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13 **UNITED STATES DEPARTMENT OF THE INTERIOR**
14 **OFFICE OF HEARINGS AND APPEALS**
15 **INTERIOR BOARD OF INDIAN APPEALS**

16 **PRESERVATION OF LOS OLIVOS,**
17 **and PRESERVATION OF SANTA YNEZ,**

18 Appellants,

19 v.

20 **PACIFIC REGIONAL DIRECTOR,**
21 **BUREAU OF INDIAN AFFAIRS,**

22 Appellee.

APPELLANTS' OPENING BRIEF

Docket No. IBIA 05-050-1

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1 **I. INTRODUCTION**

2 Pursuant to the November 13, 2009 Order of the Honorable Interior
3 Board of Indian Appeals (hereinafter “Board” or “IBIA”) setting the remand
4 procedures applicable to this appeal, Preservation of Los Olivos and Preservation of
5 Santa Ynez (collectively, “POLO”) submit the following Opening Brief which
6 consolidates Appellants’ arguments on its standing to pursue their administrative
7 appeal and the underlying merits of the appeal.

8 **II. APPELLANTS HAVE STANDING TO ADMINISTRATIVELY APPEAL**
9 **THE FEE TO TRUST RULING**

10 **A. POLO Meets the Test For Standing Set Forth in *Koniag* and**
11 **Adopted by the District Court in this Case**

12 The District Court’s July 9, 2008 Order remanding this case to the Board
13 for further proceedings held that Title 43, section 4.331 and Title 25, section 2.2 of the
14 Code of Federal Regulations unquestionably binds the IBIA’s decision with respect to
15 POLO’s standing to appeal the BIA’s fee-to-trust ruling in this case. July 9, 2008
16 Order Granting in Part and Denying in Part Plaintiff’s Motion for Summary Judgment
17 (“District Court Order”), 18:12-13.

18 Title 43 C.F.R. section 4.331 provides in relevant part: “*Any interested*
19 *party* affected by a final administrative action or decision of an official of the Bureau
20 of Indian Affairs issued under regulations in Title 25 of the Code of Federal
21 Regulations may appeal to the Board of Indian Appeals.” (Emphasis added.) An
22 “interested party” is defined as “any person whose interests *could be* adversely
23 affected by a decision in an appeal.” 25 C.F.R. § 2.2. (Emphasis added.)
24 Furthermore, a “person” under this regulatory scheme includes “any non-Indian
25 organization.” *Id.* The District Court correctly observed that the foregoing standard is
26 “relatively broad” and “markedly looser” than the Article III standard previously
27 applied by the Board in this case. District Court Order, 25:1-4; 26:22-23.

28 In remanding the case, the Court directed the Board to conduct a

1 functional analysis in the nature of the analysis outlined by Judge Bazelon in his
2 concurring opinion in *Koniag, Inc., Village Uyak v. Andrus*, (D.C. Cir. 1978) 580 F.2d
3 601, 614-15. Preliminarily, Judge Bazelon observed in *Koniag* that the starting point
4 for determining administrative standing should be the language of the applicable
5 statutes and the regulations. In the present case, the language of the current
6 regulations, specifically the IBIA's own standing regulations identified above, is
7 particularly telling in light of the substantial revisions made by the Secretary in 1989
8 that eliminated the restrictive language requiring that the "action or decision is
9 protested as a violation of a right or privilege of the appellant." By eliminating the
10 foregoing language the Secretary clearly intended, as the District Court in the present
11 case observed, to loosen the standards for standing to appeal and broaden the
12 categories of persons who possess such standing. District Court Order, 20:9-22:25.¹
13 See also, the District Court's observation that the decision in *Van Mechelen v. Acting*
14 *Portland Area Director*, (2002) 34 IBIA 202, 203 n.2, reinforces the proposition that
15 the standard under the standing regulations in this case is meant to be relatively broad.
16 District Court Order, 24:13-25:4.

17 Judge Bazelon outlined five factors that would go into the functional
18 analysis:

- 19 (1) The nature of the interest asserted by the potential participant.
20 (2) The relevance of this interest to the goals and purposes of the
21

22
23 ¹ The Board's November 13, 2009 Order setting remand procedures requests the parties to
24 brief two specific questions: (1) Is the test for Article III standing either required or
25 permissible under the applicable regulations; and, (2) if not, then what is the proper
26 standard? In raising the foregoing issues, the Board refers to excerpts of editions of the
27 Department of Interior, Departmental Manual issued on December 13, 1988 through
28 February 26, 2009 and the Board attaches copies to its Order. These excerpts contain the
foregoing "violation of a right or privilege" language that the Secretary removed from the
regulations in 1989. It appears that the manuals inadvertently carried forward the prior
language without recognizing the 1989 revision. In any event, the regulations, which were
adopted after necessary hearings, publication in the Federal Register, and public comment,
control over any inconsistent language in the Department's internal manuals.

1 agency.

2 (3) The qualifications of the potential participants to represent this
3 interest.

4 (4) Whether other persons could be expected to represent adequately
5 this interest.

6 (5) Whether special considerations indicate that an award of standing not
7 be in the public interest.

8 Applying the foregoing factors to the case before the Court in *Koniag*,
9 Judge Bazelon, and the other two Circuit Judges with whom he concurred in a
10 unanimous decision, determined that the State of Alaska and two federal agencies
11 (Fish and Wildlife and Forrester Service) had administrative standing to challenge the
12 Secretary of Interior's (BIA's) decision that certain Alaskan native villages were
13 eligible to take public lands pursuant to the Alaska Native Claims Settlement Act, 43
14 U.S.C. § 1601 *et seq.* The Court noted that the BIA's decision may have a significant
15 impact on the environment including that the villages may take lands that are within a
16 wildlife refuge or a national forest, or both. Therefore, the two federal agencies
17 plainly had standing. The Court determined that Alaska had standing under the
18 regulations because "at some later time for some undisclosed reason it might, under
19 the Alaska Statehood Act, seek to have land patented to it that would be claimed by
20 these villages."² Similarly, applying the foregoing functional or factors analysis from
21 Judge Bazelon's concurring opinion in *Koniag* to the present case, POLO clearly has
22 standing under the regulations applicable to our case.

23 (1) *The nature of the interest asserted by POLO.* The nature of POLO's
24

25 ² The regulations at issue in *Koniag* are very similar to those that govern this case. Under the
26 regulations in that case any "interested party" may protest an initial decision of the BIA and
27 "any party aggrieved" by the BIA final decision may appeal to the IBIA. 580 F.2d at 606.
28 In the present case, the applicable regulations grants standing to any person whose interests
could be adversely affected by the BIA's decision, a standard that is, we submit, even
broader and looser than the "aggrieved party" standard at issue in *Koniag*.

1 interests in this matter is legitimate both from an environmental and economic
2 perspective. POLO is a non-profit 501(c)(4) corporation formed to protect the rural
3 character, natural resources, and water and air quality of the Santa Ynez Valley. To
4 achieve these goals, POLO participates in most, if not all, local governance issues in
5 the Valley. Similarly, POSY is also a non-profit 501(c)(4) corporation formed to
6 protect the rural character, water quality and air quality of the Santa Ynez Valley.
7 Both organizations generally support and are chartered to preserve the environment,
8 aesthetics and life style of their community. In addition, as noted in the District
9 Court's Order, POSY President Jon Bowen, as a local business owner, demonstrated
10 that he will be competitively disadvantaged because he does not enjoy the same
11 immunity from state and local taxation, land use laws and other regulatory burdens as
12 the commercial enterprise that the Tribe plans to operate on the 6.9 acres to be held in
13 trust. District Court Order 13:18-14:12.

14 (2) *The relevance of POLO's interest to the goals and purposes of BIA*
15 *under the regulations.* Moreover, POLO and POSY's environmental and economic
16 interests are relevant to the goals and purposes of the Secretary's (BIA's) obligations
17 under the fee-to-trust regulations which contemplate that before the BIA accepts land
18 into trust, consideration must be given to the impact that action will have on the local
19 community. 25 C.F.R. §§ 151.1 *et seq.* In particular, upon receiving a request to take
20 land into trust, the BIA is to notify state and local officials having jurisdiction over the
21 land who are afforded the opportunity to comment. 25 C.F.R. § 151.10, introductory
22 paragraph. Among other findings, the BIA must determine the purposes for which the
23 land will be used, jurisdictional problems and *conflicts of land use that may arise.* 25
24 C.F.R. § 151.10(c),(f). The BIA is charged with determining the need of the tribe to
25 place the land in trust and justify the anticipated benefits from acquisition against the
26 detriments of removing the land from state and local control. 25 C.F.R. § 151.10(b).

27 This regulatory purpose is made particularly, but not exclusively, applicable to "off-
28 reservation land" where the BIA must give greater scrutiny to the tribe's justification

1 of anticipated benefits from acquisition the greater the distance between the tribe's
2 reservation and the land to be acquired. 25 C.F.R. § 151.11(b). Also on off-
3 reservation land to be used for business purposes, the BIA is charged with reviewing
4 and approving a business plan. In all cases, the BIA must comply with the National
5 Environmental Policy Act, 25 C.F.R. § 151.10(h). Finally, in taking action on a fee to
6 trust application, the BIA is given wide latitude to request any and all additional
7 information relevant to the decision and, if the BIA finds that such information is
8 necessary to an informed decision it must request it, from whatever source. 25 C.F.R.
9 § 151.112(a). Significantly, in the present case the BIA did solicit and receive
10 substantial information from the local residents, including but not limited to
11 community groups such as POLO and POSY, concerning the impact that accepting
12 the land into trust status would have on the surrounding community.

13 A review of the Federal Register notices related to proposed rulemaking
14 for the foregoing fee-to-trust regulations, beginning in 1978 when the rules were first
15 promulgated, makes plain that the regulations are intended to take into account and
16 solicit views of the general public, including non-Indians and non-Indian groups,
17 regarding the impact on the community of a fee-to-trust transfer of property.

18 Many objections were received about the acquisition of fee
19 lands in trust status. These comments primarily concerned
20 the erosion of tax base and serious jurisdictional problems
21 that can arise when land outside of reservation is acquired in
22 trust status . . . *In order to insure that conflicting interests*
23 *are evaluated before land is acquired in trust status, a new*
24 *[section 151.10] has been added setting forth the factors*
25 *that will be considered by the secretary when evaluating a*
26 *land acquisition request.* 45 Fed. Reg. 62034, 62035 (Sept.

27 18, 1980) (Emphasis added.)

28 Moreover, with respect to the fee-to-trust regulations in general, “[t]he policy of the

1 Department of the Interior is, whenever practical, *to afford the public an opportunity*
2 *to participate in the rulemaking process.* 49 FR 32859 (August 17, 1984); see also 52
3 FR 23560 (Emphasis added).

4 POLO's interests in the environmental and economic well-being of the
5 Santa Ynez Valley are among the interests to be considered under 25 C.F.R. §
6 151.10(f), 151.10(h) and NEPA before land is placed into trust. See *TOMAC v.*
7 *Norton*, (D.D.C. 2002) 193 F.Supp.2d 182 and 240 F.Supp.2d 24, (the court found
8 that the BIA violated NEPA where it failed to take a "hard look" at the potential
9 impacts of a proposed casino on the growth and development of the local community.)

10 (3) *POLO's qualifications to represent the foregoing interest.*
11 Throughout this protracted appeals process nobody has ever suggested that POLO or
12 POSY lacks the qualifications to represent the foregoing interests—not the Tribe, nor
13 the BIA, nor the IBIA, nor the state or local governments, nor the District Court.
14 Such a suggestion would be preposterous. As stated above, POLO and POSY were
15 formed as non-profits expressly for the purpose of preserving the local environmental
16 and aesthetic interests of this rural community. In fact, in its Notice of Decision
17 which this appeal targets, the BIA specifically acknowledged that another similarly
18 chartered local community group (Santa Ynez Valley Concerned Citizens) and
19 Perkins Coie, the prior law firm representing POLO and POSY in this appeal, are
20 "known interested parties" who may feel "adversely affected" by the BIA's fee to
21 trust decision and, therefore may wish to appeal that decision. Thus, the BIA itself
22 concedes POLO's qualifications as a responsible representative of the community and
23 an interested party that could be adversely affected by the BIA's Notice of Decision.

24 (4) *Whether other persons could be expected to represent adequately this*
25 *interest.* Perhaps other community groups, and perhaps even other individuals with
26 the economic wherewithal to sustain the fight, could, we suppose, also adequately
27 represent the interests of the community in this case. But the proof is in the pudding.
28 Only four such groups stepped forward to appeal the BIA decision and now only

1 POLO and POSY remain. We anticipate that the BIA, or even the Santa Ynez Band,
2 may assert that the State of California or a local government such as the County of
3 Santa Barbara may protect local interests as well as POLO. If made, such an assertion
4 would be naïve and misplaced. The seats of both governments are remote
5 geographically. Nor does either government have a focused interest on the Santa
6 Ynez Valley and the particular interests of this unique community. By definition, the
7 Governor and Legislature of the State of California represents all of California and the
8 Santa Barbara Board of Supervisors represents all of Santa Barbara County.
9 Moreover, the current realities of budgetary and fiscal demands on an already depleted
10 tax base at both the state and local levels in California make it essentially certain that
11 environmental considerations will yield to maintaining revenues, such as those
12 generated by the existing casino. Therefore, as a real and practical matter, POLO and
13 POSY stand alone as representatives of the community's interest in this matter.

14 (5) *Whether other special considerations indicate that awarding standing*
15 *to POLO would not be in the public interest.* There are no special considerations
16 indicating that awarding standing to POLO and POSY would be contrary to the public
17 interest. Again, we anticipate. The BIA may assert that community groups such as
18 POLO should not have standing to appeal because granting such appeal rights may
19 encumber and prolong the appellate process.³ Such an argument would be specious.
20 POLO has a legitimate interest that deserves a voice in these proceedings. Even if a
21 substantial number of persons or organizations also appealed, that would certainly not
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24 ³ Our sense that the BIA may raise this argument stems from the Federal Defendants'
25 reliance in the District Court proceedings on cases in which, they contended, the IBIA "has a
26 well-established practice of adhering to those jurisdictional constraints as a matter of
27 prudence to further judicial economy." The District Court viewed this notion with
28 skepticism. See District Court Order, 22:8-25. And for good reason because *Koniag* cites
Office of Communication of United Church of Christ v. FCC, (D.C. Cir. 1966) 359 F.2d
994, 1005 for the well reasoned principle that administrative economy should be achieved
through thoughtful and streamlined processes that promote orderly and transparent
participation by interested participants, not by excluding those with legitimate interests. See
Koniag, 580 F.2d at 1615-16.

1 be grounds to deny standing. A similar argument was made, and rejected, in *Office of*
2 *Communication of United Church of Christ v. FCC*, (D.C. Cir. 1966) 359 F.2d. 994,
3 1005 which held that representatives of the listening public had standing to intervene
4 in a Federal Communications Commission license renewal proceeding. In that case
5 the FCC argued that listeners should be excluded because awarding them standing
6 would invite hundreds, if not thousands, of intervenors. The Court rejected the FCC's
7 assertion stating that the appropriate way to limit the possibility of abuse was by
8 controlling the proceeding so that all participants are required to adhere to the issues
9 and to refrain from introducing cumulative or irrelevant evidence, not by excluding
10 parties who have the right to participate. Similar streamlining measures may be
11 adopted by the IBIA in other cases; but, of course, no such measure is needed here
12 because POLO and POSY are the only appellants representing the community in this
13 case and they have consolidated their interests so as not to burden the Board with
14 excessive or duplicative briefs.

15 The foregoing functional analysis is the proper test for determining
16 POLO's standing to administratively appeal the BIA's fee to trust ruling and provides
17 the appropriate answer to the Board's second question set forth at the conclusion of its
18 November 13, 2009 Order—What is the proper test? Further, for the reasons
19 discussed above, POLO has demonstrated that it meets the test and has standing to
20 administratively appeal the BIA ruling.

21 **B. The Board Is Neither Required Nor Permitted to Apply Article III or**
22 **Prudential Standing Standards to this Administrative Appeal**

23 Answering the first of the Board's two questions set forth in its
24 November 13, 2009 Order, POLO respectfully submits that the Board is neither
25 required nor permitted to apply Article III or prudential standards to administrative
26 appeals of fee to trust decisions by the BIA.

27 The well reasoned District Court Order in this case demonstrates why the
28 Board is not required to apply Article III and prudential standing tests to this

1 administrative appeal. The clear language of Title 43, section 4.3331 and Title 25,
2 section 2.2 of the Code of Federal Regulations provide that “any interested person”
3 who is “adversely affected” by the BIA decision may appeal. As discussed above, the
4 language of the regulation is broad and relatively loose—much more permissive than
5 the tests applicable to judicial standing. Furthermore, the fact that such language was
6 changed in 1989 to eliminate restrictions on standing that had been more akin to the
7 tests for judicial standing, further demonstrates that the Secretary intended to broaden
8 the scope of those persons and organizations who may administratively appeal BIA
9 decisions, including fee to trust decisions.⁴ As the District Court Order also points
10 out, prior IBIA decisional law that applied judicial standing is based on the prior
11 version of the standing regulations and has no precedential value to standing under the
12 current, revised regulations. District Court Decision, 20:2-22:25. Accordingly, the
13 Board is certainly not required to adopt standards of judicial standing in this case.

14 Nor should the Board be permitted to adopt such standards here. The
15 District Court remanded the case with clear direction to determine POLO’s standing
16 consistent with the Court’s ruling which adopted the functional analysis set forth in
17 Judge Bazelon’s concurring opinion in *Koniag*. When applied to the regulations and
18 facts of this case, the foregoing functional analysis leads to the inescapable conclusion
19 that POLO and POSY have standing to administratively appeal the BIA ruling here.
20 If, by applying principles of judicial standing, the Board should reach a contrary
21 result, then that result would be inconsistent with the District Court Order’s and,
22 inconsistent with the Court’s directions on remand.

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27 ⁴ As discussed in footnote 1, *supra*, the fact that the outdated language of the pre-1989
28 regulations was carried forward into post-1989 versions of the Departmental Manual is
nothing more than an inadvertent artifact which cannot control the clear language of the
regulations themselves.

1 C. Even if the Board Were to Apply Standards of Judicial Standing,
2 POLO Still Must Prevail

3 In rejecting the Federal Defendant's assertion that substantial deference
4 must be given to the IBIA's decisions applying principles of judicial standing to IBIA
5 appeals, the District Court discussed the BIA cases of *Redfield v. Acting Deputy*
6 *Assistant Secretary*, (1982) 9 IBIA 174, 176 and *Hawley Lake Homeowners'*
7 *Association v. Deputy Assistant Secretary*, (1985) 13 IBIA 276, 284, which relies on
8 *Tennessee Electric Power Co. v. TVA* (1939) 306 U.S. 118. In an illuminating and
9 compelling footnote, the District Court then observed that in the decades since the
10 Supreme Court decided *Tennessee Elec. Power*, judicial standing barriers have been
11 substantially lowered, "it is difficult to regard *Hawley Lake's* citation to *Tennessee*
12 *Electric Power* as accurately applying the judicial standing principles of the day.
13 District Court Order, 21:23-28, fn. 9.

14 The District Court also rejected the Federal Defendants' citation to the
15 more recent IBIA case of *Evitt v. Acting Pacific Regional Director*, (2002) 38 IBIA
16 77. Noting that *Evitt* relies on *Redfield* and *Hawley Lake*, the District Court states that
17 *Evitt* is not persuasive that the IBIA was correct in using judicial standing principles
18 to assess standing to challenge trust acquisition decisions *or even that the IBIA*
19 *correctly applied judicial standing principles*. District Court Order 26:4-7. The
20 highlighted reference clearly refers to footnote 9 of the District Court Order, which
21 states that the IBIA's judicial standing analysis depends on an outmoded and
22 discredited 1939 Supreme Court decision.

23 The modern view of constitutional standing focuses on concrete actual
24 injury in fact to the plaintiff—which the District Court has already found to exist in
25 this case. *See* District Court Order 12:12-14:12. And, the modern view of prudential
26 standing applies a widening and more relaxed definition of "zone of interest," which is
27 intended not to impose an onerous burden on the plaintiff. *Association of Data*
28 *Processing Service Organizations, Inc. v. Camp* (1970) 397 U.S. 150, 153; *Clarke v.*

1 *Sec. Indus. Ass'n.*, (1987) 479 U.S. 388, 399. Applying these principles, POLO has
2 standing to appeal, even when measured by the higher standard applicable to judicial
3 standing.

4 **III. THE SUPREME COURT DECISION IN *CARCIERI* REQUIRES THAT**
5 **THE BIA RULING BE VACATED**

6 Title 25, section 151.10(a) of the Code of Federal Regulations provides
7 that the BIA must consider the following criteria in evaluating requests for the
8 acquisition of land in trust status: “**the existence of statutory authority for the**
9 **acquisition and limitations contained in such authority.**”

10 In its January 14, 2005 Notice of Decision, the BIA discussed the
11 foregoing requirement by reciting the purported authority granted the BIA to receive
12 land into trust under the Indian Reorganization Act of 1934, specifically 25 USC
13 Section 465. *See* Notice of Decision, page 5, para. 1. On February 24, 2009 the
14 United States Supreme Court issued its decision in *Carcieri v. Salazar*, (2009) 129
15 S.Ct. 1058, which dramatically changed the legal landscape with respect to the power
16 and authority of the Secretary of Interior and the BIA to take land into federal trust for
17 Indian tribes. The *Carcieri* decision came down after the District Court’s Order in
18 this case and before the matter had been remanded to the Board for further
19 proceedings. More importantly, *Carcieri* was decided nearly four years after the
20 BIA’s foregoing Notice of Decision that the government would take the subject 6.9
21 acres into federal trust status.

22 *Carcieri* needs no elaborate discussion. The case holds that the BIA may
23 take land into trust status only for those Indian Tribes that were under federal
24 jurisdiction at the time of the statute’s enactment in June 1934. *Id.* Suffice it to say,
25 the BIA’s Notice of Decision in this case makes no reference to the status of the Santa
26 Ynez Band in 1934, nor does the record contain any evidence that the Regional
27 Director undertook to confirm such status when it considered the subject fee to trust
28 application. Therefore, the BIA’s reference above to Section 465 without noting the

1 limitations placed by *Carcieri* and the absence from the record or in fact of any BIA
2 investigation into the Santa Ynez Band's status as of 1934 is grounds to vacate the
3 Regional Director's ruling.⁵

4 Although it is not necessary to demonstrate at this stage that the Santa
5 Ynez Band, indeed, was not a "tribe under federal jurisdiction" at the time of
6 enactment of the IRA in 1934, the evidence is overwhelming that the Santa Ynez
7 Band lacked federal recognition at that critical date.

8 Attached hereto as Exhibit 1 is a document produced from the BIA's
9 archives in which the Commissioner of the Office of Indian Affairs lists "Indian
10 Tribes under the IRA" as of March 18, 1937. Notably, while "Santa Ynez," is
11 identified as having a reservation or Rancheria it is not listed as a tribe.

12 Similarly, a little over two years later the Department of Interior, Office
13 of Indian Affairs, published another list of Indian tribes, grouped by states, which had
14 been chartered under the IRA. The Santa Ynez Band is not listed. See attached
15 Exhibit 2. Thus, the Santa Ynez Band could hardly be a "tribe under federal
16 jurisdiction" at the time the IRA was enacted in 1934 when in 1937 and again in 1939,
17 the Department of Indian Affairs did not even recognize the entity as an Indian tribe at
18 all.

19 Exhibit 3 is an April 10, 2007 cover letter from the BIA responding to
20 POLO's Freedom of Information Act Request seeking all documents that the BIA
21 considered in placing the Santa Ynez Band on the list of federally recognized Indian
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24 ⁵ The Statement of Reasons filed concurrently with the Notice of Appeal states that the "BIA
25 Failed to Consider All Facts under 25 C.F.R. § 151.10," but does not specifically refer to
26 subpart (a). POLO contends that it adequately preserved its right to appeal the decision on
27 the grounds that the BIA lacks statutory authority to take this land into trust for the Santa
28 Ynez Band. However, if the IBIA determines otherwise, then POLO respectfully requests
the IBIA to invoke the authority under 43 C.F.R. § 4.318 to exercise the inherent authority of
the Secretary to correct a manifest injustice or error where appropriate. We cannot imagine a
more appropriate instance in which the IBIA should correct an error as here where the BIA
wholly lacks statutory authority to take the action it has taken, or at least has not undertaken
the necessary review of tribal status to grant it such authority.

1 tribes. The cover letter indicates that the Santa Ynez Band was first placed on a list of
2 federally recognized tribes in 1972, thirty eight years after the enactment of the Indian
3 Reorganization Act.

4 Exhibit 4 is an October 7, 1940 Solicitor's Opinion which discusses the
5 history of title to the land on which the Santa Ynez Band resided. The opinion was
6 issued in connection with recommending that the federal government accept the
7 donation of such land and related water rights of the "*proposed* Santa Ynez Indian
8 Reservation in Santa Barbara County." As the Solicitor's Opinion discusses, because
9 of certain deed restrictions and other irregularities, the 1940 Solicitor's opinion letter
10 refers to the land as a proposed reservation because previously it had been under state
11 jurisdiction—not federal—as required by *Carcieri*.

12 Suffice it to say that there is more evidence than has been attached to this
13 brief, all leading to the conclusion that the Santa Ynez Band was not a tribe under
14 federal jurisdiction in 1934. However, the evidence that we have submitted herewith
15 demonstrates that, at least, there exists a good faith reason to believe the Regional
16 Director did not and could not approve the fee to trust application pursuant to 15
17 C.F.R. Section 151.10(a) in light of the landmark decision in *Carcieri*.

18 Finally with respect to Section 150.10(a), the present case should be
19 remanded to the BIA for further findings in light of another recent United States
20 Supreme Court case, *Hawaii v. Office of Hawaiian Affairs*, (2009) 129 S.Ct. 1436
21 which puts into question the federal government's authority to grant trust status to
22 land once ceded to a state. Under *Hawaii*, even if the land is taken into trust, state
23 jurisdiction cannot be removed to allow the Santa Ynez Band to exercise sovereignty
24 over the 6.9 acres.

25 **IV. THE BIA FAILED ADEQUATELY TO CONSIDER OTHER**
26 **REQUIREMENTS OF ITS REGULATIONS**

27 **A. The BIA Failed to Consider Potential Gaming Uses for the Property**

28 The Band's initial application cited 25 U.S.C. § 2719 as authority for this

1 trust acquisition. This provision applies to the use of off-reservation land taken into
2 trust after 1988 for gaming purposes. Later, the Band amended its application and
3 eliminated any reference to gaming or Section 2719. However, the fact remains that
4 the proposed project will likely become an ancillary facility to an existing Indian
5 casino operated by the Santa Ynez Band. The 6.9 acres in question is across a state
6 highway from a Las Vegas style hotel and casino operated by the Band. The proposed
7 facility—an Indian cultural center, museum Indian themed park and commercial
8 center will appear to the public as part of the casino complex. Therefore, the proposed
9 facility will be frequented by casino patrons and the facility's parking lot will very
10 likely be used by such patrons as overflow parking for the casino. This conclusion is
11 fortified by the Band's obtaining a traffic light at the intersection of Highway 246 and
12 Casino Drive with a cross walk connecting the subject 6.9 acres with the casino. *See*
13 *Environmental Assessment (EA)*, page 3-15, Section 3.7. Nonetheless, the BIA did
14 not consider the potential use in connection with the existing casino or the
15 applicability of, and compliance with, 25 U.S.C. § 2719.

16 **B. The BIA Erroneously Applied Section 151.10 Rather than Section**
17 **150.11 of the Fee to Trust Regulations**

18 It is undisputed that the 6.9 acre parcel which is the subject of the fee to
19 trust ruling in this case is separated from the current reservation by a state highway.
20 Moreover, the highway constitutes an economic and cultural divide between the land
21 currently used by the Band to operate a large Las Vegas style hotel and casino and the
22 area in which the 6.9 acres is located—occupying the historical, rural small western
23 town of Santa Ynez.

24 This small town is as far from a large scale gaming operation as one
25 could imagine. The Band's fee to trust application specified that the 6.9 acres was
26 "contiguous" to the Band's existing reservation. Without significant investigation, the
27 BIA accepted the Band's representation and processed the application under 25 C.F.R.
28 Section 151.10 rather than Section 151.11. The selection of regulations is significant

1 because the Band produced no business plan, even though the land will be operated as
2 a business. Such a plan is required by 25 C.F.R. § 151.119 (c) but is not mentioned in
3 Section 151.10. Furthermore, if the land were considered “off-reservation” then
4 Section 151.11(b) requires the BIA to give greater scrutiny to the anticipated benefits
5 from acquisition—measured against the detriments to the community by removing the
6 land from local taxation and regulation.

7 POLO is mindful of the regulations and IBIA rulings which define the
8 term “contiguous” to include land that would be otherwise adjacent to an existing
9 reservation but for an intervening highway. *See* 25 C.F.R § 292.2. Nonetheless,
10 POLO respectfully submits that in judging whether a proposed fee to trust acquisition
11 is “on-reservation” or “off-reservation” the BIA should consider, in cases such as this
12 where there is an intervening highway, the qualitative nature of the occupation and use
13 of the targeted land compared to the occupation and use of the existing reservation.
14 Where, as here, the highway represents an economic and cultural divide between the
15 existing land (Las Vegas style casino) and the targeted land (small rural town), the fee
16 to trust acquisition should be evaluated under 25 C.F.R. Section 151.11. Accordingly,
17 the ruling should be reversed and the project remanded to the BIA to consider the
18 additional requirements applicable to off-reservation fee to trust acquisitions.

19 **C. There is No Evidence of Need for Fee to Trust Status**

20 Title 25, section 150.10(b) requires the BIA to evaluate the tribe’s need
21 for additional land. Since the Santa Ynez Band already owns the land, Section
22 151.10(b) applies to this case to require the Regional director to determine the need, if
23 any, to take the land into trust status. The Regional Director determined that the Santa
24 Ynez Band “needs” the federal government to take the 6.9 acres into trust for the
25 Band’s use and benefit because otherwise, the property would be subject to state and
26 local taxation and land use, environmental and regulatory processes applicable to all
27 other similarly situated but non-Indian commercial enterprises in the community. The
28 Regional Director’s circuitous finding is arbitrary and capricious for several reasons.

1 First, there is no evidence that the project contemplated by the Band for
2 the property cannot be, and should not be, developed pursuant to the laws and
3 regulations of the State of California and local governments. In short, the cultural
4 center, museum, park and retail commercial space can just as well be developed under
5 state and local law without placing the land in trust.

6 Second, contrary to the Regional Director's conclusions, the project
7 contemplated for the 6.9 acres is neither essential nor even relevant to "ensure the
8 effective exercise of tribal sovereignty." The proposed project has no relation
9 whatsoever to the sovereign institutions or offices of the Santa Ynez Band. The
10 project is not intended to house any seat of tribal government or even administrative
11 offices. It is, purely and simply, a proposed recreational and commercial facility
12 intended for general public use.

13 Third, the project does not contemplate any use that is unique or personal
14 to the Santa Ynez Band or its members such as housing, a school or medical center
15 dedicated to serving the Band. To the contrary, by definition the Band intends to
16 develop facilities that are open to the general public for the use by the general public.
17 Such a public recreational and commercial center need not be excluded from
18 governmental regulation that otherwise applies to the general public who will be
19 invited to use the facilities. Indeed, in the past several years the Band has acquired
20 local hotels, offices and other facilities in the area surrounding its casino operation
21 apparently without needing to place any of these commercial operations in trust.
22 POLO submits that the reason the Band wishes to place this particular parcel in trust
23 (as well as another similarly situated 5.2 acre parcel near the casino to which the Band
24 submitted but then withdrew a fee to trust application) is that the Band intends to use
25 these parcels for casino purposes, as discussed above.

26 **D. The BIA Failed to Consider Significant Jurisdictional Problems and**
27 **Conflicts of Land Use**

28 The Regional Director's decision acknowledges that the Band will assert

1 its own civil/regulatory jurisdiction over the project. Therefore, California's common
2 law, including the law of torts, contracts and statutes and regulations of businesses
3 open to the public, will not apply to the recreational and commercial operations
4 contemplated by the Band. An unwary public will use the facilities unaware that the
5 laws and regulations normally applicable to such operations offer no protection at this
6 facility. Nonetheless, the Regional Director did not take evidence on this factor nor
7 does the January 15, 2005 Decision discuss it.

8 The foregoing Decision of the Regional Director does contain the
9 following single conclusion, without any discussion: "There are no anticipated
10 jurisdictional or land use problems." The Santa Ynez Valley is included in an
11 extensive Community Plan, part of the County's Master Plan, the purpose of which is
12 to preserve the rural character of the community, including agriculture and open
13 space. Yet, the Decision does not mention, let alone discuss, the conflict between the
14 Community Plan and the Band's further commercial development near its existing
15 casino.

16 **E. The Decision Fails to Comply with NEPA**

17 Title 25, section 151.10(h) requires the Regional Director to assess the
18 fee to trust application under NEPA. Rather than obtaining an Environmental Impact
19 Statement (EIS) the purpose of which is to assess major Federal actions significantly
20 affecting the quality of the human environment,⁶ the Regional Director chose to
21 proceed with a truncated Environmental Assessment (EA) upon which he made a
22 finding of no significant impact (FONSI). In short, the Director determined that
23 taking the project into trust will not significantly impact the human environment. This
24 application should have proceeded, if at all, on the basis of an EIS and it was error to
25 proceed pursuant to the less formal EA and FONSI process.

26 1. The Traffic and Circulation Report on which the EA is based in
27
28

⁶ *National Audubon Society v. Department of Navy*, (4th Cir. 2005) 422 F.3d. 174.

1 part was produced in March 2002, nearly three years before the Regional Director's
2 Decision. See EA, Appendix C. Some of the Santa Ynez Valley specific data on
3 which the Report is based go back as far as 1992—thirteen years before the Director's
4 Decision. The Traffic and Circulation data and Report is outdated and cannot support
5 the EA or the Regional Director's Decision.

6 2. The EA gives no consideration for the impact on traffic of the
7 increased foot traffic between the proposed parking for the project and the casino
8 across Highway 246. That increased foot traffic will impact vehicular traffic patterns
9 and circulation and implicate safety concerns for pedestrians.

10 3. The EA acknowledges that a major source of air pollutants in the
11 area is from mobile (vehicular) sources. See EA, page 3-1, Section 3.3.1. Therefore,
12 by not considering current traffic data or adequately addressing traffic and circulation
13 patterns for the project, the EA fails to adequately assess air quality impacts of the
14 project. This concern is compounded by the fact that as of the time of the EA, Santa
15 Barbara County exceeded the state standard for ozone and particulate matter—both
16 pollutants generated by automobile exhaust. EA, page 3-9, Section 3.3.4.

17 4. The EA acknowledges that there are many existing sensitive noise
18 receptors, including residences, in close proximity to the project and along roadways
19 providing access to and from the site. EA, page 3.23, Section 3.10.3. The EA further
20 acknowledges that Santa Barbara County has established noise thresholds and
21 limitations. *Id.*, Section 3.10.4. However, the EA does not address whether the noise
22 levels from the project will exceed the Santa Barbara regulations. Such an analytical
23 gap may result from the fact the project will not comply with the County's
24 regulations. Or, as discussed above, if the land is taken into trust, the County will
25 simply no longer have jurisdiction. See EA, page 4-10, Section 4.1.8.

26 5. Nor is the EA's conclusion supportable that the increased noise
27 from traffic and the operation of the facilities will not be a significant impact to the
28 surrounding residences because the facilities will operate during "normal business

1 hours.” EA, Sections 4.1.10, *passim*.

2 6. The mitigation measures recommended for traffic and circulation
3 are ineffective and likely counterproductive. The EA suggests installing an exclusive
4 left turn lane on the northbound to the property and making improvements to adjacent
5 streets. This will likely increase traffic flow which will not mitigate the problems.
6 The EA proposes no mitigation measures for noise.

7 **V. CONCLUSION**

8 For the reasons set forth above, the IBIA should find that POLO and
9 POSY have standing to present their administrative appeal and that the January 14,
10 2005 Notice of Decision of the Regional director be vacated and the matter remanded
11 for proper consideration under the applicable laws and regulations.

12 DATED: February 8, 2010 Respectfully submitted,

13
14 JOHN M. ROCHEFORT
15 LISA GILFORD
16 ROGER A. CERDA
17 ALSTON & BIRD LLP

18 
19 _____
20 John M. Rochefort

21 Attorneys for Appellants
22 **PRESERVATION OF LOS OLIVOS and**
23 **PRESERVATION OF SANTA YNEZ**
24
25
26
27
28

EXHIBIT 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

Ind-Org.

MAR 18 1937

Hon. Elmer Thomas,
Chairman, Committee on Indian Affairs,
United States Senate.

My dear Mr. Chairman:

I have your letter of March 12 requesting seven sets of documents relating to the Indian Reorganization Act. Herewith and under separate cover, I am sending you the following:

- 1) List of Indian tribes under the Indian Reorganization Act.
- 2) List of Indian tribes who have adopted constitutions and by-laws in accordance with the Indian Reorganization Act.
- 3) List of Indian tribes who have adopted charters of incorporation in accordance with the Indian Reorganization Act.
- 4) Copy of the "Law and Order Regulations " approved by the Secretary of the Interior, November 27, 1935.
- 5) Copy of the "Code of Ordinances of the Gila River Pima-Maricopa Indian Community".
- 6) Printed copies of seventeen charters of incorporation and fifty constitutions and by-laws.

We are unable to send you copies of the following:

- 1) Five charters of incorporation and nine constitutions and by-laws which have been adopted.
- 2) Copies of several constitutions and charters which have been submitted for election, or which are in the process of being submitted.
- 3) Copies of law and order codes which have been adopted by certain tribes.

It would place a very excessive demand upon our stenographic force, to supply you with copies of the above. They are, however, available for inspection at this Office.

Sincerely yours,


Commissioner.

Enclosure 1183744

INDIAN TRIBES UNDER THE I.R.A.

<u>STATE</u>	<u>AGENCY OR SCHOOL</u>	<u>RESERVATION OR RANCHERIA</u>	<u>TRIBE</u>	<u>ESTIMATED POPULATION (ESTIMATED)</u>
Arizona	Colorado River	Colorado River	Chosokhevi	703
		Fort Mojave	Mojave	432
		Cocopah		32
		Fort Apache	Apache	2,713
	Paints (Utah)	Kaibab	Paints	93
	Phoenix	Camp Verde	Havasupai-Apache	451
	Pima	Fort McDowell	Hohokam-Apache	305
		Gila River	Pima-Maricopa	4,659
		Salt River	Pima	1,049
		Ak Chin		179
	San Carlos	San Carlos	Apache	2,843
	Sells	Gila Band	Papago	323
		San Xavier	Papago	323
		Papago	Papago	5,146
	Truxton Canon	Havasupai	Havasupai	301
		Truxton Canon		451
	Hopi	Hopi	Hopi	2,533
California	Hoopa Valley	Trinidad	Trinidad	4
		Crescent City		16
		Blue Lake	Blue Lake	
	Colorado River (Ariz.)	Fort Young	Apache	619
	Mission	Capitan Grande Inc. Barona	Capitan Grande Barona	160
		Guyapaipo	Guyapaipo	

<u>STATE</u>	<u>AGENCY OR SCHOOL</u>	<u>RESERVATION OR MANCHERIA</u>	<u>TRIBE</u>	<u>TOTAL POPULATION (ESTIMATED)</u>
		Laguna		3
		La Posta	La Posta	3
		Manzanita		57
	San Pascual			9
		Santa Ynez		90
	Sacramento	Alexander Valley		26
		Alturas		26
		Big Bend		
		Big Valley		92
		Cache Creek		30
		Buena Vista		4
		Cedarville (No residents)		
		Oloverdale		40
		Colusa		72
		Colfax (No residents)		
		Cortina		40
		Coyote Valley		16
		East Lake (Robinson)		46
		Fort Bidwell		180
		Guideville		54
		Grindstone		50
		Hopland		112
		Jackson		3
		Likely		60
		Lookout		24
		Lytton (No residents)		
		Manchester		92

<u>STATE</u>	<u>AGENCY OR SCHOOL</u>	<u>RESERVATION OR RANCHERIA</u>	<u>TRIBE</u>	<u>TOTAL POPULATION (ESTIMATED)</u>
California	Sacramento (con't)	Kiddistown		28
		Hillborton (No residents)		
		Montgomery Creek		14
		Navada City		36
		Packenta		32
		Pineoleville		102
		Potter Valley		52
		Redwood Valley		36
		Runsay		22
		Santa Rosa		
		Sebastopol (No residents)		
		Sheep Ranch		1
		Stewart's Point		140
		Sulphur Banks		40
		Susanville		12
		Strathmore (No residents)		
		Taylorville		4
		Tuolumne		20
		Tule River		128
		Upper Lake		72
		Wilton		28
		Round Valley	Covale	327
Colorado	Con. Ute	Southern Ute	Ute	320
		Ute Mountain	Ute	445
Florida	Seminole	Seminole	Seminole	520

<u>STATE</u>	<u>AGENCY OR SCHOOL</u>	<u>RESERVATION OR BANCHEPIA</u>	<u>TRIBE</u>	<u>TOTAL POPULATION (ESTIMATED)</u>
Idaho	Coeur d' Alene	Kallispel	Kallispel Gros	88
	Fort Hall	Fort Hall	Shoshone-Bannock	1,839
Iowa	Sac and Fox	Sac and Fox	Sac and Fox	419
Kansas	Potawatomi	Potawatomi	Potawatomi	956
		Sac and Fox	Sac and Fox	99
		Kickapoo	Kickapoo	303
		Iowa	Iowa	498
Minnesota	Con. Chippewa	White Earth	Chippewa (Minn.)	8,039
		Leech Lake	" "	2,076
		Pon du Lac	" "	1,296
		Bois Fort	" "	627
		Grand Portage	" "	377
	Red Lake	Red Lake		1,968
	Pipestone	Pipestone	Lower Sioux) Granite Falls) Prairie Island)	552
Michigan	Great Lakes (Wis.)	L'Anse		1,116
		Bay Mills		190
		Isabella		948
		Hannahville		108
		Ontonagon		
Mississippi	Choctaw	Choctaw	Choctaw)	1,792
		Chetimaha (La.)	Chetimaha)	70
Montana	Blackfeet	Blackfeet	Blackfeet	3,262
	Flathead	Flathead	Conf. Salish & Kootenai	2,964
	Fort Belknap	Fort Belknap	Assiniboiné Gros Ventre	1,367

<u>STATE</u>	<u>AGENCY OR SCHOOL</u>	<u>RESERVATION OR RANCHERIA</u>	<u>TRIBE</u>	<u>TOTAL POPULATION (ESTIMATED)</u>
Montana (con't.)	Rocky Boy's	Rocky Boy's	Chippewa Cree	576
	Tongue River	Tongue River	Cheyenne	1,562
Nebraska	Winnebago	Winnebago	Winnebago	1,187
		Ponca	Ponca	392
		Omaha	Omaha	1,642
		Santee	Santee	1,277
Nevada	Carson	Fort McDermitt		273
		Pyramid Lake		549
		Summit Lake		64
		Heno-Sparks		190
		Desolerville	Washoe	150
		Levelocke		90
		Winnemucca		50
		Battle Mountain		30
		Elko		20
		Ely		70
		Indian Ranch		20
		Walker River		492
		Yerington	Paite	102
		Paiute (Utah)		
		Hoopa River		152
		Las Vegas Tract		40
	West. Shoshone	Back Valley	Shoshone- Paiute	516
New Mexico	Mescalero	Mescalero	Apache	722
	Jicarilla	Jicarilla	Apache	703
	United Pueblos	Nambe	Pueblo	122
		Picuris	"	117

<u>STATE</u>	<u>AGENCY OR BUREAU</u>	<u>RESERVATION OR RANCHERIA</u>	<u>TRIBES</u>	<u>TOTAL POPULATION (ESTIMATED)</u>
New Mexico	United Pueblos (cap't)	Pojoaque	Pueblo	9
		San Ildefonso	"	126
		Santa Clara	"	400
		San Juan	"	561
		Taos	"	745
		Tesuque	"	123
		Acoma	"	1,125
		Cochiti	"	305
		Ialata	"	1,103
		Laguna	"	2,271
		Sandia	"	129
		San Felipe	"	596
		Santa Ana	"	241
		Santa Domingo	"	856
		Sia	"	189
		Zuni	"	2,081
New York	New York	Cornplanter (Penn.)		80
North Carolina	Cherokee	Cherokee	Eastern Cherokee	3,254
North Dakota	Fort Berthold	Fort Berthold	Arikara) Gros Ventre) Mandan)	1,569
	Standing Rock	Standing Rock	Sioux	3,775
Oregon	Salem	Grand Ronde	Grand Ronde	356
	Warm Springs	Warm Springs		952
	" "	Borns		134
South Dakota	Cheyenne River	Cheyenne River	Sioux	3,228
	Crow Creek	Lower Brule	Sioux	603

<u>STATE</u>	<u>AGENCY OR SCHOOL</u>	<u>RESERVATION OR BANCHEERIA</u>	<u>TRIBES</u>	<u>TOTAL POPULATION (ESTIMATED)</u>
South Dakota	Flandreau	Flandreau	Santee Sioux	503
	Pine Ridge	Pine Ridge	Oglala Sioux	8,370
	Rosebud	Rosebud	Sioux	6,362
	Rosebud	Yankton	Sioux	2,018
Texas	Kiowa (Okla.)	Als. & Comanche		300
Utah	Paite	Goshute	Goshute	155
	"	Cedar City	Paite	23
	"	Gandy	Paite	6
	"	Kanosh	Paite & Ute	24
	"	Koocharen	Ute	30
	"	Las Vegas		40
	"	Paite	Paite	19
	"	Shivwitz	Shivwitz	79
	"	Skull Valley	Goshute	41
	Uintah & Ouray	Uintah & Ouray	Ute	1,251
Washington	Fort Hall (Idaho)	Washakie		137
	Taholah	Wahah		403
		Nisqually		65
		Ozette		2
		Quinalt		1,729
		Hoh		4
		Quileute		242
		Skokomish		130
		Squaxin Island	Squaxin	39
	Tulalip	Muckleshoot	Muckleshoot	200
		Port Madison	Squamish	171
		Puyallup	Puyallup	328

<u>STATE</u>	<u>AGENCY OR SCHOOL</u>	<u>RESERVATION OR RANCHERIA</u>	<u>TRIBE</u>	<u>TOTAL POPULATION (ESTIMATED)</u>
Washington (con't.)	Tulalip	Swinomish	Swinomish	373
		Tulalip	Tulalip	683
		Clallam	Clallam	739
		Nooksack		235
		Skagit-Squalie		205
Wisconsin	Great Lakes	Mad River	Chippewa	1,211
		Lac Courte Oreille	"	1,582
		Red Cliff	"	502
		Potawatomi	"	528
		Lac du Flambeau	Lac du Flambeau	255
	Keshena	Menominee	Menominee	2,077
		Oncida		3,122
		Stockbridge		200

COPY

March 18-1957

Honorable John Collier
Commissioner
Office of Indian Affairs
Washington, D. C.

Dear Mr. Collier:

This will acknowledge receipt of the data
sent me by messenger, relative to the Indian
Reorganization Act.

Thanking you for this favor, I am

Yours most cordially,

Elmer Thomas

ET-SS

EXHIBIT 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of Indian Affairs
Washington

80524

Elizabeth J. Benedict
Nov. 9 '39

Void

October 16, 1939

The following list shows Indian tribes, grouped by states, which are under Constitutions and Charters, as approved by the Secretary of the Interior in accordance with the provisions of the Indian Reorganization Act, the Oklahoma Indian Welfare Act, and the Alaska Act. The listed dates show when the Constitutions and Charters went into effect.

No. Reservation	Official Name of Organization	Constitution Approved	Charter Ratified	Total Population
<u>ARIZONA:</u>				
1. San Carlos	The San Carlos Apache Tribe	Jan. 17, 1936		3,017
2. Pima	The Gila River Pima-Maricopa Indian Community	May 14, 1936	Feb. 28, 1938	4,586
3. Fort McDowell	The Fort McDowell Mahave-Apache Community	Nov. 24, 1936	June 6, 1938	195
4. Hopi	The Hopi Tribe	Dec. 19, 1936		3,325
5. Gila Bend) San Xavier) Sells)	The Papago Tribe	Jan. 6, 1937		5,656
6. Camp Verde	The Yavapai-Apache Indian Community	Feb. 12, 1937		419
7. Colorado River	The Colorado River Indian Tribes of the Colorado River Reservation, Arizona and California			
8. Fort Apache	The White Mountain Apache Tribe	Aug. 13, 1937		1,212
9. Hualapai	The Hualapai Tribes of the Hualapai Reservation	Aug. 26, 1938		2,811
10. Havasupai	The Havasupai Tribe of the Havasupai Reservation	Dec. 17, 1938		459
		Mar. 27, 1939		207
			Total	21,887

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No. Reservation	Official Name of Organization	Constitution Approved	Charter Ratified	Total Population
<u>CALIFORNIA:</u>				
1. Big Valley	The Big Valley Band of Pomo Indians of the Big Valley Rancheria	Jan. 15, 1936		92
2. Upper Lake	The Upper Lake Band of Pomo Indians of the Upper Lake Rancheria	Jan. 15, 1936		72
3. Wilton	The Me-wuk Indian Community of the Wilton Rancheria	Jan. 15, 1936		28
4. Tule River	The Tule River Indian Tribe	Jan. 15, 1936		196
5. Tuolumne	The Tuolumne Band of Me-wuk Indians of the Tuolumne Rancheria	Jan. 15, 1936		80
6. Fort Bidwell	The Fort Bidwell Indian Community	Jan. 28, 1936	Nov. 12, 1937	128
7. Stewart's Point	The Kashia Band of Pomo Indians of the Stewart's Point Rancheria	Mar. 11, 1936		140
8. Manchester	The Manchester Band of Pomo Indians of the Manchester Rancheria	Mar. 11, 1936		92
9. Round Valley	The Covelo Indian Community	Mar. 11, 1936	Feb. 27, 1937	838
10. Fort Yuma	The Quechan Tribe	Dec. 16, 1936	Nov. 6, 1937	852
11. Quartz Valley	The Quartz Valley Indian Community	Dec. 18, 1936		29
		June 15, 1939		
			Total	2,547
1. Southern Ute	The Southern Ute Tribe of the Southern Ute Reservation	Nov. 4, 1936	Nov. 1, 1938	403
<u>IDAHO:</u>				
1. Fort Hall	The Shoshone-Bannock Tribes of the Fort Hall Reservation	Apr. 30, 1936	Apr. 17, 1937	1,847

COLORADO:

1. Southern Ute
The Southern Ute Tribe of the Southern Ute Reservation

IDAHO:

1. Fort Hall
The Shoshone-Bannock Tribes of the Fort Hall Reservation

Page 3 - Continued

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No. Reservation	Official Name of Organization	Constitution Approved	Charter Ratified	Total Population
<u>IOWA:</u>				
1. Sac and Fox	The Sac and Fox Tribe of the Mississippi in Iowa	Dec. 20, 1937		460
<u>KANSAS:</u>				
1. Iowa	The Iowa Tribe in Nebraska and Kansas	Feb. 26, 1937	June 19, 1937	537
2. Kickapoo	The Kickapoo Tribe in Kansas	Feb. 26, 1937	June 19, 1937	342
3. Sac and Fox	The Sac and Fox Tribe of Missouri	Mar. 2, 1937	June 19, 1937	127
			Total	1,006
<u>MICHIGAN:</u>				
1. Hannahville	The Hannahville Indian Community	July 23, 1936	Aug. 21, 1937	108
2. Bay Mills	The Bay Mills Indian Community	Nov. 4, 1936	Nov. 27, 1937	109
3. L'Anse	The Keweenaw Bay Indian Community	Dec. 17, 1936	July 17, 1937	1,116
4. Isabella	The Saginaw Chippewa Indian Tribe of Michigan	May 6, 1937	Aug. 28, 1937	800
			Total	2,133
<u>MINNESOTA:</u>				
1. Lower Sioux	The Lower Sioux Indian Community in the State of Minnesota	June 11, 1936	July 17, 1937	192
2. Prairie Island	The Prairie Island Indian Community in the State of Minnesota	June 20, 1936	July 23, 1937	94
3. Consolidated Chippewa	The Minnesota Chippewa Tribe	July 24, 1936	Nov. 13, 1937	13,232
			Total	13,518

80524

No. Reservation	Official Name of Organization	Constitution Approved	Charter Ratified	Total Population
<u>MONTANA:</u>				
1. Flathead	The Confederated Salish and Kootenai Tribes of the Flathead Reservation	Oct. 28, 1935	Apr. 25, 1936	3,114
2. Rocky Boy's	The Chippewa Cree Tribe of the Rocky Boy's Reservation	Nov. 23, 1935	July 25, 1936	672
3. Tongue River	The Northern Cheyenne Tribe	Nov. 23, 1935	Nov. 7, 1936	1,573
4. Blackfeet	The Blackfeet Tribe of the Blackfeet Indian Reservation	Dec. 13, 1935	Aug. 15, 1936	4,348
5. Fort Belknap	The Fort Belknap Indian Community	Dec. 13, 1935	Aug. 25, 1937	1,540
			Total	11,247
<u>NEBRASKA:</u>				
1. Omaha	The Omaha Tribe of Nebraska	Mar. 30, 1936	Aug. 22, 1936	1,700
2. Ponca	The Ponca Tribe of Native Americans	Apr. 3, 1936	Aug. 15, 1936	391
3. Santee	The Santee Sioux Tribe of Nebraska	Apr. 3, 1936	Aug. 22, 1936	1,290
4. Winnebago	The Winnebago Tribe of Nebraska	Apr. 3, 1936	Aug. 15, 1936	1,238
			Total	4,619
<u>NEVADA:</u>				
1. Reno-Sparks	The Reno-Sparks Indian Colony	Jan. 15, 1936	Jan. 7, 1938	190
2. Pyramid Lake	The Pyramid Lake Paiute Tribe	Jan. 15, 1936	Nov. 21, 1936	559
3. Washoe	The Washoe Tribe	Jan. 24, 1936	Feb. 27, 1937	150
4. Western Shoshone	The Shoshone-Paiute Tribes of the Duck Valley Reservation	Apr. 20, 1936	Aug. 22, 1936	545
5. Fort McDermitt	The Fort McDermitt Paiute and Shoshone Tribe	July 2, 1936	Nov. 21, 1936	258
6. Yerington	The Yerington Paiute Tribe	Jan. 4, 1937	Apr. 10, 1937	134
7. Walker River	The Walker River Paiute Tribe	Mar. 26, 1937	May 8, 1937	501
8. Te-Moak	The Te-Moak Bands of Western Shoshone Indians	Aug. 24, 1938	Dec. 12, 1938	80
			Total	2,417

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No. Reservation	Official Name of Organization	Constitution Adopted	Charter Ratified	Total Population
<u>NEW MEXICO:</u>				
1. Santa Clara	The Pueblo of Santa Clara	Dec. 20, 1935	Aug. 1, 1936	450
2. Mescalero	The Apache Tribe of the Mescalero Reservation	Mar. 25, 1936	Sept. 4, 1937	762
3. Jicarilla	The Jicarilla Apache Tribe of New Mexico	Aug. 4, 1937		727
				1,939
<u>NORTH DAKOTA:</u>				
1. Fort Berthold	The Three Affiliated Tribes of the Fort Berthold Reservation	June 29, 1936	Apr. 24, 1937	1,728
<u>OREGON:</u>				
1. Grand Ronde	The Confederated Tribes of the Grand Ronde Community	May 13, 1936	Aug. 22, 1936	373
2. Warm Springs	The Confederated Tribes of the Warm Springs Reservation	Feb. 14, 1938	Apr. 23, 1938	779
<u>OKLAHOMA:</u>				
1. Seneca-Cayuga	The Seneca-Cayuga Tribe of Oklahoma	Apr. 26, 1937	June 26, 1937	748
2. Wyandotte	The Wyandotte Tribe of Oklahoma	July 17, 1937	Oct. 30, 1937	786
3. Cheyenne and Arapaho	The Cheyenne-Arapaho Tribes of Oklahoma	Aug. 25, 1937		2,848
4. Kickapoo	The Kickapoo Tribe of Oklahoma	Sept. 18, 1937	Jan. 18, 1938	262
5. Iowa	The Iowa Tribe of Oklahoma	Oct. 23, 1937	Feb. 7, 1938	109
6. Sac & Fox	The Sac and Fox Tribe of Indians of Oklahoma	Dec. 7, 1937		875
7. Pawnee	The Pawnee Indians of Oklahoma	Jan. 6, 1938	Apr. 28, 1938	977
8. Caddo	The Caddo Indian Tribe of Oklahoma	Jan. 17, 1938	Nov. 15, 1938	993
9. Tonkawa	The Tonkawa Tribe of Indians of Oklahoma	Apr. 21, 1938		52

80521

No. Reservation	Official Name of Organization	Constitution Ratified	Charter Ratified	Total Population
<u>OKLAHOMA: - Continued</u>				
10. Ottawa	The Ottawa Tribe of Oklahoma	Nov. 30, 1938	June 2, 1939	426
11. Absentee-Shawnee	The Absentee Shawnee Tribe of Indians of Oklahoma	Dec. 5, 1938		653
12. Potawatomi	The Citizen Band of Potawatomi Indians of Oklahoma	Dec. 12, 1938		2,627
13. Thlopthlocco	The Thlopthlocco Tribal Town	Dec. 27, 1938	Apr. 13, 1939	380
14. Alabama-Quassarte	The Alabama-Quassarte Tribal Town	Jan. 10, 1939	May 24, 1939	150
15. Miami	The Miami Tribe of Oklahoma	Oct. 10, 1939		287
16. Peoria	The Peoria Tribe of Indians of Oklahoma	Oct. 10, 1939		372
Total				12,545
<u>SOUTH DAKOTA:</u>				
1. Lower Brule	The Lower Brule Sioux Tribe	Nov. 27, 1935	July 11, 1936	613
2. Rosebud	The Rosebud Sioux Tribe	Dec. 20, 1935	Mar. 16, 1937	6,752
3. Cheyenne River	The Cheyenne River Sioux Tribe	Dec. 27, 1935		3,490
4. Pine Ridge	The Oglala Sioux Tribe of the Pine Ridge Reservation			
5. Flandreau	The Flandreau Santee Sioux Tribe	Jan. 15, 1936	Oct. 31, 1936	8,776
Total				348
TEXAS:				19,979
1. Alabama-Coushatta	The Alabama-Coushatta Tribes of Texas	Aug. 19, 1938		326
<u>UTAH:</u>				
1. Uintah & Ouray	The Ute Indian Tribe of the Uintah and Ouray Reservation	Jan. 19, 1937	Aug. 10, 1938	1,304

No. Reservation	Official Name of Organization	Constitution Approved	Charter Ratified	Total Population
<u>WASHINGTON:</u>				
1. Tulalip	The Tulalip Tribes	Jan. 24, 1936	Oct. 3, 1936	673
2. Swinomish	The Swinomish Indian Tribal Community	Jan. 27, 1936	July 25, 1936	302
3. Puyallup	The Puyallup Tribe	May 13, 1936		319
4. Muckleshoot	The Muckleshoot Indian Tribe	May 13, 1936	Oct. 31, 1936	193
5. Makah	The Makah Indian Tribe	May 15, 1936	Feb. 27, 1937	408
6. Quileute	The Quileute Tribe of the Quileute Reservation			
7. Skokomish	The Skokomish Indian Tribe of the Skokomish Reservation	Nov. 11, 1936	Aug. 21, 1937	286
8. Kalispel	The Kalispel Indian Community of the Kalispel Reservation	May 3, 1938	July 22, 1939	211
9. Port Gamble	The Port Gamble Indian Community	Mar. 24, 1938	May 28, 1938	97
		Sept. 7, 1939	Total	192
				<u>2,681</u>
<u>WISCONSIN:</u>				
1. Red Cliff	The Red Cliff Band of Lake Superior Chippewa Indians			
2. Bad River	The Bad River Band of the Lake Superior Tribe of Chippewa Indians of the State of Wisconsin	June 1, 1936	Oct. 24, 1936	624
3. Lac du Flambeau	The Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin	June 20, 1936	May 21, 1938	1,215
4. Oneida	The Oneida Tribe of Indians of Wisconsin	Aug. 15, 1936	May 8, 1937	877
5. Wisconsin Potawatomi	The Forest County Potawatomi Community	Dec. 21, 1936	May 1, 1937	3,249
6. Stockbridge	The Stockbridge-Munsee Community	Feb. 6, 1937	Oct. 30, 1937	301
7. Mole Lake	The Sokaogon Chippewa Community	Oct. 30, 1937	May 21, 1938	600
		Nov. 9, 1938	Oct. 7, 1939	187
			Total	<u>7,053</u>
			Grand Total	110,791

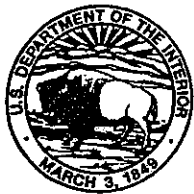
Page 8 - Continued

80524

TERRITORY OF ALASKA

No. Community	Official Name of Organization	Constitution Ratified	Charter Ratified	Total Population
1. Hydaburg	The Hydaburg Cooperative Association of Alaska	Apr. 14, 1938	Apr. 14, 1938	329
2. Klawock	The Klawock Cooperative Association of Alaska	Oct. 4, 1938	Oct. 4, 1938	277
3. Craig	The Craig Community Association of Craig Alaska	Oct. 8, 1938	Oct. 8, 1938	201
4. Sitka	The Sitka Community Association of Alaska	Oct. 11, 1938	Oct. 11, 1938	620
5. Kasaaan	The Organized Village of Kasaaan	Oct. 15, 1938	Oct. 15, 1938	83
6. King Island	The King Island Native Community	Jan. 31, 1939	Jan. 31, 1939	192
7. Atka	The Native Village of Atka	May 23, 1939	May 23, 1939	91
8. Nikolski	The Native Village of Nikolski	June 12, 1939	June 12, 1939	87
9. Wales	The Native Village of Wales	July 29, 1939	July 29, 1939	189
10. Shishmaref	The Native Village of Shishmaref	Aug. 2, 1939	Aug. 2, 1939	235
11. Karluk	The Native Village of Karluk	Aug. 23, 1939	Aug. 23, 1939	192
			Total	2,496

EXHIBIT 3



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240



IN REPLY REFER TO:

Tribal Government Services
FOIA 07373

APR 10 2007

Mr. Sayema Hameed
Attorney at Law
Weston, Benshoof, Rochefort, Rubalcava
& MacCuish, LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Dear Mr. Hameed:

This is in response to your Freedom of Information Act (FOIA) request dated January 8, 2007, for copies of all documents that the Bureau of Indian Affairs (BIA) considered and relied upon in deciding to place the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California on the list of federally recognized Indian Tribes as published by notice in the Federal Register, 44 FR 7235, dated February 6, 1979.

The list published in 1979 was not the first list of federally recognized tribes. Rather, it was the first list published in the Federal Register as required by 25 CFR 54.6(b) now designated as 25 CFR 83.5. An earlier list was published in March 1972, titled *American Indians and Their Federal Relationship*. The Santa Ynez Band of Mission Indians is listed on page 12 of this publication and identified as among the "Indian or Alaska Native organizations whose constitutions are approved by the Secretary of the Interior under Federal statutory authority of the Indian Reorganization Act; Oklahoma Indian Welfare Act; or Alaska Native Act."

If you consider this response to be a denial of your request under 43 CFR 2.28(a)(2), you may file an appeal by writing to:

Freedom of Information Act Appeals Office
Department of the Interior
Office of the Solicitor
1849 C Street, N.W., MS-6556-MIB
Washington, D.C. 20240

Your appeal must be received no later than 30 days after the date of this letter. The

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EXHIBIT 4

MWV

MILLER

Miller
Speern
10-7-40

M. 29739.

SOLICITOR'S OPINION

Re: Sufficiency of deeds and acceptability of title to certain lands and certain water rights within the proposed Santa Ynez Indian Reservation in Santa Barbara County, California, being donated to the United States in trust for the Santa Ynez Band of Mission Indians by the Petroleum Securities Company, the Roman Catholic Bishop of Los Angeles and San Diego, Harold J. Buell and Archie M. Hunt.

OCT 14 1940

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

M. 2573.

NOV 14 1940

Synopsis of
Solicitor's Opinion

Re: Sufficiency of deeds and acceptability of title to certain lands and certain water rights within the proposed Santa Inez Indian Reservation in Santa Barbara County, California, being donated to the United States in trust for the Santa Inez Band of Mission Indians by the Petroleum Securities Company, the Roman Catholic Bishop of Los Angeles and San Diego, Harold J. Buell and Archie E. Hunt.

Held: That before title may be accepted, the following requirements must be met:

1. The Office of Indian Affairs should determine whether title should be accepted subject to the encumbrances mentioned herein.
2. The disclaimer of interests referred to herein must be placed of record.
3. The articles of agreement and quitclaim deed, when executed by the Secretary, must be recorded.
4. The Departmental report on possessory rights must be extended to cover all of the property down to the date of the recording of the articles of agreement and quitclaim deed.
5. The abstract must be recertified to a date subsequent to such recording showing an indefeasible title vested in the United States.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

Miller

K. 29739.

The Honorable,

OCT 24 1940

The Secretary of the Interior.

My dear Mr. Secretary:

The Office of Indian Affairs has presented for approval a quitclaim deed executed by the Petroleum Securities Company, a corporation, a quitclaim deed executed by The Roman Catholic Bishop of Los Angeles and San Diego, a corporation sole, and an agreement and quitclaim deed executed by Harold J. Hall and wife and Archie K. Hunt and wife, conveying as a donation their respective interests in certain lands aggregating 100 acres and certain water rights situated within the proposed Santa Ynez Indian Reservation in Santa Barbara County, California. The lands and water rights which are more particularly described in the deeds are being conveyed for the establishment of a permanent Indian reservation for the perpetual use and occupancy of the Santa Ynez Band of Mission Indians, under the act of February 14, 1931 (46 Stat. 1106).

The deeds, abstract of title, and related papers have been submitted to me for an opinion as to the sufficiency of the deeds and the acceptability of the title to be conveyed.

The abstract of title reveals that the lands under consideration were originally a part of the Rancho de Los Pinos or College Rancho, which was patented by the United States on February 28, 1861, to

Joseph S. Alamy, Bishop of Monterey. The land described in this patent was on February 3, 1882, partitioned and divided between the Roman Catholic Archbishop of San Francisco and the Roman Catholic Bishop of Monterey. On February 12, 1897, the Roman Catholic Bishop of Monterey filed an action in the Superior Court of Santa Barbara County to determine, settle and establish the rights of Indians therein named to a portion of the Canada de Los Pinos or College Rancho and to the waters of Zanja de Cota Creek. On March 31, 1906, judgment was entered in the action. By the terms of this judgment the Santa Ines Indians were granted the right to occupy certain lands and the right to a portion of the waters of Zanja de Cota Creek, subject to certain superior rights of the Roman Catholic Bishop of Monterey. Pursuant to the terms of this judgment and of an agreement entered into with Lucius A. Right, Indian Agent, the Roman Catholic Bishop of Monterey and Los Angeles, a corporation sole, on April 10, 1906, conveyed to the United States of America a portion of the Canada de Los Pinos or College Rancho east of Zanja de Cota Creek, but not abutting thereon, as described in the deed, with certain attached water rights. The grantor reserved certain easement rights referred to in the deed and the right to have the property reconveyed to the grantor or its successors or assigns upon abandonment of the land by the Indians. By means conveyances, the reversionary rights to said land and the rights as riparian owner or otherwise in the waters of Zanja de Cota Creek became vested in the Petroleum Securities Company.

The Santa Ynez Land and Improvement Company, owner of a portion of the Rancho Canada or College Rancho west of the center line of Zanja de Gota Creek, conveyed certain parcels of land and water right uses to the Secretary of the Interior of the United States in trust for the continuous, undisturbed possession, use and occupancy of five families of Santa Ynez Indians named in the deed of conveyance. This deed contains a clause to the effect that the lands and water rights, upon the death of the families named therein or their descendants, shall revert to the grantor, its successors or assigns. By a deed dated March 26, 1919, the Santa Ynez Valley Development Company, successor in title to the Santa Ynez Land and Improvement Company, conveyed to the Secretary of the Interior a right of way for the construction of a cement lined ditch approximately 1,220 feet in length for the purpose of diverting water to the Indian lands. This deed also included a reversionary clause. By means conveyances the interests of the Santa Ynez Valley Development Company became vested in Harold J. Snell and Archie K. Hunt.

In order to protect the interest of the Indians and to clear title to the lands involved, certain quitclaim deeds and agreements have been procured from the parties in interest, namely the Petroleum Securities Company, the Roman Catholic Bishop of Los Angeles and San Diego, a corporation sole, Harold J. Snell and Archie K. Hunt.

The abstract of title, consisting of 227 pages, was prepared by Omeroy Anderson, Abstractor, and certified on February 14, 1940. According to the abstract and related papers, title to the lands under consideration is vested in the following manner.

Title to that portion of the lands lying on the east side of the center line of Zanja de Gota Creek and appurtenant water rights is vested in the United States in trust for the Santa Inez Band of Mission Indians subject only to the matter hereinafter discussed.

The plat submitted show that the property is subject to the rights of the public in Zanja Gota Avenue and Valley Street. These rights must be considered by the Office of Indian Affairs and a determination should be made as to whether title should be accepted subject thereto.

Title to that portion of the lands lying on the west side of the center line of Zanja de Gota Creek and water rights to the waters of said creek as riparian owners is vested in Harold J. Buell and Archie H. Hunt subject to the objections and defects hereinafter discussed.

The property is subject to the rights of the Secretary of the Interior in and to said lands and waters held in trust for certain members of the Band of Santa Inez Indians as conveyed by the Santa Inez Land and Development Company to the Secretary of the Interior by deed dated February 27, 1903, reported in Book 92, page 113 of Deeds, Santa Barbara County records, and as defined and conveyed by deed from Santa Inez Valley Development Company to the Secretary of the Interior,

by deed dated March 26, 1919, recorded in Book 171, page 528 of Deeds, Santa Barbara County records, and subject also to lower riparian rights. However, Harold J. Snell and Archie M. Hunt have executed the enclosed unrecorded agreement and quitclaim deed dated May 26, 1937, defining the rights of the parties thereto to the waters of Zanja de Cota Creek, and conveying all of said land owned by them to the United States in trust for the Santa Inez Mission Band of Indians subject to certain reserved rights contained therein. These reserved rights and the rights of the lower riparian owners must be considered also by the Office of Indian Affairs and a determination made as to the acceptability of title subject thereto.

It appears that it was necessary for the Indians to relinquish certain small parcels of land in order to effect the terms of this agreement and quitclaim deed. The Indians have approved the transaction and have executed a disclaimer of their interests in those parcels which were acquired under the deed of February 27, 1903, from Santa Inez Land and Improvement Company to the Secretary of the Interior, recorded May 2, 1903, in Book 92, page 118, Santa Barbara County records. This disclaimer must be placed of record.

When all the foregoing requirements have been met, the articles of agreement and quitclaim deed should be executed by the Secretary of the Interior and placed of record.

The departmental report on possessory rights which has been submitted must be extended to cover all of the property under examination down to the date of the recording of the articles of agreement and quitclaim deed. Thereafter the abstract must be recertified to a date subsequent to such recording showing an indefensible title vested in the United States in trust for the Santa Ynez Band of Mission Indians.

The quitclaim deeds and the articles of agreement and quitclaim deed are in satisfactory form and have been properly executed. The deeds from the Petroleum Securities Company and the Roman Catholic Bishop of Los Angeles and San Diego have been recorded although not accepted formally by the United States.

When all the requirements of this opinion have been met, the title may be approved and the deeds accepted formally.

The deeds, abstract of title, and related papers are returned for further action in accordance with this opinion.

Respectfully,

For the Solicitor,

Thomas Spector

Assistant Solicitor.

Approved:

W. Mendenhall

Acting Assistant Secretary.

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PROOF OF SERVICE

I, Cynthia F. Ambriz, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, California, 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 8, 2010, I served the document(s) described as **APPELLANTS' OPENING BRIEF** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows: *See attached Service List*

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☐ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 8, 2010, at Los Angeles, California.


CYNTHIA F. AMBRIZ

Preservation of Los Olivos, et al. v. Pacific Regional Director, et al.
United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals
Docket No. IBIA 05-050-1

SERVICE LIST

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Interior Board of Indian Appeals
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Arlington, VA 22203

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PROOF OF SERVICE

I, Cynthia F. Ambriz, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, California, 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

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☒ BY FEDERAL EXPRESS ☒ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☒ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☒ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☐ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 8, 2010, at Los Angeles, California.


CYNTHIA F. AMBRIZ

Preservation of Los Olivos, et al. v. Pacific Regional Director, et al.
United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals
Docket No. IBIA 05-050-1

SERVICE LIST

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