INDIAN FEE TO TRUST REFORM

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REQUESTED ACTION: In considering the implications of the Supreme Court's *Carcieri v. Salazar* decision, Congress should address long-standing deficiencies in the fee to trust process rather than compounding them by advancing a "quick fix." In doing so, the respective roles of Congress and the executive branch in trust land decisions must be better defined; clear and specific congressional trust acquisition standards established; and, a more transparent process put into place. Specific legislative reforms must include the following:

- **Notice and Transparency** – As part of the trust application process, local governments should be given notice immediately when an application is filed (even if incomplete), and should receive a complete description of the proposed trust land and planned acquisition purposes. This level of disclosure is not unlike the public information required for planning, zoning, and permitting on the local level. A copy of the trust application should be made readily available. Legislation should remedy the serious problem that counties currently do not receive any notice of tribal requests for determinations of whether an acquisition is considered "Indian lands" and therefore eligible for casino gaming.

- **Consultation** – Provide sufficient opportunity for public comment and consultation. Under the Part 151 fee to trust regulations, the Bureau of Indian Affairs (BIA) does not provide notice to or invite comment from non-jurisdictional parties, even though nearby governments and private parties may experience major negative impacts. BIA only invites comments from the affected state and the local governments with legal jurisdiction over the land and, from those parties, only on the narrow question of tax revenue loss and regulatory jurisdictional conflicts. As a result, trust acquisition requests are reviewed under a very one-sided and incomplete record that does not provide real consultation or an adequate representation of the consequences of the decision. Consultation should be encouraged to take place before an application is submitted and efforts should be made to include counties in the NEPA process as "cooperating agencies." Counties further should be provided an opportunity to comment on tribal requests for gaming determinations on whether proposed acquisitions qualify as "Indian lands."

- **Enforceable Intergovernmental Agreements** – Legislation must ensure that off-reservation significant adverse impacts of a project are sufficiently addressed through Intergovernmental Agreements between tribes and local governments to provide for the mitigation of environmental and economic impacts from the transfer of land into trust. It should be noted that such an approach is required and working well under recent California State gaming compacts.

BACKGROUND: On February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*. The decision held that the Secretary of the Interior lacks authority to take land into trust on behalf of Indian tribes that were not under the jurisdiction of the federal government upon enactment of the Indian Reorganization Act (IRA) in 1934.

In the wake of this significant court decision, several members of the 112th Congress introduced legislation (HR 1291/HR 1234/S 676) that would reverse the Supreme Court's ruling by providing the Secretary of Interior with authority to take land into trust for *all* tribes. Unfortunately, the legislation does not include any trust land reform provisions.

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