

1                   **FINANCE AND INTERGOVERNMENTAL AFFAIRS STEERING COMMITTEE**  
2  
3                   **RESOLUTION OPPOSING THE CONGRESSIONAL REVERSAL OF CARCIERI V.**  
4                                   **SALAZAR**

5  
6           **Issue:** Opposing congressional reversal of *Carcieri v. Salazar*.  
7

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.  
11

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.  
41

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.  
45

46           Adopted by the NACo Board of Directors  
47           March 8, 2010  
48  
49