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Statement of the
California State Association of Counties
for the record of the
U. S. House of Representatives Committee on Natural Resources
Subcommittee on Indian and Alaska Native Affairs
for its September 19, 2013 Oversight Hearing on
Executive Branch Standards for Land-Into-Trust Decisions for Gaming Purposes

Dear Chairman Young, Ranking Member Hanabusa, and Honorable Members of the Subcommittee:

This testimony is submitted on behalf of the California State Association of Counties (CSAC). Founded in 1895, CSAC is the unified voice on behalf of all 58 of California's counties. The primary purpose of the association is to represent county government before the California Legislature, administrative agencies, and the federal government.

CSAC places a strong emphasis on educating the public about the value and need for county programs and services. Additionally, the association and its members are pleased to remain actively involved in pursuing federal laws and regulations that provide the framework for constructive government-to-government relationships between counties and tribes.

It must be stated at the outset that CSAC reaffirms its absolute respect for the authority granted to federally recognized tribes. We also reaffirm our support for the right of Indian tribes to self-governance and recognize the need for tribes to preserve their tribal heritage and to pursue economic self-reliance.

At the same time, CSAC believes that existing federal laws and regulations fail to address the off-reservation impacts of tribal land development, including casinos, and particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors. As we all know, commercial projects on reservation land can attract large volumes of visitors and lead to myriad impacts on the surrounding community.

The intent of this testimony is to provide a perspective from California's counties regarding the need for Congress to address what we believe are major, long-standing deficiencies in the current land-into-trust process as it relates to both gaming and non-gaming land acquisitions. In our view, the current fee-to-trust process, as authorized under the *Indian Reorganization Act of 1934* (IRA) and governed by the Department of the Interior's Part 151 regulations, lacks adequate standards and has led to unnecessary conflict and distrust of the federal decision-making system for trust lands.

The Role of Counties

There are two key reasons why the subject matter at hand is of heightened importance for California counties. First, counties are legally responsible to provide a broad scope of vital services for all members of their communities. Second, throughout the State of California and the nation, tribal gaming has rapidly expanded, creating economic, social, environmental, health, safety, and other impacts. The facts clearly show that the mitigation and costs of such impacts increasingly fall upon county government.

Every Californian, including all tribal members, depend upon county government for a broad range of critical services, from public safety and transportation, to waste management and disaster relief. California counties are responsible for nearly 700 programs, including, but not limited to, the following: local law enforcement, public health, fire protection, family support, probation, jails, child and adult protective services, roads and bridges, and flood control. Notably, most of these services are provided to residents both outside and inside of city limits.

Unlike the exercise of land use control, programs such as public health, welfare, and jail services are provided - and often mandated - regardless of whether a recipient resides within a city or in the unincorporated area of the county. These vital public services are delivered to California residents through their 58 counties. It is no exaggeration to say that county government is essential to the quality of life for over 37 million Californians. In addition, because county governments have very little authority to independently raise taxes and increase revenues, the ability to adequately mitigate tribal commercial endeavors is critical, or all county services could be put at risk.

Counties have a legal responsibility to properly provide for and protect the health, safety, and general welfare of the members of their communities. However, California counties' efforts in this regard have been significantly impacted by the rapid expansion of Indian gaming. Although certain tribes and counties have reached local agreements for the mitigation of off-reservation impacts on services that counties are required to provide, many others have not. In the absence of local agreements, counties must bear the full cost and burden of addressing the off-reservation impacts associated with commercial gaming enterprises.

Because of counties' integral role in the daily lives of it citizens, and in consideration of the impacts to communities created by ever-expanding tribal business ventures, counties should be viewed as indispensible to any discussion involving the Bureau of Indian Affairs' (BIA) land-into-trust process. To follow is a description of what CSAC regards as the long-standing defects in the trust acquisition process, as well as a series of recommendations for how the process should be fixed.

The Deficiencies of the Current Land-into-Trust Process

The fundamental problem with the trust acquisition process is that Congress has not set standards under which any delegated trust land authority would be applied by BIA. The relevant section of federal law, Section 5 of the IRA, 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.

The aforementioned general and undefined congressional guidance, as implemented by the Department of the Interior in its Part 151 regulations, has resulted in a trust land process that fails to meaningfully include legitimate interests, provide adequate transparency to the public, or demonstrate fundamental balance in trust land decisions. The unsatisfactory process has created significant controversy, serious conflicts between tribes and states, counties and local governments - including litigation costly to all parties - and broad distrust of the fairness of the system.

One of CSAC's central concerns with the current trust acquisition process is the severely limited role that state and local governments play. The implications of losing jurisdiction over local lands are very significant, including the loss of tax base, loss of planning and zoning authority, and the loss of environmental and other regulatory power. Yet, state, county and local governments are afforded limited, and often late, notice of a pending trust land application, and, under the current regulations, are asked to provide comments on two narrow issues only: 1) potential jurisdictional conflicts; and, 2) loss of tax revenues.

Moreover, the notice that local governments receive typically does not include the actual fee-to-trust application and often does not indicate how the applicant tribe intends to use the land. Further, in some cases, tribes have proposed a trust acquisition without identifying a use for the land; in other cases, tribes have identified a non-intensive, mundane use, only to change the use to heavy economic development, such as gaming or energy projects, soon after the land is acquired in trust.

Local governments also are often forced to resort to Freedom of Information Act (FOIA) requests to ascertain if a petition for an Indian lands determination - a key step in the process for a parcel of land to qualify for gaming - has been filed in their jurisdiction. Because many tribal land acquisitions ultimately will be used for economic development purposes - including gaming activities - there are often significant unmitigated impacts to the surrounding community, including environmental and economic impacts. Unfortunately, current law does not provide any incentive for tribes and affected local governments to enter into agreements for the mitigation of off-reservation impacts.

While the Department of the Interior understands the increased impacts and conflicts inherent in recent trust land decisions, it has not crafted regulations that strike a reasonable balance between tribes seeking new trust lands and the states and local governments experiencing unacceptable impacts. Indeed, the current notification process embodied in the Part 151 regulations is, in practice, insufficient and falls far short of providing local governments with the level of detail needed to adequately respond to proposed trust land acquisitions. Accordingly, a legislative effort is needed to meet the fundamental interests of both tribes and local governments.

Carcieri v. Salazar - A Historic Opportunity

On February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*. The Court 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 IRA in 1934.

Because the *Carcieri* decision has definitively confirmed the Secretary's lack of authority to take land into trust for post-1934 tribes, Congress has the opportunity not just to address the issue of the Secretary's authority under the current failed fee-to-trust system, but to reassert its primary authority for these decisions by setting specific standards for taking land into trust that address the main shortcomings of the trust land process.

In the wake of this significant court decision, varied proposals for reversing the *Carcieri* decision have been generated, some proposing administrative action and others favoring a congressional approach. Today's hearing, like several hearings before it, is a recognition of the significance of the *Carcieri* decision and the need to consider legislative action.

We believe that the responsibility to address the implications of *Carcieri* clearly rests with Congress and that a decision to do so in isolation of the larger problems of the fee-to-trust system would represent an historic missed opportunity. Indeed, a legislative resolution that hastily returns the trust land system to its status before *Carcieri* will be regarded as unsatisfactory to counties, local governments, and the people we serve. Rather than a "fix," such a result would only perpetuate a broken system, where the non-tribal entities most affected by the trust acquisition process are without a meaningful role. Ultimately, this would undermine the respectful government-to-government relationship that is necessary for both tribes and neighboring governments to fully develop, thrive, and serve the people dependent upon them for their well being.

Our primary recommendation to the Subcommittee and to Congress is this: Do not advance a congressional response to *Carcieri* that allows the Secretary of the Interior to return to the flawed fee-to-trust process. Rather, carefully examine, with input from tribal, state and local governments, what reforms are necessary to "fix" the fee-to-trust process and refine the definition of Indian lands under the Indian Gaming Regulatory Act (IGRA). Concurrently, the Secretary of the Interior should determine the impacts of the *Carcieri* decision, including the specific tribes affected and the nature and urgency of their need, so that a more focused and effective legislative remedy can be undertaken.

The *Carcieri* decision presents Congress with an opportunity to carefully exercise its constitutional authority for fee-to-trust acquisitions and to define the respective roles of Congress and the Executive Branch in trust land decisions. Additionally, it affords Congress with the opportunity to establish clear and specific congressional standards and processes to guide trust land decisions in the future. A clear definition of roles is acutely needed regardless of whether trust and recognition decisions are ultimately 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 the power to ***not*** provide new standard-less 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 recent years. 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 direction to the Secretary of the 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.

Looking ahead, we respectfully urge Members of this Subcommittee to consider both sides of the problem in any legislation seeking to address the trust land process post-*Carcieri,* namely: 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. As Congress considers the trust land issue, it should undertake reform that is in the interests of all affected parties.

Some of the more important new standards should be 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 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; accordingly, 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. 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. As previously indicated, counties are often forced to file a FOIA request to even determine if an application was filed and the basis for the petition.

Notice for trust and other land actions for tribes that go to counties and other governments is not only very limited in coverage, the opportunity to comment is minimal; 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 providing input in critical Department of Interior decisions and policy formation that directly affects their communities. This remains true today as evidenced by new policies being announced by the Administration without input from local government organizations.

The corollary is that consultation with counties and local governments must be substantive, include all affected communities, and provide an opportunity for public comment. Under Part 151, BIA does not invite comment by third parties even though they may experience major negative impacts, although it will accept and review such comments. BIA accepts comments only 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, government services currently provided to the subject parcels, 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. Broad notice of trust applications should be required with at least 90 days to respond.

2) The BIA Should Define "Tribal Need" and Require Specific Information about Need from the Tribes. The BIA regulations provide inadequate guidance as to what constitutes legitimate tribal need for a trust land acquisition. There are no standards other than the stipulation 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.

Congress should consider developing standards requiring justification of the need and purpose for acquisition of additional trust lands so that the acquisition process does not continue to be a "blank check" for removing land from state and local jurisdiction. Notably, CSAC supports a lower threshold for acquisition of trust land that will be used only for non-gaming or non-intensive economic purposes, including governmental uses and housing projects.

3) Applications Should Require Specific Representations of Intended Uses. Changes in use should not be permitted without further reviews, including environmental impacts, and application of relevant procedures and limitations. Such further review should have the same notice, comment, and consultation as the initial application. The law also should be changed to explicitly authorize restrictions and conditions to be placed on land going into trust that further the interests of both affected tribes and other affected governments.

4) Tribes that Reach Local Intergovernmental Agreements to Address Jurisdiction and Environmental Impacts Should Have a Streamlined Process. The legal framework should encourage tribes to reach intergovernmental agreements to address off-reservation project impacts by reducing the threshold for demonstrating need when such agreements are in place. Tribes, states, and counties need a process that is less costly and more efficient. The virtually unfettered discretion contained in the current process, due to the lack of clear standards, almost inevitably creates conflict and burdens the system. A process that encourages

cooperation and communication provides a basis to expedite decisions and reduce costs and frustration for all involved.

It should be noted that an approach that encourages intergovernmental agreements between a tribe and local government affected by fee-to-trust applications is required and working well under recent California State gaming compacts. Not only does such an approach offer the opportunity to streamline the application process, it can also help to ensure the success of the tribal project within the local community. The establishment of a trust land system that incentivizes intergovernmental agreements between tribes and local governments is at the heart of CSAC's fee-to-trust reform recommendations and should be a top priority for Congress.

5) Establish Clear Objective Standards for Agency Exercise of Discretion in Making Fee-to-Trust Decisions. The lack of meaningful standards or *any* objective criteria in fee-to-trust decisions made by the BIA have been long criticized by the U.S. Government Accountability Office and local governments. For example, BIA requests only minimal information about the impacts of such acquisitions on local communities and 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.

Furthermore, the BIA has the specific mission to serve Indians and tribes and is granted broad discretion to decide in favor of tribes. In order to reasonably balance the interests of tribes and local governments, the Executive Branch should be given clear direction from Congress regarding considerations of need and mitigation of impacts to approve a trust land acquisition. However any delegation of authority is resolved, Congress must specifically direct clear and balanced standards that ensure that trust land requests cannot be approved where the negative impacts to other parties outweigh the benefit to the tribe.

The attached fee-to-trust legislative reform proposal developed by CSAC seeks to address the inequities and flaws in the current trust land system. The centerpiece of the reform package is a proposal that would provide an incentive for tribes and local governments to enter into judicially enforceable mitigation agreements. Additionally, the proposal would remedy the aforementioned defects in the fee-to-trust process related to inadequate notification and consultation requirements, as well as address other significant shortcomings in the trust land system.

Pending Legislation

As stated above, congressional action must address the critical repairs needed in the fee-to-trust process. Unfortunately, legislation currently pending in the House (HR 279 and HR 666) fails to set clear standards for taking land into trust, to properly balance the roles and interests of tribes, state, local and federal governments in these decisions, and to clearly address the apparent usurpation of authority by the Executive Branch over Congress' constitutional authority over tribal recognition.

HR 279, in particular, serves to expand the undelegated power of the Department of the Interior by expanding the definition of an Indian tribe under the IRA to any community the Secretary "*acknowledges* to exist as an Indian Tribe [emphasis added]." In doing so, the effect of the bill is to facilitate off-reservation activities by tribes and perpetuate the inconsistent standards that have been used to create tribal entities. Such a "solution" causes controversy and conflict rather than an open process which, particularly in states such as California, is needed to address the varied circumstances of local governments and tribes.

IGRA

While the IRA provides the Secretary of the Interior with the authority to take land into trust for the benefit of Indian tribes, IGRA provides the framework for tribes to conduct gaming on trust land. Under IGRA, casino-style gaming is authorized on lands located within or contiguous to the boundaries of a tribe's reservation as it existed on October 17, 1988 (the date of IGRA's enactment). Although the Act prohibits gaming on land taken into trust or restricted status for a tribe after the aforementioned date, Congress authorized several notable exceptions to the prohibition. Pursuant to Section 20 of IGRA, gaming is allowed under the following circumstances:

- the land is part of the initial reservation of an Indian tribe acknowledged by the Secretary under the federal acknowledgment process;
- the restoration of land for a tribe that is restored to federal recognition;
- if, after consultation with the Indian tribe, other nearby tribes, and appropriate state and local officials, the Secretary determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community and the governor concurs in the Secretary's determination;
- the land is taken into trust for a tribe as part of a land claim settlement.

The passage of IGRA has substantially increased both tribal and non-tribal investor interest in having lands acquired in trust so that economic development projects, otherwise prohibited under state law, could be built. The opportunities under IGRA were also a factor in causing many tribal groups that were not recognized as tribes in 1934 to seek federal recognition and trust land in the past 20 years.

Further, tribes have more aggressively sought lands that are of substantially greater value to state and local governments, even when distant from the tribe's existing reservation, because such locations are far more marketable for various economic purposes. The result has been increasing conflict between tribes and state and local governments.

In California in 2011, 2012 and 2013 alone, there were approximately 40 applications from tribes to take land into trust consisting of approximately 9,450 acres of land. 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 land-into-trust applications are alike.

It should be noted that some tribes are seeking to have land located far from their aboriginal location deemed "restored land" under IGRA; if successful - and if Congress were to restore the Secretary's trust land acquisition authority for post-1934 tribes - this would allow the land to be eligible for gaming even without the support of the governor or local communities, as would be otherwise required. Restored tribes are an exception for gaming that circumvents the intended two-part determination process that empowers a state to manage the location and growth of gaming.

CSAC's policy with respect to gaming on restored lands is one that reflects the importance of local government and individual tribal government relationships and the uniqueness of each local situation. Indeed, there are a number of examples of California counties working cooperatively with tribes on a government-to-government basis on issues of common concern to both parties, not just gaming-related issues. Based on this cooperation, tribes and counties have forged mutually beneficial agreements that address the impacts of tribal development projects.

At the same time, there are examples of tribal governments that have not complied with the requirements of IGRA or California's Tribal-State Gaming Compacts. In these instances, conflict has ensued and the county has been left to address the impacts associated with the tribe's development.

As provided for in CSAC's fee-to-trust reform proposal, the overriding principle supported by the association is that when tribes are permitted to engage in gaming activities under federal legislation, judicially enforceable agreements between counties and tribal governments must be required. Such agreements should fully mitigate local impacts from a tribal government's business activities and fully identify the governmental services to be provided by the county to that tribe.

Potential Changes to the Federal Acknowledgment Process

Earlier this year, the Department of the Interior released a discussion draft of potential changes to the Department's Part 83 process for acknowledging certain Indian groups as federally recognized tribes. The intent of the proposed draft is for BIA to solicit comments identifying potential changes to the federal acknowledgment process to improve the integrity of the Bureau's decisions to recognize particular groups as Indian Tribes.

The federal acknowledgment process is the Department's regulatory procedure by which petitioning groups that meet the regulatory criteria are "acknowledged" as federally recognized Indian tribes with a government-to-government relationship with the United States. Once an Indian tribe receives formal recognition, the tribe and its members are eligible for certain benefits, as well as subject to certain protections. It also means that the tribe may be eligible to conduct gaming operations under IGRA.

CSAC is interested in the topic of federal acknowledgment because there are potentially hundreds of Indian groups in California that may desire recognition from the federal government and which may desire to have land removed from state and local jurisdiction

through the fee-to-trust process, particularly for gaming purposes, upon or in connection with acknowledgment. The association takes great interest in any decision-making process that may lead to the removal of land from state and local jurisdiction, for reasons previously discussed in this testimony.

CSAC understands that the current acknowledgment process has been criticized as expensive, burdensome, opaque, and inflexible. We believe, however, that modifications to the current process, if any, to address these criticisms, must not compromise the integrity of BIA's decisions to recognize a group as an Indian tribe – a political entity with a distinct "government-to-government relationship with the United States" and that has been in continuous existence as a political entity and social community since the time of first contact with non-Indians.

Acknowledgement confers significant political and economic benefits to the recognized tribe and creates a powerful government-to-government relationship stretching into perpetuity. Because counties interact with federally recognized tribes on important matters ranging from child welfare to economic development to prevention of environmental and cultural degradation, CSAC is particularly interested in the accuracy of acknowledgement decisions. Moreover, county governments often already have a relationship with an unrecognized tribe or group, and can contribute directly to the Bureau's investigation.

We believe that the acknowledgment process would be greatly improved if the Bureau were required to affirmatively seek input from local governments concerning petitions for acknowledgments at the earliest opportunity. Moreover, CSAC believes that acknowledgment must be objective, based on verifiable evidence received from all interested parties, and made according to uniformly applied and rigorous criteria. In short, such an important decision should be made with deliberate care.

Unfortunately, the Department's proposed draft changes would diminish the rights of local governments to participate in the acknowledgment process. First, while the current Part 83 regulations provide for limited and constructive participation of Informed and Interested Parties, the draft would eliminate the opportunity of such parties, including local governments, to appeal a final acknowledgment determination. The ability to file an administrative appeal with the Interior Board of Indian Appeals provides a check on improper decisions by BIA and should be maintained as part of the process.

Additionally, CSAC has significant concerns with the following proposed changes: the unfair page limit on interested party submissions; the one-way requirement that interested parties must submit their evidence and argument to petitioners, but not vice versa; the ability for petitioners to cease active review whenever they want, despite the cost and disruption caused to interested parties; the elimination of the requirement for an interested party to file a notice of intent, which serves as early notice to local governments; the denial of technical assistance to interested parties, even though it is provided to petitioners; and, providing petitioners, but not interested parties, the right to submit evidence at a hearing. The aforementioned changes are all one-sided in favor of petitioners, and they go too far.

Because of the impact that IGRA has had on acknowledgement, restoration and reaffirmation, CSAC recommends that, in addition to removing the problematic proposals discussed above, BIA should include the following steps in the "conversation of the draft discussion:"

- Solicit input from and convene consultation meetings with local governments, including counties in particular, concerning acknowledgment petitions at the earliest opportunity. Counties have government-to-government relationships with tribes affecting a variety of important interests from child welfare, to gaming, to environmental protection and mitigation of off-reservation impacts created by on-reservation development, including gaming in particular. As a result, counties are uniquely positioned to contribute important evidence to the acknowledgment process. Additionally, counties should be consulted prior to the Bureau authorizing re-petition by a previously denied petitioner.

- Facilitate and encourage constructive public participation in the review process. Several consultation hearings should be scheduled in California where there are more tribes than any other state petitioning for federal recognition or seeking reaffirmation.

- Additionally, since newly acknowledged tribes are a clear and indisputable exception under section 20 of IGRA, although a separate process, a stringent and transparent fee-to-trust process with significant input from all stakeholders must be considered regarding "initial" reservation lands. Of course, BIA acquired trust land is not currently available to newly acknowledged tribes as a result of the *Carcieri* decision, and this fact should be acknowledged by BIA.

In sum, California counties are uniquely interested in the acknowledgement process not only because of the sheer number of current and potential petitions, but also due to the potential for tribal recognition to lead to the removal of land from state and local jurisdiction. Additionally, due to their government-to-government relations with tribes that span a host of matters important to all levels of government, California counties have significant interest in which groups are granted federal recognition status. Finally, California counties have important information to contribute to the acknowledgement process that should be considered when acknowledgement decisions are made. Accordingly, the Bureau should be required to fully engage and solicit information from counties concerning acknowledgement petitions, or authorization for re-petitions.

Conclusion

We ask Members of the Subcommittee and Congress as a whole to thoughtfully consider the recommendations that we have submitted as part of this testimony. In particular, as the Subcommittee considers options for addressing the implications of *Carcieri*, we urge you to incorporate the aforementioned fee-to-trust reforms as part of any legislative proposal that may emerge. Indeed, Congress must take the lead in any legal repair for inequities caused by the Supreme Court's action, but absolutely should not do so without addressing these critically important and long-overdue reforms.

CSAC's proposals are common-sense modifications 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. These reforms also would assist trust land applicants by guiding their requests toward a collaborative process and, in doing so, reduce the delay and controversy that now routinely accompany acquisition requests.

We also urge Members to reject any "one-size-fits-all" solution to these issues. In our view, IGRA itself has often represented such an approach, and as a result has caused many problems throughout the nation 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 Kiana Buss, CSAC Legislative Representative, at (916) 327-7500 ext. 566, kbuss@counties.org.

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COMPREHENSIVE FEE-TO-TRUST REFORM PROPOSAL

Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: Provided, that no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

The Secretary may acquire land in trust pursuant to this section where the applicant has identified a specific use of the land and:

(a) the Indian tribe or individual Indian applicant has executed enforceable agreements with each jurisdictional local government addressing the impacts of the proposed trust acquisition; or

(b) in the absence of the agreements identified in subsection (a):

(1) the Indian tribe or individual Indian demonstrates, and the Secretary determines, that:

(A) the land will be used for non-economic purposes, including for religious, cultural, tribal housing, or governmental facilities, and the applicant lacks sufficient trust land for that purpose; or

(B) the land will be used for economic or gaming purposes and the applicant has not achieved economic self-sufficiency and lacks sufficient trust land for that purpose;

and

(2) the Secretary determines, after consulting with appropriate state and local officials, that the acquisition would not be detrimental to the surrounding community and that all significant jurisdictional conflicts and impacts, including increased costs of services, lost revenues, and environmental impacts, have been mitigated to the extent practicable.

(c) notice and a copy of any application, partial or complete, to have land acquired in trust shall be provided by the Secretary to the State and affected local government units within twenty (20) days of receipt of the application, or of any supplement to it. The Secretary shall provide affected local governmental units at least ninety (90) days to submit comments from receipt of notice and a copy of the complete application to have land acquired in trust.

(d) a material change in use of existing tribal trust land that significantly increases impacts, including gaming or gaming-related uses, shall require approval of the Secretary under this section, and satisfy the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and, if applicable, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq.;

(1) the Secretary shall notify the State and affected local government units within twenty (20) days of any change in use in trust land initiated by an applicant under this subsection.

(2) as soon as practicable following any change in use in trust land initiated prior to review and approval under this section, the Secretary shall take steps to stop the new use, including suit in federal court, upon application by an affected local government;

(3) any person may file an action under 5 U.S.C. § 701 et seq. to compel the Secretary to enjoin any change in use in trust land initiated prior to review and approval under this section.

(e) notwithstanding any other provisions of law, the Secretary is authorized to include restrictions on use in the deed transferred to the United States to hold land in trust for the benefit of the Indian tribe or individual Indian and shall consider restricting use in cases involving significant jurisdictional and land use conflicts upon application of governments having jurisdiction over the land;

(f) any agreement executed pursuant to subsection (a) of this section shall be deemed approved by the Secretary and enforceable according to the terms of the agreement upon acquisition in trust of land by the Secretary;

(g) the Secretary shall promulgate regulations implementing these amendments within 365 days of enactment.