



CSAC Congressional Position Paper on Indian Affairs

March 2009

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500

Facsimile
916.441.5507

The California Association of Counties (CSAC) is the single, unified voice speaking on behalf of all 58 California counties. Due to the impacts related to large scale tribal gaming in California, Indian issues have emerged as one of CSAC's top priorities. To address these issues CSAC adopted specific policy guidelines concerning land use, mitigation of tribal development environmental impacts, and jurisdictional questions arising from tribal commercial ventures (attached). There are at least two key reasons for this keen interest. First, counties are legally responsible to provide a broad scope of vital services for all members of their communities. Second, tribal gaming and other economic development projects have rapidly expanded, creating a myriad of economic, social, environmental, health, and safety impacts. The facts clearly show that the mitigation and costs of such impacts increasingly fall upon county government.

In recognition of these interrelationships, CSAC strongly urges a new model of government-to-government relations between tribal and county governments. Such a model envisions partnerships which seek both to take advantage of mutually beneficial opportunities and insure that significant off-reservation impacts of intensive tribal economic development are fully mitigated. Towards this end, counties urge policy and legislative modifications which require consultation and adequate notice to counties regarding proposed rule changes, significant policy modifications, and various Indian lands determinations. As part of this effort CSAC favors creation of a Bureau of Indian Affairs (BIA) local government liaison to facilitate county tribal partnerships.

Introduction

At the outset, CSAC reaffirms its absolute respect for the authority granted to federally recognized tribes and its support for Indian tribal self-governance and economic self-reliance. The experience of California counties, however, is that existing laws fail to address the unique relationships between tribes and counties.

Every Californian, including all tribal members, depends upon county government for a broad range of critical services, from public safety and human services, to waste management and disaster relief. In all, California counties are responsible for nearly 700 programs, including sheriff, public health, child and adult protective services, jails and roads and bridges.

Most of these services are provided to residents both outside and inside city limits. It is no exaggeration to say that county government is essential to the quality of life for over 35 million Californians. No other form of local government so directly impacts the daily lives of all citizens. In addition, because county government has very little authority to independently raise taxes and increase revenues, the ability to be consulted about and adequately mitigate reservation commercial endeavors is critical.

The failure to include counties as a central stakeholder in federal government decisions affecting county jurisdictional areas has caused unnecessary conflict with Indian tribes. To address these issues CSAC has regularly testified and commented on congressional proposals and administrative rulemaking in this important area. Currently, three overall issues facing the new Administration and Congress are of preeminent importance.

Consultation and Notice

A new paradigm is needed where counties are considered meaningful and constructive stakeholders in Indian land related determinations. For too long counties have been excluded from meaningful participation in critical Department of the Interior (DOI) decisions and policy formation which directly affects their communities. For example, Indian lands determinations, a critical step for a tribe to take land into trust for gaming purposes, is conducted in secret without notice to affected counties or any real opportunity for input. Incredibly, counties are often forced to file a Freedom of Information Act (FOIA) request to even determine if an application was filed and the basis for the petition.

To begin to address these issues, CSAC recommends that within the BIA an office be created to act as liaison for tribes and local and state government. This office would be a point of contact to work with non-tribal governments to insure they have the information necessary regarding DOI programs and initiatives to help foster cooperative government to government relations with tribes. As part of this paradigm shift local governments would be consulted, in a manner similar to that as tribes, on proposed rule changes and initiatives that may impact counties.

In addition, legislative and regulatory changes need to be made to insure that affected governments receive timely notice of fee to trust applications and petitions for Indian land determinations in their jurisdiction and have adequate time to provide meaningful input. For example, the Secretary should be required to seek out and carefully consider comments of local affected governments on Indian gaming proposals subject to the two-part test determination that gaming would be in the best interest of the tribe and not detrimental to the surrounding community (25 U.S.C. 2719 (b)(1)(A)). This change would recognize the reality of the impacts tribal development projects have on local government services and that the success of these projects are maximized by engagement with the affected jurisdictions.

Fee-to-Trust Acquisitions

Suspension of Fee-to-Trust Applications

At present, there are over 70 applications from California tribes to take land into trust for purposes representing almost 7,000 acres of land (at least 10 of these applications seek to declare the properties "Indian lands" and therefore eligible for gaming activities under IGRA). California's unique cultural history and geography, and the fact that there are over

100 federally-recognized tribes in the state, contribute to the fact that no two of these applications are alike. Some tribes are seeking to have lands located far from their aboriginal location deemed “restored land” under IGRA, so that it is eligible for gaming even without the support of the Governor or local communities, as would be otherwise required.

The U.S. Supreme Court’s recent decision in *Carcieri v. Salazar* (2009; No. 07-526) further complicates this picture. The Court held that the authority of the Secretary of Interior to take land into trust for tribes extends only to those tribes under federal jurisdiction in 1934, when the Indian Reorganization Act (IRA) was passed. However the phrase “under federal jurisdiction” is not defined. CSAC’s interpretation of the decision is that land should not be placed into trust under the IRA unless a tribe was federally recognized in 1934. This type of bright line rule provides clarity and avoids endless litigation.

However, many California tribes are located on “Rancherias” which were originally federal property on which homeless Indians were placed. No “recognition” was extended to most of these tribes at that time. If a legislative “fix” is considered to address the decision, it is essential that changes be made to the fee-to-trust process that insure improved notice to counties, better defined standards to remove the property from local jurisdiction, and requirements that the significant off-reservation impacts of tribal projects are fully mitigated.

In the meantime, CSAC strongly urges the Department of Interior to suspend further fee-to-trust land acquisitions until *Carcieri’s* implications are better understood and new regulations promulgated (or legislation passed) to better define when and which tribes may acquire land, particularly for gaming purposes.

Mitigation Agreements

CSAC has consistently advocated that Intergovernmental Agreements be required between a tribe and local government affected by fee-to-trust applications to require mitigation for all adverse impacts, including environmental and economic impacts from the transfer of the land into trust. As stated above, if any legislative modifications are made, CSAC strongly supports amendments to IGRA that require a tribe, as a condition to approval of a trust application, to negotiate and sign an enforceable Intergovernmental Agreement with the local county government to address mitigation of the significant impacts of gaming or other commercial activities on local infrastructure and services.

Tribal County Partnerships

Under the new model advocated by CSAC, the BIA would be charged to assist tribes and counties to promote common interests through taking advantage of appropriate federal programs. For example, the BIA could play a productive role in helping interested governments take advantage of such programs as the Energy Policy Act of 2005 (to develop sustainable energy sources); the Indian Reservation Roads Program (IRR) (to clarify jurisdictional issues and access transportation funds to improve tribal and county roads

serving tribal government); and Indian Justice System funding (to build collaboration between county and tribal public safety officials to address issues of common concern.

CSAC is committed to collaboratively addressing these important issues which so significantly affect our communities.

For further information please contact DeAnn Baker, CSAC Legislative Representative at (916) 327-7500 ext. 509 or at dbaker@counties.org or Kiana Buss, CSAC Legislative Analyst at (916) 327-7500 ext. 566 or kbuss@counties.org.