets these interests (DOR). The four options listed satisfy these two criteria.

Our next goal was to help maximize the effectiveness of the funds received through the Settlement Act. We interpreted this mandate as not only to improve the quality of life and delivery of services on the Reservation, but also to increase the options available to the Northern Cheyenne Tribe in their future decision-making. Unfortunately, any use of the funds towards a single project would limit the amount of funds available to other projects, thus decreasing the number of options on the Tribal development agenda. **On closer inspection, however, the development of a Restricted Endowment Fund is NOT a use of these funds.** The other options constitute uses of resources and this distinction is very important.

By placing the Settlement money into the Endowment Fund, the Tribe can safeguard the present value of the money while at the same time preserving the money for future use. An endowment fund is not a use of the money, but merely delays a decision on its use pending more favorable situations (economic, political) for development. The money will be available, in its entirety, for the Tribe to use at the end of a predetermined period.

Restating the analysis from the Financial section, large sums of money (such as the Settlement) may be highly problematic if they tend to conceal operating deficiencies and do not allow the Tribe to correct troublesome flows (losses) of resources. **Financial**

stability is one of the first steps to long-term viability and proper economic development.

The Restricted Endowment Fund effectively removes the money received from the Settlement Act from a problematic flow of resources. It establishes a source of funding (diversification of income is one component to maintaining financial health) independent of the Federal government, quasi-independent from Tribal control. **It creates a model which (through the use of P.L. 93-638) the Tribe can use to increase the independence from the BIA and other outside authorities.** This increased sovereignty allows the Tribe to better direct resources to meet its overall goals. It is presently constrained from fully achieving those goals due to the restrictive policies maintained by the BIA.

The entire proposal, as we envision it, would call for the Tribe to place the entire \$10 million received from the Federal government in a Restricted Endowment Fund. This would limit Tribal access to the principle (\$10M) for a determined period of time [We suggest that the Tribe restrict access for at least 6-8 years. The lower estimate removes this fund from immediate political consideration and the higher estimate allows for possible redoubling of the initial principle, without withdrawals]. Ideally, we would wish that the funds remain untouched until the restriction period is over. Realistically, we realize that the interest accrued from this amount of money could have a significant impact on gaining Tribal independence. Even under this contingency, the plan is highly favorable.

This proposal would allow the Tribe to align itself along its core interests. Then, when the funds are finally unrestricted, they can be used to their maximum potential. During this period, if the Tribe does not decide to re-invest the interests, it can reasonably expect to receive well over \$600K thousand a year in new revenues (This figure was obtained by adding the yearly repayment figures from the State of Montana, totaling close to \$300 thousand per annum, plus a very modest three percent yield on the \$10 million in the Restricted Fund.)

Clearly, with its potentials for immediate yield and future uses, the Restricted Endowment Fund is an excellent proposal. It would even allow the completion of the water infrastructure project simultaneously, thus show that it would not preclude the development of new projects.

IV.

RECOMMENDATIONS

Using the Settlement as a catalyst and the new decision frameworks (**COMPASS, DOR, OPS**), we recommend the following courses of action which most accurately align this unique opportunity with the Tribe's goals and interests.

- 1) **Do not spend any of the \$21.5M on projects that do not advance the goals of the Tribe.** The Tribe should not use the funds on any project (development, maintenance, or otherwise) without considering how these new projects relate to the overall Tribal mission. Using the **COMPASS** framework and the supporting **DOR** and **OPS** checklists, the Tribe can objectively and effectively gauge the viability of proposed projects. It is suggested that the Tribe refrain from any major capital investments until the Constitutional revisions, which are currently underway, have been completed.
- 2) **The lump sum received from the federal government (\$10 million) should be placed in a Restricted Endowment Fund,** subject to regulations concerning such a classification. The interest received from such fund can be compounded (preferred) or made available to the general fund of the Tribe. One recommendation is that accrued interest be expressly earmarked towards funding the conversion to a independent sovereign state. This is intended to remove the duplicity in functions performed by the present Tribal government and the local Bureau of Indian Affairs (BIA). It also allows (under P.L. 638), the ability for the Tribe to acquire control over essential policy planning positions.
- 3) The forty equal annual payments from the State of Montana, totaling \$11.5 million, should be allocated specifically for operating expenses. **Since loan repayment by the State of Montana is virtually assured, the Tribe can use this steady income to achieve its goal of economic independence.** By earmarking this money for Tribal salaries, the Tribe will have more discretionary funds available for other uses relevant to its interests. This money may also be used to fund minor capital projects, establishment of an educational fund, or any other project where the asset matches the funding stream.
- 4) **An improved water system is also highly congruent with Tribal aims, and can be accomplished along with the Restricted Endowment Fund.** This project accomplishes several core aims, is highly feasible, and is greatly desired by the community-at-large. This project would embody the spirit of the Water Rights Settlement Act and at the same time improve the delivery of a crucial service to the Northern Cheyenne people.

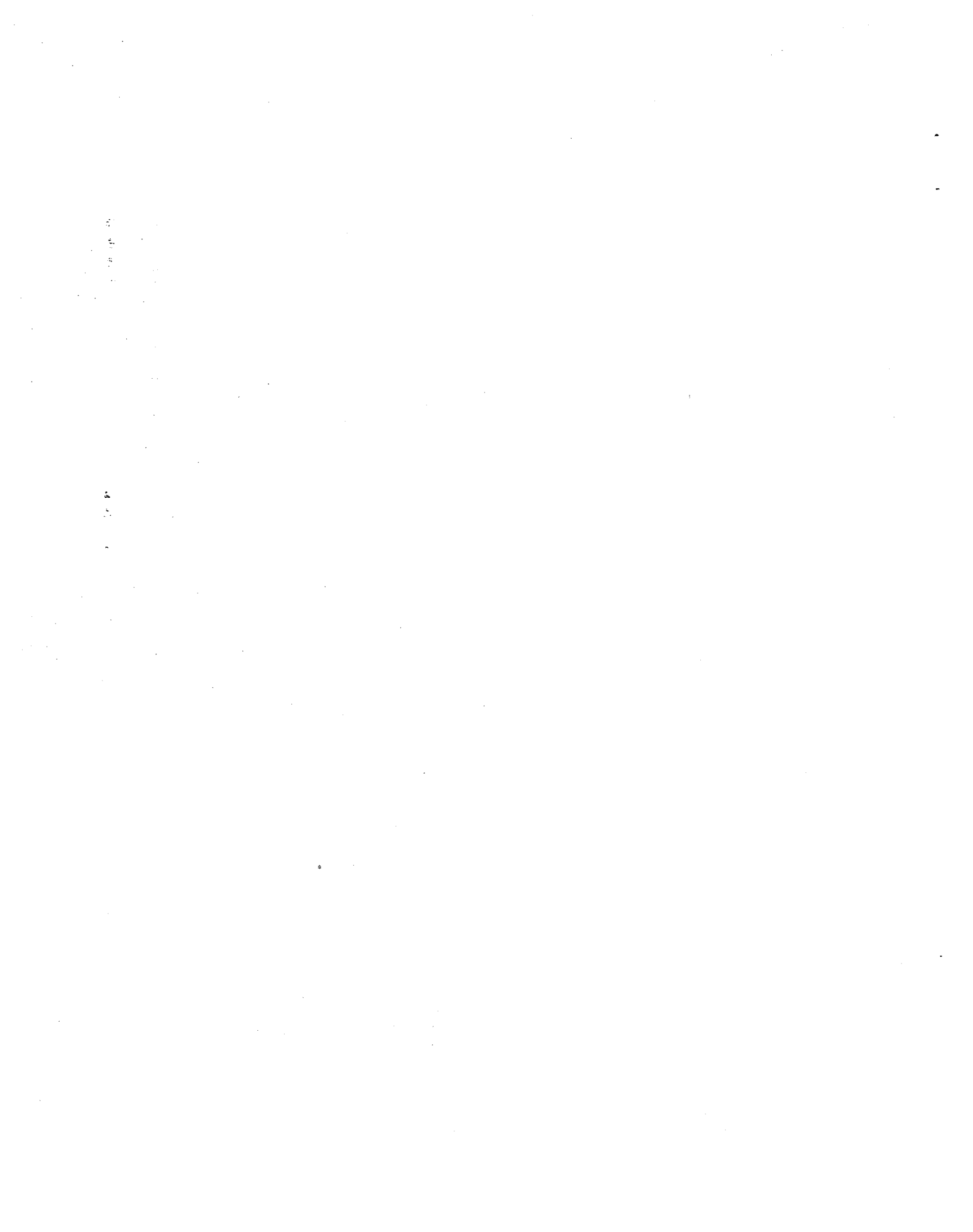
CONCLUSION

It is our recommended strategy that the Tribe (specifically, the Tribal Council) assume a macro-economic perspective towards development on the Reservation. In that way, the Tribe can set the agenda over which areas it feels relevant to the overall development of the Tribe (infrastructure, education, sanitation, etc.). Through incentives and legislation, the Tribe can encourage development in those areas, both among members of the Tribe and the larger community. By creating a stable environment for development, long-term projects that were previously unsustainable due to uncertainty in political and financial streams, may then become possible. This change in planning will be crucial to the success of the Tribe.

Whereas before the long-term goals were previously determined by the summation of sporadic, uncoordinated, and independent short-term plans, the new shift will allow the Tribe to establish true long-term plans. Individual projects can be assessed regarding their contributions to the overall plan, through the use of objective and standardized decision frameworks. In this way, the Tribe can use the funding (or non-funding) of certain ventures as a guidance tool to successfully obtain its interests and objectives. With careful planning, the *Northern Cheyenne Indian Reserved Water Settlement Act of 1992* can serve as the catalyst to building a stronger, sovereign Northern Cheyenne Nation.

APPENDIX A

BACKGROUND
ON THE
NORTHERN CHEYENNE INDIAN
RESERVED WATER RIGHTS SETTLEMENT ACT OF 1992



THE WINDFALL

In 1992 the State of Montana and the Northern Cheyenne Tribe entered into a Water Rights Compact to finally settle the issue of federal reserved water rights belonging to the Tribe. These rights derive from the landmark 1908 *Winters* decision, which in essence gives tribes "first rights" to any sources of water bordering upon or flowing through a reservation. This right exists whether or not the tribe actually uses the water.

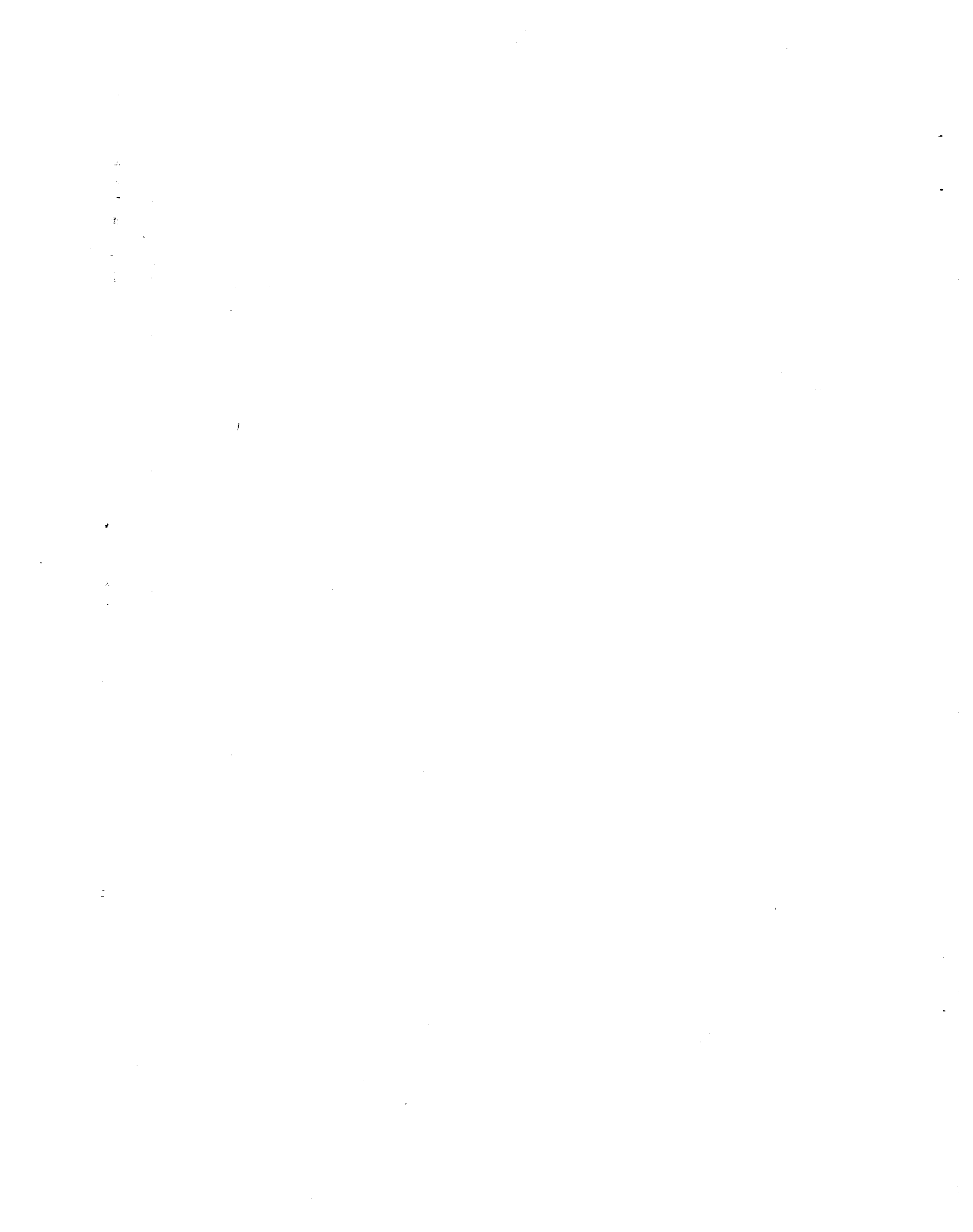
Ratified by the U.S. Congress as the *Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992*, the Compact awards the Tribe \$21.5 million to be placed in a trust fund in the U.S. Treasury and is conditioned upon the completion of repair and enlargement of the Tongue River Dam located about twenty miles upstream from the Reservation. To this end, the settlement provides that the Northern Cheyenne loan to the State of Montana the sum of \$11.5 million at no interest to finance the costs of repair. In turn, the remaining \$10 million sum in the trust fund can be used by the Tribe for three things: (1) land and natural resource development and planning, (2) land acquisition within the Reservation, and (3) any other purpose determined by the Tribe. The per-capita distribution of income, reflective of the tribe's communal values, is prohibited.

The State's obligations, on the other hand, include the provision of fish and wildlife enhancement measures along the Tongue River and the preferential hiring of Northern Cheyenne workers for the dam renovation project. As of yet, the renovations on the Tongue River Dam have not begun, pending completion of environmental impact assessments.

APPENDIX B

GOALS AND MISSION
OF THE NORTHERN CHEYENNE
OVERALL ECONOMIC DEVELOPMENT PROGRAM*

*Update: *Overall Economic Development Plan of the Northern Cheyenne Reservation Area* (Lame Deer, MT: Northern Cheyenne Tribe, March 1995).



MISSION AND GOALS

The general mission of the Northern Cheyenne Overall Economic Development program is to bring about the evaluation of a productive, diversified, relatively self-sustaining economy on the Northern Cheyenne Reservation. Based on needs and potentials, the following goals have been selected as a means to guide reservation development in the right direction.

A. Diversification and development of reservation resources by Northern Cheyenne people so that the Reservation's need for food, shelter and fuel for heat can be met from Reservation resources.

B. Provision of a sufficient number and quality of permanent work places (jobs) that those Northern Cheyenne who wish to work for wages can do so with dignity and some sense of accomplishment.

C. Development of sufficient retail, service, recreation and financial business (or other structures) by Northern Cheyenne people that (1) adequate goods and services are available on the Reservation and that (2) as much cash as possible is recirculated on the Reservation, by being spent here one or more times, instead of leaving the Reservation by being spent in Hardin or Billings.

D. Evolution of education, organization and discipline among all Northern Cheyenne people, so that all other goals become possible.

E. Continuation of Tribal lands acquisition program, in order to (1) ensure permanent tribal control of the Reservation land base, and (2) make maximum revenue contribution to Tribal income.

F. Achievement of a level of Tribal income that is at the same time (1) high enough that loss Tribal service and program needs and (2) diversified enough to meet Tribal service and program needs, (3) diversified enough that loss of any one source will not jeopardize the Tribal budget, and (4) growing at a rate that will at least keep pace with inflation and Northern Cheyenne population growth.

(Tribal income can come from the following sources:

- Grants and donations
- Fees for service provided under contract to the BIA and others
- Grazing fees
- Other lease payments for land or for buildings and other physical facilities
- Royalty and other negotiated payments on minerals
- Stumpage payments on lumber
- Dividends on equity position, in case of Tribal ownership
- Tax revenues)

G. Conversion and, when possible, improvement of the Tribe's productive assets, particularly air, water, range land, timber and minerals, so that future generations may enjoy undiminished opportunities for self-sufficiency and a rewarding way of life.

H. Improvement of the physical infrastructure -- town streets, water and sewer systems, rural roads, multipurpose buildings, and many other kinds of "economic underpinnings" -- on the Reservation, so that the Tribe is able to keep pace with the real needs of its members.

I. Continued growth improvement in the operation Tribal organization, tribal programs, and Tribal systems, such as civil, criminal, corporation, tax, juvenile, traffic, land use (etc.) codes so that the Tribe is able to keep pace with the real needs of its members.

J. Provision of a wide variety of innovative medical, social and rehabilitative services, with particular attention paid to the young and elderly, to preventive rather than reactive care, and to providing services on the Reservation rather than at Crow Agency.

K. Accomplishment of the above goals in ways which reflect the credit on the Northern Cheyenne people, both as a Tribe and as individuals, so that the people can continue to grow stronger in spirit, as well as in economics of daily life.

APPENDIX C

PUBLIC LAW 93-638

PUBLIC LAW 93-638:
THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT OF 1975

Self-determination policy basically embodies the idea that self-determination means economic development through self-governance. To this end, it involves two processes:

- establishing and developing tribal governments and organizations
- turning budgetary, administrative, and operational control of Indian programs over to these Indian agencies.

To this end, Title 1 of PL 93-638 gives tribes the right to manage the programs and services formerly provided by the BIA and Indian Health Service. It also provides for grants to the tribes to increase tribal capabilities for such contracting.

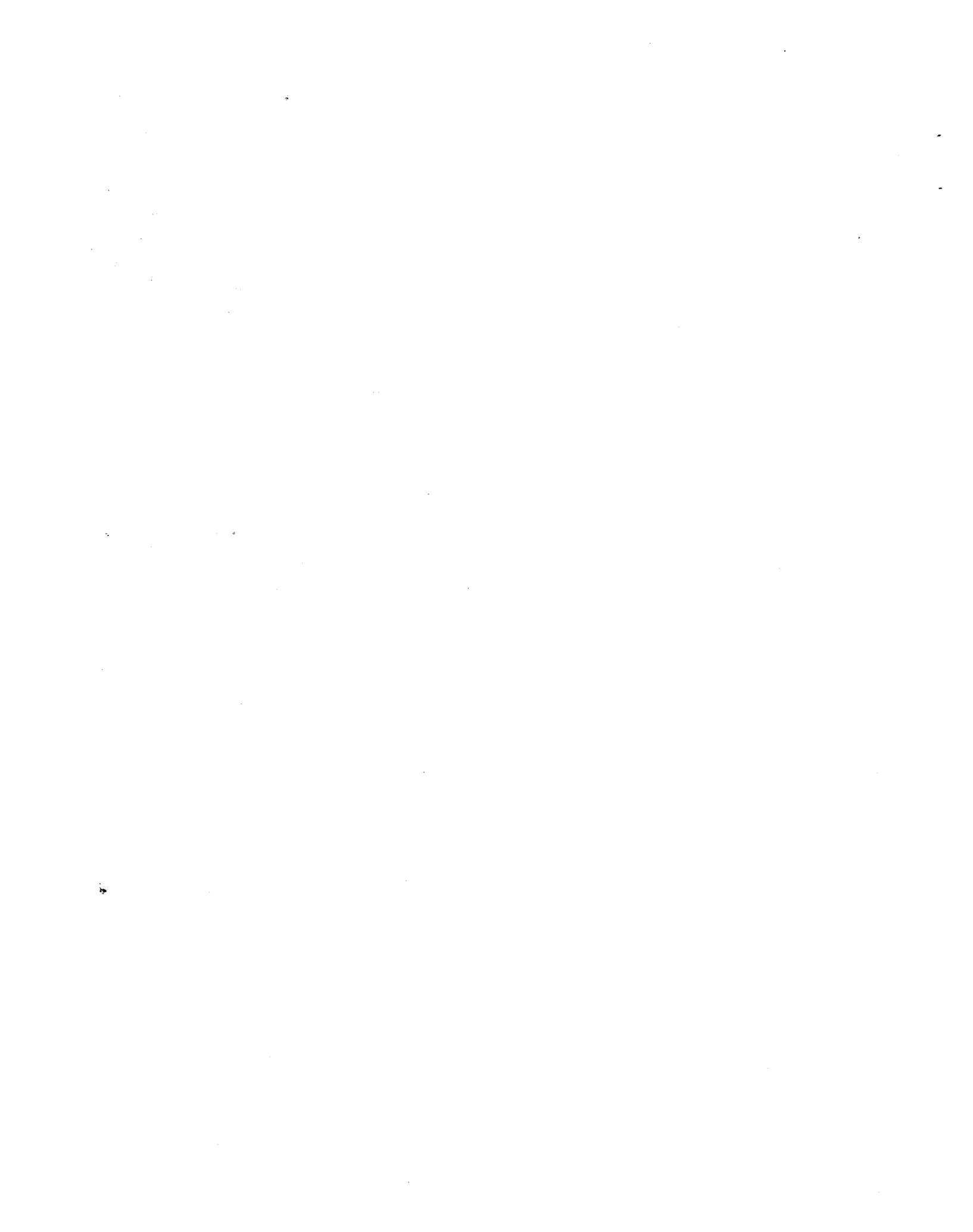
The Secretaries of Interior and Health and Human Services may refuse these requests by tribes to enter contracts if they find that (1) service to Indian beneficiaries will not be satisfactory, (2) adequate protection of trust resources is not assured, or (3) the proposed project or function cannot be maintained or completed by the proposed contract. Whenever a secretary declines to enter into a contract, he/she shall (1) state the objections in writing to the tribe within sixty days, (2) help the tribe overcome the objections, and (3) give the tribe the opportunity to appeal through a hearing on the objections raised.

Title 2 provides contracting authority to ensure that funds for the education of Indian children are used for Indian education by the states. Such funds can only be used by the state only after review and approval of a school board of which the majority of the members are Indian or by local committee made up of Indian parents. This title also authorizes funds for state school construction for Indians, including land and buildings.

Contracting affords tribes more autonomy. They are able to decide for themselves when and how they will administer federal programs on reservations. However, more often than not tribes are ill-equipped (dearth of technical and management capabilities) to take advantage of this opportunity. As well, the prospect of greater autonomy has bred apprehension that economic and political self-sufficiency may lead to termination.

APPENDIX D

KEYS TO DEVELOPMENT



Inventory of the Northern Cheyenne Tribe's
Ingredients for Successful Economic Development

	Assessment	Does the Tribe have control over this resource?	If so, what can the Tribe do about this resource?	Is this resource essential to Tribe's goals?
External Opportunities				
•Political Sovereignty	•Strong/weak	•Somewhat (none over federal policy)	•PL-93-638 contracts	•Yes
•Market Opportunities	•Favorable tax status	•Somewhat (could develop coal)	•Chamber of Commerce, coal	•Yes
•Financial Capital	•Inaccessible	•Somewhat	•Loan fund	•Yes
•Distance from Markets	•Very isolated	•No	•Nothing (except of improving accessibility)	•Somewhat
Internal Assets				
•Human Capital	•Weak	•Somewhat	•Invest in education and training	•Yes
•Institutions of Governance	•Weak, unpopular	•Yes	•Constitutional revision; separation of powers	•Yes
•Culture	•Strong communal values	•N/A	•Match culture with appropriate structures	•Yes
•Natural Resources	•Coal, timber, grazing, water	•Yes	•Develop plan for prudent use	•Yes
Development Strategies				
•Economic System	•Tribal enterprise; little private	•Yes	•Set codes of conduct/ rules	•Yes
•Development Activities	•Pet projects	•Yes	•Select projects carefully	•Yes

How Much Control Do Tribes Have over the Keys to Development?*

	Degree of Control		
	Low	Moderate	High
External Opportunities			
Political Sovereignty		X	
Market Opportunity	X		
Distance from Markets	X		
Access to Capital		X	
Internal Assets			
Natural Resources	X		
Human Capital		X	
Governing Institutions			X
Tribal Culture		X	
Development Strategy			
Economic Policy			X
Development Activity			X

* From J. P. Kalt and Stephen Cornell, "Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations" in *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*. Los Angeles: University of California, Los Angeles, 1992. p.12

APPENDIX E

PROPOSED CHANGES TO THE NORTHERN CHEYENNE TRIBAL CONSTITUTION*

* Excerpted from Northern Cheyenne Constitution Revision Project Staff, *Community Outreach Phase I Summary*, 31 March 1992.

NORTHERN CHEYENNE
CONSTITUTION REVISION PROJECT

CONSTITUTION AND CORPORATE CHARTER
SURVEY RESULTS

LIST OF PROPOSED CONSTITUTIONAL AMENDMENTS

1. REMOVAL OF TRIBAL OFFICIALS:

A. Clarify the process for removal of Tribal Officers which is based upon specific cause, due process and recall system through a tribal referendum.

AGREED 90.6 %

DISAGREED 6.3 %

UNDECIDED 3.1 %

B. Provide for a recall procedure for individual Tribal Council Representatives based on specific cause and due process.

AGREED 87.8 %

DISAGREED 4.8 %

UNDECIDED 7.4 %

2. GENERAL ELECTION SYSTEM:

A. Institute a Primary Election System prior to the General Election so that only two candidates will be running for each vacant Tribal Council seat.

AGREED 95.5 %

DISAGREED 1.5 %

UNDECIDED 3 %

3. SIZE OF THE TRIBAL COUNCIL:

- A. Reduce the Tribal Council 5-7 members and provide that these will be full-time positions.

AGREED 90.3 %

DISAGREED 7.1 %

UNDECIDED 2.6 %

4. TWO YEAR GENERAL ELECTION CYCLE:

- A. Provide for staggered terms for Tribal Council Members to increase continuity and stability of Tribal Government.

AGREED 92.8 %

DISAGREED 4.6 %

UNDECIDED 2.6 %

5. TRIBAL CORPORATE CHARTER:

- A. Revise the Tribal Corporate Charter so it can be utilized to separate the business enterprises from the political functions of the Tribal

AGREED 91.2 %

DISAGREED 3.8 %

UNDECIDED 5.2 %

6. SEPARATION OF POWERS:

- A. Clarify the specific roles, authority and functions of the three branches of Tribal Government. (Tribal Chairman, Tribal Council and Tribal Court.)

AGREED 93.8 %

DISAGREED 2.6 %

UNDECIDED 3.6 %

AMENDMENT #1 - TO CLARIFY THE PROCESS FOR REMOVAL OF TRIBAL OFFICIALS

Current Constitutional Provision

The process for removal of tribal officials governed by the present tribal constitution is as follows:

ARTICLE VII - REMOVAL FROM OFFICE

Section 1. Forfeiture of Office - (a) Any officer or councilman found guilty of a felony in any tribal, county, State or Federal Court shall automatically be removed from office and may stand for election for three (3) years thereafter.

(b) Any Officer or councilman found guilty of a misdemeanor involving moral turpitude in any court shall automatically be removed from office, but such member may stand for nomination and reelection.

Section 2. Removal from Office - Any officer or councilman who shall fail to perform the duties assigned to him or shall be guilty of gross neglect may be removed by two-thirds (2/3) vote of the Tribal Council, after affording the accused member a fair opportunity to be heard in his own defense. The decision of the Tribal Council shall be final.

Section 3. Any complaint against the President, a member, or officer of the Tribal Council must be in writing and sworn to by the complainant.

Discussion of Issues

Over the past several years, removal of tribal officials (particularly Tribal Presidents) by the Tribal Council has been a frequent source of political concern on the reservation as it has created an impression of instability of the Tribal Government.

Part of the problem is that the current constitution is unclear on a number of points such as: the definition of moral turpitude; what constitutes a system of due process; what constitutes failure to perform duties or "gross neglect". This has resulted in different interpretations of these provisions from time to time by the Tribal Council.

Although Council members can be removed by the Council in accordance with the two above mentioned, the current constitution does not provide a mechanism for removal through a "recall", i.e. popular participation of the voters. The recall provision is standard in most democratic governments and is designed to provide a checks and balances system in government.

AMENDMENT #2 - INSTITUTE PRIMARY ELECTION SYSTEM

Current Constitutional Provision

Under the present tribal constitution, the Northern Cheyenne Tribe holds a general election for all seats on the tribal council every two years and for the Tribal President's position every four years as required by the following section:

ARTICLE VI - ELECTIONS

Section 3. (a) The President shall be nominated in the following manner: Each district shall appoint the same number of electors as they have members of the Tribal Council and these electors shall nominate one or more candidates for the office of President.

(b) The members of the Tribal Council shall be nominated by the districts in the following manner: Each district shall nominate its candidates for membership in the Tribal Council in such manner as the Tribal Council shall designate.

(c) The list of qualified candidates for President nominated by the electors and the list of qualified candidates for Tribal Council members nominated by the districts shall be submitted to the Secretary of the Tribal Council who shall post the lists of these qualified candidates in the several districts at least three (3) weeks before the date of the election.

(d) All nominations and elections shall be held in accordance with ordinances adopted by the Tribal Council.

Discussion of the Issues

In addition to the district nomination process provided for under Article VI, the Tribal Council through ordinance has also provided for a petition process, whereby an individual can run for office by securing twenty-five signatures on a petition. Under Tribal election law, the candidate which receives the highest number of votes is elected.

Under the general election system currently utilized on the reservation, there are typically numerous candidates for each Tribal Council seat as well as the Tribal President's position. For example, in the most recent election held for the Tribal President thirteen (13) candidates were nominated. Due to the high number of candidates running for each seat, the votes are fragmented and few candidates are elected by a majority of votes which often follow family lines.

Several Indian Tribes have established primary elections similar to those operated in local, state and federal elections.

Two significant guarantees provided by the Indian Civil Rights Act to persons subject to the jurisdiction of a tribal government are due process and equal protection under the law. Due process relates to legal procedures that follow defined rules and principles established for the protection of individual rights. The basic requirements of due process are "notice" and "opportunity to be heard". When a government makes a decision affecting the life, liberty, or property of an individual, that government must also provide an opportunity for the individual to defend those rights. In reaching a decision, the government must act in a reasonable, justified manner.

Equal protection under the law refers to legal provisions that provide each person within a government's jurisdiction with the same restrictions and protections of individual freedom. Every person need not be treated the same, but every person in a given situation must be treated the same.

The tribal constitution vests powers of self-government in a representative governing body. However, the Northern Cheyenne Tribal Constitution does not include a provision which is usually made for the voters to participate more directly in the governing process. This serves as a check-and-balance arrangement. Procedures for direct participation by the people, or popular participation, usually allow for a recall. A recall is generally initiated via a petition requesting an election to vote on whether a particular official should be unseated from office. Recall need not be associated with a cause, as is removal. Removal is accomplished when the tribal governing body unseats one of its members for cause, after due process.

Provisions should make it possible to achieve a recall when necessary, but not so easily that officials are faced with a recall every few weeks. One possibility is to limit recall attempts of any one official during his/her term of office. Other techniques which make for a responsible recall include: requiring that a substantial percentage of the registered voters sign the petition requesting a recall election; providing that only one official can be the object of each recall election; and establishing objective procedures that promote order in the petitioning process, including how a petition is determined to be valid.

Discussion of Proposed Change

The recommendation amending this section of the Constitution would focus on:

1. clarifying the definition of what constitutes just cause for removal, including "gross neglect" of officials by the Tribal Council;
2. clarifying the system of due process to be utilized to ensure that the process is fair and impartial;

3. instituting a recall system to allow for removal of officers and individual council members through popular participation of tribal members.

Comments Pertaining to Clarifying the System of Removing Tribal Officials

In Favor:

The Council shouldn't be involved in removal. 3

The district should remove a council person by 2/3 vote of eligible voters. 3

There has to be a just cause (for removal) which is carefully spelled out, not just because someone dislikes a person.

We need to define and include gross misconduct.

The definition for cause for removal needs to be clarified, there is too much gray area. Specific cause needs to be defined as to what charges.

If a person is removed from a tribal council seat for any connection, they should be ineligible for any position or job within the Tribe for two years.

This (removal) should be handled in the same manner of job procedures and regulations as far as terminating, hiring, and suspension and be only by vote.

This (removal) should be done with due process and through individual contact and large meetings such as district or general meetings.

A Tribal referendum should be mandatory.

The wording in the constitution should coincide with the existing law and order code under sections that apply to official misconduct and crimes.

The Chairman should not be involved if there is such a hearing (for removal). An attorney not connected should chair.

There has to be a similar removal system such as a tribal referendum for (removing) a tribal council member also.

Elected officials who have a drinking problem should be removed.

Those who miss three meetings should be removed.

This removal should also include Program Directors as Tribal

Under a primary system, there tends to be a greater degree of discussion of issues by candidates and the issues of candidate qualifications are more carefully considered by the electorate. Although technically, the Northern Cheyenne Tribe could implement a primary system through the adoption of an election ordinance, it is unlikely that this would be done due to the number of legal challenges which have been made to tribal election ordinances in the past.

Discussion of Proposed Change

The proposed amendment would change the current constitution by establishing a primary election similar to that operated in local, state and federal elections. That is, the Tribe would hold a primary election some time before a general election. Under a primary system, an unlimited number of candidates could run for office; however, only the two candidates which receive the top number of votes would commence to the general election. In the general election, voters would have the choice between two candidates for each vacant seat and the candidate receiving the highest number of votes would be elected.

The rationale behind implementing a primary system is that it would: 1. result in the election of candidates by a majority of the voters, thereby increasing support for the Tribal Council and decreasing factionalism; 2. encourage a debate of issues; 3. encourage members to consider the qualifications, background, experience and capability of candidates; and 4. diminish the influence of family voting blocks on elections.

Community Comments Pertaining to Primary Election System

In Favor:

It is about time we have this. 2

The Election Board should be specific and be sure of the procedures.

This would be great. As of now, too many people are running for one position. This would eliminate the dead heads early.

If the Council gets too large, the number of people for each seat could be increased.

What would be the basis of population (for each seat)?

This would reduce the influence of family voting on politics.

This (primary) should include the Tribal Chairman.

The primary should be the same for all tribal officials, including

the Chairman, Secretary-Treasurer, Vice-Chairman, Judges and Associate Judges.

Candidates should pay a non-refundable fee to run in the primary election and this money can be used to help support the general election.

Set standards on requirements through referendum vote of both the primary and general election.

Opposed:

Two elections is costly to the Tribe, I like the idea except for the cost of implementing it.

I think there should be 3 or 4 candidates running rather than two or it's not going to be fair.

Questions:

Which district will get two or three members?

AMENDMENT #3 - REDUCING THE SIZE OF TRIBAL COUNCIL

Current Constitutional Provision

The present Tribal Constitution requires that one council member be elected for each 200 members of the Tribe:

ARTICLE III- GOVERNING BODY

Section 2. The Tribal Council shall consist of members elected from each of the following districts: Ashland, Birney, Busby, Muddy and Lane Deer in the proposition of one member each tow-hundred (200) population and an additional member for each major fraction thereof. The present Tribal Council shall designate the boundaries of each district named herein prior to the election of the first Tribal Council and the Tribal Council thereafter shall have power to change the boundaries of the districts.

Discussion of Issues

Given the tribal population of 6,300 members, if this section were to be interpreted literally, the Northern Cheyenne Tribal Council would consist of approximately 38 members. The Tribal Council has interpreted this section differently from time to time. That is, they have determined that the 200 referred to resident members or adult members etc. This is the reason that the number of tribal council members has fluctuated from time to time.

The proposed amendment would reduce the size of the Council to a smaller number by increasing the number of tribal members required for each Tribal Council seat. The suggested number of 5-7 was based on looking at other Tribes which have full-time Councils. The Blackfeet Tribe, for example, which has a tribal population of 12,000 operates with seven full-time Council members. In contrast, the present Northern Cheyenne Tribal Council has a membership of approximately 6,300 and 18 Council members. Indeed, the Northern Cheyenne Tribe has the largest Tribal Council of any Tribe in the Great Plains area even though our population base is much smaller than many of the other tribes.

Traditionally, the Cheyenne Tribal Council provides full-time employment for a number of it's members including: Tribal President, Vice-President, an Executive Committee (the number has ranged from 7 to 2 members, depending upon the individual Council); and several of the Council members work for the Tribe in other job positions. The remainder of the Tribal Council, however, serve on a part-time basis and are paid a stipend to attend monthly and special meetings of the Council. A frequent complaint is that Council members do not have adequate time to familiarize themselves with issues presented for Council action and not accessible to their constituents.

Discussion of Proposed Change

There are a number of factors to be considered with the proposed "shrinking" of the Tribal Council. One of the challenges is to determine what the ideal number of Tribal Council members would include factors such as: the current population and future growth; the boundaries of each district, based on population and the equal representation, and what is needed to have an active and effective working legislative body.

One of the issues which surfaced during discussion of this proposal is the "one-man-one-vote" philosophy which refers to the ability of voters to vote on a reservation-wide basis for representatives. Another issue which must be considered is the need to have equal representation among the existing five districts. It would not be ideal, for example, to have one representative from the Lame Deer district represent 2,000 people while a Birney representative represents 50 people. On one hand, there seems to be a community consensus that the five districts (Lame Deer, Muddy, Busby, Birney and Ashland) should continue to exist. However, there is a large difference in the population base of these districts with Lame Deer having the majority of the population and Birney the smallest population. If the size of the Council were reduced, it would be necessary to determine how each of the districts could have equal representation in a way that no one district could dominate the proceedings of the legislative body.

One of the thoughts behind this proposal is that a full-time council could have more time to devote to their legislative responsibilities and therefore be better equipped to make more informed decisions for the Tribe and to work more effectively on tribal projects, particularly those involving economic development. Full-time positions for tribal council members also has the potential of making tribal council representatives more accessible to their constituents.

Community Comments related to reducing the size of the Council

In Favor:

I would like to see at least one full-time person from each district. 7

Have eleven members: Ashland -2; Birney -1; Busby -2; Muddy -1, and Lame Deer - 5.

I am in favor of reducing the number, but not full-time. 3

Have two council members from each district. 3

Districts need to be equally represented not by districts are grossly unequal in population. 3

I think the size of the tribal council (5-7) members is a good proposed amendment. They will reach out to more people and get things done. 2

We should have staggered terms and no sisters or brothers serving at the same time or no two members from one family.

Have five at a minimum and ten at a maximum.

The Vice-Chairman should be separate.

This would improve decision making, not time consuming or political influence on voting.

The larger tribal councils never have a quorum to hold a meeting.

As it is now, there's too many Council members (all want to be chiefs) and all want to be on full-time or administrative or executive committees.

Have three (3) from district based on one man one vote.

We should also elect the Tribal Secretary and Treasurer.

Each district should be able to vote for their own representative rather than a reservation-wide vote. A small group of councilmen will get the job done rather than a large group.

Have one council person from each district and the Chairman and vice-chairman to run at large on the same ticket. This would result in seven members of the Council.

We should have 12 council members who get paid just for meetings.

Now we can't get them to all agree.

I recommend that we have one representative for each 500 members, including all eligible voters.

Re-apportion the districts so that each is equal in population and adult members.

This has worked well on other reservations.

Full-time council positions would be more stable and accountable.

Opposed:

If there are more council members, such as it is now, it provides a better opportunity for more opinions rather than just 5 - 7 persons deciding all issues.

Maybe ten members would work, but 5 - 7 is too small. 5

I disagree with this set amount or number of tribal council at 5-7. I believe that since the population of our tribe has gotten bigger and hopefully it will continue to grow that one council person representing a set number for example one for each 500-600 people.

Keep the districts and members now used. They (smaller council) would not represent the people if it were changed, changes would be made on personal feelings.

Questions:

What positions and at what salary?

How would we pay for these positions (fulltime)?

Would the proposed number of seven include the Chairman, Vice-Chairman, Secretary and Treasurer?

AMENDMENT #4 - IMPLEMENTING STAGGERED COUNCIL TERMS

Current constitutional provision

Under the present tribal constitution, an election is held for all tribal council seats every two years.

ARTICLE III - GOVERNING BODY

Section 4. All elections for members of the Tribal Council and for the President shall be held on the first Tuesday in the month of September of even numbered years. The President shall serve for four (4) years and the members of the Tribal Council shall serve for two (2) years.

Discussion of Issues

Under the present system, there is traditionally a large turnover in the Tribal Council after each election. Many observers of tribal government believe that this turnover interferes with continuity and effective long range planning efforts of the tribal government.

Professor Joseph Kalt, Kennedy School of Government, Harvard University, for example, (he conducted in-depth studies on several tribes, including Northern Cheyenne) cited this as one of the major reasons that tribal governments are unsuccessful in economic development. With significant turnovers in tribal councils every two years, there tends to be a change in policy, direction and priorities with each new tribal council. Many economic development projects require long range planning and continuity to be successful which can be hampered by two year terms.

Another factor with two year elections is that it requires some period of time for newly elected tribal officials to become familiar with the operation of tribal government, federal laws and other factors necessary to be an effective representative. Often, under the current system, just when an individual has familiarized themselves with these issues, they are removed from office.

Discussion of Proposed Change

The proposed change would implement a system of staggered terms so that only half or a portion of the Tribal Council seats are vacated during each election. Many Tribes have proven the value of providing carry-over of experience on the governing body. Rather than face the possibility of an entirely new set of elected officials following each election, their constitutions call for only part of the terms expiring at each election. There are advantages to having terms long enough in length to provide time for officials to accomplish tribal objectives and it may be necessary to look at three or four year terms if this provision is

implemented. However, where longer terms are used, it is important to have effective means of achieving recall from office.

Community Comments related to staggered terms

In Favor:

I would like to see a four-year staggered term. 7

This would give more stability. 4

This would work good as each election year there would be a carry over and they (council members) would know past two year's actions and business. 2

I agree if more people participate in the election.

This is working elsewhere.

Vote at large for staggered terms and reduce council members.

This is very important.

Have a six month trial basis, if he or she is working good extend their term to two years or whatsoever, or have a probationary period.

Two year terms are too short of time for initiating and accomplishing business.

We should limit serving on the Council to three terms or less.

Have three year terms.

Opposed:

This will only work if people are doing good in office.

I would like to see all of the tribal officer positions (President, secretary, etc.) all be on a two year term.

AMENDMENT #5 - IMPROVING/UPDATING TRIBAL CORPORATE CHARTER

Background on Corporate Charter

Under the provisions of the Indian Reorganization Act (IRA) the Northern Cheyenne Tribe also adopted a Corporate Charter through an election held for this purpose in 1936. The purpose of the Corporate Charter is to:

Section 1. In order to further the economic development of the Northern Cheyenne Tribe of the Tongue River Reservation in Montana by conferring upon the said Tribe certain corporate rights, powers, privileges and immunities; to secure for the members of the Tribe an assured economic independence; and to provide for the proper exercise by the Tribe of various functions heretofore performed by the Department of the Interior, the aforesaid Tribe is hereby chartered as a body politic and corporate of the United States of America.

Discussion of Issues

While the Corporate Charter was intended as a mechanism to facilitate economic development, management of trust resources and investment of funds, the Charter has been rarely used and is not well understood by the governing body or the tribal community. In addition, the Corporate Charter is antiquated in several respects. For example, the Charter prohibits the Tribe from making a per capita of more than \$25.00 without the express approval of the Secretary of the Interior.

As an alternative to the corporate charter, the Tribe has utilized the authority of the Tribal Constitution to create separate boards and entities to handle economic development for the Tribe. In recent years the Tribal Council has attempted to separate the business from the governance functions by creating a separate board to manage the Cheyenne Depot, Quick Lube and future tribal businesses. While this is a step in the right direction, these committees and boards could be terminated by future Councils at will calling into question the permanency of this approach.

In the past, tribal efforts at economic development handled by the Tribal Council have been complicated by political needs to create employment opportunities and to generate income for the operation of tribal government. These needs have often competed with the need for long term investment and autonomous management of businesses.

Discussion of Proposed Change

Historically, it has been demonstrated that governing bodies

(whether it be the State Legislature, Congress or Tribal Councils) are not effective in the tasks associated with business development or management. Frequently political considerations such as the need to create employment, the need for income to operate tribal government and other factors have been a negative influence on Tribal Council decisions about the management of business enterprises. Often the members of the Tribal Council are not experienced in corporate or business management and find it difficult to make long term management decisions. A particular problem has related to long term investments due to chronic needs of the Tribal Government for funds to deliver social services and programs.

On the other hand, several Tribes (notably the Confederated Tribes of the Warm Springs Reservation and the Mescalero Apache) have achieved particular success in economic development by separating the business functions of the Tribe from the Tribal Council governance functions through the use of a Corporate Charter and a Corporate Board of Directors. The keys to their success seem to hinge upon several factors: the use of experienced and qualified business people as members of the Corporate Board; the autonomy of the Corporate Board to administer and develop businesses without political interference; and the concept of reinvesting to maintain sound businesses by ensuring that profits are redirected to maintain the viability and growth of tribal business enterprises.

While the Corporate Charter is a separate document, it is closely related to the constitution and must be developed so that it is compatible with the Tribal Constitution and by-laws. Under federal law, the Tribe can revoke the constitution through an election held for this purpose, but the Corporate Charter can only be revoked by an act of Congress. Furthermore, federal regulations require that a separate election be held for the Corporate Charter in that only reservation residents are eligible to vote on the Corporate Charter amendments.

Community comments related to corporate charter
/separation of business from government

In Favor:

The Tribal Council should stay out of tribal businesses (Cheyenne Depot etc.). The Tribal Council operates in conflict now. 3

The charter should protect the enterprises of an Indian. 2

Perhaps our economic development would "soar" and make sure the business people who would serve under the corporate board are qualified people to make up the Board.

I would agree with the members of the Corporate Board consisting of

non-council members and also include non-tribal members, maybe as consultants with no vote, such as the tribe's credit committee. A non-member (such as James Mullins) would be valuable for his expertise regarding business.

Separate business and political functions. Define qualifications for the Corporate Board with restrictions on duties.

I think this is a great idea to develop a corporate charter. We need to keep investing our money and spending it to make it work. I think the current development corporation board has been successful, however, I feel there should be more business and professional people on the board.

Now there are too many politics and not enough time spent in making money for the Tribe. This would help the Tribe.

Open all budget books to the public. Publicize all proposed amendments/resolutions.

Questions:

We need more information on what is to be revised.

**AMENDMENT #6 - INSTITUTING SEPARATION OF POWERS BETWEEN
TRIBAL COUNCIL, EXECUTIVE BRANCH AND COURTS**

Current constitutional provision

Under the present tribal constitution, two branches of government are established: the legislative (Tribal Council) and the executive (Tribal President). The tribal court is not a separate branch of government, rather it exists on the same level as a tribal program and is controlled by the other two branches of the Tribe.

ARTICLE IV - POWERS OF THE TRIBAL COUNCIL

Section (I) To promulgate and enforce ordinance, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Northern Cheyenne Tribe and any other person or persons coming within the jurisdiction of the reservation, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

Discussion of Issues

The issue of tribal council influence over tribal courts is a national issue in Indian country. The predominant perception is that tribal courts are not fair and unbiased because they are subject to the dictates of the tribal councils. Issues of particular concern are: the authority of the tribal council to hear, review and overturn tribal court decisions; the tribal council's authority to appoint and remove judges at will (Although personnel policies and procedures afford some protection to tribal judges, ultimately the power to remove rests for the Council. This can create a precarious position for judges in that they can often subject to political pressures related to certain decisions); the lack of specific qualifications for tribal judges; and the lack of tribal court authority to review tribal council decisions/actions to determine if they are legal in terms of the constitution or tribal law (judicial review) and the authority of the tribal council to determine the funding for tribal courts through manipulation of the priorities for the Tribe/Agency budget (Indian Priority System).

At present, the Northern Cheyenne Tribal Court exists on the level of a tribal program, rather than as a separate branch of government. Tribal judges are appointed and removed by the Tribal President, subject to the confirmation of the Tribal Council, which creates an impression that the Council exercises undue political influence over the tribal court. The tribal council also frequently hears appeals regarding tribal court decisions. As a result of these factors, there is a strong perception within tribal communities and the outside world that tribal courts are not fair

and impartial. In many Tribes there is a perception that tribal courts are not as qualified or competent as non-Indian courts. This has historically been the argument behind numerous successful efforts in the Congress and federal courts to limit the jurisdiction and authority of tribal courts. In summary, due to the lack of separation of powers and autonomy of from the influence of tribal politics, tribal court systems do not have a high degree of credibility.

Although some Tribes have instituted separation of powers for tribal courts through ordinance, very few Tribes have achieved a constitutional separation of powers. The effort of the Northern Cheyenne to accomplish this objective puts the Tribe on the "cutting edge" of Indian law, but this also means that many issues associated with the proposal have to be carefully investigated in order to design a court which will function effectively and be accountable under a constitutional separation of powers.

Discussion of Proposed Change

The Northern Cheyenne Tribe has in the past considered separation of powers by considering different proposals to accomplish this objective, but thus far no measures have been enacted into law by the Tribal Council.

The proposed change would clearly and thoroughly describe the nature of the entity empowered to exercise the tribes' legislative, executive and judicial powers. It should clearly describe the authorities delegated to the governing entities (legislative, executive and judicial). It should create a tribal court that is independent from the legislative and executive functions of tribal government; enumerate the powers of the tribal courts and provide for the election or appointment of judges by a process that frees the court from potential pressures and influences of the tribal government.

Under IRA, most tribes combined the functions of executive, legislative and judicial in a single branch - the tribal council. However, with increased emphasis on civil rights and the growing complexity of issues facing tribal governments, more tribes are recognizing the need to build into their constitutions a system of checks and balances that separates the three responsibilities of government: executive, legislative and judicial. Under this approach each branch would have separate powers as follows:

Tribal Council - establishes tribal policy through enactment of laws, ordinances or codes for the long term interest of the Tribe. Specifically, the Council enacts law, sets policy, approves budgets and confirms certain key appointments of the Executive Branch.

Executive Branch - implements and carries out policy

established by the Tribal Council and provides governmental services.

Tribal Court - Administers justice objectively and reviews actions of the legislative and executive branches to ensure that the constitution and tribal laws are upheld.

Finally, the actual functions of the court (selection and removal of judges, court procedures, judicial review, appellate procedures etc) must be developed. so that the tribal community can have the opportunity to review the proposed model court system. Therefore, an objective of the project is to design a model court system based upon separation of powers which will be presented for community review prior to holding an election on the proposed separation of powers amendment.

Community Comments Related to Proposed Separation of Powers

In favor:

We need court qualified police commission, council and chairman. I would only agree if the Tribal Court personnel and elected officials had high qualifications. Standards should be high enough such as the judges need to have a law degree. Not only do we need a separation of powers, but we need qualifications that must be met by a tribal judge. Our system needs to be more than a mockery of justice. It does need to meet the needs of the people. It's hindering development. 8

Fully agree on separation of powers and defining the specific roles of each branch of government. Get them to understand their separate roles and stay put. 3

Hold elections for the tribal judge. 2

This has to be done - the sooner the better.

Keep the political influence out of justice.

If tribal judges are elected then politics come into play. Either appoint judges for life or a five year term with a just removal clause.

We need a good appellate system on the reservation.

I think this would free the court from the influence of personal feelings.

The Tribal Court should have more power than it currently has.

Opposed:

Return the Tribal Court to the BIA.

Council should have the power. Common sense should rule in Court.

This would lead to a power struggle.

Questions:

We need a meeting on this.

Is the Court going to have a Board of Regents if they are separated from the Tribal Council?

The Tribal Court financial status needs to be more specific. How would the court function if the council still holds ultimate financial authority?

**AMENDMENT #7 - CHANGING ELECTION DATE TO COINCIDE WITH
FEDERAL ELECTION DATE**

Background on Current Constitution

Under the present tribal constitution, the Tribe is mandated to hold an election on the first Tuesday of each September every two years:

ARTICLE III - GOVERNING BODY

Section 4. All elections for members to Trial Council and for the President shall be held on the first Tuesday in the month of September of even numbered years.

Discussion of Issues

While there is historically a large voter turnout for tribal elections, there has also been a traditionally low rate of voter registration and voter turnout by Indians in local, state and federal elections. This is certainly true on the Northern Cheyenne reservation.

Discussion of Proposed Change

The proposed amendment would change the tribal election date to coincide with the federal and state election date (the first Tuesday of each November). This has been advocated by numerous State and Congressional officials (in particular Senator Daniel K. Inouye, Chairman, Senate Select Committee on Indian Affairs) based on the theory that it would increase the participation of Indian voters in State and Congressional elections and thereby increase political influence necessary to gain support for tribal budget and legislative requests.

Comments related to changing the date of the tribal election:

In favor:

This would encourage tribal members to vote for federal elections on the same time frame (as tribal elections).

Most Tribes are doing it (coinciding federal with tribal elections)

Opposed:

This is our government and we want to run our own election.

Have the election strictly tribal.

Have the election in the summer season

AMENDMENT #8 - INSTITUTE ETHICS CODE FOR COUNCIL PEOPLE

Current Constitutional Provision

At present the Tribal Council operates under a Plan of Operations which includes a code of ethics. However, for purposes of this report, the project was not able to obtain a copy of the current ethics code.

Under the present constitution, a convicted felon is eligible to run for office. On the other hand, if a person is convicted of a felony while in office, resignation is mandatory, but the individual is eligible to run for office after a three year period.

The Tribe also have the authority to address the issue of eligibility of convicted felons to stand for office through enactment and promulgation of the election ordinance.

Discussion of Issues

Under the present system of Tribal Government, the Code of Ethics does not contain specific standards or guidelines to govern the conduct of elected officials. Neither is there a mechanism to enforce the Code. Specifically, there are no guidelines or tribal law defining "conflict of interest", i.e., utilizing elected office for personal financial or other immediate personal gain which benefits the individual official or immediate family members.

As a result, there is often a community perception or belief that tribal council members utilize their office for personal financial gain for themselves or members of their family, particularly in the area of jobs or tribal contracts. This tends to erode the credibility of the Tribal government.

Tribal constitution should promote fundamental fairness. The following factors can help achieve such equity and language should be included to which does not permit tribal officials to pursue self interests through their elected position. The constitution could also require that newly elected tribal officials and appointees participate in an orientation designed to promote an understanding of the tribal constitution; tribal policies; status of programs and services; relationship with Federal, state and local governments; code of conduct/ethics; pertinent Federal allows (including Indian Civil Rights Act) and the duties and responsibilities of their positions.

Discussion of Proposed Change

The idea for this proposed amendment is based upon the Code of Ethics utilized by the U.S. Congress: This includes the following

features:

- . Convicted Felons are not eligible to stand for election
- . Elected officials must make a financial disclosure of their personal financial interests
- . When the Tribal Council considers a vote or other actions which would result in financial gain to an elected official or immediate member of his/her family, the elected official is required to recuse him/herself from all consideration of the vote, including lobbying, introducing legislation or voting on the issue. This is not meant to preclude the Council from enacting legislation which would benefit members of the Council or their families, rather it is meant to preclude individual members from influencing Council decisions for their personal benefit.

. The Congress has a built-in mechanism (the ethics committee) to enforce it's ethics code. Violations of the code can result in penalties which range from censure to removal from office.

Comments regarding the Proposed Code of Ethics

In favor:

I don't think a felon should hold office. 17

Tribal council members should not have tribal jobs. This is a conflict of interest.

When my Dad was on the Council, I had to resign from a tribal job because it was conflict of interest.

Develop a strong code of the ethics because the governing body is supposed to be role models.

This should eliminate nepotism.

There should be no favoritism for relatives by councilmen.

Prevent tribal personnel and council men from gaining financial gain from office.

Felons should not be considered unless they are reinstated by the Federal or State as a citizen.

Felons have no rights and their lease money should go to their kids.

People with a dishonorable discharge (from the service) should not be considered for office.

Hauling people to the polls by candidates should be stopped.

Opposed:

Leave as it is. 3

They (felons) have serve time for their crime and should be given a chance". 2

The Code of Ethics that we currently have is all right, but it needs to be enforced. 2

Ethics codes can be abused.

**AMENDMENT #9 - REMOVE SECRETARIAL APPROVAL OF TRIBAL COUNCIL
ACTIONS EXCEPT FOR FEDERAL LAW AND TRUST ASSETS**

Background on Current Constitutional Provision

The current tribal constitution requires that the Secretary of the Interior or his representative (normally the Agency Superintendent) review and approve of all tribal council actions before they are considered legal and binding:

ARTICLE IV - POWERS OF THE TRIBAL COUNCIL

Section 4. Manner of Review - Any resolution or ordinance which pursuant to this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation within ten (10) day of enactment by the Tribal Council, and the Superintendent shall, within ten (10) days after receipt, approve or disapprove same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of enactment rescind the same ordinance or resolution for any cause by notifying the Tribal Council of such decision.

If the Superintendent shall refuse to approve any ordinance or resolution submitted to him within ten (10) days after its receipt, he shall advise the Tribal Council of his reasons therefore. If these reasons appear to the Tribal Council insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may within ninety (90) days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

Discussion of Issues

When the Northern Cheyenne Tribe adopted it's constitution under the IRA in 1936, such provisions requiring Secretarial review and approval of all tribal council actions were standard incorporations into tribal constitutions. However, under current law and the Self Determination law, many of the actions of the Tribal Council do not require Secretarial review and approval. The exception is those actions which are required by federal law or those which involve trust resources and assets.

At present, this section of the tribal constitution often results in a "paper shuffle" between the BIA and Tribe as every resolution or ordinance, (no matter how mundane) must be sent to the BIA for review prior to being instituted.

Discussion of Proposed Change

Under the federal policy and philosophy of Self Determination, the BIA has recommended that the opportunity exists for tribal constitutions to promote effective self-determination to the maximum extent permitted by Federal law and policy. Tribes can avoid some self-imposed restrictions on self determination in drafting constitutions. For example, constitutional provisions should not require Secretarial action on any matter unless that action is required by Federal law or policy. This permits tribes to exercise the greatest possible degree of self-determination.

The proposed amendment would delete the requirement for Secretarial approval for all tribal council actions except for those required by federal law or relating to trust resources and assets.

Comments relating to Removing Secretarial Approval

In favor:

It's (removing secretarial approval) is the beginning of our statement of sovereignty. Currently we don't recognize our sovereign rights in that we can decide for ourselves what to do.

Opposed:

Anything to do with tribal law should go to him (Secretary). 2

Secretarial Approval is a safety network because sometimes the tribal council reacts on emotions. The secretarial approval helps in seeing the objective rather than an overseer.

This can only happen when we are financially stable. Currently it works with tribal monies but would not work with BIA funds.

What would happen to the trust responsibility that the BIA has if secretarial approval is removed?

I feel that having to go to the BIA is just another way of keeping the Tribal Council from doing something that may violate our rights as individual members.

Questions:

I need to give this more thought based on more information. 3

APPENDIX F

FINANCIAL STATEMENTS



- WOHEHV -
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043



- WOHEHV -
The Morning Star

July 13, 1992

Ken Davis, Superintendent
Northern Cheyenne Agency
Lame Deer, MT 59043

Dear Ken:

I am requesting the monthly cash draws from Fiscal Year '92 trust funds in accordance with the following schedule.

October	November	December	Quarter Totals
\$35,000.00	\$35,000.00	\$35,000.00	\$105,000.00
January	February	March	
\$13,400.00	\$13,400.00	\$13,400.00	\$ 40,200.00
April	May	June	
\$13,400.00	\$13,400.00	\$13,400.00	\$ 40,200.00
July	August	September	
\$13,400.00	\$73,842.23	\$29,413.00	\$116,655.23
		TOTAL DRAWS	\$302,055.23

Sincerely,

Edwin Dahle

Edwin Dahle, President
Northern Cheyenne Tribe

ED/bf

SCH92A

NORTHERN CHEYENNE TRIBE, INC.
LAME DEER, MT 59043

SCHEDULE A 10/01/91 - 9/30/92
FISCAL YEAR 92

SCHEDULE A 92	FY 91 ACTUAL	FY 92 ESTIMATES
TRUST FUND REVENUES		
Carry Over-Previous Fiscal Year	\$283,124.09	\$120,819.45
Land Acquisition Fund Transfer	(\$125,775.00)	
Balance	\$157,349.00	
Earning on Tribal Funds		
9701 Int - US Treas Funds	\$4,136.00	\$4,000.00
9703 Int - Time Deposits	\$10,557.00	\$10,000.00
Leases, Permits, Rental & Licenses		
9713 Grazing	\$181,039.00	\$184,000.00
9715 Land - Farm/Pasture Lease	\$4,045.00	\$5,000.00
9773 Roads	\$5,100.00	\$0.00
Sales		
9755 Timber and Stumpage	\$190,680.00	\$108,575.77
9720 Other	\$6.30	\$0.00
9763 Admin Fees/Forestry		\$76,424.23
Total Trust Fund Revenues	\$552,912.00	\$508,819.00
INDIRECT COSTS REVENUES		
IDC - Federal Programs	\$865,962.00	\$834,374.00
IDC - State Programs		
	\$865,962.00	\$834,374.00
TRIBAL RECEIPTS		
Western Energy Settlement	\$0.00	\$100,000.00
Other	\$1,564.00	\$500.00
Cheyenne Western Bank/Dividends	\$5,761.00	\$5,000.00
Bingo Income	\$51,835.00	\$40,000.00
1/2 Pot Bingo	\$698.00	\$600.00
4th July Bingo Income	\$563.00	\$1,500.00
Rebate Range Telephone	\$23,237.00	\$18,000.00
Job Service	\$4,133.00	\$0.00
BIA Clk Salary Reim.	\$9,406.00	\$14,938.00
Powder River Project	\$35,000.00	\$0.00
Treco Rebate	\$690.00	\$500.00
Tongue River	\$2,669.00	\$0.00
Admin Chargers (grants)	\$64,865.00	\$35,000.00
Total Rev. from Tribal Receipts	\$200,421.00	\$216,038.00

INCOME SUMMARY TOTALS

Trust Fund Receipts	\$552,912.00	\$508,819.00
Indirect Cost Receipts	\$865,962.00	\$834,374.00
Tribal Receipts	\$200,421.00	\$216,038.00
Cash in Bank Carry-over	\$3,980.00	\$183,433.00

TOTAL TRIBAL INCOME	\$1,623,275.00	\$1,742,664.00
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EXPENDITURES (by resolution)	\$1,284,023.00	\$1,359,476.00
CROWDER RIVER EXPENDITURES	\$35,000.00	\$0.00
WESTERN ENERGY EXPENITURES		\$100,000.00
1990-92 FORESTRY ADM EXPEND		\$76,424.23
TOTAL EXPENDITURES	\$1,319,023.00	\$1,535,900.23

TRUST FUND DRAWDOWNS	\$432,093.00	\$302,055.23
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Trust Fund Carried Forward	\$120,819.00	\$206,763.77
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TOTAL FUNDS CARRIED FORWARD	\$304,252.00	\$206,763.77
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APPENDIX G

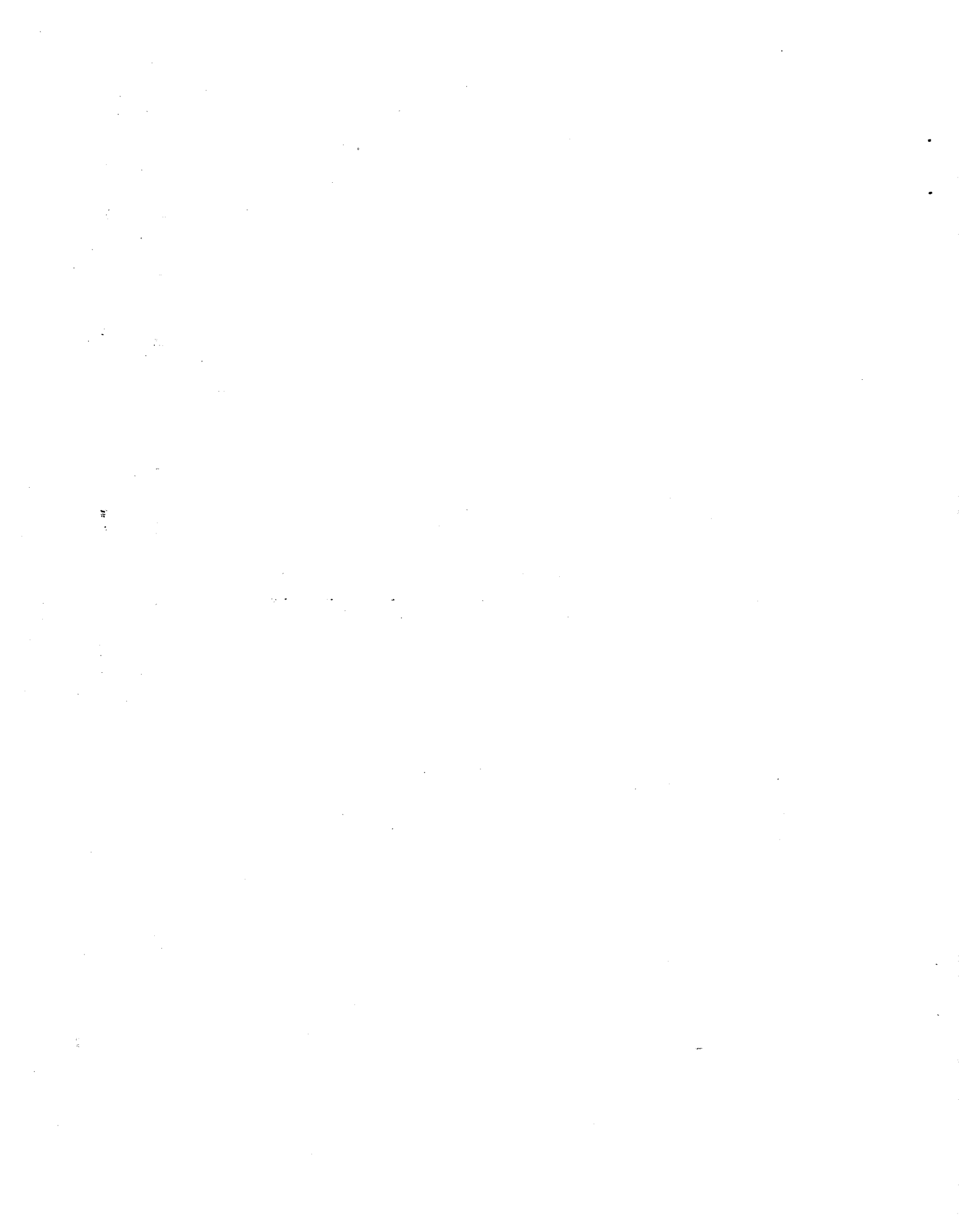
FACTORS INFLUENCING THE SUCCESS OF BUSINESS POTENTIAL IN INDIAN RESERVATIONS

TABLE:
Factors Influencing Business Development Potential in Indian Reservations

Factors	Reservation Conditions:		
	Good	Fair	Poor
1. Labor Force Availability	59.5	27.4	13.1
2. Facility Requirements	49.4	35.1	15.6
3. Transportation Requirements	39.7	38.5	21.8
4. Raw Material/ Supplies	34.8	39.1	26.1
5. Site Location and Development Requirements	64.9	17.6	17.6
6. Geographic Location	60.2	25.3	14.5
7. Financial and other Assistance	44.2	14.0	41.9
8. Employee Housing Availability	33.8	21.8	22.4
9. Tax Advantages	55.0	15.0	30.0
10. Proximity to Markets	38.5	35.4	26.2
11. Population (Market Potential)	43.9	21.2	34.8
12. Social/ Communal Amenities	38.8	32.8	22.4
13. Climate	51.3	36.8	11.8

Source: Ann Ludwig and James Schowalter, *Financing American Indian Economic Development: An Analysis and Organizational Structure for S.721-- The Indian Development Finance Corporation Act*. A Report to the Senate Select Committee on Indian Affairs. John F. Kennedy School of Government: Harvard Project on American Indian Economic Development. April 1988.

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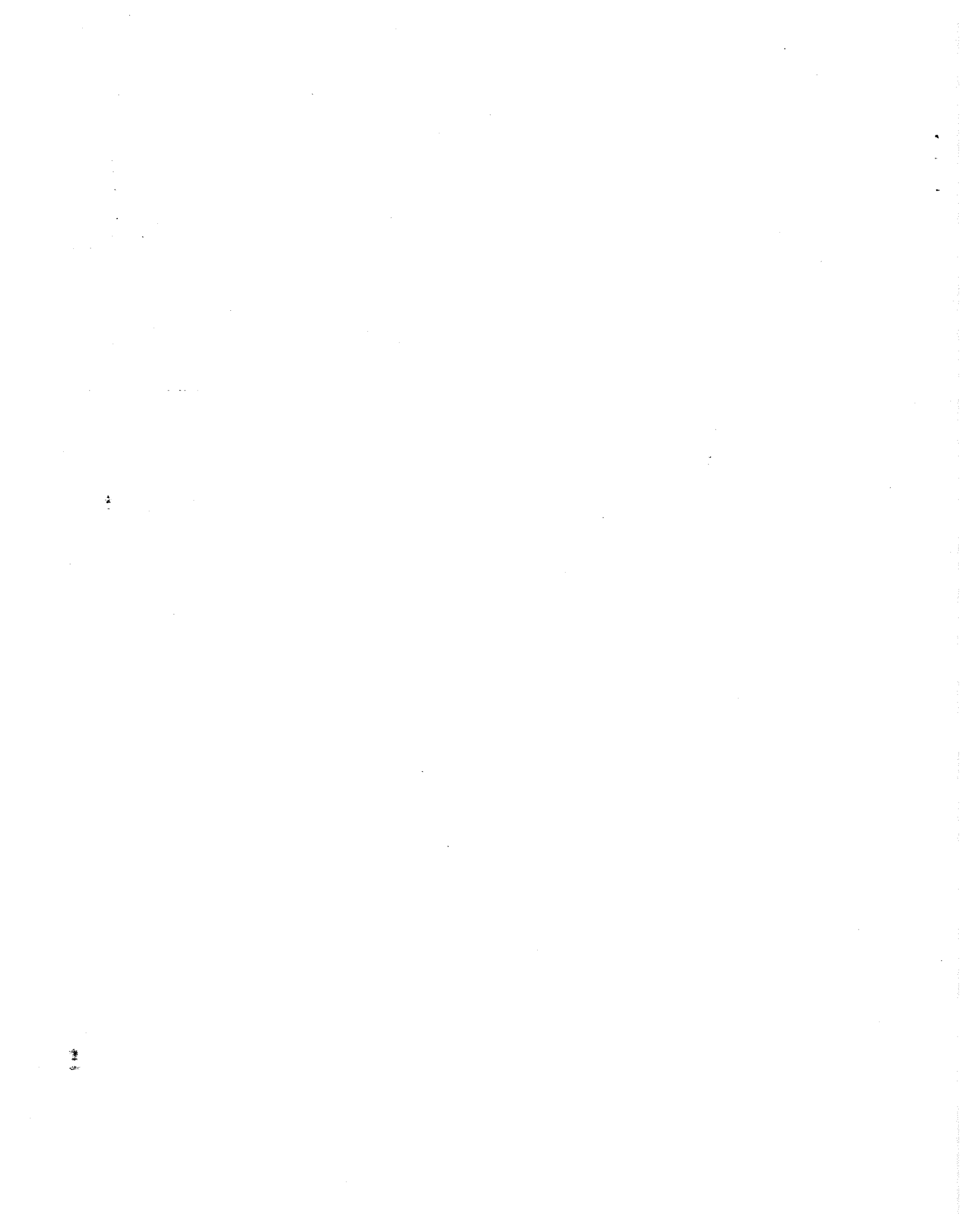
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