



March 18, 2010

RE: S. 1703

Dear Senator:

The National Association of Counties, the only national organization that represents county governments in the United States, is writing in opposition to S. 1703, which seeks a “quick fix” to the *Carcieri v. Salazar* decision by reaffirming the authority of the Secretary of the Interior to take lands into trust for Indian tribes recognized after 1934. Instead, NACo calls on Congress to address the impacts of the *Carcieri* decision as part of a comprehensive examination and reform of the fee to trust process. Attached is a resolution that was approved by the NACo Board of Directors at our recently concluded 2010 Legislative Conference. Overall, NACo supports changes to the fee to trust process which absolutely respects tribal sovereignty while: 1) providing meaningful notice to local governments; 2) facilitating good faith government to government consultation on proposed projects and impacts; 3) encouraging intergovernmental mitigation agreements to address off-reservation project impacts; and 4) compensating local government for tax loss equivalents related to the land’s development.

For example, as you know, trust properties are not subject to property taxes levied by county and local governments. However, these same governments provide essential services to all citizens, including tribal members, whether the land on which they reside is taxable or not. These services include, but are not limited to, road construction and maintenance, law enforcement, state and county welfare services, and emergency services. However, because of declining tax revenues, many local governments are struggling financially to continue to provide critical services and programs to our residents. For some jurisdictions, these financial challenges are exacerbated as a result of lands taken into trust by the federal government as the proposed projects often create the need for increased services while simultaneously reducing property tax revenue. The current flawed process does not provide a meaningful mechanism to evaluate these and related concerns.

As a recent GAO study investigating the fee to trust regulatory standards concluded:

“the criteria are not specific and do not offer clear guidelines for what constitutes an unacceptable result. For example, one criterion requires BIA to consider the impact of lost tax revenues on state and local governments. However there is no guidance on how to evaluate lost tax revenue and . . . no threshold for what might constitute an unacceptable loss of tax revenue [and lead to an application’s denial].” (GAO, Indian Issues: BIA’s Efforts to Impose Time Frames and Collect Better Data Should Improve Processing of Trust Applications (July 2006) at pp.5-6.)

A similar lack of guidance often leads to an abuse of discretion in considering the other key regulatory criterion of examination of jurisdictional conflicts created when land is taken into trust. In this regard the GAO study further commented on problems with BIA’s wide discretion and lack of documentation in the decision making process.

The GAO study also reflected County concerns that there is a lack of consultation, lack of information, and inadequate time for local government to meaningfully participate in the process. For example, under current guidelines, local governments affected by fee to trust applications (which often take 1-2 years to complete) have only 30 days to provide comment. This short deadline is hardly sufficient for local governments to solicit public comment, hold appropriate public hearings, analyze the financial implications and other impacts of any possible action, and write and submit comments to the BIA. Further, the BIA has not traditionally shown any serious interest in accepting and/or acting on comments provided by local governments before submitting recommendations to the Secretary. Overall the GAO recommendations echo the concerns of counties that changes be made “to improve the timeliness and transparency of the land in trust process.”

For these and other reasons, the current process has created significant controversy and unnecessary conflicts between federal, state, county, and tribal governments and has generated broad distrust concerning the fairness and openness of the process. While we believe that the *Carcieri* decision has created uncertainty for some tribes and should be addressed, any “quick fix” that fails to simultaneously repair the broken fee to trust process should be rejected.

NACo stands ready to engage in a dialogue on these issues and to help shape a solution that ultimately benefits tribes, local government and the BIA. Thank you for your interest in this important matter and we look forward to working with you on this and other issues of importance to county and tribal governments. If you have any questions regarding our position or need any additional information, please contact Steve Traylor, Associate Legislative Director, at 202-942-4254.

Sincerely yours,



Valerie Brown  
President

Attachment