



May 19, 2009

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The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
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The Honorable Jerry Brown
Attorney General, State of California
California Department of Justice
Attn: Public Inquiry Unit P.O. Box 944255
Sacramento, CA 94244-2550

Dear Governor Schwarzenegger and Attorney General Brown:

The California State Association of Counties (CSAC) would like to ask for your assistance in a matter of extreme importance to the State of California in the area of tribal trust land acquisitions. We are encouraged that your past willingness to consider the impact on local governments of policies created at the state level will mean that you will favorably consider this request.

As is true with the implementation of many state policies, California's counties are the first to experience the impacts. In the case of Indian gaming, counties across the state have been forced to cope with the tremendous impacts of the large commercial casino enterprises built or proposed by the tribes. Although counties are very appreciative of the provisions of those compacts signed since 2004 which require the tribes to prepare an environmental assessment of their projects, and to negotiate with local governments to mitigate the impacts of these projects, counties do so without additional funding or resources. Moreover, counties must participate in this process under circumstances where the tribes, the projects' proponents, are certifying their own environmental assessments.

This situation is exacerbated by the efforts of many tribes to move from one location to another, or to seek land in distant locations with the claim that the new lands are "restored" lands, all for the purpose of locating in an area that will prove profitable for a casino operation. Counties have been forced to retain expert assistance in (1) determining whether the lands are actually "restored" lands, (2) preparing a response to the Environmental Impact Statement required under the National Environmental Policy Act, and (3) determining the scope and nature of the realty questions raised by a tribe's application to have the federal government take the land into trust. As with negotiations for a mitigation agreement under the compact, these activities are funded out of the county's general fund, which is made more difficult if litigation is necessary to resolve the issue.

On February 24, 2009, the United States Supreme Court issued its opinion in *Carcieri v. Salazar*, No. 07-526 (2/24/09). The *Carcieri* decision held that the Secretary of Interior does not have the authority to take land into trust for tribes who were not "under federal jurisdiction" in 1934, when the Indian Reorganization Act was enacted. The decision has far-reaching implications for California. On April 1, 2009, the House Resources Committee held a hearing concerning the ramifications of the *Carcieri* decision. On April 13, 2009, CSAC filed extensive comments with the House committee, and among other things urged

the committee to impose a moratorium on future land acquisitions for tribes until a thoughtful and considered response could be fashioned. Of course, many tribes have urged Congress to rush through a response that would “fix” *Carcieri*, without regard to the issues raised by trust land acquisitions.

On February 24, 2009, the Attorneys General of 17 states urged much the same response. Both CSAC and the State Attorneys General comments are attached for your consideration. Unfortunately, the State of California has been silent on this issue and did not join in the comments of the other states. CSAC intends to continue commenting on this issue and joins many others in calling on the Department of Interior to establish which tribes were “under federal jurisdiction” in 1934 so that states and local governments would know whether authority exists to take land into trust for a particular tribe.

We are very concerned that Congress does not have the benefit of the State of California’s comments. We invite both of you to join in the comments previously filed by California counties because we believe they reflect a concern for the good of the State and for the local jurisdictions who are dealing with the impacts of tribal gaming on a daily basis. Adding California’s voice to the voices of both other states, and California’s own local governments, would be a powerful declaration that Congress should take the time to adequately address the land acquisition issues that have come to the forefront during the more than twenty years since the Indian Gaming Regulatory Act was passed.

Thank you in advance for your consideration of our request and concern for this issue. Please let me know if you would like to discuss this issue further, or if you require any additional information. I can be reached at (916) 375-6440 or DeAnn Baker, CSAC Senior Legislative Representative can be contacted at (916) 327-7500 ext. 509 or dbaker@counties.org.

Sincerely,



Mike McGowan
Supervisor, Yolo County
Chair, CSAC Housing, Land Use, and Transportation Policy Committee
Chair, CSAC Indian Gaming Working Group

cc: Andrea Hoch, Legal Affairs Secretary, Office of Governor Arnold Schwarzenegger
Cynthia Bryant, Director, Governor’s Office of Planning and Research
Robert L. Mukai, Senior Assistant Attorney General, Indian and Gaming Law Section