

**“Subcommittee on Indian and Insular Affairs
Legislative Hearing – H.R. 1208 (Carciari) – June 26, 2024
Questions for the Record – Supervisor Rabbitt**

Questions from Rep. Westerman for The Hon. David Rabbitt, Supervisor, Sonoma County Board of Supervisors and Member of National Association of Counties.

1. Can you expand from your testimony on how intergovernmental mitigation agreements between tribal and local governments have benefitted land-into-trust projects? And have you seen a specific benefit to tribal gaming projects that include these intergovernmental mitigation agreements?

In Sonoma County and other jurisdictions, the development and approval of intergovernmental mitigation agreements have greatly benefitted land-into-trust projects, particularly in the case of proposed gaming operations. While I describe in greater detail Sonoma County’s experience in this regard (please see the answer to question 2), to follow are a number of examples in California that illustrate how mitigation agreements have yielded favorable outcomes. In all cases in which county and tribal leaders have come together, the result has been enhanced respect and renewed government-to-government partnerships.

In Yolo County, the Board of Supervisors has a long history of working with the Yocha Dehe Wintun Nation to ensure adequate services in the area where the tribe’s casino is operating. In addition to reaching an agreement for the mitigation of off-reservation impacts resulting from the tribe’s casino expansion and hotel project, Yolo County has entered into agreements with the tribe to address impacts created by other tribal trust-land projects in the county.

In southern California, numerous tribes in San Diego County have worked with the county sheriff’s department on law enforcement-related issues in communities where tribal casinos are located. Additionally, San Diego County has entered into agreements with several tribes to address transportation impacts created by various land-into-trust/casino projects.

On a broader scale, San Diego County and the Santa Ysabel Band of Digueño Indians reached a comprehensive agreement back in 2005 that paved the way for the tribe to construct a new large-scale gaming complex. The tribe’s chairman hailed the agreement as a model for future pacts between tribes and government entities.

In northern California, Humboldt, Placer, and Colusa Counties have memorandums of understanding in place with various tribes to address law enforcement-related issues. In the case of Humboldt County, the Board of Supervisors also signed agreements with several tribes regarding the operation of a court facility/sub-station and library. Additionally, Humboldt County and several tribes have agreed to a cooperative approach for seeking federal assistance to increase water levels in nearby rivers, and have reached accords with regard to road improvements.

Madera and Placer Counties also have reached comprehensive agreements with the tribes that operate casinos in their communities. While these intergovernmental agreements provide differing approaches to mitigating off-reservation impacts of Indian casinos, each is effective in addressing the unique concerns of the community in question.

Finally, in Santa Barbara County, a tribe that completed a significant expansion of an existing casino negotiated with the county a mitigation agreement to address ingress/egress and flood control issues that arose as a result of the casino's expansion. Santa Barbara County and the tribe continue to address impacts caused by the tribe's development of its trust land on a case-by-case basis, reaching intergovernmental agreements where possible.

The takeaway is that intergovernmental partnerships – memorialized by cooperative agreements that address the specific impacts of tribal development projects – benefit tribes, counties, and local communities and facilitate the fee-to-trust process by helping parties avoid costly litigation.

2. During your testimony, you mentioned your county has had successful intragovernmental projects with tribes due to the presence of information up front during the land-into-trust process.

a. Please share with the committee specific examples of successful intergovernmental projects that have benefited from an open exchange of information that you were involved in, or you are aware of.

Sonoma County has five federally recognized tribes within its boundaries: the Dry Creek Rancheria; Lytton Rancheria; Federated Indians of Graton Rancheria (FIGR); Kashia Band of Pomo Indians; and, the Cloverdale Rancheria. Except for Cloverdale Rancheria, all of these tribes have federally established reservation lands, or "trust lands," within Sonoma County.

Three of these tribes have intergovernmental agreements with the County intended to mitigate the off-site impacts of various on-reservation development projects. These intergovernmental agreements also address other important issues. The agreements reflect a mutual understanding of the importance of addressing the impacts of tribal development projects while furthering respectful and mutually beneficial government-to-government relationships.

In the case of the Dry Creek Rancheria, the Tribe operates the River Rock Casino near Geyserville, CA. On February 28, 2023, the Board of Supervisors approved an amended and restated Memorandum of Understanding (MOA) between the Tribe and the County. The financial terms under the restated MOA provide for an annual baseline payment of \$750,000 to offset the costs related to County services impacted by operations on the Dry Creek Rancheria.

With regard to The Lytton Rancheria, the Tribe does not operate a gaming facility in Sonoma County, but does possess a reservation of over 500 acres outside the Town of Windsor. A tribal

housing development project is currently under construction, with a winery and resort development planned for the future. The County entered into an MOA with the Lytton Rancheria on March 10, 2015 to establish a framework for government-to-government relations, address the impacts of the proposed residential housing development, and establish parameters and processes for addressing the impacts of potential future tribal development.

Finally, the Federated Indians of Graton Rancheria currently operate the Graton Casino located in Rohnert Park. On June 6, 2023, the Board of Supervisors approved an Amended and Restated Intergovernmental Mitigation Agreement (IMA) between the Tribe and the County. The IMA provides \$14,500,000 per year, adjusted annually for CPI, to mitigate impacts of the gaming facility in a number of key areas, including: law, justice and public safety; health and human services; traffic, transportation, and road maintenance; affordable housing; greenhouse gasses and air quality; fire and emergency services; groundwater and water conservation projects; tourism impacts; and, socioeconomic impacts.

b. Are you aware of any tribal gaming projects that have benefited from this way of operating, and, if yes, how did that benefit the project?

As previously indicated, the Federated Indians of Graton Rancheria currently operate a casino in Rohnert Park. According to the Tribe's leadership, the revenue from the gaming project allows the Tribe to provide programs and services to Tribal Citizens to help them realize their dreams of self-sufficiency. Absent transparency and cooperation at the local level and without a mitigation agreement in place that offsets impacts on public services, projects such as the Graton Casino typically face increased scrutiny and community skepticism, if not widespread opposition from local government and community stakeholders. Based on our experience in Sonoma County, we strongly believe that tribes – and the projects they operate – as well as local governments and the surrounding community greatly benefit when intergovernmental partnerships result in agreements that recognize the impacts of developments projects.

Additionally, and expanding upon the aforementioned Yolo County example, I'd note that the County and the Yocha Dehe tribe did not always have a positive and productive working relationship. Rather, the parties remained at odds for years over the tribe's proposed Cache Creek Casino Resort expansion project. After much negotiation, however, the parties entered into an agreement that allowed the project to move forward. The comprehensive agreement addresses a number of key issues, including the mitigation of gaming-related impacts, including language addressing transportation needs, law enforcement, and fire and emergency services.

3. You testified during the hearing that state and local governments would prefer a 120-day window to submit comments during the land-into-trust process. Could you elaborate further on the benefits of a longer comment period?

Many fee-to-trust acquisitions – particularly for large-scale economic development projects – result in significant impacts to the surrounding community. Accordingly, it is essential that counties thoroughly consider and examine the potential ramifications of any tribal

development project, particularly as it relates to the health, safety, and welfare of community members.

I'd note that as part of the typical zoning, planning, and permitting process at the local level, counties are responsible for conducting public outreach and engagement in order to determine how proposed development projects will impact the community. In doing so, counties must consider a whole host of issues, including land-use compatibility, ingress-egress, jurisdictional matters, transportation, environmental impacts, and many other issues. This process is highly complex and takes time.

As I indicated in my written testimony, federal law should require the BIA to provide jurisdictional governments with detailed information regarding proposed trust land acquisitions, not unlike the public information required for local planning, zoning and permitting. This assumes even greater importance since local ordinances and laws are ultimately preempted by trust-land decisions. In order to provide counties, our jurisdictional partners, and local communities with sufficient opportunity to evaluate potential impacts in their entirety, NACo policy calls for 120 days for parties to review and comment on a pending fee-to-trust application.

4. Is there anything else you would like to add to your written testimony on how the Department of the Interior's fee-to-trust process should be reformed to benefit tribes and state and local governments?

For 15 years, tribes and counties – along with other stakeholders – have been urging Congress to address the implications of the *Carcieri v. Salazar* decision. It is long past time for lawmakers to act.

Moving forward, Congress must pass a single legislative remedy that accomplishes two essential objectives: put all tribes on equal footing as it relates to the opportunity to have land taken into trust; and, establish a fair and balanced trust-land system that takes into account the legitimate interests of local governments and the communities they serve.

Thank you again for the opportunity to testify before the Subcommittee.