

# Collaboration and Consent: Prioritizing Indigenous Rights in Investment

Thursday, March 18, 11:00 am ET

*Presented by the Investors & Indigenous Peoples Working Group*

## **Collaboration and Consent: Prioritizing Indigenous Rights in Investment - March 18, 2021**

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- **Becky Albert-Breed**, [First Nations Community Financial](#)
- **Nikki Pieratos**, [NDN Fund / NDN Collective](#)
- **Anouska Perram**, [Forest Peoples Programme](#)
- **Steven Heim** (Moderator), [Boston Common Asset Management](#)
- **Kate Finn** (Introduction), [First Peoples Worldwide](#)

In this webinar presented by the [Investors & Indigenous Peoples Working Group](#), panelists shared how to prioritize Indigenous rights in project collaboration, drawing from the experiences of tribal finance leaders in North America, international standard setting in the UK and the EU, and Indigenous enterprise and impact investment in Indian Country.

**TOOLKIT:** [Download the Recording](#) • [Articles/Resources](#) • [Bios](#) • [Socials and Graphics](#)

### **Summary Notes:**

**Introduction:** How can we create an entryway for those newly interested about investing in alignment with Indigenous Peoples' rights and wellbeing, as well as those who want to learn more across sectors – in social investment, banking, public and private equity, foundations impact funds, etc.? **We have to work to respect Indigenous Peoples, both in the companies we invest in and in our work.**

### **I. Important Principles of Investing and Indigenous Rights**

- Domestic and corporate policies do not adequately respect the rights of Indigenous people, nor their rights to lands, territories and resources.
- First codified Indigenous rights standard was [ILO 169](#) in 1989.
- Since 2007, the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP) has become the international consensus as the "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world" (Article 43)
  - The Declaration recognizes the right to Indigenous people's self-determination; the right to control, participation and decision-making regarding their lands, territories, resources, people, education and culture; and the right to understand the impacts on their resources now and in the future.
  - Endorsement of UNDRIP is not a legally binding authority; though some governments and corporations have adopted some aspects, it can be selective or diluted
  - Investors and companies wishing to collaborate and understand what it is to work with Indigenous entrepreneurs, tribal enterprises and governments, and for those wanting to comply with the responsibilities to respect human rights under

the UN Guiding Principles on Business and Human Rights should look directly to UNDRIP

- UNDRIP is the standard that Indigenous Peoples use and is the standard that will catalyze success for investors, companies and Indigenous Peoples alike
- Free, prior and informed consent (FPIC) safeguards the rights of Indigenous Peoples and ensures equity in negotiation, participation and outcomes
  - See the [FPIC Due Diligence Questionnaire](#) for businesses and investors
  - FPIC is about free and fair information, and providing framework to ensure an equitable and fair engagement throughout the process
  - Ideas of consent and collaboration can collide in negative ways for Indigenous Peoples where FPIC is seen as just a process to get to a "yes"
  - FPIC is a process to solicit consent, but that decision could be a veto or approval with conditions
  - "Consent" of FPIC can be understood in the business world as a decision tree where Indigenous Peoples have influence at multiple branches.
  - Need to engage with Indigenous people long before a project is initiated to understand that a project may be a non-start from the very beginning
- Look at UNDRIP and FPIC through international norms before domestic interpretations (e.g. U.S. endorsement of the UNDRIP in 2010 was as consultation regime and *not* a consent regime)

## **II. General Considerations of Tribal Nations' Approach to Investment and Sustainability**

- Financial vehicles include:
  - Trust and investment committees oversee investments of the tribe (e.g. short-term long-term minor's trust, 401ks, etc.)
  - Native Community Development Financial Institutions (CDFIs) are a critical vehicle
- Ho-Chunk Nation is part of a collective of four Native CDFIs ([Wisconsin Indian Business Alliance](#))
- Tribal nations are building support and financial opportunities, often working on the ground to strengthen and better economic solutions for their people and aligned with their values
- Need as well as opportunity are great within communities
- Pandemic has brought about desire to diversify revenue streams (e.g alternatives to hard-hit hospitality, retail and gaming industries)
- Native communities working hard to gain back traction in economic and financial growth with support through development services, technical services, loans
- New focus on micro businesses could drive new economic opportunities

## **III. Indigenous Rights Due Diligence: How Investors Can Avoid Harmful Initiatives**

- What is human rights and environmental due diligence
  - Enumerated in the [UN Guiding Principles on Business and Human Rights](#)
  - A priority is for Indigenous people's rights to own, occupy, manage and use the traditional lands and natural resources, which is protected by FPIC
  - FPIC is most critical for companies and investors to do correctly
  - Outward facing: looks at risks to people and planet, in addition to inward assessment of financial or reputational risk to a company

- Ongoing process that requires businesses to identify and assess actual and potential human rights impacts caused directly by activities or indirectly through the supply chain, who they're investing with or providing services to
- Companies must take steps to address impacts, which may include avoiding them or mitigating them
- Requires continuous improvement in performance
- Legislative developments in Europe and the UK
  - Several major pieces of due diligence legislation happening in EU/UK, ranging from removing products leading to deforestation from European market and a broader sustainable corporate governance proposal focused companies doing business in the EU, and a UK bill to establish a due diligence system of for deforestation linked to commodities
    - Some of these use domestic law and not preferred international or broader sustainability standards
    - Amendments put forward for UK bill included the right to FPIC, and to include financial service providers and investors
- Challenges for due diligence aligned with Indigenous rights
  - Business activities that most frequently negatively affect Indigenous Peoples include industrial agribusiness, mining, oil and gas, large-scale infrastructure development, and carbon offsets
  - Understanding Indigenous people's rights in these sectors at the outset is critical
  - Investors can be connected to a large number of supply chains with Indigenous Peoples often the last link in the chain
  - Large amounts of information and data to consider, understand
  - Difficulties tracing where money goes, and thus knowing where impact when further down the chain
  - Often investors rely on non-objective documents provided by companies
  - FPIC agreements presented without actual consent
  - Indigenous Peoples access to remedy can be very difficult or impossible, especially when asking for land back or after violations occur
- Possible solutions for investors to improve respect for Indigenous rights
  - Recognizing high-risk industries or projects
  - Clearly communicate expectations to businesses, reinforcing in contracts and reporting structure; follow-up when things are inadequate in continuous process
  - Greater capacity for analysis of geographical context to understand risks, particularly to land rights
  - Use what is happening on a domestic/national level to better understand realities for Indigenous People (e.g. if there significant risk to human rights defenders in a country)
  - Genuinely independent verification to spotcheck whether companies are doing what they said they would do; independent audits of supply chains using NGOs, community-based information and other sources
  - Recognize some investments just shouldn't happen at all – with FPIC sometimes consent is not given, which needs to be respected
  - Shift to longer-term and more stable investment relationships and investments that focus on more locally-led projects

#### IV. Intermediaries, Investors and Innovating Solutions with Indigenous Peoples

- Indigenous intermediaries have a pivotal role as convener, cultural translator, risk mitigator, and capacity builder for both the Native nation or entrepreneur and the financier and investor
- There is an increasing importance of identifying and encouraging governance practices with tribes that strengthen their sovereignty and that also reduce uncertainty for investors
- FPIC must be the center of development, especially when Indigenous communities are not the originator of a project – *consultation is not the same as consent*
- A goal for NDN Collective is to move capital to large-scale development projects led by and serving Indigenous communities that uphold the principles of regenerative and just economies
- Ultimately decision-making around design, deal structure and project outcomes must return to Indigenous Peoples
- Focus on right innovation and adaptation to co-designed resilient and regenerative guidelines, capital screens, underwriting practices (see NDN Collective's [impact investing and lending resources](#))
- Key areas are renewable energy, social enterprise, community development, affordable housing infrastructure (much-needed roads, telecom, water) and regenerative agriculture
- Many Native nations are primed for solar development as guardians of roughly 10% of the renewable energy sources in the U.S.
- For further perspective across the globe, 80% of all remaining biodiversity is still within Indigenous lands
- Indigenous people's ancestral knowledge is a guide to designing the regenerative economies of the future, working with financial systems and technology that are expressive of these values and strengths
- Relationships can take over a year to develop right before an investment is even made or a project is ever launched – take the time
- How impact investing community can re-imagine engagement and due diligence processes
  - Be comfortable with shifting the decision-making over deal structure itself, including terms, closing requirements, risk assessment and deal speed
  - Indigenous self-determination is central to the work, so don't just push deals through communities – it's about building relationships based intentionality
  - Understand these are living and breathing relationships that “move at the speed of trust.”
  - Think about the multiplier effect: Indian Country represents a blind spot of billions of dollars for economic development (e.g. tribes collectively represent the 13th largest employer in the U.S.)
  - Think ahead about communities that could or would be affected; have proactive engagements and discussions about understanding communities' priorities
- Indigenous-led development gets at the heart of the systems change needed on a global scale, particularly for promoting a circular economy that uplifts resilience, climate justice, health equity and better systems of governance

## V. Audience Q&A

- *How can offsets hurt Indigenous Peoples?*
  - Protected areas and some carbon offsets are land-based investments, and land-based investment can and often does take land from Indigenous Peoples
  - Use caution around conservation; many land-based carbon investments and protected areas carve up land for industry and the environment, which displaces and disposes Indigenous Peoples
- *What are some other innovations that should happen in investment?*
  - What we are really combating is Native economic invisibility
  - Investor due diligence needs to greatly expand to better consider what Indigenous Peoples require and what their economic development can look like
  - 
  - Ask: Who are Indigenous Peoples impacted? How are they related to the land here? Where are ancestral territories?
  - Do not dismiss these projects, people or outcomes because they are great distances: behave and react as if they are local investment
- *What kind of vehicles (e.g. CDFIs) are most appropriate for channeling financial resources to help Indigenous Peoples address rights issues?*
  - Native CDFIs are adjusting to the environment and a critical aspect of economic growth
  - Native finance can't operate in a silo – when we start working in collaboration with others our voices are heard
  - The work has to come from all sides in collaboration – Native finance, the investors, intermediaries should meet in the middle to get innovative ideas and understandings happen
  - How can Indigenous Peoples access abundant capital that exists, how can we consider private capital and private investing spaces?
- *What can investors do in the area of shareholder engagement with companies, extractive or otherwise, that might be operating in Native territories?*
  - Learn about issues that are priorities for Indigenous Peoples; connect with the Indigenous Peoples most affected
  - Note that any land-based investment will likely intersect with the rights of Indigenous Peoples, including agribusiness and sustainable development
  - In the long line from where a CEO sits to where Indigenous Peoples are being impacted, shareholder advocacy connects the dots and makes sure impacts on the ground are understood at the board level
- *What can be done on the tribal level?*
  - Continuously provide education and information to tribal members and elected leaders
  - Create channels for advocacy, and make sure you are saying clearly what the tribe needs anywhere there is opportunity
- *Opportunities on Indigenous rights in business and in boardrooms:*
  - SEC's newly created [ESG enforcement taskforce](#)
  - NASDAQ's [pending ruling](#) enforcing board-level diversity
  - Regarding board expertise on human rights and Indigenous rights, investors can influence company requirements to improve assessment

- Challenges in boardrooms are from disparity of representation—boards need more BIPOC folks, and also a range of ages, backgrounds and experiences
- *How can investors help protect Indigenous Peoples' intellectual property?*
  - Indigenous People's IP is not properly recognized under existing copyright, patent and other regimes
  - It is never okay when a company or anyone is using the name of a tribe or the name of Indigenous Peoples, unless the free prior and informed consent has been solicited and granted
  - Shareholders and impact investors can help ensure Native peoples are represented well and respectfully – the names and cultures of Indigenous Peoples are sacred and meaningful

## Related Articles and Resources

- [Bridging the Divide Between Impact Investing and Native America](#) (Stanford Social Innovation Review, 2/4/21)
- [NDN Collective: Investing in Indigenous Power to Build Regenerative Futures](#) (Cultural Survival, December 2020)
- [Indigenous Peoples' Human Rights as a Minimum Standard for Corporate Practice](#) (Stanford Social Innovation Review, 2/18/21)
- [Indigenous peoples' organisations submit observations on proposed EU corporate due diligence laws that uphold indigenous rights](#) (Forest Peoples Programme)
- [Free, Prior and Informed Consent Due Diligence Questionnaire](#) and [FPIC Primer Infographics](#) (First Peoples Worldwide)
- [Harnessing Private Equity for Indigenous Peoples](#) (First Peoples Worldwide)

## Participant Bios

### Becky Albert-Breed

Executive Director, [First Nations Community Financial](#)

Becky is an enrolled tribal member of the Ho-Chunk Nation. She holds a bachelor degree in accounting from University of Wisconsin-Milwaukee and a MBA from Cardinal Stritch University. Prior work experience include both internal and external auditing for City of Milwaukee, large corporate bank, tribal government & gaming. Ho-Chunk Nation financial positions include Treasurer, Business Finance Director over Casinos and C-Stores, and Legislative Financial Examiner. She was instrumental in advocating for positive change within the Children's Trust Funds for her tribe. This effort lead to establishment of the Trust & Investment Committee to preserve and protect investments of her tribe with portfolios holding over half a billion dollars and has served on the committee since inception in 2011.

Becky has served as Chairperson at First Nations Community Financial (FNCF), a Native Community Development Financial Institution (CDFI) since its inception in 2010. She is excited



to recently transition to the Executive Director role at FNCF. She brings years of strong business management and financial skills to First Nations Community Financial (FNCF). Our organization is designed to help natives and surrounding communities' access funds for personal growth such as home ownership, small business, investing and personal finance. This is close to her heart as she has focused on using her finance and business background to volunteer and help in the non-profit sectors within many diverse communities from 1988 to the present.

### **Anouska Perram**

Lawyer and Policy Advisor, [Forest Peoples Programme](#)

Anouska Perram is a lawyer in Forest Peoples Programmes's Legal and Human Rights team, and works primarily in the Congo Basin, Colombia and Peru. She has been involved in a number of national and international cases involving land and/or environmental jurisdictional disputes, including through strategic legal advice to litigation, preparation of amicus briefs, and submitting communications to international human rights bodies. She is also currently supporting FPP's advocacy and policy work related to proposed human rights and environmental due diligence legislation in the EU and the UK. Prior to joining FPP, Anouska worked as a solicitor in the dispute resolution group of commercial firms in London and Sydney (Australia), with an NGO based in Nepal, and for the state-level environmental protection agency in Australia.

### **Nikki Pieratos**

Managing Director, [NDN Fund](#)

Nikki Pieratos, NDN Fund Managing Director, is a citizen of the Bois Forte Band of Chippewa. Nikki is responsible for the leadership, management, and growth of NDN Fund, which provides financing for large-scale Indigenous development projects that align with Indigenous economic regenerative principles. Nikki is an accomplished leader in community development finance with ten years of experience. She has a Bachelor's degree in history and education from Fitchburg State University and a Master's degree in public policy from the University of Chicago.

### **Steven Heim** (Moderator)

Director of ESG Research / Shareowner Engagement, [Boston Common Asset Management](#)

Steven is primarily responsible for ESG research and shareholder engagement. In collaboration with Geeta Aiyer, he contributed to the book, *The SRI Advantage: Why Socially Responsible Investing Has Outperformed Financially* (New Society Publishers, 2002). In cooperation with As You Sow and the Investor Environmental Health Network, Steven co-authored multiple editions of *Disclosing the Facts: Transparency and Risk in Hydraulic Fracturing Operations*. Steven served on the Vermont Public Interest Research Group board of trustees for 15 years and currently serves on the Boards of Directors of Cultural Survival (Treasurer) and International Funders for Indigenous Peoples. With 30 years of experience in Sustainable and Responsible Investing, Steven has held leadership roles on numerous industry committees and working groups with special expertise on issues of climate change, renewable energy, extractive

industries, and the rights of Indigenous Peoples worldwide. Steven received two Bachelor of Science degrees from the Massachusetts Institute of Technology.

### Sample Socials and Graphics

- The Investors & Indigenous Peoples Working Group brings together investors collaborating with #IndigenousPeoples and Indigenous finance leaders strengthening economic development in their communities. 3/18 @ 11am ET. Register: <https://forms.gle/HHov8v7ccCRd4Eg59>
- Join Becky Albert-Breed @FNCFinancial, Nikki Pieratos @ndncollective and Anouska Perram @ForestPeoplesP to examine #IndigenousRights in investment, operationalizing #FPIC in project development & more! Register: <https://forms.gle/HHov8v7ccCRd4Eg59> #sustainablefinance #impactinvesting #IIPWG

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*Presented by the Investors & Indigenous Peoples Working Group*



# FREE, PRIOR & INFORMED CONSENT

- ✓ Upholds the Sovereignty and Self-Determination of Indigenous Peoples
- ✓ Protects Indigenous Lands and Resources
- ✓ Reduces or Eliminates Risk of Material Loss
- ✓ Facilitates Equitable Partnerships



## WHAT IS FREE, PRIOR AND INFORMED CONSENT?

International human rights standards enshrine Indigenous Peoples' right to free, prior and informed consent on projects affecting their lands, resources, cultural heritage and more. This includes the right to meaningful dialogue and the right to say "yes" or "no" to a project.

**Free** - Consent is given voluntarily and without coercion, intimidation or manipulation. The process is self-directed by the community from whom consent is being sought and unencumbered by externally imposed expectations or timelines.

**Prior** - Consent is sought sufficiently in advance of any authorization or commencement of activities, and allows the time necessary for Indigenous Peoples to undertake their own decision-making processes.

**Informed** - Consent is properly solicited when Indigenous Peoples are given objective and accurate information related to the proposed activity in an accessible manner and form.

**Consent** - Consent is the collective decision made by Indigenous Peoples, which is reached through customary decision-making processes. Consent may also be subject to conditions set forth by Indigenous Peoples.

See the [United Nations Declaration on the Rights of Indigenous Peoples](#).



More [FPIC Primer infographics](#).