



April 19, 2010

Mr. Ben Burshia
Bureau of Indian Affairs
Division of Real Estate Services
Mail Stop 4639-MIB
1849 C Street, NW
Washington, D.C. 20240

**RE: Renewal of Agency Information Collection for Acquisition of Trust Land
[OMB Control Number: 1076-0100]**

Dear Mr. Burshia:

The National Association of Counties (NACo) appreciates the opportunity to comment on the information collection process that allows the Bureau of Indian Affairs to review applications for the acquisition of land into trust status on behalf of individual Indians and Indian tribes, pursuant to 25 CFR 151. NACo, the only national organization that represents county governments in the United States, strongly urges that the Bureau take advantage of the current information collection process and undertake a comprehensive examination and reform of the fee to trust process.

Attached is a resolution that was approved by the NACo Board of Directors at our 2010 Legislative Conference. Overall, NACo supports changes to the fee to trust process, which absolutely respects tribal sovereignty while: 1) providing meaningful notice to local governments; 2) facilitating good faith government to government consultation on proposed projects and impacts; 3) encouraging intergovernmental mitigation agreements to address off-reservation project impacts; and 4) compensating local government for tax loss equivalents related to the land's development.

As you know, trust properties are not subject to property taxes levied by county and local governments. However, these same governments provide essential services to all citizens, including tribal members, whether the land on which they reside is taxable or not. These services include, but are not limited to, road construction and maintenance, law enforcement, state and county welfare services, and emergency services. However, because of declining tax revenues, many local governments are struggling financially to continue to provide critical services and programs to our residents. For some jurisdictions, these financial challenges are exacerbated as a result of lands taken into trust by the federal government as the proposed projects often create the need for increased services while simultaneously reducing property tax revenue. The current flawed process does not provide a meaningful mechanism to evaluate these and related concerns.

As a recent GAO study investigating the fee to trust regulatory standards concluded:

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“the criteria are not specific and do not offer clear guidelines for what constitutes an unacceptable result. For example, one criterion requires BIA to consider the impact of lost tax revenues on state and local governments. However there is no guidance on how to evaluate lost tax revenue and . . . no threshold for what might constitute an unacceptable loss of tax revenue [and lead to an application’s denial].” (GAO, Indian Issues: BIA’s Efforts to Impose Time Frames and Collect Better Data Should Improve Processing of Trust Applications (July 2006) at pp.5-6.)

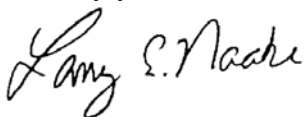
A similar lack of guidance often leads to an abuse of discretion in considering the other key regulatory criterion of examination of jurisdictional conflicts created when land is taken into trust. In this regard the GAO study further commented on problems with BIA’s wide discretion and lack of documentation in the decision making process.

The GAO study also reflected county concerns that there is a lack of consultation, lack of information, and inadequate time for local government to meaningfully participate in the process. For example, under current guidelines, local governments affected by fee to trust applications (which often take 1-2 years to complete) have only 30 days to provide comment. This short deadline is hardly sufficient for local governments to solicit public comment, hold appropriate public hearings, analyze the financial implications and other impacts of any possible action, and write and submit comments to the BIA. Further, the BIA has not traditionally shown any serious interest in accepting and/or acting on comments provided by local governments before submitting recommendations to the Secretary. Overall the GAO recommendations echo the concerns of counties that changes be made “to improve the timeliness and transparency of the land in trust process.”

For these and other reasons, the current process has created significant controversy and unnecessary conflicts between federal, state, county, and tribal governments and has generated broad distrust concerning the fairness and openness of the process.

NACo stands ready to engage in a dialogue on these issues and to help shape a solution that ultimately benefits tribes, local government and the BIA. Thank you for your interest in this important matter and we look forward to working with you on this and other issues of importance to county and tribal governments. If you have any questions regarding our position or need any additional information, please contact Steve Traylor, Associate Legislative Director, at 202-942-4254.

Sincerely yours,

A handwritten signature in black ink, reading "Larry E. Naake". The signature is written in a cursive, flowing style.

Larry E. Naake
Executive Director

1 **FINANCE AND INTERGOVERNMENTAL AFFAIRS STEERING COMMITTEE**
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3 **RESOLUTION OPPOSING THE CONGRESSIONAL REVERSAL OF CARCIERI V.**
4 **SALAZAR**

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6 **Issue:** Opposing congressional reversal of *Carcieri v. Salazar*.
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8 **Adopted Policy:** NACo opposes S.1703, H.R.3697, and H.R. 3742, and any other interim
9 related action, and calls on Congress to address the *Carcieri* issues as part of a comprehensive
10 examination and congressionally enacted reform of the fee to trust process.
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12 **Background:** On February 24, 2009, the United States Supreme Court decided the case of
13 *Carcieri v. Salazar* which held that the Secretary of the Department of the Interior (DOI) lacks authority
14 to take land into trust for tribes that were not “under federal jurisdiction” upon enactment of the Indian
15 Reorganization Act (IRA) in 1934. This case has called into question practices of the DOI in
16 recognizing tribes and placing land into trust without clear Congressional authorization. The decision
17 has created uncertainty among some tribes regarding their status and land holdings and has led to
18 introduction of legislation (S.1703, H.R.3697, and H.R.3742) calling for a “quick fix” to overturn the
19 Supreme Court’s action without addressing serious problems in the fee to trust process itself.
20

21 NACo policy has recognized the serious shortfalls in the fee to trust process with respect to the
22 failure to seriously take into consideration community interests. This is particularly problematic for
23 counties, who generally exercise land use jurisdiction over lands that tribes seek to place into trust, thus
24 removing them from local regulatory and jurisdictional control. NACo’s Policy Platform calls for
25 reform of the fee to trust process to insure: 1) meaningful notice to counties of trust applications; 2)
26 good faith consultation with counties regarding fee to trust issues; and 3) agreements with counties to
27 insure that the off reservation impacts of tribal development projects are mitigated (NACo Finance and
28 Intergovernmental Affairs Platform Policies 4.9.3; 4.9.5; and 4.9.6.). NACo policies further support
29 legislative changes to the trust process which include full compensation to counties for lost tax revenue
30 resulting from taking lands into federal jurisdiction (Policy Platform 1.6.2.).
31

32 The current federal fee to trust process as exercised under the Indian Reorganization Act and as
33 used under the “restored lands” exception to the Indian Gaming Regulatory Act is contrary to the
34 original legislative intent; is without clear and enforceable standards; does not take into account county
35 interests; and, at times, interferes with county ability to provide essential services to the community.
36 The lack of: appropriate county consultation (or notice); transparency; balance; and clear standards in
37 trust land decisions have combined to create significant controversy and unnecessary conflicts between
38 federal, state, county and tribal governments, and broad distrust over fairness in the system. While the
39 uncertainty created for many tribes by the recent Supreme Court decision should be addressed, a “quick
40 fix” which does nothing to repair the broken fee to trust system should be rejected.
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42 **Fiscal/Urban/Rural Impact:** The requirement of consultation and negotiated mitigation
43 agreements and full tax reimbursement will reduce negative financial impacts to both rural and urban
44 counties where land is taken into trust.
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46 Adopted by the NACo Board of Directors
47 March 8, 2010
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