

**Tribal Partner Organizations Letter
In Support of Protecting the Land Into Trust Process and Existing Tribal Homelands**



April 11, 2022

The Honorable Brian Schatz
Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

The Honorable Lisa Murkowski
Vice Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Re: Protect the Land Into Trust Process and Existing Tribal Homelands

Dear Chairman Schatz and Vice Chairman Murkowski,

February 24, 2022 will mark 13 years since the U.S. Supreme Court's deeply misguided decision in *Carcieri v. Salazar*. This decision has generated a wave of costly litigation, as well as caused significant direct negative economic, community, and cultural impacts in Indian Country. The chaos and confusion resulting from this decision must finally come to an end once and for all. *Carcieri* stands in direct conflict with the ability of ALL Tribal Nations to rebuild our nations and economies after years of direct federal action designed to deprive us of our lands and diminish our inherent sovereign rights and authorities.

The U.S. House of Representatives has passed legislation addressing the deep inequities resulting from *Carcieri* twice during the 117th Congress, including by a wide, bi-partisan margin of 302-127 on December 1, 2021. The time is long overdue for the Senate to also take action to right this wrong.

Therefore, the undersigned Tribal organizations strongly urge the Senate Committee on Indian Affairs, as the Senate committee tasked with leading strong U.S.-Tribal Nation diplomatic relations and protecting the principles of our sovereign status, to work toward enactment of legislation that would reaffirm the status of existing Tribal trust lands and restore certainty and fairness to the Tribal land into trust process by fixing the flawed *Carcieri* decision.

It must be acknowledged and understood that at its core, the *Carcieri* decision is an attack on the Indian Reorganization Act (IRA) of 1934, which Congress enacted to stop the massive loss of Tribal homelands inflicted by the General Allotment Act of 1887 (Allotment Act).

The Allotment Act was a shameful federal policy with the direct intent of dismantling the foundation that supported our ability to exert our sovereign status and authorities. Accompanied by the policy of forced Assimilation, the result was the unjust taking and loss of 86 million acres of Tribal homelands. The Allotment Act also inflicted collateral damage in the form of the "diminishment" of Treaty-promised Tribal homelands; the "checkerboard-ing" of Tribal homelands—creating the jurisdictional morass facing many residents of Indian Country today; and the "fractionation" of Tribal homelands that added to the federal government's mismanagement of remaining Tribal Nation land bases.

Recognizing and taking accountability for these unjust actions, five decades later, Congress enacted the Indian Reorganization Act of 1934 to repeal the Allotment policy with the overarching goals of restoring and protecting Tribal homelands, empowering Tribal governments, and preserving Tribal culture. Section 465 of the IRA authorizes the Interior Secretary to acquire lands and place them into trust for Tribal Nations. For

75 years, Tribal Nations used Section 465 to restore a modest land base for basic infrastructure projects (schools, hospitals, housing, etc.), for agricultural development, to protect Tribal sacred places and burial sites, and for economic development purposes. Tribes restored approximately 5 million acres of Tribal homelands—far short of the 86 million acres lost or taken through Allotment.

In 2009, the *Carcieri* Court ruled that the Secretary's IRA land to trust authority is limited to only those Tribal Nations that were "under federal jurisdiction" in 1934. The term "under federal jurisdiction" is not defined and has led to legal ambiguities that have paralyzed the already under funded and severely backlogged land into trust process. The decision has also generated new legal attacks on existing Tribal trust lands that the United States, at taxpayer expense, must defend. These lawsuits jeopardize not only Tribal Nation governmental programs but also hinder economic and community development.

Tribal Nation land bases are the very foundation of Tribal sovereignty and strong economies. Enacting a legislative fix to the *Carcieri v. Salazar* decision remains a top priority for all of Indian Country. Such legislation includes two components: (1) restoring the Secretary's IRA authority to take land into trust for all federally recognized Tribal Nations; and (2) reaffirming existing Tribal trust lands.

As a result, our organizations urge you to enact S. 1901 (sponsored by Senators Jon Tester and Jerry Moran) and similar bills that will achieve these two goals.

Thank you for your consideration of this request. We look forward to our continued work with you in the 117th Congress to finally enact legislation to reverse the devastating impacts of the *Carcieri* decision by protecting the IRA Tribal land to trust process and existing Tribal trust lands.

Sincerely,



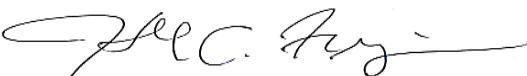
Kirk Francis (Penosbcoot)
President
United South and Eastern Tribes Sovereignty Protection Fund



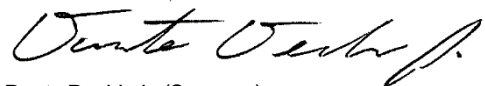
W. Ron Allen
Tribal Chairman/CEO, Jamestown S'Klallam Tribe and President, Board of Directors, Self-Governance Communication & Education Tribal Consortium



Frank Ettawageshik (Odawa)
Executive Director
United Tribes of Michigan



Chairman Harold Frazier (Cheyenne River Sioux)
Chairman
Great Plains Tribal Chairmen's Association, Inc



Dante Desiderio (Sappony)
Chief Executive Officer
National Congress of American Indians



Francys Crevier
Chief Executive Officer
National Council of Urban Indian Health



Rebecca Richards (Pokagon Band of Potawatomi)
President
Midwest Alliance of Sovereign Tribes



Rico Frias (Chiricahua Apache from the Chihene Nde Nation)
Executive Director
Native American Finance Officers Association



William Smith (Valdez Native Tribe)
Chairman
National Indian Health Board



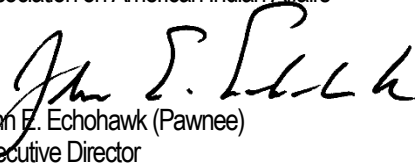
Ernest L. Stevens, Jr (Oneida Nation)
Chairman
National Indian Gaming Association



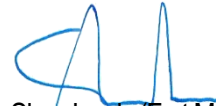
Sherman O'Loughlin (Choctaw Nation of Oklahoma)
Chief Executive
Association on American Indian Affairs



Cris Stainbrook (Oglala Lakota)
President
Indian Land Tenure Foundation



John F. Echohawk (Pawnee)
Executive Director
Native American Rights Foundation



Shah Lewis (Fort Mojave)
President, Inter Tribal Association of Arizona
Vice-Chairman, Fort Mojave Indian Tribe



Leonard Forsman (Suquamish)
President
Affiliated Tribes of Northwest Indians



William F. Snell, Jr. (Crow/Assiniboine)
Executive Director
Rocky Mountain Tribal Leaders Council



Kevin Killer (Ogala Lakota)
President
Coalition of Large Tribes (COLT)