



## Proposed Amendments to the *Interior Improvement Act (S. 1879)*

### *Explanatory Statement of the California State Association of Counties*

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#### INTRODUCTION

On February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*. The decision held that the Secretary of the Interior lacks authority to take land into trust on behalf of Indian tribes that were not “under federal jurisdiction” at the time of the enactment of the 1934 *Indian Reorganization Act* (IRA). The effect of the ruling, which sent shockwaves through tribal communities, was the creation of two classes of Indian tribes.

In response to the *Carcieri* ruling, many tribes have called upon Congress to pass narrowly tailored legislation that would reverse the Court’s decision. It should be noted that roughly a dozen such *Carcieri* “clean fix” bills – written *solely* to restore the Secretary’s trust acquisition authority for post-IRA tribes – have been introduced in every session of Congress since 2009. Absent consensus on the scope of the legislation, however, those measures have failed to advance.

CSAC, while in full agreement with Indian tribes that Congress should address the inequity caused by the Supreme Court’s decision, has remained steadfast that *any* legislation restoring the Secretary’s trust acquisition authority must be coupled with long-overdue reforms in the Bureau of Indian Affairs’ (BIA) deeply flawed fee-to-trust process.

#### BACKGROUND AND NEED FOR LEGISLATION

Section 5 of the IRA provides the Secretary of the Interior with authority to take land into trust for the benefit of Indian tribes. The Act does not, however, include *any* limits or standards relative to the exercise of that authority, which has effectively left all trust acquisition policies to the discretion of the BIA. Unfortunately, the BIA’s administratively created fee-to-trust process has caused significant controversy, serious conflicts between tribes and local governments – including litigation costly to all parties – and broad distrust of the fairness of the system. Despite longstanding, glaring deficiencies in the trust-acquisition process, many of which have been cited by the Government Accountability Office and a leading independent law review, Section 5 authority has never been amended by Congress.

Under BIA’s current regulatory practices, county governments are afforded limited, and often late, notice of a pending trust-land application. Additionally, the BIA does not accord local concerns adequate weight in the land-into-trust process, as counties are only invited to provide comments on two narrow issues – potential jurisdictional conflicts and the loss of tax revenues. Moreover, current law does not provide any incentive for Indian tribes to enter into enforceable mitigation agreements with counties to address the often significant off-reservation impacts associated with tribal development projects, including casinos.

## **THE INTERIOR IMPROVEMENT ACT**

Last year, Senate Committee on Indian Affairs (SCIA) Chairman John Barrasso (R-WY) introduced legislation that would overhaul the Department of the Interior's fee-to-trust process. The bill (S. 1879) includes a series of reforms championed by CSAC, which was closely involved in the drafting of the Barrasso legislation. S. 1879 also would restore the Secretary's authority to take land into trust for all Indian tribes.

Entitled the *Interior Improvement Act*, the Barrasso bill would go a long way toward fixing many of the flagrant defects in the current fee-to-trust process. Among other reforms, the legislation would require the BIA to provide adequate, up-front notice to contiguous jurisdictions whenever the agency receives an initial and completed application from a tribe seeking to have off-reservation fee or restricted land taken into trust. In turn, jurisdictions would be afforded an opportunity to review and comment on all aspects of a trust-land application.

Moreover, S. 1879 would encourage tribes that are seeking trust land to enter into cooperative agreements with contiguous jurisdictions, the terms of which could relate to mitigation, changes in land use, dispute resolution, fees, etc.

In cases in which tribes and contiguous jurisdictions have not entered into enforceable agreements, the legislation would require the Secretary of the Interior to make a "Determination of Mitigation" describing whether the anticipated impacts associated with a proposed trust acquisition have been mitigated to the maximum extent practicable. These proposed standards and requirements are representative of the type of criteria that has been altogether absent from the BIA's administratively driven fee-to-trust process.

While a number of CSAC's key reform principles are reflected in the *Interior Improvement Act*, the association believes that certain provisions of the legislation must be further strengthened and clarified. CSAC also is proposing several key additions to the legislation.

## **CSAC AMENDMENTS**

Attached are CSAC's amendments to S. 1879, which have been embedded in the most recent version of the legislation (as approved by SCIA on December 2). The information below is intended to serve as an explanatory statement of the association's legislative revisions.

### **DEFINITIONAL CHANGES**

#### **(1) Definition of "Contiguous" (found at page 3 of the bill)**

**Issue:** S. 1879 defines the term "contiguous" to mean: "2 parcels of land having a common boundary, notwithstanding the existence of non-navigable waters or a public road or right-of-way." In California, jurisdictions have held the position that land separated by highways and/or non-navigable waters are *not* "contiguous" parcels.

As currently written, S. 1879 would *only* subject “off-reservation” land acquisitions to the legislation’s fee-to-trust process, meaning applications for contiguous land would be exempt from the requirements of the bill. By modifying the definition of “contiguous” as described in the amendment below, proposed land acquisitions separated by a road or waterway *would* be considered off-reservation and therefore governed by the bill.

Notwithstanding the proposed amendment, CSAC believes that *all* contiguous land acquisitions should be covered by S. 1879. Please see amendment number (7), which addresses this broader issue.

**Proposed Amendment:** The phrase “notwithstanding the existence of non-navigable waters or a public road or right-of-way” should be removed from the bill.

(2) **Definition of “Contiguous Jurisdiction” (page 3; term also used throughout S. 1879)**

**Issue:** As drafted, S. 1879 would establish a fee-to-trust process that provides for the involvement of: (a) the applicant Indian tribe; and, (b) the “contiguous jurisdiction.” Under the legislation, “contiguous jurisdiction” is defined as: “any county, county equivalent, or Indian tribe, or the Federal Government, with governmental jurisdiction over the land contiguous to the land under consideration in an application.”

In California, as well as many other states, the jurisdiction that is contiguous to a proposed trust acquisition will typically be a county government with regulatory jurisdiction over the land to be acquired. There are scenarios, however, in which tribal development projects are or would be wholly encompassed by a city. Thus, under the terms of S. 1879, a non-contiguous county government – although likely a key service provider to the land in question – could be altogether removed from the fee-to-trust process.

**Proposed Amendment:** The term “contiguous jurisdiction” should be replaced with “local government” and defined as: “any county, city, township, municipality, borough, or any other general purpose political subdivision of any State.” This proposed change, along with other key modifications described below, is intended to ensure that the interests of *all* impacted jurisdictions are considered as part of the trust acquisition process.

Note: the term “contiguous jurisdiction” appears in numerous places throughout the *Interior Improvement Act*. Where appropriate, the term has been replaced by either “local government,” “State and local government(s)” or “party.”

(3) **Definition of “Cooperative Agreement” (page 3)**

**Issue:** S. 1879 defines a “cooperative agreement” as “any enforceable contract by which the parties bind themselves to work jointly and productively toward some mutually beneficial end.”

**Proposed Amendment:** Add the term “judicially” to “enforceable contract” in order to make it explicitly clear that agreements would be enforceable in a court of law.

(4) **Definition of “County and County Equivalent” (pages 3 and 4)**

**Issue:** S. 1879 includes a definition of “county and county equivalent” and defines the terms as “the largest territorial division for local government within a State with the authority to enter into enforceable cooperative agreements with Indian tribes or individual Indians.”

**Proposed Amendment:** Delete the terms “county and county equivalent.” These terms would be unnecessary in light of amendment number (2), which would impose a generic definition of “local government” throughout S. 1879.

(5) **Definition of “Determination of Mitigation” (page 4)**

**Issue:** CSAC believes that an indispensable element of fee-to-trust reform is a mechanism whereby the Secretary of the Interior is required to certify that all anticipated adverse impacts associated with a proposed trust acquisition are sufficiently mitigated. Without such a mechanism in place, the fee-to-trust process will continue to result in conflict and litigation.

Under S. 1879, “Determination of Mitigation” is defined as “a written Secretarial determination that: (a) ***describes whether*** anticipated impacts on contiguous jurisdictions have been mitigated to the maximum extent practicable; and, (b) explains the basis of that determination.”

CSAC believes that the aforementioned definition – along with the mechanics of the determination process prescribed under the bill (see amendment number 11 below) – falls short of providing the necessary assurances that all potential impacts resulting from a trust acquisition would be mitigated. While the legislation would require the Secretary to *describe* whether anticipated impacts have been mitigated to the maximum extent practicable, there is no actual *mitigation requirement* in the bill.

**Proposed Amendment:** The term “Determination of Mitigation” should be defined as “a written Secretarial determination that: ***certifies that all*** anticipated impacts on ***local governments*** have been mitigated to the maximum extent practicable; and, explains the basis of that determination.”

(6) **Definition of “Impacts” (page 5)**

**Issue:** S. 1879 defines “impacts” as: “the anticipated costs and benefits to the applicant, contiguous jurisdictions, and any other Indian tribe with governmental functions, infrastructure, or services that would be directly, immediately, and significantly impacted by the proposed acquisition.” The bill’s definition does *not* explicitly enumerate “environmental impacts.”

In California, numerous fee-to-trust acquisitions, particularly major development projects, have resulted in various adverse impacts on agricultural resources, air quality, biological resources, water quality, etc. These environmental impacts should be accounted for as part of the fee-to-trust process.

**Proposed Amendment:** The definition of “impacts” should be broadened to explicitly include “*environmental impacts*.”

## GENERAL PROVISIONS

### (7) **Discretionary Off-Reservation Acquisitions (page 6)**

**Issue:** The provisions of S. 1879 would apply to “off-reservation fee or restricted land” acquisitions. Lands that are “contiguous” (or adjacent) to Indian reservation land would fall outside the purview of the bill. Because tribal development projects on contiguous lands can produce the exact same impacts to neighboring local governments, CSAC believes that contiguous land acquisitions should be subject to the same notice, comment, and review procedures as off-reservation land acquisitions.

Note: In California, a significant percentage of fee-to-trust applications have traditionally been for parcels of land that are contiguous to existing tribal land.

**Proposed Amendment:** Add “*contiguous fee or restricted land*” to the bill so that such acquisitions would be subject to the requirements of S. 1879.

### (8) **Encouraging Local Cooperation (pages 11 and 12)**

**Issue:** The *Interior Improvement Act* is designed to provide an incentive for Indian tribes to enter into cooperative agreements with jurisdictions addressing the off-reservation impacts of a proposed development project. In cases in which a tribe has submitted a trust application that is supported by a cooperative agreement, the bill provides for an expedited application process.

Under S. 1879, the Secretary would be required to encourage applicants to enter into cooperative agreements with contiguous jurisdictions. While the measure suggests the types of terms that could be addressed by an agreement, the legislation falls short of encouraging that such agreements account for *all* anticipated impacts (i.e., an application supported by a single cooperative agreement addressing only a narrow set of impacts would nevertheless make the application eligible for the bill’s expedited process).

**Proposed Amendment:** Require the Secretary to encourage applicants to enter into cooperative agreements with “*each local government addressing all anticipated impacts of the proposed trust acquisition and proposed use*.” This change would emphasize the critical importance of *comprehensive* agreements with all potentially

impacted local governments and would qualify an application for expedited review *only* if it were supported by a comprehensive agreement(s).

(9) **Proposed New Section: Encouraging Local Cooperation for Purposes of Environmental Review (page 13)**

**Issue:** S. 1879 does *not* include language encouraging tribes to include local governments as cooperating agencies for purposes of implementing the *National Environmental Policy Act* (NEPA). In California, experience has shown that intergovernmental cooperation between stakeholders during the environmental review process generally yields positive project outcomes and fosters constructive long-term working relationships. Accordingly, CSAC believes that S. 1879 should include language encouraging such cooperation.

**Proposed Amendment:** Require the Secretary of the Interior to: encourage and consider favorably, but not require, applicants to include local governments as cooperating agencies for purposes of implementing NEPA for actions on proposed land acquisitions and major Federal actions or approval regarding change in use on existing Indian land.

(10) **Deemed Approved (page 13)**

**Issue:** Under S. 1879, a fee-to-trust application that is supported by a cooperative agreement would be *automatically approved* and treated as a final decision if the Secretary fails to issue a final decision not later than 120 days after the date on which: clear title to the land is verified; and, all applicable requirements under Federal law and regulation are satisfied.

CSAC understands that the intent of this language is to ensure that trust applications do not languish indefinitely if the Secretary fails to act in a timely manner; however, as currently written, the bill could result in the automatic approval of an application that is supported by a single, narrowly constructed agreement that fails to address all anticipated impacts. The Secretary's failure to act on an application within a prescribed timeframe should not result in its automatic approval, thereby potentially threatening the interests of affected local governments.

**Proposed Amendment:** Delete the "Deemed Approved" language.

(11) **Determination of Mitigation" (pages 13 and 14)**

**Issue:** S. 1879 would require the Secretary to make a "Determination of Mitigation" if a tribe does *not* submit a cooperative agreement in support of an application. In making such a determination, the Secretary would be required to consider the anticipated impacts on the contiguous jurisdiction and the applicant.

While CSAC believes that the concept behind this particular mechanism is essential to a successful fee-to-trust system, we believe that the legislation must be modified to ensure that the determination process would result in the mitigation of all anticipated off-

reservation impacts. Absent a process that accounts for all adverse impacts of tribal development projects, the outcome of certain trust acquisitions will invariably lead to continued conflict and litigation.

**Proposed Amendment:** Change “Considerations for Determination” to “Requirements for Determination.” Moreover, this section should be amended to require the Secretary to determine, “**prior to issuing a final decision to approve an application and based on substantial evidence and in consultation with appropriate State and local government officials, that—**

- (I) the acquisition and proposed use would not be detrimental to local governments and the surrounding community;
- (II) all anticipated impacts have been mitigated to the maximum extent practicable; and,
- (III) all requirements of the environmental review process under NEPA have been fully satisfied.”

(12) **Good Faith Protection (page 15)**

**Issue:** Pursuant to S. 1879, a tribe’s failure to submit a cooperative agreement “shall not prejudice an application if the Secretary determines that the failure to submit is attributable to the failure of any contiguous jurisdiction to work in good faith, honestly and without fraud or unfair dealing, to reach an agreement.”

CSAC believes that a Secretarial determination regarding a failure to work in good faith should be supported by a factual finding that is based on “substantial evidence.” Pursuant to the *Administrative Procedures Act*, such factual determinations are reviewed under a substantial evidence standard, defined as: “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” (*Richardson v. Perales*, 402 U.S. 389, 401 (1971)). This standard should guide the Secretary’s determination as it pertains to a potential breach of good faith.

As a matter of equity, CSAC also believes that the good faith protection standard of the legislation should apply to the actions of both the applicant and local governments.

**Proposed Amendment:** The bill should require the Secretary to determine, “**based on substantial evidence and after consulting with the impacted local governments and the applicant**, that the failure to submit is attributable to the failure of any **party** to work in good faith...”

(13) **Proposed New Section: Change in Use (page 18)**

**Issue:** Neither current law nor S. 1879 includes any mechanism that protects local governments from the potentially significant negative off-reservation impacts associated with a change in use of existing trust land. In other words, there is nothing to prevent a

tribe from acquiring land in trust for a specific stated purpose – such as housing – and subsequently changing the use to heavy economic development/gaming. There are several examples of tribes in California exploiting this particular loophole.

CSAC believes that S. 1879 should include language that would require the Secretary to undertake a thorough review process prior to any change in use of *existing* trust land that would lead to *significantly increased off-site impacts*. The intent of this requirement is not to tread on tribal sovereignty or impede efforts by tribes to initiate lateral/benign changes in land use; rather, the goal is to ensure that modifications in the use of existing parcels of trust land do not lead to significant unmitigated impacts to local governments and the surrounding community.

**Proposed Amendment:** “A change in use of existing tribal trust land that significantly increases off-reservation impacts shall—

- (1) require the approval of the Secretary;
- (2) be subject to the notice and comment requirements of S. 1879; and,
- (3) satisfy the requirements of NEPA, and, if applicable, the *Indian Gaming Regulatory Act* (IGRA).”

## CONCLUSION

CSAC believes that a new fee-to-trust process – one that is rooted in statute, encourages local governments and tribes to work together, and protects the interests of county governments and respects tribal sovereignty – is long overdue. We further believe that S. 1879, while in need of the refinements embodied in the amendment package described herein, represents the start of a balanced solution to the long-standing problems associated with the BIA's fee-to-trust process and the inequities caused by the *Carcieri v. Salazar* decision.

For additional information on these proposals, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444 ([jk@wafed.com](mailto:jk@wafed.com))

Below is the text of the *Interior Improvement Act* (S. 1879) as approved on December 2, 2015 by the Senate Committee on Indian Affairs. Embedded in the document are a series of amendments proposed by the California State Association of Counties (CSAC). For an explanation and justification of CSAC's proposed modifications, please see the statement accompanying this document.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.**

**S. 1879**

To improve processes in the Department of the Interior, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Interior Improvement Act”.

**SEC. 2. DEFINITIONS.**

(a) IN GENERAL.—The first sentence of section 19 of the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 479), is amended—

(1) by striking “The term” and inserting “Effective beginning on June 18, 1934, the term”; and

(2) by striking “any recognized Indian tribe now under Federal jurisdiction” and inserting “any federally recognized Indian tribe”.

(b) **RETROACTIVE PROTECTION.**—To the extent a trust acquisition by the Secretary of the Interior pursuant to the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 461 et seq.), is subjected to a challenge based on whether an Indian tribe was federally recognized or under Federal jurisdiction on June 18, 1934, that acquisition is ratified and confirmed.

**SEC. 3. IMPROVING LAND ACQUISITIONS.**

The Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”), is amended by inserting after section 5 (25 U.S.C. 465) the following:

**“SEC. 5A. LAND ACQUISITION APPLICATIONS.**

**“(a) DEFINITIONS.**—In this section:

**“(1) APPLICANT.**—The term ‘applicant’ means an Indian tribe or individual Indian who—

**“(A) submits an application under subsection (b)(1)(A); or**

**“(B) is deemed an applicant under subsection (b)(1)(B).**

**“(2) APPLICATION.**—The term ‘application’ means an application submitted to the Department by an applicant under subsection (b).

“(3) CONTIGUOUS.—The term ‘contiguous’—

“(A) means 2 parcels of land having a common boundary, ~~notwithstanding the existence of non-navigable waters or a public road or right-of-way~~ **(1)**; and

“(B) includes parcels that touch at a point.

“(4) ~~CONTIGUOUS—JURISDICTION~~LOCAL GOVERNMENT.—The term ‘~~contiguous jurisdiction~~’‘local government’ means any ~~county, county equivalent, city, township, municipality, borough, or any other general purpose political subdivision of any State, or Indian tribe, or the Federal Government, with governmental jurisdiction over the land contiguous to the land under consideration in an application~~ **(2)**.

“(5) COOPERATIVE AGREEMENT.—

“(A) IN GENERAL.—The term ‘cooperative agreement’ means any judicially **(3)** enforceable contract by which the parties bind themselves to work jointly and productively toward some mutually beneficial end.

“(B) INCLUSION.—The term ‘cooperative agreement’ includes a memorandum of understanding, an intergovernmental agreement, or any other enforceable contract.

“(6) ~~COUNTY AND COUNTY EQUIVALENT~~.—

~~The terms ‘county’ and ‘county equivalent’ mean the largest territorial division for local government with—~~

~~in a State with the authority to enter into enforceable cooperative agreements with Indian tribes or individual Indians (4).~~

“(7) DEPARTMENT.—The term ‘Department’ means the Department of the Interior.

“(8) DETERMINATION OF MITIGATION.—The term ‘determination of mitigation’ means a written Secretarial determination that—

“(A) ~~describes certifies (5) whether that all anticipated impacts on contiguous jurisdictions local governments (2) have been mitigated to the maximum extent practicable; and~~

“(B) explains the basis of that determination.

“(9) EXPLANATION OF FINAL DECISION.—The term ‘explanation of final decision’ means a written explanation—

“(A) of the basis of a final decision to approve or deny an application; and

“(B) that explicitly addresses all requirements and considerations described in subsection (e)(1).

“(10) FINAL DECISION.—The term ‘final decision’ means a decision that is final for the Department, as determined or defined by the Secretary.

“(11) IMPACTS.—The term ‘impacts’ includes environmental impacts and (6) means the anticipated costs ~~and benefits~~ to the applicant, ~~contiguous jurisdictions~~ local governments (2), and any other Indian tribe with governmental functions, infrastructure, or services that would be directly, immediately, and significantly impacted by the proposed acquisition.

“(12) INDIAN TRIBE.—The term ‘Indian tribe’ means an Indian tribe included in the list published by the Secretary in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

“(13) MITIGATE.—The term ‘mitigate’ means to avoid, minimize, rectify, reduce, or compensate for adverse impacts to the applicant, ~~contiguous jurisdictions~~ local governments (2), and any other Indian tribe with governmental functions, infrastructure, or services that would be directly, immediately, and significantly impacted by the proposed acquisition.

“(14) NOTICE OF FINAL DECISION.—The term ‘notice of final decision’ means a notice of a final decision to accept or deny an application to take land into trust that—

“(A) is made available to the public; and

“(B) contains—

“(i) a legal description of the land;

and

“(ii) instructions on how to obtain a

copy of the final decision.

“(15) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(b) DISCRETIONARY OFF-RESERVATION AND CONTIGUOUS LAND ACQUISITIONS.—

“(1) SUBMISSION.—

“(A) IN GENERAL.—An Indian tribe or in-

dividual Indian seeking to have off-reservation fee or restricted land or contiguous fee or restricted land (7) taken into trust for the benefit of that Indian tribe or individual Indian shall submit an application to the Secretary at such time, in such manner, and containing such information as this section and the Secretary require.

“(B) PENDING APPLICATIONS.—On the request of an Indian tribe or individual Indian whose application to take land into trust is pending as of the first date on which an application may be filed under the application process established by this section, the Secretary shall deem the Indian tribe or individual Indian an ‘applicant’ under this section, subject to the

condition that the Indian tribe or individual Indian supplements the pending application as necessary to comply with this subsection.

“(2) APPLICATION REQUIREMENTS.—The Secretary may approve complete applications described in paragraph (1), subject to the condition that the application includes—

“(A) a written request for approval of a trust acquisition by the United States for the benefit of the applicant;

“(B) the legal name of the applicant, including, in the case of an applicant that is an Indian tribe, the tribal name of the applicant as the name appears in the list of recognized Indian tribes published by the Secretary in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1);

“(C) a legal description of the land to be acquired;

“(D) a description of the need for the proposed acquisition of the property;

“(E) a description of the purpose for which the property is to be used;

“(F) a legal instrument to verify current ownership, such as a deed;

“(G) statutory authority for the proposed acquisition of the property;

“(H) a business plan for management of the land to be acquired, if the application is for business purposes; and

“(I) the location of the land to be acquired relative to State and reservation boundaries.

“(c) STATUTORY NOTICE AND COMMENT REQUIREMENTS.—

“(1) INITIAL APPLICATIONS.—

“(A) NOTICE.—

“(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary shall make that application, whether complete or incomplete, available to the public on the website of the Department, subject to applicable Federal privacy laws.

“(ii) ADDITIONAL NOTICE BY CERTIFIED MAIL.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary

shall provide by certified mail notice of the application to ~~contiguous jurisdictions the impacted State and local governments~~ (2).

“(B) COMMENTS.—

“(i) IN GENERAL.—~~Each contiguous jurisdiction~~The State and local governments (2) notified under subparagraph (A)(ii) shall have not fewer than 60 days, beginning on the date that ~~the contiguous jurisdiction receives the notice~~ notice is received, to comment on that initial application.

“(ii) RESPONSE TO COMMENTS.—An applicant shall have not fewer than 60 days, beginning on the date on which a ~~contiguous jurisdiction~~State and local government (2) submits a comment under clause (i), to respond to comments submitted on an initial application.

“(2) APPLICATION UPDATES, MODIFICATIONS, AND WITHDRAWALS.—

“(A) IN GENERAL.—If at any time an application is updated, modified, or withdrawn, not later than 10 days after the date on which the Secretary receives notice of that update, modification, or withdrawal, the Secretary shall make that information available to the public on the website of the Department, subject to any applicable Federal privacy laws.

“(B) INCLUSION.—If an application has been updated or modified in any way, the notice described in subparagraph (A) shall include a description of the changes made and the updated or modified application, whether complete or incomplete, available on the website of the Department, subject to any applicable Federal privacy laws.

“(3) COMPLETED APPLICATIONS.—

“(A) NOTICE.—

“(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall make that application available to the public on the website of the Department, subject to any applicable Federal privacy laws.

“(ii) ADDITIONAL NOTICE BY CERTIFIED MAIL.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall provide by certified mail notice of the application to ~~contiguous jurisdiction~~ the impacted State and local governments **(2)**.

“(iii) PUBLICATION IN FEDERAL REGISTER.—Not later than 10 days after the date on which the Secretary receives a completed application, the Secretary shall publish in the Federal Register notice of the completed application.

“(B) COMMENTS.—

“(i) IN GENERAL.—~~Each contiguous jurisdiction~~ The State and local governments (2) shall have not fewer than 60 days, beginning on the date on which the ~~contiguous jurisdiction~~ receives notice is received under subparagraph (A)(ii), to comment on that completed application.

“(ii) RESPONSE TO COMMENTS.—An applicant shall have not fewer than 60 days, beginning on the date on which a ~~contiguous jurisdiction~~ State and local government (2) submits a comment under clause (i), to respond to comments submitted on a completed application.

“(d) ENCOURAGING LOCAL COOPERATION.—

“(1) IN GENERAL.—The Secretary shall encourage, but not require, applicants to enter into cooperative agreements with ~~contiguous jurisdictions~~ each local government addressing all anticipated impacts of the proposed trust acquisition and proposed use (8).

“(2) COOPERATIVE AGREEMENTS.—

“(A) IN GENERAL.—The Secretary shall evaluate applications accompanied by 1 or more cooperative agreements with ~~contiguous jurisdictions~~ local governments (2) in accordance with the expedited process described in subparagraph (C)(i).

“(B) TERMS OF AGREEMENT.—A cooperative agreement described in paragraph (1) may include terms relating to mitigation, changes in land use, dispute resolution, fees, and other terms determined by the parties to be appropriate.

“(C) COOPERATIVE AGREEMENT SUBMITTED.—

“(i) EXPEDITED PROCESS.—If an applicant submits to the Secretary 1 or more cooperative agreements executed between the applicant and ~~contiguous jurisdictions~~ local governments addressing all anticipated impacts of the proposed trust acquisition and proposed use (2 & 8), the Secretary shall issue a final decision to approve or deny a complete application not later than 120 days after the date on which—

“(I) clear title to the land under consideration is verified; and

“(II) all applicable requirements under Federal law and regulation are satisfied.

“(3) ENCOURAGING COOPERATION FOR PURPOSES OF ENVIRONMENTAL REVIEW.— The Secretary shall encourage and consider favorably, but not require, applicants to include local governments as cooperating agencies for purposes of implementing the environmental review process under the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., for—

“(A) actions on proposed land acquisitions subject to the approval of the Secretary under this Section; and

“(B) major Federal actions or approval regarding change in use on Indian land. (9)

~~“(ii) DEEMED APPROVED.— If the Secretary fails to issue a final decision by the dates described in clause (i), the application shall be deemed approved and treated as a final decision of the Department, subject to the condition that all requirements described in clause (i) are satisfied. (10)~~

“(D) COOPERATIVE AGREEMENT NOT SUBMITTED.—

“(i) DETERMINATION OF MITIGATION.—If an applicant does not submit to the Secretary 1 or more cooperative agreements executed between the applicant and the contiguous jurisdictions local governments addressing all anticipated impacts of the proposed trust acquisition and proposed use (2 & 8), the Secretary shall issue a written determination of mitigation by the date that is not later than 180 days after a complete

application is received by the Secretary.

~~“(ii) CONSIDERATIONS REQUIREMENTS FOR DETERMINATION.—In Prior to making issuing a determination of mitigation described in clause (i) final decision to approve an application, the Secretary shall ~~consider~~ determine, based on substantial evidence and in consultation with appropriate State and local government officials, that—~~

“(I) the acquisition and proposed use would not be detrimental to local governments and the surrounding community;

“(II) all anticipated impacts have been mitigated to the maximum extent practicable; and

“(III) all requirements of the environmental review process under the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., have been fully satisfied.—

~~“(I) the anticipated impacts on~~

~~contiguous jurisdictions and the applicant of approving or not approving an application;~~

~~“(II) any relevant comments and responses to comments received by the Secretary under this section; and~~

~~“(III) whether the absence of a cooperative agreement is attributable to the failure of any contiguous jurisdiction to work in good faith to reach an agreement with the applicant. **(11)**~~

“(iii) GOOD FAITH PROTECTION.—

Failure to submit a cooperative agreement shall not prejudice an application if the Secretary determines, based on substantial evidence and after consulting with the impacted local governments and the applicant (12), that the failure to submit is attributable to the failure of any contiguous jurisdiction party (2) to work in good faith, honestly and without fraud or unfair dealing, to reach an agreement.

“(iv) GUARANTEED REGULAR PROC-

ESSING.—In making a determination of mitigation, the Secretary shall not unduly delay the regular processing of an application.

“(v) NOTICE OF DETERMINATION.—

The Secretary shall provide by certified mail a copy of the determination of mitigation described under this subsection to the applicant and contiguous jurisdictions impacted local governments (2) not fewer than 10 days after a determination of mitigation is issued.

“(3) RECIPROCAL NOTICE AND COMMENT.—

The Secretary shall also encourage contiguous jurisdictions local governments (2) to engage in local cooperation through reciprocal notice and comment procedures, particularly with regard to changes in land use.

“(e) FINAL DECISION ON APPLICATION.—

“(1) FINAL DECISION.—The Secretary shall issue a final decision to approve or deny a completed application after—

“(A) clear title to the land under consideration is verified;

“(B) all applicable requirements under Federal law and regulation are satisfied; and

“(C) consideration of—

“(i) all application materials and information submitted by the applicant under this section;

“(ii) all comments and responses to comments submitted to the Secretary under this section;

“(iii) a determination of mitigation issued under subsection (d), if any;

“(iv) relevant and material cooperative agreements between the applicant and ~~contiguous jurisdictions~~ local governments (2), if any; and

~~“(v) relevant and material cooperative agreements between the applicant and non-contiguous jurisdictions, if any; and~~

“(vi) any other information the Secretary identifies as relevant and material to the final decision to approve or deny an application.

“(2) TRANSPARENCY.—

“(A) NOTICE AND EXPLANATION OF FINAL DECISION.—Not later than 10 days after a final decision to approve or deny an application is issued, the Secretary shall—

“(i) publish a notice of final decision and explanation of final decision on the website of the Department and in the Federal Register; and

“(ii) provide by certified mail a copy of the notice of final decision and explanation of final decision.

“(B) ADDITIONAL NOTICE.—In addition to the notice required by subparagraph (A), the Secretary shall publish a notice of final decision in a newspaper of general circulation serving the affected area of the decision.

“(C) INCLUSION.—The requirements described in subparagraphs (A) and (B) apply to an application deemed approved under subsection (d)(2)(C)(ii).

“(f) CHANGE IN USE.—A change in use of existing tribal trust land that significantly increases off-reservation impacts shall—

“(1) require approval of the Secretary under this section;

“(2) be subject to the notice and comment requirements of subsection (c); and

“(3) 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. **(13)**

“(fg) SAFEGUARDING PROPRIETARY INFORMATION.—

Nothing in this Act requires the publication or release of proprietary information submitted by an applicant under this section.

“(gh) IMPLEMENTATION.—

“(1) CONSULTATION.—Not later than 90 days after the date of enactment of this section, the Secretary shall initiate consultation with Indian tribes regarding the implementation of this section.

“(2) SUMMARY.—Not later than 180 days after the date on which the consultation described in paragraph (1) is initiated, the Secretary shall issue a summary of the consultation and the summary shall be published in the Federal Register.

“(3) RULEMAKING.—Not later than 90 days after the date on which the summary described in paragraph (2) is published in the Federal Register, the Secretary shall, through a rulemaking under section 553 of title 5, United States Code, modify existing regulations, guidance, rules, and policy statements, as necessary to carry out this section.

“(hi) JUDICIAL REVIEW.—Interested parties may seek review of a final decision in a United States district court after exhausting all administrative remedies available under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the ‘Administrative Procedure Act’).”.

**SEC. 4. EFFECT.**

(a) OTHER LAND DETERMINATIONS.—Nothing in this Act (or an amendment made by this Act) impacts any other Federal Indian land determination.

(b) EFFECT ON OTHER LAWS.—Nothing in this Act (or the amendments made by this Act) affects—

(1) the application or effect of any Federal law other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.); or

(2) any limitation on the authority of the Secretary of the Interior under any Federal law or regulation other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.).