



STATEMENT FOR THE HEARING RECORD  
Submitted by the Rural County Representatives of California

Subcommittee on Indian, Insular and Alaska Native Affairs  
U.S. House of Representatives  
***"Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act of 1934."***  
May 14, 2015

The Rural County Representatives of California (RCRC) appreciate this opportunity to submit a statement regarding the "Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act of 1934." We ask that this statement be included as part of the Subcommittee hearing record.

RCRC is an association of thirty-four rural California counties. Our counties include over half the land mass of the state and are home to more than 3 million Californians. We represent the interests of rural California on issues as diverse as land use, environment, natural resources, wildfire response, housing, transportation, public safety, public health, and human services, among others.

RCRC counties are home to many of the more than 100 recognized Indian Tribes in California. We fully support the preservation of Indian heritage and the development of economic opportunity for Tribes in our counties. Because we are responsible for the economic and social well-being of all county residents and the environment in which they live, we are committed to economic development and responsible land use improvement for all our residents. A critical element for achieving those goals is the improvement of the federal fee-to-trust acquisition process for Tribal lands.

While there are differing perspectives on the response to the U.S. Supreme Court's *Carcieri v. Salazar* decision that restricts trust acquisition to Tribes recognized before 1934, there is near unanimity on the need to improve the land into trust acquisition process. The process is opaque, cumbersome, lengthy, and uncertain for all parties involved. More than one-quarter of the Tribes in California have applied for fee-to-trust lands within the past four years. These applications comprise 10,314 acres of land, approximately equal to the number of acres taken into trust in California in the previous ten years. During that period 100 percent of the fee-to-trust applications were approved by the Bureau of Indian Affairs (BIA). While the BIA must follow regulations, the

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Government Accountability Office has concluded that “most of the criteria in the regulations are not specific and thus do not offer clear guidance for how the BIA should apply them...As a result the BIA decision-maker has wide discretion.”

RCRC's perspective is that under the current system, local governments are not permitted adequate engagement during the federal fee-to-trust (FTT) application process and that the local land use impacts of these decisions are not being considered. These decisions often have significant impacts on cities and counties, and can interrupt or irreparably damage long-term general planning. The opportunity for state and local government comment is short. Moreover, it is restricted to impacts on tax revenue and jurisdictional conflict. Additionally, notice to comment is given only to those governments that have regulatory jurisdiction, not to every local government that may experience an impact. Even those noticed state and local governments are not provided the trust acquisition application and often do not know the proposed use of the property.

The effect is even more pronounced in rural counties. For example, RCRC member Inyo County, located in central California, is mostly public land; less than two percent of property within the county is privately owned. Losing potential revenue-generating property to FTT applications with little or no warning and no purposeful way to describe the impact on the community is devastating. Moreover, when land is taken into trust for the purpose of creating a gaming facility, usage of infrastructure such as roads, water and sewer systems, and public safety needs from police and fire all are substantially increased. These increased needs, along with no additional revenue to fund them and minimal time to prepare, is nearly impossible for many rural and remote counties to address.

While gaming can have the most dramatic impact on land use and environmental impacts, other uses can be inappropriate and even dangerous. Another RCRC member, El Dorado County, recently learned of plans to operate an outdoor gun range on Tribal land near two elementary schools, a church, and a residential neighborhood.

We would encourage Congress to alter the current FTT decision-making process in a practical and balanced way. The federal government should affirmatively acknowledge the sovereignty of local governments during the FTT process by considering the importance of land use decisions to affected local governments. RCRC also believes the process should reflect the important need for decisions that support established Tribal rights. RCRC supports an FTT process where local governments are engaged at the earliest possible point within the process, thus ensuring enough time to work with the Bureau of Indian Affairs and tribes to make sure project impacts are adequately defined and addressed.

Congress needs to respond to the *Carcieri* decision. But Congress would be remiss in its responsibility to Tribes, as well as to other Americans living near Tribal lands, if it does not take this unique opportunity to address the deficiencies in the existing trust

acquisition process. We join with our fellow county organizations to recommend the following provisions in any new FTT process:

- **Full disclosure from the Tribes and fair notice and transparency from the BIA:** Trust acquisition applications should require the proposed use of the land and should give notice to all affected state and local governments and the public, as is the case with public information required for all planning, zoning and permitting at the local level. The opportunity for public comment should allow for all possible impacts to be considered, rather than be limited only to tax revenue and regulatory jurisdictional questions. Adequate notification of a pending application should be provided to the public and to any state and local government that could be affected by the trust acquisition. Sufficient time should be afforded for comments from the local governments and for public comment. In short the public and government review process for trust acquisition should be consistent with the process for considering any other major land use decision.
- **Tribal Need Definition:** Congress should consider developing standards that require justification of the need and purpose for acquisition. Current standards of tribal self-determination, economic development, or Indian housing are vague and can be met by virtually any acquisition request.
- **Intended Land Use:** Applications must include the intended land use and any later changes in that use must be attended by a full evaluation of environmental impacts of the change to the original application. Such review should be subject to the same process as the original trust acquisition application to ensure that all environmental impacts are adequately addressed.
- **Intergovernmental Agreements:** A revised process should encourage Tribes to reach intergovernmental agreements to address off-reservation project impacts. Tribes, local governments, and all affected parties need a process that is more predictable, more efficient, and less costly. Where they exist, intergovernmental agreements have expedited decision-making and reduce the potential for conflicts. A trust land system that incentivizes intergovernmental agreements between Tribes and local governments is essential to an improved process for all parties involved.

We appreciate this opportunity to present our concerns. We look forward to working with the Subcommittee as Congress moves to address the *Carciari* decision and establish the framework for a new FTT process that ensures the full engagement of state and local governments in it.