



February 9, 2016

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500

Facsimile
916.441.5507

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

On behalf of the California State Association of Counties (CSAC), I am writing to you regarding the *Interior Improvement Act* (S. 1879). This important legislation, which would provide long-overdue modifications in the Department of the Interior's trust-land acquisition process, represents the first fee-to-trust reform bill introduced in Congress since the U.S. Supreme Court handed down its controversial *Carcieri v. Salazar* decision in 2009. As the Senate prepares for the possible consideration of S. 1879, I urge you to support key aspects of this reform bill and to work to strengthen the measure in several key areas.

As you know, the 1934 *Indian Reorganization Act* (IRA) provides the Secretary of the Interior with broad discretionary power to take land into trust for the benefit of Indian tribes, an authority that has not been amended by Congress since the IRA's enactment 81 years ago. The Act does not include any limits or standards relative to the exercise of the Secretary's authority, which has left all policies for taking land into trust to the discretion of the Bureau of Indian Affairs (BIA). Unfortunately, the BIA's fee-to-trust process has created significant controversy, serious conflicts between tribes and local governments – including litigation costly to all parties – and broad distrust of the fairness of the system.

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.

We are pleased that S. 1879, while in need of refinement in several key areas, would go a long way toward fixing many of the glaring deficiencies in the current fee-to-trust process. Among other reforms, CSAC strongly supports provisions of the bill that would require the BIA to provide adequate, up-front notice to counties whenever the agency receives both an initial and completed application from a tribe seeking to have off-reservation fee or restricted land taken into trust. Likewise, our association supports language that would afford counties with an opportunity to review and comment on all *aspects* of a trust-land application.

Furthermore, the bill's provisions that would encourage tribes to enter into enforceable cooperative agreements with counties are largely consistent with CSAC policy. In cases in which tribes and counties 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 reform principles are reflected in the *Interior Improvement Act*, CSAC believes that certain provisions of the legislation must be further strengthened and clarified. For example, we believe that the aforementioned Determination of Mitigation should be modified to explicitly require the Secretary to certify – prior to issuing a final decision to approve a trust land acquisition – that all reasonably anticipated off-reservation impacts associated with a tribal development project have been sufficiently mitigated.

CSAC also believes that the legislation 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. Our intent is not to tread on tribal sovereignty or impede efforts by tribes to initiate lateral/benign changes in land use; rather, and consistent with our views regarding proposed trust acquisitions, our goal is to ensure that changes in use of existing parcels of trust land do not lead to significant unmitigated impacts to counties and the surrounding community. For a comprehensive list of legislative revisions sought by CSAC, please find attached to this correspondence a package of proposed amendments to S. 1879.

In closing, 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 our attached amendment package, 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.

Thank you for your consideration of these requests and for your longstanding commitment to California's counties. We look forward to continuing to work with you and your staff in an effort to further strengthen this important reform effort. Should you have any questions or if you need any additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444.

Sincerely,



Matt Cate
CSAC Executive Director

cc: Senator John Barrasso, Chairman, Senate Committee on Indian Affairs
Senator Jon Tester, Vice Chairman, Senate Committee on Indian Affairs
Senator Barbara Boxer