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December 1, 2009

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

On behalf of the California State Association of Counties (CSAC), I am writing to urge you to seek a full debate on – and modifications to – Senate Indian Affairs Committee Chairman Byron Dorgan's (D-ND) legislation (S 1703) that would clarify the Secretary of Interior's authority to take land into trust for Indian tribes. The bill, introduced in response to the Supreme Court's *Carcieri v. Salazar* decision, would extend the Secretary's trust-land acquisition authority to all tribes, regardless of whether they were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934.

As you know, S 1703 is expected to be considered by the Indian Affairs Committee in the near future. With a limited number of days remaining in the current session of Congress, it is our understanding that S 1703 could be attached to another vehicle on the floor of the Senate as a means to facilitate the bill's passage. We strongly urge you to oppose this maneuver and to work with your colleagues to seek a full Senate debate not only on the merits of S 1703, but on the broader policy implications arising from the *Carcieri* decision.

In the wake of the Supreme Court's recent action, CSAC believes that Congress has a rare opportunity to thoughtfully reexamine the fee-to-trust process to ensure that program flaws – as well as the needs of tribes and local governments – are addressed. While S 1703 would level the playing field for tribes seeking to have land taken into trust, it would not address the type of programmatic reforms that we believe are long overdue.

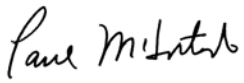
As you know, the current fee-to-trust process has a number of systemic flaws, including a lack of clearly defined standards for trust land acquisitions. In addition, there are no notification requirements, meaning local governments are often forced to resort to Freedom of Information Act requests to determine if petitions for Indian land determinations have been filed in their jurisdictions. Accordingly, legislative and regulatory changes need to be made to ensure that affected governments receive timely notice of fee-to-trust applications for tribal development projects and have adequate opportunity to provide meaningful input. CSAC also believes that intergovernmental agreements should be required between tribes and local governments to require mitigation for adverse impacts of development projects, including environmental and economic impacts from the transfer of the land into trust.

CSAC urges you to work with your Senate colleagues and other stakeholders to advance not just a simple fix of the *Carcieri* holding, but a broader solution that fairly balances the roles of local and tribal governments. Such a solution should establish clear and specific congressional

standards and processes to guide future trust land decisions, and should define the respective roles of Congress and the executive branch in the fee-to-trust process. The enclosed CSAC testimony, which was submitted to the Senate Indian Affairs Committee earlier this year, provides a roadmap for such an approach.

Thank you for your continued support of California's counties. Should you have any questions regarding our position or need any additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444, or DeAnn Baker, CSAC Legislative Representative at (916) 327-7500 ext. 509.

Sincerely,



Paul McIntosh
Executive Director
California State Association of Counties

cc: Members, Senate Committee on Indian Affairs

Enclosure