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SENATE

REPORT
114–275

INTERIOR IMPROVEMENT ACT

JUNE 9, 2016.—Ordered to be printed

Mr. BARRASSO, from the Committee on Indian Affairs, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 1879]

The Committee on Indian Affairs, to which was referred the bill (S. 1879) to improve processes in the Department of the Interior, and for other purposes, having considered the same, reports favorably thereon with an amendment, and recommends that the bill, as amended, do pass.

PURPOSE

S. 1879 would restore the authority of the Secretary of the Department of the Interior (Secretary) to take land into trust for all federally recognized tribes, reaffirm the status of Indian trust lands already held in trust, and improve existing land into trust processes and procedures.

BACKGROUND

On February 24, 2009, the U.S. Supreme Court ruled in *Carcieri* v. *Salazar* that the Secretary of the Interior did not have the authority to take land into trust for the Narragansett Tribe under the Indian Reorganization Act of 1934 [1] (IRA) because the Tribe was not "under Federal jurisdiction" when the IRA was enacted in

[1] Indian Reorganization Act of 1934, 25 U.S.C. § 465 (1934).

1934.[2] While the Court's holding applied specifically to the Narraganset Tribe, the *Carcieri* decision has had a far greater impact on tribes, states and local jurisdictions across the country. The Court's decision in *Carcieri* has given rise to many concerns, litigation and uncertainty.

The reach of *Carcieri* has extended far beyond the Narragansett Tribe, as it rests on a limiting interpretation of the primary statute under which the Secretary derives authority to take land into trust for the benefit of Indian tribes. In particular, "[t]he decision appears to call into question the ability of the [Secretary] to take land into trust for any recently recognized tribe unless the trust acquisition has been authorized by legislation other than the 1934 Indian Reorganization Act (IRA) or the tribe can show that it was "under Federal jurisdiction" in 1934."[3]

The *Carcieri* decision opened the door to significant litigation, creating further uncertainty around the status of Indian trust lands.[4] One such case is *Match-E-Be-Nash-She Wish Band of Pottawatomi Indians* v. *Patchak*, which involved a challenge to the Secretary's authority to acquire trust land for tribes that were not federally recognized in 1934.[5] Ultimately, the Supreme Court relied on the merits of a six-year statute of limitations in the Federal *Administrative Procedure Act* for challenges to final agency actions to rule that the Federal government's sovereign immunity under the *Quiet Title Act* did not bar challenges to any decision of the Secretary to take land into trust once title passed to the United States, and that challenges to such final agency action may be brought within six years.[6]

In response to *Patchak*, the Bureau of Indian Affairs (BIA) revised its Indian trust land acquisition regulations with language that is often referred to as the "*Patchak Patch*".[7] This language would limit a party's administrative appeal period to provide greater certainty to Indian tribes when developing on their lands.

Other action by the Department of the Interior (Department), including taking land into trust pursuant to a Department Solicitor's Opinion, has exacerbated legal issues associated with *Carcieri* and caused related litigation. The *Carcieri* Court construed the IRA in a manner that would limit the means by which the Secretary may exercise the authority to take land into trust. The Solicitor's Opinion arguably conflicts with this limiting principle by applying a far more expansive interpretation.

It is clear the Supreme Court did not define the meaning of the phrase "under federal jurisdiction" in its *Carcieri* decision.[8] Instead, the Court left this question to Congress to address through the creation of law, pursuant to Congress' plenary authority over

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[2] *Carcieri* v. *Salazar*, 555 U.S. 379 (2009).

[3] M. Maureen Murphy, Congressional Research Service, *Carcieri* v. *Salazar: The Secretary of the Interior May Not Acquire Trust Land for the Narragansett Indian Tribe Under 25 U.S.C. Section 465 Because That Statute Applies to Tribes "Under Federal Jurisdiction" in 1934,* Apr. 22, 2015 (RL34521).

[4] *See e.g., Id.*; Jane M. Smith, Congressional Research Service, *Ninth Circuit Opinion Suggests Carcieri* v. *Salazar May Provide a Basis for Challenging Indian Trust Land Status*, Feb. 12, 2014 (Legal Sidebar).

[5] *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S.___(2012); 132 S. Ct. 2199 (2012).

[6] *Id.*

[7] Land Acquisitions: Appeals of Land Acquisition Decisions, 78 Fed. Reg. 67,928 (Nov. 13, 2013) (codified at 25 C.F.R. pt. 151).

[8] *Carcieri* v. *Salazar*, 555 U.S. 379 (2009).

Indian tribes.[9] Nonetheless, on March 12, 2014, the Department of the Interior Office of the Solicitor issued a Solicitor's Opinion (M–37029) describing how the Secretary would be able to determine whether an Indian tribe was "under federal jurisdiction" in 1934.[10] This document, which includes a two-part Secretarial determination for determining whether a tribe was "under federal jurisdiction" in 1934 and is therefore eligible to have land taken into trust by the Secretary on their behalf, has been used by the Department as the legal justification or basis to take land into trust for Indian tribes recognized after 1934.[11] This two-part test created by the Department of Interior has only provided a temporary fix and has been subject to significant litigation.

The existing administrative process for taking land into trust is arduous and can take many years to complete.[12] The Department currently uses a sixteen-step process to evaluate discretionary land into trust applications for Indian tribes under the IRA.[13] Some Indian tribes have been waiting years for a decision because the Interior must conduct a *Carcieri* analysis and determine if the Indian tribe is eligible to request that the land be taken into trust.[14] According to the Department, the two-step analysis established by the Solicitor's Opinion in 2014 has added yet another layer of bureaucracy, resulting in further delays and costs for all parties involved in the acquisition process.[15]

The Department's current trust acquisition process also lacks transparency and lacks meaningful opportunities for stakeholders to voice their concerns, share ideas or even collaborate prior to the Department taking final action on an application. This has left many stakeholders with few alternatives to filing suit in court to voice their concerns or protect their interests.

The Court's *Carcieri* decision has been devastating to all parties involved, from both a financial and a community perspective. This situation has strained local relationships among tribes and between tribes and counties, and has significantly increased uncertainty and litigation. Among the many other costs associated with the status quo are innumerable lost opportunities for economic development, job creation and prosperity.

Another critical concern is that the *Carcieri* decision and the Department's subsequent actions have had the practical effect of undermining tribal sovereignty and, in essence, creating two classes

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[9] *U.S.* v. *Lara*, 541 U.S. 193, 200–02 (2004); *U.S.* v. *Jicarilla Apache Nation*, 564 U.S. 162, 175 (2011).

[10] Memorandum from Hilary C. Tompkins, Solicitor, U.S. Dep't of the Interior, on the Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act (Mar. 12, 2014) (M–37029) *available at https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37029.pdf.*

[11] *Id.*

[12] *Addressing the Costly Administrative Burdens and Negative Impacts of the Carcieri and Patchak Decisions:* Oversight Hearing before the S. Comm. on Indian Affairs, 112th Cong. (2012).

[13] 25 C.F.R. pt. 151.

[14] U.S. Dep't of the Interior, Bureau of Indian Affairs, Office of Trust Services, *Acquisition of Title to Land Held in Fee or Restricted Fee Status* (*Fee-to-Trust Handbook*) at 15 (2014).

[15] *A Path Forward: Trust Modernization & Reform for Indian Lands:* Oversight Hearing before the S. Comm. on Indian Affairs, 114th Cong. (2015) (written testimony of Kevin Washburn, Assistant Secretary—Indian Affairs).

of tribes—tribes that are eligible for discretionary acquisitions under the IRA and tribes that are not.[16]

Only Congress can finally bring the clarity needed to stop and reverse the fallout of *Carcieri.* S. 1879 would directly resolve the legal questions at issue and incentivize local cooperation between tribes and contiguous jurisdictions, which is greatly needed.

NEED FOR LEGISLATION

Since the Court's *Carcieri* decision in 2009, Indian tribes have been working with Congress to pass a "legislative fix" to restore the ability of the Secretary to take land into trust for all federally recognized Indian tribes. This Committee has held various hearings and meetings on the decision, impacts of the decision on tribes, and proposals to address the decision.[17] Although numerous legislative proposals have been introduced to "fix" the *Carcieri* decision, no bill has successfully passed through both Chambers of Congress.[18]

With the goal of finding a viable solution to finally resolve the *Carcieri* problem, the Senate Indian Affairs Committee took a fresh and inclusive approach to evaluating pertinent issues and forming a legislative solution. Through this process, the Committee learned that a "clean fix" in isolation is not viable for many reasons. Instead, a workable solution would include both "clean fix" language and language to improve the Department's underlying land into trust process. The Committee also identified language that could not be included in legislation without losing support from key stakeholders.[19]

S. 1879 is the product of the collaborative, solutions-based approach described above, which involved substantial discussion, deliberation, public feedback and negotiation by diverse stakeholders. S. 1879 is unique in that it addresses the longstanding problems associated with *Carcieri* and the Department's Part 151 land acquisition process, and at the same time avoids language that would frustrate cooperation.

Specifically, S. 1879 would solve problems flowing from the Court's *Carcieri* decision by restoring the Secretary's authority to take land into trust for all federally recognized tribes and reaffirming the status of lands already held in trust for Indian tribes. S. 1879 would also improve existing Part 151 regulations by encouraging local cooperation for off-reservation acquisitions[20] and codi-

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[16] *Addressing the Costly Administrative Burdens and Negative Impacts of the Carcieri and Patchak Decisions:* Oversight Hearing before the S. Comm. on Indian Affairs, 112th Cong. (2012).

[17] *The Carcieri Crisis: The Ripple Effect on Jobs, Economic Development and Public Safety in Indian Country:* Oversight Hearing Before the S. Comm. on Indian Affairs, 112th Cong. (2011); *Addressing the Costly Administrative Burdens and Negative Impacts of the Carcieri and Patchak Decisions:* Oversight Hearing Before the S. Comm. on Indian Affairs, 112th Cong. (2012); *Carcieri: Bringing Certainty to Trust Land Acquisitions:* Oversight Hearing Before the S. Comm. on Indian Affairs, 113th Cong. (2013); *The Carcieri* v. *Salazar Supreme Court Decision and Exploring a Way Forward:* Roundtable Discussion Before the S. Comm. on Indian Affairs, 114th Cong. (2015).

[18] *See* LEGISLATIVE HISTORY section below.

[19] For instance, S. 1879 does not amend the Indian Gaming Regulatory Act of 1988 or include carve outs for any state, tribal or special interest. It also does not include a "county veto" that would enable counties or other stakeholders to indefinitely block an Indian tribe's application to take land into trust. S. 1879 also does not mandate contracting or reciprocal notice-and-comment procedures between local jurisdictions and tribes, but does encourage local cooperation.

[20] For instance, S. 1879 promotes local cooperation by requiring consultation with Indian tribes; recommending the use of cooperative agreements and reciprocal notice and comment procedures; offering a fast-track application process for tribes with cooperative agreements; pro-

fying key portions of the Department's off-reservation land into trust regulations and guidance.[21] The bill does *not* include special carve-outs, gaming prohibitions, county or state vetoes, or other poisonous language that would undermine tribal sovereignty or otherwise weaken the broad coalition of support for this bill.

Failure to pass S. 1879 will result in continued and additional litigation and uncertainty, with substantial financial and societal costs to tribes, counties and other governments. While S. 1879 will not resolve all litigation and uncertainty relating to Indian trust land acquisitions, it will reduce it significantly. It will also lay the foundation for improved local relations between tribes, and among tribes, counties and other governmental entities. All parties involved can benefit from the economic and other opportunities rooted in such cooperation.

LEGISLATIVE HISTORY

Sixteen bills have been introduced to address the Supreme Court's *Carcieri* decision.[22] Most of these bills can be characterized as "clean fix" or "*Carcieri* fix" bills. These terms are typically used to describe a stand-alone bill that reaffirms (1) the Secretary's authority to take land into trust for tribes that are federally recognized after 1934, and (2) the trust status of land already taken into trust by the Secretary on behalf of tribes recognized after 1934.[23] No such bill has successfully passed both Chambers of Congress. For various reasons, other bills relating to the land into trust acquisitions have also failed to garner support.

Interior Improvement Act

Chairman Barrasso introduced the *Interior Improvement Act*, S. 1879, on July 28, 2015. Unlike other bills, S. 1879 takes a fresh and practical approach to addressing the *Carcieri* decision. It maintains the core elements of a "*Carcieri* fix" and also improves the existing trust land acquisition process. S. 1879 also takes pieces and policy from past efforts to reform the land into trust process.

S. 1879 was referred to the Senate Committee on Indian Affairs and a committee business meeting was duly held on December 2, 2015. The bill was ordered to be reported favorably, as amended by an amendment in the nature of a substitute offered by Chairman Barrasso.

Other legislative activity

111th Congress. On September 24, 2009, Senator Byron Dorgan [D–ND] introduced S. 1703, *A bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.* Senator Daniel Akaka [D–HI], Senator Max Baucus [D–MT], Senator Jeff Bingaman [D–NM],

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viding a good faith protection for tribes without cooperative agreements; allowing stakeholders to voice and address concerns without first resorting to the courts.

[21] *See e.g.*, meaning of the words "contiguous" (*see* 25 C.F.R. pt. 151); application components (*see* 25 C.F.R. pt. 151.09–.11)*; notice and comment associated with applications and Notice of Decision (see 25 C.F.R. pt. 151.11(d) and 25 C.F.R. pt. 151.12); review of final agency actions (*see 25 C.F.R. pt. 151.12); exhausting administrative remedies (*see* 25 C.F.R. pt. 151.12); encouraging mitigation and use of cooperative agreements (see Fee-to-Trust Handbook at 23).

[22] *Carcieri* v. *Salazar*, 555 U.S. 379 (2009).

[23] There is no formal definition of what constitutes a "clean fix" or "*Carcieri* fix" bill, nor is there exact language that must be included or excluded from a bill in order for it to fall into this category.

Senator Al Franken [D–MN], Senator Daniel Inouye [D–HI], Senator Jon Tester [D–MT], and Senator Tom Udall [D–NM] were the original co-sponsors. 5 additional Senators co-sponsored S. 1703 at a later date. The bill was referred to the Senate Committee on Indian Affairs and a business meeting was duly held on December 17, 2009. The bill was ordered to be reported favorably, as amended. On August 5, 2010, S. 1703 was reported, as amended, by Senator Dorgan and placed on the Senate Calendar. No further action was taken on S. 1703.

On October 1, 2009, Representative Tom Cole [R–OK–4] introduced H.R. 3697, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.* There were 12 co-sponsors to H.R. 3697. The bill was referred to the House Committee on Natural Resources and a legislative hearing was held on November 4, 2009. H.R. 3697 is an identical companion bill to S. 1703. No further action was taken on H.R. 3697.

On October 7, 2009, Representative Dale E. Kildee [D–MI–5] introduced H.R. 3742, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.* 44 Representatives co-sponsored H.R. 3742. The bill was referred to the House Committee on Natural Resources and a legislative hearing was held on November 4, 2009. H.R. 3742 is identical to H.R. 3697 and S. 1703 except for the addition to include "tribe" with "Indian tribe" as a term to define who the Secretary can acknowledge as an Indian tribe. No further action was taken on H.R 3742.

112th Congress. On March 29, 2011, Representative Dale E. Kildee [D–MI–5] introduced H.R. 1234, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.* 30 Representatives co-sponsored H.R. 1234. The bill was referred to the House Subcommittee on Indian and Alaska Native Affairs and a hearing on the bill was a hearing held on July 12, 2011. No further action was taken on H.R. 1234.

On March 30, 2011, Senator Daniel K. Akaka [D–HI] introduced a companion bill S. 676, *A bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.* The bill was originally co-sponsored by Senator Kent Conrad [D–ND], Senator Al Franken [D–MN], Senator Daniel K. Inouye [D–HI], Senator Tim Johnson [D–SD], Senator John Kerry [D–MA], Senator Jon Tester [D–MT] and Senator Tom Udall [D–NM]. Senator Max Baucus [D–MT] and Senator Debbie Stabenow [D–MI] were later added as co-sponsors. The bill was referred to the Senate Committee on Indian Affairs and a business meeting was duly held on April 7, 2011. The bill was ordered to be reported with amendments favorably. On May 17, 2012, S. 676 was reported by Senator Akaka with an amendment and placed on the Senate Calendar. No further action was taken on S. 676.

On March 31, 2011, Representative Tom Cole [R–OK–4] introduced H.R. 1291, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes, and for other purposes.* 10 Representatives co-sponsored H.R. 1291. The bill was referred to the House Sub-

committee on Indian and Alaska Native Affairs and a hearing was held on July 12, 2011. H.R. 1291 and H.R. 279 (113th Cong.) are similar, H.R. 279 differs in that it removes subsection "(a)" of Section 1 of the bill. No further action was taken on H.R. 1291.

113th Congress. On January 15, 2013, Representative Tom Cole [R–OK–4] introduced H.R. 279, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes, and for other purposes.* There were 37 co-sponsors to H.R. 279. The bill was referred to the House Subcommittee on Indian and Alaska Native Affairs on January 31, 2013. H.R. 279 is identical to H.R. 249 (114th Cong.) and differs from H.R. 1291 (112th Cong.) in that subsection "(a)" of Section 1 (as found in H.R. 1291) is omitted. No further action was taken on H.R. 279.

On February 13, 2013, Representative Edward J. Markey [D–MA–5] introduced H.R. 666, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.* The bill had 10 original co-sponsors: Rep. Xavier Becerra [D–CA–34], Rep. Eni Faleomavaega [D–AS], Rep. Raul Grijalva [D–AZ–3], Rep. Colleen Hanabusa [D–HI–1], Rep. Daniel Kildee [D–MI–5], Rep. Ben Luján [D–NM–3], Rep. Betty McCollum [D–MN–4], Rep. Gwen Moore [D–WI–4] Rep. Frank Pallone [D–NJ–6], and Rep. Niki Tsongas [D–MA–3]. 23 Representatives were later added as co-sponsors to H.R. 666. The bill was referred to the House Subcommittee on Indian and Alaska Native Affairs on February 22, 2013. H.R. 666, H.R. 1234 (112th Cong.) and H.R. 407 (114th Cong.) are identical bills, and only minor differences exist between these bills and S. 676 (112th Cong.). No further action was taken on H.R. 666.

On March 31, 2014, Senator Jon Tester [D–MT] introduced S. 2188, *A bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes*. The 7 original co-sponsors included: Senator Mark Begich [D–AK], Senator Martin Heinrich [D–NM], Senator Heidi Heitkamp [D–ND], Senator Jerry Moran [R–KS], Senator Patty Murray [D–WA], Senator Tom Udall [D–NM], and Senator John Walsh [D–MT]. 6 Senators were later added as co-sponsors to S. 2188. The bill was referred to the Senate Committee on Indian Affairs. On May 7, 2014, the Committee held a legislative hearing on S. 2188. On June 11, 2014, a business meeting was duly held and the bill was ordered to be reported with an amendment favorably. Senator Tester reported the bill on August 26, 2014 and was placed on the Senate Calendar. No further action was taken on S. 2188.

114th Congress. On January 9, 2015, Representative Tom Cole [R–OK–4] introduced H.R. 249, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes, and for other purposes.* 37 Representatives were later added as co-sponsors to H.R. 249. The bill was referred to the House Subcommittee on Indian, Insular, and Alaska Native Affairs on March 2, 2015. This bill is Identical to H.R. 279 (113th Cong.) but differs from H.R. 1291 (112th Cong.) in that subsection "(a)" of Section 1 (as found in H.R. 1291) is omitted.

On January 20, 2015, Representative Betty McCollum [D–MN–4] introduced H.R. 407, *To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into*

trust for Indian tribes. The bill was originally co-sponsored by Representative Tom Cole [R–OK–4] and 8 Representatives being added as co-sponsors at a later date. The bill was referred to the House Subcommittee on Indian, Insular, and Alaska Native Affairs on March 2, 2015. This bill is identical to H.R. 1234 (112th Cong.) and H.R. 666 (113th Cong.), and similar to S. 676 (112th Cong.).

On March 12, 2015, Senator Jon Tester [D–MT] with 7 co-sponsors introduced S. 732, *A bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.* The bill was referred to the Senate Committee on Indian Affairs on March 12, 2015. This bill is similar to other legislation that has previously been introduced.

On March 24, 2015, the Senate Committee on Indian Affairs held a round table discussion on *The Carcieri* v. *Salazar Supreme Court Decision and Exploring a Way Forward* with key stakeholders. The Senate Committee on Indian Affairs also held an oversight hearing on A *Path Forward: Trust Modernization & Reform for Indian lands* on July 8, 2015, where S. 1879 was discussed in concept by the witnesses and Committee members.

On July 21, 2015, Representative Tom Cole [R–OK–4] and 41 co-sponsors introduced H.R. 3137, *To reaffirm the trust status of land taken into trust by the United States pursuant to the Act of June 18, 1934, for the benefit of an Indian tribe that was federally recognized on the date that the land was taken into trust, and for other purposes.* There were 17 original co-sponsors: Rep. Dan Benishek [R–MI–1], Rep. Bradley Byrne [R–AL–1], Rep. Tony Cárdenas [D–CA–29], Rep. Ruben Gallego [D–AZ–7], Rep. Raul Grijalva [D–AZ–3], Rep. Derek Kilmer [D–WA–6], Rep. Michelle Lujan Grisham [D–NM–1], Rep. Ben Luján [D–NM–3], Rep. Betty McCollum [D–MN–4], Rep. Gwen Moore [D–WI–4], Rep. Markwayne Mullin [R–OK–2], Rep. Patrick Murphy [D–FL–18], Rep. Raul Ruiz [D–CA–36], Rep. Pete Sessions [R–TX–32], Rep. Michael Simpson [R–ID–2], Rep. Mark Takai [D–HI–1], and Rep. Debbie Wasserman Schultz [D–FL–23]. The bill was subsequently sponsored by 29 others. The bill was referred to the House Subcommittee on Indian, Insular, and Alaska Native Affairs on August 4, 2015.

On August 4, 2015, Senator Jerry Moran [R–KS] introduced S. 1931, *A bill to reaffirm that certain land has been taken into trust for the benefit of certain Indian tribes.* Senator Jon Tester [D–MN] originally co-sponsored the bill and Senator Al Franken [D–MN] co-sponsored it at a later date. The bill was referred to the Senate Committee on Indian Affairs on August 4, 2015. This bill is unique in that it would omit part one of the "*Carcieri* fix," and reaffirm the trust status of land taken into trust on behalf of certain tribes. While this approach might benefit some tribes, it would not resolve the fundamental questions, concerns, and litigation surrounding the authority of the Secretary to take land into trust for tribes recognized after 1934.

On March 3, 2016, Senator Jon Tester [D–MT] introduced S. 2636, the *Reservation Land Consolidation Act of 2016*. There are no co-sponsors to the bill. There is no House companion bill. S. 2636 was referred to the Senate Committee on Indian Affairs on March 3, 2016 where no further action has taken place on the bill.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Section 1 cites this Act as the "Interior Improvement Act."

Section 2—Definitions

Subsection 2(a) clarifies that the Secretary of the Interior may take land into trust for all federally recognized tribes by amending section 19 of the Act of June 18, 1934 (commonly known as the Indian Reorganization Act or the IRA) (25 U.S.C. 479).

Subsection 2(b) ratifies and confirms existing trust acquisitions made pursuant to the IRA, thereby eliminating the potential for legal challenges based on whether an Indian tribe was federally recognized or under Federal jurisdiction on June 18, 1934.

Section 3—Land acquisition applications

Section 3 amends the IRA by inserting section 5A after section 5 of the IRA. The title of section 5A is "Land Acquisition Applications."

Section 5A improves the application process for discretionary off-reservation acquisitions.

Subsection 5(a) defines the following terms for the purposes of this section: (1) applicant; (2) application; (3) contiguous; (4) contiguous jurisdiction; (5) cooperative agreement; (6) county and county equivalent; (7) Department; (8) determination of mitigation; (9) explanation of final decision; (10) final decision; (11) impacts; (12) Indian tribe; (13) mitigate; (14) notice of final decision; and (15) Secretary.

Subsection 5(b) addresses the submission of applications for discretionary off-reservation acquisitions.

Subsection 5(b)(1) limits the scope of this section to applications for discretionary acquisitions of off-reservation fee land or restricted land. It also allows Indian tribes and individual Indians with a pending application to opt into the expedited process established under this section, provided that the pending application is supplemented as necessary to comply with the application requirements of this section.

Subsection 5(b)(2) codifies application submission and content requirements for discretionary off-reservation acquisitions. Listed requirements track current regulations and guidance of the Department of the Interior (Department).

Subsection 5(c) specifies statutory notice and comment requirements.

Subsection 5(c)(1) requires the Secretary to make all initial applications available to the public on the Department's website within 30 days of receipt of an initial application, subject to Federal privacy laws. The Secretary must also provide notice by certified mail to contiguous jurisdictions that an initial application has been received within 30 days of the Secretary's receipt of an initial application. Contiguous jurisdictions have no less than 60 days from the date they receive such notice to comment on an initial application. Applicants have no less than 60 days from the date comments are submitted by a contiguous jurisdiction to respond to the comments.

Subsection 5(c)(2) requires the Secretary to make any application updates, modifications, or withdrawals available to the public on the Department's website, subject to Federal privacy laws.

Subsection 5(c)(3) requires the Secretary to make all completed applications available to the public on the Department's website within 30 days of receipt of a completed application, subject to Federal privacy laws. The Secretary must also provide notice by certified mail to contiguous jurisdictions that a final application has been received within 30 days of receipt of a completed application. Contiguous jurisdictions have no less than 60 days from the date they receive such notice to comment on a completed application. Applicants have no less than 60 days from the date comments are submitted by a contiguous jurisdiction to respond to the comments. Completed applications must be published in the Federal Register within 10 days of receipt by the Secretary, subject to Federal privacy laws.

Subsection 5(d) encourages local cooperation by incentivizing the use of cooperative agreements between the applicant and contiguous jurisdictions.

Subsection 5(d)(1) directs the Secretary to encourage, but not require, applicants to enter into cooperative agreements with contiguous jurisdictions.

Subsection 5(d)(2) directs the Secretary to evaluate applications accompanied by cooperative agreements with contiguous jurisdictions on an expedited basis. This subsection also identifies terms that may, at the discretion of the parties, be included in a cooperative agreement.

Subsection 5(d)(2)(C) provides for applications accompanied by cooperative agreements with contiguous jurisdictions. Under the expedited process established by this subsection, the Secretary must issue a final decision within 120 days of receiving a completed application. If the Secretary fails to act within this timeframe, the application is deemed approved and treated as a final decision of the Department, provided that (1) free and clear title to the land under consideration is verified; and (2) all applicable requirements under Federal law and regulation are satisfied.

Subsection 5(d)(2)(D) provides for applications that are *not* accompanied by cooperative agreements with contiguous jurisdictions. In this case, the Secretary is required to make a determination of mitigation within 180 days of receiving a completed application. In making a determination of mitigation, the Secretary must consider (1) anticipated impacts of approving or not approving an application; (2) relevant comments and responses to comments; and (3) whether the absence of a cooperative agreement is attributable to the failure of any contiguous jurisdiction to work in good faith to reach an agreement. The Secretary must provide notice of a determination of mitigation to an applicant and contiguous jurisdictions within 10 days of making a determination.

Subsection 5(d)(2)(D) also provides specific protections for applicants that do not have cooperative agreements with contiguous jurisdictions. This subsection specifically prohibits the Secretary from prejudicing such applicants when the absence of a cooperative agreement is attributable to a contiguous jurisdiction's failure to work in good faith towards an agreement. The Secretary is also

prohibited from unduly delaying the regular processing of an application.

Subsection 5(d)(3) directs the Secretary to enhance local cooperation by encouraging the use of reciprocal notice and comment procedures.

Subsection 5(e) lists conditions, considerations and notice requirements associated with the Secretary's final decision to approve or deny an application.

Subsection 5(e)(1) directs the Secretary to issue a final decision on an application after (1) free and clear title to the land under consideration is verified; (2) all applicable requirements under Federal law and regulation are satisfied; and (3) consideration of application materials; comments and responses to comments; the determination of mitigation, if applicable; cooperative agreements with contiguous and non-contiguous jurisdictions; and any other information the Secretary identifies as relevant and material.

Subsection 5(e)(2) directs the Secretary to provide several types of notice within 10 days of issuing a final decision on an application. Specifically, the Secretary must (1) send the applicant and contiguous jurisdictions a notice of final decision by certified mail; (2) publish a notice of final decision and an explanation of final decision on the Department's website and in the Federal Register; and (3) publish a notice of final decision in a newspaper of general circulation serving the affected area of the decision.

Subsection 5(f) states that nothing in this Act requires the publication or release of proprietary information submitted by an applicant.

Subsection 5(g) requires the Secretary to implement this Act within one year, after consultation with tribes and through notice and comment rulemaking.

Subsection 5(g)(1) requires the Secretary to initiate consultation with Indian tribes within 90 days of enactment.

Subsection 5(g)(2) requires the Secretary to publish a summary of the consultation in the Federal Register within 180 days of initiating consultation.

Subsection 5(g)(3) requires the Secretary to modify existing regulations, guidance, rules and policy statements, as necessary to carry out this section, within 90 days of publishing a summary under subsection (g)(2).

Subsection 5(h) states that interested parties may seek review of a final decision in a United States district court after exhausting all administrative remedies available under chapters 5 and 7 of the Administrative Procedures Act.

Section 4—Effect

Subsection 4(a) states that nothing in this Act impacts any other Federal Indian land determination.

Subsection 4(b) states that nothing in this Act impacts (1) the application or effect of any Federal law other than the IRA; or (2) any limitation on the authority of the Secretary under any Federal law or regulation other than the IRA.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated May 31, 2016, was prepared for S. 1879:

MAY 31, 2016.

Hon. JOHN BARRASSO,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1879, the Interior Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL.

Enclosure.

S. 1879—The Interior Improvement Act

Summary: S. 1879 would modify the Secretary of the Interior's authority to take certain land into trust on behalf of Indian tribes under the Indian Reorganization Act. Under current law, as established by the Supreme Court's decision in *Carcieri v. Salazar (2009),* the Secretary's authority to take land into trust is limited to tribes that were federally recognized prior to the enactment of that act in 1934. S. 1879 would amend that act to allow the Secretary to take land into trust for all federally recognized Indian tribes. The bill also would specify a process—including new requirements and deadlines—for the Secretary to follow in considering applications from tribes or individual Indians to have certain types of land taken into trust on their behalf.

CBO estimates that implementing S. 1879 would increase administrative costs for the Department of the Interior (DOI) by $30 million over the next five years, assuming appropriation of the necessary amounts. Pay-as-you-go procedures do not apply to this legislation because enacting it would not affect direct spending or revenues.

CBO estimates that enacting S. 1879 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 1879 would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate costs of mandates in the bill on public and private entities would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($77 million and $154 million in 2016, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1879 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By Fiscal year, in millions of dollars—					
	2017	2018	2019	2020	2021	2017–2021
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	2	5	6	8	9	30
Estimated Outlays	2	5	6	8	9	30

Basis of estimate: CBO assumes S. 1879 will be enacted near the end of fiscal year 2016 and that the necessary amounts will be appropriated each year. The bill would specify a process for taking certain "off-reservation" lands that lie outside of the boundaries of existing Indian reservations into trust for Indian tribes or individual Indians. That process would establish new requirements for both applicants and DOI, expand opportunities for entities that own contiguous lands or other community stakeholders to comment on proposed transactions, and specify timeframes within which DOI must complete certain administrative actions or render decisions on applications. Under certain circumstances, if DOI failed to approve an application within the specified timeframe, it would be deemed approved.

Information from DOI and the Congressional Research Service indicates that the length of time required to process applications to take off-reservation lands into trust under current law varies, but can often take several years. S. 1879 would specify rigorous deadlines that would require the department to complete its review of such applications—including additional materials required under the bill—on an expedited basis. CBO expects those deadlines would require DOI to complete necessary reviews much sooner than under current law. In addition, the bill would impose new administrative requirements related to posting applications and related materials online and expanding efforts to communicate with local communities that could be affected by proposed trust acquisitions. As a result, CBO expects that implementing that new process would increase DOI's administrative costs.

According to DOI, funding for administrative costs related to acquisitions of trust lands in 2016 totals about $13 million and covers the costs of roughly 70 full-time equivalent staff with expertise in realty and environmental issues. CBO expects that meeting the bill's expedited timeframes would require DOI to increase the number of staff devoted to reviewing trust applications and that the department would gradually hire those additional personnel over four years starting in 2018. In total, based on information from DOI about existing costs for personnel and related expenses, CBO estimates that implementing S. 1879 would cost $30 million over the 2012–2021 period. That amount includes $2 million in upfront administrative costs to complete necessary rulemakings; remaining amounts reflect increased costs to hire additional realty and environmental specialists to review trust applications within the accelerated timeframes specified by the bill.

CBO also expects that amending current law to allow DOI to take land into trust for all Indian tribes would simplify the analysis that DOI must currently perform, pursuant to Carcieri v. Salazar, and could reduce the workload of DOI staff. Although CBO expects that any reductions on workload would be small those savings are incorporated in the estimated net costs of the bill.

Pay-As-You-Go considerations: None.

Increase in long term direct spending and deficits: CBO estimates that enacting S. 1879 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: S. 1879 would impose both intergovernmental and private-sector mandates as de-

fined in UMRA, but CBO estimates that the aggregate compliance costs on public and private entities would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($77 million and $154 million in 2016, respectively, adjusted annually for inflation).

S. 1879 could expand an existing intergovernmental mandate that exempts land taken into trust from state and local taxes. State and local governments may have the ability to collect taxes on some lands as a result of the *Carcieri v. Salazar* decision because those lands might no longer be considered Indian lands under current law. Subsequent application of that ruling by DOI appears to limit its scope, however, making fewer lands potentially subject to such taxation. Also, very few state or local governments have asserted taxing authority on those lands. Because any attempt to assert such taxing authority would likely result in litigation, it is unlikely that such governments would collect taxes on those lands in the next five years. Therefore, CBO estimates that enacting S. 1879 would not result in a significant loss of revenue for state or local governments.

S. 1879 also would limit the ability of public and private entities or individuals to file certain claims in court related to land ownership and actions of the Secretary of Interior. Those limits would impose both intergovernmental and private-sector mandates by restricting the rights of plaintiffs. The costs of the mandates would be the forgone value of compensation and settlements associated with such claims if they would have been successful under current law. Information from the Bureau of Indian Affairs indicates that fewer than 20 such court claims are currently pending. The possibility of a monetary award or settlement under current law would depend on the type of claim. In many cases, particularly those related to administrative procedures and decisions by the federal government, no monetary award is available; in others the amount of such an award or settlement is limited to the value of the land in question. Because of the small number of existing claims and the limited scope of potential awards, CBO expects that the annual number of claims involving such land and the value of the awards and settlements in those claims (and consequently the mandates costs) would be small.

Estimate prepared by: Federal costs: Megan Carroll; Impact on state, local, and tribal governments: Rachel Austin; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1879 would have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1879.

MINORITY VIEW

I share these views only in response to the majority's characterization of actions taken by the Department of the Interior since the Supreme Court's decision in *Carcieri v. Salazar*. With respect to the bill, I will continue to hear from Tribes to ensure that in correcting the problem created by the Carcieri decision, we do not create additional obstacles or delays in restoring tribal homelands.

Congress enacted the Indian Reorganization Act (IRA or Act) to revitalize tribal governments throughout the United States. In doing so, Congress charged the Secretary of the Interior (Secretary) with implementing the Act. Although time has passed since passage of the IRA, the Secretary remains responsible for upholding the Federal Government's trust responsibility and carrying out Congress's intent under the Act.

Congress gave the Secretary the tools necessary to fulfill the mission of the IRA and a key aspect of that mission is to restore the land bases of tribal governments. Section 5, which authorizes the Secretary to take land into trust, was included to achieve this objective. In 2009, the Supreme Court issued its opinion in the case *Carcieri v. Salazar*.[24] The Supreme Court narrowly construed the language "now under federal jurisdiction" to mean that the Secretary could only take land into trust for tribes under federal jurisdiction in 1934.[25] However, no decision for what constitutes "under federal jurisdiction" was reached by the Supreme Court.

The *Carcieri* case effectively created two classes of tribes—those that can have land taken into trust and those that cannot. The case did not, however, affect the Secretary's duty to revitalize tribal governments or restore tribal land bases provided for under the IRA. Additionally, it did not affect the Secretary's responsibility to ensure that, regardless of when or how a Tribe received formal recognition by the Federal government, all federally recognized tribes are treated equally, as directed by Congress in the 1994 Amendments to the IRA.[26] Therefore, the Secretary remains responsible for implementing the IRA in a manner that avoids—to the extent possible—creating different classes of tribes.

Despite the Majority's characterizations, the Department of the Interior's handling of land into trust after the *Carcieri* case was an exercise of its authority under the IRA and intended to uphold the will of Congress. In issuing the Solicitor's Opinion examining the meaning of "now under federal jurisdiction", the Department sought to fill the gap created by the absence of clarity in the *Carcieri* decision and exercise its authority under the IRA to re-

[24] *Carcieri v. Salazar,* 555 U.S. 379 (2009).
[25] *Id.* at 396.
[26] Pub. L. No. 103–263, 108 Stat. 707 (1994).

store tribal land bases in a manner that minimizes inequitable treatment of tribes.

JON TESTER.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1879, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic):

25 U.S.C. 465 (INDIAN REORGANIZATION ACT (48 STAT. 985))

§ 465. Acquisition of lands, water rights or surface rights; appropriations; title to lands; tax exemption

SEC. 5.

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: Provided, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

SEC. 5A. LAND ACQUISITION APPLICATIONS.

(a) DEFINITIONS.—In section:

(1) APPLICANT.—The term 'applicant' means an Indian tribe or individual Indian (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) who submits an application under subsection (b).

(2) APPLICATION.—The term 'application' means an application submitted to the Department by an Indian tribe or individual Indian under subsection (b).

(3) CONTIGUOUS.—The term contiguous—

(A) means 2 parcels of land having a common boundary, notwithstanding the existence of non-navigable waters or a public road or right-of-way; and

(B) includes parcels that touch at a point.

(4) CONTIGUOUS JURISDICTION.—The term 'contiguous jurisdiction' means any county, county equivalent, or Indian tribe with authority and control over the land contiguous to the land under consideration in an application.

(5) COUNTY AND COUNTY EQUIVALENT.—The terms 'county' and 'county equivalent' mean the largest territorial division for local government within a State with the authority to enter into enforceable cooperative agreements with Indian tribes or individual Indians, as appropriate.

(6) DEPARTMENT.—The term 'Department' means the Department of the Interior.

(7) ECONOMIC IMPACT.—The term 'economic impact' means any anticipated costs associated with the development of or activity on the land under consideration in an application, including associated costs to a contiguous jurisdiction for utilities, public works, public safety, roads, maintenance, and other public service costs.

(8) FINAL DECISION.—The term 'final decision' means a decision that is final for the Department, as determined or defined by the Secretary.

(9) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(10) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

(b) APPLICATIONS.—

(1) IN GENERAL.—An Indian tribe or individual Indian seeking to have off-reservation fee or restricted land taken into trust for the benefit of that Indian tribe or individual Indian shall submit an application to the Secretary at such time, in such manner, and containing such information as this section and the Secretary require.

(2) REQUIREMENTS.—The Secretary may approve complete applications described in paragraph (1) on a discretionary basis, subject to the condition that the application includes—

(A) a written request for approval of a trust acquisition by the United States for the benefit of the applicant;

(B) the legal name of the applicant, including, in the case of an applicant that is an Indian tribe, the tribal name of the applicant as the name appears in the list of recognized Indian tribes published by the Secretary in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.I. 479a–1);

(C) a legal description of the land to be acquired;

(D) a description of the need for the proposed acquisition of the property;

(E) a description of the purpose for which the property is to be used;

(F) a legal instrument to verify current ownership, such as a deed;

(G) statutory authority for the proposed acquisition of the property;

(H) a business plan for management of the land to be acquired, if the application is for buss purposes;

(I) the location of the land to be acquired relative to State and reservation boundaries; and

(J) a copy of any cooperative agreement between the applicant and a contiguous jurisdiction.

(3) FINAL DECISION.—After considering an application described in this subsection and in accordance with subsection (c) and any other applicable Federal law or regulation, a final decision to approve or deny the completed application shall be issued.

(c) STATUTORY NOTICE AND COMMENT REQUIREMENTS.—

(1) NOTICE AND COMMENT REQUIREMENTS FOR INITIAL APPLICATIONS.—

(A) NOTICE.—

(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary shall make that application, whether complete or incomplete, available to the public on the website of the Department, subject to applicable Federal privacy laws.

(ii) ADDITIONAL NOTICE REQUIREMENT.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary shall provide by certified mail notice of the application to contiguous jurisdictions.

(B) COMMENT.—Each contiguous jurisdiction notified under subparagraph (A)(ii) shall have not fewer than 30 days, beginning on the date that the contiguous jurisdiction receives the notice, to comment on that initial application.

(2) NOTICE REQUIREMENT FOR ANY APPLICATION UPDATE, MODIFICATION, OR WITHDRAWAL.—

(A) IN GENERAL.—If at any time an application is updated, modified, or withdrawn, not later than 5 days after the date on which the Secretary receives notice of that update, modification, or withdrawal, the Secretary shall make that information available to the public on the website of the Department, subject to any applicable Federal privacy laws.

(B) INCLUSION.—If an application has been updated or modified in any way, the notice described in subparagraph (A) shall include a description of the changes made and the updated or modified application, whether complete or incomplete, available on the website of the Department, subject to any applicable Federal privacy laws.

(3) NOTICE AND COMMENT REQUIREMENTS FOR COMPLETED APPLICATIONS.—

(A) NOTICE.—

(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall make that application avail-

able to the public on the website of the Department, subject to any applicable Federal privacy laws.

(ii) ADDITIONAL NOTICE REQUIREMENTS.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall provide by certified mail notice of the application to contiguous jurisdictions.

(iii) PUBLICATION IN FEDERAL REGISTER.—Not later than 5 days after the date on which the Secretary receives a completed application, the Secretary shall publish in the Federal Register notice of the completed application.

(B) COMMENT.—Contiguous jurisdictions shall have not fewer than 30 days, beginning on the date on which the contiguous jurisdiction receives notice under subparagraph (A)(ii), to comment on that completed application.

(4) NOTICE OF DECISION.—

(A) IN GENERAL.—Not later than 5 days after a final decision to approve or deny an application is issued, the Secretary shall issue a notice of decision and make the notice of decision available to the public on the website of the Department.

(B) PUBLICATION IN FEDERAL REGISTER.—Not later than 5 days after a final decision to approve or deny an application is issued, the Secretary shall publish in the Federal Register the notice of decision described in subparagraph (A).

(d) ENCOURAGING LOCAL COOPERATION.—

(1) IN GENERAL.—The Secretary shall encourage, but may not require, applicants to enter into cooperative agreements with contiguous jurisdictions.

(2) COOPERATIVE AGREEMENTS.—

(A) IN GENERAL.—The Secretary shall give weight and preference to an application with a cooperative agreement described in paragraph (1).

(B) TERMS OF AGREEMENT.—A cooperative agreement described in paragraph (1) may include terms relating to mitigation, changes in land use, dispute resolution, fees, and other terms determined by the parties to be appropriate.

(C) SUBMISSION OF COOPERATIVE AGREEMENT.—

(i) IN GENERAL.—If an applicant submits to the Secretary a cooperative agreement or multiple cooperative agreements executed between the applicant and contiguous jurisdictions, the Secretary shall issue a final decision to approve or deny a complete application not later than—

(I) 60 days after the date of completion of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) described in clause (ii); or

(II) if that review process is not applicable, 30 days after the date on which a complete application is received by the Secretary.

(ii) TIMELINE.—Completion of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) described in clause (i) may refer to—

(I) the issuance of a categorical exclusion determination in accordance with section 6.204 of title 40, Code of Federal Regulations (or successor regulations);

(II) an environmental assessment finding of no significant impact in accordance with section 6.206 of title 40, Code of Federal Regulations (or successor regulations); or

(III) the issuance of a record of decision in accordance with section 6.208 of title 40, Code of Federal Regulations (or successor regulations).

(iii) EFFECT OF FAILURE TO ISSUE TIMELY FINAL DECISION.—If the Secretary fails to issue a final decision by the date described in clause (i) the application shall be—

(I) deemed approved on an automatic basis; and

(II) treated as a final decision.

(D) COOPERATIVE AGREEMENT NOT SUBMITTED.—

(i) IN GENERAL.—If an applicant does not submit to the Secretary a cooperative agreement executed between the applicant and contiguous jurisdictions, the Secretary shall issue a written determination of mitigation by the date that is not later than 30 days after a complete application is received by the Secretary, which shall—

(I) describe whether any economic impacts on contiguous jurisdictions have been mitigated to the extent practicable; and

(II) explain the basis of that determination.

(ii) DETERMINATION OF MITIGATION.—The Secretary shall consider a determination of mitigation in making a final decision to approve or deny an application, but that determination shall not halt or unduly delay the regular processing of an application.

(iii) CONSIDERATIONS.—In making a determination of mitigation described in clause (i), the Secretary shall take into consideration—

(I) the anticipated economic impact of approving an application on contiguous jurisdictions; and

(II) whether the absence of a cooperative agreement is attributable to the failure of any contiguous jurisdiction to work in good faith to reach an agreement with the applicant.

(iv) NOTICE.—The Secretary shall provide by certified mail a copy of the determination of mitigation described in clause (i) to the applicant and contiguous jurisdictions not less than 5 days after a determination of mitigation is issued.

(v) GOOD FAITH PROTECTION.—Failure to submit a cooperative agreement shall not prejudice an applica-

tion if the Secretary determines that the failure to submit is attributable to the failure of any contiguous jurisdiction to work in good faith to reach an agreement.

(3) RECIPROCAL NOTICE AND COMMENT.—The Secretary shall also encourage contiguous jurisdictions to engage in local cooperation through reciprocal notice and comment procedures, particularly with regard to changes in land.

(e) IMPLEMENTATION.—

(1) CONSULTATION.—Not later than 60 days after the date of enactment of this section, the Secretary shall initiate consultation with Indian tribes regarding the implementation of this section.

(2) SUMMARY.—Not later than 180 days after the date on which the consultation described in paragraph (1) is initiated, the Secretary shall issue a summary of the consultation and the summary shall be published in the Federal Register.

(3) RULEMAKING.—Not later than 60 days after the date on which the summary described in paragraph (2) is published in the Federal Register, the Secretary shall, through a rulemaking under section 553 of title 5, United States Code, modify existing regulations, guidance, rules, and policy statements, as necessary to carry out this section.

(f) JUDICIAL REVIEW.—

(1) IN GENERAL.—An applicant or contiguous jurisdiction may seek review of a final decision.

(2) ADMINISTRATIVE REVIEW.—An applicant or contiguous jurisdiction may seek review in a United States district court only after exhausting all available administrative remedies.

25 U.S.C. 479 (INDIAN REORGANIZATION ACT OF 1934 (48 Stat. 988))

§ 479. Definitions

SEC. 19.

[The term**]***Effective beginning on June 18, 1934, the term* "Indian" as used in this Act shall include all persons of Indian descent who are members of **[**any recognized Indian tribe now under Federal jurisdiction**]***any federally recognized Indian tribe*, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

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