United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:

NOTICE OF DECISION JUN 13 2012

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7011 2970 0000 0580 9706

Mr. Vincent Armenta, Chairperson
Santa Ynez Band of Mission Indians
PO Box 517
Santa Ynez, California 93460

Re: Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director, Bureau of Indian Affairs, Docket No. IBIA 05-050-A

Dear Mr. Armenta:

On May 17, 2010, the Interior Board of Indian Appeals ("IBIA"), at the request of the Bureau of Indian Affairs ("BIA" or "Bureau") granted the agency's request "for a limited remand for the sole purpose of allowing BIA to consider whether the Tribe was under Federal jurisdiction in 1934." *IBIA Order at 2*. In the 2009 Supreme Court opinion of *Carcieri v. Salazar*, 129 S.Ct. 1058, (2009) the Court held that the "term 'now under Federal jurisdiction' in §479 unambiguously refers to those tribes that were under federal jurisdiction of the United States when the IRA was enacted." As a result of the Supreme Court's decision, the Secretary of the Interior's authority to take land into trust for the purpose of providing land to its members meant that the Tribe had to be under federal jurisdiction when the Indian Reorganization Act ("IRA")[1] was enacted in 1934.

By way of background, the Pacific Regional Director received an application from the Santa Ynez Band to have 6.9 acres, more or less, accepted into trust. The BIA issued previously a decision to approve the land acquisition request by letter dated January 14, 2005 (enclosed). The case was appealed to the United States District Court for the Central District of California and eventually remanded back to the IBIA. During the time the matter was before the District Court, the Supreme Court issued its *Carcieri* opinion which, without further evidence and analysis, raised concerns regarding the Tribe's pending acquisition. As such, and at the request of the Bureau, the IBIA remanded the proceeding and directed the Bureau of Indian Affairs to evaluate whether *Carcieri v. Salazar* or *Hawaii v. Office of Hawaiian Affairs* limits the authority of the Secretary of the Department of Interior to acquire land in trust for the Santa Ynez Band.

In response to the IBIA's remand Order, the Bureau requested the Appellants and the Tribe to provide supplemental evidence and argument analyzing whether the Secretary may acquire land

[1] 25 U.S.C. §§461, et seq.

in trust for the Tribe. The supplemental evidence, briefs, and other documentation was referred to the Associate Solicitor, Division of Indian Affairs, for an opinion. Based upon the Associate Solicitor's memorandum opinion of May 23, 2012 (enclosed), the Bureau again affirms its previous decision of January 14, 2005 to take the land into trust for the Tribe.

CONCLUSION

Based on the foregoing, the Bureau accepts the property described in its decision of January 14, 2005 into trust. Subject acquisition will vest title to the subject real property in the United States of America in trust for the Santa Ynez Band of Mission Indians in accordance with the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 USC 465).

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed. If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior, 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).

Sincerely,

Amy Klutsch

Regional Director

Enclosure[s]

43 CFR 4.310–4.340
Sol Memorandum Opinion of May 23, 2012
Notice of Decision dated January 14, 2005

cc: See Distribution List

DISTRIBUTION LIST

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Office of the Governor of California
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Honorable Holly Sierra – 7011 2970 0000 0580 9782
City of Buellton
107 W. Highway 246
Buellton, CA 93427

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Santa Barbara, CA 93101

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105 E. Anapamu Street
Santa Barbara, CA 93101

Chief Andy DiMizio – 7011 2970 0000 0580 9829
Fire Department, City of Santa Barbara
121 W. Carrillo Street
Santa Barbara, CA 93101

Mr. Camerino Sanchez, Chief of Police – 7011 2970 0000 0580 9836
Santa Barbara Police Department
215 E. Figueroa Street
Santa Barbara, CA 93101

Public Works Department – 7011 2970 0000 0580 9843
County of Santa Barbara
123 E. Anapamu
Santa Barbara, CA 93101

City Hall, Planning Department – 7011 2970 0000 0580 9850
630 Garden Street
Santa Barbara, CA 93101

Mr. Kenneth Pettit – 7011 2970 0000 0580 9867
Santa Barbara County Assessor's Office
105 E. Anapamu Street, #204
Santa Barbara, CA 93102

Office of County Counsel – 7011 2970 0000 0580 9874
County of Santa Barbara
105 E. Anapamu Street, Suite 201
Santa Barbara, CA 93101

Ms. Bonnie A. Ottoman, General Manager – 7011 2970 0000 0580 9881
Santa Ynez Community Services District
P.O. Box 667
Santa Ynez, CA 93460

Mr. Charles Jackson, Co-Chair – 7011 2970 0000 0580 9898
The Santa Ynez Valley Concerned Citizens
P.O. Box 244
Santa Ynez, CA 93460

Honorable Lois Capps – 7011 2970 0000 0580 9904
US House of Representatives
301 East Carrillo Street, Suite A
Santa Barbara, CA 93101

Ms. Jena A. MacLean – 7011 2970 0000 0580 9911
Perkins Coie, LLP
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San Diego, California 92131

Marzulla Law, LLC – 7011 2970 0000 0580 9935
for Santa Ynez Band of Chumash Mission Indians
1150 Connecticut Avenue, NW Suite 1050
Washington, D.C. 20036

Alston & Bird, LLP – 7011 2970 0000 0580 9942
for Preservation of Los Olivos and
Preservation of Santa Ynez
333 South Hope Street, 16th Floor
Los Angeles, CA 90071-1410

Chair, Board of Supervisors – 7011 2970 0000 0580 9959
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101

County Executive Officer – 7011 2970 0000 0580 9966
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA

Regular Mail:

Superintendent,
Southern California Agency
1451 Research Park Drive, Suite 100
Riverside, CA 92507

state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in §4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The OHA deciding official must lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in support thereof as the OHA deciding official may require. The OHA deciding official will then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service must be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or

representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days are excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§ 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receipt of appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The BIA is considered an interested party in any proceeding before the Board. The Board may request that the BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

§ 4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion, or order of a BIA official or an OHA deciding official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

§ 4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an OHA deciding official or a BIA official, which at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any federal court to the Board for further proceedings, the Board will either remand the matter to an OHA deciding official or to the BIA, or to the extent the court's directive and time limitations will permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues which were before the OHA deciding official upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.320 Who may appeal.

(a) A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) Notice of appeal. Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. A

statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed. The notice of appeal must include the names and addresses of parties served. A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) Service of copies of notice of appeal. The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy must be served upon the OHA deciding official whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) Action by the OHA deciding official; record inspection. The OHA deciding official, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record must be conformed to the original by the Land Titles and Records Office and will thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the OHA deciding official will have a transcript prepared which must be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[66 FR 67656, Dec. 31, 2001, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

§ 4.322 Docketing.

The appeal will be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, must be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part must be conformed to the original and forwarded to the Superintendent concerned.

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by § 4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

[54 FR 6487, Feb. 10, 1989, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in §4.332 of this part, may not be extended.

§ 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§ 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

§ 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to §4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§ 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to §4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other

comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

§ 4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§ 4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), amended by Public Law 100–153 (101 Stat. 886) and Public Law 100–212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *adminstrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

§ 4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:

JAN 14 2005

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7004 0750 0001 2844 1009

Mr. Vincent Armenta, Chairperson
Santa Ynez Band of Mission Indians
PO Box 517
Santa Ynez, California 93460

Dear Mr. Armenta:

This is notice of our decision on your application to have the below described real property that is located contiguous to the exterior boundaries of the Reservation accepted by the United States of America in trust for the Santa Ynez Band of Mission Indians of California.

The land referred to herein is situated in the State of California, County of Santa Barbara, and is described as follows:

PARCEL ONE:

ALL OF LOTS 1 TO 9 INCLUSIVE OF BLOCK 19 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED OCTOBER 13, 1882 IN BOOK "B", PAGE 441 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY.

PARCEL TWO:

ALSO THE NORTHERLY ONE-HALF OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID ABOVE MENTIONED LOTS; THE EASTERLY ONE-HALF OF MAIN STREET EXTENDING FROM THE CENTERLINE OF SAID ALLEY TO THE SOUTHERN LINE OF NUMANCIA STREET; AND THE WESTERLY ONE-HALF OF TYNDALL STREET EXTENDING FROM THE CENTERLINE OF SAID ALLEY TO THE SOUTHERN LINE OF NUMANCIA STREET.

PARCEL THREE:

THAT PORTION OF LOT 10 IN BLOCK 19 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, ACCORDING TO THE MAP THEREOF RECORDED OCTOBER 13, 1882 IN BOOK B OF MISCELLANEOUS RECORDS,

AT PAGE 441 RECORDS OF SAID COUNTY, LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT NORTH 14°45'17" WEST, 139.03 FEET FROM AN IRON AXLE (U.S. MONUMENT NO. 1) SET TO MARK THE SOUTHERLY TERMINUS OF THE COURSE NUMBERED 1 ON THE MAP ENTITLE "MAP OF THE LAND EAST OF LINE SANJO DE COTA CREEK NEAR THE VILLAGE OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, IN THE STATE OF CALIFORNIA, SUBJECT TO THE OCCUPANCY OF BAND OF VILLAGE OF MISSION INDIANS KNOWN AS SANTA YNEZ INDIANS, SURVEYED BY FRANK F. FLOURNOY, COUNTY SURVEYOR, JUNE 1899", FILED IN BOOK 1 AT PAGE 78 OF MAPS AND SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON THE10TH DAY OF AUGUST 1899; THENCE FROM A TANGENT THAT BEARS NORTH 61°59' EAST ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 2050 FEET THROUGH AN ANGLE OF 5°08'34" FOR A DISTANCE OF 184.00 FEET; THENCE NORTH 56°49'44" EAST 52.34 FEET; THENCE NORTH 70°48'52" EAST 410.83 FEET TO A POINT ON THE CENTER LINE OF THE ALLEY BETWEEN VALLEY STREET AND NUMANCIA STREET AS SAID ALLEY IS DELINEATED ON THE ABOVE SAID MAP OF THE TOWN OF SANTA YNEZ, SAID POINT BEING DISTANT ALONG SAID ALLEY CENTER LINE; NORTH 89°35'20" EAST 42.79 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE EASTERLY BOUNDARY LINE OF MAIN STREET AS SAID STREET IS DELINEATED ON SAID MAP.

PARCEL FOUR:

LOT 1, BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, IN THE STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF MADE BY JOHN GILCREST, RECORDED MARCH 12, 1888 IN BOOK 1, PAGE 41 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT 2 IN SAID BLOCK 15 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2, THENCE EAST ALONG THE NORTH LINE OF SAID LOT, 40 FEET; THENCE SOUTH 200 FEET TO THE NORTH LINE OF AN ALLEY; THENCE WEST ALONG THE LINE OF SAID ALLEY TO THE 40 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2, THENCE NORTH ALONG THE WEST LINE OF SAID LOT 200 FEET TO THE PLACE OF BEGINNING.

PARCEL FIVE:

ALL THE PORTION OF THE EAST ½ OF TYNDALL STREET LYING WITHIN THE WESTERLY PROLONGATION OF THE SOUTH LINE OF NUMANCIA STREET AND THE WESTERLY PROLONGATION OF THE SOUTH LINE OF LOT 1 OF SAID BLOCK 15, NOW ABANDONED, WHICH WOULD PASS BY OPERATION OF LAW WITH ANY CONVEYANCE OF SAID LOT 1, BLOCK 15.

PARCEL SIX:

ALL THAT PORTION OF THE NORTH ½ OF THAT CERTAIN ALLEY IN SAID BLOCK 15 AND THAT PORTION OF TYNDALL STREET IN SAID TOWN OF SANTA YNEZ, LYING BETWEEN THE SOUTHERLY PROLONGATION OF THE EAST LINE OF THE WEST 40 FEET OF LOT 2 IN SAID BLOCK 15 AND THE SOUTHERLY PROLONGATION OF THE CENTER LINE OF TYNDALL STREET, NOW ABANDONED, WHICH WOULD PASS BY OPERATION OF LAW WITH ANY CONVEYANCE OF SAID LOTS 1 AND 2.

PARCEL SEVEN:

THE EAST 10 FEET OF LOT 2 AND ALL OF LOT 3 IN BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST, SURVEYOR, NOVEMBER AND DECEMBER 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY OF MARCH 12, 1888.

PARCEL EIGHT:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOTS 2 AND 3 IN SAID BLOCK 15 AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14448 OF THE BOARD OF SUPERVISORS, DATED MAY 9, 1955, A CERTIFIED COPY THEREOF BEING RECORDED MAY 12, 1955 AS INSTRUMENT NO 8610 IN BOOK 1314, AT PAGE 337 OF OFFICIAL RECORDS.

PARCEL NINE:

LOT 4 IN BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA ACCORDING TO MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST, SURVEYOR, NOVEMBER AND DECEMBER 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY OF MARCH 12, 1888, IN BOOK 1, PAGE 41 OF MAPS AND SURVEYS.

PARCEL TEN:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOT 4 IN BLOCK 15 AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14448 OF THE BOARD OF SUPERVISORS DATED MAY 9, 1955 A CERTIFIED COPY THEREOF BEING RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610 IN BOOK 1314, AT PAGE 337 OF OFFICIAL RECORDS.

PARCEL ELEVEN:

LOT 5 IN BLOCK 15 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA ACCORDING TO THE MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST , SURVEYOR, NOV. AND DEC. 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF THE SANTA BARBARA COUNTY OF MARCH 12, 1888.

PARCEL TWELVE:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOT 5, AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14148 OF THE BOARD OF SUPERVISORS DATED MAY 9, 1955 A CERTIFIED COPY OF WHICH WAS RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610 IN BOOK 1314, AT PAGE 337 OF OFFICIAL RECORDS

PARCEL THIRTEEN:

LOTS 6 AND 7 TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA ACCORDING TO MAP ENTITLED, "MAP OF TOWN OF SANTA YNEZ" AS SURVEYED BY JOHN GILCREST, SURVEYOR, NOVEMBER AND DECEMBER 1887 AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA BARBARA COUNTY OF MARCH 12, 1888.

PARCEL FOURTEEN:

THE NORTHERLY ½ OF THE ALLEY LYING SOUTHERLY OF AND ADJACENT TO SAID LOTS 6 AND 7; AS SAME WAS ABANDONED BY ORDER TO ABANDON, RESOLUTION NO. 14148 OF THE BOARD OF SUPERVISORS, DATED MAY 9, 1955, A CERTIFIED COPY OF WHICH WAS RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610 IN BOOK 1314, PAGE 337 OF OFFICIAL RECORDS

PARCEL FIFTEEN:

ALL THAT PORTION OF BLOCK 20 AND THE ABANDONED STREET AND ALLEY ABUTTING AND WITHIN SAID BLOCK IN THE TOWN OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED MARCH 12, 1888 IN BOOK1, PAGE 41 OF RECORD OF SURVEYS, AND RECORDED OCTOBER 13, 1882 IN BOOK B, PAGE 441 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, SAID PORTION LYING WESTERLY OF THE CENTERLINE OF MAIN STREET (ABANDONED) 80 FEET WIDE, NORTHWESTERLY OF HIGHWAY 246 AS IT NOW EXISTS, EASTERLY OF SANJO COTA CREEK AND SOUTHERLY OF THE SOUTHERLY LINE OF NUMANCIA STREET 80 FEET WIDE.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of Indian tribes. In this particular instance, the authorizing Act of Congress is the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 USC. 465). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended. The proposed land acquisition is necessary for the Band to exercise governmental jurisdiction by consolidating the land, thus further enhancing tribal self-determination.

On April 12, 2001, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee-to-trust application from Governor Gray Davis, California; Ms. Sara Drake, Attorney General, California Department of Justice; State Clearing House, Office of Planning and Research; Mr. Kenneth Pettit, Santa Barbara County Assessor's Office; Honorable Lois Capps, U.S. House of Representatives; Honorable Jack O'Connell, State Senator, Santa Barbara, California; Honorable Ed Andrisek, City of Solvang, California; Honorable Harriet Miller, Santa Barbara City Hall, Santa Barbara, California; Honorable Neil Jones, City of Buellton, California; Ms. Betti Hannon, Planning Department, City of Santa Barbara; Ms. Joni Gray, Chairperson, County Board of Supervisors District Office, Santa Barbara County; Ms. Bonnie A. Ottoman, General Manager, Santa Ynez, California; Honorable Beth Jackson, 35th District Office, Santa Barbara, California; Honorable Gail Marshall, Third Supervisorial District, Santa Barbara, California; Honorable Dick DeWees, City of Lompoc, California; Lieutenant Mal Parr, Sheriffs Department, City of Buellton, California; Mr. Phil Demery, Director of Public Works, City of Santa Barbara, California; Mr. William F. Brown Jr., Chief of Police, City of Lompoc, California; Mr. Camerino Sanchez, Chief of Police, City of Santa Barbara, California; Chief Warner McGrew, Fire Department, City of Santa Barbara; Chief Warner McGrew, Fire Department, City of Santa Barbara, California; Honorable Dianne Feinstein; and the Honorable Barbara Boxer.

There were a total of fifty-five comments received during the thirty-day comment period. Out of the fifty-five comments, twenty-nine were in opposition to the annexation of land into trust. Out of the twenty-nine comments two letters warranted a cause for a response. The comments are noted as follows:

Ms. Joni Gray, Chair, Board of Supervisors, County of Santa Barbara, responded with a letters dated June 13, 2001 and November 6, 2001, expressing concerns regarding the acceptance into trust by United States of America for the Santa Ynez Band of Mission Indians. More specifically, the County requested a full NEPA review of the entire project as well as, a local public hearing. On November 23, 2004, the Bureau of Indian Affairs met with the Santa Barbara County Board of Supervisors and provided a detailed overview of the 25 CFR Part 151 process. During that time, the BIA answered questions from Board members and the general public regarding land into trust issues.

The County also provided comments regarding the NEPA process, which began after the County's initial comments; the results from the NEPA compliance process are summarized in the analysis to follow.

The balance of twenty-seven comments were speculative in nature and did not provide substantive issues, and therefore, were out of the scope of the Title 25, Code of Federal Regulations, Part 151.10. In fact, the most common concerns listed involved issues with the exiting gaming operations and a possible casino expansion on the subject property.

During the period of processing the application, twenty-six letters were received giving their support to the Santa Ynez Band of Mission Indians Fee-to-Trust Application as follows: April 24, 2002, Assemblyman, Abel Maldonado, Thirty-Third District, State of California; April 30, 2001, Chris Devers, Tribal Chairman, Pauma Band of Mission Indians; April 25, 2002, Support letter from the Coalition of Labor, Agriculture and Business (C.O.L.A.B.); April 25, 2002, Molla Meyer, Area Manager, American Diabetic Association; April 29, 2002, Sara Reyes, Assemblywoman, State of California, 31st District; April 30, 2002, Ed Chavez, Assemblyman, Fifty-Seventh District, State of California; April 30, 2002, Senator Jack O'Connell, Eighteenth Senatorial District, State of California; April 30, 2002, Assemblyman Simon Salinas, Twenty-Eighth District, State of California, April 30, 2002; Assemblyman Thomas M. Calderon, Fifty-Eighth District, State of California; April 30, 2002, Senator Richard G. Polanco, Twenty-Second Senatorial District, State of California; May 1, 2002, Marco Antonio Firebaugh, Majority Floor Leader, Fiftieth District, State of California; May 1, 2002, Senator Thomas McClintlock, Nineteenth Senatorial District, State of California; May 1, 2002, Lou Correa, Assemblyman, Sixty-Ninth District, State of California; May 1, 2002; Senator Jim Battin, Thirty-Seventh Senatorial District, State of California; May 1, 2002, Senator Nell Soto, Thirty-Second Senatorial District, State of California; May 2, 2002, Assemblyman Tony Cardenas, Thirty-Ninth District, State of California; May 6, 2002, Carol Brown, Executive Director, Dream Foundation, Santa Barbara, California; May 6, 2002, Assemblymember Jenny Oropeza, Chair, Assembly Budget Committee, Fifty-Fifth District, State of California; May 6, 2002, Linda Alexander, Local resident, Centralia, California; May 6, 2002, Jeff Saleen, long time resident of Santa Ynez, California; Efren Ramirez, Board Member, Lompoc Valley Chamber of Commerce and Visitors Bureau, Lompoc, California; May 8, 2002, Assemblyman Robert "Bob" Pacheco, Sixtieth District, State of California; May 8, 2002, Assemblyman Juan Vargas, Seventy-Ninth District, State of California; May 8, 2002, Assemblyman Mike Briggs, Twenty-Ninth District, State of California; May 9, 2002, Anthony W. Fox, Lt. Col, USAF (Ret.) resident of Santa Ynez, May 10, 2002; Herb J. Wesson, Jr., Speaker of the California State Assembly; May 10, 2002, James D. Brown, Superintendent, College School District, Santa Ynez, California.

Pursuant to CFR 151.10, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; and (6) whether or not contaminants or hazardous substances may be present on the property. Accordingly, the following analysis of the application is provided.

Factor 1 Need for additional land

Subsequent to the mission period, the Mexican Governors of California issued land grants to tribal leaders and several heads of families of the "Santa Ines Indians." The United States Government did not honor these land grants after taking over California. Therefore, the Santa Ynez Band was forced from the lands near the Mission where they had lived throughout the Mexican occupation/rule of California. They eventually resettled at the Sanja de Cota Creek area, which was owned by the church. The U.S. Government eventually acquired this area, approximately 100 acres of land for use as the Santa Ynez Reservation. Much of the land was unusable creek bed and flood plain and continues to be so today.

The current reservation of the Santa Ynez Band of Mission Indians is located in the community of Santa Ynez, southwest of Highway 246 in Santa Barbara County, California. The Tribe has a total enrollment of 158 persons. The reservation is comprised of a total of 138.95 acres in trust, including the original or Southern Reservation, Northern Reservation and the Walker and Davidge property. The approximately 26 acres of the Northern Reservation is primarily residential housing. The Northern and Southern portions of the reservation are separated by an irregularly shaped 12.6-acre parcel of land (Walker and Davidge property), which was accepted into trust on February 4, 2004. The Walker and Davidge property is primarily riparian in nature and is not suitable for development.

The current reservation lands are highly constrained due to a variety of physical, social, and economic factors. A majority of the lands held in trust for the Santa Ynez Band are located in a flood plain and therefore, are unsuitable for development because of flooding and drainage problems. The irregular topography and flood hazards are associated with the multiple creek corridors, which run throughout the property resulting in severe limitations of efficient land utilization. Undeveloped property is at a minimum within the Santa Ynez Reservation. Lands that are undeveloped are of insignificant size for development. On the Northern portion of the reservation, which is made up of 26.9 acres, land utilization is specifically designed to provide residential opportunities for tribal members. Any further development in the area would be appropriate only for small-scale residential enhancements or governmental facilities.

The remaining 99 acres held in trust for the Santa Ynez Band constitutes the Southern Reservation. Portions of the Southern reservation, upon which the tribal hall and other offices are now located, are constrained by the Sanja de Cota Creek and another tributary creek. These two watercourses have created a small island thus limiting further the available space. Given the limited usable land the Tribe has to work with, it has established a plan for land consolidation of lands immediately adjacent to the Reservation. Such land consolidation allows the Tribe to consolidate its holdings for purposes of enhancing its self-determination, beautification of the Reservation and surrounding properties, and protection and preservation of invaluable cultural resources.

The property subject of this acquisition is comprised of 6.9 acres, more or less, and is located adjacent to the exterior boundaries of the Santa Ynez Reservation.

The property has historical and cultural significance to the Tribe due to the existence of archaeological sites. The identified site has a portion of an ancient village site, which the Tribe is making every effort to preserve and protect. It is proper that the Tribe maintain primary interest in such resources, and therefore, be the ultimate authority on proper treatment and disposition of such resources. Placing the property into trust will ensure tribal jurisdiction over the property and preserve and protect such resources for generations to come.

The Tribe has demonstrated a need in order to manage and develop the property pursuant to its own laws, interests and goals. As with any government, the Tribe must be able to determine its own course in addressing the needs of its government and members. If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the overriding authority of the State of California and the County of Santa Barbara, thus impairing the Tribe's ability to adopt and execute its own land use decisions and development goals. Therefore, it is our conclusion that in order to ensure the effective exercise of tribal sovereignty and development prerogatives with respect to the land, trust status is essential.

Factor 2 - Proposed Land Use.

The Santa Ynez Band of Mission Indians originally planned to use the 6.9 acres of land to provide additional land for an expanded tribal administration and community center. The intent is to develop the site for community facilities that support tribal self-determination. However, because of the significant archaeological find on the property, the Tribe has determined that such a use would not be consistent with its goals.

The new plans for the property are anticipated to consist of three components (1) a cultural center and museum: (2) an open community/commemorative park which would focus on the history of the Chumash people and act as representative/buffer for the village site; and (3) a correlative commercial retail building which would help generate revenues for upkeep of the cultural center and park.

In addition to the necessity of taking the property into trust for purposes of preserving the invaluable cultural resources on the property, taking the property into trust will serve to enhance the Tribe's land base, thus enhancing tribal self-determination. The transfer of land into trust status will allow the Tribe to assert jurisdiction over such things as the overt appearances of the property as well as the cultural resources contained within the property. Therefore, transferring the property from fee ownership by the Santa Ynez Band into trust will help the Tribe to achieve its goals of cultural resource protection and preservation, community outreach and self-determination.

Factor 3 - Impact on State and Local Government's Tax Base.

The current Assessor's taxes for Parcel Numbers 143-241-03, 143-251-01, 143-251-05, 143-251-06, 143-251-08, 143-251-09 and 143-241-02 are $43,239.89 per year according to the Santa Barbara County Tax Assessor's Office. The zoning of the parcels is highway commercial, which is consistent with the proposed use.

Emergency services to the property are provided by the City and County Fire and Police through tribal agreements with those agencies. Furthermore, the Tribe collects sales tax on all transactions to non-Tribal members as well as Tribal members not residing on the Reservation. In fact, the Tribe has collected more than $200,000 in sales tax this year for the State and County.

Additionally, the Tribe has proven to be economically beneficial to the region by providing over 1,300 jobs at its resort and tribal government operations. Through this tribal employment of local citizens, the State has colleted nearly $2.0 million in income tax. Over $1.0 million of that comes from employed tribal members. Another benefit, which the tribe provides is a health clinic on the reservation that is open to all of the residents of Santa Ynez and Solvang. Finally, the Tribe purchases goods and services from over 600 vendors in the local community for its business operations.

The County does not currently collect sales tax from any business on the subject property. As such, the County is not losing any sales tax from the transfer of the subject property in trust for the benefit of the Santa Ynez Band of Mission Indians of California. We conclude that removal from the tax rolls will not incur an adverse impact on the County's financial situation.

Factor 4 - Jurisdictional Problems/Potential Conflicts

Tribal jurisdiction in California is subject to PL 83-280, therefore, there will be no change in criminal jurisdiction. The Tribe will assert civil/regulatory jurisdiction. There are no anticipated jurisdictional or land use problems. Emergency services to the property are provided by the City and County Fire and Police though agreements between those agencies and the Tribe. It does not appear that transfer to trust status would result in jurisdictional conflict.

Factor 5 - Whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status

Acceptance of the lands into Federal trust status will not impose any significant additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Reservation. The property is vacant and has no forestry or mineral resources, which would require BIA management. The zoning of the parcels is zoned highway commercial, which is consistent with the proposed use. With respect to the maintenance of the property itself, the Tribe has, and will continue, to maintain the property through its Planning/EPA department. Emergency services to the property are provided by City and County Fire and Police though agreements between those agencies and the Tribe.

The development of the property will be solely funded with the tribal monies, as well as being managed by Tribe. Based on the Tribe's current plans for the property, it is anticipated that easements for utilities may be necessary. The processing of any easements will not impose any significant burdens on the BIA as the Tribe itself contracts for surveying and environmental services, as well as the drafting of any applications and

easement documents. The minimal processing of any easements documents will only affect the BIA at the Agency level and will require recording at the Land Title and Records Office. As such, the Bureau of Indian Affairs is equipped to administer the additional responsibilities resulting from this acquisition.

Factor 6 - Whether or not contaminants or hazardous substances are present on the property

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility for conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record, which includes a negative Level I "Contaminant Survey Checklist", reflects that there were no hazardous materials or contaminants on the property proposed for acquisition.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1.

In this particular instance, an Environmental Assessment (EA), dated April 2004, was distributed for public review and comment for the period beginning April 21, 2004, and ending May 24, 2004. Comments were also solicited directly from the California Attorney General, Governor of the State of California, the Santa Barbara County Board of Supervisors, the City of Solvang, the U.S. Fish and Wildlife Service, Concerned Citizens, Santa Ynez Community Services District and Santa Ynez River Water Conservation District. Comments on the EA were received from the County of Santa Barbara, the City of Solvang, Santa Ynez Valley Concerned Citizens, Caltrans and various private citizens. Based upon the analysis documented in the EA, and consideration of comments received during the public review period, a Finding of No Significant Impact (FONSI) was completed on September 22, 2004. The FONSI was circulated for public review for the period beginning September 29, 2004, and ending October 22, 2004.

Compliance with requirements of Section 106 of the National Historic Preservation Act has been documented in a letter dated October 22, 2002. Similarly, a Phase 1 Survey for hazardous materials, required by 602 DM, was completed on February 17, 2004.
In summary, compliance with NEPA, the National Historic Preservation Act, and stipulations of 602 DM, has been achieved.

CONCLUSION

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. Subject acquisition will vest title to the subject real property in the United States of America in trust for the Santa Ynez Band of Mission Indians in accordance with the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 USC 465).

If any party receiving the enclosed notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed. If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior, 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).

Sincerely,

Regional Director

Enclosure[s]

43 CFR 4.310–4.340

cc: see attached

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse (ten copies) – 7004 0750 0001 2844 1016
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Ms. Sara J. Drake, Deputy Attorney General –7004 0750 0001 2844 1023
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Mr. Paul Dobson, Deputy Legal Affairs Secretary – 7004 0750 0001 2844 1030
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

James Peterson, District Director - 7004 0750 0001 2844 1047
Office of the Honorable Dianne Feinstein
750 "B" Street, Suite 1030
San Diego, CA 92101

Mr. William F. Brown, Jr. - 7004 0750 0001 2844 1160
Chief of Police
Lompoc Police Department
107 Civic Center Plaza
Lompoc, CA 93436

Ms. Joni Gray, Chairperson –7004 0750 0001 2844 1153
County Board of Supervisors
Santa Barbara County
401 E. Cypress Avenue
Lompoc, CA 93436

Ms. Marlene F. Demery – 7004 0750 0001 2844 1177
City Manager
City of Solvang
P.O. Box 107
Solvang, CA 93465

Honorable Ed Andrisek – 7004 0750 0001 2844 1184
City of Solvang
1644 Oak Street
Solvang, CA 93464

Honorable Neil Jones – 7004 0750 0001 2844 1191
City of Buellton
140 W. Highway 246
Buellton, CA 93427

Lieutenant Mal Parr – 7004 0750 0001 2844 1207
Sheriff's Department
P.O. Box 156
Buellton, CA 93427

Honorable Harriet Miller – 7004 0750 0001 2844 1214
Santa Barbara City Hall
P.O. Box 1990
Santa Barbara, CA 93101

Honorable Gail Marshall – 7004 0750 0001 2844 1221
Third Supervisoral District
105 E. Annapamu Street
Santa Barbara, CA 93101

Chief Warner McGrew – 7004 0750 0001 2844 1146
Fire Department, City of Santa Barbara
121 W. Carrillo Street
Santa Barbara, CA 93101

Mr. Camerino Sanchez, Chief of Police - 7004 0750 0001 2844 1252
Santa Barbara Police Department
215 E. Figueroa Street
Santa Barbara, CA 93101

Mr. Phil Demery – 7002 3150 0005 2285 3209
Director of Public Works
County of Santa Barbara
Santa Barbara, CA 93101

Ms. Beth Hannon – 7002 3150 0005 2285 3223
City Hall, Planning Department
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United States Department of the Interior

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Memorandum

TO: Amy Dutschke, Pacific Regional Director
Bureau of Indian Affairs

FROM: Michael J. Berrigan, Associate Solicitor, Division of Indian Affairs

SUBJECT: Determination of Whether *Carcieri v. Salazar* or *Hawaii v. Office of Hawaiian Affairs* limits the authority of the Secretary to Acquire Land in Trust for the Santa Ynez Band of Chumash Mission Indians

On May 17, 2010, the Interior Board of Indian Appeals (IBIA) directed the Bureau of Indian Affairs (Bureau or BIA) to evaluate whether *Carcieri v. Salazar*[1] or *Hawaii v. Office of Hawaiian Affairs*[2] limits the authority of the Secretary of the Department of the Interior (Secretary) to acquire land in trust for the Santa Ynez Band of Chumash Mission Indians (Chumash Tribe or Tribe).[3] In response to the Board's order, the Bureau requested that the Appellants[4] and the Chumash Tribe provide supplemental evidence and argument analyzing whether the Secretary may acquire land in trust for the Tribe in light of these decisions.

The Bureau requested that the Solicitor's Office review the submissions received by the Department and render a legal opinion on the matter. For the reasons below, we conclude that neither *Carcieri v. Salazar* nor *Hawaii v. Office of Hawaiian Affairs* limits the Secretary of the Interior's authority to acquire land in trust for the Chumash Tribe. This conclusion is explained more fully in the following discussion, which is divided into three parts: (1) an analysis of the application of *Carcieri v. Salazar*; (2) an analysis of the relevance of *Hawaii v. Office of Hawaiian Affairs*; and (3) a review of the constitutional issues raised by Appellants.

Summary

Pursuant to the interpretation of the Indian Reorganization Act[5] (IRA) in *Carcieri*, the Secretary must determine whether an Indian tribe was "under federal jurisdiction" in 1934, the year the IRA was enacted, before the Secretary can acquire land in trust for that tribe.[6] We conclude that

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[1] 555 U.S. 379 (2009).
[2] 129 S. Ct. 1436 (2009).
[3] *See* Order Vacating Decision in Part and Remanding in Part (Remand Order) in *Preservation of Los Olivos et al., v. Pacific Regional Director, Bureau of Indian Affairs*, Docket No. IBIA 05-050-1.
[4] Appellants, Preservation of Los Olivos and Preservation of Santa Ynez, are challenging the January 14, 2005 decision to accept a 6.9-acre parcel of land in Santa Barbara County, California, in trust for the Chumash Tribe.
[5] 25 U.S.C. §§ 461-479.
[6] The *Carcieri* decision addresses the Secretary's authority to acquire land in trust for "members of any recognized Indian tribe now under [f]ederal jurisdiction." *See* 25 U.S.C. § 479. The case does not address the Secretary's authority to acquire land in trust for groups that fall under other definitions of "Indian" in Section 19 of the IRA.

the Chumash Tribe was under federal jurisdiction in 1934 for *Carcieri* purposes because the Tribe voted in an election held pursuant to Section 18 of the IRA[7] on December 18, 1934. While this conclusively establishes that the Chumash Tribe was under federal jurisdiction in 1934, additional federal actions, including the United States' establishment of the Santa Ynez Reservation for the Tribe by at least 1906 and enumeration of the Tribe's members on the 1934 Indian Census prepared by the Department of the Interior (Department), further demonstrate that the Tribe was under federal jurisdiction in 1934. Thus, the Secretary is authorized to acquire land in trust for the Tribe under the IRA.

Appellants contend that the *Hawaii v. Office of Hawaiian Affairs* decision prevents the Secretary from acquiring land in trust for the Chumash Tribe. In *Hawaii*, the Supreme Court never considered the IRA or the Secretary's authority to acquire land in trust for Indian tribes. Instead, the Court held that a joint Congressional resolution apologizing to native Hawaiians for the 1893 overthrow of the Kingdom of Hawaii did not restrict the State of Hawaii's sovereign authority to convey lands held in a public trust that it acquired from the United States when it was admitted to the Union in 1959. As a further point of distinction, state-owned lands were at issue in *Hawaii*, unlike the present case where the Chumash Tribe, not the State of California, owns the parcel in fee. Thus, the *Hawaii* decision does not in any way limit the Secretary's authority to acquire land in trust for the Chumash Tribe.

Appellants also raise, for the first time on appeal, several generalized constitutional challenges to the Secretary's authority to acquire land in trust for the Chumash Tribe. As discussed in Part III below, not only are such arguments untimely, they do not limit the Secretary's authority to acquire land in trust pursuant to the IRA for any tribe, including the Chumash Tribe.

Part I: The Tribe was "Under Federal Jurisdiction" in 1934

The *Carcieri* decision addressed the Secretary's authority to acquire land in trust for "members of any recognized Indian tribe now under [f]ederal jurisdiction."[8] The IRA does not define the phrase "under federal jurisdiction." As set forth below, the Department has developed an analytical framework for evaluating whether a tribe was "under federal jurisdiction" in 1934.[9] Based on the framework and the record before the Department, we conclude that the Tribe was under federal jurisdiction in 1934.

A. The Department's Application of *Carcieri v. Salazar*

In the Department's record of decision (ROD) regarding the Cowlitz Tribe of Indians' fee to trust application (December 17, 2010), the Department concluded that the text of the IRA does not define or otherwise establish the meaning of the phrase "under federal jurisdiction." Nor does the legislative history clarify the meaning of the phrase. Because the IRA does not

[7] *See* Indian Reorganization Act, sec. 18, 48 Stat. 984 (1934) (providing that the IRA "shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application").
[8] 555 U.S. at 387-88; 25 U.S.C. § 479.
[9] Examples of the Department's application of this analytical framework are attached as Exhibit 1 (Cowlitz Record of Decision (Dec. 17, 2010)) and Exhibit 2 (Tunica-Biloxi Tribe of Louisiana Decision Letter (Aug. 11, 2011)).

unambiguously give meaning to the phrase "under federal jurisdiction," the Secretary must interpret that phrase in order to continue to exercise the authority delegated to him under Section 5 of the IRA.[10] The canons of construction applicable in Indian law, which derive from the unique relationship between the United States and Indian tribes, also guide the Secretary's interpretation of any ambiguities in the IRA.[11] Under these canons, statutory silence or ambiguity is not to be interpreted to the detriment of Indians. Instead, statutes establishing Indian rights and privileges are to be construed liberally in favor of the Indians, and ambiguities are to be resolved in their favor.[12]

The discussion of "under federal jurisdiction" also must be understood against the backdrop of basic principles of Indian law that define the Federal Government's unique and evolving relationship with Indian tribes. The Supreme Court has long held that "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that [the Supreme Court] consistently described as 'plenary and exclusive.'"[13] The Indian Commerce Clause also authorizes Congress to regulate commerce "with the Indian tribes," U.S. Const., art. I, § 8, cl. 3, and the Treaty Clause grants the President the power to negotiate treaties with the consent of the Senate. U.S. Const., art. II, § 2, cl. 2. Pursuant to U.S. Const., art. VI, cl. 2, treaties are the law of the land.

The Court also has recognized that "[i]nsofar as [Indian affairs were traditionally an aspect of military and foreign policy], Congress' legislative authority would rest in part, not upon 'affirmative grants of the Constitution,' but upon the Constitution's adoption of pre-constitutional powers necessarily inherent in any Federal Government, namely powers that this Court has described as 'necessary concomitants of nationality.'"[14] In addition, "[i]n the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them . . . needing protection . . . Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation."[15] In order to protect Indian lands from alienation and third party claims, Congress enacted a series of Indian Trade and Intercourse Acts ("Nonintercourse Act")[16] that ultimately placed a general restraint on conveyances of land interests by Indian tribes.

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[10] The Secretary receives deference to interpret statutes that are consigned to his administration. *See Chevron v. NRDC*, 467 U.S. 837, 844 (1984); *United States v. Mead Corp.*, 533 U.S. 218, 230-31 (2001); *see also Skidmore v. Swift*, 323 U.S. 134, 139 (1944) (agencies merit deference based on "specialized experience and broader investigations and information" available to them).

[11] *Yankton Sioux Tribe v. Kempthorne*, 442 F. Supp. 2d 774, 783 (D.S.D. 2006).

[12] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 200 (1999); *see also County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992).

[13] *United States v. Lara*, 541 U.S. 193, 200 (2004); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813 (1993) (If Congress possesses legislative jurisdiction, then the question is whether and to what extent Congress has exercised that undoubted jurisdiction); *Morton v. Mancari*, 417 U.S 535, 551-52 (1974) ("The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself.").

[14] *Lara*, 541 U.S. at 201.

[15] *Mancari*, 417 U.S. at 552 (citation omitted).

[16] *See* Act of July 22, 1790, Ch. 33, § 4, 1 Stat. 137; Act of March 1, 1793, Ch. 19, § 8, 1 Stat. 329; Act of May 19, 1796, Ch. 30, § 12, 1 Stat. 469; Act of Mar. 3, 1799, Ch. 46, § 12, 1 Stat. 743; Act of Mar. 30, 1802, Ch. 13, § 12, 2 Stat. 139; Act of June 30, 1834, Ch. 161, § 12, 4 Stat, 729. In applying the Nonintercourse Act to the original states

> No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered pursuant to the Constitution.[17]

Indeed, in *Johnson v. M'Intosh*, the Supreme Court held that while Indian tribes were "rightful occupants of the soil, with a legal as well as just claim to retain possession of it," the United States owned the lands in "fee."[18] As a result, title to Indian lands could only be extinguished by the United States. Thus, "[n]ot only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States . . . the power and the duty of exercising a fostering care and protection over all dependent Indian communities."[19] Once Congress has established a relationship with an Indian tribe, Congress alone has the right to determine when its guardianship shall cease.[20]

After we considered the text of the IRA, its remedial purposes, legislative history, the Department's early practices, and the Indian canons of construction in connection with the Cowlitz Tribe of Indians' fee to trust application, the Department construed the phrase "under federal jurisdiction" as entailing a two-part inquiry. The first part examines whether there is a sufficient showing in the tribe's history, at or before 1934, that it was under federal jurisdiction, *i.e.*, whether the United States had, in 1934 or at some point in the tribe's history prior to 1934, taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members – that are sufficient to establish or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal Government. Some federal actions may in and of themselves demonstrate that a tribe was under federal jurisdiction, or a variety of actions when viewed in concert may achieve the same result.

Once having identified that the tribe was under federal jurisdiction at or before 1934, the second part ascertains whether the tribe's jurisdictional status remained intact in 1934.[21] For some

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the Supreme Court held "that federal law, treaties, and statutes protected Indian occupancy and that its termination was exclusively the province of federal law." *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670 (1974). This is the essence of the Act: that all land transactions involving Indian lands are "exclusively the province of federal law." The Nonintercourse Act applies to both voluntary and involuntary alienation, and renders void any transfer of protected land that is not in compliance with the Act or otherwise authorized by Congress. *Id.* at 669.

[17] Act of June 30, 1834, § 14, 4 Stat. 729, now codified at 25 U.S.C. § 177.

[18] 21 U.S. (8 Wheat.) 543 (1823).

[19] *United States v. Sandoval*, 231 U.S. at 45-46; *see also United States v. Kagama*, 118 U.S. 375, 384-385 (1886).

[20] *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan, 369 F.3d 960, 968 (6th Cir. 2004), citing Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370* (1st Cir. 1975), *see also United States v. Nice*, 241 U.S. 591, 598 (1916); *Tiger v. W. Investment Co.*, 221 U.S. 286 (1911).

[21] For purposes of submitting this supplemental information and analysis per the IBIA's request regarding the Chumash Tribe, it is not necessary to posit in the abstract the universe of action that might be relevant to a determination of whether the Tribe was under federal jurisdiction in 1934. It should be noted, however, that the Federal Government's failure to take any action towards or on behalf of a tribe during a particular time period does

tribes, evidence of being under federal jurisdiction on or before 1934 will be unambiguous. For those tribes, there is no need to proceed to the second step of the two-part inquiry.

This interpretation of the phrase "under federal jurisdiction," including the two-part inquiry, is consistent with the remedial purpose of the IRA and with the Department's post-enactment practices in implementing the statute. We apply the same interpretation in this opinion.

B. Application of the Two-Part Inquiry to the Chumash Tribe

Applying the principles above and based on our review, we conclude that the IRA election held by the Secretary in 1934 unambiguously and conclusively establishes that the Tribe was under federal jurisdiction in 1934 for *Carcieri* purposes. While no additional evidence is necessary, the United States' establishment of the Santa Ynez Reservation for the Chumash Tribe by at least 1906 and the enumeration of members of the Chumash Tribe on Indian Census rolls further support the determination that the Tribe was under federal jurisdiction at or before 1934, and the Tribe retained this jurisdictional status in 1934.

1. *The Chumash Tribe voted to accept the IRA in 1934*

Section 18 the IRA provides that "[i]t shall be the duty of the Secretary of the Interior, within one year after the passage [of the IRA] to call . . . an election" regarding application of the IRA to each reservation.[22] If "a majority of the adult Indians [on a reservation . . . vote against its application," the IRA "shall not apply" to the tribe.[23] On December 18, 1934, the Chumash Tribe of the Santa Ynez Reservation did not reject the IRA.[24] Twenty members of the Chumash Tribe residing at the Reservation were eligible to vote, and all twenty voted to accept the IRA.[25] In 1935, Commissioner of Indian Affairs John Collier wrote to the Chumash Tribe to confirm the results of the Secretarial election stating that "the Indians of the Santa Ynez jurisdiction have accepted the Indian Reorganization Act."[26] The Chumash Tribe's vote in a Section 18 IRA election, in itself, conclusively establishes that the Tribe was under federal jurisdiction in 1934.

Appellants contend that the Chumash Tribe did not have a reservation in 1934, and its lack of a tribal land base impacted its jurisdictional status under the IRA. Not only is this contention incorrect, it is irrelevant. First, the Tribe currently resides on the Santa Ynez Reservation, just as it did in 1934 when it accepted the IRA in the election the Secretary held there on December 18,

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not necessarily reflect a termination of its relationship with the tribe since only Congress can terminate such a relationship. *See Lara*, 541 U.S. at 200.

[22] Indian Reorganization Act, sec. 18, 48 Stat. 984 (1934).

[23] *Id.*; *see also* Theodore H. Haas, *Ten Years of Tribal Government Under the I.R.A.* at 13-20 (1947) (Haas Report) (attached as Exhibit 3).

[24] *See* Haas Report at 15; List of Chumash Tribe members eligible to vote in the 1934 IRA election prepared by Superintendent John W. Dady (Nov. 24, 1934) (attached as Exhibit 4); Results of IRA Election held on December 18, 1934 at the Santa Ynez Reservation (Dec. 19, 1934) (attached as Exhibit 5). The Haas Report states that the election at the Santa Ynez Reservation occurred on December 15, 1934; after reviewing the documents prepared by Superintendent Dady (Exhibits 4 and 5) and the Letter from Commissioner Collier, *infra* note 26, we conclude that the date on the Haas List is incorrect, and the correct date is December 18, 1934.

[25] *See* List of Chumash Tribe members eligible to vote at 1-2; Results of IRA Election at 1.

[26] Letter from Commissioner John Collier to the Indians of the Santa Ynez Reservation (Jan. 22, 1935) (attached as Exhibit 6).

1934. Moreover, a recent decision from the Interior Board of Indian Appeals found that a Secretarial election pursuant to Section 18 of the IRA was dispositive evidence of a tribe being under federal jurisdiction in 1934. In addition, the IBIA rejected the contention that a tribal land base is a prerequisite to a determination that a tribe was "under federal jurisdiction" in 1934 for *Carcieri* purposes.

In *Shawano County v. Acting Midwest Regional Director, Bureau of Indian Affairs*,[27] the IBIA determined that the Stockbridge-Munsee Community was under federal jurisdiction for *Carcieri* purposes even though the Tribe did not have a reservation or trust lands in 1934.[28] Notwithstanding that fact, the Secretary held an IRA election for the Tribe on December 15, 1934 in which it voted to accept the IRA.[29] Based on this Secretarial election, the IBIA concluded that the Tribe was under federal jurisdiction for *Carcieri* purposes:

> Under § 18 of the IRA, 25 U.S.C. § 478, the terms of the IRA would not apply to a reservation if the adult Indians of a reservation voted to reject its application. To permit tribes to exercise this option, the Secretary was required to conduct elections pursuant to § 478. The Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted not to reject the provisions of the IRA. Regardless of whether the election for the Tribe, in the absence of a reservation, had any immediate, practical effect, the Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. That is the crux of our inquiry, and we need look no further to resolve this issue.[30]

Thus, according to *Shawano County*, tribes that voted in an election held pursuant to Section 18 of the IRA were necessarily "under federal jurisdiction" in 1934 for *Carcieri* purposes. This conclusion comports with the stated purpose of the IRA to acquire "land for landless Indians."[31] Indeed, in 1937 after the Stockbridge-Munsee Community voted to accept the IRA, the Department utilized its IRA authority to acquire land in trust for that Tribe.[32]

The IRA election held by the Secretary at the Santa Ynez Reservation on December 18, 1934 is an unambiguous federal action that establishes, in and of itself, that the Chumash Tribe was under federal jurisdiction in 1934 for *Carcieri* purposes.

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[27] 53 IBIA 62 (2011).
[28] *Id.* at 71-72.
[29] *Id.* at 64. *See also* Haas Report at 20.
[30] 53 IBIA at 71-72.
[31] *Id.*
[32] *Id.* at 64-65.

2. *Notwithstanding the 1934 Secretarial Election, other factors bolster our determination that the Chumash Tribe meets the two-part inquiry*

i. Establishment of the Santa Ynez Reservation for the Chumash Tribe

The United States established the Santa Ynez Reservation as early as 1906, when the Roman Catholic Bishop of Monterey conveyed land to the Secretary to be held in trust for the Chumash Tribe.[33] The United States' establishment of the Santa Ynez Reservation by at least 1906 also demonstrates that the Chumash Tribe was under federal jurisdiction before and including in 1934 for *Carcieri* purposes.

Indeed, the United States' effort to establish a reservation for the Chumash Tribe began prior to 1906. In 1891, Congress passed the Act for the Relief of the Mission Indians in the State of California ("Relief Act").[34] The Relief Act established a commission to "arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided."[35] The commission became known as the Smiley Commission after Commissioner Albert K. Smiley. The Smiley Commission's report discussed the Commission's investigation of the Chumash Tribe and its recommendation that "the special attorney for the Mission Indians be instructed to take immediate steps" to perfect the title to the land then occupied by the Tribe.[36]

The Indian Agents responsible for the Chumash Tribe followed through with the Commission's directive, detailing their efforts to establish a reservation for the Tribe in a series of Annual Reports. For example, in the 1894 Report the agent noted that "[s]teps have been taken by me to secure to these people a permanent and fixed home."[37] In the 1895 Report, the agent reported that he had "hopes of locating the Indians comfortably upon the lands offered them by the owner of the College grant."[38]

In 1897, the Roman Catholic Bishop of Monterey filed suit against Department officials in the Superior Court of Santa Barbara County seeking to determine the Tribe's rights to the property upon which the Tribe's members had been residing.[39] Immediately after a final judgment was issued in the litigation in 1906, the Bishop conveyed property to the United States to be held in trust for the Chumash Tribe.[40]

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[33] Deed from the Roman Catholic Bishop of Monterey to the United States (June 18, 1906) (1906 Deed) (attached as Exhibit 7).
[34] 26 Stat. 712 (1891) (attached as Exhibit 8).
[35] *Id.* Congress later amended the Relief Act to authorize the Secretary to select trust patents from the public lands for Mission Indians to help fulfill the goal of establishing a land base for them. *See* 34 Stat. 1015, 1023 (1907).
[36] Smiley Commission Report at 26-28 (attached as Exhibit 9).
[37] 1894 Annual Report at 121 (stating that the Chumash Tribe were living "on the college grant in Santa Barbara County" while the agent worked to establish a permanent home for them) (attached as Exhibit 10).
[38] 1895 Annual Report at 132 (stating also that the Tribe was "very much in the same condition as last year, except that they are not being disturbed in their property rights by the whites.") (attached as Exhibit 11).
[39] Solicitor's M-29739 Opinion at 2 (Oct. 14, 1940) (attached as Exhibit 12); 1901 Annual Report at 196-97 (attached as Exhibit 13).
[40] 1906 Deed at 4 (discussing the court judgment published on April 2, 1906).

The Department took several steps to secure a tribal land base for the Chumash Tribe prior to 1906 while this litigation was pending. As early as 1898, the Bishop conveyed property to Indian Agent Lucius Wright so that the land upon which the Tribe's members resided could be held in trust by the United States for the benefit of the Tribe.[41] In the Annual Report for that year, Agent Wright reported:

> The fact that many Indians are living on lands alleged to be granted by the Government of Mexico to various missions and private parties renders the advancement of these particular Indians impossible. On account of the uncertainty of their possessions and the chaotic condition of such land titles, strenuous efforts should be made by the proper authorities to forever settle the legal status of the occupants. I shall, therefore, in the near future make recommendations which I hope will meet with the approbation of the Department. The Santa Ynez Land question, I am pleased to report, promises a satisfactory solution both to the Indians in interest and the Department.[42]

In the Annual Report for 1901, Agent Wright detailed an agreement reached with the Bishop to convey certain lands to the United States to be held in trust for the Tribe, subject to the outcome of the pending state court litigation.[43] When the litigation was resolved in 1906, the Bishop executed a deed conveying the land upon which the Chumash Tribe resided to the United States, which established the Santa Ynez Reservation for the Tribe.[44] The Bishop reserved an easement in the property as well as a reversionary interest in the event the Tribe abandoned the Reservation entirely.[45]

The Department later worked to remove the reversionary rights from the conveyance in order to "protect the interest of the [Chumash Tribe] and clear title to the lands" of the Reservation.[46] To that end, the Department worked throughout the 1930s obtaining deeds from the Bishop's successors in interest.[47] By 1940, the Department obtained all of the deeds necessary to dispose of the reversionary interests held by third parties.[48]

Throughout this entire period, including in 1934, the Department consistently referred to the Chumash Tribe's property as the "Santa Ynez Reservation" under the federal jurisdiction of the

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[41] Deed from Bishop of Monterey to Lucius A. Wright, U.S. Indian Agent (July 30, 1898) (attached as Exhibit 14).
[42] 1898 Annual Report at 134-35 (attached as Exhibit 15).
[43] 1901 Annual Report at 196-97.
[44] 1906 Deed at 4. *See also* 1906 Annual Report at 205 (listing the Santa Ynez Reservation as under the federal jurisdiction of the Superintendent of the Mission Agency) (attached as Exhibit 16); Letter from Office of Indian Affairs to Superintendent Will Stanley (April 1909) (confirming that the Santa Ynez Reservation was "Indian Country" for the purposes of enforcing laws prohibiting the introduction of alcohol on the Reservation) (attached as Exhibit 17).
[45] 1906 Deed at 4-5.
[46] Solicitor's M-29739 Opinion at 1-3 (discussing the Department's acquisition of several deeds in trust for the Chumash Tribe to clear all remaining title issues involving the Reservation).
[47] *Id.*
[48] *Id.*

Mission Agency or other Department officials.[49] This demonstrates that the United States considered the Tribe and the reservation land upon which its members resided to be under federal jurisdiction at least as early as 1906, if not earlier. The establishment of the Santa Ynez Reservation for the Chumash Tribe further bolsters the conclusion that the Tribe was "under federal jurisdiction" prior to and in 1934.

ii. Enumeration on the Indian Census Rolls

Although it is not needed, the record also demonstrates that the Tribe's members were included on Indian Census rolls, further supporting the conclusion that the Tribe and its members were "under federal jurisdiction" in 1934.

The Department, through its multiple Indian agencies across the United States, interacted with tribes and their members, sometimes provided services to them, and in some instances, recorded their population numbers on the Department's Indian Census rolls. Enumeration on the Indian Census rolls reflects the existence of a federal-tribal relationship and demonstrates that the federal government acknowledged responsibility for the tribes and the Indians identified therein.

In 1884, Congress first directed the Department to create an Indian Census in an Appropriations Act for the Indian Department.[50] Section 9 of the Act provided that each Indian agent "be required, in his annual report, to submit a census of the Indians at his agency or upon the reservation under his charge."[51] From the initiation of the Indian Census in 1884, through and including 1934, the Department maintained Indian Census rolls.

In the Indian census included in the 1934 Annual Report, the Chumash Tribe was listed as being under the jurisdiction of the Mission Agency in California. The Mission Agency enumerated ninety enrolled members of the Chumash Tribe on the 1934 Indian Census: nineteen residing at the agency and seventy-one residing elsewhere.[52] This enumeration further demonstrates that the Tribe was under federal jurisdiction in 1934.[53]

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[49] *E.g.*, 1902 Annual Report at 175 (listing the Santa Ynez Reservation as under the jurisdiction of the Mission Agency despite "[u]nsettled" issues involving the property) (attached as Exhibit 18); 1905 Annual Report at 192 (discussing the establishment of the Reservation and the remaining "legal technicalities to be disposed of" going forward) (attached as Exhibit 19); 1906 Annual Report at 205 (listing the Santa Ynez Reservation as under the jurisdiction of the Mission Agency); 1919 Annual Report at 74 (enumerating 71 members of the Chumash Tribe under the jurisdiction of the Santa Rosa superintendent) (attached as Exhibit 20); 1925 Annual Report at 34 (enumerating 77 members of the Chumash Tribe under the jurisdiction of the Mission Agency) (attached as Exhibit 21); 1930 Annual Report at 38 (enumerating 84 members of the Chumash Tribe under the jurisdiction of the Mission Agency) (attached as Exhibit 22); 1934 Annual Report at 127 (enumerating 90 members of the Chumash Tribe under the jurisdiction of the Mission Agency) (attached as Exhibit 23).

[50] 23 Stat. 76, 98 (July 4, 1884).

[51] *Id.*

[52] 1934 Annual Report at 127 (enumerating nineteen tribal members residing at the Santa Ynez Reservation on April 1, 1934). When the 1935 Indian Census was taken on January 1, 1935, the Mission Agency enumerated twenty members of the Tribe residing at the Santa Ynez Reservation, consistent with the number of votes cast in the IRA election held two weeks prior. *See* 1935 Annual Report at 161 (attached as Exhibit 24); Haas Report at 15.

[53] Members of the Chumash Tribe were consistently enumerated on Indian Census rolls during this period. *See e.g.*, 1931 Annual Report at 44 (enumerating 87 tribal members under the jurisdiction of the Mission Agency) (attached as Exhibit 25); 1932 Annual Report at 37 (enumerating 90 tribal members under the jurisdiction of the Mission

C. Appellants' Arguments Do Not Disturb the Conclusion that the Chumash Tribe was Under Federal Jurisdiction in 1934

In July 2010, in response to the Remand Order from the IBIA, the Parties were asked to provide supplemental evidence and/or argument regarding *Carcieri* and *Hawaii v. Office of Hawaiian Affairs*. In response, Appellants and the Chumash Tribe submitted extensive comments and documents for the Bureau's review.

In their submissions, Appellants take the position that *Carcieri* limits the Secretary's authority to acquire land in trust under the IRA "*only* for Indian Tribes that were recognized by the federal government and under federal jurisdiction in June 1934." (App. Br. at 1, emphasis in the original). In support of their conclusion, Appellants make four assertions: (1) that the Tribe did not have a reservation in 1934 and thus, a March 28, 2007 letter from the Department stating that the Chumash Tribe's Reservation was established in 1901 is not accurate, *see* App. Br. at 2-6;[54] (2) that the Chumash Tribe was not federally recognized until after the enactment of the IRA, *see id.* at 6-9; (3) that the Chumash Tribe was under state jurisdiction, not federal jurisdiction, in 1934, *see id.* at 9; and (4) that the Indian residents are not Chumash Indians, *see id.* at 10. None of these arguments disturb the conclusion that the Chumash Tribe was under federal jurisdiction in 1934.

1. *A Tribe's Lack of a Reservation is Not Dispositive*

First, contrary to Appellants' assertion that the Chumash Tribe did not have a reservation until at least 1941, the Tribe did have a reservation, the Santa Ynez Reservation, which was established by at least 1906, if not before, decades prior to 1934.[55] Even if the Chumash Tribe did not have a reservation in 1934, that fact would not change the determination that the Tribe was under federal jurisdiction in 1934. Residence on a reservation is not a prerequisite to being under federal jurisdiction or to benefiting from the IRA.[56] Indeed, as discussed in *Shawano County*, the Stockbridge-Munsee Community did not have a tribal land base in 1934, but notwithstanding the Tribe's status, the Secretary held an IRA election for the Tribe, and then used his IRA authority to acquire land in trust for the Tribe.[57] Thus, a tribe need not have a reservation to benefit from the IRA; indeed, one of the purposes of the IRA was to provide "land for landless Indians."[58] As such, Appellants' argument, even if it was factually correct, does not change the determination that the Tribe was under jurisdiction in 1934.

Agency) (attached as Exhibit 26); 1933 Annual Report at 117 (enumerating 92 tribal members under the jurisdiction of the Mission Agency) (attached as Exhibit 27).

[54] The record before the IBIA contains several documents showing a series of transactions and communications between 1897 and 1906 during which the United States was acquiring deeds and litigating the Chumash Tribe's property rights. Throughout this period and including 1901 and 1934, the Department consistently referred to the tribal land base as the Santa Ynez Reservation and considered the Tribe and its members to be under federal jurisdiction. The Department's efforts to obtain all necessary deeds to clear any competing claims to part of the Reservation demonstrate that the Department considered the Chumash Tribe and its Reservation to be under federal jurisdiction.

[55] *See supra* discussion in Part I(B)(2)(i).

[56] *Shawano County*, 53 IBIA at 72-73.

[57] *Id.* at 73.

[58] *Id.* (citing *South Dakota v. DOI*, 487 F.3d 548, 552 (8th Cir. 2007)).

2. *Appellants Misconstrue Carcieri's Discussion of "Under Federal Jurisdiction"*

Appellants contend that the IRA is "*only* for Indian Tribes that were recognized by the federal government" and under federal jurisdiction, in June 1934. (*See* App. Br. at 1; emphasis in the original). They contend that the Chumash Tribe was not federally recognized in 1934 and is therefore precluded from taking land into trust under the IRA. These assertions are not supported by the text of the IRA, the *Carcieri* decision itself, or by the history of the dealings between the United States and the Chumash Tribe.

For present purposes, it is not necessary to reach the question of the precise meaning of "recognized Indian tribe" as used in the IRA, nor need we ascertain whether the Chumash Tribe was recognized by the Federal Government in the formal sense in 1934, in order to determine whether land may be acquired in trust for the Tribe.[59] The Secretary has issued regulations governing the implementation of his authority to take land into trust.[60] Those regulations define "tribe" as "any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians . . . which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs."[61] The Department, therefore, only takes land into trust for federally recognized tribes.[62] If a tribe is federally recognized, by definition it satisfies the IRA's term "recognized Indian tribe" in both the cognitive and jurisdictional senses of that

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[59] The term "recognized Indian tribe" has been used historically in at least two distinct senses. First, "recognized Indian tribe" has been used in what has been termed the "cognitive" or quasi-anthropological sense. Pursuant to this sense, "federal officials simply 'knew' or 'realized' that an Indian tribe existed, as one would 'recognize.'" W. Quinn, *Federal Acknowledgment of American Indian Tribes: The Historical Development of a Legal Concept*, 34 Am. J. Legal Hist. 331, 333 (1990). Second, the term has sometimes been used in a more formal or "jurisdictional" sense to connote that a tribe is a governmental entity comprised of Indians and that the entity has a unique relationship with the United States. *Id. See also* Felix Cohen, *Handbook of Federal Indian Law* 268 (1942 ed.) ("The term 'tribe' is commonly used in two senses, "an ethnological sense and a political sense."). The political or jurisdictional sense of the term "recognized Indian tribe" evolved into the modern notion of "federal recognition" or "federal acknowledgment" in the 1970s. In 1978, the Department promulgated regulations establishing procedures pursuant to which tribal entities could demonstrate their status as Indian tribes. 25 C.F.R. pt. 83.

The members of the Senate Committee on Indian Affairs debating the IRA appeared to use the term "recognized Indian tribe" in the cognitive or quasi-anthropological sense. For example, Senator O'Mahoney noted that the Catawba would satisfy the term "recognized Indian tribe," even though"[t]he Government has not found out that they live yet, apparently." *To Grant Indians Living under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise: Hearing on S. 2755 before the Senate Committee on Indian Affairs*, 73rd Cong., 2d Sess., at 266. *See also id. at* 80 (Senator Thomas). Based on this legislative history, the Associate Solicitor concluded that "formal acknowledgment in 1934 is [not] a prerequisite to IRA land benefits." Memo. from Associate Solicitor, Indian Affairs to Assistant Secretary, Indian Affairs, Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe, at 7 (Oct. 1, 1980) (attached as Exhibit 28).

[60] 25 C.F.R. pt. 151.

[61] 25 C.F.R. § 151.2.

[62] In 1994, Congress enacted legislation requiring the Secretary to publish "a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (25 U.S.C. § 479a-1). The Chumash Tribe appears on the most recent list of tribes. 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010). Additionally, in 1994 Congress amended the IRA, codified at 25 U.S.C. § 476(f), to prohibit federal agencies from classifying, diminishing or enhancing the privileges and immunities available to a recognized tribe relative to those privileges and immunities available to other Indian tribes.

term. That is because, whatever the precise meaning of the term "recognized tribe," the date of federal recognition does not affect the Secretary's authority under the IRA. In Section 19 of the IRA, the word "now" modifies only the phrase "under federal jurisdiction", it does not modify the phrase "recognized tribe."[63] As a result, "[t]he IRA imposes no time limit upon recognition",[64] the tribe need only be "recognized" as of the time the Department acquires the land into trust, which clearly would be the case here, under any conception of "recognition."

Indeed, in his concurring opinion in *Carcieri*, Justice Stephen Breyer explained that the evidence that establishes federal recognition can also establish federal jurisdiction as of 1934, depending on when federal recognition was established and pointed out that the IRA "imposes no time limit upon recognition," and that a tribe may have been "under federal jurisdiction" in 1934 even though the Federal Government did not believe so at the time.[65] To illustrate his point, Justice Breyer noted that a list prepared after the IRA's enactment concerning IRA elections could not be the final list of tribes under federal jurisdiction, primarily because it omitted tribes that the "Department later recognized . . . on grounds that showed that it should have recognized them in 1934 even though it did not."[66] Thus Appellants' argument that the Tribe must show it was federally recognized in 1934 gets them nowhere. Moreover, the Chumash Tribe is, and has been, consistently treated by the Federal government as a federally recognized Indian tribe, and therefore satisfies the IRA's requirement that the Tribe be "recognized."[67]

3. *The Chumash Tribe was Under Federal, not State, Jurisdiction in 1934*

Appellants' argument that the Chumash Tribe was under state and local jurisdiction in 1934 – and not federal jurisdiction – is no more than a restatement of their argument that the Chumash Tribe had to have a reservation in 1934 in order to be under federal jurisdiction. (App. Br. at 9) Appellants do little more than observe that in 1934 the Chumash Tribe was not living on federal land and, thus, was subject to the same laws as non-Indians. (*Id.*) As explained above, the Chumash Tribe resided on the Santa Ynez Reservation in 1934 and, even if they did not have a reservation, the lack of a tribal land base in 1934 would not have precluded the Chumash Tribe from being under federal jurisdiction.[68] What matters, and what has been demonstrated above, is that the Secretary held an election for the Chumash Tribe on December 18, 1934 at such Reservation. Additionally, the United States established the Santa Ynez Reservation for the Chumash Tribe at least as early as 1906, and Indian agents enumerated the Chumash Tribe and

[63] *Carcieri*, 555 U.S. at 398-99 (Breyer, J., concurring).
[64] *Id.*
[65] *Id.*
[66] *Id.* at 398.
[67] Moreover, as Appellants note in their Opening Brief at 2-3, the Department's position was and continues to be that the Chumash Tribe has had a political relationship with the Federal Government since at least 1891. *See* Letter from Assistant Secretary Artman to Mr. James E. Marino (Apr. 30, 2007). Moreover, Appellants' arguments regarding the Federal government's continued interactions prior to and in 1934, with the individuals residing on the Santa Ynez reservation support the conclusion that notwithstanding Appellants' characterizations of alleged tribal heritage or community, the Federal government dealt with the residents of the Santa Ynez reservation on a political basis as one tribal group. *See* App. Br. at 2-3 & App. Reply Br. at 5-7. And, in any event, since at least 1979 when the Department first began formally publishing an annual list of federally-recognized tribes, the Chumash Tribe has been included on that list. *See* Indian Tribal Entities that Have a Government-to-Government Relationship with the United States, 44 Fed. Reg. 7235, 7236 (Feb. 6, 1979).
[68] *Shawano County*, 53 IBIA at 72-73.

its members on the Indian Census rolls. Appellants' argument therefore fails because the record demonstrates that the Tribe was in fact under federal jurisdiction in 1934, consistent with *Carcieri*.

4. *Legal Status of the Chumash Tribe*

Appellants raise two additional concerns about the legal status of the Chumash Tribe. First, they argue that the Chumash Tribe is not descended from "the Chumash linguistic group that inhabited the Santa Ynez Valley before first contact." (App. Br. at 10) Appellants' second argument is that the current members of the Chumash Tribe are not related to the five families that resided on the land that became the Tribe's Reservation. (*Id.*)

The issue of ancient contact and historic descendency are not relevant to the *Carcieri* analysis. The question posed by the *Carcieri* decision is whether a particular tribe was under federal jurisdiction in 1934. We have concluded that the Chumash Tribe was under federal jurisdiction in 1934. As to the issue of modern relatedness, the Indian Census rolls illustrate that several tribal members lived on the Santa Ynez Reservation and some tribal members lived in other locations. Regardless of location, however, all Chumash tribal members were considered under the federal jurisdiction of the Mission Agency.[69] The continuing relationship between the United States and the Tribe has never been in dispute.

Again, contrary to Appellants' arguments, the record demonstrates that the Chumash Tribe has long been under the jurisdiction of the United States before, during and after the IRA was enacted in 1934, consistent with the Supreme Court's decision in *Carcieri*.[70]

Part II: The Secretary's Authority to Acquire Land into Trust For Indian Tribes is not limited by *Hawaii v. Office of Hawaiian Affairs*

Appellants allege that the Supreme Court's decision in *Hawaii v. Office of Hawaiian Affairs* limits the authority of the Secretary to acquire land in trust for tribes, even though *Hawaii* does not address this authority whatsoever.[71] The narrow issue before the Court in *Hawaii* was whether a Congressional resolution passed on the anniversary of the overthrow of the Hawaiian monarchy in 1893 affected the State of Hawaii's sovereign authority to convey lands held in a public trust to private owners free from the encumbrance of potential claims to such lands brought by native Hawaiians.[72]

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[69] *Id.* at 71-72.

[70] Appellants also assert that in 1934 the Chumash Tribe did not meet the definition of tribe from *Montoya v. United States*, 180 U.S. 261 (1901). (App. Reply Br. at 5-6.) This creative argument ignores the controlling definition of "tribe" in Section 19 of the IRA. 25 U.S.C. § 479. Section 19 defines "tribe" as "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." *Id.* Appellants assert the Chumash Tribe needed to have been "united in a community" and "organized politically under one leadership or government." (App. Reply Br. at 6) Whether or not the Chumash Tribe meets such criteria, the operative definitions are found in Section 19. The term "Indian" means "all persons of Indian descent who are members of any recognized tribe"; and the term "tribe" refers to "any Indian tribe, organized band, pueblo" or the "Indians residing on one reservation." *Id.* The fact that the Department organized an IRA election for the Chumash Tribe in 1934 demonstrates that the Department recognized the Chumash Tribe as a tribe under the IRA.

[71] 129 S. Ct. 1436 (2009).

[72] *Id.* at 1439.

When the State of Hawaii was admitted to the Union in 1959, the United States conveyed certain lands it held to the new State government that was required to hold such lands in a "public trust" for the benefit of Hawaiian citizens.[73] Proceeds from the sale or use of such lands were to be used to "promote various public purposes, including supporting public education, bettering conditions of native Hawaiians, developing home ownership, making public improvements, and providing lands for public use."[74] The Office of Hawaiian Affairs (OHA) "was established to receive and manage funds from the use or sale of the ceded lands for the benefit of native Hawaiians."[75]

In 1993, Congress passed the "Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii" (Apology Resolution), that, among other things, apologized to native Hawaiians for the overthrow and expressed Congress's "commitment to acknowledge the ramifications of the overthrow."[76] The Apology Resolution also acknowledged that "the indigenous Hawaiian people never directly relinquished their claims" against the United States and provided that "[n]othing in this [Apology Resolution] is intended to serve as a settlement of claims against the United States."[77]

Following the passage of the Apology Resolution, the State of Hawaii sought to convey a parcel of land on Maui from the public trust to a private landowner for development purposes.[78] OHA asked the State not to convey the parcel unless the conveyance included a disclaimer "preserving any native Hawaiian claims to ownership of lands transferred from the public trust for redevelopment."[79] When the State refused on the basis that such disclaimer would cloud the title to the parcel, OHA filed suit to enjoin the conveyance.[80]

OHA argued that the Apology Resolution required the State to convey lands subject to the disclaimer because the statute acknowledged that native Hawaiians never directly relinquished their claims against the United States and because the Apology Resolution did not settle claims native Hawaiians may have against the United States.[81] The Supreme Court rejected this argument because the provisions of the Apology Resolution, wherein the United States apologized to native Hawaiians and acknowledged that they never directly relinquished their claims against the United States, did not create substantive rights enforceable against the State.[82] Additionally, the Court would not reach a conclusion adversely affecting the State's sovereignty or cloud the title to State lands without a clearer expression of Congressional intent to do so.[83]

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[73] *Id.* at 1440.
[74] *Id.*
[75] *Id.* at 1441.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.* at 1441-442.
[81] *Id.* at 1443.
[82] *Id.* at 1443-444.
[83] *Id.* at 1444-445.

Whether the State of Hawaii may convey public lands in light of the Apology Resolution is irrelevant to the issue before the IBIA, which is the authority of the Secretary of the Department of the Interior to acquire land in trust for tribes pursuant to the IRA. Appellants' attempt to apply the *Hawaii* ruling to an Indian fee-to-trust decision in California is vexing and their argument completely misunderstands the Court's narrow decision in *Hawaii*. That case stands only for the proposition that the Apology Resolution did not affect the State of Hawaii's sovereign authority to convey Hawaiian public lands. Nowhere did the Court ever discuss the issue of whether the United States may acquire land in trust for Indian tribes under the IRA.[84]

More importantly, the present case is factually distinguishable from *Hawaii*. Here, the Chumash Tribe is not attempting to acquire an interest in lands for which California holds title. There is no attempt to retroactively cloud the title of land the State of California acquired from the United States upon admission into the Union. The Chumash Tribe already owns the land at issue in fee and now seeks to transfer those lands into trust pursuant to, and consistent with, the IRA. Appellants' arguments therefore are unfounded.

Part III: Appellants' Constitutional Claims Are Untimely

In their August 19, 2010 Letter to Acting Regional Director Dale Risling, Appellants raised for the first time several generalized constitutional challenges to the Secretary's authority to acquire land in trust for the Chumash Tribe. (App. Br. at 11-18.) Those challenges question the constitutionality of the IRA in light of the effect the operation of the statute has on state and local taxation authority, changes to the title to the land, and how the IRA implicates the Indian Commerce Clause, the Enclave Clause, as well as the Tenth and Fourteenth Amendments to the United States Constitution. (*Id.*) Appellants conclude that to the extent the IRA results in "trust parcels being removed from all state and local jurisdiction," it is unconstitutional. (*Id.* at 18.)

Even assuming Appellants have standing to bring these claims, which we do not address here, the IBIA lacks authority to adjudicate constitutional challenges.[85] Determining whether the IRA is constitutional is outside the scope of the IBIA's purview and is irrelevant to the IBIA's May 17, 2010 Order requesting the Parties to evaluate the fee-to-trust acquisition in light of the *Carcieri* and *Hawaii* opinions.[86]

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[84] Since the IRA does not apply to native Hawaiians, any argument that the Supreme Court's decision in *Hawaii* might impact the Secretary's authority under the IRA is even more attenuated. *See Kahawaiolaa v. Norton*, 386 F.3d 1271, 1280 (2004), *cert. denied* 1255 S. Ct. 2902 (2005) ("[B]y its terms, the Indian Reorganization Act [25 U.S.C. §473] did not include any native Hawaiian group.").

[85] *See State of South Dakota and County of Charles Mix v. Acting Great Plains Regional Director*, 49 IBIA 129, 141 (2009); *see also, Estate of Guadalupe Almanza Conger*, 21 IBIA 244 (1992); *Estate of Evan Gillette, SR. & Lizzie Gillette/Yellow, et al.*, 22 IBIA 133 (1992); *Reindeer Herders Ass'n v. Juneau Area Director, BIA*, 23 IBIA 28 (1992); *Amerada Hess Corp.*, 128 IBLA 94 (1993).

[86] Even if they were relevant, Appellants' constitutional challenges are without merit. Several Supreme Court and federal court cases have dealt with and squarely rejected a variety of claims on the constitutionality of the Secretary's authority to acquire land in trust for tribes under the IRA. *See, e.g., Surplus Trading Co. v. Cook*, 281 U.S. 647, 651 (1930) (finding that Indian reservations are not federal enclaves under the Enclave Clause); *Ohio ex. rel. Bryant v. Akron Metropolitan Park Dist.*, 281 U.S. 74, 74-80 (1930) (rejecting claim that federal action violated the state's right to a republican form of government under the Guarantee Clause on the basis that it is a non-justiciable political question); *County of Charles Mix v. DOI*, 799 F. Supp. 2d 1027, 1037 (D.S.D. 2011) (rejecting claims that tribal trust acquisition violated the Guarantee Clause, the Indian Commerce Clause, and the Fourteenth

Conclusion

Based on the analysis above, we conclude that neither the *Carcieri* nor the *Hawaii* decisions prohibits the Secretary from exercising his authority to acquire land in trust for the Chumash Tribe. Consistent with the Supreme Court's decision in *Carcieri*, the Chumash Tribe was under federal jurisdiction in 1934, as evidenced by the IRA election held by the Secretary on December 18, 1934. Moreover, the United States established the Santa Ynez Reservation for the Chumash Tribe by at least 1906 and included the Tribe's members on the Indian Census rolls in 1934, all of which further bolsters the conclusion that the Chumash Tribe was under federal jurisdiction in 1934. For these reasons, the Secretary has authority under the IRA to acquire land in trust for the Chumash Tribe.

If you have any questions concerning this memorandum, please do not hesitate to contact me.

Amendment); *City of Roseville v. Norton*, 219 F. Supp. 2d 130, 153-54 (D.D.C. 2002) (rejecting plaintiff's Tenth Amendment challenge to the IRA).