INDIAN FEE TO TRUST REFORM

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REQUESTED ACTION: Congress should fix long-standing deficiencies in the Bureau of Indian Affairs' (BIA) fee-to-trust process as part of any legislation that addresses the U.S. Supreme Court's *Carcieri v. Salazar* decision. In doing so, the respective roles of Congress and the executive branch in trust land decisions must be better defined; clear and specific congressional trust acquisition standards established; and, a more transparent process put into place. Specific legislative reforms must include the following:

Notice and Transparency – As part of the trust application process, local governments should be given immediate notice when an application is filed and should receive a complete description of the proposed trust land acquisition purposes. This level of disclosure should be commensurate with the public information required for planning, zoning, and permitting on the local level. In addition, counties should receive notice of tribal requests for determinations of whether an acquisition is considered "Indian lands" and therefore eligible for casino gaming.

Consultation – Provide sufficient opportunity for public comment and consultation. Under Part 151 fee-to-trust regulations, the BIA does not provide notice to or invite comments from non-jurisdictional parties, even though nearby governments and private parties may experience major negative impacts as a result of tribal development. 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. Consultation should be encouraged to take place before an application is submitted and efforts should be made to include counties in the NEPA process as "cooperating agencies." Counties further should be provided an opportunity to comment on tribal requests for gaming determinations on whether proposed acquisitions qualify as "Indian lands."

Enforceable Intergovernmental Agreements – Legislation must ensure that off-reservation significant adverse impacts of a project are sufficiently addressed through Intergovernmental Agreements between tribes and local governments to provide for the mitigation of environmental and economic impacts from the transfer of land into trust. It should be noted that such an approach is required and working well under recent California State gaming compacts.

BACKGROUND: On February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*. The decision held that the Secretary of the Interior lacks authority to take land into trust on behalf of Indian tribes that were not under the jurisdiction of the federal government upon enactment of the Indian Reorganization Act (IRA) in 1934.

In the wake of this significant court decision, many tribes have urged Congress to overturn the Supreme Court's ruling. As in previous sessions of Congress, legislation has been introduced in the 113th Congress (HR 279) that would reverse the Supreme Court's ruling by providing the Secretary of Interior with authority to take land into trust for *all* tribes. Unfortunately, the legislation does not include any trust land reform provisions.

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