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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CITY OF YREKA, CITY COUNCIL OF THE CITY OF YREKA, Plaintiffs, v. KEN SALAZAR in his official capacity as Secretary of the United States Department of Interior; LARRY ECHOHAWK in his official capacity as Assistant Secretary for Indian Affairs of the United States Department of Interior and BUREAU OF INDIAN AFFAIRS; AMY DUTSCHKE in her official capacity as Pacific Regional Director of the Bureau of Indian Affairs; MICHAEL MALLORY in his official capacity as Siskiyou County Assessor Recorder; Does 1 through 100, Defendants	Case No. 2:10-cv-01734-WBS-EFB **FEDERAL DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT** Date: May 23, 2011 Time: 2:00 pm Place: Courtroom 5

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Pursuant to Fed. R. Civ. P. 56(b), Ken Salazar, Secretary of the Interior ("Secretary"), Larry Echohawk, Assistant Secretary for Indian Affairs ("AS-IA"), the Bureau of Indian Affairs ("BIA" or "Bureau"), and Amy Dutschke, Pacific Regional Director of the Bureau of Indian Affairs ("Regional Director") (collectively, "Federal Defendants"), respectfully submit this Memorandum in Support of their Motion for Summary Judgment as there are no genuine issues of material fact and Federal Defendants are entitled to judgment as a matter of law.

INTRODUCTION

In this action, the City of Yreka, California ("City"), and the City Council of the City of Yreka ("Council") (collectively, "Plaintiffs") challenge the Regional Director's decision to accept the 0.90-acre parcel of fee land upon which the Karuk Tribe of California's ("Tribe") health clinic sits ("Yreka Clinic") into trust, pursuant to Section 5 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465, and implementing regulations, 25 C.F.R. Part 151. The Yreka Clinic is located only 1.4 miles from the Tribe's existing trust land, and the Regional Director's determination that acquisition of the Tribe's fee land would foster tribal self-determination places the proposed acquisition squarely within the objectives of the Interior Department's "Land Acquisition Policy" set forth at 25 C.F.R. § 151.3.

Plaintiffs assert that the Regional Director's decision to approve the Tribe's trust application should be overturned under the review standards of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and that accordingly, the trust acquisition of the parcel should be permanently enjoined. Plaintiffs, however, cannot carry their heavy burden of demonstrating that the Regional Director's decision was arbitrary, capricious or contrary to law under the APA, and their requests for declaratory and injunctive relief should be denied.

SEPARATE STATEMENT OF UNDISPUTED FACTS

a. Trust Application

The Tribe originally intended to build a new health clinic on its existing trust land, but was prevented by the State of California's September 24, 1998 cease and desist order prohibiting all new construction in the City due to the inadequacy of the City's sanitary sewer system. AR000008. This constraint necessitated the Tribe's 1999 purchase and subsequent remodeling of

the existing Yreka Clinic (AR000008), located approximately 1.4 miles from the Tribe's trust land AR000006. Prior to purchase the Tribe had operated the Yreka Clinic on the site, pursuant to a year-to-year lease. AR000009. On April 8, 2003, in accordance with its March 31, 2003 Tribal Resolution No. 03-R-06, the Tribe submitted an application pursuant to 25 C.F.R. Part 151, requesting that BIA accept the Yreka Clinic into trust for the benefit of the Tribe. AR000017, AR000001. The Tribe's application addressed the 25 C.F.R. Part 151 governing regulatory criteria. AR000007-9.

b. Notice of Decision

On June 18, 2004, pursuant to 25 C.F.R. § 151.11(d), BIA issued a Notice of Off Reservation Land Acquisition Application (Non-Gaming) ("NOA"), seeking comments and information from the State and local governments concerning the current annual property taxes levied on the property, any special assessments against the land, governmental services provided to the parcel, and whether the intended use of the property was consistent with current zoning requirements. AR000090-100. The State Clearinghouse distributed the NOA to relevant State agencies on June 24, 2004. AR000101-102. The State Department of Transportation, the sole state agency to comment, replied on July 19, 2004 and expressed no concerns. AR000105.

The City provided comments in a letter dated August 31, 2004. AR000110-112. The City asserted that the Yreka Clinic is located approximately 100 miles from what it alleged were the Tribe's traditional lands, a mile from the Tribe's housing project, and that its location in the heart of the City would directly affect surrounding properties controlled by the City of Yreka Zoning Ordinance. AR000110. Though acknowledging that operation of the Yreka Clinic was an appropriate use for the location, the City raised concerns that future use might not remain consistent with the surrounding area. AR000110. Further, the City asserted that although it could absorb the loss of property tax revenue without reducing necessary services, it considered that consequence to be unfair. AR000111. The City then requested that BIA impose two conditions on the trust acquisition: (1) that the Tribe pay the City an in-lieu contribution equivalent to the lost property tax revenue consistent with the Native American Housing Assistance and Self-

Determination Act ("NAHASDA"), 25 U.S.C. § 4101 *et seq*., cooperative agreement;[1] and (2) that the current use of the parcel remain unchanged. AR000111.

The Tribe provided its response to the City's comments on June 23, 2005. AR000137-139. The Tribe asserted that placing the land into trust would benefit both members and non-members of the Tribe in the surrounding area, and that the City's zoning concerns were unsupported. AR000137-138. Finally, the Tribe opposed the City's requested conditions as impractical and/or legally impermissible. AR000138-139.

On November 9, 2007, BIA requested supplemental information from the Tribe pertinent to its fee-to-trust application, including: a statement of whether the proposed use was for non-gaming, gaming, or gaming related purposes, a statement of whether the property proposed for trust included surface rights, subsurface, or both, current property tax receipts, and a copy of the deed(s) effectuating the Tribe's acquisition of the property. AR000155. The Tribe provided the requested documents on December 20, 2007, which included: an updated tribal resolution, Resolution No. 07-R-160, dated December 19, 2007, declaring the proposed use of the Yreka Clinic for non-gaming purposes and requesting that BIA accept into trust both the surface and subsurface of the property (AR000159-160), tax receipts (AR000161-162), and a December 23, 1999 grant deed to the Tribe for the land at issue. AR000163-164. On May 14, 2008, the BIA Pacific Regional Director issued a Notice of Decision ("NOD") to accept the parcel into trust. AR000183-202.

c. Interior Board of Indian Appeals Decision

The Interior Board of Indian Appeals ("IBIA") received Plaintiffs' Notice of Appeal of the Regional Director's NOD on June 18, 2008. AR000230-231. In its June 7, 2010 Order Affirming Decision, the IBIA examined and rejected Plaintiffs' contentions that the acquisition

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[1] The City's comments referenced a 1999 in lieu agreement for real and personal property taxes, negotiated between the City and the Tribe to satisfy a condition attached to the development of an additional 70 units for the NAHASDA housing project. *See* 25 U.S.C. § 4111(d)(2). The City acknowledged, both before the BIA and the IBIA, that no such legal compulsion exists to replace the loss of real property tax revenues in the instant context, but that it regarded the impacts in each situation to be analogous. AR000111.

lacked statutory authority, that the Regional Director's discussion of the proposed use of the land was based on erroneous facts, and that removal of the property from the City's jurisdiction would create the possibility that the land might be put to uses, including potential gaming, which would not conform to the City's codes and general plan. *City of Yreka, California, et al. v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIA 287, 295 (2010).[2]

The IBIA determined that "the Tribe's ownership of the parcel in fee clearly qualifies as an ownership interest in the land under 25 C.F.R. § 151.3(a)(2)," and that "the Regional Director's determination that the acquisition fosters tribal self-determination places the acquisition squarely within the parameters of 25 C.F.R. § 151.3(a)(3)." *Id*. With respect to the alleged erroneous facts referred to by Plaintiffs, the Tribe acknowledged in its Answer Brief that although the situation had changed after the Regional Director's decision, the Yreka Clinic remained only one of two facilities in the City accepting new Medicare and MediCal patients. *Id*. at 296. The IBIA concluded that Plaintiffs had failed to show how any subsequent development regarding the number of medical facilities in the area accepting such patients could undermine the Regional Director's determination that the land would continue to be used as a medical and dental clinic. *Id*. Finally, the IBIA found that Plaintiffs had not shown that the Regional Director failed to consider jurisdictional problems and potential conflicts in deciding to accept the land into trust, and that Plaintiffs' fears of future gaming on the land were "entirely speculative." *Id*. Based on these conclusions, the IBIA affirmed the Regional Director's decision. *Id*. at 297.

STATUTORY BACKGROUND

I. The Indian Reorganization Act

The Indian Reorganization Act ("IRA"), 25 U.S.C. §§ 461–79, was enacted in 1934 as part of the federal government's return to a policy supporting "principles of tribal self-determination and self-governance." *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 255 (1992). The prior federal policy, including allotment under the General Allotment Act of 1887, 25 U.S.C. § 331 *et seq*., resulted in enormous losses of

[2] Attached as Exhibit A.

tribally owned lands, diminishing Indian land holdings from 138 million acres in 1887 to 48 million acres in 1934, a loss of 90 million acres. *See County of Yakima*, 502 U.S. at 276 (Blackmun, J., concurring in part and dissenting in part); F. Cohen, Handbook of Federal Indian Law 77-78 (2005). Thus, the IRA was designed, in part, to halt the loss of tribal lands and to allow the acquisition of new lands to restore the tribal land base. To this end, Section 5 of the IRA authorizes the Secretary to take lands into trust "for the purpose of providing land for Indians." 25 U.S.C. § 465.

The Department of the Interior's ("DOI") regulations implementing Section 5 are found at 25 C.F.R. Part 151. The regulations set forth the policies and procedures governing the Secretary's decision-making on tribal applications to have land transferred into federal trust. The overarching land acquisition policy provides that the Secretary may acquire land into trust "when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing." *Id*. § 151.3(a)(3). The regulations distinguish between on-reservation acquisitions, *id*. § 151.10, and off-reservation acquisitions, *id*. § 151.11, and require consideration of, *inter alia*, the tribe's need for the land, the proposed uses, the impacts to the state and political subdivisions of removal of the land from tax rolls, potential jurisdictional problems and conflicts over land use, the BIA's ability to discharge additional responsibilities attendant to Indian trust land, and compliance with the National Environmental Policy Act ("NEPA"). *Id*. §§ 151.10, 151.11. A tribe seeking to have land taken into trust by the United States must first file a written request with the Secretary. *Id*. §151.9. Upon receiving such a request, the Secretary must notify the state and local governments having regulatory jurisdiction over the land proposed for trust acquisition in order that written comments on the potential impacts to jurisdiction, taxes, and assessments may be provided. *Id*.

Pursuant to internal delegations and procedures, BIA Regional Directors have authority to review and decide upon discretionary on-reservation trust acquisitions. The Regional Directors also have authority to review and decide upon discretionary off-reservation trust acquisitions for non-gaming purposes.

If DOI decides to accept a tribal fee-to-trust application, notice must be published in the Federal Register or in a newspaper of general circulation serving the affected area. Such notice shall state the intent of the Secretary to acquire title in the name of the United States no sooner than thirty days after the notice is published. This notice requirement provides opportunity for legal challenge under the APA. *Id*. § 151.12(b).

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) ("[T]he plain language of Rule 56(c) mandates the entry of summary judgment… against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."); *Manzanita Park, Inc. v. Insurance Co. of N. Am.*, 857 F.2d 549, 552 (9th Cir. 1988) ("A 'material fact' is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit.") (citation omitted). Rule 56 is "an integral part of the Federal Rules as a whole" insofar as it allows for the dismissal of "factually insufficient claims" before trial, and thereby prevents the "unwarranted consumption of public and private resources" required by a trial of such meritless claims. *Celotex Corp.*, 477 U.S. at 327. Typically, the court must construe the record in the light most favorable to the non-movant, drawing all reasonable inferences in that party's favor. However, these inferences are limited to those upon which a reasonable jury might return a verdict. *T.W. Electric Service, Inc. v. Pacific Electric Contractors Ass'n*, 809 F.2d 626, 630-631 (9th Cir. 1987) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

Summary judgment is also the appropriate mechanism for deciding cases brought before the Court under the APA. *See, e.g.*, *Northwest Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1472 (9th Cir. 1994) ("This case involves review of a final agency determination under the Administrative Procedures Act, 5 U.S.C. § 706; therefore resolution of this matter does not require fact finding on behalf of this court.").

STANDARD OF REVIEW UNDER THE APA

Plaintiffs seek judicial review of the Regional Director's trust acquisition decision finally rendered after a full agency adjudicatory proceeding before the IBIA. The IBIA, which has been delegated Secretarial authority, is the final authority within the Department of the Interior on appeals of contested administrative actions by BIA officials. *See* 43 C.F.R. §§ 4.1(b)(1)(i) and 4.314. Accordingly, this appeal is governed by the APA and the standard of review set forth in § 706 of that Act.

Section 706(2)(A) of the APA provides that a court may set aside agency action only where it finds the action "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." This standard is "highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision." *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Dep't of Agric.*, 499 F.3d 1108, 1115 (9th Cir. 2007) (quoting *Indep. Acceptance Co. v. California*, 204 F.3d 1247, 1251 (9th Cir. 2000)). Even a decision of "less than ideal clarity" should be upheld so long as "the agency's path may reasonably be discerned." *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 658 (2007) (citations and internal quotation marks omitted). Thus, "[t]he ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971); *see also Davis v. U.S. E.P.A.*, 348 F.3d 772, 781 (9th Cir. 2003) (citing *Arizona v. Thomas*, 824 F.2d 745, 748 (9th Cir. 1987)).

Under the APA and relevant case law, both the Regional Director's decision to approve the Tribe's trust application, and the IBIA's opinion upholding that decision, are entitled to the deference normally accorded agencies. *See Overton Park*, 401 U.S. at 415. Agency interpretations of their own implementing regulations are often accorded heightened deference and are controlling unless clearly erroneous or inconsistent with the relevant regulation. *Auer v. Robbins*, 519 U.S. 452, 461 (1997); *Udall v. Tallman*, 380 U.S. 1, 16 (1965); *Lyng v. Payne*, 476 U.S. 926, 939 (1986) (agency's construction of its own regulations is entitled to substantial deference); *EPA v. Nat'l Crushed Stone Ass'n*, 449 U.S. 64, 83 (1980). These limitations on

judicial review of agency decision-making are grounded in the separation of powers doctrine and the recognition that Congress has conferred certain discretionary decision-making powers to federal agencies equipped with special expertise. *Cronin v. U.S. Dep't of Agric.*, 919 F.2d 439, 444 (7th Cir. 1990). For the same reasons, a reviewing court should accord deference to agency interpretation and implementation of statutes the agency is charged with administering. *Chevron U.S.A. Inc. v. N.R.D.C., Inc.*, 467 U.S. 837, 844 (1984); *see also Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *Barnhart v. Walton*, 535 U.S. 212 (2002); *United States v. Mead Corp.*, 533 U.S. 218 (2001); *Christensen v. Harris County*, 529 U.S. 576 (2000).

Ultimately, the reviewing court's task is to determine "whether the [agency's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 378 (1989); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 841 (9th Cir. 2003). Because the Interior Department administers Section 5 of the IRA, and the IBIA exercises final decision-making authority for the Secretary concerning challenges to administrative actions by BIA officials, both the Regional Director's decision to approve the Tribe's trust application, and the IBIA's opinion upholding that decision, are entitled to substantial deference. *Chevron*, 467 U.S. at 844.

SCOPE OF REVIEW UNDER THE APA

The scope of review under the APA is well-established. Judicial review of agency decision-making is limited to review of the administrative record. "In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party." 5 U.S.C. § 706. *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Overton Park*, 401 U.S. at 420; *Cronin*, 919 F.2d at 444 (district court should confine review to whether the agency's decision is based upon relevant factors and supported by evidence in administrative record, much as court of appeals reviews a district court decision.). In *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985), the Supreme Court emphasized that when reviewing administrative decisions,

> [T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C.

> § 706, to the agency decision based on the record the agency presents to the reviewing court.

Id. at 743-744 (quoting *Camp*, 411 U.S. at 142). However, "if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Florida Power & Light*, 470 U.S. at 744.

ARGUMENT

I. The Regional Director's Decision to Approve the Tribe's Fee-to-Trust Application, as Affirmed by the IBIA, is Reasonable, Supported by the Administrative Record, and Entitled to Substantial Deference Under the APA

As previously explained, the IRA was enacted in 1934 to revitalize tribes as sovereigns, in part by restoring lands to tribes. *County of Yakima*, 502 U.S. at 255. Critical to this effort is Section 5 of the IRA and the regulations found at 25 C.F.R. Part 151, which guide the Secretary's decision-making on tribal applications to have fee land accepted into trust by the United States. Section 5 provides that,

> The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.
>
> ….
>
> … Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 *et seq*.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

25 U.S.C. § 465.

The Bureau's regulations found at 25 C.F.R. Part 151 set forth the policies and procedures governing the Secretary's decision-making on tribal applications to have land transferred into trust. These regulations distinguish between on-reservation acquisitions, § 151.10, and off-reservation acquisitions, § 151.11, and require consideration of, *inter alia*, the Tribe's need for the land, the proposed uses, potential jurisdictional conflicts and environmental impacts to the land. The Tribe's application for an off-reservation acquisition required

consideration of two of the § 151.11 factors and seven of the § 151.10 factors, §§ 151.10(a)-(c), (e)-(h), incorporated into § 151.11.

a. The Regional Director Gave Reasonable Consideration to Plaintiffs' Comments on the NOA

Plaintiffs allege that the Regional Director failed to respond to their comments in response to the Tribe's NOA. Complaint ¶¶ 22, 43. To the contrary, the Administrative Record demonstrates that the Regional Director gave reasonable consideration to Plaintiffs' comments. Pursuant to 25 C.F.R. § 151.11(d), BIA issued a Notice of off Reservation Land Acquisition Application (Non-Gaming) on June 18, 2004 (AR000090-100), to which Plaintiffs provided comments on August 31, 2004. AR000110-112. The Tribe responded to Plaintiffs' comments on June 23, 2005. AR000137-139. In the NOD, the Regional Director considered both Plaintiffs' arguments regarding the NOA and the Tribe's responses to those comments. AR000184-185. The IBIA, in turn, considered and rejected each of Plaintiffs' arguments for overturning the Regional Director's decision.

1. Beneficial Effects

Plaintiffs first contended that the Tribe would realize little benefit from the transfer of the Yreka Clinic land into trust, as it is located 100 miles from what the Plaintiffs allege to be the Tribe's traditional lands. AR000110; AR000184. The Regional Director cited the Tribe's response, which indicates that approximately 350 tribal members who live in or around the City would benefit from the continued operation of the property as a tribal health clinic. AR000137; AR000184. As explained below in connection with the Regional Director's consideration of the economic benefits associated with the proposed use pursuant to 25 C.F.R. § 151.11(c), acquiring the Yreka Clinic in trust would protect the property from involuntary alienation and generally ensure that the land remains subject to tribal governmental authority.

2. Zoning Concerns

Plaintiffs next expressed concern that although the current use of the property was consistent with the zoning for the surrounding area, the property could be put to other uses once taken into trust. AR000110; AR000184. On this ground Plaintiffs requested that the Secretary

require the use of the property to remain unchanged as a condition of trust acquisition. However, as stated by the Regional Director in the NOD, "[t]he Secretary is not authorized in 25 C.F.R. Part 151 to require, as a condition to acceptance into trust, restrictions on the tribe's land use." AR000184; *see also City of Lincoln City v. U.S. Department of Interior*, 229 F.Supp.2d 1100, 1124 (D.Or. 2001) ("the Secretary of the Interior does not have the authority to impose restrictions on a Tribe's future use of property taken into trust, or to acquire fee-to-trust property conditionally.") The IBIA emphasized that Plaintiffs "fear" is "entirely speculative" and that BIA is not required to consider such "speculation" about a future land use. 51 IBIA at 296-297 (citing *Town of Charlestown, Rhode Island v. Eastern Area Director*, 35 IBIA 93, 103 (2000)). The Board also noted that the Regional Director reasonably relied upon the Tribe's representation that it did not plan to change the current use of the land, and that the purpose of the land will remain to provide health care facilities for its members and non-members in the community. AR000184; AR000007-8.

3. Economic Concerns

Plaintiffs' final concern related to the loss of real property tax revenues. AR000111; AR000184. They requested that the Secretary also require, as a condition of acceptance into trust, that the Tribe pay an in-lieu yearly contribution equivalent to the lost property tax revenue received for services provided, referencing a 1999 NAHASDA agreement in which the Tribe agreed to pay in-lieu tax contributions to the City. AR000111; AR000184. The Regional Director reiterated that "the Secretary is not authorized in 25 C.F.R. Part 151 to impose restrictions on land as a condition to acceptance into trust," and that "[the NAHASDA] agreement is entirely unrelated to the transaction at issue here." AR000184-185. The IBIA likewise held that it "does not have authority to impose conditions on trust acquisitions." 51 IBIA at 297, n.4. Additionally, the Regional Director noted the City's acknowledgement that it could absorb the loss of property tax revenue without impacting necessary services. AR000111; AR000184.

b. The Regional Director Properly Analyzed the Tribe's Application Under the Governing Regulatory Factors

Plaintiffs' further allege that the Regional Director's decision to approve the Tribe's trust application violated the APA for failure to adequately analyze the application under the governing regulations found at 25 C.F.R. Part 151. Complaint ¶¶ 41–45. Contrary to Plaintiffs' contentions, the Administrative Record demonstrates that the Regional Director considered all of the relevant regulatory factors and made a reasoned decision based on the record before him. The IBIA's ruling, which is final for the Department, 43 C.F.R. § 4.312, found that "the administrative record demonstrates that [the Regional Director] considered each of the criteria in 25 C.F.R. § 151.10 and 151.11 and reasonably exercised his discretion." 51 IBIA at 297. The IBIA ruling and the Regional Director's underlying decision, which together constitute final agency action for the Interior Department, are entitled to substantial deference under the APA.

1. Land Acquisition Policy Under 25 C.F.R. § 151.3(a)

The Regional Director found the proposed acquisition to be squarely within the Bureau's general land acquisition policy, as codified by regulations at 25 C.F.R. § 151.3(a). This policy states that land may be acquired in trust for a tribe under one or more of three circumstances:

> 1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
>
> 2) When the tribe already owns an interest in the land; or
>
> 3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

25 C.F.R. § 151.3(a). Though the Yreka Clinic is not located within or contiguous to the Tribe's existing trust lands, it is located only 1.4 miles away, and is within the Tribe's ancestral territory as described by its Constitution. AR000187. The Tribe's ownership of the parcel in fee constitutes an ownership interest in the land under 25 C.F.R. §151.3(a)(2). Complaint ¶ 30; 51 IBIA at 295. Though such an interest does not fall within the standard of the first circumstance allowing acquisition under the policy, the Regional Director further determined that the acquisition fosters tribal self-determination under 25 C.F.R. § 151.3(a)(3), and therefore reasonably concluded that the Tribe's application was consistent with the second and third circumstances allowing acquisition under the policy. AR000184, 187. The IBIA agreed, finding

that "[Appellants] offer nothing contradicting that finding and their unsupported opinion does not undermine the Tribe's assertion – and BIA's acceptance of that assertion – that acquisition of the land is crucial to the Tribe's ability to continue to deliver culturally appropriate medical services to its members." 51 IBIA at 295.

2. Statutory Authority Under 25 C.F.R. § 151.10(a)

25 C.F.R. § 151.10(a) requires identification of the statutory authority for the proposed trust acquisition. The Regional Director's May 14, 2008, Notice of Decision correctly identifies Section 5 of the IRA, 25 U.S.C. § 465, and the implementing regulations set forth at 25 C.F.R. Part 151 as supplying the requisite authority for the acquisition decision. AR000183; 51 IBIA at 292. As previously noted, Section 5 is central to Congress's goal of reversing tribal land loss, and has been at the core of federal Indian policy since the enactment of the IRA in 1934. *County of Yakima*, 502 U.S. at 255.

3. Need for Additional Land Under 25 C.F.R. § 151.10(b)

The next factor requires consideration of the tribal applicant's "need for additional land." 25 C.F.R. § 151.10(b). Here, the Tribe's need for the land is amply supported by the Administrative Record of the decision. As catalogued by the IBIA, the Regional Director noted that although the Tribe had 620 acres of scattered trust land, none of those trust parcels were currently suited for, or devoted to, the provision of health and dental services for tribal members. AR000185. The Tribe's responses to Plaintiffs' comments on the NOA emphasized that there are approximately 350 tribal members living in the City who will be served by the Yreka Clinic. AR000137. These members would directly benefit from the acquisition of the Yreka Clinic in trust, which would in turn further the Tribe's self-determination and self-governance. Accordingly, citing the Tribe's objective of having a sufficient land base to meet its goals of "cultural and social preservation, self-determination, self-sufficiency, and economic growth," the Regional Director determined, and the IBIA agreed, that the proposed acquisition would allow the Tribe to "consolidate its land holdings and exercise tribal sovereign powers over the subject property." AR000185; 51 IBIA at 292.

4. Proposed Land Use Under 25 C.F.R. § 151.10(c)

The Part 151 regulations also require consideration of "the purposes for which the land will be used." 25 C.F.R. § 151.10(c). The Administrative Record demonstrates that the agency gave reasonable consideration to this factor. The Tribe's application states that the then nearly complete remodeling of the clinic would enhance the Tribe's self-sufficiency and its ability to provide quality medical, dental, and behavioral health services to both tribal members and non-members. AR000008. The Regional Director further noted that the proposed use of the land is the continued operation of a health and dental clinic, which would not change the current use of the property. AR000185. The Regional Director's decision emphasized the fact that the Tribe had completely remodeled the clinic and planned to continue its land use of the past nine years as a site for a health and dental clinic. AR000185. The Administrative Record demonstrates the Tribe's consistent use of the land as a health clinic, first as a year-to-year lessee, then as fee owner remodeling the existing clinic, and now as an applicant for acquisition of the land into federal trust.

The Regional Director's decision also highlighted the Tribe's assertion that the Yreka Clinic was the only clinic within a 100-mile radius accepting new Medicare and MediCal patients. AR000185. During the IBIA proceeding, the Tribe acknowledged that subsequent to the Regional Director's decision, the situation had changed and one other facility in the City was accepting new patients with Medicare or MediCal coverage. The IBIA concluded that Plaintiffs had not demonstrated how this subsequent development could undermine the Regional Director's determination that the land would continue to be used as a health and dental clinic, and found no merit Plaintiffs' argument. 51 IBIA 296.

5. Tax Impacts Under 25 C.F.R. § 151.10(e)

Tribal requests that land be acquired in trust require consideration of "the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls." 25 C.F.R. § 151.10(e).

The Tribe's trust application asserted that the loss of $5,610 annual property tax assessed as of April 8, 2003 would have a minimal impact on the local tax base. AR000008. Plaintiffs' comments acknowledged that the City could absorb the loss of property tax revenue and still

provide services such as police, fire, and utilities. AR00011. The Regional Director's decision concurred, concluding that the de minimis loss of tax revenue would be offset by a reduction in County-sponsored welfare programs due to the clinic's provision of healthcare and dental services to both tribal members and non-member Medicare and MediCal patients. AR000186; 51 IBIA 292-293.

6. Potential Jurisdictional Problems and Land Use Conflicts Under 25 C.F.R. § 151.10(f)

Section 151.10(f) requires consideration of "jurisdictional problems and potential conflicts of land use which may arise" as a result of a fee-to-trust acquisition. The Administrative Record indicates that the Regional Director complied with this requirement, determining that there would be no significant structural changes to the property or major construction. Additionally, since tribal jurisdiction in California is subject to Public Law 83-280, codified at 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321-1326, there would be no change in criminal jurisdiction. AR000186. Accordingly, the Regional Director anticipated no jurisdictional problems or potential conflicts arising from the transfer of the property into trust status.

The IBIA agreed and concluded that Plaintiffs' contentions that the Regional Director did not adequately consider jurisdictional problems and potential land use conflicts were unsupported. The IBIA found that Plaintiffs' concerns regarding the possibility that the property would be put to uses inconsistent with the surrounding area did not create significant conflicts between the City and the Tribe, and were speculative. 51 IBIA at 296. In support of this conclusion, the IBIA cited resolution of past conflicts between the City and Tribe, as well as the City's characterization of its relationship with the Tribe as "generally good." *Id*.

7. The Bureau's Ability to Meet Additional Responsibilities Under 25 C.F.R. § 151.10(g)

Pursuant to 25 C.F.R. § 151.10(g), the Regional Director must consider whether the Bureau is "equipped to discharge the additional responsibilities" resulting from trust acquisition of lands currently held in fee status.

The Regional Director considered the impact of acquiring the 0.9-acre property in the context of its current responsibilities, and concluded that any additional responsibilities would be minimal. Noting BIA's established working relationship with the Tribe, the Tribe's complete operation and maintenance of the clinic, and the continuity of the land use, the Regional Director reasonably determined that BIA was equipped to discharge any additional responsibilities occasioned by the transfer. AR000186; 51 IBIA at 293.

8. The Bureau's Environmental Evaluation Under 25 C.F.R. § 151.10(h)

25 C.F.R § 151.10(h) requires the Bureau to consider "the extent to which [a tribe] has provided information that allows the Secretary to comply" with hazardous substance and NEPA regulations governing federal land acquisitions.

The Regional Director noted in his decision that a Phase 1 Contaminant Survey Checklist (AR000232-252) prepared for the acquisition had uncovered "no hazardous materials or contaminants" on the parcel. AR000186-187; 51 IBIA at 293. Furthermore, the Bureau's assessment of the property resulted in a determination that the Yreka Clinic qualified for a Categorical Exclusion (AR000082-83), eliminating the need for an Environmental Assessment or Environmental Impact Statement, and fulfilling all required NEPA analyses for the property. AR000187; 51 IBIA at 293.

9. Anticipated Economic Benefits Associated with the Proposed Use Under 25 C.F.R. § 151.11(c)

For off-reservation acquisitions, the Bureau's analysis must incorporate a tribal plan "specif[ying] the anticipated economic benefits associated with the proposed use" of the trust land. 25 C.F.R. § 151.11(c). The Regional Director's consideration of this factor is reflected in his analysis of the Tribe's need and purposes for the Yreka Clinic under §§ 151.10(b) and (c), above. The Regional Director further determined that the clinic operates on a minimal budget and that acquisition of the parcel is crucial to the Tribe's ability to freely exercise and preserve cultural management over quality health care and to foster tribal self-determination. AR000187. The Tribe has underscored the low-income status of its members, many of whom qualify for MediCal or Medicare coverage. AR000137. Trust status for the land, unlike fee status,

guarantees that the land upon which the Yreka Clinic sits will be protected from involuntary alienation, i.e. loss through tax foreclosure, and generally will be subject to tribal governmental authority. Such a guarantee is at the core of tribal self-determination.

Again, the IBIA found that Plaintiffs failed to provide any evidence contradicting the Regional Director's determination. 51 IBIA at 295. Though Plaintiffs contend that operating the Yreka Clinic would be less expensive if the clinic were located on existing trust lands, Complaint ¶ 31, the IBIA determined that given the extensive renovations to the existing clinic, relocation would be neither economical nor practical. 51 IBIA at 296.

10. Notice to State and Local Governments and Consideration of Comments in Relation to Location of Land Under 25 C.F.R. §§ 151.11(b) and 151.11(d)

The Part 151 factors specifically addressed to "off-reservation" lands require BIA, upon receipt of a tribal fee-to-trust application, to notify the state and local governments with regulatory jurisdiction over the land of the tribe's application. This notice must also inform the state and locality that they have thirty days within which to provide written comments on the acquisition's "potential impacts on regulatory jurisdiction, real property taxes and special assessments." 25 C.F.R. § 151.11(d). The Administrative Record demonstrates the Regional Director's compliance with this requirement.

After receiving the Tribe's trust application on April 8, 2003 (AR000001-80), BIA issued a Notice of Off Reservation Land Acquisition Application (Non-Gaming) on June 18, 2004, seeking comments and information from state and local governments concerning the current annual property taxes levied on the property, any special assessments against the land, governmental services provided to the parcel, and whether the intended use of the property was consistent or inconsistent with current zoning. AR000090-100. On August 31, 2004, the City submitted its comments on the application. AR000110-112. The Tribe provided its response on June 23, 2005. AR000137-139. The Regional Director requested and received additional information from the Tribe, including an updated tribal resolution, Resolution No. 07-R-160 dated December 19, 2007, declaring that the proposed use of the Yreka Clinic was for non-gaming purposes. AR000158-164.

Section 151.11(b), in conjunction with § 151.11(d), guides the Bureau's consideration of comments received by state and local governments. These sections state:

> (b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the 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. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.
>
> ….
>
> (d) Contact with state and local governments pursuant to § 151.10(e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

25 C.F.R. §§ 151.11(b) and 151.11(d). The Administrative Record indicates that the Regional Director appropriately weighed the Plaintiffs' and the Tribe's submissions against the §§ 151.11(b) and 151.11(d) guidelines. AR000183-202. The fact that the Yreka Clinic is located only a short distance from the Tribe's existing trust land was taken into consideration. The Regional Director observed that the Yreka Clinic is located approximately 1.4 miles away, "within walking distance of Karuk trust land." AR000187. As stated in 25 C.F.R. § 151.11(b), greater scrutiny is required for land acquisitions located further from a tribe's reservation. The weight accorded concerns expressed by local governments is lessened where, as here, the proposed land is proximate to the Tribe's existing trust lands. Therefore, the Regional Director gave appropriate consideration to Plaintiffs' comments.

II. The IBIA's Affirmation of the Regional Director's Decision is Entitled to Substantial Deference Under the APA

The IBIA, pursuant to Departmental delegation, is the final authority within the Department of the Interior on appeals of contested administrative actions by BIA officials. *See* 43 C.F.R. §§ 4.1(b)(1)(i) and 4.314. Plaintiffs had a full adjudicatory proceeding before the

IBIA, which affirmed the Regional Director's decision to take the Yreka Clinic into trust, finding that he reasonably exercised his discretion after considering Plaintiffs' comments regarding the NOA, as well as each of the criteria under 25 C.F.R. §§ 151.11 and 151.10. 51 IBIA at 297. Plaintiffs' Complaint does not provide any basis for this Court to overturn the IBIA's affirmation of the Regional Director's decision and this Court should not substitute its judgment for that of the agency.

a. The IBIA Properly Analyzed the Regional Director's Decision to Take the Yreka Clinic into Trust

As set forth above, the IBIA reviewed the Regional Director's consideration of the statutory authority for taking the land into trust, as well as each of the criteria under 25 C.F.R. §§ 151.11 and 151.10. 51 IBIA at 292-293. Thereafter, the IBIA assessed each of Plaintiffs' contentions, which are reiterated in Plaintiffs' Complaint in the instant case.

1. Compliance with Statutory and Regulatory Authority for the Trust Acquisition

Plaintiffs contend that the Regional Director did not comply with statutory and regulatory authority for the acquisition of the Yreka Clinic in trust. 51 IBIA at 295; Complaint ¶ 25. However, the IBIA correctly noted that "25 U.S.C. § 465 grants the Secretary broad discretion to acquire land for Indians." 51 IBIA at 295. As discussed above, the implementing regulations at 25 C.F.R. § 151.3(a) identify three circumstances under which land may be acquired in trust for a tribe:

> 1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
>
> 2) When the tribe already owns an interest in the land; or
>
> 3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

As explained above, though the land is not adjacent to or within the Tribe's existing trust land, the Tribe's ownership of the Yreka Clinic in fee meets circumstance two of 25 C.F.R. § 151.3(a), and the Regional Director's determination that the acquisition fosters tribal self-determination under the third criteria "squarely places the acquisition within the parameters of 25 C.F.R. §

151.3(a)(3).” 51 IBIA at 295. Plaintiffs insist that the Regional Director’s failure to specifically cite to which of the three circumstances were relied upon in making his decision amounts to an abuse of discretion. Complaint ¶ 26. However, the IBIA clearly determined that Plaintiffs failed to offer evidence contradicting both the Tribe’s assertion and Regional Director’s determination that acquisition of the Yreka Clinic land in trust would further the Tribe’s ability to provide culturally appropriate medical services to its members. 51 IBIA at 295.

In any event, Plaintiffs’ assertion is unavailing, because nothing in the regulations *requires* the Regional Director to specifically identify which circumstances supported his decision. *See* 25 C.F.R. Part 151. The administrative Record clearly demonstrates that both the second and third circumstances are met, through the Tribe’s ownership of the property in fee (AR000163-164) and the Regional Director’s determination that acquisition in trust will facilitate the Tribe’s self-determination. AR000184.

2. Factual Basis for the Regional Director’s Consideration of the Proposed Land Use of the Yreka Clinic

Plaintiffs further contend that the Regional Director’s decision was based on the incorrect factual conclusion that the Yreka Clinic was the only facility accepting new Medicare and MediCal patients. 51 IBIA at 295; Complaint ¶ 35. As noted above, the Tribe acknowledged that after the Regional Director issued his decision, the Yreka Clinic was no longer the sole facility accepting such patients. 51 IBIA at 296. Nevertheless, the IBIA concluded that Plaintiffs failed to demonstrate how a subsequent development with respect to the number of clinics accepting Medicare and MediCal patients would undermine the Regional Director’s determination that the Yreka Clinic would continue to be used as a medical and dental clinic. *Id*.

3. The Regional Director’s Consideration of Jurisdictional Problems and Potential Conflicts

Finally, Plaintiffs continue to claim that the Regional Director did not give adequate consideration to potential jurisdictional problems and conflicts that might arise from the removal of the Yreka Clinic from the City’s jurisdiction. *Id*.; Complaint ¶ 36. Plaintiffs cite past conflicts between the City and the Tribe, anticipating similar difficulties if the Yreka Clinic is taken into

trust, as well as the possibility that the land will be put to uses that do not conform to City codes. 51 IBIA at 296; Complaint ¶¶ 36-38. The IBIA again found Plaintiffs' contentions to be unsupported. Citing the City's characterization of its relationship with the Tribe as "generally good" the IBIA concluded that these past conflicts "apparently have been resolved satisfactorily and amicably," and that Plaintiffs had not shown that the Regional Director failed to consider jurisdictional problems and potential conflicts in making his decision. 51 IBIA at 296.

Plaintiffs also reprise their contentions that the Regional Director failed to review the possibility of a future gaming operation on the land at issue. *Id*. at 295; Complaint ¶ 33. However, as noted by the IBIA, such a claim is "entirely speculative." 51 IBIA at 296. The Administrative Record plainly demonstrates that the Tribe does not intend to use the property for gaming. NOA at AR000090-100; Tribal Resolution No. 07-R-160 at AR000159-160 (explicitly stating that the Tribe "has no plans to conduct gaming or gaming related activities on the Yreka Clinic Property"). The IBIA noted that "not only does the Tribe admit that the land does not qualify for gaming use under the Indian Gaming Regulatory Act, 25 U.S.C. § 2719(a), but… that the renovated site is completely developed and could not feasibly or fiscally-responsibly be used for gaming." 51 IBIA at 296-297 (citing Tribe's Answer Brief). Moreover, the BIA is not required to engage in an analysis of speculative uses for a property beyond the Tribe's proposed use for the land. *See City of Lincoln City*, 229 F.Supp.2d at 1123-1124 (affirming BIA decision to unconditionally approve fee-to-trust application for a Tribe's housing development despite City's speculation about future possible changes in the property use). The IBIA properly concluded that Plaintiffs' mere speculation about possible future gaming did not require the Regional Director to consider gaming as a potential use of the property in his consideration of the Tribe's trust application. *Id*. at 297.

CONCLUSION

The Administrative Record of the challenged decision indicates that the Regional Director reasonably considered the pertinent criteria under 25 C.F.R. §§ 151.10 and 151.11 and that there is a "rational connection between the facts found and the conclusions made." *Oregon Natural Resources Council Fund v. Brong*, 492 F.3d 1120, 1131 (9th Cir. 2007) (quoting *Native*

Ecosystems Council v. U.S. Forest Service, 418 F.3d 953, 960 (9th Cir. 2005)). Accordingly, the Regional Director's decision to approve the Tribe's fee-to-trust application for the Yreka Clinic, and the IBIA's affirmation of that decision, are entitled to substantial deference and should be upheld by this Court.

For the foregoing reasons, Federal Defendants respectfully request that this Court grant their Motion for Summary Judgment and deny Plaintiffs' claims for relief.

Respectfully submitted this 4th day of April, 2011

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