



County of San Diego

GEOFF PATNOE
DIRECTOR
(619) 531-5202
FAX: (619) 557-4199

OFFICE OF STRATEGY AND INTERGOVERNMENTAL AFFAIRS

1600 PACIFIC HIGHWAY, SUITE 298, SAN DIEGO, CA 92101-2437

September 15, 2015

The Honorable John Barrasso, Chair
Select Committee on Indian Affairs
United States Senate
838 Hart Building
Washington, DC 20510

The Honorable Jon Tester, Ranking Member
Select Committee on Indian Affairs
United States Senate
838 Hart Building
Washington, DC 20510

RE: S.1879 - SUPPORT IF AMENDED

Dear Chairman Barrasso and Ranking Member Tester:

On behalf of the County of San Diego (County), I am writing to express the County's support if amended position for the federal Interior Improvement Act, Senate Bill 1879 (S. 1879). The County has a keen interest in reforming the Fee-To-Trust (FTT) process. We are home to more Tribal Nations than any other county in the United States with 18 tribal governments within the County's boundaries. The County has been impacted in recent years by FTT land acquisitions including one of the largest requests in the state of California. Since that acquisition, tribal governments have applied for an additional 4,000 acres. Each FTT land acquisition comes with its own unique issues, often times impacting more than local revenue sources and land use control. We understand that S. 1879 has been designed to address some of these issues, which is why the County wanted to share some of our concerns with your Committee.

As you are aware, the Indian Reorganization Act of 1934 (IRA) provides the Secretary of the Interior with discretionary authority to take land into trust for the benefit of Indian tribes. The IRA does not establish limits or standards for this authority, and in the absence of further Congressional direction, the Bureau of Indian Affairs (BIA) has developed a FTT process that offers only limited notification and transparency. Although taking land into trust can result in a wide range of impacts on the surrounding local jurisdictions, the current process allows counties to comment only on matters of potential jurisdictional conflicts and the loss of tax revenues.

While S. 1879 offers improvements to the FTT process, such as county notification requirements, comment requirements, the ability of contiguous jurisdictions to submit comments on all aspects of the FTT application, and incentives for local cooperative agreements, the County believes the bill is deficient in key areas and, if strengthened, could create a more collaborative and transparent process. We urge the Committee to consider the following improvements to the legislation:

- S. 1879 encourages, but does not require, tribes to participate in intergovernmental agreements. Some applicants could simply choose to forego any sort of agreement, and in the absence of an agreement the bill specifies that the Secretary of the Interior will consider whether off-reservation impacts have been sufficiently mitigated. However, there are no criteria on which the Secretary would base such a decision and it would only be a determination of whether mitigation exists, not whether it is actually implemented. Binding agreements are necessary to ensure mitigation in

surrounding jurisdictions since mitigation measures can only be challenged and made enforceable through such agreements.

- One of the flaws in the current FTT process is that a tribe can put land into trust for one designated purpose, and, after approval, change the use to gaming or some other high impact type of development. S. 1879 seeks to remedy this by suggesting that intergovernmental agreements may include provisions related to a change in the land use, but absent an agreement that contains such provisions, or if a tribe foregoes intergovernmental agreements entirely, this flaw will remain unresolved. Without a provision to require additional environmental review with a change in the purpose of the land, the entire FTT process can be undermined.
- The comment period for responding to FTT applications is short – set as 30 days after a contiguous jurisdiction receives notice that the application has been filed, and another 30 days when the application is complete. The County feels that more time is needed, since with only 30 days there are concerns related to how quickly the County will be able to receive the information and provide an in-depth review.
- The definition of a contiguous jurisdiction could remove a county from the process if the land in question is completely within city limits, even though the impacts and services that would be required by gaming or other intensive development may affect counties. Additionally, regardless of whether they are considered to be a contiguous jurisdiction, counties would lose property tax revenue.
- Under the bill, only contiguous jurisdictions and the applicant have the right to bring a lawsuit forward related to the FTT process, whereas current law allows any aggrieved party access to the courts. This could also limit the participation by those tribes with existing facilities on their trust land.
- S. 1879 expressly authorizes the Secretary of the Interior to take off reservation land into trust on a discretionary basis, which could preclude judicial review of the decision. It may not be the intent of the bill to preclude off reservation decisions from judicial review, but the bill language should be clarified to reflect that it will not do so rather than leaving it open to interpretation.

The Select Committee has a unique opportunity to address major deficiencies in current regulation that have at times created the opportunity for adversarial relationships between local governments and Tribal Nations. Similar to those issues raised by the California State Association of Counties and the Rural County Representatives of California, the additions and adjustments set forth above seek to reasonably strengthen consistency and transparency in the FTT process and ensure the mitigation of off reservation impacts. The County stands ready to support S. 1879 if amended to include greater incentives for local cooperative agreements, statutory language that addresses “change in use” impacts, and assurance that environmental impacts will be mitigated.

Thank you for your leadership on this issue, and we look forward to working with you to enact meaningful reform of the Fee-To-Trust process. Please do not hesitate to reach out to the County if you have any questions.

Sincerely,



GEOFF PATNOE

Director

Office of Strategy and Intergovernmental Affairs

County of San Diego