Housing, Land Use, & Transportation Policy Committee
119th CSAC Annual Meeting
Wednesday, November 20, 2013 · 10:00 a.m. – 12:00 p.m.
Ballroom A1 · San Jose Convention Center
Santa Clara County, California

AGENDA

Supervisor Phil Serna, Sacramento County, Chair
Supervisor John Benoit, Riverside County, Vice Chair

10:00 a.m. I. **Welcome, Introductions, and Opening Remarks**
Supervisor Phil Serna, Chair, Sacramento County

10:10 a.m. II. **Overview of the HLT Policy Committee**
- Review of Purview of Policy Areas, Legislative Committees, State Agencies, County Affiliates, etc.
- How can CSAC Better Engage our Members?

Kiana Buss, CSAC Legislative Representative
Attachment One: HLT Policy Committee Summary

10:30 a.m. III. **Tribal and Intergovernmental Affairs Update**
Joe Dhillon, Senior Advisor for Tribal Negotiations, Office of the Governor
Joe Krahn, CSAC Federal Advocate, Waterman & Associates
Chris Lee, CSAC Legislative Analyst
Bruce Goldstein, County Counsel, Sonoma County
Minh Tran, County Counsel, Napa County
Attachment Two: Tribal & Intergovernmental Relations Platform
Attachment Three: CSAC Letter to the BIA Re: Proposed Rules for Land Acquisitions and Appeals of Land Acquisitions (the "Patchak Patch")
Attachment Four: CSAC Letter to the Bureau of Indian Affairs Regarding Discussion Draft on Policies Related to Federal Acknowledgment of Tribes

11:15 a.m. IV. **Strategic Growth Council Presentation**
Mike McCoy, Executive Director, Strategic Growth Council

11:35 a.m. V. **Business, Consumer Services, and Housing Agency Update**
Anna Caballero, Secretary, BCS&H Agency
James Goldstene, Undersecretary, BCS&H Agency

11:50 a.m. VI. **2013 Legislative and Budget Wrap-Up & 2014 Legislative Teaser**
Kiana Buss, CSAC Legislative Representative
Cara Martinson, CSAC Legislative Representative
Chris Lee, CSAC Legislative Analyst
Attachment Five: Updated 2013-14 HLT Policy Committee Priorities

12:00 p.m. VII. **Adjournment**

ATTACHMENTS

Attachment One ..... Housing, Land Use and Transportation Policy Committee Summary

Attachment Two ..... Tribal and Intergovernmental Relations Chapter from CSAC Platform

Attachment Three ..... CSAC Letter to the Bureau of Indian Affairs Regarding Proposed Rules for Land Acquisitions and Appeals of Land Acquisitions (the "Patchak Patch")

Attachment Four ..... CSAC Letter to the Bureau of Indian Affairs Regarding Discussion Draft on Policies Related to Federal Acknowledgment of Tribes

Attachment Five ..... Updated FY 2013-14 Housing, Land Use and Transportation Policy Committee Priorities

Attachment One
Housing, Land Use and Transportation Policy Committee Summary

Housing, Land Use and Transportation

The CSAC Housing, Land Use and Transportation Policy Committee reviews state and federal legislative proposals and budget items, regulatory issues, and ballot resolutions in these three important interrelated areas.

CHAIR:

Supervisor Phil Serna,
Sacramento County

VICE-CHAIR:

Supervisor John Benoit,
Riverside County

CSAC STAFF:

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Primary Legislative Policy Committees

Senate and Assembly Appropriations Committees
Senate Transportation and Housing Committee
Senate Governance and Finance Committee
Senate Governmental Organization Committee
Assembly Transportation Committee
Assembly Housing and Community Development Committee
Assembly Local Government Committee
Assembly Governmental Organization Committee

Primary Budget Subcommittees

Senate Budget and Fiscal Review Committee and Subcommittee No. 2 on Resources, Environmental Protection, Energy and Transportation
Assembly Budget Committee and Subcommittee No. 3 on Resources and Transportation

Key State Agencies

California State Transportation Agency
Department of Transportation
California Transportation Commission
California Business, Consumer Services, and Housing Agency
Department of Housing and Community Development
California Natural Resources Agency
California Air Resources Board
Department of Finance
State Controller's Office
California Gambling Control Commissions
California Coastal Commission
Strategic Growth Council
Governor's Office of Planning and Research

Key CSAC Affiliates

California Building Officials Association of California
California County Planning Directors Association
County Engineers Association of California (CEAC)

CSAC Internal Working Groups/Task Forces

CSAC CEQA Working Group

CSAC Indian Gaming Working Group

CSAC/CEAC Statewide Local Streets and Roads Needs Assessment Oversight Committee

CEAC Transportation Subcommittee on New Revenues and State Implementation of MAP 21

Legislative Responsibilities

- Housing: housing element law, the Regional Housing Needs Assessment (RHNA), affordable housing, rental housing, farmer-worker housing, mobile homes, and financing/permanent source
- Land Use & Planning: general plans, California Environmental Quality Act (CEQA), Subdivision Map Act, building standards, local coastal plans, regional blueprint plans and Sustainable Communities Strategies, incorporations and annexations, disadvantaged communities, regulatory streamlining, sustainable growth, and climate change
- Public Works Administration: contracts, procurement methods (e.g. design-build, public private partnerships), and force account
- Transportation: infrastructure (local streets and roads, bridges, complete streets), public transportation, active transportation, interregional rail, airports, state and federal funding, sustainable technologies and practices, and regulatory and project delivery streamlining
- Native American Issues: Tribal-State Gaming Compacts, mitigation of impacts from tribal gaming and other development, off-reservation gaming, sacred sites/cultural resources, and fee-to-trust and other federal tribal regulations
- Utilities/Telecommunications: land use and public right-of-way

Attachment Two

Tribal and Intergovernmental Relations Chapter from CSAC Platform

Chapter Sixteen

Tribal and Intergovernmental Relations

Section 1: GENERAL PRINCIPLES

CSAC supports government-to-government relations that recognize the role and unique interests of tribes, states, counties, and other local governments to protect all members of their communities and to provide governmental services and infrastructure beneficial to all—Indian and non-Indian alike.

CSAC recognizes and respects the tribal right of self-governance to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and promotes self governance by counties to provide for the health, safety and general welfare of all residents of their communities. To that end, CSAC supports active participation by counties on issues and activities that have an impact on counties to ensure the ability to provide for the public safety, health, and welfare of all community members.

Nothing in federal or state law should interfere with the provision of public health, safety, welfare or environmental services by local government. CSAC will support legislation and regulations that preserve—and do not impair—the ability of counties to provide these services to the community. CSAC will work to mitigate any impacts on the ability of counties to provide these critical functions and services should federal or state law or regulations propose to hamper the ability of counties to protect all residents of their communities and the environment.

Section 2: TRIBAL-STATE GAMING COMPACTS

CSAC recognizes that Indian Gaming in California is governed by a unique structure that combines federal, state, and tribal law.

While the impacts of Indian gaming fall primarily on local communities and governments, Indian policy is largely directed and controlled at the federal level by Congress.

The Indian Gaming Regulatory Act of 1988 (IGRA) is the federal statute that governs Indian gaming. IGRA requires compacts between states and tribes to govern the conduct and scope of casino-style gambling by tribes. Those compacts may allocate jurisdiction between tribes and the state.

The Governor of the State of California entered into the first Compacts with California tribes desiring or already conducting casino-style gambling in September 1999. Since that time tribal gaming has rapidly expanded and created a myriad of significant economic, social, environmental, health, safety, and other impacts.

Some Compacts have been successfully renegotiated to contain most of the provisions

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recommended by CSAC including the requirement that each tribe negotiate with the appropriate county government on the impacts of casino projects, and impose binding "baseball style" arbitration on the tribe and county if they cannot agree on the terms of a mutually beneficial binding agreement

However, CSAC believes that the 1999 Compacts fail to adequately address these impacts and/or to provide meaningful and enforceable mechanisms to prevent or mitigate impacts.

The overriding purpose of the principles presented below is to harmonize existing policies that promote tribal self-reliance with policies that promote fairness and equity and that protect the health, safety, environment, and general welfare of all residents of the State of California and the United States.

In the spirit of developing and continuing government-to-government relationships between federal, tribal, state, and local governments, CSAC specifically requests that the State request negotiations with tribal governments pursuant to section 10.8.3, subsection (b) of the Tribal-State Compact, and that it pursue all other available options for improving existing and future Compact language.

Towards that end, CSAC urges the State to consider the following principles when it negotiates or renegotiates Tribal-State Compacts:

1. A Tribal Government constructing or expanding a casino or other related businesses that impact off-reservation land will seek review and approval of the local jurisdiction to construct off-reservation improvements consistent with state law and local ordinances including the California Environmental Quality Act (CEQA) with the tribal government acting as the lead agency and with judicial review in the California courts.

2. The Compact shall provide a process to ensure that Tribal environmental impact reports are consistent with CEQA standards and provide adequate information to fully assess the impacts of a project before a facility may operate and prior to mitigation disputes being subject to arbitration.

3. A Tribal Government operating a casino or other related businesses will mitigate all off-reservation impacts caused by that business. In order to ensure consistent regulation, public participation, and maximum environmental protection, Tribes will promulgate and publish environmental protection laws that are at least as stringent as those of the surrounding local community and comply with CEQA with the tribal government acting as the lead agency and with judicial review in the California courts.

4. A Tribal Government operating a casino or other related businesses will be subject to the authority of a local jurisdiction over health and safety issues including, but not limited to, water service, sewer service, fire inspection and protection, rescue/ambulance service, food inspection, and law enforcement, and reach written agreement on such points.

5. A Tribal Government operating a casino or other related businesses will pay to the local jurisdiction the Tribe's fair share of appropriate costs for local government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, law enforcement, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, in lieu payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, impacts fees, and other similar types of costs typically paid by non-Indian businesses.

6. To address socioeconomic and other impacts that are not easily quantifiable, in addition to direct mitigation offsets, the Compact shall provide for an appropriate percentage of Net Win to go to the affected county to address in-direct impacts. The Indian Gaming Special Distribution Fund, will not be the exclusive source of mitigation, but will be an additional mechanism to ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming. Special Distribution Funds should be provided directly to the Indian Gaming Community Benefit Committee in each county that receives this funding.

7. To fully implement the principles announced in this document and other existing principles in the Tribal-State compact, Tribes will meet and reach a judicially enforceable agreement with local jurisdictions on these issues before a new compact or an extended compact becomes effective.

8. The Governor should establish and follow appropriate criteria to guide the discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by IGRA (25 U.S.C § 2719). The Governor should also establish and follow appropriate criteria/guidelines to guide his/her participation in future compact negotiations.

Section 3: FEDERAL TRIBAL LANDS POLICY/DEVELOPMENT ON TRIBAL LAND

The 1999 Compacts allow tribes to develop two casinos, expand existing casinos within certain limits, and do not restrict casino development to areas within a tribe's current trust land or legally recognized aboriginal territory.

Additionally, in some counties, land developers are seeking partnerships with tribes in order to avoid local land use controls and to build projects, which would not otherwise be allowed under the local land use regulations.

Some tribes are seeking to acquire land outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust and beyond the reach of a county's land use jurisdiction.

Furthermore, Congress continues to show an interest in the land-into-trust process and revisiting portions of IGRA.

The overriding principle supported by CSAC is that when tribes are permitted to engage in gaming activities under federal legislation, then judicially enforceable agreements between counties and tribal governments must be required in the legislation. These agreements would fully mitigate local impacts from a tribal government's business activities and fully identify the governmental services to be provided by the county to that tribe.

CSAC believes that existing law fails to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors.

The following provisions emphasize that counties and tribal governments need to each carry out their governmental responsibilities in a manner that respects the governmental responsibilities of the other.

1. Nothing in federal law should interfere with provision of public health, safety, welfare or environmental services by local governments, particularly counties.

   Consistent with this policy, CSAC is supportive of all federal legislation that gives counties an effective voice in the decision-making process for taking lands into trust for a tribe and furthers the overriding principle discussed above.

2. CSAC supports federal legislation and policy to provide that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without adequate notice and opportunity for consultation and the consent of the State and the affected county.

   Federal legislation is deserving of CSAC's support if that legislation requires counties' consent to the taking of land into trust for a tribe.

3. CSAC supports federal legislation and regulations which ensure that counties receive timely notice of all trust applications and an adequate time to respond to the Tribe and BIA. In addition, material changes in the use of trust land, particularly from non-gaming to gaming purposes, shall require separate approval and environmental review by the Department of the Interior.

4. CSAC reiterates its support of the need for enforceable agreements between tribes and local governments concerning the mitigation of off-reservation impacts of development on tribal land. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements.

5. CSAC opposes the practice commonly referred to as "reservation shopping" where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the affected county.

   CSAC will support federal legislation that addresses "reservation shopping" or consolidations in a manner that is consistent with existing CSAC policies, particularly the

requirements of consent from Governors and local governments and the creation of judicially enforceable local agreements.

6. CSAC does not oppose the use by a tribe of non-tribal land for development provided the tribe fully complies with state and local government laws and regulations applicable to all other development, including full compliance with environmental laws, health and safety laws, and mitigation of all impacts of that development on the affected county.

   CSAC will support federal legislation that furthers the ability of counties to require and enforce compliance with all environmental, health and safety laws. Counties and tribes need to negotiate in good faith over what mitigation is necessary to reduce all off-Reservation impacts from an Indian gaming establishment to a less than significant level and to protect the health and safety of all of a county's residents and visitors.

7. CSAC supports the position that all class II and class III gaming devices should be subject to IGRA.

CSAC is concerned about the current definition of Class II, or bingo-style, video gaming machines as non-casino gaming machines. These machines are nearly indistinguishable from Class III, slot-style gaming machines, and thereby generate the same type of impacts on communities and local governments associated with Class III gaming.

CSAC believes that operation of Class II gaming machines is a form of gaming, and tribes that install and profit from such machines should be required to work with local governments to mitigate all impacts caused by such businesses.

Section 4: SACRED SITES

California's every increasing population and urbanization threatens places of religious and social significance to California's Native American tribes.

In the sprit of government-to-government relationships, local governments and tribal governments should work cooperatively to ensure sacred sites are protected.

Specifically, local governments should consult with tribal governments when amending general plans to preserve and/or mitigate impacts to Native American historical, cultural, or sacred sites.

Attachment Three

CSAC Letter to the Bureau of Indian Affairs Regarding Proposed Rules for Land Acquisitions and Appeals of Land Acquisitions (the "Patchak Patch")

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July 25, 2013

Via FedEx and email: consultation@bia.gov
Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
United States Department of the Interior
1849 C Street, NW
Mail Stop 4141—MIB
Washington, DC 20240

Re: Federal Fee-to-Trust Process and BIA Proposed Rule, "Land Acquisitions and Appeals of Land Acquisition Decisions," 25 CFR Part 151, BIA-2013-0005, RIN 1076-AF15

Dear Ms. Appel:

On behalf of the California State Association of Counties (CSAC), I am writing to express our strong concerns regarding the proposed rule identified above, and the continued need for comprehensive reform of the fee-to-trust process. Established in 1895, CSAC is the unified voice on behalf of all 58 counties in California. Governed by elected county supervisors, CSAC is a non-profit corporation dedicated to representing California county governments before the federal government, administrative agencies, and the California Legislature. We appreciate this opportunity to comment on the Proposed Rule and the fee-to-trust process.

Since 1994, CSAC has sought to correct long-standing deficiencies in the fee-to-trust process that have resulted in expensive, unproductive, and unnecessary conflict between tribes and local governments. Jurisdiction over land is just as critical for counties as it is for tribes, and the loss of sovereignty results in irreparable harms to counties, including the loss of land use and regulatory authority, tax revenue, and investment in nearby development and infrastructure. The crucial role of counties demands a process that provides sufficient notice to stakeholders, clear and enforceable standards for fee-to-trust decisions, and a requirement that tribes negotiate intergovernmental agreements that mitigate adverse impacts and build relationships with affected communities.

The need for a comprehensive solution was reaffirmed recently in a quantitative analysis of all 111 fee-to-trust decisions by the Pacific Region BIA Office between 2001 and 2011.[1] The analysis found that BIA granted 100% of the proposed acquisition requests and in no case did any Section 151 factor weigh against approval of an application.[2] The analysis further found that because of the lack of clear guidance and objective criteria, Pacific Region BIA decisions avoid substantive analysis in favor of filler considerations and boilerplate language.[3] The result is a broken process in which community concerns are ignored or downplayed, applications are rubber-stamped at a 100% acceptance rate, and tribes and local governments are forced into unnecessary and unproductive conflict.[4] The problem

[1] (Kelsey J. Waples, *Extreme Rubber Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934*, 40 Pepperdine Law Review 250 (2013).
[2] Id., pp. 278.
[3] Id., pp. 286, 293, 302.
[4] Id., pp. 292, 295, 297.

appears likely to worsen in the future, given recent statements by the Department trumpeting its desire to "keep that freight train moving" and "keep restoring lands for tribes."[5]

The Proposed Rule appears intended to expedite trust approvals to the detriment of all interested parties, and to the administrative process itself. The Proposed Rule incorrectly asserts that because of the decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* (2012) 132 S.Ct. 2199 (*Patchak*), eliminating the current 30-day wait period (see Section 151.12(b)) would not effect a change in the law or affect any parties' rights under current law. In fact, as set forth below, the Proposed Rule would put local governments in a far worse position by dramatically altering the balance of equities and eliminating their ability to obtain emergency relief after a decision to accept the land in trust, but before the land achieves trust status.

The Proposed Rule fails to recognize that the facts on the ground and balance of equities changes when land achieves trust status and development commences. The Proposed Rule directs the Secretary or other BIA official to "[p]romptly acquire the land in trust" after a decision becomes final, and the BIA is encouraging tribes to begin development immediately upon acceptance of land into trust. Both of these steps appear intended to foreclose concerned parties from obtaining emergency relief, even with regard to trust decisions that are clearly inappropriate and arbitrary. Courts are less likely to order emergency relief if a tribe and its development partners have invested resources and substantially implemented a gaming or other development project. Indeed, courts may be unable to grant relief at all if tribes decline to participate in the action and claim sovereign immunity.

The Proposed Rule also contravenes protections in the Administrative Procedures Act (APA) for parties seeking emergency relief from administrative decisions. In particular, Section 705 of the APA authorizes federal courts to postpone the effective date of an agency action and to preserve status or rights pending conclusion of the review proceedings. The Proposed Rule circumvents Section 705 by pushing land transfers before an affected party can seek judicial review and allow the courts to exercise their authority to review trust transfers. Communities and local governments will be harmed because, even if successful in the litigation, their success likely will not bring back the tax revenue and other fees lost when the land went into trust, nor remove the incompatible developments that are not permitted under comprehensive local land use plans, now possible without the Proposed Rule.

The BIA's new push for immediate project implementation also appears intended to impede a court's ability to award complete relief. Litigation can take years to reach a final decision, and Senator Dianne Feinstein and others have correctly raised strong concerns about the Department's practical ability to unwind a trust decision and remove land from trust.[6] The Proposed Rule ignores these concerns, and includes no procedure for undoing a trust decision in a transparent and orderly manner.

The Department should not pretend that these harms are balanced by the proposed requirements regarding the notification of decisions and administrative appeal rights. These proposed changes are equally flawed; the Proposed Rule would require communities and local governments to make themselves known to BIA officials at every decision-making level to receive written notice of a trust land acquisition. It will be extremely difficult for anyone to sort through local and national BIA organizational charts to try to determine how, when, and by whom a particular application will be

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[5] See "Washburn Announces Plan of Attack for Patchak Plan," http://indiancountrytodaymedianetwork.com/2013/05/24/washburn-announces-plan-attack-patchak-patch-149514.

[6] See Letter from Senator Dianne Feinstein to Secretary Ken Salazar, January 31, 2013, p. 2.

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processed. BIA decision-making is far from transparent today, and the Proposed Rule would make the process even more opaque and participation more difficult in the future.

CSAC supports a new paradigm in which counties are considered meaningful and constructive stakeholders by the BIA in Indian land-related determinations. CSAC and its member counties would strongly support a revision to the Proposed Rule to provide immediate notice and full information upon filing of trust applications, establish clear and specific trust acquisition standards, create a mechanism for the BIA to consult with counties and respond to comments on trust applications, and ensure that adverse impacts are addressed through intergovernmental agreements. CSAC believes these measures represent a real and lasting solution that would reduce conflict and controversy, to the benefit of tribes and all other parties.

If the Department instead intends to proceed with the Proposed Rule's "quick fix," CSAC recommends the following changes:

- An additional regulation in Part 151 providing that, when a party has appealed a trust decision to the Interior Board of Indian Appeals, or has appeared before the Assistant Secretary - Indian Affairs, the party shall be entitled upon timely request to an automatic 30 day stay of a decision approving a trust application. This would enable the party to preserve its rights by seeking a judicial order staying the effectiveness of any approval decision pending the court's review of the validity of that decision.

- Additional provisions requiring BIA to publish trust applications on its website, provide regular updates as to the status of its review, identify the decision-makers responsible for an application, and provide contact information to allow parties to identify themselves as interested parties. Parties should be exempt from exhaustion requirements in the absence of substantial compliance with these provisions.

Thank you for considering these comments. Should you have any questions, please contact the Kiana Buss with CSAC at (916) 327-7500, ext. 566.

Sincerely,

Matthew Cate
Executive Director

cc: Members, Senate Indian Affairs Committee
Members, House Natural Resources Committee
Members, California Congressional Delegation
Gail Adams, Director of Intergovernmental Affairs, Department of the Interior

Attachment Four

CSAC Letter to the Bureau of Indian Affairs Regarding Discussion Draft on Policies Related to Federal Acknowledgment of Tribes

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September 18, 2013

Information Collection Clearance Officer
Indian Affairs, Mail Stop 4141
1849 C Street, NW
Washington, D. C. 20240

RE: Preliminary Discussion Draft Comments - Chapter 1 Bureau of Indian Affairs, Department of the Interior: Part 83 Procedures for Establishing that an American Indian Group Exists as an Indian Tribe

Dear Information Collection Clearance Officer,

The California State Association of Counties (CSAC) submits these comments on the preliminary discussion draft to identify for the Bureau of Indian Affairs (Bureau) potential improvements to the federal acknowledgment process to improve the integrity of the Bureau's decisions to acknowledge particular groups as Indian Tribes. Federal acknowledgment grants Indian Tribes a number of rights and privileges, only one of which includes the ability to have the federal government take land into trust on a Tribe's behalf. CSAC respects the rights of Indian Tribes to seek federal recognition and in so doing be granted sovereign status and gain access to and a host of federal programs and services. While acknowledgement by the federal government is a necessary step for a Tribe to have land taken into trust, recognition does not guarantee that a Tribe will seek trust lands.

Already home to 109 federally recognized tribes, California has potentially hundreds of Indian groups which may desire acknowledgment from the federal government as an Indian tribe, and which may desire to have land removed from state and local jurisdiction through the fee to trust process, particularly for gaming purposes, upon or in connection with acknowledgment. Since the acknowledgement process can be a precursor to Tribes taking land into trust for gaming and other non-gaming development and activities, counties have an interest in the regulations governing decisions related to federal acknowledgement. CSAC advocates for federal legislation and regulations that gives counties an effective voice in the decision making process that may lead to the removal of land from state and local jurisdiction for the benefit of an Indian tribe. As a result, we take very seriously the process and criteria guiding acknowledgement decisions for the recognition of a group as an Indian tribe, where such recognition would allow the federal government to remove land from state and local jurisdiction for the benefit of such tribe.

We recognize that we are not obligated to comment since there is no OMB Control Number assigned to this draft. However, we would like to make some recommendations for the collection of information that may be helpful in preparation of an official proposed rule for Part 83. In addition, for the reasons discussed in this letter, we would oppose many aspects of the preliminary discussion draft if set forth as proposed rules.

Discussion

CSAC understands that the current acknowledgment process has been criticized as expensive, burdensome, less than transparent, and inflexible. CSAC, however, believes that modifications to the current process, if any, to address these criticisms, must not compromise the integrity of the Bureau's decisions to recognizes a group as an Indian tribe – a political entity with a distinct "government-to-government relationship with the United States" that has been in continuous existence as a political entity and social community since the time of first contact with non-Indians. Acknowledgement confers

significant political and economic benefits to the recognized tribe and creates a powerful government-to-government relationship stretching into perpetuity. County governments interact on a government-to-government basis with federally recognized tribes on important matters ranging from child welfare to economic development to prevention of environmental and cultural degradation. County governments, therefore, are particularly interested in the accuracy of acknowledgement decisions. Moreover, County governments often already have a relationship with an unrecognized Tribe or group, and can contribute directly to the Bureau's investigation. We believe that the acknowledgment process would be greatly improved if the Bureau was required to affirmatively seek input from local governments concerning petitions for acknowledgments at the earliest opportunity. We believe acknowledgment must be objective, based on verifiable evidence received from all interested parties, and made according to uniformly applied and rigorous criteria. In short, such an important decision should be made with deliberate care.

We are concerned about changes to the rights of local governments to participate. The current Part 83 process does provide for limited and constructive participation of Informed and Interested Parties. There is a comment period of 180 days to submit arguments and evidence on the proposed finding and an opportunity to participate in a formal meeting. However, such a meeting must be requested by the tribal group or the Interested Parties. Unfortunately, the last opportunity for Informed and Interested Parties is an Appeal Process on the final determination. An Appeal or Reconsideration usually involves difficult, adversarial and protracted litigation, none of which is efficient, cost- or time-saving. *If* the current process needs improvement, it is in the area of inclusion of the public and greater input from affected state and local governments, particularly counties. Unfortunately, the preliminary discussion draft does not strengthen the role of interested parties; it diminishes their rights. We object to the proposed requirement that evidence must be read in a light most favorable to the petitioner. The current rules impose a rigorous burden of proof on the petitioner; a reasonable requirement considering the extensive benefits that are conferred on federally recognized tribes. We also object to the unfair page limit imposed on interested party submissions; the one-way requirement that interested parties must submit their evidence and argument to petitioners, but not vice versa; the ability for petitioners to cease active review whenever they want, despite the cost and disruption caused to interested parties; the elimination of the requirement for an interested party to file a notice of intent, which serves as early notice to local governments; the elimination of the administrative appeal to the Interior Board of Indian Appeals, which provides a check on improper decisions by BIA; the denial of technical assistance to interested parties, even though it is provided to petitioners; and providing petitioners, but not interested parties, the right to submit evidence at a hearing. These changes are all one-sided in favor of petitioners, and they go too far.

Also, if adopted, the proposed changes would significantly loosen the evidentiary showing needed to qualify for acknowledgment. Moreover, if adopted, the proposed changes would permit a previously denied applicant to re-petition for acknowledgement if "by a preponderance of the evidence, that a change from the previous version of the regulations to the current version of the regulations warrants reversal of the final determination." We are concerned that revised criteria will lead to a significant increase in the number of recognized tribes in California in particular, some of which may have overlapping traditional territories, and to a loss of significant acreage from state and local jurisdiction primarily for the purpose of gaming, without protections in place to guarantee mitigation of impacts experienced by state and local governments due to such tribal economic or other development. Taken together, these proposed changes suggest that the purpose of the proposal is not to improve the efficiency of the acknowledgment process but instead to simply lower the bar to make possible a very significant increase in the number of federally recognized tribes.

Recommendations for Information Collection

Because of the impact that Indian Gaming Regulatory Act (IGRA) has had on Acknowledgement, Restoration, and Reaffirmation, CSAC recommends that, in addition to removing the problematic proposals discussed above, the Bureau should include the following steps in the "conversation of the draft discussion":

- Solicit input from and convene consultation meetings with local governments, including counties in particular, concerning acknowledgment petitions, at the earliest opportunity. Counties have government-to-government relationships with tribes affecting a variety of important interests from child welfare, to gaming, to environmental protection and mitigation of off-reservation impacts created by on-reservation development, including gaming in particular. As a result, counties are uniquely positioned to contribute important evidence to the acknowledgment process. Additionally, counties should be consulted prior to the Bureau authorizing re-petition by a previously denied petitioner.

- Facilitate and encourage constructive public participation in the review process. Several consultation hearings should be scheduled in California where there are more tribes than any other state petitioning for federal recognition or seeking reaffirmation.

- Additionally, since newly acknowledged tribes are a clear and indisputable exception under section 20 of IGRA, although a separate process, a stringent and transparent fee to trust process with significant input from all stakeholders must be considered regarding "initial" reservation lands. Of course, Bureau-acquired trust land is not currently available to newly acknowledged tribes as a result of the *Carcieri* decision, and this fact should be acknowledged by BIA.

California counties are uniquely interested in the acknowledgement process not only because of the sheer number of current and potential petitions, but also due to the potential for tribal recognition to lead to the removal of land from state and local jurisdiction. Additionally, due to their government-to-government relations with tribes that span a host of matters important to the federal government, tribal governments, and state government, California counties have significant interests in the process through which groups are granted federal recognition. Finally, California counties have important information to contribute to the acknowledgement process that should be considered when acknowledgement decisions are made. Towards these ends, the Bureau should be required to fully engage and solicit information from counties concerning acknowledgement petitions, or authorization for re-petitions. CSAC welcomes the opportunity to fully engage in the acknowledgment process and is available to work with federal, tribal, state, and local governments regarding draft proposals designed to improve the acknowledgment process.

Sincerely,

Matthew Z. Cate

Matt Cate
Executive Director
California State Association of Counties

Attachment Five

Updated 2013-14 Housing, Land Use and Transportation Policy Committee Priorities

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State Transportation Funding

Counties, cities, and regions have voluntarily contributed over $1 million to the California State Association of Counties (CSAC) and the League of California Cities (League) to hire a consultant to determine funding needs on the city street and county road system. The findings are alarming, identifying an $82 billion funding shortfall over the next decade. Twenty-five percent of the local system will fail over the next decade without new revenue. Transportation stakeholders have a two-year window to seek additional transportation revenue as California's Cap and Trade program is expected to increase gas prices from 20 to 50 cents per gallon. This increase will preclude us from relying on the traditional source of funding (per gallon excise tax on gas) for system preservation of the existing transportation network. CSAC is working on a statewide effort with the California State Transportation Agency (CalSTA) to identify potential revenue options to address the nearly $300 billion identified shortfall over the next ten years for all modes of transportation statewide. CSAC is also working with stakeholders on an effort to pursue new revenue for transportation, potentially via a ballot initiative in November 2014, which would focus revenues on maintenance and rehabilitation of the existing network. Lastly, we support restoring the sunset on $128 million a year in HUTA that was diverted to the General Fund. CSAC recognizes that it is going to take a suite of measures, revenue and policy/regulatory changes, to address such significant deficits.

Cap & Trade

The Governor and Legislature borrowed up to $500 million from cap and trade auction revenues in the FY 2013-14 State Budget. CSAC expects that the California Air Resources Board (CARB) and Department of Finance (DOF) will develop an actual allocation plan for the cap and trade auction revenues estimated to generate $6 billion annually, potentially to be released with the January Budget Proposal. CSAC Housing, Land Use, and Transportation staff continues to participate in a coalition of transportation stakeholders to dictate how the portion of auction revenues related to fuel producers is allocated—estimated to be 40% of the total revenues. CSAC Agriculture and Natural Resources staff is also involved in the allocation of the utility and other auction revenues. Ultimately, the Legislature must also appropriate these funds.

MAP 21

Congress passed a two-year authorization for continued allocation of federal surface transportation funds in June 2012. The authorization was somewhat short-term in nature – two-years compared to a traditional five-year measure. As such, after more than a year of working with key stakeholders including CSAC, the Administration and Legislature agreed to implement MAP 21 administratively rather than through legislation. CSAC was successful in ensuring counties continued to receive at least existing funding levels for our top priorities including bridge and highway safety funding. State legislation is no longer expected until Congress enacts a more long-term authorization. CSAC staff is working with the County Engineers on development of MAP 21 reauthorization principles which the CSAC HLT Policy Committee will consider and make a recommendation to the CSAC Board of Directors in spring 2014.

SB 375 Implementation

In 2008, Senate President Pro Tempore Darrell Steinberg sponsored one of the most significant land use bills in recent history (SB 375, Chapter No. 728, Statutes of 2008). Implementation is in full swing with several urban regions in the process of adopting new regional plans, each of which

includes a Sustainable Communities Strategy (SCS) to guide transportation investments and growth into the future. CSAC remains very engaged in these efforts as counties struggle to shape these plans at the regional level and seek the tools to ensure successful implementation (i.e. CEQA streamlining for infill, adequate transportation revenues, relief from the California Department of Housing and Community Development's default densities, etc.).

State and Federal Indian Gaming

CSAC is the lead local government interest involved in Indian gaming and Tribal Compacts negotiated between the Governor and California's Native American tribes. With 69 casinos in 26 of our counties, mitigation of off-reservation impacts and other service costs, including public safety, remain a priority for CSAC. Further, CSAC remains proactive in seeking reforms to the federal fee-to-trust process. Staff will explore with the HLT Policy Committee whether our existing policy meets the needs of counties for federal tribal regulations and policy and whether we should reopen the CSAC Indian Gaming Working Group to update and potential develop new policy. Lastly, in reaction to legislation introduced in 2013 (AB 52 by Assembly Member Mike Gatto which seeks to provides tribes individual consultation in the CEQA process), CSAC predicts focusing on the issue of tribal sacred sites and when it's appropriate to potentially afford tribes additional opportunity for consultation above and beyond what is provided to all other interested parties.

Housing Element Reform

This area of law has resulted in one of the most contentious state-local relationships in existence under the HLT policy areas. Staff is once again engaged in reform discussions with HCD. One of the primary goals is to reduce state costs associated with housing element review. HCD has significant authority to review local planning and zoning for regional housing needs required by state law. We expect numerous bills to deal with county issues related to required density levels, HCD discretion, statute of limitations for litigation, etc.

High Speed Rail

Prompted by the San Joaquin Valley counties, CSAC has been charged with working with the High-Speed Rail Authority (HSR Authority) in an effort to mitigate impacts as a result of the construction of the initial segment through the San Joaquin Valley already underway. The CSAC High-Speed Rail Working Group successfully developed priorities and principles for implementation of the HSR Project. CSAC staff is monitoring the progress of the project and achievement of CSAC's HSR implementation principles. CSAC staff is relying on a strong partnership with counties help with on-the-ground monitoring of the progress as well.