United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 2 4 2014

The Honorable Dennis Martinez
Chairman, Mechoopda Indian Tribe of Chico Rancheria
125 Mission Boulevard
Chico, California 95926

Dear Chairman Martinez:

In 2004, the Mechoopda Indian Tribe of Chico Rancheria of California (Tribe) submitted an application[1] to the Department of the Interior (Department) requesting that the Secretary acquire 626.55 acres of land located in Butte County, California, (Site) in trust pursuant to Section 5 of the Indian Reorganization Act (IRA)[2] for gaming and other purposes for the Tribe. On March 13, 2008, the Assistant Secretary – Indian Affairs approved the trust acquisition (2008 Decision).[3]

The 2008 Decision was challenged by Butte County, California, and was ultimately remanded to the Department for reconsideration by the United States District Court for the District of Columbia. The Secretary was ordered to consider and include in the administrative record a historical report on the Tribe prepared by Dr. Stephen Dow Beckham (Beckham Report). The present decision includes our review of the Beckham Report, as well as other information received from the parties, and incorporates the findings and conclusions of the 2008 Decision and supporting materials.

The Indian Gaming Regulatory Act (IGRA)[4] generally prohibits Indian gaming on lands acquired in trust after October 17, 1988, subject to several exceptions. The "restored lands exception" at 25 U.S.C. § 2719(b)(1)(B)(iii) provides that IGRA's general prohibition does not apply to lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." The Department's regulations at 25 C.F.R. Part 292 implement section 2719 of IGRA, and articulate standards by which the Department will evaluate applications for tribes seeking to conduct gaming on lands acquired in trust after

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[1] Memorandum from the Mechoopda Indian Tribe of Chico Rancheria of California to the Secretary, United States Department of the Interior (March 19, 2004) [hereinafter 2004 Application] (Attachment 1).

[2] 25 U.S.C. § 465.

[3] Memorandum from Acting Deputy Assistant Secretary – Policy and Economic Development to Assistant Secretary – Indian Affairs [hereinafter 2008 Decision] (March 13, 2008) (Attachment 2).

[4] 25 U.S.C. § 2701 *et seq.*

October 17, 1988. Sections 292.7 through 292.12 address the restored lands exception and require two inquiries: (1) is the tribe a "restored tribe," and (2) do the newly acquired lands meet the criteria of "restored lands" in section 292.11.[5]

We find that the Tribe meets the restored lands exception in IGRA. In addition, we find that the proposed acquisition meets the requirements of Section 5 of the Indian Reorganization Act[6] and its implementing regulations at 25 C.F.R. Part 151. Therefore, it is our determination that the 626.55-acre Site will be acquired in trust.

BACKGROUND

The Site is located northeast of California State Highway 99 near the City of Chico, Butte County, California, and consists of 626.55 acres.[7] The Site consists of 2 parcels located approximately halfway between Chico and Oroville, at the junction of Highway 99 and Highway 149, with Highway 149 serving as the parcels' western boundary.

The Tribe plans to develop the Site commercially and offer class II and III gaming on approximately 91 acres. The proposed gaming facility will consist of approximately 41,600 sq. ft., including a casino floor, restaurants, retail areas, and administrative offices.[8] Ancillary facilities will include a wastewater treatment plant, water facilities, and parking for employees and casino guests (collectively the "Project").

PROCEDURAL HISTORY

The Tribe has pursued this initiative for more than a decade. In 2002, the Tribe requested that the National Indian Gaming Commission (NIGC) issue an Indian lands opinion regarding the subject parcels.[9] On March 14, 2003, the NIGC Office of General Counsel issued an opinion

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[5] 25 C.F.R. §292.7. Shortly after the Department issued its 2008 Decision, the BIA promulgated Part 292 to clarify and standardize its interpretation of the IGRA exceptions. The regulations explicitly do not apply to or affect agency actions made prior to the date of their promulgation. *See* § 292.26. As discussed *infra*, this grandfathering provision applies here, such that the criteria in the regulations are not applicable to the present decision. Due to the unique procedural history of the case and the timing of the remand, we have analyzed this issue under both pre-regulation and post-regulation authority so as to leave no doubt that this acquisition is eligible for gaming. Under either analysis, our conclusion is the same - the subject parcels qualify for IGRA's "restored lands" exception.

[6] 25 U.S.C. § 465.

[7] *See* Memorandum from Regional Director, Bureau of Indian Affairs, Pacific Region, to Assistant Secretary – Indian Affairs, Re: Mechoopda Indian Tribe's Land Acquisition Request for Class II and Class III Gaming (June 26, 2013) [hereinafter Regional Director's 2013 Recommendation] (Attachment 3).

[8] *See* Memorandum from Regional Director, Pacific Region, to Assistant Secretary – Indian Affairs, regarding Mechoopda Indian Tribe's land Acquisition Request for Class II and III Gaming (March 27, 2007) [hereinafter Regional Director's 2007 Recommendation] at 5 (Attachment 4).

[9] Letter from Steve Santos, Tribal Chairman, Mechoopda Tribe of Chico Rancheria, to Penny Coleman, Deputy General Counsel, National Indian Gaming Commission 1 (March 26, 2002).

finding that the subject parcels would constitute "restored lands."[10] The Solicitor's Office concurred in that opinion. Subsequently, the Tribe submitted a fee-to-trust request to the Bureau of Indian Affairs (BIA) on March 19, 2004.[11] On June 16, 2006, Butte County (County) submitted a historical report on the Tribe prepared by Dr. Stephen Dow Beckham (Beckham Report) to the BIA. The County sought to use the Beckham Report to question the Mechoopda Tribe's origins and to argue that the Tribe had no political existence before being organized on the Chico Rancheria. The Acting Deputy Assistant Secretary for Policy and Economic Development responded that, because the Solicitor's Office had concurred with the NIGC's opinion, the issue of the Tribe's status would not be revisited.[12] A Notice of Final Agency Determination to Take Land into Trust was published on May 8, 2008.[13]

Butte County challenged the Secretary's determination in the United States District Court for the District of Columbia, disputing the merits of the restored lands decision as well as the Secretary's failure to consider the Beckham Report. The County's suit was dismissed on summary judgment.[14] On appeal, however, the D.C. Circuit Court of Appeals vacated the Secretary's decision, finding that the Department violated the Administrative Procedure Act by failing to provide the County with a "brief statement of the grounds for" denying its request for the Department to review the Beckham Report and for failing to "consider evidence bearing on the issue before" the Department.[15] The subsequent remand order from the district court required the Secretary to reconsider the 2008 Decision and to "include and consider the 'Beckham Report' as part of the administrative record on remand."[16]

Although there was no requirement to open the record for additional materials, given the unique circumstances and procedural posture of this particular case, the Department afforded the County and the Tribe the opportunity to submit materials addressing two issues: the restored land analysis, and the relevance of issues that might arise under *Carcieri v. Salazar*, 555 U.S. 379 (2009). On April 12, 2011, the Deputy Solicitor - Indian Affairs sent the County and the Tribe letters describing the process by which the Department would accept additional submissions to the administrative record, providing each party with an opportunity to supplement the record.[17]

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[10] 25 U.S.C. § 2719 (b)(1)(B)(iii); Memorandum to Chairman, National Indian Gaming Commission, from Penny Coleman, Deputy General Counsel, National Indian Gaming Commission (Mar. 14, 2003).

[11] 2004 Application.

[12] Letter from George T. Skibine, Acting Deputy Assistant Secretary for Policy and Economic Development, Department of Interior, to Dennis J. Whittlesey, Jackson Kelly PLLC, Counsel for Butte County (Aug. 26, 2006) [hereinafter Skibine Letter].

[13] Land Acquisition; Mechoopda Indian Tribe, California, 73 Fed. Reg. 26,142 (May 8, 2008).

[14] *Butte County v. Hogen*, 609 F. Supp. 2d 20 (D.D.C. 2009) (Attachment 5).

[15] *Butte County v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010) (citing 5 U.S.C. §§ 555, 706) (Attachment 6). Specifically, the court found that the Skibine Letter failed to provide sufficient response to the County on why the Department would not review the findings in the Beckham Report. *Id.* at 195.

[16] *Butte County v. Hogen*, Civ. Action No. 08-00519 (HHK) (D.D.C. Dec. 22, 2010). (Attachment 7).

[17] Letter from Patrice H. Kunesh, Deputy Solicitor-Indian Affairs, Department of the Interior, to Bruce Alpert, Counsel for Butte County (April 12, 2011); Letter from Patrice H. Kunesh, Deputy Solicitor - Indian Affairs,

After receiving submissions from both parties, the Department closed the administrative record, allowing for any additional materials to be submitted only at the Department's request.[18]

On April 1, 2013, the BIA's Pacific Regional Office sent a Notice of Trust Land Acquisition to applicable State and local government entities, requesting updated comments with respect to the acquisition's potential impacts in accordance with 25 C.F.R. §§ 151.10 and 151.11.[19] Specifically, the Notice requested updated comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessment.

DESCRIPTION OF THE PROPERTY

The Site is situated in Butte County, California, and is described as follows:[20]

Parcel I
All that portion of the east half of the northeast quarter of Section 1, Township 20 North, Range 2 East, M.D.B. & M., lying easterly of U.S. Highway 99E.

Excepting therefrom that portion thereof, heretofore conveyed to the State of California by deed recorded July 27, 1951, in Book 575, Page 326, Official Records, recorded October 9, 1974, in Book 1944, Page 64, Official Records and October 9, 1974, in Book 1944, Page 68, Official Records and Parcel 1 of the Grant Deed recorded January 15, 2004, under Butte County Recorder's Serial No. 2004-0002294. APN 041-190-048 (formerly 038-150-026).

Parcel II
The north half of the northwest quarter, the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of Section 5, and all that portion of Section 6 lying northeasterly of the Oroville Chico Highway, all in Township 20 North, Range 3 East, M.D.B. & M.

Department of the Interior, to Dennis E. Ramirez, Chairman of the Mechoopda Indian Tribe of Chico Rancheria (April 12, 2011).

[18] Letter from Patrice H. Kunesh, Deputy Solicitor-Indian Affairs, Department of the Interior, to Bruce Alpert, Butte County Counsel, and Dennis Ramirez, Chairman Mechoopda Tribe (July 12, 2011). After closing the record, the Department granted the County's request to reopen the record so that it could respond to the Tribe's submissions. Letter from Patrice H. Kunesh, Deputy Solicitor - Indian Affairs, Department of the Interior, to Dennis Whittlesey, Counsel for Butte County (August 11, 2011). The County, however, did not submit further materials and instead motioned the District Court to clarify the remand order and exclude the Tribe's submissions from the record. The court denied this motion. *Butte County v. Hogen*, No.: 1:08-CV-519 (FJS) (Mar. 19, 2012).

[19] Notice of Trust Land Acquisition Application (April 1, 2013) (Attachment 8).

[20] Attachment to the Regional Director's 2007 Recommendation ,Vol. 3, Tab 4.

Excepting therefrom said Section 6, that portion conveyed to the State of California by Deeds recorded February 8, 1951, in Book 555, Page 329, Official Records, and July 27, 1951, in Book 575, Page 326, Official Records.

Also excepting therefrom that portion conveyed to the State of California by Deed recorded October 9, 1974, in Book 1944, Page 64, Official Records and Parcel 1 of Grant Deed recorded January 15, 2004, under Butte County Recorder's Serial No. 2004-002294. APN 041-190-045 (formerly 041-190-020).

TITLE TO THE PROPERTY

The commitment for title insurance was issued by First American Title Insurance Company Order No. BU-220311 DMP amended March 20, 2007.[21] An updated Title Commitment Order Number 0401-4274473(DH) was completed on February 22, 2013.[22] The fee title is held by the Tribe.

COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

The IGRA prohibits gaming on newly acquired trust lands unless the applicant tribe can demonstrate that it meets one or more of the exemptions and exceptions set forth in 25 U.S.C. § 2719. As explained in detail below, the subject parcels meet the "restored lands" exception to IGRA's general prohibition against gaming on trust lands acquired after October 17, 1988.[23]

This section first sets forth the applicable law. It then provides a synopsis of the Tribe's history over the past two centuries. It concludes with an analysis of whether the Mechoopda Tribe is a "restored tribe" and whether the parcels constitute "restored lands" as understood in IGRA and the corresponding regulations at 25 C.F.R. Part 292.[24] In that analysis, we address and reject the argument raised by the County that the current Mechoopda Tribe should be precluded from using any historical accounts that pre-date the Bidwell Ranch to demonstrate a significant historical connection to the subject parcels.

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[21] Regional Director's Recommendation 2007, Vol. 3, Tab 4.

[22] Regional Director's 2013 Recommendation at 8.

[23] 25 U.S.C. § 2719(b)(1)(B)(iii).

[24] *Id.*; 25 C.F.R. pt. 292.

I. Applicable Law

The IGRA prohibits gaming on land acquired in trust for an Indian tribe after October 17, 1988, (newly acquired lands) unless the newly acquired lands meet one of several exceptions.[25] The exception applicable to the issue at hand allows gaming when:

> (B) lands are taken into trust as part of –
>
> (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.[26]

Shortly after the Department issued its 2008 Decision, the BIA promulgated regulations to clarify and standardize its interpretation of the IGRA exceptions.[27] The regulations specific to the restored lands exception are sections 292.7 – 292.12. Section 292.7 requires two inquiries: (1) is the tribe a "restored tribe" pursuant to 25 C.F.R. section 292.7 (a)-(c); and (2) do the newly acquired lands meet the criteria of "restored lands" set forth in section 292.11.[28]

The regulations explicitly do not apply to or affect "final agency decisions" under section 2719 made prior to the date of their promulgation.[29] Additionally, the "grandfathering" clause at section 292.26 states:

> [The] regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the [NIGC] issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.[30]

Because the court vacated only the 2008 Decision, the NIGC opinion remains in effect subject to NIGC's "full discretion to qualify, withdraw or modify such opinion."[31] Thus, as a preliminary matter, we find that the grandfathering provision applies such that the substantive criteria in the Department's regulations are not applicable to this current decision. It follows that we base our decision on an analysis of IGRA's restored lands exception under the legal authority that existed prior to promulgation of the Department's regulations. Because of the unique procedural history

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[25] 25 U.S.C. § 2719.

[26] *Id.* at § 2719(b)(1)(B)(iii).

[27] Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354 (May 20, 2008), *codified at* 25 C.F.R. pt. 292.

[28] 25 C.F.R. § 292.7.

[29] *Id.* at § 292.26.

[30] *Id.* at § 292.26(b).

[31] *Id.*

of this case, however, we have analyzed this issue under both pre-regulation and post-regulation authority. Our conclusion under both is the same – the subject parcels qualify for the restored lands exception.

II. Historical Background

The history of the Mechoopda Tribe provided herein is divided essentially into two periods - before and after the arrival of Euro-American settlers in California. We describe each period separately and then discuss the Federal Government's treatment and relationship to the Tribe in the Twentieth Century. The recitation of the Tribe's history is derived from our review of all of the documents submitted by the Tribe and the County, as well as our own independent research.

A. The Mechoopda Indians Prior to the Arrival of Europeans

The Mechoopda Tribe was typical of many American Indian tribes in California before Euro-American settlement, small in size with a correspondingly localized political structure based on kinship.[32] The Tribe shares a common language history with other tribes in the Sacramento Valley region, collectively referred to as "Maidu."

At the outset, we note there are some limitations to the extent of primary historical resources prior to the late Nineteenth Century that are available regarding the Maidu. It is well understood, however, that European and American exploration and settlement of California had a devastating effect on Indian populations, including the tribes within the Maidu region. Throughout much of the Spanish and Mexican occupational periods (1806-1848), the total Indian population of California dropped precipitously from 300,000 to 150,000, followed by another dramatic decrease to about 30,000 during the gold rush and surge of Euro-American settlers between 1850 and 1870.[33] When the Spanish settled in California, they brought diseases from which the native peoples had no immunity. Virulent epidemics devastated the Indian population.[34]

The earliest ethnographic study of the Maidu occurred around 1871, decades after many Indian villages had been abandoned or destroyed due to depredations from disease and white encroachment.[35] Roland Dixon began his Maidu field research in 1899, and 2 years later,

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[32] VICTOR , CALIFORNIA INDIAN LANGUAGES 2-3 (University of California Press 2011).

[33] MICHAEL J. GILLIS & MICHAEL F. MAGLIARI, JOHN BIDWELL AND CALIFORNIA 250 (Arthur H. Clark Co. 2003) (citing SHERBURNE F.COOK, THE POPULATION OF THE CALIFORNIA INDIANS, 1769-1970 43-44, 59, 65 (University of California Press, 1976)).

[34] DOROTHY HILL, THE INDIANS OF CHICO RANCHERIA 14 (California Department of Parks & Recreation 1978).

[35] *See* STEPHEN POWERS & JOHN WESLEY POWELL, TRIBES OF CALIFORNIA 6 (Government Printing Office 1877).

A.L. Kroeber, another preeminent ethnologist, began his field research.[36] C. Hart Merriman's earliest cited work dates to 1907.[37] We find these historical investigations sufficiently authoritative and comprehensively instructive on the Mechoopda Tribe's early history.

i. The Tribe's Maidu Origins

Before the arrival of Euro-American settlers, the indigenous peoples living in the area now known as California consisted of approximately 600 polities, which scholars have deemed "village communities" or "tribelets."[38] While these peoples shared common languages, the tribes within these linguistic territories were wholly autonomous. As explained by the linguistic historian Victor Golla:

> While most Californian languages shared a number of structural traits . . . the most important of the defining features of the California language area was not linguistic but sociopolitical. More precisely, it was the absence of a congruence between the linguistic and the sociopolitical. In this region, uniquely in North America, the idea that a distinct and common language is the social glue that holds together a tribe or nation played no significant role.[39]

Indian peoples in the greater Sacramento Valley area of California referred to themselves according to their villages.[40] In 1877, Stephen Powers first used the term "Maidu," an indigenous word meaning "man" or "Indians," to describe the language family of this region, and the term has since gained universal acceptance.[41] This language group is typically divided into three or four[42] language sub-groups, also separated by geographical boundaries: the Northeastern Maidu, the Northwestern Maidu (or Konkow), and the Southern Maidu (or Nisenan) languages.[43] The Northwestern Maidu primarily occupied open plains from the Sacramento River east to the

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[36] Bruce Bernstein, *Roland Dixon and the Maidu*, MUSEUM ANTHROPOLOGY, June 2008, at 20; VICTOR GOLLA, CALIFORNIA INDIAN LANGUAGES 36 (University of California Press 2011).

[37] GOLLA, *supra* n.36 at 44.

[38] *Id.* at 3; *see also* A.L. KROEBER, THE PATWIN AND THEIR NEIGHBORS 258 (University of California Press 1932) [hereinafter KROEBER (1932)]; ROLAND BURRAGE DIXON, THE HUNTINGTON CALIFORNIA EXPEDITION, VOL. XVII, PT. III, THE NORTHERN MAIDU, 223 (The Knickerbocker Press 1905). This memorandum will use the more modern designation of "tribe."

[39] GOLLA, *supra* n.36 at 3; KROEBER (1932), *supra* n.38 at 258.

[40] POWERS & POWELL, *supra* n.35 at 282; A.L. KROEBER, HANDBOOK OF INDIANS OF CALIFORNIA 394 (U.S. Government Printing Office 1925) [hereinafter KROEBER (1925)].

[41] POWERS & POWELL, *supra* n.35 at 282; *see also* GOLLA, *supra* n.36 at 136, 139; DIXON, *supra* n.38 at 123; STEPHEN DOW BECKHAM, MECHOOPDA INDIAN TRIBE OF THE CHICO RANCHERIA 1-2 (prepared for Jackson Kelly PLCC (2006)).

[42] Victor Golla further divides the Maidu linguistic territory from three into four languages, finding two languages within the Northwestern Maidu group: Chico Maidu and Konkow. GOLLA, *supra* n.36 at 139.

[43] KROEBER (1925), *supra* n.40 at 399; POWERS & POWELL, *supra* n.35 at 313; DIXON, *supra* n. 38 at 128.

foothills of the Sierra Nevada Mountains.[44] The name Northwestern Maidu is frequently used synonymously with Konkow.

The Mechoopda Tribe was a village community of the Northwestern Maidu language sub-group in the region where the town of Chico is situated today.[45] For that reason, we focus our distillation of Maidu history on the village communities within the Northwestern Maidu territory. It is estimated that during the early to mid-Nineteenth Century, these tribes averaged between 100 to 200 citizens.[46]

Beyond defining a sub-language of the Maidu family, the term "Konkow" has several meanings. It is an anglicized Maidu word for "meadowland."[47] It also refers to a tribe within the language territory[48] and a specific historic village.[49] Similarly, the word "Mechoopda," or "Michupda," refers to both a tribe and potentially two villages within the Konkow language region.[50] Many tribes within the Konkow territory commonly referred to their tribes by the name of the central village.[51]

ii. Political and Social Structure

The predominant political organizations within the Maidu region were small tribes consisting of several villages, including the Mechoopda.[52] Francis C. Riddell, relying on the ethnographic research of Roland Burrage Dixon and A.L. Kroeber, described the basic political structure of these tribes as follows:

> A village community was recognized as an autonomous unit and consisted of several adjacent villages. Central to the village community was the village displaying the largest *kúm* (Konkow *kúmi*), a semisubterranean earth-covered lodge . . . provided as a ceremonial assembly chamber. The central village,

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[44] Francis C. Riddell, *Maidu and Konkow, in* 8 HANDBOOK OF N. AM. INDIANS, CALIFORNIA 370, 370-71 (William C. Sturtevant & Robert Heizer eds., Smithsonian Institute 1978). Francis C. Riddell defined the Konkow territory as "include[ing] a portion of the Sacramento Valley floor and a section of the sierra foothill east of Chico and Oroville." *Id.* at 372.

[45] GOLLA, *supra* n.36 at 137, map 26.

[46] KROEBER (1925), *supra* n.40 at 397 (estimating a population of 125); GILLIS & MAGLIARI, *supra* n.33 at 54 (1958 deposition of John Bidwell regarding Indian Treaty of August 1, 1851 who reports each tribe had a population of about 100 individuals).

[47] Riddell, *supra* n.44 at 372.

[48] POWERS & POWELL, *supra* n.35 at 282; GILLIS & MAGLIARI, *supra* n.33 at 254; HILL, *supra* n.34 at 23.

[49] KROEBER (1925), *supra* n.40 at 395; Riddell, *supra* n.44 at 370-71 fig. 1; BECKHAM, *supra* n.41 at 2.

[50] A. K. Bidwell, *The Mechoopdas or Rancho Chico Indians,* OVERLAND MONTHLY & OUTWEST MAGAZINE, Feb. 1896, at 204; Riddell, *supra* n.44 at 370-71 fig. 1 (identifying two Mechoopda villages).

[51] GOLLA, *supra* n.36 at 221; KROEBER (1925), *supra* n.40 at 398.

[52] KROEBER (1925), *supra* n.40 at 389 ("There is no trace of any system of social or political classification other than the village communities").

> although not always the most populous, was probably the residence of the most authoritative man of the village community, who used the *kúm* as a regular dwelling. Among the [Northeast] Maidu and Konkow, the headman was primarily an advisor and spokesman. The separate villages were self-sufficient and not bound under any strict political control by the community headman. The central location around the largest assembly chamber of one village was primarily for ceremonial and subsistence activities.[53]

According to Maidu customs and culture, the headman of each tribe made the significant decisions for the community concerning war and peace with other tribes, determined areas for subsistence gathering and hunting, and understood the boundaries of the tribe's territory, among other things.[54] In addition to the headman, Maidu village communities also recognized a shaman who resolved disputes and led the "dance society," a ceremony in which the shaman selected a new headman.[55] Maidu tribes viewed a shaman as the most important position within the village community.[56]

iii. Use of and Relationship to the Land

The land occupied by the Northwest Maidu tribes, including the Mechoopda Tribe, was comprised of the Sacramento Valley and the foothills of the Sierra, including the modern day towns of Chico and Oroville. It was an area of grass savannahs and oak stands that typically experienced rainy winters and dry summers.[57] This land was conducive to subsistence hunting, fishing, and food gathering.[58] Routinely, tribes moved between their permanent villages to camp sites during the summertime, which allowed for better hunting and fishing.[59] The Mechoopda Tribe had a summer camp on the south bank of Big Chico Creek, which later became John Bidwell's property, while its main village was located approximately 5 miles south of that summer camp.[60]

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[53] Riddell, *supra* n.44 at 373 (citations omitted).

[54] *Id.* at 379; DIXON, *supra* n.38 at 330.

[55] Henry Azbill, *Bahapki*, INDIAN HISTORIAN, Spring 1971, at 57 (reprinted in SHELLY TILEY, REBUTTAL TO THE BECKHAM REPORT REGARDING THE MECHOOPDA INDIANS 12 (prepared for Mechoopda Indian Tribe of Chico Rancheria (2011)); DIXON, *supra* n.38 at 328-30; *see also* Riddell, *supra* n.44 at 379. The headman was also the leader of the "Secret Society" or "Dance Society," which held meetings in the *kúm* where the headman resided, and membership to the Society was comprised of the community's elders. Azbill at 57; DIXON, *supra* n.38 at 224.

[56] DIXON, *supra* n.38 at 267.

[57] Riddell, *supra* n.44 at 372.

[58] *Id.* at 373-74.

[59] DIXON, *supra* n.38 at 223; Riddell, *supra* n.44 at 373.

[60] Azbill, *supra* n.55 at 57.

As highly autonomous political entities, the Northwest Maidu tribes, including the Mechoopda, demarcated territories among themselves.[61] In fact, anthropologist Roland Dixon, who studied the Maidu tribes around the turn of the Twentieth Century, noted the agreement among four tribes situated in what would become Butte County and described the symbols used to mark the property boundaries between them, which were then patrolled by tribal members selected by the headman.[62] This territory included designated hunting and fishing grounds.[63] Tribal members were allowed to cross boundaries into other territories only to retrieve game wounded on their property and when headmen arranged agreements to use another tribe's resources, such as gathering or fishing areas.[64]

B. The Mechoopda Indians After the Arrival of Euro-American Settlers

The Mechoopda likely had been in contact with a number of explorers, hunters, and missionaries who passed through their territory prior to the 1840s.[65] One of the first permanent Euro-American settlements near Mechoopda territory was established by William Dickey and Edward Farwell, when they set up an encampment on the banks of a stream they would name Chico Creek in 1842.[66] Two years later, Dickey and Farwell each received two land grants from Mexican Governor Micheltorena and called the five square-league area "Rancho Arroyo Chico."[67] John Bidwell then purchased a partial interest in the Farwell land grant, known as Rancho del Arroyo Chico, an act that changed the history of the Mechoopda Tribe.[68]

Years later, as a State senator, Bidwell drafted a version of the California Indian Bill—which was never voted upon—advocating for "a system of shared governance designed to protect and guarantee fundamental Indian rights."[69] The bill reflected Bidwell's own relationship with the Mechoopda Tribe in which he "recognized the right of Indians to remain in villages that they had possessed 'from time immemorial,' even when the villages were located on land subsequently claimed by whites as private property . . . [and] to continue their 'usual avocations' of hunting, fishing, and gathering seeds and acorns."[70]

i. The Bidwell Ranch

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[61] DIXON, *supra* n.38 at 225.

[62] *Id.*; *see also* KROEBER (1925), *supra* n.40 at 398.

[63] DIXON, *supra* n.38 at 224-25.

[64] *Id.* at 226, 330-31.

[65] HILL, *supra* n.34 at 9-10.

[66] *Id.* at 10.

[67] *Id.*

[68] GILLIS & MAGLIARI, *supra* n.33 at 129.

[69] *Id.* at 250-51.

[70] *Id.* at 252-53 (quoting John Bidwell, "An Act Relative to the Protection, Punishment, and Government of Indians," 16 March 1850, California State Senate, Old Bill File, California State Archives).

As noted above, in 1845, Bidwell purchased the Farwell property with the purpose of starting a cattle ranch.[71] His close relationship with the Mechoopda Tribe, however, began in 1847 when he lived at a Mechoopda village for 3 weeks prior to constructing his cabin on the property.[72] Thereafter, Bidwell employed the Mechoopda both on his ranch and at the gold mining operation he began in 1848, known as Bidwell's Bar.[73] Bidwell employed between 20 and 50 Mechoopda and other Butte County Indians during the 2 years the mine was in full operation.[74]

The Mechoopda likely were living in several villages to the south of Chico Creek prior to 1849.[75] When Bidwell began construction of his ranch at Rancho del Arroyo Chico, however, a village was established 100 yards from the site of Bidwell's house. The village initially was named "Mikchopdo" and later "Bahapki" (Maidu for "mixed").[76] The historical record indicates that the headman brought 250 Mechoopda to live in the village on Bidwell's ranch for the dual purposes of employment and protection.[77] Most accounts report that Mikchopdo was established to protect the Mechoopda from both encroaching hostile settlers and other marauding Indians.[78] While some non-Mechoopda Indian laborers settled in the community, the majority of inhabitants were Mechoopda and Mechoopda cultural traditions continued at Mikchopdo throughout the Nineteenth Century, including the construction of a *kúm*, retaining the dance society, speaking Maidu, and recognizing a Mechoopda headman.[79]

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[71] *Id.* at 129. In 1851, Bidwell purchased the remaining interests in Rancho del Arroyo Chico and became the sole proprietor, bringing his total land holding in the area to the north of Chico Creek to 33,000 contiguous acres. *Id.* at 130.

[72] HILL, *supra* n.34 at 12.

[73] GILLIS & MAGLIARI, *supra* n.33 at 129.

[74] *Id.* at 256.

[75] *Id.*; Azbill, *supra* n.55 at 57. Modern ethnographers estimate the original Mechoopda village was located approximately 4.5 miles south of the Bidwell property on Little Butte Creek. Robert F. Heizer & Thomas R. Hester, *Names and Locations of Some Ethnographic Patwin and Maidu Indian Villages*, *in* PAPERS ON CAL. ETHNOGRAPHY at 81 (University of California Archeological Research Facility 1970).

[76] GILLIS & MAGLIARI, *supra* n.33 at 256; Bidwell, *supra* n.50 at 205; Azbill, *supra* n.55 at 57. Some reports also indicate that John Potter, another rancher in the area, also employed Mechoopdas that resided in a village on his property. HILL, *supra* n.34 at 16; Michele Shover, *John Bidwell: Reluctant Indian Fighter 1852-1856* , Dogtown Territorial Quarterly, at 33 (1998).

[77] HILL, *supra* n.34 at 25.

[78] Azbill, *supra* n.55 at 57; HILL, *supra* n.34 at 24; GILLIS & MAGLIARI, *supra* n.33 at 256; Bidwell, *supra* n.50 at 205; SHOVER, *supra* n.76 at 36 Anne H. Currie, *Bidwell Rancheria*, 36 CAL. HIST. SOC'Y Q. 313, 314 (1957).

[79] HILL, *supra* n.34 at 25 (reporting that headman Holi Lafonso moved 250 of his tribesmen to Chico Rancheria); GILLIS & MAGLIARI, *supra* n. 33 at 257 ("[T]he Mechoopda continued to speak their native tongue and were free to practice their own religion, which centered around the ritualistic spirit dances of the Kuksu cult conducted in the village *kum* . . . ."); Azbill, *supra* n.55 at 57 (describing the *kúm* at the Bidwell Ranch). Mechoopda headmen remained genealogical descendants of the original Mechoopda Tribelet into at least the Twentieth Century. *See* HILL, *supra* n.33 at 25 (reporting that Amanda Wilson, who stated that she was both Konkau and Mechoopda, was the widow of the last two "chiefs" of Chico Rancheria, Holi Lafonso and Santa Wilson); Interview by John Neider, Supervisor, Bidwell Mansion State Historical Monument, with Henry Azbill, Mechoopda Tribe Member (1966), *in*

ii. The 1851 Treaty

In 1851, Oliver M. Wozencraft, a Federal commissioner appointed by the President, arrived in the area seeking to negotiate treaties with the local Indian tribes.[80] Bidwell assisted Wozencraft with this assignment by bringing 13 tribal headmen from the Northern Maidu to his ranch, where treaty negotiations were conducted over several days.[81] Ultimately, 9 headmen, including the Mechoopda Headman Luck-Y-An, signed a treaty on August 1, 1851. The 1851 Treaty would have ceded much of the signatory tribes' aboriginal land to the United States, setting aside a 227 square mile reservation stretching eastward from Chico to south of Oroville, to be shared by the signatory tribes.[82] The United States Senate failed to ratify the 1851 Treaty, and as a result, the signatory tribes never received the promised reservation lands.[83]

It is important to note that the subject parcels are located within the reservation boundaries that would have been created by the 1851 Treaty signed by the Mechoopda headman.[84]

iii. Late Nineteenth Century

In the several decades following the 1851 Treaty negotiations, the Tribe continued to live at Mikchopdo. John Bidwell's wife, Annie, tried to "civilize" the Mechoopda over the next several decades. She held Christian religious services and taught Mechoopda women and children.[85]

California State University Chico Oral History Program, Northeastern California Project 24-25 (Association for Northern California Records and Research 1966) [hereinafter Azbill (1966)] (discussing Holi Lafonso's death in 1906); SHELLY TILEY, REBUTTAL TO THE BECKHAM REPORT REGARDING THE MECHOOPDA INDIANS 12 (*prepared* for Mechoopda Indian Tribe of Chico Rancheria (2011) (distilling the Mechoopda lineage from primary documents, including censuses and rolls)).

[80] Robert F. Heizer, *Treaties*, *in* 8 HANDBOOK OF N. AM. INDIANS, CALIFORNIA 701 (William C. Sturtevant & Robert Heizer eds., Smithsonian Institution 1978); GILLIS & MAGLIARI, *supra* n.33 at 254.

[81] Treaty at Bidwell's Ranch, August 1, 1851, Between O.M. Wozencraft, United States Indian Agent, and the Chiefs, Captains and Head Men of the Mi-chop-da, Es-kuin, Etc. Tribes of Indians [hereinafter "1851 Treaty"]; GILLIS & MAGLIARI, *supra* n.33 at 296-97.

[82] 1851 Treaty, *supra* n.81; HILL, *supra* n.34 at 20, 22; Mechoopda Indian Tribe of the Chico Rancheria, Request for Indian Land Determination at 8 and Exhibits I, J (March 26, 2002).

[83] HILL, *supra* n.34 at 23.

[84] Mechoopda Indian Tribe of the Chico Rancheria, Request for Indian Land Determination at 8 and Exhibits I, J (March 26, 2002); *see also* Map attached as Exhibit 3 to Second Historical Use and Occupant Report from Mechoopda Indian Tribe of the Chico Rancheria to Maria Getoff, National Indian Gaming Commission, re: Second Supplemental Report to March 26, 2002, Request for Indian Lands Determination (July 26, 2002) [hereinafter Map of Mechoopda Aboriginal Territory] (same map reproduced in Letter from Kathryn Isom, Anderson Indian Law, to Jeff Nelson, U.S. Department of the Interior, re: Copies of Maps from Mechoopda Indian Tribe's Second Supplemental Report to March 26, 2002, Request for Indian Land Determination (Aug. 28, 2012)).

[85] Bidwell, *supra* n.50 at 206-207.

The Mechoopda Indians nonetheless maintained many of their customs and traditional practices.[86]

Throughout the next 50 years, Bidwell increasingly employed more laborers, correspondingly increasing the size of the village. Bidwell's workforce also became more mixed due to the influx of immigrants and settlers into the region. By 1891, 4 decades after establishing his ranch, Bidwell's workforce comprised approximately 80 to 100 Euro-American, American Indian, and Chinese laborers.[87] Additionally, the Bidwell Ranch had a diverse Indian population. During the period when California Indians were relocated to the Nome Lackie and Round Valley reservations, many Indians from other tribes sought the protection and work afforded by Bidwell.[88] Many of these newcomers integrated themselves into the Mechoopda culture and political structure.[89] More importantly, there is no indication that the Indians arriving from other tribes displaced the Mechoopda, whose unbroken history and cultural presence in the area is well documented.

iv. The Bidwell's Wills

In their respective wills, John and Annie Bidwell provided assurances that the Mechoopda Village on their property would be held in a private trust for the Indians' behalf. When Annie Bidwell died in 1918, 18 years after John's death, their testamentary wishes were executed.[90] In 1933, however, the executors of the trust notified the Mechoopda Tribe that the trust could no longer afford the taxes necessary to administer the trust, prompting the Tribe to seek assistance from the Federal Government.[91] After several years of communication between the Tribe and the Federal Government on this issue, which date back to at least 1914, the BIA purchased the land on which the Mechoopda Village was located, placed the land into trust, and established the Chico Rancheria in 1939.[92]

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[86] Azbill (1966), *supra* n.79 at 22-25; Margaret D. Jacobs, *Resistance to Rescue: The Indians of Bahapki and Mrs. Annie E.K. Bidwell* (1997) University of Nebraska – Lincoln, Faculty Publications, Department of History, *available at* http://digital commons.unl.edu/historyfacpub/16.

[87] GILLIS & MAGLIARI, *supra* n.33 at 146; BECKHAM, *supra* n.41 at 7.

[88] HILL, *supra* n.34 at 42-44; Azbill, *supra* n.55 at 57. This occurred from 1854 through 1864. *Id.*

[89] Azbill, *supra* n.55 at 57.

[90] BECKHAM, *supra* n.41at 8-13; Currie, *supra* n.78 at 319-20.

[91] Letter from Rev. Harris Pillsbury, Bidwell Memorial Presbyterian Church, to O.H. Lipps, Superintendent, Sacramento Agency, Office of Indian Affairs, U.S. Dep't of the Interior (Mar. 21, 1934); Currie, *supra* n.78 at 320. Reverend Pillsbury assisted the Indians at Mechoopda Village when he learned that the land would be sold if a solution was not found.

[92] Currie, *supra* n.78 at 321 (citing Official records of Butte County, #138, at 409); BECKHAM, *supra* n.41 at 29-30; Letter from William J. Conway, Mechoopda, to the Secretary of the Interior (May 29, 1914); *see also* Memorandum from Frederic L. Kirgis, Acting Solicitor, U.S. Dep't of the Interior, to the Commissioner of Indian Affairs (July 16, 1936) ("Unless the funds are now available to meet the sewer bonds as they fall due, any action on this land would have to be held up until such time as funds are available, or special authority to purchase subject to existing liens is obtained.").

The Mechoopda Tribe's status remained unchanged until Congress passed the California Rancheria Act of 1958, which expressly authorized the termination of the Chico Rancheria.[93] By proclamation published on June 2, 1967, pursuant to the authority granted by Congress under the Act, the Secretary terminated the Federal Government's trust relationship with and supervisory responsibilities for the Mechoopda Tribe.[94] In 1986, Mechoopda tribal citizens, along with citizens of other terminated California tribes, challenged the Secretary's actions terminating their tribal status in Federal court.[95] The Mechoopda Tribe prevailed, achieving a favorable settlement that restored its recognition in 1992.[96]

III. Analysis

Considering this extensive and unique history, we must determine whether the Mechoopda Tribe's application satisfies both requirements of the "restored lands" exception: (1) that the Mechoopda Tribe is a restored tribe; and (2) that the subject parcels qualify as restored lands.[97] We conclude that it does.

A. Restored Tribe

Before addressing the larger question of whether the parcels here constitute "restored lands," we note that the restored lands exception to the general prohibition against gaming on newly acquired trust lands, quite logically, applies to restored tribes only.[98] We conclude that the Mechoopda Tribe is a restored tribe, and there is no dispute regarding that conclusion.[99]

The new regulations on "restored tribe" status for IGRA purposes follow a standard very similar to that set forth in *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the W.D. of Mich.* (*Grand Traverse Band III*).[100] Both the pre-regulation *Grand Traverse Band III* standards and the subsequent Part 292 regulations establish three requirements: (1) the tribe was historically recognized by the Federal Government; (2) for a

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[93] Pub. L. No. 85-671, 72 Stat. 619 (1958), *amended by* Pub. L. No 88-419, 78 Stat. 390 (1964).

[94] Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 32 Fed. Reg. 7981 (June 2, 1967).

[95] *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, 921 F.2d 924 (9th Cir. 1990).

[96] Stipulation for Entry into Judgment, *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, No. C-86-3660-VRW (N.D. Cal. 1992).

[97] 25 C.F.R. § 292.7.

[98] 25 U.S.C. § 2719(b)(1)(B)(iii) (excepting from IGRA's general prohibition lands "for an Indian tribe that is restored to Federal recognition").

[99] Plaintiff's Reply Brief in Support of Plaintiff's Motion for Summary Judgment at 2 n.2, *Butte County v. Hogen*, 609 F. Supp. 2d 20 (D.D.C. 2008) (No. 1:08-CV-00519-HHK-AK).

[100] 369 F.3d 960 (6th Cir. 2004) [hereinafter *Grand Traverse Band III*].

period of time, the tribe lost Federal recognition; and (3) the Federal Government reinstated recognition of the tribe.[101]

The Mechoopda Tribe meets all three requirements. First, by negotiating a proposed treaty with the Tribe in 1851, the United States recognized a government-to-government relationship with the Tribe.[102] Although the Senate failed to ratify the treaty, the treaty negotiations themselves are evidence of a government-to-government relationship under pre-regulation legal authority.[103] Similarly, under the regulations, "treaty negotiations" suffice to show the existence of Federal recognition.[104] In addition to treaty negotiations, another indicium of Federal recognition is the United States' acquisition of the Chico Rancheria in trust for the Mechoopda Indian Village in 1939.[105]

Second, Congress authorized the termination of the Federal relationship with the Tribe and the Chico Rancheria as part of the California Rancheria Act of 1958.[106] Notice of this termination was published on June 2, 1967.[107] Legislative termination qualifies under the regulations as a sufficient showing that a tribe lost its government-to-government relationship.[108]

Finally, in 1992, the United States restored its government-to-government relationship with the Mechoopda Tribe through a court settlement, wherein the United States acknowledged that the Tribe's termination was unlawful.[109] Subsequently, the Assistant Secretary – Indian Affairs published a notice in the *Federal Register* that the Tribe and its members were restored to their

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[101] *Grand Traverse Band III*, 369 F.3d at 967; 25 C.F.R. § 292.7.

[102] 1851 Treaty, *supra* n.81.

[103] *See Washington v. Wash. State Commercial Passenger Fishing Vessels Ass'n*, 443 U.S. 658, 675 (1979) ("A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations."); *United States v. Washington*, 898 F. Supp. 1453, 1458 n.7 (W.D. Wash. 1995) (stating that treaty rights were "the result of the negotiation between two sovereigns, the United States and the Tribes"); NIGC, Cowlitz Tribe Restored Lands Opinion, at 4-5 (Nov. 22, 2005) (finding that treaty negotiations, even without a signed document, sufficiently evidenced a government-to-government relationship).

[104] 25 C.F.R. § 292.8(a).

[105] BECKHAM, *supra* n.41 at 29-30; Letter from Roy Nash, Superintendent, Sacramento Indian Agency, to G.B. Hjelm, Asst. U.S. Dist. Attorney (Jan. 24, 1938); Currie, *supra* n.78 at 321 (citing Official records of Butte County, #138, at 409); 25 C.F.R. § 292.8(d) (providing that Federal recognition may be shown when "[t]he United States at one time acquired land for the tribe's benefit").

[106] Pub. L. No. 85-671, 72 Stat. 619 (1958), *amended by* Pub. L. No 88-419, 78 Stat. 390 (1964).

[107] Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 32 Fed. Reg. 7981 (1967).

[108] 25 C.F.R. § 292.9(a).

[109] *Scotts Valley Band of Pomo Indians v. United States*, No. C-86-3660 VRW (N.D. Cal. filed April 17, 1986); Stipulation for Entry into Judgment, *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, No. C-86-3660-VRW (N.D. Cal. 1992). Under the regulations, a tribe qualifies as a restored tribe if the United States has entered into a court-approved settlement agreement. 25 C.F.R. § 292.10(c).

Federal status that existed prior to termination.[110] A court-approved settlement agreement entered into by the United States is sufficient under the regulations to show that a tribe was restored to Federal recognition.[111]

Meeting all three requirements, the Mechoopda Tribe qualifies as a restored tribe under pre-regulation authority and the Department's Part 292 regulations.

B. Restored Lands Analysis

Having concluded that the Mechoopda Tribe is a restored tribe under IGRA, the question remains whether the lands to be acquired in trust for the Tribe, if taken into trust, would qualify as "restored lands" under IGRA.[112] As explained above, because of the unique procedural history of this IGRA issue, we first conduct this analysis under pre-Part 292 authority according to Part 292's grandfathering clause at 25 C.F.R. § 292.26, and then conduct the analysis pursuant to the substantive criteria at Part 292. The outcome is the same under both analytical methods.

1. Restored Lands Analysis Pursuant to Pre-Part 292 Authority

Lands may be restored to a tribe through the administrative fee-to-trust process under 25 C.F.R. Part 151 even when those lands are not specified in the tribe's restoration act.[113] In *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan* (*Grand Traverse Band II*),[114] the court distilled three factors to consider when determining whether lands acquired after restoration constitute "restored lands": (1) the factual circumstances of the acquisition; (2) the location of the acquisition; and (3) the temporal relationship of the acquisition to the tribal restoration.[115] Upon review of these three factors, we conclude that trust acquisition of the lands at issue constitutes restoration of lands to a restored tribe.

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[110] Notice of Reinstatement to Former Status for the Mechoopda Indian Tribe of the Chico Rancheria of Chico, CA, 57 Fed. Reg. 19,133 (May 4, 1992).

[111] 25 C.F.R. § 292.10(c).

[112] 25 U.S.C. § 2719(b)(1)(B)(iii).

[113] *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 935-36 (W.D. Mich. 2002), *aff'd* 369 F.3d 960 (6th Cir. 2004) [hereinafter *Grand Traverse Band II*] ("[N]othing in the record supports the requirement of Congressional action [to restore tribal lands.]"); *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 161-64 (D.D.C. 2000); *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the W. Dist. of Mich.*, 46 F. Supp. 2d 689, 699-700 (W.D. Mich. 1999) [hereinafter *Grand Traverse I*].

[114] 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004) [hereinafter *Grand Traverse Band II*].

[115] *Grand Traverse II*, 198 F. Supp. 2d at 935; *see, also*, NIGC, Karuk Indian Lands Opinion, at 5 (Oct. 12, 2004) (adopting the court's suggested three-factor analysis).

i. The Factual Circumstances of the Acquisition

In assessing the factual circumstances surrounding the acquisition, we note that the purpose of the exceptions in IGRA's prohibition of gaming on newly acquired lands was to ensure that tribes lacking reservations or other trust lands when IGRA was enacted would not be disadvantaged relative to more established tribes.[116] The Mechoopda have no current tribal trust lands or a reservation. The Tribe's prior reservation was established in 1939, when the United States took the Chico Rancheria into trust on behalf of the Mechoopda.[117] Twenty years later, after enactment of the California Rancheria Termination Act, most of the Mechoopda community property was liquidated to cover expenses such as property taxes and renovating former Rancheria housing.[118]

As a condition to its restoration settlement, the Mechoopda Tribe agreed that it would not seek to re-establish the boundaries of the former Chico Rancheria,[119] and only a small cemetery within the bounds of the former Chico Rancheria is eligible to be held in trust by the United States for the Tribe.[120] Chico State University owns and has developed much of the former Chico Rancheria lands, rendering those lands unsuitable for reacquisition.

The Tribe first attempted to acquire trust lands suitable for gaming purposes in 1998. That effort failed, in large part due to the prevailing opinion in the Solicitor's Office that the "restored lands" exception was available only for lands that were restored to a tribe pursuant to a Congressional restoration act.[121] A court decision, however, directly disavowed this view,[122] and the Tribe renewed its efforts to obtain restored lands in 2001.[123] As a tribe without restored lands eligible for gaming, but which has pursued such lands since its restoration, the factual circumstances factor weighs in favor of finding that the land qualifies as restored.

ii. The Location of the Acquisition

The next factor examines the location of the proposed acquisition relative to the Tribe. In assessing this factor, we must evaluate both the historical and modern connections to the land to

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[116] *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003); *Grand Traverse II*, 198 F. Supp. 2d at 935-36.

[117] Letter from William J. Conway, Mechoopda, to the Secretary of the Interior (May 29, 1914); BECKHAM, *supra* n.41 at 29-30.

[118] Pub. L. No. 85-671, 72 Stat 619 (1958), *amended by* Pub. L. No 88-419, 78 Stat. 390 (1964).

[119] *Scotts Valley Band of Pomo Indians v. United States*, No. C-86-3660 VRW at ¶ 5 (N.D. Cal. 1992). Furthermore, any after-acquired trust lands within the boundaries of the former Rancheria would have to comply with the General Plans of the City of Chico or Butte County. *Id.* at ¶ 8.

[120] *Id.* at ¶ 5.

[121] Letter from John D. Leshy to U.S. Rep. Vic Fazio (Aug. 3, 1998).

[122] *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 162 (D.D.C. 2000).

[123] Mechoopda Tribe of Chico Rancheria, Res. 01-57 (2001).

ensure that a tribe has "maintained connections to the area surrounding" the property proposed for trust acquisition.[124] We look for indicia that, on the whole, connect the Tribe to the land in the vicinity of the acquired land.[125] Evidence should show that the land was "important to the tribe throughout its history and remained so immediately on resumption of Federal recognition."[126]

a. Historical Connections to the Land

In other opinions, the Federal Government has focused extensively on the proximate location of the subject parcels relative to lands that were significant to the tribes. In an opinion involving the Bear River Band of Rohnerville Rancheria, for example, the NIGC found that the newly acquired parcels situated 6 miles from the Bear River Band's former Rancheria qualified as restored lands.[127] At the other end of the spectrum, the NIGC did not classify Wyandotte Nation lands as restored lands where the Nation was transient for much of its history and occupied the lands at issue for only 11 years, a period that did not include the time when the Tribe was terminated.[128]

The land at issue here is located approximately 10 miles from the Tribe's former Rancheria. The former Rancheria site clearly is historically significant to the Tribe and we find it to be a proximate location to the subject parcels. The restored lands exception is not limited to lands that previously were owned by the Tribe. In this case, the Stipulation and Order restoring the Tribe to Federal recognition effectively precludes the Tribe from acquiring any trust lands for the purpose of gaming within the boundaries of the former Rancheria,[129] even if those lands were available for purchase. Therefore, it is reasonable for the Tribe to seek a restoration of lands on a parcel that is located in close proximity to its former Rancheria, rather than within it.

As for other historic connections, the County has argued that the Tribe should not be permitted to rely on any historical connections that pre-date the Bidwell Ranch. According to the County's view, as embodied in the Beckham Report and filings in the Federal District Court, the Mechoopda Tribe as it exists today originated on the Bidwell Ranch as an amalgamation of

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[124] NIGC, Cowlitz Tribe Restored Lands Opinion, at 10 (Nov. 22, 2005); *see also* NIGC, Wyandotte Nation Lands Opinion, at 10 (Sept. 10, 2004) (concluding that lands within close proximity to historically significant areas qualify as "restored lands").

[125] NIGC, Karuk Tribe of California Indian Lands Opinion, at 10 (Apr. 3, 2012); *City of Roseville v. Norton,* 348 F.3d 1020, 1023, 1032 (D.C. Cir. 2003) (holding that a parcel within 40 miles of the original reservation was still eligible as "restoration lands").

[126] NIGC, Grand Traverse Band of Ottawa & Chippewa Indians Lands Opinion, at 15 (Aug. 31, 2001); NIGC, Karuk Tribe of California Indian Lands Opinion, at 10 (Apr. 3, 2012).

[127] NIGC, Bear River Band of Rohnerville Rancheria Lands Opinion, at 11-13 (Aug. 5, 2002).

[128] In Re: Wyandotte Nation Amended Gaming Ordinance at 10-12 (NIGC Sept. 10, 2004).

[129] Stipulation for Entry into Judgment, *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, No. C-86-3660-VRW at ¶¶ 8, 15 (N.D. Cal. 1992) (Attachment 9).

Indians from numerous tribes and non-Indians, with no history pre-dating the arrival of John Bidwell.[130] As summarized by the County's cover letter to the Beckham Report:

> The bottom line is found in Dr. Beckham's Conclusions at pp. 46-50, and it is that there was no "tribe" at the Chico Rancheria, which in fact was the ranch of John and Annie Bidwell. The residents were people the Bidwells hired and allowed to live in the Indian village they created as a housing area for their employees. They alone decided who could live there. Mrs. Bidwell even expelled from the village Indians who lived lifestyles of which she did not approve.[131]

We decline to adopt the County's conclusions that the Mechoopda Tribe was a creation of the Bidwells. Based on our review of the record, we conclude that the Mechoopda were a tribal polity that had significant historical connections to the region prior to John Bidwell's arrival, and those connections were not severed when the Tribe resided at Chico Rancheria. The Beckham Report does not acknowledge the existence of the Mechoopda as a tribe prior to Euro-American settlement, identifying "Mechoopda" only as the name of one or two villages and perhaps a Maidu dialect.[132] Citing to the same primary sources discussed herein, the Report concludes that although the Northwest Maidu had autonomous "village communities," the Mechoopda could not be considered a tribe.[133]

We believe the evidence in the record points to the contrary conclusion. Most significantly, the Mechoopda Tribe negotiated a treaty with the United States in 1851, and the Tribe's headman, Luck-Y-An, representing the interests of the Mechoopda, signed the treaty.[134] Through the treaty negotiations, the United States recognized the Mechoopda Tribe as a sovereign political entity with whom it had a government-to-government relationship. It did not treat the Mechoopda as a village locality or a dialect. Indeed, eight other tribes signed the treaty, further confirming that the Mechoopda were recognized distinctly from other tribes in the region. We thus reject the County's conclusion that the Mechoopda Tribe had no political existence before moving onto the Chico Rancheria.

By mischaracterizing the Mechoopda as a dialect or village, the Beckham Report also ignores a number of important sources that discuss the relationship between John Bidwell and the Mechoopda upon Bidwell's arrival in the Sacramento Valley.[135] Further, the Mechoopda had

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[130] BECKHAM, *supra* n.41 at 46-49.

[131] Letter from Dennis J. Whittlesey, Special Counsel for Gaming to Butte County, to the Honorable Dirk Kempthorne, Secretary of the Interior at 2 (June 16, 2006).

[132] BECKHAM, *supra* n.41 at 2, 46.

[133] *Id.*

[134] 1851 Treaty, *supra* n.81.

[135] GILLIS & MAGLIARI, *supra* n.33 at 256; HILL, *supra* n.34 at 12; Bidwell, *supra* n.50 at 205; Azbill, *supra* n.55 at 57.

experience working on John Potter's ranch prior to John Bidwell's arrival, substantiating Mechoopda's existence as a tribe before the arrival of John Bidwell.[136]

It is undisputed that during the late Nineteenth Century, the Mechoopda resided on the Bidwell Ranch, which later became the center of the Town of Chico and the Tribe's Rancheria. As discussed above, the Tribe adapted to its environs as it confronted the trials and tragedies of white settlement, including disease, disruption, relocation, and pressure to assimilate into European culture. That the Mechoopda lived and worked on the ranch, absorbed a succession of other Indians into the Tribe, and were affected by the dictates of the Bidwells signifies to us a dynamic community that was willing to change in order to survive, but remained culturally and politically intact.[137] The renaming of the Mechoopda Indian Village to "Bahapki," or "mixed" did not signal an end to the Tribe's traditions and political structure. Indeed, it was quite the opposite – the Tribe persevered and prevailed throughout the Bidwells' lives and after Federal involvement with the Tribe.[138]

We thus find that the Mechoopda Tribe is able to use its early history to demonstrate its significant historical connection to the land. The available evidence supports the Tribe's position that the subject parcels are located close to the villages of the pre-contact Mechoopda Tribe. While the historical accounts cannot define the Mechoopda Tribe's pre-contact boundaries with certainty, it is clear that the Mechoopda was a tribe of the Northwest Maidu.[139] The Northwest Maidu occupied an area extending from Chico down to Oroville and east towards the Sierra foothills—an area that encompasses the lands at issue.[140] The Mechoopda most likely were one of the four tribes identified by Dixon in Butte County that controlled a specific territory.[141] The exact location of the historic boundaries between these Maidu village territories is no longer known, but is not critical to our analysis of the Mechoopda Tribe's historic connections to the land. We know that tribes crossed those boundaries into neighboring territories for fishing, gathering, trade, marriage, and other ceremonies.[142] For our purposes, it is sufficient to note that

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[136] HILL, *supra* n.34 at 16.

[137] *Id.*; Azbill, *supra* n.55 (stating "we all considered ourselves Mechoopda").

[138] *Id.*; HILL, *supra* n.34 at 24; TILEY, *supra* n.79 at 4; Bidwell, *supra* n.50 at 204-10.

[139] GOLLA, *supra* n.36 at 137, map 26. The Mechoopda Tribe is mentioned in the works of nearly every major anthropological, ethnographic, linguistic, and historic research work or publication discussing the Indian peoples of this area of California. *See, e.g.,* KROEBER (1932), *supra* n.38 at 267; POWERS & POWELL, *supra* n.35 at 282; DIXON, *supra* n.38 at 123; KROEBER (1925), *supra* n.40 at 394; Riddell, *supra* n.44 at 370-71 fig. 1; GILLIS & MAGLIARI, *supra* n.33 at 256; GOLLA, *supra* n.36 at 138; Bidwell, *supra* n.50 at 204; EDWARD S. CURTIS, THE NORTH AMERICAN INDIAN, VOL. XIV 121 (Weston La Barre, ed., Landmarks in Anthropology 1924).

[140] Riddell, *supra* n.44 at 372. Based on review of the entire record, including the sources cited here and the County and Tribe's submissions, the most supportable territorial boundary of the Mechoopda is likely marked in the south by the present towns of Dayton and Durham and marked in the north by a point extending north just beyond the city of Chico. KROEBER (1932), *supra* n.38 at 266-67; HILL, *supra* n.34 at 12-13 map 2; GOLLA, *supra* n.36 at 237 map 26. Kroeber's research reflects a probable estimate of historic Mechoopda Territory. KROEBER (1932), *supra* n.38 at 267-77.

[141] DIXON, *supra* n.38 at 225; *see also* KROEBER (1925), *supra* n.40 at 398.

[142] DIXON, *supra* n.38 at 226, 330-31; HILL, *supra* n.34 at 8.

the subject parcels are located no more than 8 miles from the likely location of the primary historic village of Mechoopda.[143]

Even if the Mechoopda had no other village closer to the subject parcels than its primary village, we can surmise that the Tribe's territory extended beyond the actual dwelling site of the primary village, covering an area that either encompassed the subject parcels or came very close to them. Also, because we know that the Mechoopda Indians traveled beyond their territorial boundaries for trade, ceremonies, and the use of nearby lands for sustenance, we can deduce that the subject parcels are within the area that the Tribe used throughout its early history. Furthermore, the subject parcels are located only one mile from three buttes called the Pentz Hills that have noted cultural significance to the Tribe.[144] Finally, the subject parcels are within the reservation boundaries that would have been created for the Tribe under the Treaty of 1851, had that treaty been ratified. As a whole, this evidence demonstrates the Tribe's significant historic connection to the land at issue.

b. Modern Connections to the Land

Today, a majority of tribal members reside in the Chico area, most of whom share a direct genealogical link to the Mechoopda Indians who resided at the Mechoopda Indian Village.[145] The Tribe's headquarters is located only 10 miles away from the subject parcels.[146] These modern connections to the area weigh sufficiently in favor of the Tribe.

iii. The Temporal Relationship of the Acquisition to Tribal Restoration

The final factor to consider under *Grand Traverse Band II* is whether there is a reasonable temporal connection between the restoration of the Tribe's Federal recognition and the Federal Government's trust acquisition of the land.[147] In this case, the time period between restoration of

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[143] Historical Use and Occupancy Report Prepared by Brian Bibby for the Mechoopda Indian Tribe of the Chico Rancheria, submitted to Maria Getoff, National Indian Gaming Commission, at 9 (May 9, 2002); Map of Mechoopda Aboriginal Territory *supra* n.84; Riddell, *supra* n44 at 370-71 fig. 1; Heizer & Hester, *supra* n.75 at 81.

[144] The Tribe's submissions explain: "It was on these buttes that *Oankoitupeh* fought the fierce Black Eagle and on another where he slew an evil female being. These two separate events were among the heroic accomplishments of *Onkoitupeh*, who was responsible for the origin of the sacred dance society (the Kumeh), and other aspects of Mechoopda culture. The Mechoopda were restored to these buttes after they had been lost in a legendary gambling game with *Haikatwotopeh*, a spirit being who lived in the ice country of the north." Memorandum from Mechoopda Indian Tribe of the Chico Rancheria to Penny Coleman, Deputy General Counsel, NIGC, at 8 (March 26, 2002) (citing Bates Decl. at ¶ 10 (Exhibit H); *see also* Historical Use and Occupancy Report prepared by Brian Bibby for the Mechoopda Indian Tribe of the Chico Rancheria, submitted to Maria Getoff, National Indian Gaming Commission, at 3 (May 9, 2002); Map of Mechoopda Aboriginal Territory, *supra* n.84.

[145] TILEY, *supra* n.79 at 12; HILL, *supra* n.34 at 25; Azbill (1966), *supra* n.79 at 24-25.

[146] Memorandum from Mechoopda Tribe of Chico Rancheria, to Penny Coleman, Deputy General Counsel, NIGC, at 2-3 (Mar. 26, 2002).

[147] *Grand Traverse Band II*, 198 F. Supp. 2d at 936 ("[T]he land may be considered part of a restoration of lands on the basis of timing alone.").

the Tribe and restoration of the land has been lengthy – but through no fault of the Tribe. This factor thus does not weigh against the Tribe.

In 1992, the Mechoopda Tribe and the United States reached a settlement agreement whereby the United States restored the Tribe's Federal recognition.[148] The Tribe made its first attempt to obtain restored lands in 1998, but, at the time, the Department rejected its application based on a Solicitor's Office opinion that narrowly interpreted IGRA's restored lands exception as applying only to lands that are restored pursuant to a restoration statute. Subsequent court decisions rejected that view and adopted a broader perspective of restored lands using the three-factor analysis applied here.[149] The Mechoopda Tribe then renewed its efforts to acquire lands, requesting a restored lands opinion from the NIGC concerning the subject parcels.[150] Subsequently, the Tribe submitted a fee-to-trust application to the BIA,[151] and the Secretary's intended approval of that application has been the subject of judicial challenge and remand to the Secretary for additional analysis.

The Tribe's first attempt to obtain restored lands occurred 6 years after the Tribe's restoration. Its second attempt took place 3 years later and within a year after the judicial interpretation of "restored lands" that created new eligibility for the Tribe. Litigation on this issue and the efforts to mitigate the controversy between the County and the Tribe prior to litigation have further prolonged a final determination for the past 10 years. Based on the Tribe's repeated attempts to place land into trust, we refuse to prejudice the Tribe's efforts by the 20-year time span between recognition and trust acquisition.

Under this pre-regulation analysis, we conclude that the Mechoopda Tribe was "restored to Federal recognition," and if transferred into trust, such trust lands will be a "restoration of lands" under IGRA.

2. Analysis Under the Department's Part 292 Regulations

The Department's regulations at 25 C.F.R. Part 292 provide standards to determine whether a tribe qualifies for an exception to IGRA's general prohibition of gaming on trust lands acquired after October 17, 1988. The regulations specific to the restored lands exception are sections 292.7 – 292.12. As discussed below, the conclusion under the regulatory criteria for restored lands is the same as under the pre-regulation analysis: the subject parcels qualify as restored lands.

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[148] *Scotts Valley Band of Pomo Indians v. United States*, No. C-86-3660 VRW at ¶ 15 (N.D. Cal. filed April 17, 1986).

[149] *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians*, 116 F. Supp. 2d at 162; *Grand Traverse II*, 198 F. Supp. 2d at 935.

[150] Memorandum from Mechoopda Tribe of Chico Rancheria, to Penny Coleman, Deputy General Counsel, NIGC (Mar. 26, 2002).

[151] Memorandum from Mechoopda Tribe of Chico Rancheria to Assistant Secretary - Indian Affairs, Department of the Interior (March 19, 2004).

Section 292.11 states:

> For newly acquired lands to qualify as "restored lands" for purposes of § 292.7, the tribe acquiring the lands must meet the requirements of paragraph (a), (b), or (c) of this section.
> * * *
> (c) If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12.[152]

Section 292.12 essentially requires the applicant tribe to demonstrate that the tribe has modern and significant historical connections to the subject lands and that there is a temporal connection between the tribe's restoration and acquisition of the lands. We address each of the specific criteria below.

i. Modern Connection

In order to satisfy the first prong of section 292.12, the Tribe must demonstrate that it has modern connections to the newly acquired lands. First, a tribe must show that the land is located in the same state or states as the tribe, as evidenced by its "governmental presence and tribal population."[153] Second, a tribe must demonstrate at least one of the following indicators of a modern connection to the newly acquired lands:

> (1) The land is within a reasonable commuting distance of the tribe's existing reservation;
> (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
> (3) The land is within a 25 mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
> (4) Other factors demonstrate the tribe's current connection to the land.[154]

The Mechoopda Tribe easily meets the modern connection criteria. The tribal government's headquarters, most of the Tribe's 400 members, and the subject parcels are all located within the State of California.[155] Additionally, the subject parcels are located less than 10 miles from the tribal headquarters, which has been located in Chico since 1994, thus satisfying indicator (3) of the modern connection criteria.[156] As the Tribe has no current reservation and a majority of

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[152] 25 C.F.R. § 292.11.

[153] *Id.* at § 292.12(a).

[154] *Id.*

[155] Memorandum from Mechoopda Tribe of Chico Rancheria, to Penny Coleman, Deputy General Counsel, NIGC, at 2-3 (Mar. 26, 2002).

[156] *Id.* at 2.

tribal members reside in nearby Chico, the Tribe also meets indicator (2) of the modern connection criteria.[157] As the Tribe meets at least two of the criteria in section 292.12(a), it has satisfied the modern connection requirement.

ii. Significant Historical Connection

Under section 292.12(b), the Tribe also must show that it has a "significant historical connection" to the lands it acquired.[158] A tribe may satisfy this prong by showing through historical documentation either that the land is "located within the boundaries of the tribe's last reservation under a ratified or unratified treaty," or the existence of "the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land."[159]

As discussed above, the subject parcels are within the boundaries of the reservation that would have been created by the unratified Treaty of 1851.[160] This was the last reservation that the United States attempted to create for the Tribe under a treaty. Therefore, the subject parcels meet the significant historic connection requirement of the Part 292 regulations under this criterion alone.

In addition, the record also contains sufficient evidence of the Tribe's "villages, burial grounds, occupancy or subsistence use in the vicinity" of the subject parcels that meets the alternative method of demonstrating a significant historical connection. The analysis here is the same as that which we conducted above in the pre-regulatory analysis of historic connections, and we refer back to that section for a full discussion of the Tribe's historic connections.

Briefly, we note that the Tribe's former Rancheria and historic cemetery are located only about 10 miles from the subject parcels. Also, as discussed above and contrary to the conclusions of the Beckham Report, we find sufficient evidence in the record to support the fact that the Mechoopda Tribe existed before the arrival of John Bidwell and, therefore, the Tribe's pre-contact history is relevant to establish its historical connections to the subject parcels. For instance, the subject parcels are no more than 8 miles from the site of the primary Mechoopda village in pre-contact times.[161] It is difficult to determine how far south the Mechoopda's territory extended from this primary village,[162] but even if the Tribe's territory did not cover the

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[157] *Id.* at 3. The Tribe obtained land in fee through the U.S. Department of Housing & Urban Development in order to address housing needs in 1996. However, public opposition to the project foreclosed that option, and the Tribe still has not found a solution to its citizens' housing problem. *Id.* at 2-3.

[158] 25 C.F.R § 292.12(b).

[159] *Id.* § 292.2.

[160] *See* discussion of 1851 Treaty in Section II(B)(ii), *supra.*

[161] Historical Use and Occupancy Report Prepared by Brian Bibby for the Mechoopda Indian Tribe of the Chico Rancheria, submitted to Maria Getoff, National Indian Gaming Commission, at 9 (May 9, 2002); Map of Mechoopda Aboriginal Territory *supra* n.84; Riddell, *supra* n.44 fig. 1, at 370-71; Heizer & Hester, *supra* n.75 at 81.

[162] Riddell, *supra* n.44 at 370-71 fig. 1; DIXON, *supra* n.38 at 224-25; KROEBER (1925), *supra* n.40 at 398.

subject parcels, we reasonably can deduce that the Tribe ventured at least as far south as the parcels for trade, ceremonies, and subsistence use by agreement with neighboring tribes.[163] In sum, the historical documentation supports the conclusion that the subject parcels are "in the vicinity" of historic tribal villages, occupancy and subsistence use, and, thus, the Tribe satisfies the second requirement of section 292.12.

iii. Temporal Connection

The third and final prong that the Tribe must establish under section 292.12 is the temporal connection "between the date of the acquisition of the land and the date of the tribe's restoration."[164] An applicant tribe satisfies this criterion if it submitted an application to take the newly acquired lands into trust within 25 years after restoration, so long as the tribe is not gaming on other lands. Only 9 years passed between the date of the settlement agreement that restored the Mechoopda Tribe to Federal recognition in 1992 and when it decided to submit the subject fee-to-trust application.[165] Further, the Tribe has not had any other land taken into trust for the purpose of gaming. For these reasons, the Mechoopda have a temporal connection between the time of the Tribe's restoration and the lands it seeks to restore.

Applying the Part 292 regulations, we conclude that the subject parcels qualify as "restored lands" within the meaning of IGRA because the Tribe has established sufficient modern, historical, and temporal connections to the parcels.

3. Summary

In 1992, the Tribe was "restored to Federal recognition." Since that time, the Tribe purchased lands near its former historical territory and former Rancheria in Chico, California, and has submitted a fee-to-trust application with the United States. These lands satisfy both the regulatory standards in 25 C.F.R. Part 292 and the prevailing standards prior to the 2008 promulgation of the regulations in order to qualify as "restored lands." Accordingly, the lands will be eligible for gaming as "restored lands" under IGRA.

COMPLIANCE WITH 25 C.F.R. PART 151

The Secretary's general authority for acquiring land in trust is found in Section 5 of the IRA.[166] The regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5. In particular, 25 C.F.R. § 151.10 and 25 C.F.R. § 151.11 enumerate the criteria considered by the Department when evaluating requests for acquiring off-reservation land in trust status. We analyzed the Tribe's request in accordance with the regulations in 25 C.F.R. Part 151.

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[163] DIXON, *supra* n.38 at 224-25, 330-31; HILL, *supra* n.34 at 8.

[164] 25 C.F.R. § 292.12(c).

[165] Mechoopda Tribe of Chico Rancheria, Res. 01-57 (2001).

[166] 25 U.S.C. § 465.

25 C.F.R. 151.3. Land acquisition policy.

Section 151.3 sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe. The Secretary may acquire land in trust for a tribe when the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The Regional Director determined that the acquisition of the Site satisfies the requirements of this provision because the land is needed by the Tribe to facilitate tribal self-determination and economic development.[167] The revenue from the Project is projected to be $26,581,000 in year 5 of operation.[168] The Tribe indicates that this revenue would be used for tribal government operations and programs, programs to support the general welfare of its members, and tribal economic development.[169] Specific programs include education, housing, infrastructure, health care, community grants, tribal courts, social services, tribal emergency services, land acquisition, youth recreation, senior programs, food services, language programs, and economic development.[170] We concur in the Regional Director's determination that acquiring the Site in trust will facilitate tribal self-determination and economic development.

25 C.F.R. 151.10(a). The existence of statutory authority for the acquisition and any limitations contained in such authority.

Pursuant to the United States Supreme Court's interpretation of the IRA in *Carcieri v. Salazar*,[171] 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.[172]

We conclude that the Tribe was under Federal jurisdiction in 1934 for IRA purposes because for example, the United States negotiated a treaty with the Tribe in 1851; the Department worked to acquire land in trust for the Tribe prior to, during and after 1934; and the Tribe was included on Federal census rolls and various individual tribal members attended BIA schools. This course of dealings, with each considered alone or taken together, demonstrate that the Tribe was under Federal jurisdiction in 1934 and, thus, with each, the Secretary is authorized to acquire land in trust for the Tribe under the IRA.

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[167] *See* Regional Director's 2007 Recommendation at 2.

[168] GVA Marquette Advisors, Inc., "Mechoopda Indian Tribe, Economic Benefits of a Proposed Casino, Chico, California," (June 2002) at III-2, IV-7, Regional Director's 2007 Recommendation, Vol. 2, Tab 8.

[169] *Id.* at IV-7.

[170] *Id.*

[171] 555 U.S. 379 (2009).

[172] 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 § 19 of the IRA.

I. The Department's Application of Carcieri v. Salazar

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."[173] In evaluating this language, the Department has concluded that the text of the IRA does not define or otherwise establish the meaning of the phrase "under Federal jurisdiction."[174] Nor does the legislative history clarify the meaning of the phrase. Because the IRA does not 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 her under Section 5 of the IRA.[175] 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.[176] 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.[177]

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.'"[178] 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's legislative authority would rest in part, not upon

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[173] 555 U.S. at 387-88; 25 U.S.C. § 479.

[174] *See* Record of Decision: Trust Acquisition of, and Reservation Proclamation for the 151.87 acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe at 82-106 (Apr. 22, 2013), *available at* http://cowlitzeis.com/documents/record_of_decision_2013.pdf [hereinafter, "Cowlitz ROD"].

[175] 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).

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

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

[178] *United States v. Lara*, 541 U.S. 193, 200 (2004)(citation omitted); *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.").

'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.'"[179] 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."[180] In order to protect Indian lands from alienation and third party claims, Congress enacted a series of Indian Trade and Intercourse Acts (Nonintercourse Acts)[181] that ultimately placed a general restraint on conveyances of land interests by Indian tribes:

> 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.[182]

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."[183] As a result, title to Indian lands could be extinguished only 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."[184] Once Congress has established a relationship with an Indian tribe, Congress alone has the right to determine when its guardianship shall cease.[185]

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[179] *Lara,* 541 U.S. at 201 (internal quotation marks and citations omitted).

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

[181] *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 March 3, 1799, Ch. 46, § 12, 1 Stat. 743; Act of March 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 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." *Id.* 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 668-70.

[182] Act of June 30, 1834, Ch. 161, § 124, 4 Stat, 729 (now codified at 25 U.S.C. § 177).

[183] 21 U.S. (8 Wheat.) 543, 574 (1823).

[184] *United States v. Sandoval,* 231 U.S. at 45-46; *see also United States v. Kagama,* 118 U.S. 375, 383-85 (1886).

[185] *Grand Traverse Tribe of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan,* 369 F.3d 960, 968-69 (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).

After considering the text of the IRA, its remedial purposes, legislative history, the Department's early practices, and the Indian canons of construction, 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 specific Federal actions alone may demonstrate that a tribe was under Federal jurisdiction, or a variety of actions when viewed in concert may produce the same conclusion.[186]

For example, some tribes may be able to demonstrate that they were under Federal jurisdiction by showing that Federal Government officials undertook guardian-like action on behalf of the tribe, or engaged in a continuous course of dealings with the tribe. Evidence of such acts may be specific to the tribe and may include the negotiation of and/or entering into treaties; the approval of contracts between a tribe and non-Indians; enforcement of the Trade and Intercourse Acts (Indian trader, liquor laws, and land transactions); the education of Indian students at BIA schools; and the provision of health or social services to a tribe. Evidence may also consist of actions by the Office of Indian Affairs, which became responsible, for example, for the administration of the Indian reservations, in addition to implementing legislation. The Office exercised this administrative jurisdiction over the tribes, individual Indians, and their lands. There may be, of course, other types of actions not referenced herein that evidence the Federal Government's obligations, duties to, acknowledged responsibility for, or power or authority over a particular tribe.

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.[187] For some tribes, the circumstances or evidence will demonstrate that the jurisdiction was retained in 1934. It should be noted, however, that the Federal Government's failure to take any actions towards, or on behalf of a tribe during a particular time period does not necessarily reflect a lawful termination or loss of the tribe's jurisdictional status.[188] Moreover, the absence of any probative

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[186] *See* Cowlitz ROD at 94-95.

[187] The Department has recognized that some activities and interactions could so clearly demonstrate Federal jurisdiction over a tribe as to render elaboration of the two-step inquiry unnecessary. For example, "for some tribes, evidence of being under federal jurisdiction in 1934 will be unambiguous (e.g., tribes that voted to accept or reject the IRA following the IRA's enactment, etc.), thus obviating the need to examine the tribe's history prior to 1934. For such tribes, there is no need to proceed to the second step of the two-part inquiry." Cowlitz ROD at 95 n.99. *See also Shawano County, Wis. v. Acting Midwest Reg'l Dir., Bureau of Indian Affairs,* 53 IBIA. 62 (2011) ("[T]he Secretary's act of calling and holding [the] 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.").

[188] *See* memorandum 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 (Oct. 1, 1980).

evidence that a tribe's jurisdictional status was terminated or lost prior to 1934 would strongly suggest that such status was retained in 1934.

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 decision.

II. Application of the Two-Part Inquiry to the Tribe

Applying the principles above, we conclude that the Tribe was under Federal jurisdiction in 1934. This is demonstrated by the treaty the United States negotiated with the Tribe in 1851; the enrollment of Mechoopda children in BIA schools; the enumeration of Mechoopda tribal members on Federal censuses; and the Federal Government's efforts to acquire land in trust for the Tribe prior to and including in 1934. Although Congress authorized the termination of this relationship in 1958 that does not impact whether the Mechoopda were under Federal jurisdiction in 1934. (and in fact, supports the opposite conclusion – that until 1967 when the Secretary purported to terminate the Tribe pursuant to the 1958 Congressional authorization, the Mechoopda were at all times under Federal jurisdiction). In any event, as discussed above, the Tribe's status was restored in 1992.

In the IGRA analysis above, we concluded that the two parcels that are the subject of the Tribe's fee to trust application qualify for the restored lands exception to IGRA's general prohibition of gaming on lands acquired in trust after October 17, 1988.[189] In reaching this conclusion, we evaluated the history of the Tribe, taking into account submissions and analysis from the Tribe supporting its application and from Butte County, which opposes the fee-to-trust acquisition.[190] In order to avoid repetition of historical facts, this analysis incorporates by reference the historical discussion in the IGRA analysis set forth above, and also restates portions of such discussion when directly relevant to the inquiry herein.

A. The United States' treaty negotiations with the Tribe in 1851 conclusively demonstrate that the Tribe was under Federal jurisdiction before 1934.

As discussed in more detail above, nine tribal headmen, including the headman representing Mechoopda, Luck-Y-An, signed a treaty with the United States on August 1, 1851. The 1851 Treaty would have ceded much of the signatory tribes' aboriginal land and would have set aside a 227 square mile reservation to be shared by the signatory tribes.[191] However, despite official United States participation in and negotiation of the 1851 Treaty, the United States Senate

[189] 25 U.S.C. § 2719(b)(1)(B).

[190] When it responded to the BIA's Notice of Trust Land Acquisition Application, the State of California responded with general comments concerning *Carcieri* that only repeated and endorsed the views of Butte County. By rebutting the County's assertions, this decision both addresses and refutes the State's general comments.

[191] 1851 Treaty, *supra* n.81; HILL, *supra* n.34 at 20, 22; Mechoopda Indian Tribe of the Chico Rancheria, Request for Indian Land Determination at 8 and Exhibits I, J (March 26, 2002).

ultimately failed to ratify it, and the signatory tribes never received the reservation lands.[192] The parcels of land at issue here are located within the reservation boundaries that would have been created by the 1851 Treaty that was signed by the Mechoopda headman.

Treaty negotiations between the United States and an Indian tribe "demonstrate that the Federal Government clearly regarded the [Tribe] as a sovereign entity capable of engaging in a formal treaty relationship with the United States."[193] Moreover, "[e]ven if the treaty negotiations were unsuccessful, the act of the Executive Branch undertaking such negotiations constitutes, at a minimum, acknowledgment of jurisdiction over those particular tribes."[194] Thus, when the United States entered into treaty negotiations with an Indian tribe, such negotiations reflected the existence of a Federal-tribal relationship and the acknowledgment by the Federal Government of its responsibility for such tribe.[195]

The same principle applies here. By entering into treaty negotiations with the Mechoopda Tribe, the United States acknowledged the Tribe as a sovereign entity capable of treaty-making, while also acknowledging Federal responsibility for the Tribe. Accordingly, the Tribe was under Federal jurisdiction at least as early as 1851.

B. The Tribe's "Under Federal Jurisdiction" Status Remained Intact well into and after 1934.

The Mechoopda Tribe's "under Federal jurisdiction" status persisted after the 1851 Treaty negotiations through to and after 1934, as evidenced by the enrollment of Mechoopda children in BIA schools between 1899-1902; the report and censuses prepared by California Indian Agent Charles E. Kelsey in 1905-1906; the Department's efforts to investigate the issues facing the Tribe in 1914 and 1927; and the Department's efforts to acquire land in trust for the Tribe in 1934, culminating in the acquisition of Mikchopdo in trust to establish the Chico Rancheria in 1939.

As explained above, in the decades following the 1851 Treaty negotiations, the Tribe continued to live at Mikchopdo. The Tribe's "under Federal jurisdiction" status remained intact throughout this time. Mechoopda children were enrolled at the BIA's Greenville School between 1899 and 1902.[196] Meanwhile, Charles E. Kelsey, Special Agent for the California Indians, surveyed non-

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[192] Hill, *supra* n.34 at 23.

[193] Cowlitz ROD at 79.

[194] *Id.* at 92 (citing *Worcester v. Georgia*, 31 U.S. 515, 556, 569-60 (1832) ("The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties.").

[195] *Id.* at 97.

[196] *See* Greenville School Student Register, 1897-1902.

reservation Indians in Northern California under Federal jurisdiction.[197] In a census attached to his main report, Kelsey listed the members of the Mechoopda Tribe, which he referred to as the "Chico" Indians at the Bidwell Ranch in Butte County.[198] Kelsey's census names Captain Lafonso and William Conway as the head of the list of Mechoopda families.[199]

On February 27, 1914, and May 29, 1914, Mechoopda tribal member William Conway wrote to the Secretary of the Interior asking that the Federal Government purchase a home in Chico, Butte County, for the "Mechoopda Tribe of Indians" out of concern that Mrs. Bidwell might force the Tribe out of Mikchopdo.[200] Conway's request prompted Interior officials to investigate the Tribe's circumstances.[201] Such investigation, which included interviews with Mrs. Bidwell, William Conway, and members of the Tribe, culminated in a report prepared by BIA clerk W.C. Randolph, which recommended against acquiring land for the Tribe, in part because the Tribe's request was impracticable – citing among other things the Tribe's perceived lack of industry.[202]

Relying on Rudolph's report, Assistant Commissioner of Indian Affairs E.B. Meritt denied the Tribe's request, primarily on the basis that given the limited funding available, and that land acquisitions for California Indians without a tribal land base took preference over the Mechoopda, who the Federal Government acknowledged as having a tribal land base upon which to reside.[203] Meritt concluded his response, however, by explaining that the Tribe's petition would receive further consideration should funds later become available to allow the Department to "buy[] lands for the McHoopda [sic] band at a reasonable price."[204]

As discussed above, Mrs. Bidwell died in 1918. In her will, Mrs. Bidwell bequeathed the Mikchopdo village to the Home Missions of the Presbyterian Church in trust for the Tribe.[205] In 1927, Superintendent L.A. Dorrington of the Sacramento Agency prepared a report for the Commissioner of Indian Affairs on the homeless California Indians.[206] Surveying the Indians under his jurisdiction in the counties of northern and central California, Dorrington referred to the Mechoopda Tribe as the "Bidwell band," noting that its members resided "on land set aside

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[197] C.E. Kelsey, Special Agent for California Indians, to Commissioner of Indian Affairs (Mar. 21, 1906) ("Census of Non-Reservation California Indians, 1905-1906").

[198] *Id.* at 15-16.

[199] *Id.* at 15.

[200] Letter from William J. Conway to Secretary of the Interior 1 (Feb. 27, 1914); Letter from William J. Conway to Secretary of the Interior 1-2 (May 29, 1914).

[201] Letter from C.F. Hauke, Second Assistant Commissioner, to William J. Conway 1 (Mar. 13, 1914).

[202] Letter from W.C. Randolph, Clerk, to H.G. Wilson, Supervisor (Apr. 13, 1914).

[203] Letter from E.B. Meritt, Assistant Commissioner, to William J. Conway 1-2 (May 23, 1914).

[204] *Id.* at 2.

[205] Letter from Harris Pillsbury to O.H. Lipps, Indian Agent 1 (Mar. 21, 1934).

[206] Report from L.A. Dorrington, Superintendent of the Sacramento Indian Agency, to Commissioner of Indian Affairs (Jun. 23, 1927).

for them by the former Bidwell estate."[207] In his report, Dorrington alerted the Commissioner to the possibility that it might become necessary in the future "to protect these Indians and to prevent them becoming homeless, to acquire tracts that become delinquent on account of taxes and set them aside as a rancheria."[208]

The Presbyterian Church was ultimately unable or unwilling to pay the taxes on the lands it held in trust for the Mechoopda Tribe and deeded them back to the Bidwell Estate.[209] In 1933, the Estate decided that it, too, could no longer afford the taxes on the land, which raised the threat that Mikchopdo could be lost to tax foreclosure.[210]

Mechoopda tribal members Elmer Lafonso and Isaiah Conway met with Superintendent O.H. Lipps of the Sacramento Indian Agency in early 1934 seeking advice on how to prevent the Tribe from losing its land.[211] Lipps endorsed the view of Reverend Harris Pillsbury of the Bidwell Memorial Church that deeding Mikchopdo in trust to the United States was "the wisest and surest way to protect their interests and to relieve the land from taxation."[212] Lipps subsequently requested an investigation by Interior's Division of Investigations.[213]

Commissioner of Indian Affairs John Collier was informed about Lipps' plan "to have the land in question deeded to the United States in trust for the Indians" and Lipps' intent, should "the Wheeler-Howard Bill become[] law, to organize a Community and apply for a charter" should the Mechoopda desire it.[214] Owing to the imminent threat of tax foreclosure, Lipps requested quick approval for the plan, which Lipps would use in negotiating with the Butte County Board of Supervisors.[215] The Commissioner responded that the Department of the Interior "is interested in protecting the home-places of Indians generally" and directed Lipps "to take such action as may be found necessary to protect [the Mechoopda's] interests" so long as "the band is of the class of California Indians entitled to federal supervision."[216]

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[207] *Id.* at 3.

[208] *Id.*

[209] Letter from Ira Lantz, Special Agent, to Louis R. Glavis, Director of Investigations 5-6 (Jun. 6, 1934).

[210] *Id.* at 6-7.

[211] Letter from O.H. Lipps, Superintendent, to J.H. Favorite, Special Agent in Charge 1 (Mar. 17, 1934).

[212] Letter from O.H. Lipps, Superintendent, to Rev. Harris Pillsbury, Minister 1 (Mar. 22, 1934).

[213] Letter from O.H. Lipps, Superintendent, to J.H. Favorite, Special Agent in Charge 1-2 (Mar. 17, 1934).

[214] Letter from O.H. Lipps, Superintendent, to John Collier, Commissioner of Indian Affairs 1-2 (Mar. 24, 1934).

[215] *Id.* at 2.

[216] Letter from John Collier, Commissioner, to O.H. Lipps, Superintendent, Sacramento Indian Agency 1 (Apr. 11, 1934).

Interior staff conducted a field investigation that included an enumeration of the Mechoopda families living in Mikchopdo.[217] The resulting report recommended that an effort be made to transfer title to the land to the United States "in trust for the benefit and use" of the Tribe.[218]

Thereafter, on July 26, 1934, Superintendent Lipps was instructed "to take immediate action to protect the interests" of the Indians residing at Mikchopdo, in consultation with the United States Attorney for the Northern District of California.[219] In April 1935, the Department sent a letter to the United States Attorney General formally requesting that the United States Attorney for the Northern District of California be instructed to acquire the property from the Tribe's trustee "in the name of the United States for these Indians."[220] Contemporaneously, the United States Attorney General directed the United States Attorney for the Northern District of California to act as attorney for the Tribe in the proceedings to transfer the Mechoopda's lands to Reverend Pillsbury so that he could convey them to the United States, a request with which the United States Attorney complied.[221]

While these efforts were underway, the Mechoopda themselves requested an election to vote on the IRA.[222] Because Mikchopdo was not then held in trust by the United States, Superintendent Lipps sought the opinion of the Commissioner of Indian Affairs regarding whether an election could be held there.[223] By telegram dated May 16, 1935, Commissioner Collier responded that because the land was not yet a government reservation, it was not eligible for an election under the IRA at that time.[224] But Commissioner Collier added that there would probably be an opportunity later, presumably once title had been acquired by the United States in trust for the Tribe.[225] The fact that an IRA election was not held at Mikchopdo does not alter the Tribe's under Federal jurisdiction" status;[226] indeed, Section 5 of the IRA was the authority relied upon by the Secretary in between 1934 and 1939 to acquire the property in trust for the Tribe.[227]

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[217] Letter from Ira Lantz, Special Agent, to Louis R. Glavis, Director of Investigations 2 (Jun. 6, 1934).

[218] *Id.* at 18-19.

[219] Letter from William Zimmerman, Jr., Assistant Commissioner, to O.H. Lipps, Superintendent, Sacramento Agency 1 (Jul. 26, 1934).

[220] Letter from T.A. Walters, First Assistant Secretary, to U.S. Attorney General 2 (Jul. 2, 1935).

[221] Currie *supra* n. 78 at 321.

[222] Letter from O.H. Lipps, Superintendent, to John Collier, Commissioner of Indian Affairs (Mar. 28, 1935).

[223] *Id.*

[224] Telegram from John Collier, Commissioner, to O.H. Lipps, Superintendent 1 (May 16, 1935).

[225] *Id.*

[226] The fact that a tribe had or continues to have a reservation or land protected by the Federal Government is relevant to our inquiry, but it does not follow that only tribes that had a reservation or land in 1934 were under federal jurisdiction. *Shawano County*, 53 IBIA at 71-72 (rejecting such argument). Rather, a tribe may be "under federal jurisdiction" but have no reservation. It is a basic principle of Federal Indian law that tribal governing authority arises from a sovereignty that predates establishment of the United States, and that "[o]nce recognized as a political body by the United States, a tribe retains its sovereignty until Congress [affirmatively] acts to divest that

The delay in the Department's ability to clear the title to Mikchopdo in order to finalize the trust acquisition in 1939 was due in part to the lack of appropriated funding to clear the liens on the property.[228] In 1937, the Assistant Secretary of the Interior granted spending authority for funds to clear title to the "Me-choop-da Indian Village at Chico, California,"[229] and in January 1939, Reverend Harris Pillsbury, acting as trustee for the Tribe, signed an indenture relinquishing all interest in the property.[230] The United States was in position to make final payment to clear the liens on the property by October, and the land was held in trust by the United States by the end of that year, formally establishing the Chico Rancheria for the Tribe.[231]

Lastly, the Mechoopda Tribe's status as a tribe "under federal jurisdiction" remained unchanged until the California Rancheria Act of 1958 authorized the termination of the Chico Rancheria. By proclamation published on June 2, 1967, the Secretary purported to terminate the Federal Government's trust relationship with and supervisory responsibilities for the Mechoopda Tribe.[232] In 1986, however, Mechoopda tribal citizens, along with citizens of other terminated California tribes, challenged the Secretary's actions terminating their tribal status in Federal court.[233] The Mechoopda Tribe prevailed, achieving a favorable settlement that restored its recognition in 1992.[234] Unless the Mechoopda Tribe was a tribe "under Federal jurisdiction" under the IRA, there would not have been a need for Congress to enact a statute to attempt to terminate its recognition of, and obligation to the Tribe. Simply stated, Congress's and the Secretary's actions attempting to terminate the Federal-tribal relationship demonstrate that prior to the California Rancheria Act's enactment, the Mechoopda Tribe's recognition and "under federal jurisdiction" status was firmly established.

These facts demonstrate to us that the Mechoopda Tribe's "under Federal jurisdiction" status remained intact in 1934. As discussed above, Federal jurisdiction can be seen in an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the tribe

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sovereignty. Felix S. Cohen, HANDBOOK OF FEDERAL INDIAN LAW § 4.01[1] (citing *Harjo v. Kleppe*, 420 F. Supp. 1110, 1142-43 (D.D.C. 1976)). A tribe remains a tribe, and retains regulatory authority over its *membership* regardless of whether it was regulatory authority over *territory*, because the former authority is derived "from a source of sovereignty independent of the land [tribes] occupy." *Baker v. John*, 982 P.2d 738, 754 (Alaska 1999).

[227] Letter from T. A. Walters, First Assistant Secretary, to U.S. Attorney General 1 (Jul. 2, 1935).

[228] Memorandum from Frederic L. Kirgis, Acting Solicitor, to Commissioner of Indian Affairs 1-2 (Jul. 16, 1936).

[229] Letter from Roy Nash, Superintendent, to G.B. Hjelm, Assistant U.S. District Attorney 1 (Jan. 24, 1938).

[230] Currie *supra* n.78 at 321.

[231] *Id.* at 322.

[232] Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 32 Fed. Reg. 7981 (June 2, 1967).

[233] *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, 921 F.2d 924 (9th Cir. 1990).

[234] Stipulation for Entry into Judgment, *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States*, No. C-86-3660-VRW (N.D. Cal. 1992).

or in some instances individual 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. Here, the negotiation of the 1851 Treaty; the 1905-06 Kelsey survey; the 1914 investigation of the Tribe's request for purchase of land; the 1927 Dorrington report, which raised concerns about the Tribe's circumstances; various census reports; the enrollment of Mechoopda members in BIA schools; as well as the efforts from March 1934 through 1939 to acquire land in trust for the Tribe all demonstrate that the Tribe was under Federal jurisdiction in 1934.

C. *Evaluating Butte County's assertions that the Mechoopda Tribe is not a tribal sovereign with a government-to-government relationship with the United States.*

Butte County submitted the Beckham Report to the Department asserting that the Mechoopda Tribe is no more than an amalgamation of members of various Indian tribes and non-Indians brought together and shaped by the Bidwells, and, further, that the contemporary Mechoopda Tribe is not the successor-in-interest to the Tribe that negotiated the 1851 Treaty.[235] In making these assertions, the County relies in part on a statement made by BIA Clerk C.W. Randolph in his 1914 report concerning the Tribe's status and on the fact that Commissioner Collier declined to hold an IRA election at Mechoopda Village.[236] We do not find these arguments persuasive based on the history of the Mechoopda and the record.

The restored lands section above addresses and refutes the assertions concerning the historical connection between the present-day Mechoopda Tribe and the Mechoopda Tribe that negotiated the 1851 Treaty, relying in part on a report prepared by Dr. Shelly Tiley. In her report, Dr. Tiley addressed the history of the Mechoopda Tribe, including the history of the Tribe's interactions with Euro-American settlers in the early to mid-Nineteenth Century.[237] Dr. Tiley further discussed the succession of the Tribe's political leadership, beginning with So-wil-le, predecessor to Luck-Y-an, who was the signatory to the 1851 Treaty, through to the modern Mechoopda Tribe.[238] Dr. Tiley relies on the 1851 Treaty, a sworn affidavit prepared by John Bidwell, several Federal censuses, and other documentation to support this conclusion.[239] We find Dr. Tiley's report more persuasive and, as discussed above, determine that, on the whole, the record supports the conclusions in Dr. Tiley's report.

Additionally, consistent with the restored lands discussion above, we conclude that the treaty negotiations between the Mechoopda Tribe and the United States in 1851 demonstrate that the United States recognized the Mechoopda Tribe as a sovereign political entity with which it had

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[235] BECKHAM, *supra* n.41.

[236] *Id.*

[237] TILEY, *supra* n.79 at 6-11.

[238] *Id.* at 4-5, 12.

[239] *Id.* at 12.

a government-to-government relationship. Indeed, eight other tribes signed the 1851 treaty, which further reflects that the Mechoopda were distinctly recognized from other tribes in the region and were not regarded as a conglomerate of regional Indians. This history disproves the County's assertion that the Mechoopda Tribe had no political existence as a tribe before taking residence at Mikchopdo Village. Moreover, the fact that the Mechoopda had worked for another Chico-area rancher before Mr. Bidwell shows they pre-dated his actions and influence and thus, discounts the assertion that the Mechoopda Tribe was created by Mr. Bidwell.

Moreover, while it is correct that in his report concerning the Mechoopda Tribe, BIA clerk W. C. Randolph specifically stated that he "did not believe that these Indians belong to any particular band, but are remnants of various small bands, originally living in Butte and nearby counties;"[240] this statement does not change our conclusion concerning the Mechoopda Tribe's "under Federal jurisdiction" status in 1934. Randolph's statement, which alone cannot terminate the Federal-tribal relationship between the Tribe and the United States, was not adopted by other Department officials following the issuance of Randolph's report. For example, E.B. Meritt continued to refer to the "Mechoopda Band" in correspondence concerning the Tribe's request that the United States acquire land after reviewing Randolph's report.[241] And, as discussed above, the Federal Government continued to take numerous actions for the benefit of the Mechoopda reflecting a significant course of dealings with the Tribe prior to and after 1934.

Even assuming *arguendo* that the present-day Tribe can trace its history back only to the former Chico Rancheria established in 1939,[242] the Department's efforts to acquire the Chico Rancheria in trust for the Tribe were underway in earnest in 1933 and 1934, when it became apparent that the private trustee for the Bidwell Ranch would no longer be able to pay taxes on the property. In 1933, the executors of the trust notified the Mechoopda Tribe that the trust could no longer afford the taxes necessary to administer the trust, prompting the Tribe to seek assistance from the Federal Government.[243] As discussed above, after active engagement by the Federal Government with the Tribe, which involved several years of communication and negotiation, and after resolving the financial and property title issues associated with the purchase, the BIA purchased the land on which Mikchopdo had been situated, placing such land in trust for the benefit of the Tribe and establishing the Chico Rancheria in 1939.

In addition, the fact that an IRA election was not held on the property between 1934 and 1936 does not alter the conclusion that the Tribe was under Federal jurisdiction in 1934. As explained above, the Tribe's land base was not yet held in trust in 1935, and while the Department

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[240] Letter from W.C. Randolph, Clerk, to H.G. Wilson, Supervisor (Apr. 13, 1914).

[241] Letter from E.B. Meritt, Assistant Commissioner, to William J. Conway 1-2 (May 23, 1914).

[242] Such assertion is refuted by the historical record. *See* TILEY, n.79.

[243] Letter from Rev. Harris Pillsbury, Bidwell Memorial Presbyterian Church, to O.H. Lipps, Superintendent, Sacramento Agency, Office of Indian Affairs, U.S. Dep't of the Interior (Mar. 21, 1934); Currie, *supra* n.78 at 320. Reverend Pillsbury assisted the Indians at Mechoopda Village when he learned that the land would be sold if a solution was not found.

determined an IRA election should not be held there on that basis,[244] Commissioner Collier noted that an election could possibly be held at a later date. Thus nothing in his statement would support a conclusion that the Mechoopda were not under Federal jurisdiction in 1934. Moreover, a vote to accept or reject the IRA is not necessarily a prerequisite to obtaining land pursuant to Section 5.[245] Indeed, despite not having the opportunity to vote on whether to accept or reject the IRA between 1934 and 1936, the IRA was extended to the Mechoopda Tribe, as Section 5 was the authority upon which the Secretary relied when Mikchopdo was acquired in trust to establish the Chico Rancheria for it. This conclusively demonstrates that the Department concluded the Tribe was "under Federal jurisdiction" in 1934 and that the IRA applied.

The County's expert asserts that an appropriation act, and not the IRA, was the authority for the trust acquisition, because funds leftover from such appropriation were used to clear liens on the property.[246] Not only is this assertion wrong,[247] it is irrelevant. Any Federal statute authorizing the Federal Government to take action that benefits the Mechoopda Tribe, coupled with the Federal Government's carrying out of such authority for the Tribe, establishes that the Tribe was under Federal jurisdiction. As discussed above, the pivotal inquiry for the Department following *Carcieri* is whether the Federal Government took actions that evidence its obligations, duties to, acknowledged responsibility for, or power or authority over the Tribe. The Department's acquisition of Mikchopdo in trust to establish the Chico Rancheria evidences all of these things.

Lastly, the County's expert contends that the Mechoopda Tribe had no "community government," and that the Tribe formalized its government structure solely for the purpose of expediting the termination of the Tribe's status as a recognized tribe pursuant to the California Rancheria Act. This assertion is belied by the historical record upon which the County's expert relies, which includes a discussion of the efforts by the residents of the Chico Rancheria to draft a tribal constitution in 1955, 3 years prior to the termination Act. In any event, whether the Tribe decided to utilize other provisions of the IRA, the relevant inquiry under *Carcieri* is whether the Tribe was under Federal jurisdiction in 1934. As demonstrated above, the Tribe was under Federal jurisdiction prior to 1934, and this status was confirmed again when the Chico Rancheria was established in 1939. Subsequent actions by the Federal Government to try to terminate the

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[244] *See* Letter from O.H. Lipps, Superintendent, to John Collier, Commissioner of Indian Affairs (Mar. 28, 1935); Telegram from John Collier, Commissioner, to O.H. Lipps, Superintendent 1 (May 16, 1935).

[245] Cowlitz ROD at 94-95 (discussing the various types of evidence that can establish a tribe was under Federal jurisdiction in 1934).

[246] BECKHAM *supra* n.41 at 47-48.

[247] Letter from T.A. Walters to U.S. Attorney General 1-2 (Jul. 2, 1935) (stating that § 5 of the IRA was the authority for the trust acquisition of the Chico Rancheria, and further explaining that funds remained available from an appropriation made pursuant to the Act of March 3, 1925, 43 Stat. 1101, to clear liens on the property); Memorandum from Frederic L. Kirgis, Acting Solicitor, to Commissioner of Indian Affairs 1-2 (Jul. 16, 1936) (stating his understanding that § 5 of the IRA would be the authority for the trust acquisition and that appropriated funds were available to clear the title prior to the acquisition); Letter from Roy Nash, Superintendent, to G.B. Hjelm, Assistant U.S. District Attorney 1 (Jan. 24, 1938) (discussing appropriated funds available to clear liens on the title to allow the trust acquisition to proceed).

Tribe's recognized and "under Federal jurisdiction" status only further demonstrate and support this point.

Summary

Based on the analysis above, we conclude that, consistent with the Supreme Court's decision in *Carcieri,* the Tribe was under Federal jurisdiction in 1934 as evidenced by the treaty the United States negotiated with the Tribe in 1851 and the continuous "under Federal jurisdiction" status of the Tribe through to and including 1934, as demonstrated by the education of Mechoopda children in BIA schools, the enumeration of the Tribe's members on Federal censuses, as well as the Federal efforts to acquire land in trust for the benefit of the Tribe in 1934. Accordingly, Section 5 of the IRA provides the required statutory authority to acquire the parcels at issue.

25 C.F.R. 151.10(b). The need of the individual Indian or tribe for additional land.

The Tribe currently has no trust land or reservation. As discussed above, the unratified 1851 Treaty would have ceded tribal aboriginal land to the United States, setting aside a 227 square mile shared reservation stretching eastward from Chico to south of Oroville.[248] The Site for the proposed Project is located within the reservation boundaries that would have been established by the 1851 Treaty.[249] Pursuant to the California Rancheria Act, the United States terminated the federally recognized Mechoopda Indian Tribe. Subsequently, a majority of the Chico Rancheria lands were sold pursuant to a distribution plan, and other trust lands were sold to satisfy tax liens as a result of termination.[250]

The acquisition of the Site in trust for the purpose of establishing a class III gaming establishment will result in substantial financial benefits to the Tribe and help stimulate economic development by providing capital to enable the Tribe to diversify its economic ventures.[251] In addition, it will enable the Tribe to generate resources that will enable the Tribe to make its own decisions regarding its future, thus enjoying the benefits of tribal self-determination. The Regional Director concluded, and we agree, that acquisition of the land in trust will allow the Tribe to receive the full benefit of exercising its sovereign rights over the Site for the benefit of current and future members.[252]

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[248] 1851 Treaty, *supra* n.81; HILL, *supra* n.34 at 20, 22; Mechoopda Indian Tribe of the Chico Rancheria, Request for Indian Land Determination at 8 and Exhibits I, J (March 26, 2002).

[249] Mechoopda Indian Tribe of the Chico Rancheria, Request for Indian Land Determination at 8 and Exhibits I, J (March 26, 2002); *see also* Map of Mechoopda Aboriginal Territory, *supra* n.84.

[250] Regional Director's 2007 Recommendation at 5.

[251] *See* GVA Marquette Advisors, Inc., "Mechoopda Indian Tribe, Economic Benefits of a Proposed Casino, Chico, California," (June 2002) at III-2, IV-7, Regional Director's 2007 Recommendation, Vol. 2, Tab 8.

[252] Regional Director's 2007 Recommendation at 5.

25 C.F.R. 151.10(c). The purposes for which the land will be used.

The Tribe plans to use a portion of the property for its reservation as well as commercial development and construction of a class II and class III gaming facility. The proposed gaming facility will be developed on approximately 91 acres located in the southeastern portion of the 626.55 acre parcel. The proposed gaming facility will consist of approximately 41,600 sq. ft., including a casino floor, restaurants, retail areas and administrative offices. Ancillary facilities will include a wastewater treatment plant, water facilities and effluent storage reservoir, and parking for employees and casino guests. As discussed above, the Project is eligible for gaming because it is "restored lands" as set forth in Section 20 of IGRA.

25 C.F.R. 151.10(e). If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls.

On April 8, 2004, the Pacific Regional Office sent a notice of the proposed land acquisition application to the State and local governments, nearby Indian tribes and other interested parties seeking comments on the potential impacts that may result from the removal of the property from the tax roll and local jurisdiction.[253] On May 4, 2004, Paul McIntosh, Chief Administrative Officer, Butte County, responded that the total property taxes for the proposed trust parcels were $6,971.29.[254] The County's share of the taxes was $1,982.00. The Annual County Service Area assessment for animal control services was $5.00. The Butte County property tax bill for the proposed trust parcels for the period of July 1, 2006, through June 30, 2007, was $6,938.78.[255]

On April 1, 2013, the Pacific Regional Office sent a Notice of Trust Land Acquisition to the State and local governments requesting updated comments as to the acquisition's potential impacts pursuant to sections 151.10 and 151.11.[256] The Notice requested updated comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments.

The Office of County Counsel for Butte County responded with the requested tax, assessment, and services information.[257] The 2012-2013 tax assessment of the two parcels totals $10,384.54,

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[253] *Id.* at Vol. 2, Tab 3.

[254] *Id.* at Vol. 2, Tab 4.

[255] *Id.* at Vol. 3, Tab 5.

[256] Notice of Trust Land Acquisition Application (April 1, 2013). The Notice specifically requested:

1) If known, the annual amount of property taxes currently levied on the subject property allocated to your government; 2) Any special assessments, and amounts thereof, that are currently assess against the property in support of your government; 3) Any government services that are currently provided to the property by your entity; and 4) If subject to zoning, how the intended use is consistent, or inconsistent, with current zoning.

[257] Letter from Bruce S. Alpert, Butte County Counsel, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (April 29, 2013) (Attachment 12a).

and has been paid by the Tribe.[258] The Annual County Service Area assessment for animal control services is $5.00. We conclude that removal of the land from the tax rolls will have only a minor impact due to the small amount of currently assessed taxes, and is offset by the substantial financial benefits that will accrue to the Tribe.[259]

25 C.F.R. 151.10(f). Jurisdictional problems and potential conflicts of land use which may arise.

Tribal jurisdiction in California is subject to Public Law 83-280 and there will be no change in criminal jurisdiction. The County provides a full range services: assessor, behavioral health services, agricultural services, child support services, building and land use permits, district attorney, social services, fire services, libraries, probation services, public health, County roads, sheriff/coroner, tax collection, water resources, and others.[260]

Most of the subject property area consists of grazing land and irrigated farmland.[261] The County reports that the Butte County General Plan 2030 designates the area as "Agricultural," and the Site has an A-160 designation due to its location."[262] The County reports that General Plan policies do not allow growth or development in this area, that only structures generally allowed in an A-160 zone are one single family residence and out buildings like a barn, and that there is no policy or practice to grant a General Plan Amendment and Rezone in an Agricultural zone for a large commercial, retail, or entertainment/gaming project.[263] As discussed below, the 2006 Revised Environmental Assessment (EA) and the 2007 Finding of No Significant Impact (FONSI) concluded that there will be no significant impacts to agricultural resources from the Project.[264] With respect to jurisdictional conflicts, tribes and local governments often enter into memoranda of understanding to address areas of concern. Here, the Tribe has pledged to work cooperatively with Butte County and the City of Chico to enter into a memorandum of

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[258] *Id.* We note that the printouts attached to the County's letter contain property tax information for parcels that are not included in the Tribe's application; Notice of Trust Land Acquisition Application (April 1, 2013) at 2 (APN 04-190-048: $771.30; APN 041-190-045: $9,613.24); Regional Director's 2013 Recommendation at 8 & Tab 10.

[259] We note that Butte County closed the 2012-13 fiscal year with an unaudited fund balance carryover of $17,954,784. *See* Letter from David A. Houser, Auditor-Controller, County of Butte, to Citizens of Butte County (November 4, 2013) available at: http://www.buttecounty.net/Administration/County%20Budgets/~/media/County%20Files/AdminOffice/Public%20Internet/Budget%20Documents/FY%2013-14%20Proposed%20Budget/2-Introduction.ashx.

[260] Letter from Bruce S. Alpert, Butte County Counsel, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (April 29, 2013) at 2.

[261] Regional Director's 2007 Recommendation at 7.

[262] Letter from Bruce S. Alpert, Butte County Counsel, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (April 29, 2013) at 3.

[263] *Id.*

[264] Finding of No Significant Impact for the Proposed Mechoopda Indian Tribe Chico Casino Fee-to-Trust Acquisition at 4 (January 4, 2007) (Attachment 10).

understanding to mitigate all the impacts that the development may have on the surrounding area.[265] To date, no such agreement has been reached. Nevertheless, in anticipation of the impacted services, the Tribe has authorized the following expenditures:

- $351,000 annually and a onetime expenditure of $50,000 for law enforcement
- $168,000 annually and a onetime expenditure of $1,000,000.00 for fire protection
- $25,000 annually for County road maintenance and a onetime expenditure of $75,000 for signal and general road repair[266]

In addition, the Tribe has amended tribal law to make all mitigation measures contained in the FONSI enforceable against the Tribe by the NIGC, and the Tribe's ordinance containing this provision was approved by the NIGC on February 8, 2007.[267]

The Thermalito Irrigation District provides potable water and recycled water to the City of Oroville and surrounding communities and although the proposed property is in this water district, service lines do not extend to the proposed property.[268] It is anticipated that water will be provided from a site located on the property because a preliminary investigation indicates that the site is in an area with an abundant supply of high quality ground water.[269]

The County notes in its letter of April 29, 2013, that the Site is within a key groundwater recharge area, and expresses its concern about the effect of any on the groundwater recharge area.[270] The 2006 Revised EA found that with the implementation of best management practices and mitigation measures, there will be no significant impacts to water resources. The 2012 review by the BIA of the Revised EA and FONSI notes that six additional groundwater monitoring wells have been installed since 2006.[271] The 2012 review found that the mitigation measures identified in the Revised EA would be sufficient to reduce potential impacts to water resources.[272]

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[265] Regional Director's 2007 Recommendation at 7.

[266] *Id.*

[267] *See* Letter from Philip N. Hogen, Chairman, NIGC, to Denis Ramirez, Chairman, Mechoopda Indian Tribe of Chico Rancheria (February 8, 2007) and Mechoopda Indian Tribe of Chico Rancheria, California, Resolution 06-62 (December 20, 2006) available at: http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/gamingordinances/mechoopdaindiantribe/amend020807.pdf.

[268] Regional Director's 2007 Recommendation at 7.

[269] *Id.*

[270] Letter from Bruce S. Alpert, Butte County Counsel, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (April 29, 2013) at 3-4.

[271] Memorandum from Regional Director, Pacific Region, to Director, Office of Indian Gaming (November 27, 2012) (Attachment 11a); Memorandum from David Zweig, Analytical Environmental Services, to Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs (November 6, 2012) (Attachment 11b) at 1 & 7.

[272] *Id.*

25 C.F.R. 151.10(g). If the land to be acquired is in fee status whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

As indicated above, title to the subject parcel is currently held in fee by the Tribe. The Regional Director determined that the Site does not contain any natural resources requiring BIA management assistance.[273] The Tribe will maintain all roadways and utilities and pay for any municipal services that may be required. Wildfire protection will be provided by the California Department of Forestry and Fire Protection. The BIA does not anticipate any significant additional responsibilities or burdens due to the trust acquisition of this property. The BIA will administer any additional responsibilities that may result from this acquisition.

25 C.F.R. 151.10(h). The extent of information to allow the Secretary to comply with 516 [Departmental Manual] 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures and 602 [Departmental Manual] 2, Land Acquisitions: Hazardous Substances Determinations.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires that a public environmental review process be accomplished prior to an agency's approval of any Federal action. Prior to making a decision, the BIA as the lead agency under NEPA, and the National Indian Gaming Commission as a Cooperating Agency, must ensure that they have analyzed and addressed the environmental effects of taking the Site into trust.

The environmental review of the Project under NEPA has been extensive.[274] On December 24, 2003, the BIA released an EA for public review and comment. The comment period expired January 27, 2004. While the comment period was never formally extended, comments were received and accepted through April 19, 2004. Approximately 40 copies of the EA were distributed during the public review period. Comments on the EA were received from nine parties.

Due to the changes in the project alternatives and the availability of new information, a Revised EA for the proposed action was provided for public review and comment from June 26, 2006, to July 26, 2006.[275] Extensions to the comment period were granted to requesting parties to August 11, 2006. Copies of the Revised EA were sent to Federal, State, local, and tribal entities. A Notice of Availability for the Revised EA was published in the *Chico Enterprise Record* and the *Oroville Mercury Register* on June 26, 2006, two local newspapers that service the area where the subject property is located.

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[273] Regional Director's 2007 Recommendation at 8.

[274] Regional Director's 2013 Recommendation at 7.

[275] *Id.*

The Pacific Regional Office concluded in its memorandum to the Assistant Secretary – Indian Affairs, dated December 13, 2006, that after review and independent evaluation, the proposed Federal action to approve the Tribe's request to accept the Site into trust for the purpose of operating a gaming facility did not constitute a major Federal action that would significantly affect the quality of the human environment.[276] That conclusion was based on the analysis contained in the Revised EA, public comments made on the Revised EA, the response to those comments, and the mitigation imposed. Therefore, an environmental impact statement was not required. The Assistant Secretary – Indian Affairs signed the FONSI on January 4, 2007.[277]

On November 27, 2012, the Pacific Regional Office finalized a review of the findings and conclusions of the Revised EA and FONSI based on an Environmental Update Letter Report (Report) dated November 6, 2012,[278] The Report concluded that the Site remains largely unchanged since 2008 with no significant new information or new impacts, that no additional mitigation is warranted, and that the Revised EA and FONSI remain adequate for compliance with NEPA.[279]

602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), the Pacific Regional Office conducted an updated site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. A Phase I contaminant survey was completed on February 19 and 26, 2003, finding no contaminants present on the site and no obvious signs of any effects of contamination.[280] The Pacific Regional Director's concurrence is dated April 25, 2003. An updated Phase 1 "Contaminant Survey Checklist" was completed on December 20, 2012, and found no hazardous materials or contaminants.[281] An updated contaminant survey will be completed and certified before the land is taken into trust.

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[276] *Id.*

[277] Regional Director's 2013 Recommendation at 7; Finding of No Significant Impact for the Proposed Mechoopda Indian Tribe Chico Casino Fee-to-Trust Acquisition (January 4, 2007).

[278] Memorandum from Regional Director, Pacific Region, to Director, Office of Indian Gaming (November 27, 2012); Memorandum from David Zweig, Analytical Environmental Services, to Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs (November 6, 2012).

[279] Memorandum from Regional Director, Pacific Region, to Director, Office of Indian Gaming (November 27, 2012).

[280] Regional Director's 2013 Recommendation at 8.

[281] *Id.*

25 C.F.R. 151.11(b). The location of the land relative to state boundaries, and its distance from the boundaries of the Tribe's reservation.

Section 151.11(b) provides that as the distance between a tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition, and give greater weight to the concerns raised by the State and local governments having regulatory jurisdiction over the land to be acquired in trust. The land is located in Butte County, approximately 10 miles from the Tribe's former Rancheria.

This regulatory requirement does not apply to the present application because the Tribe does not have a reservation.

25 C.F.R. 151.11(c). Where land is being acquired for business, the Tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

The Tribe intends to use the property for the purpose of operating a class II and III gaming facility.[282] A business plan is not included in the Tribe's application, however, in June 2002, GVA Marquette Advisors, Inc. (GVA) prepared "Mechoopda Indian Tribe, Economic Benefits of a Proposed Casino, Chico, California," a study commissioned and provided by the Tribe that quantified the benefits that would accrue from the proposed casino.[283] The benefits were categorized in the study as direct benefits and indirect and induced impacts.

The primary direct impacts attributable to the design and construction phase of the casino project will be expenditures for necessary construction materials, goods and services, as well as construction jobs. Construction of the facility is estimated to cost $25 million which will generate approximately $11 million in direct construction worker payroll. Based on an annual salary of $43,000, approximately 255 full-time construction jobs will be created for one year.

Another direct benefit attributable to the Project is employment and associated costs. The casino will provide an estimated 214 full-time positions. Total annual wages at the casino for year 3 are projected to be approximately $4.8 million. Tipped employees are estimated to earn an additional $718,000 in tip income annually, bringing the total direct earnings to $5.5 million. In addition to wages, the casino would set aside additional funds for employee benefits, including health insurance, workers compensation and other benefits. Total benefit payments to casino employees are projected to equal $776,000 in the third year of operation. The projected annual payroll-related tax withholding for casino employees is project to be $1,111,000.

Expenditures for goods and services for on-going operations at the casino are an additional measure of the direct impact resulting from the proposed land use. The related costs for

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[282] Regional Director's 2013 Recommendation at 1.

[283] GVA Marquette Advisors, Inc., "Mechoopda Indian Tribe, Economic Benefits of a Proposed Casino, Chico, California" (June 2002), Regional Director's 2007 Recommendation, Vol. 2, Tab 8.

marketing, food and beverage, gift shop, gaming supplies, utilities, security, maintenance, and administrative are projected to be $5,178,000 in the first year.

Indirect and induced impacts include increased production, subsequent employment, and earnings and expenditures at businesses that would supply goods and services to the casino operation. The total induced and indirect impact on the economic output from the proposed casino is estimated to be approximately $16 million within Butte County, and $23.3 million for the State of California as a whole.

The indirect and induced impact on employment in the County is projected to be 223 positions, and the total indirect and induced impact on employment is projected to be 245 positions. Adding the direct impact on employment from the casino to the indirect and induced impact gives a total projected impact on employment of approximately 437 positions for Butte County and 459 positions for the State as a whole.

In summary, the direct impact from the casino is projected to be approximately $22.7 million annually derived from all revenue sources at the casino. Adding the direct impact of $22.7 million in output from the casino to the indirect and induced impact total of $16 million on the County and $23.3 million for the State yields a total estimated impact on economic output of approximately $38.7 million for Butte County and $46 million for the State.

25 C.F.R. § 151.11(d). Consultation with the State of California and local governments having regulatory jurisdiction over the land to be acquired regarding potential impacts on regulatory, jurisdiction, real property taxes, and special assessments.

2004 Comments

On April 8, 2004, the Pacific Regional Office sent a notice of the proposed land acquisition application to the State and local governments, nearby Indian tribes and other interested parties seeking comments on the potential impacts that may result from the removal of the property from the tax roll and local jurisdiction.[284] The following comments were received:

On May 4, 2004, Paul McIntosh, Chief Administrative Officer (CAO), Butte County indicated that the County and Tribe are working together to establish a cooperative and mutually respectful government-to-government relationship.[285] However, Mr. McIntosh expressed concern about the location and the effects of the proposed development because it is within an area identified as a key groundwater recharge area. He indicated the County was in the process of developing an Integrated Water Resource Plan which would include recommendations for review and regulation of activities on the land overlying these areas.

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[284] Regional Director's 2007 Recommendation, Vol. 2, Tab 3.

[285] *Id.*, Vol. 2, Tab 4.

On July 23, 2004, the County issued a letter to the Tribe clarifying the County's official position regarding the proposed project and withdrew, "any formal concerns regarding the proposed location of the casino and placement of the 650 acres of land into trust status."[286]

On July 27, 2004, the Tribe responded to the issues raised by Butte County in their letter of May 4, 2004, regarding the location of the proposed project, and also addressed issues related to the environmental assessment.[287]

On March 1, 2006, Dennis Whittlesey, on behalf of the Butte County Board of Supervisors (Board), stated that the Board opposed gaming at the site the Tribe has chosen to acquire in trust.[288] The Board was concerned that the development of a casino on this current site would cause significant adverse impacts to the environment and requested that an environmental impact statement (EIS) be conducted.

On July 14, 2006, at the request of Mr. Whittlesey, a copy of a June 16, 2006, letter to Secretary Kempthorne was transmitted expressing the views of the Butte County Board of Supervisors regarding the Tribe's fee to trust application.[289] In that letter, the County Board of Supervisors reiterated its opposition to the fee-to-trust application of the Mechoopda Tribe, and requested that the Tribe consider an alternative site for the project.

On August 15, 2006, Mr. McIntosh, CAO for Butte County, advised that based upon review of the Revised EA, the County could not support a finding of no significant impact and recommended an EIS be conducted due to the large size of the proposed project, the location of the project within a sensitive resource area and the highly controversial nature of the project.[290]

On August 22, 2006, Mr. McIntosh, CAO for Butte County, responded to a letter from Karen Vercruse regarding a newspaper article in the *Chico Enterprise Record* and the *Oroville Mercury Register* that challenged the legitimacy of the Tribe's designation as a tribe.[291] Mr. McIntosh stated that no official of Butte County has ever intentionally dishonored the Tribe and that their focus is on the site the Tribe has chosen.

On August 28, 2006, Mr. Whittlesey, on behalf of the Butte County Board of Supervisors, asked the Secretary of the Interior to reject the March 14, 2003, Indian Lands Determination issued by the NIGC.[292]

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[286] *Id.*, Vol. 2, Tab 6.

[287] *Id.*, Vol. 2, Tab 5.

[288] Exhibit to the 2008 Decision no. 3.

[289] *Id.* no. 4.

[290] *Id.* no.5.

[291] Regional Director's 2007 Recommendation, Vol. 2, Tab 11.

[292] *Id.*,Vol. 2, Tab 12.

On August 8, 2007, Mr. Whittlesey, on behalf of the Butte County Board of Supervisors, advised that the Board of Supervisors opposed the Tribe's development of a casino on the current Site, found the Site of the casino to be unacceptable, and disputed the Tribe's history and its claim that it satisfies the "restored" land criteria.[293]

On February 15, 2008, Mr. Whittlesey, on behalf of the Butte County Board of Supervisors, again asked the Department to reject the Tribe's application on the basis of alleged defects in the final EA (traffic, water resources, and alternative site).[294]

By letter dated March 6, 2008, the Tribe responded to the concerns raised by Mr. Whittlesey's February 15, 2008 letter.[295]

The 2008 Decision concluded that the concerns raised by the Butte County Board of Commissioners in the above-referenced letters had been addressed, and that environmental concerns were addressed in the EA and FONSI.[296]

2013 Comments

On April 1, 2013, the Pacific Regional Office sent a Notice of Trust Land Acquisition to the State and local governments requesting updated comments as to the acquisition's potential impacts pursuant to sections151.10 and 151.11.[297] The Notice requested updated comments as to the acquisition's potential impacts of regulatory jurisdiction, real property taxes and special assessments. The Notice was sent to the following State agencies:

- California State Clearinghouse
- State of California, Deputy Attorney General
- State of California, Deputy Legal Affairs
- Butte County Board of Supervisors
- Butte County Tax Collector

As discussed above in the analysis of section 151.10(e), the Office of County Counsel for Butte County responded with the requested tax, assessment and services information.[298] Butte County also noted that it has recently completed a multi-year process to create and adopt a new Butte County General Plan 2030. The County reports that the Butte County General Plan 2030

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[293] Exhibit to the 2008 Decision no. 6.

[294] *Id.*, no. 7.

[295] *Id.*, no. 9.

[296] 2008 Decision at 9.

[297] Notice of Trust Land Acquisition Application (April 1, 2013).

[298] Letter from Bruce S. Alpert, Butte County Counsel, dated April 29, 2013, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office.

designates the area as "Agricultural, and the Site has an A-160 designation due to its location."[299] The County reports that General Plan policies do not allow growth or development in this area.[300] The 2006 Revised EA and the 2007 FONSI concluded that there will be no significant impacts to agricultural resources from the Project.[301] Also as discussed above, the Tribe has pledged to work cooperatively with Butte County and the City of Chico to enter into a memorandum of understanding to mitigate all the impacts that the development may have on the surrounding area.[302]

Butte County also expressed concerns about groundwater recharge. The Revised EA found that with the implementation of best management practices and mitigation measures, there will be no significant impacts to water resources.[303] The recent review by the BIA of the Revised EA and FONSI notes that six additional groundwater monitoring wells have been installed since 2006.[304] The 2013 review found that the mitigation measures identified in the Revised EA would be sufficient to reduce potential impacts to water resources.[305]

On April 3, 2013, the Governor's Office of Planning and Research, State Clearinghouse and Planning Unit, forwarded copies of the Notice to the following State Agencies:[306]

- The Resources Agency
- Department of Conservation
- Department of Parks and Recreation
- Department of Water Resources
- Department of Fish and Wildlife, Region 2
- Native American Heritage Commission
- Caltrans, Division of Transportation Planning
- Caltrans, District 3 N
- Regional Water Quality Control Board, Region 5 (Redding)
- California Department of Justice, Attorney General's Office

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[299] *Id.* at 3.

[300] *Id.*

[301] Finding of No Significant Impact for the Proposed Mechoopda Indian Tribe Chico Casino Fee-to-Trust Acquisition at 4 (January 4, 2007).

[302] Regional Director's 2007 Recommendation at 7.

[303] Finding of No Significant Impact for the Proposed Mechoopda Indian Tribe Chico Casino Fee-to-Trust Acquisition at 6-7 (January 4, 2007).

[304] Memorandum from Regional Director, Pacific Region, to Director, Office of Indian Gaming (November 27, 2012); Memorandum from David Zweig, Analytical Environmental Services, to Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs (November 6, 2012) at 1 & 7.

[305] *Id.*

[306] Also on April 3, 2013, the State of California, Deputy Attorney General, requested a 30-day extension in which to comment on the April 1, 2013 Notice. The Regional Director granted this request.

The following agencies provided comments:

The Department of Fish and Wildlife provided comments related to threatened, endangered and special concern species; state special-status species; indirect effects on floodplains; mitigation measures and water quality; and growth-inducing and cumulative impacts.[307]

The Department of Transportation expressed concerns about potential traffic impacts, and suggested further coordination and additional permitting.[308]

The California Highway Patrol provided comments related to traffic impacts and law enforcement, and expressed concerns about traffic entering and exiting State Route 149 at the intersection of Openshaw Road.[309]

The issues discussed in the agencies' comments were analyzed in the 2006 Revised EA and no significant impacts were identified.[310] The November 6, 2012, review of the Revised EA and FONSI found that the project site remains largely unchanged with no significant new information or new impacts.[311] The review found that the conclusions and mitigation measures set forth in the FONSI remain applicable to the project site and the proposed project. The Pacific Regional Director concurred in these conclusions in her memorandum of November 27, 2012.[312] The Pacific Regional Director also reviewed the agencies' comments discussed above and reiterated her recommendation that the Site should be acquired in trust.[313]

In addition to the responses above, the California Department of Justice provided comments related to the Secretary's authority to acquire land for the Tribe and compliance with regulatory

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[307] *See* letter from Kathleen Hill, State of California, The Natural Resources Agency, Department of Fish and Wildlife, dated April 17, 2013, to Arvada Wolfin, Bureau of Indian Affairs, Pacific Regional Office (Attachment 12b).

[308] *See* letter from Gary Arnold, Office of Transportation Planning – North, State of California, Business, Transportation and Housing Agency, Department of Transportation, dated May 2, 2013, to Arvada Wolfin, Bureau of Indian Affairs, Pacific Regional Office (Attachment 12c).

[309] *See* letter from D.S. Gillinwater, Captain, Chico Area, dated May 13, 2013, Arvada Wolfin, Bureau of Indian Affairs, Pacific Regional Office (Attachment 12d).

[310] Finding of No Significant Impact for the Proposed Mechoopda Indian Tribe Chico Casino Fee-to-Trust Acquisition at 6-7 (January 4, 2007).

[311] Memorandum from David Zweig, Analytical Environmental Services, to Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs (November 6, 2012) at 1 & 7.

[312] Memorandum from Regional Director, Pacific Region, to Director, Office of Indian Gaming (November 27, 2012).

[313] *See* Regional Director's 2013 Recommendation at 8.

requirements, and asked that the Tribe's application be denied.[314] The California Department of Justice's assertion that the Secretary lacks authority under Section 5 of the IRA because the Tribe was not under Federal jurisdiction in 1934 is addressed in the analysis of section 151.10(a) above. We, thus, reject the California Department of Justice's assertions that the regulatory requirements have not been met, including that the lands fail to qualify as "restored lands" within the meaning of IGRA.

As allowed by section 151.10, the Tribe provided its response to the comments of the State agencies.[315] The Tribe responded to the agencies' concerns and stated its belief that the issues raised in the comments have been addressed through the NEPA process, litigation, and an extensive remand process, a position in accordance with our determination.

Tribal Letters of Support

In addition to the comments received from State agencies, the Pacific Regional Office received five letters of support for the Tribe's proposed project from the following tribes:

- Resighini Rancheria[316]
- Middletown Rancheria[317]
- Coyote Valley Band of Pomo Indians[318]
- California Valley Miwok Tribe[319]
- Habematolel Pomo of Upper Lake[320]

[314] *See* letter from Kathleen E. Gnekow, Deputy Attorney General, State of California, Department of Justice, dated May 17, 2013, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (Attachment 12e).

[315] *See* letter from Dennis E. Ramirez, Chairman, Mechoopda Indian Tribe of Chico Rancheria, dated June 7, 2013, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (Attachment 13).

[316] *See* letter from Don McCovey, Tribal Chairman, Resighini Rancheria, dated April 22, 2013 to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (Attachment 14a).

[317] *See* letter from Jose Simon III, Tribal Chairman, Middletown Rancheria, dated April 4, 2013, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (Attachment 14b).

[318] *See* letter from Michael Hunter, Tribal Chairman, Coyote Valley Band of Pomo Indians, dated April 10, 2013, Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (Attachment 14c).

[319] *See* letter from Silvia Burley, Chairperson, California Valley Miwok Tribe, dated April 17, 2013, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (Attachment 14d).

[320] *See* letter from Sherry Treppa, Chairperson, Habematolel Pomo of Upper Lake, dated April 18, 2013, to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office (Attachment 14e).

Summary

We have reviewed and incorporated the 2008 Decision and supporting materials and have reviewed and analyzed materials received from the State and local agencies and the Tribe, and find that the requirements of Part 151 have been satisfied.

DECISION

For the reasons set forth above, it is our determination that the Tribe qualifies as a "restored tribe" and the Site qualifies as "restored lands," pursuant to section 2719(b)(1)(B)(iii) of IGRA. Furthermore, it is my determination that the 626.55 acres of land will be taken into trust pursuant to Section 5 of the IRA.

Sincerely,

Kevin K. Washburn
Assistant Secretary – Indian Affairs