



NATIONAL CONFERENCE  
*of* STATE LEGISLATURES

*The Forum for America's Ideas*

## The Indian Reorganization Act: Land into Trust



May 22, 2008

National Association of Counties



## Presentation Outline

- What is NCSL's State Tribal Institute?
- The basis for Land into Trust
- Department of Interior Determinations
- Land into Trust and Indian Gaming
- County Involvement



## NCSL State Tribal Institute

- Established in 2006 and is part of the Leadership Services Division within NCSL.
- Conducts outreach to American Indian, Alaska Native and Native Hawaiian state legislators and connect them with services offered throughout NCSL.
- Conduct trainings and educational programs and provides staff support to the National Caucus of Native American State Legislators.



## NCSL State Tribal Institute

**The Institute strives to improve upon and facilitate more effective state-tribal cooperation-- Because:**

- Tribal governments across the US are exercising their self-governing powers
- Therefore - an increasing need for state policymakers to learn to interact with tribes as sovereign governments, instead of viewing them as special interests or minority groups contained within a few states.



## Land into Trust Process

- Under the Indian Commerce Clause of the Constitution, Congress has plenary power to legislate on the subject of Indian tribes, and may preempt the operation of state law in Indian country. [U.S.C.A. Const. Art. 1, § 8, cl. 3.](#)
- Congress may preempt the operation of state law in Indian country. See [\*New Mexico v. Mescalero Apache Tribe\*, 462 U.S. 324, 333, 103 S.Ct. 2378, 76 L.Ed.2d 611 \(1983\).](#)



## Land into Trust Process

Under the Indian Reorganization Act (IRA) of 1934, the Secretary of the Interior (DOI) may take land into trust for Indian tribes for purpose of providing land for Indians, without the consent of the State. [25 U.S.C.A. § 465](#).

•Section 5 of the IRA: Congress has authorized the Secretary “in his discretion” to acquire and take into trust for Indian tribes “any interest in lands ... within or without existing reservations ... for the purpose of providing land for Indians.” [25 U.S.C. § 465](#). The Secretary may take land into trust for these purposes, *without the consent of the State*.



## Land to Trust Process

The Secretary's acquisition of land into trust for Indians results in the land becoming "Indian country." [18 U.S.C. § 1151.](#)

### *Indian Country*

Refers to land under the supervision of the federal government that has been set aside primarily for the use of Indians. It includes all land within an Indian reservation and all land outside a reservation that has been placed in trust by the federal government and is designated primarily for Indian use. *As a general rule, state laws do not apply to Indians in Indian Country.*



## Land into Trust Today-DOI

- Code of Federal Regulations Title 25: Indians  
**PART 151—LAND ACQUISITIONS**
  
- See Handout with Highlighted portions





## Land into Trust Today-DOI

**United States Court of Appeals: First Circuit.**

**Carcieri v. Kempthorne** 497 F.3d 15

July 20, 2007

- The State's case was 3 major arguments.
- First, the State argues that the IRA does not authorize the Secretary to take land into trust for any tribe, that first received federal recognition after June 18, 1934, the effective date of the IRA.
- Second, the State argues that the 1978 Rhode Island Indian Claims Settlement Act, restricts the Secretary's authority to place the Parcel into trust pursuant to the IRA.
- Third, the State argues that the Constitution prohibits this exercise of authority by the Secretary.



## Indian Gaming Regulatory Act

### *Section 2719*

**Gaming can be permitted on after acquired land (land into trust lands) under what is referred to as a "two-part determination" that requires:**

- The Secretary, after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community,
- IF the governor of the state in which the gaming activity is to be conducted concurs in the Secretary's determination



## Indian Gaming Regulatory Act

New policy to clarify CFR Section 151.11 (b) guiding decisions to take land into trust for gaming purposes was issued by the DOI in January 2008.

- **Two key provisions within the new policy:**



## DOI's New Policy

- Greater scrutiny be given to the tribe's justification of anticipated benefits from the acquisition of trust land as the distance between the tribe's reservation and the land to be acquired increases; and that *greater weight be given to the concerns of state and local governments.*
- Tribe's land acquisition application should include a copy of any intergovernmental agreements negotiated between the state and tribe that clarifies jurisdictional authority. If a tribe and state have not established any such agreement the petitioning tribe must explain why. The guidelines further note that failure to establish such an agreement should weigh heavily against the application's approval.



# County Involvement

## Consultation Process

- The Indian Reorganization Act (IRA) requires the Secretary of the Interior to notify state and local governments that a tribe has requested Land into Trust.
- State and local governments have the right to provide written comments (within 30 days) on the acquisition's potential impacts.
- The new 2008 guidance policies state the reviewer of the application must "give greater weight to the concerns of the state and local governments no matter what the distance is between the tribe's reservation and the proposed off-reservation acquisition."



## County Involvement

### County-Tribal Agreements

County level agreements give the County and the Tribe an opportunity to actively address concerns of both parties

#### Examples:

Tulalip tribes in Washington and bordering Snohomish County in late 2001:

Agreement allows approved tribal officers and deputy sheriffs to exercise all powers of a Tulalip police officer or deputy sheriff on the reservation. For effective prosecution of crimes, the agreement also provides that arresting officers who act under the agreement will serve as witnesses in Snohomish County superior, district, juvenile, Tulalip tribal or federal court.



## County Involvement

In 2004-Kansas Legislature enacted a law that would grant tribal law enforcement officers the authority to enforce state law within the boundaries of the reservation, subject to certain conditions. Provides tribal law enforcement officials with the same rights and obligations of any law enforcement officer in the state of Kansas.

After 2 years--Representatives from both Jackson and Brown County Sheriff's Department testified that the law is working well to create a law enforcement partnership and saves Brown County \$50,000 per year.

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## Contacts for More Information

Anne Teigen,  
State Tribal Institute  
Policy Associate

303-856-1652

[Anne.teigen@ncsl.org](mailto:Anne.teigen@ncsl.org)