



## THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

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John F. Kennedy School of Government • Harvard University

### HONORING NATIONS: 2005 HONOREE

#### **Miccosukee Tribe Section 404 Permitting Program Real Estate Services Miccosukee Tribe of Indians of Florida**

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*The reservation lands of the Miccosukee Tribe lie largely within the Everglades National Park. Development on these lands is subject to elaborate regulations by a host of federal agencies. This hindered economic development and other uses of their lands by the Miccosukee people, including the building of traditional dwellings and family gardening. Tribal citizens had to negotiate a time-consuming, regulatory maze almost every time they engaged in land-use activities. With the Section 404 Permitting Program, the Tribe set out to streamline the regulatory process and, more importantly, to win for itself a stronger role in regulatory activity. By contracting on-reservation authority from the U.S. Environmental Protection Agency and the Army Corp of Engineers to issue land permits, enforce environmental codes, and manage permit violations, the Miccosukee Tribe is not only enabling its citizens to improve their own homes and engage in traditional cultural activities, but it is also expanding the reach of the Tribe's own governmental powers by managing and enforcing permitting through national channels.*

Family and communal gathering space have always been a priority for the Miccosukee Tribe of Indians of Florida. Living on their ancestral lands in the Everglades, Miccosukee tribal citizens remained largely removed from external encroachment well into the twentieth century. However, when the U.S. Department of the Interior established the Everglades National Park in 1947, most of the Tribe's ancestral land became subject to federal regulation, oversight, and intervention. The agencies now having jurisdiction over this region include the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the National Park Service. Myriad jurisdictional authorities gave root to a daunting challenge. Extensive environmental regulations surrounding wetland preservation, especially those emanating from the Clean Water Act (the Act), posed particular challenges for tribal citizens. When building new homes or making improvements to existing lots on the Miccosukee reservation, tribal members faced a difficult, expensive and time-consuming permitting process. In the process, land use decisions, specifically those designating housing lots, were made by external organizations, with little regard to the lifestyle and needs of tribal citizens.

Because original housing lots were small, they did not offer much yard space beyond the foundation of the houses. In many cases, tribal citizens wanted larger yards to build chickees traditional dwellings commonly used today for gatherings and cooking to cultivate gardens of traditional foods, and to have a safe place for children to play. To increase the size of their

lots, individual Miccosukee homeowners had to apply for wetland fill and dredge permits from the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act. The permitting process was slow and bureaucratic, requiring public notice on each request. The Act also specified a compensatory mitigation process, which required those requesting a permit to compensate for filling wetlands on their residential lot by expanding wetlands elsewhere. Required mitigation often occurred in a location chosen by the USACE rather than the Tribe, and was not necessarily being used to improve Miccosukee tribal land. In an effort to better meet tribal citizens' land use and preservation needs, the Miccosukee Tribe worked with the USACE to streamline the existing process.

Although many of the wetland issues at Miccosukee are unique to the Everglades, the value of establishing effective tribal land management and permitting processes applies throughout Indian Country. Many Indian nations deal with issues related to the application of federal regulations on tribal lands, as well as other challenges to their jurisdiction over land use. Moreover, other tribes in the region also require federal permits to fill and dredge wetlands in areas regulated under the Clean Water Act. Because this Act places decision-making power in the hands of agencies external to tribal nations, it can effectively limit their sovereignty. By creating a process that places more of the oversight and decision-making authority in tribal hands, Miccosukee is better able to serve its citizens while preserving tribal lands.

The Miccosukee tribal government began by considering factors important to its citizens, including their desired use of the land, lifestyle factors, and environmental concerns. The Miccosukee Real Estate Services Office then initiated a mapping of potential fill sites for residential lots on the reservation. Based on its assessment of tribal land use and preservation priorities, the nation identified usable sites and also determined where on the reservation required mitigation might take place.

With a clear sense of community needs, the Miccosukee Tribe then applied for a General Permit from the USACE. Within its application, Miccosukee specified the location and maximum amount of land that would be filled, as well as the amount and location of the associated mitigation. The resulting General Permit transfers authority for issuing Section 404 permits from the USACE to the tribal government. In essence, it allows all of Section 404 permit requests on designated reservation lands to be approved by the USACE up front by consolidating potential individual permit applications. The Miccosukee's tribal government is then delegated the authority to regulate the permitting of individual tribal member land use requests. The General Permit was approved and Miccosukee now grants and manages individual homeowner permits to fill and dredge reservation land for residential use. This program allows the tribal government to meet its goal of supporting homeowners' efforts to develop new lots and expand their yards without interference from external agencies. Miccosukee is now able to interact with these agencies on behalf of its citizens and to make decisions about land use to benefit the tribal community.

The Miccosukee Section 404 Permitting Program has improved the permitting experience for tribal citizens, the Tribe, and the USACE. It has greatly reduced the time required to both grant and obtain a permit. Before the General Permit, approvals could take from six months to two years to process. Permit applications are now processed within 30-60 days. There is a 99 percent compliance rate with the environmental mitigation procedures. Tribal staff work directly with homeowners and contractors and can immediately confirm correct implementation of permit requirements. The USACE liaison points out, "We can't supervise like the Tribe does. There is a lot of potential enforcement avoided." The General Permit further streamlines the permitting process because it requires a single public notice period on the entire potential fill area, alleviating the need for public comment on each and every

homeowner's request. Similarly, water quality certification now applies to the entire area covered by the General Permit, whereas before each homeowner had to obtain a unique certificate.

This program identifies the Miccosukee Tribe as the authority for decisions on the use and preservation of its land. It reinforces to homeowners that the tribal government is the legitimate place for addressing reservation land use issues. The Tribe administers all aspects of the permitting process under the General Permit, so tribal citizens who want to increase the size of their lots deal only with the tribal government. Four offices or branches of the tribal government are responsible for administering the General Permit, including: the Real Estate Services Office, which drafts and issues permits; the Miccosukee Business Council, which approves permit applications; the Water Resources Department, which enforces the terms of the permit; and the Tribal Court, which adjudicates cases in which homeowners are in violation of the terms of the permit. To date, there has been no need for Tribal Court intervention.

Additionally, the Miccosukee Section 404 Permitting Program has strengthened the authority of the Tribe in its work with external organizations. Having already developed the most stringent clean water standards in the State, approved by the EPA in 1999 under Section 401 of the Clean Water Act, Miccosukee approached its permitting process with the same focus on high standards. The Tribe developed its own internal process to monitor land use practices and manage the mitigation process. Staff work with homeowners to ensure that correct environmental mitigation procedures are followed (i.e., that certified fill is used, the area is cleared of trash, and turbidity screens are correctly installed). Contractors selected by the Tribe conduct the required mitigation efforts. With these successes and the capacity to maintain high standards, the Tribe stands as a legitimate authority both internally and externally in decisions regarding the use and preservation of its lands.

Further, this program has made it possible for tribal citizens to interact with the land in ways that strengthen the Miccosukee community. Through its assessment of family and community needs, the Miccosukee Tribe developed a land use strategy that works to ensure the well-being of both the Miccosukee people and their reservation land. Most yards now have one or more chickees, allowing for more community gatherings. Also, under the terms of the General Permit, environmental mitigation takes place on tribal lands rather than elsewhere in the State, providing a direct benefit to the Miccosukee community. In short, the Miccosukee Section 404 Permitting Program is strengthening the Miccosukee tribal government's land use administration in ways that directly improve the state of the Miccosukee reservation and affirm tribal culture and capacity.

The success of this program has also benefited other nations. The Miccosukee's General Permit was the first granted to a tribe in the Jacksonville Region of the USACE, which covers most of the State of Florida, the U.S. Virgin Islands, and Puerto Rico. Of the 80 General Permits issued in this region, only 10-15 have featured delegated administration. Moreover, Miccosukee's Section 404 Permitting Program set the important precedent of acknowledging tribal governmental authority and capacity. Based on the strengths of this program, the USACE and the Seminoles of Big Cypress Reservation have begun discussions on a General Permit application. Other Native nations, too, stand to benefit from the approach Miccosukee has taken in dealing with outside agencies. By demonstrating its governmental capacity and administrative wherewithal in the management of its own affairs and land use, the Tribe has been able to cultivate strong and positive working relationships with federal entities.

The Miccosukee Section 404 Permitting Program illustrates self-governance in action through implementing a vision for the long-term sustainability and preservation of Miccosukee lands. Miccosukee has developed a land management approach that both strengthens the Tribe's ability to make decisions regarding tribal land use needs and that honors and is reflective of the relationships tribal citizens have to their reservation lands. This one initiative builds the capacity of the tribal government in multiple ways to meet the needs of its citizens

Lessons:

- Delegated authority can provide Native nations with better control over the management and development of their communities, allowing processes, programs, and regulations to better meet the values and objectives of the communities.
- Program successes can leverage additional opportunities related to sovereignty, strengthening both internal and external legitimacy and better meeting the needs of tribal citizens.
- Land priorities of nations are most successfully mitigated when tribal governments demonstrate and build capacity while fostering inter-governmental relations.

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