

CALIFORNIA STATE ASSOCIATION OF COUNTIES
BOARD OF DIRECTORS
Thursday, November 19, 2009
2:00pm - 4:00pm
De Anza III, Portola Hotel, Monterey, CA

A G E N D A

Presiding: Gary Wyatt, President

2:00pm

PROCEDURAL ITEMS

1. Roll Call Page 1
2. Approval of Minutes of September 10, 2009 Page 3

2:10pm

ACTION ITEMS

3. Election of 2010 Executive Committee Handout
 - *Paul McIntosh, CSAC Executive Director*
4. Consideration of CCS Partnership and CSAC Reform Principles Page 7
 - *Supervisor Rich Gordon, Chair, CCS Partnership Fiscal Reform Task Force*
 - *Jean Hurst, CSAC Staff*
5. Consideration of CSAC Communications and Legislative Advocacy Strategy Plan Page 18
 - *Jim Wiltshire, CSAC staff*
6. CSAC Policy Committee Reports Page 33
 - Administration of Justice
 - *Supervisor Ronn Dominici, Chair*
 - *Elizabeth Howard, CSAC staff*
 - Agriculture and Natural Resources Page 34
 - *Supervisor Mike Nelson, Chair*
 - *Karen Keene, CSAC staff*
 - Government Finance and Operations Page 35
 - *Supervisor Steve Worthley, Chair*
 - *Jean Hurst & Eraina Ortega, CSAC staff*
 - Health and Human Services Page 36
 - *Supervisor Liz Kniss, Chair*
 - *Kelly Brooks, CSAC staff*
 - Housing, Land Use and Transportation Page 37
 - *Supervisor Mike McGowan, Chair*
 - *DeAnn Baker, CSAC staff*
7. Approval of Resolution Authorizing Executive Director to Conduct CSAC Business Page 38
 - *Paul McIntosh*

3:30pm

DISCUSSION ITEM

8. Tribal Lands Advocacy Proposal
▪ *Paul McIntosh*

Page 39

3:45pm

INFORMATION ITEMS

9. *The following items are contained in your briefing materials for your information, but no presentation is planned:*

- | | |
|--|---------|
| ❖ Institute for Excellence in County Government Update | Page 59 |
| ❖ Institute for Local Government (ILG) Update | Page 63 |
| ❖ CSAC Finance Corporation Report | Page 65 |
| ❖ CSAC Corporate Associates Report | Page 66 |
| ❖ Litigation Coordination Program | Page 67 |

10. Other Items

4:00pm

ADJOURN

CALIFORNIA STATE ASSOCIATION OF COUNTIES

Board of Directors

2010

<u>Section</u>	<u>County</u>	<u>Director</u>
U	Alameda County	Keith Carson
R	Alpine County	Terry Woodrow
R	Amador County	Louis Boitano
S	Butte County	Bill Connelly
R	Calaveras County	Merita Callaway
R	Colusa County	Mark Marshall
U	Contra Costa County	Federal Glover
R	Del Norte County	David Finigan
R	El Dorado County	Norma Santiago
S	Fresno County	Henry Perea
R	Glenn County	John Viegas
R	Humboldt County	Mark Lovelace
S	Imperial County	Gary Wyatt
R	Inyo County	Susan Cash
S	Kern County	Jon McQuiston
R	Kings County	Richard Valle
R	Lake County	Anthony Farrington
R	Lassen County	Lloyd Keefer
U	Los Angeles County	Don Knabe
R	Madera County	Ronn Dominici
S	Marin County	Susan Adams
R	Mariposa County	Lyle Turpin
R	Mendocino County	Carre Brown
S	Merced County	Hubert "Hub" Walsh
R	Modoc County	Jeff Bullock
R	Mono County	Duane "Hap" Hazard
S	Monterey County	Fernando Armenta
S	Napa County	Brad Wagenknecht
R	Nevada County	Ted Owens
U	Orange County	John Moorlach
S	Placer County	Jim Holmes
R	Plumas County	Sherrie Thrall
U	Riverside County	John Tavaglione

U	Sacramento County	Roger Dickinson
R	San Benito County	Reb Monaco
U	San Bernardino County	Paul Biane
U	San Diego County	Greg Cox
U	San Francisco City & County	Eric Mar
S	San Joaquin County	Larry Ruhstaller
S	San Luis Obispo County	Bruce Gibson
U	San Mateo County	Rose Jacobs Gibson
S	Santa Barbara County	Joni Gray
U	Santa Clara County	Liz Kniss
S	Santa Cruz County	Tony Campos
S	Shasta County	Glenn Hawes
R	Sierra County	Lee Adams
R	Siskiyou County	Jim Cook
S	Solano County	Mike Reagan
S	Sonoma County	Valerie Brown
S	Stanislaus County	Vito Chiesa
R	Sutter County	Larry Munger
R	Tehama County	Robert Williams
R	Trinity County	Judy Pflueger
S	Tulare County	Steve Worthley
R	Tuolumne County	Richard Pland
U	Ventura County	Kathy Long
S	Yolo County	Mike McGowan
R	Yuba County	Roger Abe

President: Gary Wyatt, Imperial
 First Vice President: Tony Oliveira, Kings
 Second Vice President: John Tavaglione, Riverside
 Immed. Past President: Richard Gordon, San Mateo

SECTION: U=Urban S=Suburban R=Rural

11/2/09

CALIFORNIA STATE ASSOCIATION OF COUNTIES
 BOARD OF DIRECTORS
 September 10, 2009
 CSAC Conference Center, Sacramento

M I N U T E S

Presiding: Tony Oliveira, 1st Vice President

1. ROLL CALL

Alameda	Keith Carson	Placer	Jim Holmes
Alpine	Terry Woodrow	Plumas	Sherrie Thrall
Amador	Louis Boitano	Riverside	John Tavaglione
Butte	Bill Connelly	Sacramento	absent
Calaveras	Tom Tryon	San Benito	Jaime De La Cruz
Colusa	absent	San Bernardino	absent
Contra Costa	Federal Glover	San Diego	Greg Cox
Del Norte	David Finigan	San Francisco	absent
El Dorado	absent	San Joaquin	absent
Fresno	Henry Perea	San Luis Obispo	Bruce Gibson (audio)
Glenn	John Viegas	San Mateo	Rose Jacobs Gibson
Humboldt	Mark Lovelace (audio)	Santa Barbara	Joni Gray
Imperial	absent	Santa Clara	Liz Kniss
Inyo	Susan Cash	Santa Cruz	Tony Campos (audio)
Kern	Jon McQuiston	Shasta	absent
Kings	Tony Oliveira	Sierra	Lee Adams
Lake	Anthony Farrington	Siskiyou	absent
Lassen	absent	Solano	Mike Reagan
Los Angeles	absent	Sonoma	Mike Kerns (audio)
Madera	Ronn Dominici (audio)	Stanislaus	Vito Chiesa
Marin	Susan Adams	Sutter	Larry Munger
Mariposa	Lyle Turpin	Tehama	Robert Williams
Mendocino	Carre Brown	Trinity	Judy Pflueger
Merced	Mike Nelson	Tulare	Phil Cox
Modoc	Jeff Bullock (audio)	Tuolumne	Richard Pland
Mono	"Hap" Hazard	Ventura	Kathy Long
Monterey	Fernando Armenta	Yolo	Mike McGowan
Napa	Brad Wagenknecht	Yuba	Roger Abe
Nevada	Ted Owens	Advisor:	Susan Muranishi
Orange	John Moorlach (audio)		

The presence of a quorum was noted.

2. APPROVAL OF MINUTES

The minutes of May 28, 2009 were approved as previously mailed.

3. PRESENTATION BY CDCR SECRETARY MATTHEW CATE

California Department of Corrections and Rehabilitation Secretary Matthew Cate addressed the Board regarding current legislative proposals being considered regarding prison reform as well as the latest developments in the three-judge panel proceedings. The proposed Alternative Custody Program is of particular interest to counties. This program would create a new custody status in the community for three eligible populations: 1) those with less than 12 months left on sentences; 2) those aged 60 or older; and 3) the medically infirm/incapacitated. Participants in the alternative custody program would be on home arrest, GPS, or some other type of enhanced monitoring. Concerns were raised regarding the added costs to counties for this program.

Secretary Cate encouraged counties to site re-entry facilities in their communities, as outlined in AB 900, to assist parolees in transitioning back into society.

4. WILLIAMSON ACT CONTRACT NON-RENEWAL PROPOSAL

The CSAC Agriculture & Natural Resources policy committee recommended that CSAC not pursue a Williamson Act contract non-renewal proposal that would provide local governments with the ability to accelerate gradual re-inflation upon non-renewal of a contract immediately, as opposed to waiting four years in the event of a landowner protest. Currently, when a Williamson Act contract is non-renewed, the property taxes gradually re-inflate from their Williamson Act value to their unrestricted value. Following the Governor's action to eliminate Williamson Act subventions from this year's State Budget, CSAC received inquiries from counties regarding the handling of existing Williamson Act contracts, and this option surfaced.

Policy committee members were reluctant to support the proposal because it was thought that this would facilitate non-renewal and potentially reduce the pressure to restore funding for the Williamson Act program. The CSAC Executive Committee considered the proposal at their August 20 meeting and chose to refer the policy committee recommendation to the Board of Directors for final action given the importance of the Williamson Act to all participating counties.

Motion and second to support the policy committee recommendation to not pursue a Williamson Act contract non-renewal proposal. Motion carried unanimously.

5. PROPOSITION 1A SECURITIZATION UPDATE

In July 2009, the California Legislature adopted a series of bills to resolve a \$24 billion deficit in the 2009-10 state budget. The package of bills included legislation to suspend the constitutional protection of local property taxes by the state and set up a mechanism whereby the state would borrow 8% of the prior year's property tax allocations from local agencies. The state estimated that approximately \$1.9 billion in property taxes would be borrowed. Under the legislation, the state must repay the money borrowed within three years, including interest. This requirement creates a receivable. The legislation authorizes a joint powers authority to purchase those receivables from local agencies, thereby holding them harmless from the property tax loss. The state will then pay the joint powers agency the cost of the receivables, plus both issuance costs and interest, in 2013. The California Statewide Community Development Authority (CSCDA), qualifies as the joint powers agency identified in statute. CSCDA has begun putting the financial team together and drafting the necessary documents.

There are a number of minor errors in the legislation that need to be cleaned up before the securitization process can begin. CSAC has worked closely with representatives of the Administration and legislative leadership, to draft amendments. The next step will be for this bill to be amended into a committee bill in the Senate or Assembly and brought to both floors for a vote. CSAC is hopeful of bipartisan support and the ability to move forward quickly.

Staff presented a PowerPoint outlining the process for enrolling in the program, a timeline and marketing the bonds.

6. MAJOR STATE REFORM INITIATIVES UPDATE

Staff summarized the four major state reform initiative efforts currently underway for placement on the November 2010 ballot. They are as follows:

California Forward. This is a bipartisan group focused on broad reforms to state and local finance, governance, and budgeting. Their efforts are currently focused in the Legislature, but they have committed to go directly to the initiative process if outcomes are not achieved in the legislative process. The California Forward plan includes provisions related to: 1) Responsible State Budgets on Time; 2) Government that is Closer to the People; and 3) Constituent Access and Accountability. Details of the plan were included in the briefing materials.

Repair California. This entity is sponsored by the Bay Area Council and is focused on convening a Constitutional Convention to resolve California's myriad of problems. They are in the process of preparing initiative language to: 1) give the voters the right to call a Constitutional Convention; and 2) call the Constitutional Convention and set the process that will be submitted to the Attorney General for title and summary. Once title and summary is received, Repair California will begin the signature-gathering process.

CCS Partnership. The Cities, Counties, Schools Partnership is a joint venture of CSAC, the League of California Cities, and the California School Boards Association (CSBA). A summit was convened in July to determine which reforms are most important to local officials. Attendees discussed many reform proposals, and in the end recommended that CCS and its constituent organizations support efforts to protect local revenue.

Supervisor Gordon chairs a task force created by the CCS Partnership that has been focusing on fiscal reform issues. He reported that the task force developed and adopted a set of principles which will be brought to the Boards of Directors of CSAC, the League and CSBA for consideration. The task force will continue to meet to review the various proposed reform initiatives to see how they compare with the CCS Partnership principles.

League of Cities Transportation Proposal. At the August Executive Committee meeting, staff presented a proposal by the League of Cities to join a coalition of interested parties in developing a potential initiative to protect a variety of local revenues, including local property taxes, highway users taxes (HUTA), transit funds, and Proposition 42 revenues. The League and its partners, the California Alliance for Jobs, and the California Transit Association, have completed initial polling and are embarking on the preliminary drafting process. They requested a commitment from CSAC of \$25,000 to join the process. Given the nature of the protections being considered and the interest in maintaining a strong relationship with local government partners, the Executive Committee approved an expenditure of up to \$25,000 for this purpose.

7. STATE BUDGET/LEGISLATIVE REPORT

As directed by the Executive Committee, the CSAC Budget Reform Task Force will reconvene to develop state budget strategy recommendations for Board of Directors' consideration in November.

Some topics of discussion may include: how to deal with the continuing problem of targeting local revenues to solve the state budget deficit; determining counties' role and obligations regarding service level cuts to health and human services programs; corrections reform issues; reimbursement for special elections; mandates; media and communications strategy; administrative actions and legal options.

It was announced that the first task force meeting will take place on September 21, via conference call, followed by an in-person meeting on September 28.

Staff reported on current activities taking place in the Legislature related to water, HUTA, Healthy Families program, child welfare cuts, and corrections reform.

8. INSTITUTE FOR LOCAL GOVERNMENT UPDATE

The Institute for Local Government (ILG) has launched a new website to assist local officials and others interested in local government to more easily access the Institute's resources. The site's interactive capabilities enable users to exchange information with each other and provide feedback to the Institute.

New publications related to public service ethics were made available to Board members. *Understanding the Basics of Public Service Ethics* includes five booklets designed to help local officials meet both the law's and public's expectations for public service. In addition, *Key Ethics Law Principles for Public Servants* is a four-page pamphlet that summarizes the kinds of issues and financial interests that ought to trigger a conversation with one's agency counsel about what the law requires.

Santa Barbara County Supervisor Salud Carbajal has joined the ILG Board of Directors.

9. INFORMATION ITEMS

Reports on the CSAC Institute for Excellence in County Government, CSAC Finance Corporation, Corporate Associates, and Litigation Coordination Program were contained in the briefing materials for information purposes only. No presentations were planned.

Meeting adjourned.



November 2, 2009

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To: CSAC Administration of Justice Policy Committee
CSAC Agriculture and Natural Resources Policy Committee
CSAC Government Finance and Operations Policy Committee
CSAC Health and Human Services Policy Committee
CSAC Housing, Land Use, and Transportation Policy Committee

From: Paul McIntosh, CSAC Executive Director

Re: **CSAC Principles for Reform 2010 – ACTION ITEM**

Staff Recommendation: Staff recommends that the CSAC policy committees review the draft CSAC Principles for Reform 2010 and recommend that the Board of Directors adopt these principles and the CCS principles that they complement as guidelines for future reform discussions.

Introduction. It's no secret that Californians are discontented with state government. Chronic budget deficits remain unresolved. The Legislature has been gridlocked and unable to tackle significant, much-needed reforms in the areas of health care, water, and corrections. Both the Governor and the Legislature's approval ratings are extremely low. Political bickering prevents consensus and action in the Capitol.

In this environment, a number of groups have coalesced around different ideas to try to address the dysfunction and problems in Sacramento. Reform is clearly going to be a centerpiece of the November 2010 ballot and, likely, the 2010 gubernatorial campaigns. Numerous groups are working this fall to qualify a number of measures for the November 2010 ballot. The primary movements of significance to counties include:

- **Repair California**, led by the Bay Area Council, has submitted two ballot measures that (1) authorize the calling of a constitutional convention and (2) convene a constitutional convention for the November ballot.
- **California Forward** has submitted two ballot measures that seek to reform the state budget process and local government finance.
- **Californians to Protect Local Taxpayers and Vital Services** — a coalition led by the League of California Cities, the California Transit Association, and the Alliance for Jobs — has submitted a ballot measure to the Attorney General to further protect local property tax, transit, transportation, and redevelopment funds.

The attached chart provides additional detail about each proposal.

In addition, the Senate and Assembly have created Select Committees on Improving State Government. These committees, which have met jointly, are dedicated to developing legislative proposals to overhaul California's system of governance. The committees, chaired by Senator Mark DeSaulnier and Assembly Member Mike Feuer, met on October 22 and discussed various previous efforts on reform such as the Constitution Revision Commission, as well as current reform movements like Repair California, California Forward, and others.

The committees have a significant work plan outlined for the fall interim. The committees intend to address broader reforms, as well as smaller changes that can be made to the legislative process to increase efficiency and accountability.

Counties have already been approached by groups involved with the ballot measures to be active partners in the reform discussions. The legislative committees will undoubtedly want input from counties in their deliberations about reform. CSAC needs to be prepared to engage in these discussions in a meaningful, substantive way.

To assist counties in this effort, CSAC staff has developed a short list of core principles on which the Association may rely when reviewing any reform efforts or proposals. These principles, called the **CSAC Principles for Reform 2010**, are consistent with the CSAC platform and policies and mindful of the current fiscal and political climate. They are intended to supplement the principles developed by the Cities Counties Schools Partnership, which will go before the CSAC Board of Directors at their meeting in November along with this committee's recommendation.

Each of CSAC's five policy committees has been tasked with reviewing and recommending the 2010 reform principles document to the CSAC Board of Directors. The final document as approved by the Board will serve as the framework to guide the Association's analysis and, subsequently, any potential positions that might be taken on various proposals in the months ahead.

Policy Considerations. Because of the close nature and complex interplay that characterizes the relationship between counties and the state, counties must carefully examine any reform proposal for policy and fiscal implications. Furthermore, the sheer number and diversity of services administered by counties almost guarantees conflict within and between counties when changes are proposed. Given this dynamic, CSAC staff has taken the time to outline below the major policy considerations and concerns that arise within each of the five broad county issue areas: Administration of Justice; Agriculture and Natural Resources; Government Finance and Operations; Health and Human Services; and Housing, Land Use, and Transportation. The draft CSAC Principles for Reform incorporate the major policy planks within each issue area and seek to unify divergent interests where possible.

Administration of Justice Policy Committee

Chief among the policy considerations in the justice construct is the potential financial impact of reform proposals or initiatives — depending on the extent to which any makes substantive change to governance or financing — on the local criminal justice system.

Local public safety entities' reliance on state subventions is significant; counties and cities have historically received approximately \$500 million in state General Fund subventions for a variety of local assistance programs. The Legislature approved a funding shift earlier this year by dedicating a portion of the Vehicle License Fee (VLF) increase to specified local public safety programs; this funding authority, absent future legislative action, will lapse in July 2011. Given predictions of a prolonged financial crisis, local public safety funding may be particularly vulnerable. The Legislature could see fit to redirect the VLF public safety increment to other priorities or it could simply allow the authority for the increase to lapse. In any event, further compartmentalization of the state General Fund will put an additional squeeze on very limited discretionary dollars, making all program areas, including local public safety, subject to increased threat.

CSAC has sufficient existing policy on other primary justice areas of interest, including ongoing matters of mutual interest between courts and counties. The County Policy Principles and Guidelines on Corrections Reform, developed in November 2006 and revised in May 2007, provide extensive and substantive guidance in the broad area of state and local corrections. Given fiscal and operational imperatives to shed state program responsibilities and costs, it is highly likely that some form of a realignment proposal will emerge in coming budget discussions. Certainly, the criminal justice area is a probable target, given that responsibilities in both the adult and juvenile correctional systems can arguably be partitioned differently, with more responsibilities assigned to local governments. The CSAC Realignment Principles — coupled with the proposed 2010 Reform Principles — provide a solid framework for evaluating any proposed program or service shift to county justice agencies.

Agriculture and Natural Resources Policy Committee

Counties recognize the necessity of balancing the need to develop and utilize resources for the support of our society against the need to protect and preserve the environment. Counties assert that solutions necessary to achieve this delicate balance can best be formulated at the local level in partnership with the private sector and state and federal government. Unfortunately, at the state level, the Administration and Legislature have taken various actions that hinder counties' efforts to achieve this balance. These include elimination of funding for programs that clearly benefit the environment and economy of the state (e.g. Williamson Act, state parks and beverage container recycling) and the imposition of costly mandates upon counties without valid revenue sources (e.g. changes to general plan laws and requirements for new ordinances).

Government Finance and Operations Policy Committee

As the state's General Fund goes, so go counties. A functional state budget process that encourages cooperation and restraint would ensure full and timely payments to counties for the many programs we run on their behalf (like social services) and at their behest (like special elections and other mandates). State payments comprise a third of counties' general revenues, but have been flat for years. Reducing local vote thresholds below 2/3 would provide independence from the state's perennial catastrophe and therefore strengthen the ability of communities to govern themselves. Counties, as the level of government to which citizens turn to for day-to-day government needs, should be granted maximum flexibility in their organization, method of delivering services, and approaches to financing local priorities.

Counties have a unique position as supposed partners with the state in areas of government as far removed as land conservation is from the care of foster youth, or as far as road maintenance is from a county coroner's duties. As such, a change in one area of the budget, such as locking up a portion of state spending, invariably affects counties in other areas. This dynamic suggests a line of discussion for reform proposals. It also suggests that counties are in the best position to comment on wide-ranging reform proposals, since our interests are collectively as broad as the state's itself yet still close to the people we all serve.

Health and Human Services Policy Committee

In reviewing any reform proposals through a county health and human services lens, fiscal impacts will be important. Counties are very vulnerable to state underfunding in our role as administrators of state and federal programs. Almost all of the programs that counties administer on the state's behalf are significantly underfunded. Collectively, the state shorts counties approximately \$1 billion annually for administration of human services programs; child welfare services alone is underfunded by \$660 million. The state has no imperative to ever fully fund programs – state law provides numerous loopholes to allow continued underfunding with few consequences.

There is the potential that additional ballot measures may further tie the hands of the Legislature to appropriate General Funds. Clearly, under a measure that further compartmentalizes state General Fund, health and human services will remain a target for cuts. Little of the funding provided to counties for health and human services programs is protected in any way, in contrast to protections secured in other areas such as education (Proposition 98), transportation (Proposition 42), and local revenues (Proposition 1A).

Conversely, measures that would stabilize state General Funds could be beneficial to counties, particularly as it pertains to health and human services programs. Discussions about reform could also open the door for dialogue about how to more rationally and stably fund safety net services. Certainly discussions about mandates must include health and human services issues.

Housing, Land Use, and Transportation Policy Committee

The three important and interrelated policy areas of housing, land use, and transportation, while not typically general fund dependent, do depend on state subventions (e.g. gas tax and Proposition 42 for transportation purposes) and other state financial support (e.g. bond proceeds for housing and transportation purposes). As a result, these areas have experienced a significant lack of state financial support, while policy, planning, and regulatory responsibilities continue to be passed on to the local level.

Further, in the transportation area, local governments are responsible for 82 percent of the state's maintained miles and as such receive state subventions to the tune of over \$1.5 billion annually from the state gas tax, or Highway User Tax Account (HUTA), and Proposition 42. Due to the state's fiscal instability, counties have lost all certainty of infrastructure revenue streams. Recent budget proposals considered and acted upon have ranged from borrowing, raiding, or outright taking both the local HUTA and Proposition 42 funds. While Proposition 42 enjoys significant constitutional protection, this is not the case for HUTA and that source remains much more vulnerable to state budget actions.

Reform that provides greater authority at the local level to raise revenue for infrastructure investment and long-range planning, evaluates the cost of new policies and programs on local government, and provides greater stability and certainty in state subventions would greatly improve local government's ability to build viable, livable and healthy communities.

Process. Each of CSAC's five policy committees is tasked with reviewing and approving the attached draft CSAC Principles for Reform 2010 during regularly scheduled meetings on November 17 and 18. The actions of each policy committee will be forwarded to the CSAC Board of Directors for consideration and approval at the Board's regularly scheduled meeting on November 19. If adopted by the Board, the CSAC Principles for Reform 2010 will guide the Association and its members through the reform discussions – whether in the Legislature or on the ballot – in the coming year.

Materials. Attached are the draft CSAC Principles for Reform 2010 (Attachment A – ACTION ITEM) and the Cities Counties Schools (CCS) Partnership Reform Principles (Attachment B), which are included for your reference. Also included is a summary of the reform proposals headed for the November 2010 ballot.



CSAC PRINCIPLES FOR REFORM 2010

Preamble

California counties join the chorus echoing across the state: California government is broken. The status quo is unacceptable.

Counties in particular have firsthand experience with a dysfunctional state administration and legislature because of our uniquely close relationship with the state. Over the years, counties have developed a fundamental lack of trust in the state. Whether considering mandates, realignment, new laws or regulations, or jointly administered programs, counties generally cannot rely on the state to engage in a meaningful dialogue as to county impacts, views, or concerns. Too often, the state has proven to be an untrustworthy partner.

California counties want to establish a functional relationship with the state that allows us all to provide government services to Californians efficiently and effectively. To fail to do so is to concede that government should remain broken.

In order to better manage the relationship between the state and counties — a goal that county leaders believe will result in better outcomes for all Californians — the California State Association of Counties offers a set of principles to guide discussions on reform options. These principles are intended to provide a county focus to those endorsed by the Cities Counties Schools (CCS) Partnership. The CSAC Reform Principles for 2010 are meant to work in concert with the CCS principles and to facilitate conversations among county officials, members of the Legislature and Administration, and reform stakeholders; they are grounded in core county tenets including, principally, local control.

Principles

→ Reforms should align responsibility with authority among state and local governments.

Government works best, and is most accountable and transparent, when program responsibility is aligned with funding authority and service delivery. Programs jointly administered by the state and counties should be adequately funded to appropriately meet state and federal requirements. If adequate funding is not provided by the state, the state should adjust statutory requirements; federal penalties or other liabilities that result must be the state’s responsibility. Any future realignment of programs and services between counties and the state should ensure a new, stable and ongoing statewide revenue source that can sufficiently fund programs or services equitably across all counties with maximum administrative flexibility and solid accountability. Counties have a unique

- Align authority and responsibility
- Match service to funding level or adjust expectations
- Ensure future program realignments (1) are supported by Identify new, stable, and adequate revenue source and (2) provide maximum program flexibility

relationship with the state in providing many services, but counties must also be free to run and adequately fund programs and facilities that are local priorities, as well as adapt state services and delivery operations to match local conditions. To that end, local revenue raising authority should include the ability to approve new or increased revenues to fund local services with less than two-thirds voter approval. Furthermore, mandated programs should be paid fully and in a timely manner and the process for mandate determination and claiming should be streamlined.

- Reduce threshold for raising local revenues to less than two-thirds
- Pay mandates timely and streamline process
- Revisit state's tax and fee structure
- Allocate funds based on program responsibilities

California's tax and fee structure should be evaluated with a focus on the interconnectivity and system responsibilities between state and local governments. Revenue allocations should reflect program and service responsibilities among different levels of government, particularly in such areas as transportation, health, and the criminal justice system.

→ **Reforms should result in responsible and transparent decisions in state government.**

The Legislature must focus on oversight and review of state programs, services, and fiscal choices in order to ensure that programs and services are meeting the Legislature's goals and objectives and are cost-effective. Fiscal review of legislative measures should include thorough analysis and consideration of all costs to local governments before legislative approval. Open and public hearings that include input from interested parties and appropriate time for review of legislative proposals will help reestablish trust between the public and the Legislature. The budget process, in particular, should be timely, transparent, and inclusive.

- Enhance legislative oversight of programs, services, and fiscal choices
- Require thorough fiscal review of legislative measures including all costs to local government before approval
- Establish open, public process for legislative and budget matters

→ **Reforms should reestablish accountability and responsibility between California residents and their elected leaders.**

State fiscal decisions should be made with a long-term view and include prudent reserves that allow for appropriate annual funding of jointly administered programs while also ensuring that existing debts are paid in a timely manner. Voter-approved initiatives and legislative measures that impose new net costs should include provisions that sufficiently fund those costs. Legislative term limits must change to allow legislators to develop greater experience and expertise in a particular subject and to allow for appropriate legislative oversight and review of the efficacy of state operations.

- Expand planning and decision-making horizon for fiscal choices
- Require initiatives and legislative measures to have a sufficient, identified funding source
- Adjust legislative term limits

Cities Counties Schools (CCS) Partnership

Joint Principles for State Budget and Fiscal Reform

Preamble

California government is broken.

The failure to adopt a sustainable budget is only the most obvious manifestation of a dysfunctional state government. The state is not investing in the future, whether in needed infrastructure, economic development, or in education. New laws and regulations are piled on without balancing costs against any clear added value. Long-term implications of current actions are ignored. Urgent current problems go unaddressed. The inherent strength of community level governments is dissipated.

Some say that “politics has failed us.” Others focus on the failure of the structure of government and the institutional rules within which state government operates. Whatever the perspective, it is clear that there must be a new and better way of governing a large, complex and dynamic state.

The local governments of California are the key to the solution. The core principle of any successful reform is that each level of government and each agency of government must be given the authority and the resources to do what it does best. We can restore functional state and local governments only by aligning authority, responsibility, resources and accountability.

A more effective state government requires more effective cities, counties and school districts. The CCS Partnership offers a set of possible principles to guide reform efforts and a series of reform options that embody those principles. We invite a continuing conversation about whether these or other options are best.

We encourage a vigorous debate about how to rebuild California government. There can be no doubt, however, that substantial reform is necessary and that it must be done from the ground up--building a stronger foundation of community government.

Purpose

The CCS Partnership through its Joint Task Force on State Budget and Fiscal Reform has developed and adopted the following set of principles to guide the decisions, actions and focus of the partnering associations as they jointly and separately address the changes necessary to realign the state/local relationship and bring authority and responsibility closer to communities and local governance structures.

July 2, 2009

Principles

1. **Responsive and Accountable Local Governments.** Local governments should have broad authority, subject to voter approval for bonds and tax increases, to raise and expend a diverse and broad set of revenues necessary to provide critical local services. Concentrating these decisions at the local level will ensure greater transparency and accountability to the voters.
2. **State Preemption of Local Control.** Local control should be the rule and state preemption the exception.
3. **Enhanced Protection from State Mandates.** Local governments need additional protection from state mandates that attempt to micromanage local affairs.
4. **Personnel Policies and Pensions.** All local governments should have broad authority and flexibility in personnel matters.
5. **Focus on Outcomes in State Funding of Locally Delivered Services.** When local agencies administer state programs and mandates with state funds, they should be held accountable for the measureable outcomes and given extensive administrative flexibility over the means and methods chosen by local leaders to achieve those outcomes.
6. **Modernize State Budgeting.** The state budget process should be modernized to reflect the best practices in state financial management from across the country.
7. **Update the State and Local Revenue Systems.** The laws governing the major state and local tax revenues should be regularly updated and revised to reflect the transformation to a service-based economy and the tax equity concerns that have arisen over time.
8. **Governance and Responsiveness.** State government should periodically review and recommend improvements to the structure, functions and financing of state government operations in order to assure citizens that decisions are being made and services are being delivered in the most responsive and efficient manner possible.
9. **Organization of the State Legislature:** The legislature should be modernized in order to achieve greater effectiveness and responsiveness to the priorities of the people of the state, including changes in how legislators are elected, limits on the length of their terms, the duration of the legislative session, and the way in which the legislature operates.

Major Reform Proposals

Name	California Forward	Repair California	Californians to Protect Local Taxpayers & Vital Services	CCS Partnership
Website	www.cafoward.org	www.repaircalifornia.org	www.savelocalservices.com	www.ccspartnership.org
Who they are	Bi-partisan, foundation funded, public-interest group initiated	The Bay Area Council (a business-funded group), their partners and supporters	Primarily League of Cities, CA Alliance for Jobs, and CA Transit Assn	CSAC, League of Cities, CSBA
What they want	<ul style="list-style-type: none"> - Filed two initiatives that do the following - State that "the proceeds of any tax or assessment levied or imposed" by a local agency "belong exclusively to the entity that enacted [it]" - Protect redevelopment property taxes from state redirection - Remove authority to suspend Prop. 42 - Require new statutes and initiatives that expand programs and increase state costs by \$25 million to provide sufficient new revenue or specific savings (doesn't apply to GO bonds, one-time expenditures, restored cuts, or growth from work load increases) - Authorize Gov to reduce or eliminate any budget appropriation up to amount necessary to restore budget balance if the Legislature fails to address a fiscal emergency within 45 days of a Gov's proclamation (Prop. 58); Legislature can overturn all or some cuts with 2/3 vote - Require Governor's proposed budgets to include: <ul style="list-style-type: none"> - Proposals for budget year and following yr - Projection of anticipated expenditures and revenues for the 3 years after that (5 total) - Performance standards for state agencies and programs 	<ul style="list-style-type: none"> - Pursuing two initiatives: <ul style="list-style-type: none"> - Allow citizens to call a Convention - Call a Convention - Convention would convene by 6/3/11 and conclude by 3/1/12 or 7/1/12 - Vote on proposals by 11/6/12 - Appoints FPCC as administrator - Funds Convention with \$1.75/CA resident from state's General Fund (\$65-70 million) - 3 types of delegates <ul style="list-style-type: none"> - 4 from Indian Tribe - 240 from Assembly districts (3/district), jury pool-style - ~250 delegates chosen jointly by counties, cities, & schools, by population - Delegate qualifications: <ul style="list-style-type: none"> - Citizen, resident, 18 y.o., non-felon - County delegates cannot since 2005 have been: - Elected or appointed 	<ul style="list-style-type: none"> - Protects from any kind of diversion all taxes "imposed or levied" by a local government for that government's purposes - Prohibits suspension of Prop. 1A - Prohibits property tax transfers to pay for new local mandates - Prohibits paying for new local mandates by allocating 0.65 percent VLF rate to others besides cities, counties, and the Local Revenue Fund - Specifies that all net revenues from state taxes on motor vehicle fuels be deposited in HUTA, which is declared a trust fund to be used solely for public transit infrastructure and for streets and roads costs - Requires 2/3 legislative vote to reallocate HUTA from 6/30/9 levels - Any HUTA allocation to 	<ul style="list-style-type: none"> 545 local officials voted at the CCS Summit to support the following reforms: <ul style="list-style-type: none"> <i>Protect Local Revenue</i> (the overwhelming favorite) <i>Reform Term Limits</i> (a distant second) <i>Change Requirements for Approval of Local Taxes</i> <i>Require New Funding Sources for Statewide Ballot Measures that Impose New Obligations</i>

Name	California Forward	Repair California	Californians to Protect Local Taxpayers & Vital Services	CCS Partnership
	<ul style="list-style-type: none"> - 5-year capital plan - Require updated revenue and spending projections on May 15 and Oct 15 - Require each house to refer budget bills to a joint committee by May 1 and conference report back to each house by June 20 - Require budget passage by June 25, or legislators forfeit salary and reimbursement until budget is passed - Lower threshold for budget bill appropriations to majority; retains 2/3 for all other appropriations and strengthens 2/3 requirement for taxes - Require "nonrecurring revenue" to be spent on one-time expenditures - Require legislative oversight of every program run by the state or by a local agency on behalf of the state at least every 10 years, to result in bills that improve or end programs - Implement performance-oriented budgeting based on state agencies' missions and performance metrics - Authorize "Countywide Strategic Action Plan" <ul style="list-style-type: none"> - Initiation requires majority of BOS - Adoption allows BOS to ask for sales tax hike by majority vote (up to 1 cent) - Must contain: declaration of goals and outcomes, inventory and assessment of existing public programs, improvement plan including progress measurement and annual reporting, resource allocation plan, a school element determined by school districts, a city element determined by each city - Schools get half of any tax increase 	<p>government officials</p> <ul style="list-style-type: none"> - State or local lobbyists - State employees - Formally involved with a party or candidate committee - Convention may propose a revision or series of separate amendments, as well as necessary statutory changes - May not raise taxes, change frequency of property assessment, change definition of "change in ownership," or affect marriage or abortion rights, gambling or casinos, affirmative action, freedom of the press, freedom of religion, or the death penalty - Limits Convention to: <ul style="list-style-type: none"> - Government Effectiveness (performance review) - Elections and Influence (initiatives, candidates, campaign finance, term limits, "legislative responsiveness") - Spending and Budgeting (budget process and term, vote threshold, accountability, efficiency) - Governance (state-local relationship, structure of state government) 	<p>locals may not be borrowed, deferred, delayed, etc</p> <ul style="list-style-type: none"> - Limits HUTA use for bonds to 1/4 of revenues plus 1/4 of any local allocation - Restores traditional (pre-2001) Public Transit Account allocations and declares it a trust fund - Prohibits any allocation of Bradley-Burns sales tax to local transportation funds from being reduced below 2008 allocation percentage - Requires Prop. 42 sales tax on gas to go quarterly to a Transportation Investment Fund (declared a trust fund) - Protects redevelopment property taxes from state redirection 	CCS Partnership

November 2, 2009



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To: CSAC Board of Directors

From: Paul McIntosh, Executive Director

Re: **CSAC Communications and Legislative Advocacy Strategy Plan –
ACTION ITEM**

Recommendation. This item is for your review and approval. The CSAC Executive Committee has reviewed the information and supported the communications and legislative strategies, as outlined below. Reform efforts are being discussed in a separate agenda item.

Background. The CSAC Budget Task Force met in Sacramento on Monday, September 28, 2009 with good attendance and an agenda with lofty goals. This draft communications and legislative advocacy/strategy plan is presented for your consideration and discussion.

Staff endeavored to develop a range of options for consideration. Many would require considerable time and effort on the part of county supervisors, others would require less time. We took this approach to ensure that there would be recognition of the commitment needed to secure the success of any given option and to ensure that, regardless of the time expended, there will be new ways to share the county message.

ENGAGING COUNTY SUPERVISORS IN STATEWIDE LEGISLATIVE EFFORTS

A significant component of discussions among the task force members was the importance of engaging county supervisors in direct advocacy efforts. The focus of these discussions was on direct contact between local elected officials and their legislators in the district. To that end, we have developed a draft plan for action:

Public education campaign. Internal discussions have focused on a variety of components that would be coordinated during 2010.

- NACo has identified April 2010 as "**County Government Month.**" NACo will be providing materials and ideas to counties to highlight the role of counties nationally. In California, however, we believe this is a great opportunity to showcase counties and the services they provide to all Californians.
- In April 2010, we would request that the Legislature recognize April as "County Government Month" by adopting **a resolution in both the Senate and Assembly.** CSAC would prepare **draft resolutions and**

materials for counties to recognize April as “County Government Month” and to highlight the services counties provide locally.

- In addition, CSAC would produce a **video highlighting county services** (see *NewsHour with Jim Lehrer clip* on Contra Costa County). By visiting and filming in a few selected counties that are diverse in size, geography, and population, but also have unique stories to tell, we believe that the video could be extremely useful in communicating the county story. We would host a **viewing** of that video in conjunction with the resolution in Sacramento and invite legislators and their staffs to attend, as well as county officials, corporate partners, and other community leaders. The video would also be **made available to counties** to post on a website, YouTube, or run on a local public access channel.
- The CSAC President would present a **“State of the Counties” address**, to inform the public, the media, and our state officials with a synopsis of the conditions of California counties.

Communications plan. Attached please find a draft Communications Plan for 2010 that is intended to outline tasks and key dates for communications with county officials, the press, and the Legislature.

Social networking tools. CSAC began to use Facebook and Twitter to communicate county messages in 2009 and we found them both valuable tools for communicating with legislators, the press, county officials, and the public. We will continue our use of these tools and others that may appear to communicate a regular and consistent message online with our followers. Outreach efforts to encourage more Facebook “fans” and Twitter “followers” will also be made.

Enhance CSAC Web site as a public education tool. The CSAC Web site presents a cost-effective, dynamic opportunity to compliment other public education campaign activities that explain the integral role California counties play in the lives of 38 million residents

While the CSAC Web site contains a significant amount of information, it is our goal to repackage portions of this copy, primarily under the “California Counties” section, to better mirror the viewers of these pages.

During the past year, the CSAC Web site has received more than 625,000 visits and nearly 1.4 million page views. The majority of these views are from the public wanting to get information on their specific county or counties in general. We can utilize a number of tools to help steer these California residents toward information that teaches them more about the value of counties.

County supervisors as statewide advocates. Staff also recommends a new approach to developing county leaders and maintaining a core group of supervisors willing and able to advocate for CSAC priority issues in and out of Sacramento. Options for increasing county supervisor engagement include:

- The incoming CSAC Board of Directors will be briefed on CSAC legislative advocacy and should be expected to be called upon for in-district and Capitol meetings and hearings, as well as targeted contact to specific legislators. Board members will also be asked to help coordinate CSAC presentations or adoption of resolutions or other tasks at the local level.
- CSAC staff may identify "teams" of supervisors to make regular visits to the Capitol on priority issues for meetings, hearings, and other events.
- CSAC staff will develop a "**CSAC To-do List**" for county officials, outlining requested tasks with background information that clearly requests a specific action and timeframe for county supervisors. Staff will follow up on such requests and provide reminders, as appropriate.

ADVOCATING FOR COUNTIES IN SACRAMENTO

A critical component of determining strengthening legislative advocacy efforts and positioning of counties is to identify statewide priorities and outreach activities that have broad county consensus. Homing in on those top association priorities shared among counties is critical. As one task force member put it, "let us not divide the house."

Theoretical "scorecard." The Task Force discussed the possibility of CSAC developing a voting scorecard in an effort to achieve some accountability for a legislator's voting record. The Executive Committee directed staff to convene an ad hoc committee chaired by Supervisor Valerie Brown, including Supervisors Liz Kniss, Joni Gray, Susan Cash, and Mike Reagan, to further refine the concept of a scorecard and bring recommendations to the Board of Directors at a future date.

Coalition-building. CSAC staff will identify groups that and issues that we can organize in a focused coalition – focusing on groups that CSAC many not have worked with previously. Potential options include engaging the education community on health and human services issues, urban cities on health and human services issues, or transportation advocates on transportation funding issues such as HUTA and Proposition 42 revenues, as examples. Developing new coalitions around particular issues may be helpful in generating additional attention and resources focused on counties.

Develop/facilitate collaboration among legislators who are former county supervisors. In the past, there have been regular meetings and discussion among those legislators who were formerly elected county, city, or special district officials. Known as the “Local Government Caucus” and led by former Contra Costa County Supervisor and now-Assembly Member Tom Torlakson, these members met on a bipartisan basis to discuss measures of interest to local government. The local government associations were often asked to make presentations to the group.

A number of former county supervisors now serving in the Legislature have approached CSAC about coordinating and developing a “county caucus” in the Legislature. A number of former county supervisors are serving in the Legislature currently:

Senator Roy Ashburn	R-Kern County
Senator Lou Correa	D-Orange County
Senator Dave Cox	R-Sacramento County
Senator Mark DeSaulnier	D-Contra Costa County
Senator Mark Leno	D-San Francisco City and County
Senator Joe Simitian	D-Dan Mateo County
Senator Lois Wolk	D-Yolo County
Senator Leland Yee	D-San Francisco City and County
Assembly Member Tom Ammiano	D-San Francisco City and County
Assembly Member Juan Arambula	I-Fresno County
Assembly Member Jim Beall	D-Santa Clara County
Assembly Member Wes Chesbro	D-Humboldt County
Assembly Member Connie Conway	R-Tulare County
Assembly Member Ted Gaines	R-Placer County
Assembly Member Jerry Hill	D-San Mateo County
Assembly Member Dan Logue	R-Yuba County
Assembly Member Fiona Ma	D-San Francisco City and County
Assembly Member Roger Niello	R-Sacramento County
Assembly Member Jim Silva	R-Orange County
Assembly Member Tom Torlakson	D-Contra Costa County
Assembly Member Mariko Yamada	D-Yolo County

We anticipate that a number of these members would be interested in engaging in a dialogue about county issues in the Legislature. However, we should also be mindful that we would want them to focus on specific issues or tasks.

Budget principles. The Budget Task Force developed short-term budget principles earlier this year that may serve us well during the upcoming budget debate. We may wish to revisit some of these principles as the budget debate progresses, but these seem to be strong general principles that can guide our advocacy starting with the introduction of the January budget.

- I. *Accept no permanent ongoing cuts to counties (i.e. direct cuts, cost shifts or elimination).*
- II. *Ensure budget reductions to counties are proportional.*
- III. *Consider new mandates or program responsibilities that impose local costs (i.e. legislative or regulatory) to counties only with a new, dedicated, reliable and adequate funding source. Such a realignment should include maximum county flexibility in service provision.*
- IV. *Seek opportunities to mitigate cuts and cost shifts through a statewide balanced approach, including seeking reliable and adequate revenues.*

ENGAGING THE NEW ADMINISTRATION: RESTORE THE PARTNERSHIP CALIFORNIA

In 2008, NACo launched the 2008 Presidential Election Project, "Restore the Partnership." The project focused on ensuring that the presidential candidates addressed county issues and had an understanding and appreciation of county issues as the winning candidate came into office. NACo hired a full-time campaign consultant to work with county officials across the state to coordinate participation of county officials at events where presidential candidates were scheduled to be, to develop materials to provide the candidates' teams and to counties, and to work with the winner's transition team to ensure that county issues were a part of the President-Elect's agenda, as he or she headed into office.

Given the upcoming gubernatorial election in 2010, there is an opportunity to engage with the California gubernatorial candidates in a similar way. Typically, CSAC staff would answer questions about counties that come from the campaigns and share white papers with the Governor-Elect's transition team after the election. We would not normally extend ourselves to the campaigns directly, especially prior to the June primary. However, under a "Restore the Partnership California" program, we could mirror the NACo program by engaging the gubernatorial candidates prior to the June primary, coordinating county officials' attendance at events, and developing materials for the candidates' teams. This would require a significant commitment by county officials, and potentially get into partisan politics, but also a significant commitment by CSAC staff to coordinate such an effort, potentially requiring outside assistance from a political consultant.

FOCUSING ON HUMAN SERVICES FUNDING DEFICIT (HSFD)

The Task Force expressed interest in proceeding with a coordinated effort among counties to file mandate claim(s) with the Commission on State Mandates related to the Human Services Funding Deficit (HSFD). Recall that this chronic underfunding of human services programs now reaches \$1 billion. Programs for which a mandate claim could be filed include Foster Care, Child Welfare Services, CalWORKs, Adoptions, In-Home Supportive Services, and Adult Protective Services.

Options:

- Choose a specific program that is the most woefully underfunded (Child Welfare underfunding comprises \$660 million of the \$1 billion problem, for example); or
- File separate mandate claims on all six of the identified Human Services Funding Deficit programs.

If counties go forward with such an approach, CSAC would also need to coordinate a media response. A mandate claim and subsequent lawsuit may be the only remedy for this growing \$1 billion problem. A mandate claim would also prove to the state that counties are serious about pursuing reimbursement. A well-coordinated media campaign might create sufficient political pressure to get funding sooner than the mandate process would allow.

Risks:

- It may be difficult to get the Legislature or Governor to pay attention to the issue once counties file a mandate claim since the filing of the claim will most likely make it the next Governor's or Legislature's problem.
- Counties would need to be prepared to stop providing a service or services if the mandate claim and subsequent ruling are favorable in determining it to be an unfunded mandate. There would be considerable public outcry if counties actually stopped providing a service like child welfare.

DEVELOPING A REALIGNMENT PROPOSAL FOR BETTER OUTCOMES

The Budget Task Force discussed approaches to program realignment, recognizing that one of the ways the state can achieve program savings is to divest itself of a responsibility. Discussion centered on developing a realignment based on improving outcomes rather than fiscal imperatives. Noting that funding,

expertise and responsibility may be misaligned, they talked about exploring the concept of program reforms to achieve better outcomes.

One area that the Task Force focused on was recidivism. Both state and county governments are affected by the high costs associated with California's recidivism rate. The expertise (county mental health, alcohol and drug, job training) required to address offenders' needs is disconnected from the state agencies supervising this population. The state and Legislature are looking for answers and solutions to persistent budget problems. Are counties willing to talk about how to improve recidivism rates and consider ways to improve offender needs in the context of a criminal justice program realignment? (See also discussion of criminal justice reforms.)

In the 1991 realignment, counties agreed to take on new responsibilities in exchange for revenue sources that aligned with program costs. The intent behind the 1991 realignment was multifold: 1) permanently reduce state General Fund expenditures, 2) provide cover for tax increases, and 3) better align responsibility and funding. The 1991 realignment provided counties with increased flexibility to administer health and mental health programs.

However, the Task Force clearly focused on policy – not finances – driving the possible creation of a second realignment.

Attached are the existing CSAC realignment principles developed in 2005.

PREPARING FOR CHANGES IN THE CALIFORNIA CRIMINAL JUSTICE SYSTEM

Discussions centered on the confluence of pressures coming from (1) the federal three-judge panel — which recently ordered the state to develop a population reduction plan to shed more than 40,000 inmates from the state's 33 prisons over the next two years; (2) the prison healthcare receiver who is endeavoring to bring the state in compliance with a constitutional standard of health and mental health care in the prison system; and (3) legislative and administrative efforts to reduce the state's correctional budget by \$1.2 billion in 2009–10, in part to head off the intervention of the federal court.

Counties are sensitive to the dynamic that the corrections continuum operates as a closed system; changes on the state side generally have ramifications at the local level and vice versa. While it is evident that reforms approved by the Legislature in September (but awaiting enactment) contemplate significant local implications, there also appears to be plenty of room for additional discussion of ways to address the core problems of ineffective (if non-existent) reentry protocols and the high recidivism rates that generally follow.

The Budget Task Force expressed interest in exploring results-oriented reform rather than await the inevitable shift of the prison population and increased local

service demands. Among the ideas discussed include revisiting sentencing reforms (e.g., definition of third strike) to address persistent prison overcrowding as well as redesigning the reentry model — perhaps through the state contracting with counties for services — in a way that connects county service expertise to support inmates' transition back into the community. The Legislature clearly believes counties can deliver services more efficiently at local level with better outcomes, and counties should be prepared to provide input on models that can offer offenders more productive and promising results.

NEXT STEPS

We look forward to a vigorous discussion with the Board of Directors on the options presented above. Our members and staff are motivated and energized to take on challenges and pursue new strategies this year to ensure that — despite significant fiscal constraints — counties can remain as responsive as possible to our communities' and constituents' needs. A strong voice, an openness to reform, and a well-executed strategy have the potential to move our counties and this association in a new direction.

2010 CSAC Communications Plan

October 2009

Communication Goals	<ul style="list-style-type: none"> ▪ Build understanding and support for county issues within the state budget among various target audiences. ▪ Promote understanding of county government among various target audiences. ▪ Mentor/educate county supervisors to strengthen their roles as advocates on local and state levels.
Target Audiences	<ul style="list-style-type: none"> ▪ County supervisors, CAOs and department heads ▪ Legislature ▪ Media ▪ County stakeholders and partners
Objectives	<ul style="list-style-type: none"> ▪ Increase use of "CSAC messages/priorities" by county supervisors and CAOs at local and state levels. ▪ Coordinate messages at county board meetings regarding state budget and legislative issues (for example, pick 3-5 budget messages for discussions on same day around the state). ▪ Increase dialogue between county supervisors and their legislative delegations. ▪ Increase state and local press coverage of county budget and legislative issues. ▪ Increase state and local press coverage of state budget and legislative issues impacting counties, including service delivery.
Tactics	<ul style="list-style-type: none"> ▪ Develop key messages/talking points for supervisors, CAOs and department heads. ▪ Develop key messages for CSAC staff – for press communication and for Legislature. ▪ Utilize county supervisors, CAOs and department heads in testimony before Legislature on budget and legislative issues. ▪ Work with county PIOs on press strategy and messaging. ▪ Work with capitol press corps on county budget stories. ▪ Make CSAC staff available for presentations in counties. ▪ Provide Officers, Executive Committee, and Board of Directors members with regular "to do" lists on messaging to the public and to legislators.

<p>Key Messages</p>	<ul style="list-style-type: none"> ▪ Services as residents and communities once knew them cannot be sustained given state budget actions. ▪ Further cuts to health, human services, and public safety programs will compromise the safety net for vulnerable children, families, and seniors. ▪ County budgets are already hurting – even before the state takes further actions to balance its budget. ▪ Further state borrowing of county funds (Propositions 1A, 42 and HUTA) is short-sighted and will exacerbate the state budget revenue shortfall. ▪ Demands for county services are skyrocketing due to the ongoing economic crisis. ▪ Counties are supposed to be partners of the state. Instead, Legislative members tie the hands of counties and wrongly treat them as “just another special interest.”
<p>Evaluation</p>	<ul style="list-style-type: none"> ▪ Increase use of “CSAC messages/priorities” by county supervisors and CAOs. MEASURE: Actively talk about with Board of Directors and survey them about conversations with members of the Legislature. Follow up with them on the “CSAC To-Do List” and track their progress. ▪ Track which county supervisors testify at legislative hearings and how often they are willing to do so. ▪ Coordinate messages at county board meetings regarding state budget (for example, pick 3-5 budget messages for discussions on same day around the state). MEASURE: Keep track of board agendas and resulting press articles on designated dates. ▪ Increase state and local press coverage of county budget issues. MEASURE: Keep track of news stories in major newspapers around the state. Use as a baseline against 2009 news clips. Review CSAC media log on weekly basis to see how many media inquiries were received and how/if CSAC staff members’ quotes were used. ▪ Increase state and local press coverage of state budget issues impacting counties, including service delivery. MEASURE: Keep track of news stories in major newspapers around the state. Use as a baseline against 2009 news clips. Review CSAC media log on weekly basis to see how many media inquiries were received and how/if CSAC staff members’ quotes were used.
<p>Schedule</p>	<p>Include timelines for production of material, meeting dates, and who is responsible for each</p>

activity.

November 2009:

- PPIC report on the state of city and county budgets will be released in fall 2009.
- Coordinate messaging and press events with counties around the release of the report.
- Begin developing state budget and legislative message.
- Begin soliciting participation from Executive Committee and Board of Directors for their participation in enhanced communications plan.
- Incorporate CSAC message into written materials (BAB, leg bull, ED watch) for member counties.
- Schedule meetings with potential partners – county affiliates, SEIU, League of Cities, education, etc.
- Schedule meetings with members and legislative leadership, including budget chairs.
- Continue to work on pitching county budget stories to the press.
- Gather data and conduct surveys to assist with supporting county message.

December 2009:

- Continue to work on pitching county budget stories to the press.
- Strategically identify supervisors to assist with state budget and legislative messaging.
- Continue meetings with potential partners – county affiliates, SEIU, League of Cities, education, etc.
- Gather data and conduct surveys to assist with supporting county budget and legislative message.
- Incorporate CSAC message into written materials (BAB, leg bull, ED watch) for member counties.

January 2010:

- Continue to work on pitching county budget stories to the press in advance of January 10 budget release.
- Continue meetings with potential partners – county affiliates, labor, League of Cities, education, etc.

<ul style="list-style-type: none"> ▪ Gather data and conduct surveys to assist with supporting county message. ▪ Incorporate CSAC message into written materials (BAB, leg bull, ED watch) for member counties. ▪ Based on January budget begin to identify top 3-5 budget and legislative issues for coordinated county board discussions. <p>February 2010:</p> <ul style="list-style-type: none"> ▪ Set dates to share with members the 3-5 budget and legislative issues for coordinated county board discussions. ▪ Incorporate CSAC message into written materials (BAB, leg bull, ED watch) for member counties. ▪ Solicit feedback from Board of Directors. ▪ Prepare for county government month (April). ▪ Continue meetings with potential partners – county affiliates, SEIU, League of Cities, education, etc. <p>March 2010:</p> <ul style="list-style-type: none"> ▪ Begin roll-out of top 3-5 budget and legislative issues for coordinated county board discussions to coincide with legislative budget hearings. ▪ Incorporate CSAC message into written materials (BAB, leg bull) for member counties. ▪ Solicit feedback from Executive Committee. ▪ Prepare for county government month (April). ▪ Continue meetings with potential partners – county affiliates, SEIU, League of Cities, education, etc. <p>April 2010:</p> <ul style="list-style-type: none"> ▪ April is national county government month. Implement a number of communications ideas, including press event in Sacramento, legislative reception, public relations ideas, etc.. ▪ Continue roll out of top 3-5 budget and legislative issues for coordinated county board 	
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	<p>discussions.</p> <ul style="list-style-type: none"> ▪ Incorporate CSAC message into written materials (BAB, leg bull, ED watch) for member counties. ▪ Late April/early May: "State of the Counties" press event. Conduct a press conference highlighting the state of county governments in advance of the May Revise. ▪ Continue meetings with potential partners – county affiliates, SEIU, League of Cities, education, etc. <p>May 2010:</p> <ul style="list-style-type: none"> ▪ Late April/early May: "State of the Counties" press event. Conduct a press conference highlighting the state of county governments in advance of the May Revise. ▪ Target county budget stories to pitch to press pre-release of May Revise (May 1-15). Stories tie into "State of the Counties" event. ▪ Incorporate CSAC May Revise and other legislative messages into written materials (BAB, leg bull, ED watch) for member counties. ▪ Incorporate May Revise messages into Legislative Conference. ▪ Targeted event at capitol with supervisors while in town for Legislative conference? ▪ Continue meetings with potential partners – county affiliates, SEIU, League of Cities, education, etc. <p>June 2010:</p> <ul style="list-style-type: none"> ▪ CSAC Legislative Conference June 2-3, 2010. ▪ Solicit feedback from Board of Directors about legislative contacts, press events, and other communication. ▪ Incorporate CSAC message into written materials (BAB, leg bull, ED watch) for member counties. <p>July 2010</p> <ul style="list-style-type: none"> ▪ Incorporate CSAC message into written materials (BAB, leg bull, ED watch) for member counties.
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Budget	Include in-house costs, including print costs Staff time Contracts
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CSAC Realignment Principles 2005



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With the passage of Proposition 1A, the state and counties have entered into a new relationship whereby local property taxes, sales and use taxes, and Vehicle License Fees are constitutionally dedicated to local governments. Proposition 1A also provides that the Legislature must fund state-mandated programs; if not, the Legislature must suspend those state-mandated programs. Any effort to realign additional programs must occur in the context of these constitutional provisions.

Counties have agreed that any proposed realignment of programs should be subject to the following principles:

- 1. Revenue Adequacy.** The revenues provided in the base year for each program must be at least as great as the expenditures for each program transferred and as great as expenditures would have been absent Realignment. Revenues in the base year and future years must cover both direct and indirect costs. A hold harmless protection must be included to ensure that a county's share of costs must not exceed the amount of realigned and federal revenue that it receives for the program. The state shall bear the financial responsibility for any costs in excess of realigned and federal revenues. There must be a mechanism to protect against entitlement program costs consuming non-entitlement program funding.
- 2. Revenue Source.** The designated revenue sources provided for program transfers must be levied statewide and allocated on the basis of programs transferred; the designated revenue source(s) should not require a local vote. The state must not divert any federal revenue that it currently allocates to realigned programs.
- 3. Transfer of Existing Realigned Programs to the State.** Any proposed swap of programs must be revenue neutral. If the state takes responsibility for a realigned program, the revenues transferred cannot be more than the counties received for that program or service in the last year for which the program was a county responsibility.
- 4. Mandate Reimbursement.** Counties, the Administration, and the Legislature must work together to improve the process by which mandates are reviewed by the Legislature and its fiscal committees, claims made by local governments, and costs reimbursed by the State. Counties believe a more accurate and timely process is necessary for efficient provision of programs and services at the local level.
- 5. Local Control and Flexibility.** For discretionary programs, counties must have the maximum flexibility to manage the realigned programs within the revenue base made available, including flexibility to transfer funds between programs. For entitlement programs, counties must have maximum flexibility over the design of service delivery and administration, to the extent allowable under federal law. Again, there must be a mechanism to protect against entitlement program costs consuming non-entitlement program funding.
- 6. Federal Maintenance of Effort.** Federal maintenance of effort requirements (the amount of funds the state puts up to receive federal funds, such as IV-E and TANF), as well as federal penalties and sanctions, must remain the responsibility of the state.



CSAC 115th Annual Meeting

Administration of Justice Policy Committee

Tuesday, November 17, 2009 ■ 2:30 – 4:30 p.m.

De Anza I ■ Portola Hotel

Two Portola Plaza ■ Monterey, California

Supervisor Ronn Dominici, Madera County, Chair Supervisor Federal Glover, Contra Costa County, Vice-Chair

- 2:30 p.m. I. **Welcome and Introductions**
Supervisor Ronn Dominici, Madera County
- 2:35 II. **ACTION ITEM — CSAC Principles for Reform 2010**
Elizabeth Howard and Rosemary Lamb, CSAC Administration of Justice Staff
- 3:05 III. ***Coleman v. Schwarzenegger* and *Plata v. Schwarzenegger*: Update on State Prison Overcrowding and the Federal Three-Judge Panel**
Carol Woodward, Deputy County Counsel, San Mateo County
- 3:20 IV. **SBX3 18: What is in the 2009 Corrections Reform Package and How Will It Affect Counties?**
Dave Lewis, Associate Director – Budgets, California Department of Corrections and Rehabilitation (CDCR); Robert Ambroselli, Director, Division of Adult Parole Operations, CDCR; Margarita Perez, Associate Director, Division of Adult Parole Operations, CDCR
- 3:35 V. **AB 900 Jail Construction Funding: Update and Discussion**
Bob Takeshta, Deputy Director, Corrections Standards Authority (CSA); Sheriff Curtis Hill, San Benito County
- 3:45 VI. **Evidence-Based Practices for the Prevention and Intervention of Youth Crime and Violence**
Ashley Secarea, Research Analyst, Office of Gang and Youth Violence Policy, California Emergency Management Agency (CalEMA)
- 4:05 VII. **Judicial Branch Update**
Donna S. Hershkowitz, Assistant Director, Office of Governmental Affairs, Judicial Council/Administrative Office of the Courts
- 4:20 VIII. **Public Safety Affiliate Report**
Kirsten Barlow, Associate Director, Legislation and Public Policy, California Mental Health Directors Association (CMHDA)
- 4:30 IX. **Preview of 2010 Legislative Session**
Elizabeth Howard and Rosemary Lamb, CSAC Administration of Justice Staff
- 4:45 X. **Closing Remarks and Adjournment**
Supervisor Ronn Dominici, Madera County



Agriculture and Natural Resources Policy Committee

Tuesday, November 17, 2009 · 10:00 a.m. – 12:30 p.m.
Portola Hotel, Two Portola Plaza, Monterey, CA 93940
De Anza III Room

AGENDA

Supervisor Mike Nelson, Merced County, Chair
Supervisor Jon Vasquez, Solano County, Vice- Chair

- 10:00- 10:10 a.m. **I. Welcome and Introductions**
Supervisor Mike Nelson, Merced County
Supervisor Jon Vasquez, Solano County
- 10:10-10:25 **II. ACTION ITEM - CSAC Principles for Reform 2010**
Jean Hurst, CSAC Legislative Representative
- 10:25- 10:45 **III. Discussion of Proposed Delta/Water Legislation**
Karen Keene, CSAC Senior Legislative Representative
Cara Martinson, CSAC Legislative Analyst
- 10:45- 11:10 **IV. Understanding Federal and State Wildland Fire
Protection Suppression Policy for Structure**
Jim Pena, Deputy Regional Forester, US Forest Service
*Ed Hollenshead, Director of Fire and Aviation, US Forest
Service*
*Chief Loren Snell, Assistant Deputy Director for
Cooperative Fire Protection, CAL FIRE*
- 11:10- 11:20 **V. Overview of the Updated Model Water Efficient
Landscape Ordinance**
*Gwen Huff, Associate Land and Water Use Scientist,
Department of Water Resources*
- 11:20- 11:30 BREAK (Lunch will be Served)
- 11:30- 12:30 p.m. **VI. Status Report on the National Flood Insurance
Program and Map Modernization Efforts**
*Daniel Peterson, Director of Water Resources, Sutter
County*
FEMA Representative (tba)



Government Finance and Operations Policy Committee
CSAC 115th Annual Meeting
Tuesday, November 17, 2009 — 2:30 p.m. – 5:00 p.m.
De Anza II, Portola Hotel
Monterey County, California

Supervisor Steven Worthley, Tulare County, Chair
Supervisor Bruce Gibson, San Luis Obispo County, Vice Chair

- 2:30 p.m. **I. Welcome and Introductions**
Supervisor Steven Worthley, Tulare County, Chair
Supervisor Bruce Gibson, San Luis Obispo County, Vice Chair
- 2:35 p.m. **II. Same As It Ever Was: Next Year's State Budget Deficit**
Marianne O'Malley, Legislative Analyst's Office
- 3:10 p.m. **III. ACTION ITEM — CSAC Principles for Reform 2010**
Jean Kinney Hurst, Legislative Representative, CSAC
- 3:45 p.m. **IV. If Not Now, When? Government Reform Proposals**
Fred Silva, Senior Policy Advisor, California Forward
John B. Grubb, Repair California/Bay Area Council
Representative from Californians to Protect Local Taxpayers and
Vital Services
- 4:45 p.m. **V. Defining the Benefit: CSAC's Pension Reform Guidelines**
Eraina Ortega, Legislative Representative, CSAC
- 5:00 p.m. **VI. Closing Comments and Adjournment**
Supervisor Steven Worthley, Tulare County, Chair
Supervisor Bruce Gibson, San Luis Obispo County, Vice Chair



Health and Human Services Policy Committee
Wednesday, November 18, 2009 · 2:00 – 4:00 p.m.
De Anza 1 Room · Portola Hotel
2 Portola Plaza, Monterey, CA 93940

AGENDA

Supervisor Liz Kniss, Santa Clara County, Chair
Supervisor Terry Woodrow, Alpine County, Vice Chair

- 2:00 p.m. **I. Welcome and Introductions**
Supervisor Liz Kniss, Santa Clara County
- 2:05 – 2:35 **II. Federal Health Care Reform Update**
*Supervisor Liz Kniss, Santa Clara County, Co-Chair, NACo
Health Reform Task Force*
Tom Joseph, Waterman & Associates
- 2:35 – 3:25 **III. California's Next Medicaid Waiver (Section 1115)**
*David Maxwell Jolly, Director, California Department of Health
Care Services (invited)*
*Erica Murray, Vice President, California Association of Public
Hospitals and Health Systems*
*Patricia Ryan, Executive Director, California Mental Health
Directors Association (invited)*
*Judith Reigel, Executive Director, County Health Executives
Association of California*
- 3:25 – 3:35 **IV. Challenges for 2010: Litigation**
*Jennifer Henning, Executive Director, County Counsels
Association*
- 3:35 – 3:45 **V. Challenges for 2010: Budget Strategy**
Kelly Brooks, CSAC Legislative Representative
- 3:45 – 4:00 **VI. ACTION ITEM – CSAC Reform Principles for 2010**
Jean Hurst, CSAC Legislative Representative
- 4:00 **Adjournment**



Housing, Land Use, & Transportation Policy Committee

115th CSAC Annual Meeting

Wednesday, November 18, 2009 · 10:00 a.m. – 12:00 p.m.

Portola Hotel · De Anza I

Monterey, California

AGENDA

Supervisor Mike McGowan, Yolo County, Chair
Supervisor Paul Biane, San Bernardino County, Vice Chair

- 10:00 a.m. I. **Welcome, Introductions and Opening Remarks**
Supervisor Mike McGowan, Chair, Yolo County
Supervisor Paul Biane, Vice Chair, San Bernardino County
- 10:05 a.m. II. **Action Item: CSAC Principles for Reform 2010**
Supervisor Mike McGowan, Chair, Yolo County
Supervisor Paul Biane, Vice Chair, San Bernardino County
- 10:20 a.m. III. **Indian Gaming and Federal Lands into Trust Process**
Supervisor Mike McGowan, Yolo County
Joe Krahn, Waterman and Associates
Bruce Goldstein, County Counsel, Sonoma County
- 10:40 a.m. IV. **SAFETEA-LU Reauthorization (MAP-21) Update**
Joe Krahn, Waterman and Associates
- 10:50 a.m. V. **Local Streets and Roads Needs Assessment Update**
Pat DeChellis, Deputy Director of Public Works, Los Angeles County
- 11:00 a.m. VI. **Housing Californians: Future Needs and Affordability**
Lynn Jacobs, Director, Housing and Community Development Department
- 11:20 a.m. VII. **Napa County Workforce Housing Development Ordinance**
Supervisor Mark Luce, Napa County
- 11:40 a.m. VIII. **Informational Item: Local Taxpayer, Public Safety, & Transportation Protection Act**
Brandon Castillo, Bicker, Castillo, & Fairbanks
- 11:50 a.m. IX. **SB 375 Implementation: Coordinating Land Use and Transportation in the Greenhouse Gas (GHG) Debate**
 - Regional Targets Advisory Committee (RTAC)
 - Regional Transportation Plan Guidelines (RTP)*DeAnn Baker, CSAC Senior Legislative Representative*
Kiana Buss, CSAC Legislative Analyst
- 12:00 p.m. X. **Other Items & Adjournment**

RESOLUTION OF THE BOARD OF DIRECTORS

County Supervisors Association of California Doing business as the California State Association of Counties

WHEREAS, the Board of Directors of the California State Association of Counties (CSAC) employs an executive director and other staff to perform its day-to-day business; and

WHEREAS, the Board desires the business of the association to be transacted in an efficient and appropriate manner; and

WHEREAS, from time to time the Executive Director and Secretary of the Corporation must sign or approve documents on behalf of the Board;

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of CSAC hereby authorizes the Executive Director and Secretary of the Corporation, and his designees on staff, to execute and approve bank and other documents as authorized by the Board of Directors or the Executive Committee.

FURTHER BE IT RESOLVED, that this resolution shall remain in effect until the 2010 annual meeting of CSAC, when a similar resolution will be executed by the newly constituted Board of Directors.

Duly adopted this 19th day of November, 2009.

Gary Wyatt, President



MEMORANDUM

November 2, 2009

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500

Facsimile
916.441.5507

To: Board of Directors
California State Association of Counties

From: Paul McIntosh
Executive Director

Re: **Tribal Affairs Advocacy**

At their meeting of October 8, the CSAC Executive Committee conceptually approved entering into a contract agreement with Washington DC-based Perkins Coie for additional outside counsel and legal analysis specific to Federal Indian Gaming issues related to a recent Supreme Court decision (*Carcieri vs. Salazar*). This was pursuant to a recommendation from the County Counsel's Native American Affairs Committee, Chaired by Deputy County Counsel, Bruce Goldstein (Sonoma County). Information on that agreement is attached.

CSAC is working with Supervisor Mike McGowan, Chair of the CSAC Indian Gaming Working Group, Bruce Goldstein, and Waterman and Associates to ensure that; 1) the scope of the contract avoids redundancy with advocacy services already provided by Waterman and Associates, 2) the objectives are achievable, and 3) costs are commensurate with these goals. As explained in the accompanying material, this is an issue that has the potential to impact all 58 of California's counties.

While CSAC is in the process of putting together an agreement, and discussing strategy with other concerned states, the House Natural Resources Committee scheduled hearings on two bills that have been introduced in the House of Representatives designed to "fix" the tribal federal recognition issue created by the *Carcieri* decision (a full discussion of this issue is part of the attached materials). The Native American Lands Committee of the County Counsel's Association felt it critical that California be able to provide testimony at this hearing. CSAC's Washington advocate, Waterman and Associates, worked with House staff and secured a place on the witness list for CSAC. CSAC is providing testimony at the hearing through Steven Woodside, County Counsel, Sonoma County.

California's suggested share of the contract agreement intended to forward CSAC policy on fee to trust issues when fixing the *Carcieri* decision was set at \$30,000 for a year by Perkins Coie, which assumes California will be joined by 5 or 6 other states at that level to achieve \$70,000 to \$100,000, which is the annual goal of Perkins Coie. CSAC met with executive directors from several states during the annual NCCAE meeting earlier this month and there is great interest from several major states in joining in the Perkins Coie agreement.

CSAC intends to follow the steps outlined above with respect to evaluating the scope of the contract and pertinent costs. However, we wanted to also bring to your attention that

in addition to seeking outside counsel through this agreement, there will be potentially significant costs associated with travel to Washington DC on a periodic basis, outside of normal visits to our Nation's Capitol. This could run the cost of this issue well beyond the initial \$30,000; perhaps as much as doubling those costs.

At this time, staff does not recommend any action by the Board of Directors except to be aware that at the direction of the CSAC Executive Committee we intend to seek outside counsel through contract and pay for associated travel expenses. Staff will work with CSAC leadership to approve a revised contract that meets our objectives and remains within the \$30,000 limit. If activities increase, it may be necessary to consider a small assessment for this project as part of the 2010-2011 budget.

Attachment

MEMORANDUM

TO: CSAC Executive Committee

DATE: October 5, 2009

FROM: Valerie Brown

RE: Potential Tribal Affairs Advocacy Contract

Due to the recent United States Supreme Court decision in *Carcieri v. Salazar*, the next six months presents a time of critical opportunity, and peril, on tribal land use issues. These are critical issues for which CSAC has historically provided leadership and is looked to for policy direction. To reach our policy goals during this unique period, we need the substantive legal expertise and experience to work effectively in the legal, congressional and administrative (e.g., Department of the Interior) arenas. I urge you to make an investment in these critical issues and that we encourage other similarly impacted state county organizations also to become involved.

A confluence of factors, including the recent Supreme Court decision, a new administration, and economic pressures on tribal development, create the likelihood of change in fee to trust and tribal recognition rules and regulations that, for over a decade, have been stalled by competing forces. This potential “break through” is driven by Indian leaders and sophisticated tribal attorneys who are coalescing around a “fix” to the recent *Carcieri* decision. In that case the Court determined that, generally, a tribe can not take land into trust unless it was “under federal jurisdiction” in 1934.

This new judicial requirement to prove a tribe’s governmental status as of 1934 is especially an issue in California (due to the unique history of the Rancheria system) and has sent shock waves through Indian Country and galvanized those seeking a return to the pre-*Carcieri* status quo. The tribes understand (as we should) that the push for a “*Carcieri*” fix may well break the log jam on fee to trust issues and are now lobbying for less restrictive criteria on fee to trust applications for gaming and other purposes. Over the last two weeks at least three bills have been introduced in Congress to effectuate a *Carcieri* fix by essentially overturning the high court’s decision, as well as to speed recognition of new tribal entities. In addition, reports have leaked to Congress that the BIA is poised to release new regulations relaxing the current restrictions on off-reservation gaming.

As recognized in recent Congressional testimony sponsored by CSAC (attached), the impetus towards a “*Carcieri* fix” provides an important opportunity for local governments to have its concerns considered in a way that may not be possible for another generation. These interests include local enforceable agreements to insure that the impacts of large scale tribal developments are fully mitigated, inclusion in consultation and decision processes affecting counties, and reasoned decision making regarding recognition of new tribes and placement of tribal development projects.

CSAC has been fortunate to have excellent staff and lobbyists assist us on these issues as well as invaluable input from the County Counsel’s Association but the task before us is beyond our current in-house resources. The Perkins Coie law firm has made a proposal to CSAC to help coordinate national efforts to respond to *Carcieri* and other tribal initiatives. Several counties, including Sonoma, have had an excellent experience with the Perkins Coie law firm in the Indian law area. They have the substantive, administrative and legislative expertise to act as a focal point for coordinating county efforts as well as helping to develop legislative language and position papers to further CSAC’s goals. While I recognize that this is financially a difficult time for all, the current opportunity/challenge should not be ignored and I encourage you to carefully consider their proposal to CSAC (attached). Failure to act will undoubtedly lead to literally hundreds of thousands of dollars being spent by individual counties to oppose projects that are newly coming into their area and regret for not acting decisively when we had the chance.

Attachments



607 Fourteenth Street N.W.
Washington, D.C. 20005-2011
PHONE 202.628.6600
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Guy R. Martin
PHONE (202) 434-1650
FAX (202) 634-9139
EMAIL GMartin@perkinscoie.com

July 15, 2009

Mr. Paul Macintosh
Executive Director
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

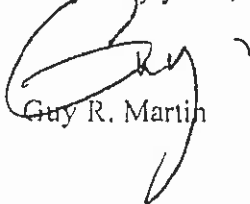
Re: Proposal for Assistance in Federal Tribal Trust Land Actions

Attached is a proposal directed to CSAC and copied to those individual California counties with significant tribal issues. The proposal would create a coordinated effort for governmental entities, in California and elsewhere, to participate effectively in the Congressional and executive branch activities which respond to the Supreme Court's *Carcieri* decision on the federal government's tribal trust land program. The proposal seeks to provide a cost-effective coalition in which diverse county, local and state interests can take an informed and effective role in the discussions toward long-overdue trust land reform. The nation's tribes have legitimate interests to be served in this process but so do local, county and state governments, and this proposal addresses that opportunity.

Attached below are: a short proposal; an analysis that provides the context for the proposal; and a short description of the Perkins Coie Indian Law Team that would provide expert coordination and other services. We envision that other local governments from other regions will participate as well, but CSAC, should it accept the proposal, would be an anchor participant in setting the agenda and utilizing the capabilities of the ad hoc coalition.

My contact information is below and we would be glad to discuss this further with you at any time.

Very truly yours,



Guy R. Martin

July 15, 2009

TO: California State Association of Counties (CSAC) and other California Non-Tribal Parties Interested in Federal Trust Land Reform

FROM: Guy R. Martin *Gym*
 Donald C. Baur
 Jena MacLean

RE: Proposal for Ad Hoc Consortium for Trust Land Reform

This proposal is based on the attached analysis of the legal and political landscape that exists in the wake of the *Carcleri* decision. The theme of that analysis is that the need for Congressional and/or executive branch response to *Carcleri* provides an unprecedented opportunity for counties, local governments and states to achieve comprehensive federal trust land reform as opposed to the "quick fix" proposed by tribes which is favored by pro-tribal Members of Congress. This proposal recognizes the opportunity for trust land reform, and also the absence of an organized national entity to coordinate and provide expert services and coordination to a disparate group of non-tribal interests toward the objectives which are summarized in the analysis. Finally, the proposal recognizes the budgetary limitations of all levels of government by providing the services on a cost-effective basis through sharing costs and creating a common base of support, strategy and coordination.

Although there are a number of firms with Indian law expertise, Perkins Coie is unique by being among the firms which function at the national level on Indian law issues, and even fewer which provide long term representation to states, counties and local governments on multiple issues in which tribal interests intersect with legitimate local and state interests. Perkins proceeds with true respect for tribal rights and perspectives but believes that non-tribal entities and their legitimate interests must be represented fully, particularly in circumstances in which tribal entities and communities co-exist and impact one another.

Specifically, we are proposing to provide a series of services which will allow a diverse group of non-tribal interests, in California and from other regions, to be effective on this issue on a cost-efficient basis. We recognize that few or none of these entities, who are state associations, small towns, individual counties, or even community groups, have the financial capability to mount their own independent effort to secure a meaningful Congressional discussion of trust land reforms, much less to secure the reforms themselves. We do not propose to either "name" or otherwise create an organization we would represent as a discrete entity, as such an arrangement would be both too expensive as well as hard to govern given the disparity of interests.

Rather, we propose to provide a suite of services which will fully utilize our expertise, experience and contacts, and be cost-effective by virtue of being shared. Those services would include:

- Monitoring and reporting on the key events and developments on trust land policy in Congress and the executive branch (hearings, meetings, review of proposals and legislation);

- The formulation of recommended strategy and actions both pro-active and reactive as the issue develops, targeting both Congress and the Department of the Interior. The starting point is to move quickly now to send signals to the key Congressional committees that they should not proceed on any fix of *Carclerl* without full information from the Department of Interior and hearing directly from the states, counties and local governments. A similar message would be sent to Interior, calling for the need to recognize and deal with the need to reform the trust land process, as opposed to simply addressing the question of how to authorize trust land acquisitions;

- The development of materials (letters, testimony, talking points) that can be adapted by any individual entity; the immediate objective would be to draft a legislative proposal which would serve as the representative view of the legitimate interests of counties, local governments and states;

- The coordination of actions to ensure that those in the group can take the best advantage of situations as they arise in the Congress and administration; and

- The coordination of advocacy where it is authorized by the group or individual entities. We will coordinate, or coordinate with, advocacy efforts, and provide materials, but the costs of a lead advocacy role are likely beyond the scope of this proposal.

Perkins Coie covers many of these same issues for specific clients but none of them can, or should have to, afford the full cost of such a difficult and expensive campaign as the one that seems necessary now. Such efforts for individual clients will likely continue because of the unique facts each local or county entity faces, but this proposal presents a better and more cost effective way to reach the central objective of securing federal trust land reform. Our feeling is that by aiming at an annual pool of \$75 to \$100,000 through contributions of \$10 to \$30,000 from various entities, depending on size, need, and capability, we can sustain a strong common effort to put all entities in a strong position to be effective on these issues. If this concept is acceptable and draws interest and support, we will proceed. And if not, and we cannot reach a level of support we can rely on, we will not pursue the common effort in favor of continued effort on behalf on specific clients. We do believe, however, that if we do not have a unified effort of some sort, it will prove very difficult even to secure a Congressional inquiry that goes beyond the most basic *Carclerl* fix.

Our proposal is for the California State Association of Counties and related California counties and local governments. Because of the size and importance of the California element in the trust land debate, and the number of entities affected, our belief is that CSAC and other California entities should bear a somewhat higher level of the costs of supporting the common effort, and essentially taking a lead role on the issues that matter most to you. We propose that the 2009 contribution should be \$30,000 for CSAC and those other California counties desiring to be active players on this issue.

July 10, 2009

TO: State, County and Local Entities Affected by Federal Trust Land Decisions
FROM: Perkins Coie LLP
RE: **Opportunity Presented by the *Carcieri* Decision for Meaningful Tribal Trust Land Reform**

Brief Background on the Federal Tribal Trust Land Issue and the *Carcieri* Decision

For more than 70 years, the Secretary of the Department of the Interior has acquired land in trust, pursuant to section 5 of the Indian Reorganization Act of 1934 ("IRA"), on behalf of any federally recognized Indian tribe. Last month, the Supreme Court determined that the Secretary had erred in doing so. In *Carcieri v. Salazar*, eight Justices decided that the Secretary's IRA authority is limited to acquiring land in trust for only those tribes "under federal jurisdiction" in 1934. More important, six members of the Court went further, concluding that the Department cannot acquire land in trust for the Narragansett Tribe of Rhode Island, the Tribe involved in the case, because the Tribe was neither federally recognized nor under federal jurisdiction when the IRA was enacted.

The various opinions in *Carcieri* (majority opinion, two concurrences and a dissent) have brought to the fore complex issues of Indian law and have raised policy concerns that have been percolating for decades. The first legal question is one raised by the concurring opinions regarding the meaning of the phrase "under federal jurisdiction," with possible definitions ranging from equating federal jurisdiction with recognition to speculating that a tribe may satisfy the "under federal jurisdiction" even if the federal government was ignorant of the tribe's existence in 1934. A second significant question, though not addressed by the decision, relates to the remedies available for land improperly placed in trust for tribes not "under federal recognition" in 1934, with many dozens of trust acquisitions potentially vulnerable to challenge. Most importantly, the decision has focused attention on trust acquisition itself, the purpose behind it, the process used to create it and the effects of acquisition on Indian and non-Indian communities.

The Larger Implications of *Carcieri* for States and Local Governments

The *Carcieri* decision has sent shock waves into Indian country. For years, both tribal and non-tribal entities have complained about the process, with objections ranging from the substantial delays associated with the process, the lack of intelligible standards for trust acquisition, and even whether the Secretary has trust acquisition authority or whether that authority is limited to Congress. Without *Carcieri*, or some other significant judicial decision, these issues would almost certainly not be raised in the Congressional and political arenas because they are so complex and politically volatile. The Court's *Carcieri* decision, however, has forced Congress

and the Department of Interior to directly confront trust acquisition policy, creating a unique and perhaps a once-in-a-generation opportunity for states, counties, and local governments to have their concerns heard. *Carcieri* has created an opening for state and local governments to force serious debate regarding how trust land acquisitions are going to continue and how federal decision-makers must balance tribal concerns against the legitimate interests of the communities and states in which trust lands will be placed. Whether these non-tribal entities will capitalize on the opportunity, however, remains to be seen.

The Initial Public and Congressional Response to the *Carcieri* Decision

The political response to the *Carcieri* decision has been revealing. Virtually immediately, most tribal interests, including national Indian organizations, created a sense of great urgency, almost as if the *Carcieri* decision itself invalidated dozens or hundreds of trust land designations nationwide, which it did not. Under this banner, most tribal interests are pressing for a focused and swift Congressional fix for the *Carcieri* result, arguing that without it, many developments on trust land acquired for post-1934 tribes, including gaming development, are endangered in unpredictable ways. Congressional hearings were initially announced and Congressional expressions of concern were made, but then were delayed or cancelled. To date, only two have been held, one in House Resources and the other in Senate Indian Affairs. Neither was legislative and no legislative proposal has been introduced. It appears that the train carrying the immediate fix for *Carcieri* seems to have been slowed by a modest but clear message that tribal interests and their Congressional supporters were surprised to encounter, and more surprised to discover resonated broadly. The message was carried by only a few scattered but impassioned voices of states, attorneys general, cities and counties, and individuals. Their message is “**just a minute**” before you rush through a quick fix for *Carcieri* without:

- Knowing the actual facts of the situation that *Carcieri* creates, tribe by tribe;
- Considering the interests of all those affected by trust land decisions, including states, counties, cities, and communities;
- Confirming the legal authorities for trust land decisions; and
- Simultaneously enacting reforms to the trust land process and standards that fully recognize the legitimate interests of states, counties, local governments, and communities when tribal enclaves are proposed in such communities.

Contrary to what many expected, hearings and legislative action on a *Carcieri* fix have stalled as Congressional Members and staff try to sort out the politics of the issue. The very first hearing in the House Natural Resources Committee received testimony from an Indian law expert who challenged, with documentation, the authority under which the Secretary could make trust decisions at all. His testimony clearly exposed the confusion and uncertainty within the Committee on the question. In the confirmation hearing for the nominee for Assistant Secretary for Indian Affairs, Senator John McCain, often a supporter of tribal interests, delivered a strong

statement on the effects of trust land decisions and tribal gaming on communities. And, finally, planned hearings on *Carciari* issues have mostly been delayed and retooled while staffs and members reassess the underlying legal questions and the politics of the issue.

Congress's pause was caused by what was only a modest and preliminary reaction from the state, county, city, and community interests. Some gaming tribes with already adequate trust land also quietly expressed reluctance to revisit the IRA, particularly if broad reform is part of the discussion. The county, city and state interests still have not developed any particular organization or strategy beyond feeling that their interests are at stake and deserve to be heard. The fact is that these concerns will resonate if they are properly represented and firmly pressed by state and local governments. *Carciari* puts those issues in play, and for that reason, the decision represents a very significant victory for state and local governments and community groups concerned about trust acquisitions, about the process, and about the substantive rules for trust land decisions. The scope and longevity of that victory, however, is not yet defined, and for this reason, states, counties, cities, and communities must organize and represent themselves with knowledge, commitment, and skill.

Congressional and Administrative Activity to Date

To avoid having to litigate the meaning of "under federal jurisdiction" and the status of lands previously acquired, tribal groups are actively seeking legislative fixes to the *Carciari* decision. Many tribal advocates prefer a simple fix that extends the application of the IRA to all federally recognized Indian tribes, a fix that would essentially return to the Department's pre-*Carciari* approach. Members who would rather avoid a fully informed and participatory process to discuss all the elements of the trust land issue are receptive to the quick fix approach. A quick fix solution could be easily achieved, assuming the absence of any organized response asking for a broader discussion of trust land reform. The quick fix would simply remove or re-define the word "now" from the "now under federal jurisdiction" phrase or amend it to state that "Indians" in the IRA means those "now or hereafter under federal jurisdiction." The Department is likely to support this type of amendment as it helps the Department avoid controversy surrounding the meaning of "under federal jurisdiction," and allows it to continue business as usual.

The extent to which this post-*Carciari* period is going to provoke a broader discussion and reform of the trust land process, rather than a quick fix for tribal interests, clearly will be determined by the organization and actions of the states, county and local governments, and community interests, in raising the broader issues and insisting on their resolution.¹

¹ In lieu of a legislative fix (or as a stop-gap measure), the Department is meeting, and undertaking tribal consultations, to determine how to address the issues *Carciari* raises. The Department is currently reviewing the decision to formulate its new position regarding the meaning of "under federal jurisdiction." At this time, the Department has developed some ideas regarding its new interpretation of the phrase, but must first vet those proposals with the Department of Justice ("DOJ") to determine the litigation exposure associated with the Department's articulating a new interpretation. The Solicitor's Office met with DOJ during the week of March 6 to discuss its modified approach. Because of the

What Should Non-Tribal Interests Affected by Federal Trust Land Decisions Be Seeking in the Post-Carcieri Period?

Almost any affected state, county, or city can answer this question. The fact is that new trust land acquisitions, and development planned on those trust land, almost always have significant and well-known impacts on all levels of non-tribal government and communities. These non-tribal entities fully deserve procedures and standards for federal trust land acquisitions. What is needed is a reformed and transparent trust land process that recognizes and accounts for the interests of both the tribe proposing the acquisition and affected non-tribal parties in the terms of any trust land decision. At present, even though the Interior Department has been promising such reforms for years, both the process and standards fall well short of this goal. There is no Congressional guidance for executive procedures and standards, and even Congressional authority for the executive branch to make trust land decisions is unclear. An initial list of trust land reforms would include the following:

- Complete and transparent tribal applications for trust land, including full disclosure of proposed uses of the land;
- Timely and complete notice to all potentially affected governments, and the opportunity to fully participate;
- A definition of “tribal need” that imposes some reasonable limitation on the amount of additional land that may be taken into trust for a tribe and that can be addressed by evidence;
- Limitation of tribal uses to those proposed in the trust land application, and calculation of local government tax losses on the those uses;
- Clear requirements for satisfaction of procedural and substantive environmental standards for the transfer of land to federal ownership, including coverage of proposed uses;
- Abandonment of the federal government’s position of maintaining sovereign immunity for lands held in trust;
- Genuine consultation between tribes and affected governments, and significant incentives for IGAs by favoring trust applications where such an agreement exists; and
- A decision standard that requires a balance of legitimate interests in all trust land decisions.

numerous problems that developing a new interpretation will create for the Department, it is likely that the Department’s negotiations will take some time.

This summary list should also include some regional or local measures, such as in California, where the overwhelming volume of trust land applications may require suspension while new federal procedural and substantive standards are established, Congressional authority issues are dealt with, and the factual issues related to the actual effects of *Carciere* are resolved. These reforms are the common cause of states, counties, cities, and other non-tribal interests affected by trust land decisions. Whether Congress even acknowledges these issues depends on the short-term actions of these non-tribal entities to win time and a commitment to consideration in the Congress.

The Immediate Tasks of Organization and Advocacy

Congress is not predisposed to carry out the comprehensive discussion of trust land authority and policy that is necessary. In spite of some initial sputtering, the motivation of the jurisdictional committees of the Congress will be to resolve the problems that the *Carciere* decision presents for tribes narrowly and quickly, and to put the larger issues of trust land policy back in storage for later consideration. Tribal interests are, in the main, pushing this course of action and the principal supporters of tribal interests in the Congress are apparently willing to proceed even without fully defining and resolving all the legal issues associated with federal trust land authority, or developing the factual basis to fully understand the actual effects of *Carciere*. Only the organized and firm advocacy of non-tribal interests will force these issues into Congressional view and get them on the agenda.

For this mission, the shortcoming of non-tribal interests is that many of them are not organized in a manner to address these issues effectively on a national basis. Associations of cities, counties, or states do not have trust land issues as a central concern of the organization, and moving some associations to effective action on such issues is a slow process under circumstances in which fast action is essential. While some associations, such as the California State Association of Counties and the Western Attorneys General, are knowledgeable and have shared internal values on trust land issues, they are not well coordinated with other interests in other states because there is no national organization set up to inform, coordinate, and represent these non-tribal interests in the area of trust land reform.

The immediate challenge for non-tribal interests has two action elements:

- First, firmly establish the principle with Congress that the consideration of post-*Carciere* issues regarding federal trust land policy and process must include full consideration of both tribal and non-tribal interests working toward a comprehensive resolution; and
- Second, convince Congress that whatever actions are taken must rely on a strong factual basis regarding the specific effects of the *Carciere* decision, as well as on sound legal analysis of the authority that has or has not been granted to the executive branch for trust land acquisitions, all toward the objective of providing new authority along with guidance for federal trust land process and standards.

One of many questions that the Congress should be asking the Department is:

With respect to each “federally recognized tribe” that DOI believes may have been affected by the *Carciere* decision, identify:

- A. The name of the tribe;
- B. The treaty or statute or final administrative action or judicial decision that designated the tribe as a “federally recognized tribe”;
- C. A location and size description of each parcel of land that the Secretary has taken into trust for the tribe pursuant to section 5 of the IRA;
- D. The date each parcel of land described in paragraph C was taken into trust;
- E. If an IGRA gambling operation is being conducted on a parcel of land described in paragraph C, the name of the casino or operation.

Longer term, based on the facts and analysis developed, non-tribal interests must be able to effectively articulate the specific reforms and the reasons supporting those reforms in the more comprehensive Congressional process they have been able to create. But the key demand immediately is to convince Congress to forgo the quick fix, to take up the broader issues of trust land law and policy, and to gather the facts and legal analysis that will inform that consideration. The attached proposal is intended as a modest approach to make the experience of our firm available to provide the coordination, research, materials, information, and strategy to assist many different non-tribal entities to work together effectively on this effort.

Conclusion

To address both the Congressional and executive responses to the *Carciere* decision, non-tribal interests must, in spite of factual differences in specific situations, have some form of coordinated effort to gain a seat at the table, get the interests of localities and states on the agenda, and insist on a broader rather than narrower policy and legal response to *Carciere*. Because both Congress and the administration are turning their attention to their response to *Carciere*, the effort of the non-tribal entities must be organized as soon as possible.

Perkins Coie Indian Law Team

The Indian law team has been active for nearly 20 years, practicing in most aspects of Indian law, including trust lands, tribal acknowledgment, tribal gaming, and diverse agreements between tribal and non-tribal entities. The team primarily represents local government entities but also private interests, public interest groups and tribes on selected issues.

Guy Martin is a partner in the DC office of Perkins Coie and a senior member of the firm's Environment and Natural Resources (ENR) Group. During his career he has served as congressional staff, opened and directed the first office for the State of Alaska in Washington, DC, served as Commissioner of Natural Resources for Alaska and as Assistant Secretary of the Interior for Land and Water. He helped found and now serves as national counsel for the Western Urban Water Coalition, made up of the largest western cities. He maintains a broad practice in natural resources law, with emphasis on water resources, Indian law, public lands and western U.S. and Alaska resources. Guy is a graduate of the University of Colorado School of Law and serves on the board of the school's Natural Resources Law Center.

Don Baur is managing partner of the D.C. office ENR Group. He has been involved in Indian law issues since he began his legal career as attorney in the Solicitor's Office of the Department of the Interior in 1979. He also has served as General Counsel of the U.S. Marine Mammal Commission and is an adjunct professor at the Vermont Law School. He is a graduate of the University of Pennsylvania School of Law.

Jena MacLean is a senior associate in the DC office of Perkins Coie and a member of the firm's ENR Group. During her career, she has worked as a hard rock mining geologist in the intermountain west and a researcher for the Idaho Policy Analysis Group focusing on public land use issues. Since joining Perkins Coie in 2001, she has counseled clients on natural resource development issues, with an emphasis on public lands and Indian law, and is one of the DC office's primary litigators in natural resources, Indian law and related areas. Jena is a graduate of the University of Virginia School of Law.



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Statement of the
California State Association of Counties
for the record of the
U. S. House Natural Resources Committee on April 1, 2009
for its hearing on the
Ramifications of the Decision of the U. S. Supreme Court
in *Carcieri v. Salazar*
Submitted April 13, 2009

Chairman Rahall and Members of the Committee:

This testimony is submitted on behalf of the California State Association of Counties (CSAC) which is the unified voice on behalf of all 58 California counties. For perspective on CSAC's activities and approach to Indian Affairs matters, we are attaching the CSAC Congressional Position Paper on Indian Affairs issued in March, 2009. Our intent in this testimony to provide a perspective from California's counties regarding the significance of the Supreme Court's recent decision in *Carcieri v. Salazar*, and to recommend measures for the Committee to consider as it seeks to address the implications of this decision in legislation. CSAC believes that the experience of our county government members in the State of California is similar to that of county and local governments throughout the nation where trust land issues have created significant and, in many cases, unnecessary conflict and distrust of the federal decision system for trust lands.

It is against this backdrop that we address the implications of the *Carcieri* decision. On February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*. This 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, varied proposals for reversing or reinstating authority for trust land acquisitions are being generated, some proposing administrative action and others favoring a Congressional approach. Because of the early scheduling of hearings in both houses of the Congress, our assumption is that there is recognition of the implications of the *Carcieri* decision and appreciation of the need to consider a legislative resolution. We are in full agreement that a Congressional resolution is required, rather than an administrative one, but we urge that the full implications of the decision and all potential resolutions should be identified for consideration before legislative action is taken. We do not believe that a legislative resolution that hastily restores the trust land system to its status before *Carcieri* will be regarded as satisfactory to counties and local governments.

Recommendation. Our primary recommendation to this committee, to our delegation and to the Congress, is this: Do not advance an immediate Congressional response to *Carcieri*, with comprehensive coverage of tribes, but rather set in motion a process that asks the Secretary of the Interior to produce the actual facts with respect to any tribe that may be affected by the decision and the nature and urgency of their need. Based on the facts that are produced by the Secretary, the tribes and state and local governments, more focused and effective action can be taken. During the period in which the needed information is gathered for the Committee, a detailed examination, with oversight and other hearings, should consider what reforms of the trust land process, as well as the definition of Indian lands under IGRA, must be undertaken at the time that legislation to "fix" *Carcieri* can proceed.

What the *Carcieri* decision presents, more than anything else, is an opportunity for Congress to fully reconsider its constitutional authority for trust land acquisitions, to define the respective roles of Congress and the executive branch in trust land decisions, and to establish clear and specific Congressional standards and processes to guide trust land decisions in the future, whether made by Congress, as provided in the Constitution, or the executive branch under a Congressional grant of authority. It should be noted that Congress has it in its power *not* to provide new authority to the executive branch for trust land decisions and instead retain its own authority to make these decisions on a case by case basis as it has done in the past, although decreasingly in the recent past. Whether or not

Congress chooses to retain its authority or to delegate it in some way, it owes it to tribes and to states, counties, local governments and communities, to provide clear authority to the Secretary of Interior to make trust land decisions according to specific Congressional standards and to eliminate much of the conflict inherent in such decisions under present practice.

CSAC will respectfully ask that our state delegation assume a leadership role to address both sides of the problem in any legislation seeking to re-establish the trust land process post-*Carcieri*: 1) the absence of authority to acquire trust lands, which affects post-1934 tribes, and 2) the lack of meaningful standards and a fair and open process, which affects states, local governments, businesses and non-tribal communities. If Congress is to open up the trust land issue to fix *Carcieri*, it should undertake reform that is in the interests of all affected parties. The remainder of our testimony addresses the trust land process, the need for its reform, and the principal reforms to be considered.

The Problem with the Current Trust Land Process. The fundamental problem with the trust acquisition process is that Congress has not set such standards under which any delegated trust land authority would be applied by BIA. Section 5 of the IRA, which was the subject of the *Carcieri* decision, reads as follows: "The Secretary of the Interior is hereby authorized in his discretion, to acquire [by various means] any interest in lands, water rights, or surface rights to lands, within or without reservations ... for the purpose of providing land to Indians." 25 U.S.C. §465. This general and undefined Congressional guidance, as implemented by the executive branch, and specifically the Secretary of the Interior, has resulted in a trust land process that fails to meaningfully include legitimate interests, to provide adequate transparency to the public or to demonstrate fundamental balance in trust land decisions. The unsatisfactory process, the lack of transparency and the lack of balance in trust land decision-making have all combined to create significant controversy, serious conflicts between tribes and states, counties and local governments, and broad distrust of the fairness of the system.

All of these effects can and should be avoided. Because the *Carcieri* decision has definitively confirmed the Secretary's lack of authority to take lands into trusts for post-1934 tribes, Congress now has the opportunity not just to address the authority issue by restoring the current failed system, but to reassert its primary authority for these decisions by setting specific trust land standards that address the main shortcomings of the current trust land process. Some of the more important new standards are as follows.

Notice and Transparency.

1) Require full disclosure from the tribes on trust land applications and other Indian land decisions, and fair notice and transparency from the BIA. The Part 151 regulations are not specific and do not require sufficient information about tribal plans to use the land proposed for trust status. As a result, it is very difficult for affected parties (local and state governments, and the affected public) to determine the nature of the tribal proposal, evaluate the impacts and provide meaningful comments. BIA should be directed to require tribes to provide reasonably detailed information to state and affected local governments, as well as the public, about the proposed uses of the land early on, not unlike the public information required for planning, zoning and permitting on the local level. This assumes even greater importance since local planning, zoning and permitting are being preempted by the trust land decision, and therefore information about intended uses is reasonable and fair to require.

Legislative and regulatory changes need to be made to ensure 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. Indeed, in most cases CSAC

believes that the two-part process as provided in Section 20 of IGRA should be the process used for land applications for gaming purposes.

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.

2) *The BIA should define "tribal need" and require specific information in trust land applications about need from the tribes.*

The BIA regulations provide inadequate guidance as to what constitutes legitimate tribal need for trust land acquisition. There are no standards other than that the land is necessary to facilitate tribal self-determination, economic development or Indian housing. These standards can be met by virtually any trust land request, regardless of how successful the tribe is or how much land it already owns. As a result, there are numerous examples of BIA taking additional land into trust for economically and governmentally self-sufficient tribes already having wealth and large land bases.

Our suggestion is that "need" is not without limits. Congress should consider explicit limits on tribal need for more trust land so that the trust land acquisition process does not continue to be a "blank check" for removing land from state and local jurisdiction. CSAC does not oppose the use by a tribe of non-tribal land for development provided the tribe fully complies with state and local government laws and regulations applicable to all other development, including full compliance with environmental laws, health and safety laws, and mitigation of all impacts of that development on the affected county.

3) *Applications should require specific representations of intended uses.* Changes in use should not be permitted without further reviews, including environmental impacts, and approval or denial as the review indicates. Such further review should have the same notice and comment and consultation as the initial application.

The Decision Process and Standards.

1) *A new paradigm for working with counties and local governments.*

The notices for trust and other land actions for tribes that go to counties and other governments is very limited in coverage and comment is minimal, and this must change. 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.

The corollary is that consultation with counties and local governments must be real, with all affected communities and public comment. Under Part 151, BIA does not invite, although will accept review and comment by third parties, even though they may experience major negative impacts. BIA only accepts comments from the affected state and the local government with legal jurisdiction over the land and, from those parties, only on the narrow question of tax revenue loss and zoning conflicts. As a result, under current BIA practice 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.

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.

2) *Establish standards that require that tribal and non-tribal interests be balanced in considering the impacts of trust land decisions.*

BIA requests only minimal information about the impacts of such acquisitions on local communities and BIA trust land decisions are not governed by a requirement to balance the benefit to the tribe against the impact to the local community. As a result there are well-known and significant impacts of trust land decisions on communities and states, with consequent controversy and delay and distrust of the process. It should be noted that the BIA has the specific mission to serve Indians and tribes and is granted broad discretion to decide in favor of tribes.

For this reason, any delegation of authority to the Secretary by Congress should consider placing decision-making responsibility for trust lands in some agency or entity without the mission conflicts of the BIA. However the delegation of authority is resolved, Congress must specifically direct clear and balanced standards that ensure that trust land requests cannot be approved where, considering the negative impacts to other parties, the benefit to the tribe cannot be justified.

3) *Limit the use of trust land to the tribe's declared purpose.*

One of the most problematic aspects of tribal trust acquisition is that once the land is acquired, BIA takes the position that the property can be used for any purpose regardless of what the initial proposal called for. For example, land acquired for tribal residential purposes can be changed to commercial use without any further review or comment by affected parties, regardless of the impacts. By allowing for un-reviewed changes in use, BIA has created an opportunity for the trust land acquisition process to be abused by tribes that seek to hide the true intent of their requests or that simply find it convenient to develop a different use after acquisition. In recent years the hidden purpose has often been the intent to develop a casino but avoid a real analysis of its impacts. The trust acquisition process should be reconstructed under Congressional direction to prohibit changes in the type of use unless a supplemental public review and decision-making process takes place.

4) For calculating tax losses for local governments, the valuation should be based on the proposed use of the land.

BIA maintains that the evaluation of the tax loss impacts of taking land into trust should be based solely on the current use of the land, not what it will be developed for after acquisition. Often the current use is "undeveloped", with minimal tax value, whereas the proposed use is high-value commercial or gaming. We strongly suggest that when a tribe proposes a specific after-trust acquisition use of the land that is new or different from current use before the acquisition, BIA should be required to value the revenue loss to local governments on the proposed or intended basis.

Federal Sovereign Immunity. BIA argues that once title to land acquired in trust transfers to the United States, lawsuits challenging that action are barred under the Quiet Title Act because federal sovereign immunity has not been waived. This is one of the very few areas of federal law where the United States has not allowed itself to be sued. The rationale for sovereign immunity should not be extended to trust land decisions, which often are very controversial and used to promote reservation shopping that will enrich investors at the expense of local governments. Third parties should have the right to challenge harmful trust land decisions, and BIA should not be allowed to shield its actions behind the federal government's sovereign immunity.

Intergovernmental Agreements and Tribal-County Partnerships. 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.

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).

California's situation and the need for a suspension of fee-to-trust application processing.

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, contributes 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 the 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 the decision, it is essential that changes are made to the fee-to-trust

processes which insure improved notice to counties, better defined standards to remove the property from local jurisdiction. Requirements must be established to insure that the significant off-reservation impacts of tribal projects are fully mitigated. In particular, any new legislation should address the significant issues raised in states like California, which did not generally have a "reservation" system, and that are now faced with small Bands of tribal people who are recognized by the federal government as tribes and who are anxious to establish large commercial casinos.

In the meantime, CSAC strongly urges the Department of the 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.

Conclusion. We ask that you incorporate these requests into any Congressional actions that may emerge regarding the *Carcieri* decision. Congress must take the lead in any legal repair for inequities caused by the *Carcieri* decision but absolutely should not do so without addressing these reforms. These are common-sense reforms that, if enacted, will eliminate some of the most controversial and problematic elements of the current trust land acquisition process. The result would help states, local governments and non-tribal stakeholders. It also would assist trust land applicants by guiding their requests to fair and equitable results and, in doing so, reduce the delay and controversy that now routinely accompany acquisition requests.

We also urge the committee to reject any "one size fits all" solution to these issues. In CSAC's view, IGRA itself has often represented such an approach, and as a result has caused many problems in a State like California, where the sheer number of tribal entities and the great disparity among them, requires a thoughtful case-by-case analysis of each tribal land acquisition decision.

Thank you for considering these views. Should you have questions regarding our testimony or if CSAC can be of further assistance please contact DeAnn Baker, CSAC Senior Legislative Representative, at (916) 327-7500 ext. 509 or at dbaker@counties.org.

Sincerely,



Mike McGowan
Supervisor, Yolo County, California
Chair, CSAC Housing, Land Use, and Transportation Committee & Indian Gaming Working Group



CSAC Institute Update

CSAC Board of Directors

November 2009

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Current Courses and Enrollment Remain Strong

The Institute has now completed 18 courses with another 4 courses scheduled through December. Over 240 individuals have now registered for at least one CSAC Institute course. Average course attendance is 20.4 participants. Four special courses are offered before and after the annual meeting. At the time of this writing, over 75 people have registered for them. The evaluations from the 18 courses are high, with the average for "overall value of the course" at 5.4 on a six point scale. "Relevancy of course content" and "instructor effectiveness" both averaged 5.5.

Institute Credential Completion

One county supervisor has already completed his requirements for the Institute Credential and five more individuals will complete their requirements by the annual meeting.

Supervisor Keith Caldwell (Napa County) was the first person to complete all the course requirements. He, along with Supervisor Terry Woodrow (Alpine County), Supervisor Tom Sweeney (Alpine County) and CAO Rick Haffey (Nevada County) will be presented with their credentials and pins at the CSAC annual meeting. Also completing their requirements is Jeff Kahn of Alameda County.

17 Courses Planned for Winter/Spring 2010

At the CSAC Annual Meeting the new course schedule for January through June will be released. Seventeen courses are scheduled, including several that will be offered in Oakland at the Alameda County Training and Conference Center. The courses are built around the Institute's Leadership Competencies and Knowledge Competencies. Highlights include a number of new courses including "Coalition Building: Creating Consensus", "Basics of Land Use Planning in California", "Media Interviewing and Presentation Skills", and "Managing Conflict (even hostility) and Disagreement in Comfort."

The Institute has received a small grant from the California Healthcare Foundation to offer several courses next semester on county health care issues. Three courses are in development, including: "Realignment 101", "County Health Care Systems: Roles, Responsibilities and Resources", and "Understanding County Mental Health Requirements and Services."

Institute Survey Documents Positive Application from Participants

The CSAC Institute conducted an on-line survey of participants to 1) assess the value of the courses to participants; 2) seek input on future course priorities; and 3) determine the overall value of the Institute as a CSAC member service. Invitations were sent to over 400 individuals to participate and over 65 individuals have completed the survey. 70% of the respondents have completed at least one course; 30% have not attended a course yet.

A few of the highlights:

- ◆ Of those that have taken a course, 100% agree or strongly agree that it is meeting their continuing education expectations (3.45 on a 4 point scale)
- ◆ 100% find the Institute well organized (3.55 on a 4 point scale)
- ◆ When asked whether they have used or applied course content in the workplace, participants rated the courses from 3.80 to 5.25 on a six point scale
- ◆ Overall value of the courses to participants ranged from 4.4 to 5.67 on a six point scale
- ◆ 73% of the participants have referred back to course materials since taking the class
- ◆ 100% of the respondents agreed that the Institute is a worthwhile investment of CSAC funds (66.7% strongly agreed)
- ◆ Realignment 101, Use of social and new media, public engagement, and creative budget solutions emerged as the top choices for future courses (all of which are scheduled for this winter)

Encourage Others to Take Advantage of this Unique Learning Experience

As with any new opportunity, the key is making supervisors and senior staff aware of the Institute and the value of the courses. Word of mouth is spreading news about the Institute as are e-mail blasts and other communications. Continued help from CSAC leadership is vital in encouraging Institute participation. The Institute maintains a website for detailed information and registration at www.csacinstitute.org. Please consider attending an Institute course and encouraging others to in a continuing education course through the Institute.

2010 WINTER/SPRING
COURSE SCHEDULE



**INSTITUTE
 FOR EXCELLENCE IN
 COUNTY GOVERNMENT**

JANUARY

381 Creative Budget Solutions and Innovative Service Redesign

How do you cut costs but maintain critical county service levels, particularly within the context of mandated priorities? This "Best Practices" course contrasts typical cutback measures with innovative approaches to service redesign. Participants examine the complexities of cutting back, the impact on the organization, and a menu of new strategies to consider. Several case studies are explored and participants discuss the collaborative leadership strategies necessary. As all counties struggle with preparing budgets with less revenues and more demand for service, this course is a must to attend.

Thursday, 14 January 2010 10:00-3:30
 Sacramento • \$75/person for counties • 3 credits • Board/Execs

352 Making an Impression: Media Interviewing and Presentation Skills

Every opportunity to address a group or appear with the media is an opportunity to make an impression. But what kind of impression is made? This course, designed for seasoned professionals and elected officials, will help you polish those presentations and strengthen your delivery skills. The course covers practical strategies for planning, preparing and delivering presentations that get your message across and retained by the audience. Hands-on group work includes practice labs, videos and constructive critiques from presentation professionals.

Friday, 22 January 2010 10:00-3:30
 Sacramento • \$75/person for counties • 3 credits • Board/Execs

FEBRUARY

311 Water In California – The Politics, Distribution ... and the Future

California has a long history of water politics. This course provides an overview of that history and puts it in the context of the current water debate. It provides the policy overview, history and proposals to this complex issue in an interactive and practical manner. Participants explore the current status of water including water storage and delivery systems in the state. The class examines pressures on the water system outside of drought and growth, including climate change and environmental regulation. Discussion identifies the proposals under discussion for dealing with the current water crisis and how they could affect water available for counties.

Thursday, 4 February 2010 10:00-3:30
 Sacramento • \$75/person for counties • 3 credits • Board/Execs

112 Getting Things Done: The Art of Working with Others to Achieve Objectives

To get things done you work with a range of county staff, elected officials and community members. What techniques and tools exist to help you pursue your objectives? This course examines practices and techniques that improve the likelihood that your desired objectives are achieved. It examines a range of elements which contribute to success, from interpersonal relations to building a system of monitoring and a culture of accountability. Participants look at them-

selves and the values that underlie ethical behavior and how to build trustworthiness. Other components address transparency in decision-making, coalition building, collaboration, and setting expectations.

Friday, 19 February 2010 10:00-3:30
 Sacramento • \$75/person for counties • 3 credits • Board/Execs

151 Financing California Counties

Have you found yourself overwhelmed trying to understand the financial reports from county programs? Or worse yet, trying to explain county finances and revenues to your constituents? This course provides an in-depth examination of the federal, state and local county funding sources and how those funds are typically spent. The class explores county discretionary levels with key funding sources and how the funds may be spent. Participants discuss various methods to communicate the challenges of county finances to the community.

Friday, 26 February 2010 10:00-3:30
 Oakland • \$75/person for counties • 3 credits • Board/Execs

MARCH

153 Labor Relations In Local Government – Negotiating Contract Changes

How do you approach labor to change contracts? Why do employee costs continue to rise, even when COLA's are limited? This course examines the basics of labor negotiations and renegotiations, keys to concession bargaining, unfair practices, and employee benefits. Participants explore the Board role versus staff in negotiations, negotiating layoffs and furloughs, and strategies for negotiating contract changes and limiting contract costs. The class also examines the techniques for maintaining the ongoing relationships with employee organizations.

Friday, 12 March 2010 10:00-3:30
 Oakland • \$75/person for counties • 3 credits • Board/Execs

114 Public Engagement: Involving the Community in Decision Making

Community involvement is a key to idea generation, effective decision-making and public acceptance of decisions. But how can you engage the fullest participation and encourage a clear, civil and informed exchange of views? This course explores practical tips to maximize the effectiveness of public forums, hearings, town halls, and other forms of community engagement. Participants examine techniques that help the public take into account the hard choices and trade-offs in decisions, and how to demonstrate that public ideas and recommendations are taken seriously. The Institute for Local Government's Collaborative Governance Initiative provides a resource to participants on suggestions to achieve broader involvement in civic engagement efforts.

Thursday, 18 March 2010 10:00-3:30
 Sacramento • \$75/person for counties • 3 credits • Board/Execs

362 Communicating Directly with Your Public: Using New Media Resources

The traditional news release, news conference or public service announcement is becoming less effective in communicating the county's perspective on issues or events. Fewer people read newspapers and most media outlets are

To register for classes please visit: www.csacinstitute.org

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cutting back on reporters. So how do counties get their messages out to the community? This course examines the broader elements of a communication strategy and how new media tools fit in. Participants explore the key elements of a communication strategy and the use and effectiveness of tools such as Face- book, Twitter and others fit into an overall strategy package. Participants discuss how to assess which strategies might be most effective in any given situation.

Friday, 26 March 2010 10:00–3:30
Sacramento • \$75/person for counties • 3 credits • Board/Execs

APRIL

113 Coalition Building: Creating Consensus

It is no easy task to bring together diverse groups of people to build coalitions and create consensus. However when consensus is achieved the results tend to be more sustainable over time. This course examines the techniques and practices of creating consensus. It provides practice tips for elected officials and staff who have a leadership or facilitative role in building coalitions. Whether it is an interdepartmental project team, a community task force, or an intergovernmental collaboration, this course provides hands-on skills in creating, leading, facilitating and keeping coalitions on track.

Friday, 9 April 2010 10:00–3:30
Sacramento • \$75/person for counties • 3 credits • Board/Execs

150 Local Governance in California

California has a complex system of providing state, federal and local services through local governments. It is often difficult to understand or explain the broad responsibilities counties have to provide a vast range of often unrelated services. This course provides an overview of government structure and responsibilities in California with a focus on how it relates to counties.

Thursday, 22 April 2010 10:00–3:30
Oakland • \$75/person for counties • 3 credits • Board/Execs

310 County Health Care Systems – The Responsibilities and Resources

Health care and public health services are among the most critical county services, but among the most complex to understand. What are the mandated responsibilities for counties? What resources are available? Who provides the services? What are the consequences of program reductions? These are among the questions that are explored in this policy-makers course on county public health services. Three aspects are examined: indigent care, general assistance and public health. Participants look a range of strategies through case studies and consider opportunities for sorting out health care priorities when resources are so severely limited. Discussion focuses on the dilemmas of funding the required county services versus the role of the county to assure lower income residents have access to care.

Friday, 23 April 2010 10:00–3:30
Sacramento • \$75/person for counties • 3 credits • Board/Execs

372 To Do or Not to Do: Leadership in Decision Making

Most of us have experienced decision-making as a one-step process—just do it! There is much more, however, to leadership in effective problem solving and decision-making. This best practice course examines how values and past experience guides one in perceiving facts when engaged in decision making and ways to apply problem solving and decision making techniques. The course introduces a step-by-step approach to problem solving and introduces participants to some handy problem solving and decision making tools.

Thursday, 29 April 2010 10:00–3:30
Sacramento • \$75/person for counties • 3 credits • Board/Execs

MAY

361 Effective Partnerships with County-Funded CBO's

Many counties fund and rely on community-based organizations (CBOs) to provide a range of county services. The success and effectiveness of the services delivered depends on the nature of the relationship between the county and the CBO? Are both the County and the CBO maximizing the resources available? Find out in this course on how to select, establish and maintain effective relationships with CBOs, indicators of success or problems, and how to get a relationship with a CBO back on solid ground.

Thursday, 6 May 2010 10:00–3:30
Sacramento • \$75/person for counties • 3 credits • Board/Execs

360 Managing Conflict (even hostility) and Disagreement In Comfort

Conflicts and disagreements are a fact of life in counties. They can contribute to better outcomes or can lead to a scathing situation. Transform the most difficult circumstances into a satisfying experience for all involved. This course helps County Supervisors and executives identify constructive approaches to positively managing conflict, whether from the dias, in a meeting, or one-on-one. Participants develop tools to quickly analyze and respond to difficult situations and create practical, positive outcomes.

Friday, 14 May 2010 10:00–3:30
Sacramento • \$75/person for counties • 3 credits • Board/Execs

303 County Mental Health Obligations, Services and Funding

Counties are the primary providers of community mental health services. This survey course introduces the statutorily mandated responsibilities and other services counties provide. It examines innovative approaches to mental health services and highlights funding opportunities for those services. Participants explore county approaches to services for those involuntarily committed and services for special-education students. This course provides decision-makers with the questions to ask and how to explain county mental health services.

Tuesday, 17 November 2009 9:30–noon
Sacramento • \$75/person for counties • 3 credits • Board/Execs

JUNE

307 Realignment 101: How did we get it; Where did it go?

You hear about realignment at every budget hearing. The formulas make your eyes glaze over yet you know it is critical in funding safety net health and safety services in your county. What is realignment, where did it come from and how does it work? This course provides the context of realignment with an examination of the history and rationale for establishing it and why certain programs were included or added over the years. Participants examine the mechanics and what county programs it funds today. Particularly challenging issues are addressed such as IHSS funding, mental health services, Prop. 53 care decisions, and California Children's Services. The course explores the current funding issues, what the future holds and potential impacts of federal health reform.

Following the CSAC Legislative Conference!
Thurs-Friday, 3-4 June 2010 1:30-4:30 & 8:30-11:30
Sacramento • \$75/person for counties • 3 credits • Board/Execs

To register for classes please visit: www.csacinstitute.org



FOUNDED 1955

INSTITUTE FOR LOCAL GOVERNMENT

Update on Activities

November 2009

This report summarizes key accomplishments and new developments for the Institute since the last CSAC Board meeting.

Collaborative Governance Initiative (Public Engagement)

- New public engagement resources for local officials are on the Institute's website, including: a story and podcast on Innovations in Resident Engagement (see www.ca-ilg.org/CGInnovations); new content to support youth commissions (see www.ca-ilg.org/youthengagement); Web 2.0 and public engagement ideas (see www.ca-ilg.org/CGItechnology); and public engagement requirements of SB 375 (see www.ca-ilg.org/SB375).
- Educational efforts continue as well. The Institute will participate in a CSAC Annual Conference session on legal issues relating to the use of social media, and will prepare content and design for a session on community engagement to be presented next spring as part of the CSAC Institute for Excellence in County Government.
- CGI is anxiously awaiting a decision in December from the James Irvine Foundation on a three-year Irvine grant for \$1,200,000 to support continuance of the Institute's program on civic engagement.

Local Government 101

- The Institute is also providing materials for CSAC Institute sessions on Leading by Values (CSAC Annual Conference), county finances (also in November), and conflict resolution. The Institute is continuing to participate in the advisory council for this effort.

Ethics Program

- Additions to the Institute's "Ethical Dilemmas" webpage (www.ca-ilg.org/everydayethics) include articles on dealing with emotional audiences and, coming in December, a piece on the role of auditors in preventing fraud.

The Institute's updated suite of public service ethics publications is available at rg/ethicsbasics. A new web sections provides resources and a short "do's and don'ts" sheet on the use of public resources relating to ballot measure campaigns (see rg/ballotmeasure).

Promoting Good Government at the Local Level

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California Climate Action Network (CCAN)

CCAN activities completed or near completion include:

- Sample Commercial Recycling Ordinance and related resources (funded by the California Integrated Waste Management Board);
- “How to Harness the Power of Your Community to Address Climate Change: A Local Official’s Guide” (funded by the Air Resources Board);
- Case stories about local agency leadership in the areas of green building, commercial recycling, efficient transportation, land use and community design and civic engagement (funded by the Air Resources Board). See www.ca-ilg.org/climateleadershipstories.
- Whitepapers on a variety of topics, including financing sustainability projects, understanding cap and trade and climate change and public health (www.ca-ilg.org/ClimateWhitepapers).

The Public Utilities Commission's recent approval of investor-owned utilities’ proposed use of “public goods charge” funding will provide CCAN about \$1,041,000 for its climate change recognition program (the Beacon Award: Local Leadership toward Solving Climate Change) over three years, starting in 2010. See www.ca-ilg.org/climaterecognition.

Intergovernmental Conflict Resolution

- Final touches are being put on the third booklet in the intergovernmental conflict resolution series: *How to Select a Mediator*. Protocols and rates for assessment services have also been developed to assist local agencies in determining whether a particular dispute is suitable for alternative dispute resolution. See www.ca-ilg.org/mediate.
- The Institute now has a process in place to assist local agencies in determining whether a particular dispute is suitable for alternative dispute resolution. See www.ca-ilg.org/mediate.

Land Use and Environment

Two *Understanding the Basics* publications, the *Guide to Local Land Use Planning* and the *Guide to Land Use and Planning Terms*, will be available by the end of the year.

Healthy Neighborhoods

- The Institute launched the Healthy Neighborhoods section of its website to provide local officials with resources to support their efforts to protect and improve community health by integrating health considerations into planning, land use and other decisions. See www.ca-ilg.org/healthyneighborhoods.
- Communities for Healthy Kids is developing an online resource center to make it easy for any city or county that wishes to help families connect with affordable health insurance for their children. See www.ca-ilg.org/chk.



CALIFORNIA STATE ASSOCIATION OF COUNTIES
FINANCE CORPORATION

November 2, 2009

To: CSAC Board of Directors

From: Tom Sweet, Executive Director, CSAC Finance Corporation

RE: **Finance Corporation Program Update
INFORMATION ITEM**

The following are highlights of the numerous programs that the CSAC Finance Corporation offers to your counties:

CalTRUST

- CalTRUST currently has 74 participants and current assets exceed \$810 million; a new record high since CalTRUST's inception.
- The new CalTRUST Money Market Fund has started off strong, already attracting over \$155 million in new assets.

California Communities

- The Finance Corporation through California Communities is very involved with the securitization of the Prop 1A portion of the 2009-10 budget agreement.
- We are also working closely with California Communities to reach out to counties that have qualified for Recovery Zone Facility Bonds and Qualified Energy Conservation Bonds. California Communities is available to directly assist local agencies in establishing a program to maximize the use of each funding program.
- California Communities is moving forward with a pilot of their AB 811 renewable energy financing program known as California FIRST. San Diego, San Luis Obispo, and Santa Cruz counties are potential participants for the pilot program.

U.S. Communities

- All 58 counties are now purchasing through the U.S. Communities program. Achieving the 100% agency purchasing threshold means that we will receive increased revenue from U.S. Communities.
- U.S. Communities has announced two new contract offerings. The first new offering is for Paint Solutions, an expansion of the Home Depot contract, providing for additional discounts for Behr and Kilz paint products. The second new contract offering is for Athletic Supplies and P.E. Equipment through Sports Supply Group, Inc with BSN Sports and U.S. Games.

General Information

- We are continuing to meet with individual counties and their department heads to present our programs and benefits. Please let us know if you would like a meeting set with your county's department heads.

If you have any questions regarding these or any other CSAC Finance Corporation programs please do not hesitate to contact us via phone, 916.327.7500 x556, or via email, tsweet@counties.org; Laura Labanieh at 916.327.7500 x536 or lalabanieh@counties.org; Laura Li at 916.327.7500 x560 or lli@counties.org.



MEMORANDUM

November 2, 2009

To: CSAC Board of Directors

From: Paul McIntosh, CSAC Executive Director
Lindsay Pangburn, CSAC Corporate Relations Manager

Re: **Corporate Associates Program Update
INFORMATION ITEM**

Following please find a summary of the CSAC Corporate Associates program activities for 2009:

- The program will wrap up this year with 79 members; this is down slightly from 2008, when we ended the year with 83 members.
- The program gained a total nine new members in 2009, including two at the Small Business level, which was introduced this year.
- Total membership and event sponsorship income for the year is \$289,450; again, this is down slightly from 2009, with a year-end total of \$303,150.
- Several of our Corporate Associates provided additional support and participation for some key CSAC-hosted events this year, including activities at the NACo Annual Conference in Nashville, and the National Council of County Association Executives (NCCAE) Conference in Sonoma County.
- Two of our 2009 Annual Meeting sessions will feature Corporate Associates members: a major session presentation on healthcare reform, as well as a workshop on privacy rights and background checks.
- The Annual Meeting Exhibit Hall is close to selling out, with just three booths still available.
- We continued to distribute regular communications to all Corporate Associates members throughout 2009, including a monthly e-newsletter, *Around Our Counties* Newsletter, *California Counties* magazine and the Executive Director's Watch.

If you have any questions about the Corporate Associates program, please feel free to contact Lindsay Pangburn, at (916) 327-7500 ext. 528, or lpangburn@counties.org.



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MEMORANDUM

To: Supervisor Gary Wyatt, President, and
Members of the CSAC Board of Directors

From: Jennifer Henning, Litigation Coordinator

Date: November 19, 2009

Re: Litigation Coordination Program Update

This memorandum will provide you with information on the Litigation Coordination Program's activities since your last meeting in September. If you have questions about any of these cases, please do not hesitate to contact me.

I. New Amicus Case Activity Since September, 2009

City of Alhambra v. County of Los Angeles

Pending in the Second Appellate District (filed Aug. 17, 2009)(B218347)

This case involves a dispute between cities and counties over the property tax administration fee (PTAF). A number of cities filed an action against LA County challenging the method used by the county (the County Auditors Association's SB 1096 Guidelines) to calculate the PTAF charged to cities. The trial court found in favor of the county, concluding that when read in the context of the entire statutory scheme, the county's calculation of the PTAF does not violate the Revenue and Taxation Code. The cities have appealed. CSAC will file a brief in support of the county. Many counties have tolling agreement with cities regarding this issue that will hold claims until this litigation is resolved.

Ardon v. City of Los Angeles

Previously published at: 174 Cal.App.4th 369 (2d Dist. May 28, 2009)(B201035), *petition for review granted* (Sept. 9, 2009)(S174507)

This case is a class action challenge to the application of the city's phone tax. The primary question raised by the case is whether plaintiff was entitled to present a single claim to the city on behalf of himself and the entire class, or whether each member of the purported class is required to file an individual claim with the city prior to filing suit. The court found plaintiff could not assert a class claim under section 910 for a tax refund. In so holding, the court overruled *County of Los Angeles v. Superior Court (Oronoz)* (2008) 159 Cal.App.4th 353,

which found in part that class actions against local taxes and fees are permitted. The Supreme Court has granted review to the following issue: Does Government Code section 910 authorize a class claim for refund of a local tax, or must each putative class member file his or her own claim prior to the filing of a class action suit? CSAC filed a brief in support of the city in the appellate court, and will file again in the Supreme Court.

Bravo v. County of Tulare

Pending in the Fifth Appellate District

Plaintiff sued the county for serious injuries he sustained at age seven months while in foster care. The complaint alleges that county social workers were made aware of bruises on the child on three occasions, but that they negligently failed to remove him from the foster home. He ended up in the emergency room where he was diagnosed with Shaken Baby Syndrome. (The foster father is facing criminal charges.) The trial court dismissed the case, finding the placement of the minor, the extent of the supervision of the placement, and the failure to remove the minor from the home were all actions protected by discretionary immunity. The trial court also found that the social workers' knowledge of the bruises, under the facts provided, was not sufficient to trigger the mandatory reporting/investigation requirements. The minor has appealed and CSAC will file a brief in support of Tulare County.

County of Sacramento v. Public Employment Relations Bd

Pending in the Third Appellate District (filed July 29, 2009)(C062484)

This case raises the issue of whether a county is required to meet and confer prior to making changes to eligibility requirements for retiree health benefits. Prior to June 2007, the county provided a subsidy for retirees to participate in the County's Retiree Health Insurance Program. In December 2006 recognized employee organizations were informed that the CEO was recommending to the Board of Supervisors that it discontinue the retiree health subsidy for all retirees retired on or after January 1, 2008, and for certain previously retired annuitants. The county initially offered to meet and confer on the issue with the employee organizations, but later withdrew that offer. In June 2007, the Board adopted its Retiree Medical and Dental Insurance Program for 2008. The policy provides that participants who retired on or before May 31, 2007, will continue to receive the subsidy, but the subsidy is eliminated for all participants who retire after May 31, 2007. The unions filed an unfair labor practice charge with PERB alleging the county was required to meet and confer prior to making the policy changes. PERB affirmed an administrative law judge decision that there was a duty to meet and confer. The county is appealing to the Third District Court of Appeal, and CSAC will file a brief in support.

Grotenhuis v. County of Santa Barbara

Pending in the Second District Court of Appeal (filed Nov. 24, 2008)(B212264)

Revenue and Taxation Code section 69.5 allows persons over the age of 55, and the disabled, to transfer the base year value of an original residence to a

replacement residence under certain specified conditions. The code expressly excludes property held by any “corporation, company or other legal entity or organization of any kind.” Based on this exclusion, the Santa Barbara County Assessor and the Assessment Appeals Board refused to transfer the base year value of the property owned by the Grotenhuis corporation. The trial court reversed, finding that Mr. Grotenhuis was the alter ego of his investment corporation and was therefore permitted to transfer the base year value under section 69.5. The county has filed an appeal and CSAC will file a brief in support.

Guggenheim v. City of Goleta

--- F.3d ---, 2009 U.S.App.LEXIS 21313 (9th Cir. Sept. 28, 2009)(06-56306)

This is a facial takings challenge to a mobilehome rent control ordinance. In relevant part, the ordinance limits any increases in mobile home rents on an annual basis to 75 percent of the increase in the local Consumer Price Index. The federal Ninth Circuit Court of Appeals invalidated the ordinance as an unconstitutional regulatory taking. In so doing, it made several important and novel legal pronouncements, including that plaintiffs did not have to first seek relief in state court (as required since 1985 under relevant U.S. Supreme Court decisions), and that it is permissible to admit evidence on the ordinance’s economic impact on the individual property owner even though the owner’s claim is that the mere enactment of the ordinance is unconstitutional. Ultimately, the court concluded the ordinance was an impermissible transfer of wealth from the park owners to the mobilehome tenants. The court remanded to the trial court for a determination of just compensation. The city will file for en banc review and CSAC will file a brief in support.

International Association of Fire Fighters Local 188 AFL-CIO v. Public Employment Relations Board (City of Richmond)

Previously published at: 172 Cal.App.4th 265 (1st Dist. Mar. 18, 2009)(A114959),
petition for review granted (July 8, 2009)(S172377)

This case challenges a city’s decision to layoff 18 firefighters without going through the meet and confer process. The union filed a complaint with PERB, but PERB decided not to issue a complaint, agreeing with the city that meet and confer was not required. The union appealed. The First Appellate District first found that PERB’s refusal to issue a complaint is generally not subject to judicial review. But the court permitted this action to go forward on a narrow exception to the rule—to consider whether the decision erroneously construes an applicable statute. The court then agreed with PERB that a local agency’s decision to layoff firefighters is not subject to collective bargaining. The California Supreme Court has granted review, and CSAC will file a brief in support of the city.

Laabs v. Southern California Edison Co.

175 Cal.App.4th 1260 (4th Dist. 2 Div. July 20, 2009)(E044917), *petition for review/depublishation denied* (Oct. 28, 2009)(S175969)

Plaintiff was in a car driven by a drunk driver that left the roadway and ultimately struck a light pole installed and owned by defendant. She sued for her injuries alleging the light pole was located too close to the curb. The trial court granted defendant's summary judgment motion finding defendant owed no duty of care to plaintiff. But the Fourth District reversed essentially holding that utilities and others have a duty of care to place objects such as utility poles as far away as possible from the roadway, even in the absence of any notice that the particular fixed object presents any risk to those using the highway's with due care. CSAC filed a letter in support of depublishation, but the request was denied.

Mammoth Lakes Land Acquisition v. Town of Mammoth Lakes

Pending in the Third District Court of Appeal (filed June 27, 2008)(C059239)

Town had FAA funding agreements for airport improvements, which pre-dated a development agreement (DA) with plaintiff developer. The FAA agreements contained "grant assurances" requiring town to comply with all rules and regulations of the FAA. The DA also expressly required both parties to comply with rules and regulations of the FAA. The FAA objected to an informal development plan for a condo/hotel project at the airport claiming that it violated the grant assurances. A town assistant manager wrote an email to developer saying that the city could not proceed with the proposed development until the FAA objections were resolved. Town supported developer against the FAA, and eventually got the FAA to withdraw its objections. But developer sued, claiming that the town entered into two mutually inconsistent contracts—the DA and the FAA funding agreements—and chose to honor the FAA agreements and repudiate the DA. The trial court effectively directed the jury to find town anticipatorily breached the DA by complying with the FAA agreements. The jury awarded developer \$30 million in damages, and the court awarded \$2.6 million dollars in attorney fees. The town appealed, and CSAC will file a brief in support.

MHC Financing Limited Partners v. City of San Rafael

Pending in the Ninth Circuit Court of Appeals (filed July 10, 2009)(09-16447)

This case is a takings challenge to the City of San Rafael's mobilehome ordinance. The ordinance as enacted in 1989 permitted park owners to annually increase rents by no more than a graduated percentage of the CPI. The ordinance was challenged as a taking in 1993, but was upheld by the Ninth Circuit. In 1999, the city amended the ordinance to alter the formula for allowable rent increases. Plaintiff then brought this action alleging the amendments were a taking. The district court found in favor of plaintiff, concluding that the amendments made it certain that mobilehome pad rents would fall progressively further behind market rents. The court found that when plaintiff purchased the park in 1994, it had a reasonable expectation that it would be provided a reasonable return on its property value, and the 1999 amendments frustrated those expectations by increasing dramatically the

burden of the ordinance on plaintiff. The city has appealed, and CSAC will file a brief in support.

Retired Employees Assoc. of Orange County v. County of Orange

Pending in the Ninth Circuit Court of Appeal (filed July 1, 2009)(09-56026)

Since approximately 1966, the County has provided health care benefits to its retired employees. In 1985, the County began pooling the retirees with active employees in the rate-setting process, which allowed retirees to pay lower premiums and receive greater coverage than they otherwise would. Over time, the County found its employee health plans were underfunded. So effective January 1, 2008, the Board approved a resolution to "split the pool," which created different premium pools for active and retired employees, resulting in significantly higher health insurance premiums for the retirees. The retirees sued in federal court, alleging breach of contract and due process claims, as well as a violation of the California Pension Protection Act of 1992. The district court ruled in favor of the County. The court found the resolutions creating the joint pool did not explicitly provide that the retirees are entitled to the pooling benefit for their lifetimes. And the court rejected the retirees' argument that the pooling benefit was an implied term of the MOU between the parties; case law requires such contractual obligations regarding public pensions base their findings on explicit language in statutes or legislative enactments. The retirees have appealed, and CSAC has filed a brief in support of the county.

Sequoia Park Associates v. County of Sonoma

176 Cal.App.4th 1270 (1st Dist. Aug. 21, 2009)(A120049), *petition for review pending* (filed Sept. 30, 2009)(S176718)

This case involves the question of whether Government Code section 66427.5, which was adopted in the 1990's to help facilitate conversions of mobilehome parks to resident ownership, preempts local regulations over such conversions. Section 66427.5 releases the park from local rent control in the event of a conversion to resident ownership. The county adopted an ordinance with an application process for the approval of such conversions. Plaintiff challenged the county's conversion ordinance on grounds of state preemption. The trial court upheld the validity of the ordinance in all respects. The First District reversed, concluding that the county's ordinance is both expressly and impliedly preempted by section 66427.5. CSAC has filed letters in support of the county's requests for Supreme Court review, or in the alternative, depublication.

II. Amicus Cases Decided Since September, 2009

California Redevelopment Association v. Genest

Appeal Abandoned in the Third District Court of Appeal (filed May 26, 2009)(C062011)
Outcome: Positive

The California Redevelopment Association filed this action against the State challenging the State budget trailer bill. The bill language redefines redevelopment to

include operating expenses for schools (finding that good schools are necessary to meet the goals of redevelopment) and then shifts redevelopment funds from redevelopment agencies to schools. The petition argued the budget trailer bill contravenes the constitutional requirements related to redevelopment funding, as well as the federal takings clause and provisions against impairment of contract. The court found that the legislative findings on the relationship between the economic development and adequate funding of school programs was entitled to deference. "The relationship may be considerably more attenuated and indirect than the relationship between redevelopment purposes and the required set-aside of tax increment revenues for low- and moderate income housing (§ 33334.2) or the required payments to 'affected taxing entities' burdened by redevelopment projects (§§ 33607.5, 33607.7), but the relationship nonetheless has a conceivable basis in fact and logic to reasonably relate ERAF transfers and redevelopment purposes." But the court concluded "that the required payments by RDAs to their county ERAFs during the 2008-2009 fiscal year are inconsistent with the intent of section 16 to use tax increment revenue for the financing of redevelopment projects insofar as tax increment revenues paid into the ERAF are unlikely to be distributed from the ERAFs for educational purposes related to the redevelopment projects. . . . Thus, section 33685, in its general and ordinary operation, inevitably conflicts with and violates the terms and intent of section 16, to allocate tax increment revenues to the financing of redevelopment projects." The State initially filed an appeal in this case, and CSAC was prepared to file a brief in support of CRA, but in late September the State abandoned that appeal. Last month, CRA filed another action challenging the State's use of a similar shift in the 2009-2010 budget.

City of Claremont v. Kruse

177 Cal.App.4th 1153 (2d Dist. Aug. 27, 2009)(B210084), *ordered published* (filed Sept. 22, 2009), *request for depublication pending* (filed Oct. 6, 2009)(S176912)

Outcome: Positive

The Second Appellate District has issued an unpublished decision upholding a city's moratorium on marijuana dispensaries. After essentially accepting the City's argument that Prop. 215 (Compassionate Use Act) and its implementing regulations (known as S.B. 420 or the Medical Marijuana Program (MMP) Act) address the criminal process, not civil land use regulations, the court held that "[n]either the CUA [Prop. 215] nor the MMP [S.B. 420] compels the establishment of local regulations to accommodate medical marijuana dispensaries. The City's enforcement of its licensing and zoning laws and its temporary moratorium on medical marijuana dispensaries do not conflict with the CUA or the MMP." CSAC's request to publish this case was granted.

County of Butte v. Superior Court (Williams)

175 Cal.App.4th 729 (3d Dist. July 1, 2009)(C057152), *petition for review denied* (Sept. 23, 2009)(S175219)

Outcome: Negative

During an investigation, a deputy sheriff visited Williams, a medical marijuana patient and marijuana collective member. The sheriff concluded he was growing more plants than he was permitted. As an alternative to arrest, he allowed Williams to remove the excess plants. Williams then brought this action alleging unlawful search and seizure and violation of due process, among other allegations. The trial court ruled in William's favor and the Third Appellate District affirmed. The court agreed with the trial court that the state constitution and state law could provide a civil remedy to Williams if his marijuana was seized absent probable cause. A dissenting opinion found that the Compassionate Use Act only provides a defense in a criminal matter, but does not create a civil property right in marijuana possession. Butte County sought Supreme Court review, which CSAC supported, but review was denied.

Las Lomas Land Company v. City of Los Angeles
177 Cal.App.4th 837 (2d Dist. Sept. 17, 2009)(B213637)
Outcome: Positive

Plaintiff applied to the City of Los Angeles to commence environmental review of the Las Lomas Project, a proposed mixed-use community on a 555-acre parcel in an unincorporated area of Los Angeles County. The city began preparing an environmental impact report under CEQA. After several years, and before the EIR was completed, the City Council made a policy decision to reject the project and not seek to annex the property to its boundaries. Las Lomas sued the city, alleging that the city was prohibited from making this policy determination and rejecting the project until it completed the EIR. The trial court sustained the city's demurrer to the petition, and Las Lomas appealed. The Second District affirmed. "To require a public agency to prepare and circulate a draft EIR, and prepare a final EIR including responses to comments, before rejecting a project would impose a substantial burden on the agency, other agencies, organizations, and individuals commenting on the proposal, and the project applicant. Such a requirement would not produce any discernible environmental benefit and would not further the goal of environmental protection." CSAC filed a brief in support of the city.

Watkins v. County of Alameda
177 Cal.App.4th 320 (1st Dist. Sept. 3, 2009)(A123320/A122992)
Outcome: Positive

This case involves a challenge to how Alameda County defines "employability" in the context of General Assistance under Welfare and Institutions Code section 17001.5. That statute allows counties to limit cash benefits to a portion of the GA population determined to be "employable," specifically allowing benefits to be limited to 3 months in any 12 month period. (Approximately 36 counties limit benefits under this provision.) In 2008, Alameda County attempted to limit cash benefits to "employable" GA recipients so that they would receive benefits for 6 months during each 12 month period. The county defined "employable individuals" as those persons who lack a verified physical or mental disability that prevents them from performing work. The Public Interest Law Project challenged the county's action and the trial court ruled against the county, finding the

Supervisor Gary Wyatt, President, and
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county's definition of employable violated requirements that GA be "fairly and equitably" administered because it did not take into account factors such as level of education, work experience, English language proficiency and the availability of jobs. The county appealed, and the First District reversed. "Section 17001.5(a)(4) does not compel such a restrictive view of the class of persons who may be subject to time limits on receipt of GA benefits. Rather, a definition of 'employable individual' that turns upon one's physical and mental fitness for work is consistent with the plain meaning of the term, its common usage, and the intent of the Legislature in enacting section 17001.5." CSAC filed an amicus brief in support of the county. The Public Interest Law Project is now seeking Supreme Court review.