

# United States Senate

WASHINGTON, DC 20510

October 1, 2015

Chairman John Barrasso  
Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C. 20510

Vice Chairman Jon Tester  
Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Tester,

As the Senate Committee on Indian Affairs prepares for its consideration and markup of S. 1879, the Interior Improvement Act, we ask that you consider revising the regulation of gaming as a part of your efforts to reform the land into trust process, with the goal of providing more certainty and integrity to the process.

We recognize that the land into trust process is an important tool in the United States' efforts to restore the tribal land base. By some estimates, of the 90 million acres of tribal land lost through the allotment process, only about eight percent has been reacquired in trust status since the IRA was passed in 1934.

Despite this modest success, the process is not perfect. The GAO concluded in a report from 2005 that the median processing time for an application was 1.2 years, with some applications languishing for up to almost 19 years. The Supreme Court's decision in *Carciere v. Salazar* in 2009 further exacerbated the administrative burden by injecting confusion and uncertainty about what tribes are eligible for trust acquisitions. As Assistant Secretary of Indian Affairs Kevin Washburn observed, both the Bureau of Indian Affairs and tribes have faced increased costs and uncertainty in the wake of *Carciere*.

The land into trust process does not occur in a vacuum, however. It's a prerequisite for many tribes that look to conduct gaming on these newly-acquired lands. While *Carciere v. Salazar* may have therefore provided this committee with the opportunity to consider legislative "fixes" to the land into trust process, this Committee can and should consider a comprehensive overhaul that not only remedies the *Carciere* issue, but also reforms how Interior regulates off-reservation gaming.

Until recently, off-reservation gaming was a rare occurrence. In IGRA's first twenty-three years, only five tribes received favorable BIA determinations for off-reservation gaming. In the past four years alone, however, the Administration has more than doubled that number, with six favorable gaming determinations (three of

which have received gubernatorial approval). These types of land-into-trust decisions—for land with which the tribe has no aboriginal connection, when there is no demonstrated modern-day connection, and for which there is no contiguous border with their reservation—are directly contrary to the original understanding of, and authorization for, tribal gaming.

As currently implemented, there is effectively no limit to where a tribe may propose a casino. In Arizona, for example, a tribe is about to open a casino located in the heart of Glendale—almost 150 miles from their headquarters in Sells, Arizona. And in Wisconsin, the BIA approved a gaming facility located about 160 miles from the tribe’s headquarters. Elsewhere, a tribe in San Diego attempted to open a casino in Barstow—a distance of more than 160 miles from their reservation. A tribe likewise proposed a casino in Richmond, California, 115 miles removed from their headquarters in Lakeport.

Attempts to conduct off-reservation gaming also continue unabated despite resounding defeats at the polls. Take California, for example, where 61% of Californians who voted this past November *rejected* Proposition 48, an off-reservation gaming referendum that would have allowed a tribe to build a casino near Fresno on land that was 50 miles away from the tribe’s headquarters.

These decisions have very real consequences. Reservation shopping invariably causes conflicts with local communities in the vicinity of the acquired lands, noise nuisances, increased drunk driving, and zoning conflicts among them. And large casinos often draw on local resources, burdening local municipalities with increased costs for police, fire, water, sewer, and transportation.

The BIA’s decisions are also the genesis of direct conflict among tribes: Some tribes may seek to develop land that other tribes identify as their ancestral lands. Allowing tribes to operate off-reservation casinos beyond the boundaries of their own ancestral homelands also raises fundamental questions of equity. Other tribes have played by the rules, sacrificing greater profits for the opportunity to invest in and develop ancestral lands within their local community—sometimes in less than convenient areas.

The language of the Indian Gaming Regulatory Act should therefore be amended to more closely align with one of the underlying purposes of the Act and its Section 20 exceptions: to create “equal footing” among all tribes.

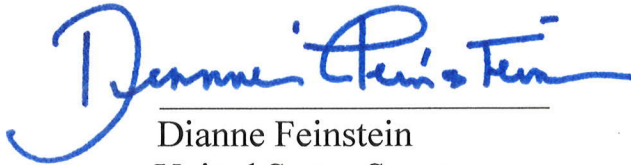
Specifically, we ask that you include language that:

1. **Requires a tribe to demonstrate, and the Secretary to confirm, a substantial and direct aboriginal connection.** This direct historical use may be demonstrated by, among other things: the presence of culturally significant sites, such as burial grounds and other historical artifacts; other evidence that the Tribe's use was more than fleeting or transient in nature; or any indication that the Executive or Judiciary has recognized these lands as the aboriginal territory of the tribe.
2. **Requires a tribe to demonstrate that it maintains a modern connection with the proposed land to be acquired.** This may be accomplished by demonstrating that the majority of the tribe's members reside within 25 miles of the proposed site or that the land is within 25 miles of the tribe's government headquarters.
3. **Limitations to change in use of the land.** Change in use should be subject to additional federal approval, such that the impacts considered and mitigation required match the use proposed.
4. **Provides for meaningful notice and comment beyond just bordering counties,** to include State and local counties whose public services may be directly impacted, as well as those tribes who may share ancestral ties to the proposed site.
5. **Requires the tribe to agree to enforceable mitigation agreements** designed to address the direct and indirect impacts these gaming operations have on the surrounding community.

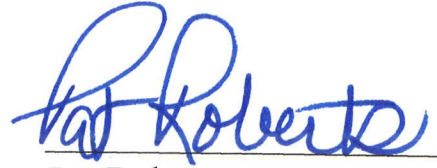
We understand the original intent to allow Indian gaming, and we agree that more must be done to improve the well-being of tribes and their members. Access to healthcare, suitable housing, an adequate education, and economic development opportunities are still important issues to be addressed. Yet with the proliferation of off-reservation gaming, and with the prospect of internet gaming looming, Congress must equip the Administration with the requisite authority and direction to regulate gaming in a consistent and objective manner, whether off-reservation or on-reservation, online or in a casino.

The time is ripe for a comprehensive re-evaluation of how tribal gaming is regulated.

Sincerely,

A handwritten signature in blue ink that reads "Dianne Feinstein". The signature is fluid and cursive, with the first name "Dianne" being particularly prominent.

Dianne Feinstein  
United States Senator

A handwritten signature in blue ink that reads "Pat Roberts". The signature is fluid and cursive, with the first name "Pat" being particularly prominent.

Pat Roberts  
United States Senator

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