

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA BARBARA STATE OF CALIFORNIA**

**IN THE MATTER OF URGING
CONGRESS TO ENACT
COMPREHENSIVE FEE-TO-TRUST
REFORM THAT RESPECTS TRIBAL
SOVEREIGNTY AND RECOGNIZES
LOCAL GOVERNMENTS AS
MEANINGFUL AND CONSTRUCTIVE
STAKEHOLDERS**

RESOLUTION NO. 15-

WHEREAS, the County of Santa Barbara, State of California, affirms its absolute respect for the authority granted to federally recognized tribes and for the right of Indian tribes to self-governance, and recognizes the need for tribes to preserve their cultural heritage and pursue economic self-reliance; and

WHEREAS, the County of Santa Barbara has a legal responsibility to properly provide for and protect the health, safety, and general welfare of the members of our communities, including tribal members; and

WHEREAS, every Californian, including all tribal members, depend upon county government for a broad range of critical services, ranging from public safety and transportation, to waste management and disaster relief, and California counties are responsible for nearly 700 programs, including, but not limited to, local law enforcement, public health, fire protection, family support, probation, jails, child and adult protective services, roads and bridges, and flood control; and

WHEREAS, the U.S. Department of Interior takes land into trust for the benefit of federally recognized tribes or individual tribal members; and

WHEREAS, uses of tribal trust lands include governmental operations, cultural activities, agricultural or forestry activities, housing, social and community services, health care, educational facilities, tribal casinos and other commercial developments; and

WHEREAS, large tribal development projects, including casinos, can attract large volumes of visitors and lead to a myriad of significant adverse social and environmental impacts on the surrounding community; and

WHEREAS, an informed and objective process for the acquisition of tribal trust lands is important in promoting inter-governmental cooperation, the provision of adequate health and safety services to the community, and in balancing development with related governmental interests such as containing urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services; and

WHEREAS, there are major, long-standing deficiencies in the current fee-to-trust process as it relates to both gaming and non-gaming land acquisitions; and

WHEREAS, the implications of losing jurisdiction over local lands are very significant, including the loss of tax base, loss of planning and zoning authority, and the loss of environmental and other regulatory power; and

WHEREAS, state, county and local governments are afforded inadequate, and often late, notice of a pending trust land application, and, under the current regulations, are asked to provide comments, in a very abbreviated time frame, on only two narrow issues: potential jurisdictional conflicts and loss of tax revenues; and

WHEREAS, studies by both the U.S. Government Accountability Office and independent legal researchers (Extreme Rubber Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934, Pepperdine Law Review, Volume 40 – Issue 1 (2012)) have determined that the current BIA process lacks objective criteria and has become a “rubber-stamp” for tribal fee-to-trust requests; and

WHEREAS, the lack of objective and consistently applied standards has resulted in a broken fee-to-trust land process that fails to meaningfully include legitimate interests, provide adequate transparency to the public, or demonstrate fundamental balance in trust land decisions, thereby creating significant controversy, conflicts between tribes and local governments, costly litigation, and broad distrust of the fairness of the system; and

WHEREAS, on February 24, 2009, the U.S. Supreme Court issued its landmark decision on Indian trust lands in *Carcieri v. Salazar*, holding 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 IRA in 1934; and

WHEREAS, the responsibility to address the implications of *Carcieri* rests with Congress and the decision presents a historic opportunity to address the long-standing issues with the fee-to-trust process; and

WHEREAS, a *Carcieri* “fix” does not make sense if the trust process remains broken and the County of Santa Barbara calls on Congress to establish clear and specific congressional standards and processes to guide trust land decisions in the future and to define the respective roles of Congress and the Executive Branch in trust land decisions; and

WHEREAS, it is the adopted policy of both the California State Association of Counties (CSAC) and the National Association of Counties (NACo), as has been conveyed to Congress in oral and written testimony, that a *Carcieri* fix should not be undertaken absent comprehensive fee-to-trust reform; and

WHEREAS, the BIA has recently promulgated an amendment to the fee-to-trust regulations (25 CFR 151.12), over the objection of many California local governments, which

allows for land to immediately go into trust despite outstanding valid legal challenges to the BIA trust decision; and

WHEREAS, the coordination of tribal, state, county and local government policies can reduce jurisdictional conflicts and the use of voluntary agreements by tribes and local governments are important to create joint plans for economic growth, long-term land use, transportation, and other aspects of regional planning; and

NOW THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Santa Barbara, State of California, urges Congress to enact comprehensive fee-to-trust reform as part of any *Carcieri* “fix” that simultaneously respects the sovereignty of federally recognized tribes and provides local governments a meaningful role in the trust land process; and

BE IT FURTHER RESOLVED that trust reform should embody a new paradigm where counties are considered meaningful and constructive stakeholders in fee-to-trust decisions which shall include: full disclosure of trust land uses on applications; fair notice to counties and a meaningful opportunity to respond to applications; BIA transparency regarding its process and decision-making; and clear objective standards by which applications are considered; and

BE IT FURTHER RESOLVED that the County of Santa Barbara supports and encourages federal fee-to-trust process reform which provides an incentive for intergovernmental agreements to support constructive government-to-government relationships between counties and federally recognized Indian tribes to ensure that the off-reservation impacts of tribal development are fully mitigated.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this tenth day of February 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:
Mona Miyasato
Clerk of the Board

Janet Wolf, Chair
Board of Supervisors

BY: _____

APPROVED AS TO FORM:
Michael Ghizzoni
County Counsel

BY: _____