

HEALTH POLICY BRIEF

BARRIERS TO COLLABORATION BETWEEN TRIBAL AND COUNTY GOVERNMENTS: PLANNING FOR MAJOR DISASTERS AND OTHER EMERGENCIES



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Health Policy Brief

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Barriers to Collaboration Between Tribal and County Governments: Planning for Major Disasters and Other Emergencies

This policy brief is intended for policymakers, Tribal advisors and elected officials, multi-level offices of emergency services or homeland security, state departments of public health, and for the various emergency management and government associations, administrators, and related Native American agencies and their forums. The impetus for writing the brief is the undeniable reality that natural disasters do not recognize political boundaries; hence, in order to be prepared to recover from a disaster, it is extremely important to coordinate emergency response efforts and to work well across jurisdictions. This, coupled with the realization that Tribal clinic directors and health agencies are extremely busy administering health services and may not have an abundance of time to become well versed in disaster planning or emergency operations, added urgency to the topic. The function of emergency management most of the time falls on Tribal elected officials or on a designated emergency planner if such a position is filled by the Tribe. In contrast all counties fill that position. The Bureau of Indian Affairs (BIA) under the United States (US) Secretary of the Interior, has a responsibility to exercise that function or fund such activities. Unfortunately, the BIA and the Indian Health Service are underfunded at 52% of the current level of need.¹ Against this backdrop, the Federal Emergency Management Agency (FEMA) is concerned that all emergency responders be sufficiently prepared and that American Indians/Alaska Natives (AIAN) and health agencies be well integrated into response networks.

Government services for Tribes and AIAN are based on a historical legal responsibility identified in treaties with the US government and in other binding documents. The trust responsibility is a legal and moral obligation to Tribes that has been at the heart of many significant Indian law cases, making it a central principle of Indian law.² This “trust” responsibility includes the obligation to provide education, health, law enforcement and many other services to Tribal communities, and in exchange Tribes relinquished most of their homeland to the US. Owing to this transfer of land ownership, US history attests that the federal government, states, and local jurisdictions prospered as a result.

Congress unilaterally granted six states (California, Minnesota, Nebraska, Oregon, Wisconsin, and later Alaska upon statehood) jurisdiction over criminal offenses and civil cases that arise on Indian lands. Enacted last century in 1953, Public Law 83-280 commonly referred to as Public Law 280 or P.L. 280, affects a transfer of legal authority (jurisdiction) from the federal government to state governments, which significantly changed the relationship among Tribal, state, and federal governments. It gives states only law enforcement and civil judicial authority, not regulatory matters, such as

¹ DHHS, Fiscal Year 2017 (Indian Health Service), Justification of Estimates for Appropriations Committees; online at <https://www.ihs.gov/budgetformulation>, see FY2017 Congressional Justification. Phone interview with the Indian Health Service California Area Office, on Nov. 16, 2016.

² See Department of the Interior, Indian Affairs, frequently asked questions at <https://www.bia.gov/FAQs>.

environmental control and land use, particularly over property held in trust by the US and federally guaranteed hunting, trapping, and fishing rights. The law permits the remaining states to assume jurisdiction with Tribal consent, and Idaho, Nevada, and Washington opted to take this approach. There are some judicial decisions that reject the application of municipal and county laws to Indian reservations, including that Public Law 280 is not intended to deny Tribes their basic governmental functions. This is very important for local government and municipalities to recognize when planning for major disasters near Indian lands, and to learn how the law applies in their state.

National Response Framework

The FEMA National Response Framework³ (NRF or the Framework) developed by the US Department of Homeland Security (DHS), is a doctrine guide to how the United States responds to serious incidents from every type of hazard or threat. The NRF guides governments at all levels, including Tribal and territorial jurisdictions, and identifies responsibilities to develop detailed all-hazards/all-threats Emergency Operations Plans. Another crucial function the NRF lays out is that it defines leadership roles to articulate what decisions need to be made, who will make them, and when.

FEMA was reorganized under DHS after the terrorist attacks of September 11, 2001 and has lead responsibilities to implement the Framework. In determining what resources are tapped in a state of emergency or catastrophic event, FEMA obliges: “Virtually every Federal department and agency possesses resources that a jurisdiction [state, tribal, or local] may need when responding to an incident.”⁴ In addition, those same federal entities must develop procedures “governing how they will effectively locate resources and provide them as part of a coordinated Federal response.” Nonetheless, it is important to note that the entire scheme of disaster response and recovery⁵ is predicated on the fact that the federal government will mobilize resources and conduct activities to *augment state, Tribal and local response efforts*—not *supplant* them. Simply put, it is very clear that the federal government does not function as the first-line provider of emergency assistance. Rather, Tribes, states, and local governments must spend some of their own funds and reasonably conclude that local resources will soon be overwhelmed if federal assistance is not received.

A cornerstone of the NRF is the National Preparedness Goal, mandated in Presidential Policy Directive (PPD) 8, which defines what it means for the whole community to be prepared for all types of disasters and emergencies:

“A secure and resilient Nation with the capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk.”

³ National Response Framework, Homeland Security (January 2008); see also <http://fema.gov/NRF>.

⁴ Comprehensive Preparedness Guide 101: Developing and Maintaining Emergency Operations Plans, Version 2.0 (November 2010), at p. 2-2.

⁵ Since the enactment in 1950 of the Federal Disaster Relief Act (Public Law 81-875). See A Citizen's Guide to Disaster Assistance, Unit Three: Overview of Federal Disaster Assistance, at p. 3-2.

The goal statement is brief,⁶ yet achieving it requires vigilance and consistent attention to 32 core capabilities agreed upon by all the FEMA stakeholders. Some of the core capabilities that are most often mentioned include: fire management and suppression, critical transportation, supply chain integrity, search and rescue mass operations, and emergency medical services with public health support. The greatest risks include events such as natural disasters (e.g., floods, earthquakes, tornadoes, and major fires), disease pandemics, chemical spills and other manmade hazards, including terrorist attacks and cyberattacks. Therefore, the NRF rightly emphasizes the concept of resilient communities. As stated in FEMA's Comprehensive Preparedness Guide (CPG) 101, "Resiliency, broadly defined, is the ability to resist, absorb, recover from, or adapt to an adverse occurrence... [e]ngaging the community in the planning process will improve community resiliency by increasing the understanding of threats and hazards, participating in the planning process, and communicating the expected actions for the community to undertake during an emergency."⁷

FEMA Emergency and Disaster Declarations

The Sandy Recovery Improvement Act of 2013 (Sandy Recovery Act) amended the Stafford Act⁸ to provide federally recognized Tribal governments the option to make their own request for a Presidential emergency or major disaster declaration independently of a state or to seek assistance under a declaration for a state. There are two types of declarations: emergency declarations and major disaster declarations. Both types of declarations authorize the President to provide supplemental federal disaster assistance. All emergency and disaster declarations are made solely at the discretion of the President of the United States.

- **Emergency Declarations.** Emergency declarations supplement Tribal, local, or state government efforts to provide emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe. This means that an emergency or disaster can be declared before it occurs. Emergency assistance is normally triggered at \$1 million and capped at \$5 million per single event.
- **Major Disaster Declarations.** The President can declare a major disaster for any natural event, including any hurricane, storm, high water, tidal wave, tsunami, earthquake, landslide, mudslide, snowstorm, or drought, or, regardless of cause, fire, flood, or explosion, that the President determines has caused damage of such severity that it is beyond the combined capabilities of Tribal, local, and state governments to respond. Disaster assistance is not capped when the President declares a major disaster.

⁶ The National Preparedness Goal may be found online at <http://www.fema.gov/ppd8>.

⁷ Comprehensive Preparedness Guide 101: see id. footnote 4, at p. 2-3.

⁸ The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (Stafford Act).

FEMA uses the Federal Response Plan (FRP) and the most recent National Incident Management System (NIMS) to coordinate the government response to disasters and emergencies. NIMS, in turn, is aligned with the Framework's response protocols referenced above and establishes a uniform incident management basis, through standardized communications and command structures for all levels of government.

State of Affairs in Indian Country

Despite all the progress made after Hurricane Sandy, and since the devastation of Hurricane Katrina in 2005 with the FEMA scandal which followed, there remains widespread uncertainty about the authority held by Tribal governments in disaster declarations. The Sandy Recovery Act was enacted to give Tribes additional and express authority to pursue their own declaration as explained above. Yet many Tribal and state jurisdictions across the United States are unaware of this change in the law. Further complicating matters, the Act is now in effect without corresponding regulatory guidance that fills in the details for Tribes on how to submit a direct declaration. A second public draft of a "Tribal Declaration Pilot Guidance" is pending final approval in the Office of Management and Budget. In the meantime, alternate discretion rests in the FEMA Director to waive statutory requirements for a Tribal declaration. In all likelihood, final approval will await action by the incoming White House administration in 2017.

Limited Tribal Attendance at Trainings

To become a resilient community, Tribal officials need to have ongoing local planning efforts in place, in addition to NIMS compliance, mitigation training, and other types of recovery training for first responders. In theory, given all the training courses offered around the nation and additional resources/tool kits that exist, a Tribal leader or council member could go from zero knowledge of emergency preparedness, to becoming conversant in various topics of emergency management. However, it appears this is not happening often enough—that sustained training programs are not attended by Tribal representatives. Time and again in conversations and roundtable discussions in communities across Indian Country, Tribal staff are excited to hear about training opportunities that county personnel readily know about or are open to conducting jointly with other jurisdictions. This alone is good reason to foster closer working relationships with neighboring county jurisdictions. The objective for Tribes is to become sufficiently familiar with resources for the purpose of knowing how to obtain additional information and training.

Lack of Engagement by Potential Partners

The updated FEMA CPG 201 (Second Edition)⁹ exhorts that emergency planners "achieve unity of purpose through coordination and integration of plans." However, in many jurisdictions, there is a want for engagement among potential partners that decries lack of communication. One obstacle that gets in the way of such integrated planning is

⁹ Comprehensive Preparedness Guide 201: Threat and Hazard Identification and Risk Assessment Guide, Second Edition (August 2013), Department of Homeland Security.

when all potential government partners are not invited to the planning table or included in the discussions of disaster mitigation. This can be due to planning staff not being aware of potential partners, being used to working with their usual and accustomed parties, and other factors. Regardless of what may be causing the lack of engagement, viable partners likely exist that meet criteria for engagement in the work. This is best achieved when it happens “across all levels of government, nongovernmental organizations, the private sector, and individuals and families,” all in support of the following principle: “[I]n many situations, emergency management and homeland security operations start at the local level and expand to include Federal, state, territorial, tribal, regional, and private sector assets as the affected jurisdiction requires additional resources and capabilities.”¹⁰ If government partners are not willing to invest the time upfront, it can be difficult to build rapport and trust in a relationship between Tribal staff and county or state planners.

Emergency planners and county staff must be deliberate in getting to know key players of the Tribe(s) that are seeking collaboration with the county. This may include making social visits to Tribal emergency leaders. It is paramount to keep in mind that each Tribe is a different sovereign government that acts according to its own history, culture, and community values.

Flawed Government-to-Government Relationship

In some parts of the United States, Tribes and counties have formal cross-jurisdictional sharing (CJS) arrangements to identify how both governments will work together to respond to and recover from emergencies. However, in many regions, there is a flawed relationship between Tribes and counties, parishes and other state subdivisions when it comes to emergency management efforts. Historically, counties have often included Tribal jurisdictions in their population size when requesting federal aid, only to ultimately spend emergency funds during recovery efforts on non-Tribal lands. This is of particular concern in places like California where Tribes are primarily smaller-sized, rural rancherias with limited infrastructure to develop formal arrangements and apply for federal emergency relief independent from counties.

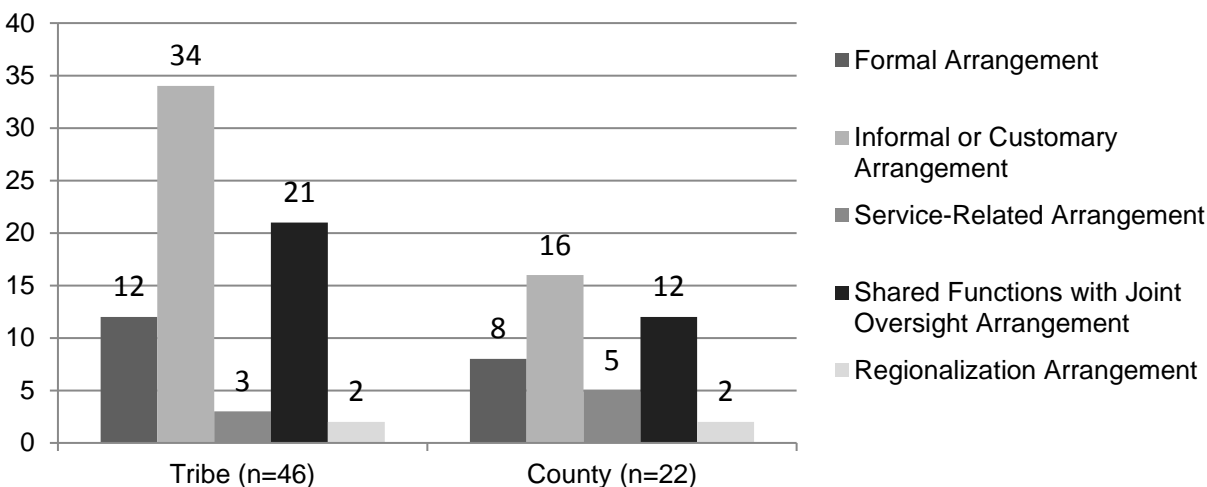
The flawed government-to-government relationship is further complicated when Tribal Nations consider emergency management to be a public health issue and designate the authority to carry out public health functions to Tribal Health Programs (THP) which serve a consortium of Tribes across county borders. For example, in California, Tribes exercise their governmental sovereignty under Public Law 93-638 and the Indian Self-Determination and Educational Assistance Act of 1975 to administer health programs previously managed by the federal government via a particular THP. In these cases, even when there is an intact Tribe-county relationship for emergency management, counties requesting federal assistance may try to share awarded emergency funds with a particular Tribe only to find out that the authority for public health is with the non-governmental THP entity, not the Tribe.

¹⁰ Comprehensive Preparedness Guide 101; see id. footnote 4 above, at Intro-1.

Brief Findings from the Tribe-County CJS Research Project

The California Rural Indian Health Board, Inc. conducted a survey with 83 tribes and 29 corresponding counties in California as part of a larger research project about CJS between Tribes and counties. The study found that A total of 46 of 83 Tribes (55%) and 22 of 29 counties (83%) in California reported having CJS arrangements. Among those with CJS arrangements, 26% of Tribes reported having formal CJS arrangements with counties, while 74% reported having informal arrangements (e.g., “handshake” or verbal arrangements), 46% reported having shared functions with joint oversight arrangements, 7% reported having service-related arrangements (e.g., as-needed contracts or consultations), and 4% reported having regionalization arrangements (e.g., Tribe and county become one department to serve both jurisdictions).¹¹ See Figure 1 and Appendix B.

Figure 1. Prevalence of Tribe-County CJS Arrangements in California



Counties were similar in the types of CJS arrangements reported most frequently, with 36% reporting formal, 73% reporting informal, 55% reporting shared functions with joint oversight, 23% reporting service-related, and 9% reporting regionalization CJS arrangements. However, when comparing whether Tribes and counties agreed about having no or any CJS arrangements, 45% of Tribe-county pairs were in disagreement, including 32% of pairs wherein counties reported CJS, but the Tribe did not. In a follow-up survey conducted with a subset of the original Tribe-county participants, Tribes and counties reported three primary barriers to the CJS relationship: lack of knowledge about Tribal governments, current or ongoing legal issues, and Tribe-county distrust. A total of 92% of Tribes and 54% of counties in the follow-up study reported that they “highly value” having formal CJS arrangements, even though findings from the first survey indicated that most Tribes and counties do not have formal arrangements in place.

¹¹ *Assessment Tool for Public Health Existing CJS Arrangements: Detailed Survey*. Center for Sharing Public Health Services, 2014. Available at <http://phsharing.org/2015/03/20/9332/>.

Why the Lack of Formalized CJS Arrangements?

For varying reasons, there is a lack of formal arrangements between Tribes and counties. Not the least among these reasons is the fact that some Tribes across the country rely on oral tradition and do not prefer that agreements or reports be written down.¹² Other Tribes have strict restrictions against photographs or digitized images, which in some cases serve to archive or identify items and sites of cultural significance. For instance, the Hopi Tribe in Arizona does not allow sharing images without prior written permission; other Tribes only allow access onsite. In relation to CJS, this would restrict a Tribe's ability, for example, to rely on geographic information systems or share information in real-time with a state or county during a period of emergency.

Formalized arrangements can fall along a spectrum, ranging from verbal agreements, to memoranda of understanding, mutual aid or assistance agreements (MAAs), all the way to setting up a joint powers authority that protects parties from direct liability. Indeed, as organizational theory and models widely cited in the public health literature affirm, falling anywhere on the "spectrum" is a positive development.¹³ Informal arrangements can work adequately and often do: For example, in Tribes where oral traditions are valued and Tribal members tend to not write down Tribal plans, informal CJS arrangements can be favored. Similarly, "handshake agreements" are informal CJS arrangements valued among Tribal leaders who make many arrangements in this manner.

Nevertheless, the end policy goal is to facilitate the conditions under which formalized CJS arrangements are more likely. As quoted by the National Indian Health Board: "It is important to further understand and strengthen the nature and quality of relationships among Tribal jurisdictions with state and local jurisdictions."¹⁴

A substantial amount of emergency preparedness literature and disaster management training documents are limited to the integrated planning and coordination between federal and state operations. Therefore, it becomes challenging for Tribal leaders and emergency response managers at the county level to identify points of intervention and coordination, or to engage in pre-disaster mitigation planning activities that will better prepare a Tribe or county for a major disaster.

Despite the CJS research findings that both Tribal and county jurisdictions highly value formal arrangements, the prevailing custom is that typically few CJS arrangements reach written formality. One implication is that notwithstanding the fact that Tribes highly value CJS arrangements, they often are not brought into the partnerships. There are, to be sure, stereotypical reasons for the absence of more formal arrangements, such as when

¹² For the importance of oral tradition, see <http://nativeede.wixsite.com/wingedmessenger/oral-tradition-in-native-america>.

¹³ Hogan, R., Bullard, C.H., Stier, D., Penn, M.S., et al (2008). *Assessing Cross-sectoral and Cross-jurisdictional Coordination of Public Health Emergency Legal Preparedness*, The Journal of Law, Medicine & Ethics, 36(s1), at pp. 36-52.

¹⁴ 2010 Tribal Public Health Profile: Exploring Public Health Capacity in Indian Country (2010). Retrieved Aug. 26, 2014, from http://www.nihb.org/docs/07012010/NIHB_HealthProfile%202010.pdf (pp. 39-40).

tension or conflicts arise, or if the Tribe(s) have historically experienced broken promises by the US government or hold a strained relationship with the surrounding counties. In those cases, it is clear that certain barriers need to be surmounted first. Many Tribes report a fear or distrust about investing time and energy to sign a CJS arrangement or MAA, thinking that the particular county will not fulfill its end of the bargain once it is overwhelmed by a major disaster. The value placed on formal arrangements should be the fulcrum around which Tribes and county governments nudge each other across the spectrum of increasingly formal arrangements.

A key point to keep in mind is that most of the time Tribes are not starting from zero. As the CJS research study found, 46 of 83 Tribal representatives in California agreed they were working with counties in one form or another, with just over 45% reporting shared functions and some degree of joint oversight.

How May Counties Benefit from Partnering with Tribes?

A strong reminder in FEMA planning documents is that both state and Tribal governments have significant resources of their own, including emergency management, police departments, health agencies, transportation assets, incident teams, and specialized teams such as Search and Rescue operations, among others. Anecdotally, in Tribe-county roundtable conversations resulting from the CJS research project in California, county personnel were often surprised to learn about the availability of Tribal training space, large buses, cranes, and other forms of heavy transport—plus other assets owned or operated by neighboring Tribes that are willing to collaborate.

Tribal members in Indian Country are also intimately familiar with the terrain. They hold historical knowledge of river banks and riparian habitat, and the location of cultural artifacts and burial grounds dating back centuries. That information is invaluable and can assist county and emergency service contractors to comply with federal and state laws. Moreover, most Tribes with a significant population tend to assign teams for search and rescue, which have proved immensely helpful in recovery efforts over the years.¹⁵ Tribal emergency managers and first responders are also adept at fire control burning techniques that either work better in their surrounding topography or respect the preservation of ceremonial and sacred spaces.

How May Tribes Benefit from Partnering with Counties?

Tribes shall know that the Stafford Act requires a FEMA-approved Hazard Mitigation Plan as “a condition for receiving certain types of [major disaster] assistance, including funding for mitigation projects.” Since 2008, FEMA-approved Tribal Mitigation Plans must be updated and resubmitted to FEMA every five years to remain eligible. Therefore, it behooves some Tribes to seek federal assistance or partner with adjacent counties to engage their own core capabilities and analytical assessments necessary to complete an approvable Tribal Mitigation or Hazard Mitigation Plan.

¹⁵ The states of Mississippi and Louisiana, in the wake of Hurricane Isaac (2012), relied on United Southern and Eastern Tribes to aid in the response efforts.

Tribes who want to participate in a multi-jurisdictional Hazard Mitigation Plan must meet certain requirements for Tribal mitigation planning (44 C.F.R. § 201.7) and proof of formal adoption of mitigation plans is required. Emergency response managers at the state and county level can greatly assist in that regard.

How Shall We Accommodate Tribal Sovereignty?

The federal and state governments have an interest and a role to play in facilitating mutual accommodation between Tribes and counties, assisting to forge more effective partnerships. FEMA exemplifies that value in its publication “Effective Coordination of Recovery Resources for State, Tribal, Territorial and Local Incidents” (Feb. 6, 2015). If the National Preparedness Goal and the NRF are to have the greatest impact in Indian Country and across all communities where Tribal members reside, the end goal must be to accommodate Tribal sovereignty.

Tribal sovereignty is a legal and moral imperative enshrined in treaties, federal statute, executive orders, and in case law precedent affirmed by the US Supreme Court. Tribal sovereignty guarantees Tribes the right to make their own laws and be ruled by them (*Santa Clara Pueblo vs. Martinez*, 436 US 49 (1978)). Therefore, it is imperative that county emergency managers, and federal and state agencies engage this government-to-government relationship. In accommodating the right of Tribal government officials to pursue their own emergency declaration, Congress took a step in the right direction. It is now incumbent upon local and state officials to share resources accordingly. In brief, one concrete way to accomplish that is to avoid whenever possible, funneling disaster funds through an affected county before it reaches Tribal jurisdictions within the county.

What Are Some Normative Traits of an Effective Partnership?

A model for collaboration is necessary as there is no standard definition of “collaboration;” however, there are observed and predictable stages of collaboration development that are useful. In this aspect, it is helpful to review and learn from the Strategic Alliance Formative Assessment Rubric (SAFAR).¹⁶ The SAFAR model focuses on both intra- and inter-organizational factors grouped in four progressive stages: assemblage, ordering, normalization, and transformation. The final goal implied in this model is that once the partner organizations develop an optimal and efficient division of work, and its operations normalize by becoming almost second nature, then a true opportunity arises for an organizational transformation or radical change. The assessment rubric spans five levels of integration in any partnership: (1) networking, cooperating, partnering; (2) merging and unifying with identifying characteristics at each level in alignment of purpose; (3) strategies and tasks; (4) leadership and decision making; and (5) communication. For Tribes and counties who wish to collaborate together, it is important to be keenly aware of the nature of the partnership being sought and decide on which level of integration is best suited for its purposes.

¹⁶ Accessible online at <http://aje.sagepub.com/content/25/1/65.abstract>.

While the NRF described at the beginning of this paper relies on a national perspective, the DHS notes¹⁷ that the Framework is also intended for government executives, private-sector and non-governmental leaders and all emergency management practitioners. Within this Framework is the more foundational “response doctrine,” which has five key principles: (1) engaged partnership; (2) tiered response; (3) scalable, flexible and adaptable operational capabilities; (4) unity of effort through unified command; (5) and a readiness to act. The first principle being the most relevant for the topic at hand, states that “leaders at all levels must communicate and actively support engaged partnerships by developing shared goals and aligning capabilities so that no one is overwhelmed in times of crisis.” From individuals, households, and communities to local, Tribal, state and federal governments, “an adequate national response depends on the instinct and ability to act decisively.”¹⁸

The government-to-government relationship is the best documented model of the Tribe to non-Tribal government relationship and therefore can beneficially serve as a starting point for all other Tribal to non-Tribal government relationships.¹⁹ There are 567 federally recognized Tribes that exercise sovereign rights and powers over their members and territory.²⁰ The government-to-government relationship between Tribes and the federal government is a unique relationship that does not apply to other populations of people in the US. Public Law 93-638 and the Indian Self-Determination and Educational Assistance Act of 1975 recognizes the government-to-government relationship and authorizes Tribes to administer health programs previously managed by the federal government. This paradigm has historically been an influential model for Tribal and state relationships and may serve as a framework for other Tribal to non-Tribal governmental relationships, including relationships with government subdivisions of the state.²¹

Policy Recommendations

From the current state of affairs and the treatment of various themes in this brief, one may easily surmise that fostering CJS relationships and taking part in joint training exercises are both an important precondition to build rapport, encourage more frequent communication, and improve the work relationship across Tribal and county jurisdictions. If resilient communities are to benefit from progressively closer Tribal-county collaboration, those activities need to be intentional and deliberated along the way. Several policy recommendations can be derived from this approach and are presented below.

¹⁷ National Response Framework, Homeland Security (January 2008); see also <http://fema.gov/NRF>.

¹⁸ *Id.*, at pp. 5-7.

¹⁹ Review the National Congress of American Indians, *Indian Nations in the United States*. Retrieved January 13, 2017, from: http://www.ncai.org/about-tribes/indians_101.pdf (pp. 7, 17-18 et seq.).

²⁰ The US Secretary of the Interior publishes annually a list of the federally recognized Tribes in the Federal Register.

²¹ For an expanded description of the Indian Self-determination Act, see Dictionary of American History at Encyclopedia.com (Copyright 2013); compare Castile, George Pierre. *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960-1975*. Tucson: University of Arizona, 1998.

Devoting Funds to Encourage Relationship-Building

One key recommendation is that the county, state, and federal government justify carving out funds to encourage relationship building. Tribes ought to seek philanthropy and government grants that are suitable for this purpose. Likewise, Policymakers and emergency planners may look for statewide funding opportunities that are devoted to smaller scale training exercises or to discrete pots of money for communications and durable equipment related to emergency planning.

In describing some of the barriers and reasons for lack of engagement among potential partners, this policy brief highlighted supporting facts for the importance of investing time upfront to build trust, rapport, and more regular communication across jurisdictions.

Developing Formal and Informal CJS Arrangements

Policymakers and other stakeholders should pass state laws, if not currently enacted, that recognize Tribal governments as sovereign nations. This would help Tribes access state funding for emergencies and formulate successful government-to-government relationships with counties. In that context, it is appropriate to note here that in states like California and others, the Office of Emergency Services or equivalent agency relies on an operational "Master" MAA for use between neighboring communities and the state, and between all political subdivisions within the state.²² This master agreement, originally approved in 1951, does not include or even mention Tribal governments in the state.²³ It is therefore strongly urged that state officials examine their historical documents and immediately correct such glaring omission of Tribal jurisdictions and other deficiencies.

Final CJS arrangements can be formal or informal, as both can be beneficial in emergency planning. At a minimum, however, Tribes and counties contemplating a CJS arrangement ought to first consider whether a joint FEMA-approved Hazard Mitigation Plan makes sense, since as stated earlier, that is a condition for receiving certain types of non-emergency assistance, including funding for mitigation projects.

Advocating for Technical Assistance and Accessible Documents

Support to Tribes and counties should involve technical assistance and funding for the development of Tribe-specific Emergency Operations Plans and CJS arrangements between Tribes and counties. Policymakers should insist that training modules and tool kits developed by FEMA and DHS include model template documents and keep them current with the most recent doctrine in emergency preparedness. There is also a dearth of readily available information for Tribal officials about mock training opportunities. Many Tribes are lacking examples of Emergency Operations Plans, memoranda of understanding and MAAs. Thus, it should be useful for each state, not simply FEMA, to

²² California has a statewide MAA that mandates joint operational planning. The California Master Mutual Aid Agreement is an opt-in contract that connects planning, incident management, and mutual aid into one overarching system.

²³ Depending on the type of MAA, a state legislature may have to formally approve a state's participation in the agreement and memorialize it in statute. State law or regulation may also establish legal requirements that govern the creation and operation of aid and assistance agreements in the state generally.

procure funding to catalogue and maintain a central repository of information with approved plans and training resources.

At the federal level, in order to access optional Homeland Security Grants (funded by DHS but administered by FEMA) that enhance emergency preparedness or pre-mitigation planning, Tribes and counties must complete a newly required "threat and hazards risk assessment" during the grant period (refer to citation at footnote 9). In the majority of cases, Tribes will need considerable help to meet that requirement successfully and are encouraged to request technical assistance from FEMA. Therefore, it is recommended that decision makers at FEMA and DHS dedicate special resources to organize technical assistance mobile teams for site visits to both small and large Tribes. Additionally, FEMA ought to thoroughly test its emergency planning curriculum and coordinate workshops for all ten FEMA Regions in the country.

Approving Federal Policy Favorable to Tribes

The Tribal Declaration Pilot Guidance mentioned earlier in this policy brief will become, once authorized, the preeminent document for Tribal governments to learn and to successfully manage emergencies and major disaster declarations. In addition, a major revision of NIMS was completed and sits on the same timeline for approval. As written, both documents lift the principle of Tribal sovereignty and translate that fundamental value into policy preferences and operational steps for emergency preparedness. For instance, the Tribal pilot guidance would lower local governments' cost threshold of \$1 million for declaring an emergency (to as low as \$300,000), and would step away from burdensome requirements that impose substantial direct compliance costs on Tribal governments. Therefore, a final policy recommendation is that the incoming federal administration authorize the Tribal pilot guidance and NIMS revision, as approved by the outgoing Secretary of Homeland Security, as soon as practicable.

Summary

As stated throughout this health policy brief, many Tribal jurisdictions have considerable resources at their disposal and county governments often manage resources that remain untapped. Those resources could be shared in times of emergency for mutual benefit, or may instead be leveraged by a Tribe to achieve greater self-sufficiency. Under either scenario, local communities are better off and assured to become more resilient, which is the cornerstone of the National Preparedness Goal.

Several policy changes could help facilitate and strengthen Tribe-county CJS, including allocating funds for relationship building, dedicating federal mobile teams to support training, recognizing Tribes as sovereign nations at the state level, updating and maintaining lists of templates and signed agreements by each state, and approving federal policy revisions that are awaiting final signature.

Appendix A: Helpful Definitions

Indian Country

'Indian Country' is a term with historical meaning and legal import. The term includes: (1) All land within the limits of an Indian reservation under the jurisdiction of the United States government; (2) All dependent Indian communities, such as the New Mexico Pueblos; and (3) All Indian allotments still in trust, whether they are located within reservations or not.²⁴

The term includes land owned by non-Indians, as well as towns incorporated by non-Indians if they are within the boundaries of an Indian reservation. It is generally within these areas that Tribal sovereignty applies and state power is limited.

Difference between Indian Country and an Indian Reservation

A reservation is an area of land "reserved" by or for an Indian band, village, or tribe (tribes) to live on and use. Reservations were created by treaty, by congressional legislation, or by executive order. Since 1934, the Secretary of the Interior has had the responsibility of establishing new reservations or adding land to existing reservations. Indian Country encompasses reservations.

General Rules of Tribal Jurisdictions

Tribes are sovereign and have exclusive inherent jurisdiction over their territory and members, but not necessarily with jurisdiction over non-Indians even within Tribal territory. Tribes are under the exclusive and plenary jurisdiction of the federal congress, which may restrict or abolish jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit Tribal jurisdiction, assume federal jurisdiction over a number of areas, and delegate that jurisdiction to some states. Congress has granted limited jurisdictional authority to the federal courts (under the General Crimes Act 18 U.S.C. § 1153 and the Major Crimes Act 18 U.S.C. § 1152) and to state courts. Congress has imposed limits on Tribal courts through the Indian Civil Rights Act (ICRA 25 U.S.C. §§ 1301-1303). These jurisdiction rules apply in all states unless modified by Public Law 280.

Public Law 83-280

The general jurisdictional scheme above was altered in California by Public Law 83-280 (commonly known as P.L. 280 or Public Law 280) enacted by Congress in 1953. P.L. 280 transferred federal criminal jurisdiction and conferred some civil jurisdiction on states and state courts in the six mandatory Public Law 280 states, which includes California. Public Law 280 is now codified in federal law as 28 U.S.C. § 1360 regarding civil jurisdiction and 18 U.S.C. § 1162 regarding criminal jurisdiction.

²⁴ From the US Department of Agriculture. For legal definition adopted by Congress in 1948, see 18 U.S.C.A. § 1151.

California Indian Tribes and Territories

California currently has 109 federally recognized Tribes, with nearly 100 separate reservations or rancherias. In addition, there are currently 87 groups petitioning for federal recognition. According to the US Census of 2010, roughly 725,000 California citizens identified as AIAN, either alone or in combination with other ethnicities. This represents roughly 14% of the entire AIAN population of the United States. Over half? 50% of the state's Native American population is composed of individuals (and now their descendants) who were relocated to large urban areas as part of the federal government's termination policy and the California Rancheria Termination Act of 1958.

California Master Mutual Aid Agreement

California has a statewide mutual aid agreement that mandates joint operational planning. The California Master Mutual Aid Agreement is an opt-in contract that connects planning, incident management, and mutual aid into one overarching system. ([http://www.oes.ca.gov/oeshomep.nsf/all/CAMasterMutAid/\\$file/CaMasterMutAid.pdf](http://www.oes.ca.gov/oeshomep.nsf/all/CAMasterMutAid/$file/CaMasterMutAid.pdf).)

Appendix B: CJS Research Project Participating Areas

