



February 12, 2013

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Dear Members of the California Congressional Delegation:

On behalf of the California State Association of Counties (CSAC), I am writing to urge you to include long-overdue reforms in the Bureau of Indian Affairs' (BIA) land-into-trust process as part of any legislation that addresses the U.S. Supreme Court's *Carcieri v. Salazar* decision. In *Carcieri*, the Court held that the Secretary of Interior lacks authority to take land into trust for Indian tribes that were not under federal jurisdiction at the time of the passage of the Indian Reorganization Act (IRA) of 1934.

As you may be aware, Representative Tom Cole (R-OK) recently introduced legislation (HR 279) that would provide the Interior Secretary with authority to take land into trust for all tribes. However, the bill would not address any of the significant, longstanding shortcomings of the BIA's fee-to-trust process. These fundamental flaws in the process, described in further detail below, have led to unnecessary conflict and distrust of the federal decision-making system for trust lands.

It should be noted that CSAC supports the rights of Indian tribes to self-governance and recognizes the need for tribes to preserve their heritage and to pursue economic self-reliance. We do not believe, however, that the Secretary of Interior should have unbridled authority to take land into trust for tribes under a system that is without clear and enforceable standards.

By way of illustration, local governments often do not receive timely notice when a trust land application is filed within their jurisdictions. In turn, BIA only invites comments from the affected state and the local governments with legal jurisdiction over the land and, from those parties, only on the narrow question of tax revenue loss and regulatory jurisdictional conflicts. As a result, trust acquisition requests are reviewed under a very one-sided and incomplete record that does not provide real consultation or an adequate representation of the consequences of the decision. Moreover, local governments are often forced to resort to Freedom of Information Act requests to ascertain if petitions for Indian land determinations have been filed in their jurisdictions.

Because many tribal land acquisitions ultimately will be used for economic development purposes - including gaming - there are often significant unmitigated impacts to the surrounding community, including environmental and economic impacts. Unfortunately, current law does not provide any incentive for tribes and affected local governments to enter into agreements for the mitigation of off-reservation impacts. The attached fee-to-trust reform proposal developed by CSAC would provide an incentive for tribes and local governments to enter into judicially enforceable mitigation agreements. The proposal also would remedy the aforementioned flaws in the fee-to-trust process related to inadequate

notification and consultation requirements, as well as other significant defects in the trust land system.

Again, CSAC urges you to include long-overdue reforms in the BIA's land-into-trust process as part of any legislation that addresses the implications of the *Carciari v. Salazar* decision. We believe the reforms in the attached legislative proposal protect the legitimate interests of both local governments and tribes and would help to foster better working relationships between tribes and localities.

Thank you for your continued support of California's counties and for your consideration of this request. Should you have any questions regarding the attached proposal or if you need any additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444, or Kiana Buss, CSAC Associate Legislative Representative at (916) 327-7500 ext. 566.

Sincerely,

A handwritten signature in black ink, appearing to read "David Finigan". The signature is stylized and cursive, with a large initial "D" and "F".

David Finigan
President, California State Association of Counties