United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Eastern Regional Office
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Nashville, TN 37214

AUG 11 2011

Real Estate Services

CERTIFIED LETTER - RETURN RECEIPT REQUESTED

Honorable Earl Barbry, Sr.
Chairman, Tunica-Biloxi Tribe of Louisiana
P. O. Box 1589
Marksville Louisiana 71351

Dear Chairman Barbry:

This is the decision of the Bureau of Indian Affairs (Bureau), Eastern Regional Office (Region), on the fee-to-trust land acquisition request of the Tunica-Biloxi Tribe (Tribe) of Louisiana for a tract of land known as Red River property, being 703.26 acres, more or less located in Avoyelles Parish, Louisiana. The tract is more particularly described in Exhibit "A" (enclosed).

The determination whether or not to acquire property in trust is made in the exercise of discretionary authority which is vested in the Secretary of the Interior (Secretary) and now delegated to this office. The request was evaluated in accordance with the regulations contained in Title 25 of the Code of Federal Regulations (C.F.R.), Part 151 Land Acquisitions. The proposed acquisition is not located within or contiguous to the Tribe's reservation. Therefore, this request has been reviewed under the regulations of section 151.11 for off-reservation fee-to-trust land acquisitions. For the reasons discussed below, it is my decision to approve the proposed fee-to-trust land acquisition request, subject to the notification requirements of section 151.12 and a satisfactory title examination as required by section 151.13.

§151.3 - Land acquisition policy

Land may be acquired in trust by the United States government for Indian tribes only when there is statutory authority to do so. The primary statutory authority used for the acquisition of land in trust for Indian tribes and individuals is section 5 of the Indian Reorganization Act (IRA) of 1934, codified at 25 U.S.C. § 465. Section 465 authorizes the Secretary to take land into trust for "the purposes of providing land for Indians." In addition, section 203 of Indian Land Consolidation Act (ILCA), (P.L. 97-459) 96 Stat. 2517, makes Section 5 of the IRA applicable to all tribes. The Tribe's request to acquire land in trust was made pursuant to the authority of section 5 of the IRA.

The Tribe was formally acknowledged by the United States in 1981 through the Department of the Interior's administrative acknowledgment process (25 C.F.R. Part 83). In accordance with the guidance of the Deputy Assistant Secretary, Office of the Assistant Secretary-Indian Affairs, this Office sought a legal review to determine whether the Tribe was under federal jurisdiction in 1934. Based on a legal review of the historical relationship between the Tribe and the United States government, and as discussed below, I find that the Tribe was under federal jurisdiction in 1934 and that the Secretary has authority to take land into trust for it.

The regulations of 25 C.F.R. Part 151 set out the process by which land may be acquired by the United States in trust for a Tribe. Section 151.3(a), states that land may be acquired for a tribe in trust when (1) the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto; 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. The Red River property is owned in fee by the Tribe and is not located within the Tribe's current reservation boundaries or adjacent thereto. The Tribe has no plans to develop this property for the foreseeable future. The Red River property will provide an area for the Tribe to utilitize for tribal self-determination purposes and to continue its current use as pasture land and aqua farming.

Accordingly, I find that there is statutory and regulatory authority to acquire land in trust for the benefit of the Tribe and the proposed acquisition request is included within the scope of that authority.

§151.11 - Off-reservation acquisitions

§151.11(a) – Application of the criteria listed in 151.10(a) through (c) and (e) through (h);

§ 151.10(a) The existence of statutory authority for the acquisition and any limitations in such authority

Section 5 of the IRA authorizes the Secretary, in his discretion, to acquire land in trust for Indians. In February 2009, the United States Supreme Court issued its decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009), concerning the Secretary's authority to acquire land into trust for the Narragansett Tribe of Indians in Rhode Island under section 5 of the IRA. The *Carcieri* decision requires that in order for the Secretary to exercise his authority under the IRA to take land into trust for an Indian tribe, the Secretary first must establish that the tribe was "under federal jurisdiction" at the time of the passage of the IRA.

Legal Analysis of "Under Federal Jurisdiction" in 1934

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

authority delegated to him under section 5 of the IRA.[1] 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 of the Interior's interpretation of any ambiguities in the IRA.[2] 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.[3]

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.'"[4] The Indian Commerce Clause also authorizes Congress to regulate commerce "with the Indian tribes," U.S. Const., art. I, § 8, cl. 3, and the Treaty Clause grants the President the power to negotiate treaties with the consent of the Senate. U.S. Const., art. II, § 2, cl. 2. Pursuant to U.S. Const., art. VI, cl. 2, treaties are the law of the land.

The Court also has recognized that "[i]nsofar as [Indian affairs were traditionally an aspect of military and foreign policy], Congress' legislative authority would rest in part, not upon 'affirmative grants of the Constitution,' but upon the Constitution's adoption of pre-constitutional powers necessarily inherent in any Federal Government, namely powers that this Court has described as 'necessary concomitants of nationality.'"[5] 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 . . . ."[6] In order to protect Indian lands from alienation and third party claims, Congress enacted a series of Indian Trade and Intercourse Acts ("Nonintercourse Act")[7] that ultimately placed a general restraint on conveyances of land interests by Indian tribes:

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[1] 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).

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

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

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

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

[6] *Morton v. Mancari*, 417 U.S. at 552 (citation omitted).

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

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.[8]

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."[9] As a result, title to Indian lands could only be extinguished by the United States. Thus, "[n]ot only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States . . . the power and the duty of exercising a fostering care and protection over all dependent Indian communities . . . ."[10] Once Congress has established a relationship with an Indian tribe, Congress alone has the right to determine when its guardianship shall cease.[11]

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

For example, some tribes may be able to demonstrate that they were under federal jurisdiction by showing that Federal Government officials undertook guardianship actions on behalf of the tribe, or engaged in a continuous course of dealings with the tribe.[12] Evidence of such acts may be specific to the tribe and may include, but is certainly not limited to, the negotiation of or entering into treaties, the approval of contracts between the

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of federal law." The Nonintercourse Act applies to both voluntary and involuntary alienation, and renders void any transfer of protected land that is not in compliance with the Act or otherwise authorized by Congress. *Id.* at 669.

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

[9] 21 U.S. (8 Wheat.) 543 (1823).

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

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

[12] *See* Memorandum, Associate Solicitor, Indian Affairs 2 (Oct. 1, 1980) (re Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe); *see also United States v. John*, 437 U.S. 634, 653 (1978) (in holding that federal criminal jurisdiction could be reasserted over the Mississippi Choctaw reservation after several decades, the Court stated that the fact that federal supervision over the Mississippi Choctaws had not been continuous does not destroy the federal power to deal with them).

tribe and non-Indians, enforcement of the Nonintercourse Acts (Indian trader, liquor laws, and land transactions); inclusion in federal census counts; and the provision of health, education, or social services to a tribe or individual Indians. Evidence may also consist of actions by the Office of Indian Affairs, which became responsible 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. Such evidence may also be found in a tribe's petition for federal acknowledgment under 25 C.F.R. Part 83 and corresponding factual findings related to the decision to acknowledge the tribe. There may, of course, be 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.[13] For purposes of deciding the instant application, it is not necessary to posit in the abstract the universe of action that might be relevant to such a determination. It should be noted, however, that the Federal Government's failure to take any action towards or on behalf of a tribe during a particular time period does not necessarily reflect a termination of its relationship with the tribe since only Congress can terminate such a relationship.[14] In general, however, the longer the period of time prior to 1934 in which the tribe's jurisdictional status is shown, and the smaller the gap between the date of the last evidence of being under federal jurisdiction and 1934, the greater likelihood that the tribe retained its jurisdictional status in 1934. Correspondingly, the absence of any probative evidence that a tribe's jurisdictional status was terminated prior to 1934 would strongly suggest that such status was retained in 1934. As Justice Breyer discussed in his concurring opinion in *Carcieri*, a tribe may have been "under federal jurisdiction" in 1934 even though the Federal Government did not believe so at the time.[15]

Justice Breyer cited to a list of tribes that was compiled as part of a report issued 13 years after the IRA (the so-called Haas Report) and noted that some tribes were erroneously left off that list – because they were not recognized as tribes by federal officials at the time – but whose status was later recognized by the Federal Government.[16] Justice Breyer further suggested that these later-recognized tribes nonetheless could have been "under federal jurisdiction" in 1934. He cited several post-IRA administrative decisions as examples of tribes that the BIA did not view as under federal jurisdiction in 1934, but which nevertheless confirm the existence of a "1934 relationship between the tribe and Federal Government that could be described as jurisdictional."[17]

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[13] For some tribes, evidence of being under federal jurisdiction in 1934 will be unambiguous, 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.

[14] *See Lara*, 541 U.S. at 200.

[15] *Carcieri*, 129 S. Ct. at 1069.

[16] *Id.* at 1070.

[17] *Id.* (discussing Stillaguamish, Grand Traverse, and Mole Lake). Justice Breyer concurred with Justices Souter and Ginsburg that "recognized" was a distinct concept from "now under federal jurisdiction." However, in his analysis he appears to use the term "recognition" in the sense of "federally recognized" as that term is currently used today in

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.

Application of the Two-Part Inquiry to the Tunica-Biloxi Tribe

The Tunica-Biloxi Tribe[18] satisfies the two-part inquiry described above. The United States first assumed jurisdiction over the Tribe in 1803 by virtue of the guarantee in the Louisiana Purchase Treaty (also known as the Treaty of Paris of 1803) that the United States would honor all Spanish "treaties and articles" with "the tribes and Nations of Indians."[19] The Tribe had always been recognized by Spain and was given land by them – land which compromises the Tribe's aboriginal territory and current day Reservation (the Tunica Village). In 1989, the District Court for the Western District of Louisiana confirmed that at all times the Tribe possessed aboriginal title to the Tunica Village. *Tunica-Biloxi Tribe of Indians v. State of Louisiana*, Civ. No. 87-0885 (June 29, 1989).

In fulfillment of the Treaty of Paris, Congress passed an Act in 1804[20] extending the Nonintercourse Act[21] to the Indian lands in Louisiana Territory, effectively making these lands subject to the exclusive authority of the Federal Government. Then, in 1806 a federal Indian agent, exercising federal authority over the Tribe and its land under the Nonintercourse Act, [22] took action to prevent the Tribe from passing title to individuals claiming the Tribe's land.

The answer to the first question, whether the Tribe was under federal jurisdiction prior to 1934, is found in the Spanish land grant and aboriginal title the Tribe holds to its land, which pre-date the Treaty of Paris. The Tribe held complete and perfect title under Spanish law, and Article 6 of the Treaty of Paris established obligations of the United States deriving from "treaties and articles" existing between the French and Spanish governments and tribes. In addition, the extension of the Nonintercourse Act to the Louisiana Territory, and actions taken to enforce the Act with regard to the Tribe's land, reinforces the conclusion that the Tribe was under federal jurisdiction prior to 1934. Thus,

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its formalized political sense (*i.e.*, as the label given to Indian tribes that are in a political, government-to-government relationship with the United States), without discussing or explaining the meaning of the term in 1934.

[18] The current Tunica-Biloxi Tribe is the result of a gradual historical fusion of four tribes. "The Avoyel, Ofo and part of the Biloxi had probably fused with the Marksville Tunica village by around 1810. A second Tunica village in Avoyelles Parish was gradually incorporated into the Marksville village during the 19th century. A remnant of the Biloxi formed a separate but allied community near Marksville until the 1930's." *See* Proposed Findings on Tunica Petition for Federal Acknowledgment at 3 [hereinafter "Proposed Findings"] (citations herein are to the Proposed findings and expert reports, not the Final Determination since there was no new evidence or argument submitted for the Final Determination and no new findings were made). For purposes of this analysis we discuss the history of both Tunica and both Biloxi tribes interchangeably since their histories relate to the current day tribe.

[19] The Treaty between the United States of America and the French Republic of April 30, 1803, 8 Stat. 200 (commonly referred to as the "Louisiana Purchase Treaty" or the "Treaty of Paris of 1803").

[20] Act of March 26, 1804, Ch. 38, § 15, 2 Stat. 283.

[21] *See* note 7 *supra*.

[22] John Sibley, *Copy of Letter from Dr. T. Sibley*, 2 American State Papers, Public Lands 666 (1811).

the described relationship reflects federal obligations, duties, responsibility for and authority over the Tribe by the Federal Government.

The answer to the second question in the *Carcieri* analysis, whether the tribe's jurisdictional status remained intact in 1934, is also positive. The United States continued to interact with the Tribe and to provide it with services. Despite occasional misstatements by Department officials, no action of the Federal Government has ever abrogated its treaty obligations under the Treaty of Paris and no action of the Federal Government has ever terminated its relationship with and obligations to the Tribe. Thus, based on the recognition of the Tribe's land grant and aboriginal title to its land and the protection by the United States of the Tribe under the Nonintercourse Act, the Tribe has been under continuous federal jurisdiction.

The federal acknowledgment of the Tribe in 1981, through the process set forth in 25 C.F.R. Part 83,[23] further confirms the above conclusions. In order to make this determination, the United States first had to determine that the Tribe existed continuously as an Indian tribe from the first initial contact by the DeSoto expedition in 1542, through the French and Spanish dominion over the Louisiana territory, and throughout the United States history in the 19th and 20th centuries, including 1934 to the present. The Tribe's situation is aptly described by Justice Breyer in his *Carcieri* concurrence: a misinformed belief about the United States relationship with a tribe does not preclude a subsequent finding by the Department that the Tribe was "under federal jurisdiction" in 1934 for purposes of taking land into trust under the IRA.[24]

A. French and Spanish Relationships with the Tribe; Receipt of Complete and Perfect Fee Title to Land from the Spanish Government

Initially a French colony, Louisiana territory west of the Mississippi became part of Spain in 1763. France then reacquired Louisiana from Spain in 1800. Louisiana became part of the United States through the Louisiana Purchase and the accompanying Treaty of Paris of 1803.

Prior to the United States acquisition of the Louisiana Territory, the Tribe's ancestors fought as allies of France during the Natchez Wars. In recognition of the Tribe's allegiance, in 1730, the King of France, Louis VX, awarded the Tunica Chief Cahura Joligo "a brevet of brigadier of the red armies, and a blue ribbon, from which hung a silver medal, which on one side represented the marriage of the king, and on the reverse has the city of Paris . . . ."[25] Medals were given upon reaching agreements and treaties with Indian nations, and were considered as significant as treaties.[26] Later, in 1764, French Governor

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[23] 46 Fed. Reg. 38,411 (Jul. 27, 1981). The extensive factual and historical record developed by the Department as part of the federal acknowledgment process is incorporated by reference herein.

[24] *See Carcieri*, 129 S. Ct. at 1069.

[25] Proposed Findings, History Report at 3 (Dec. 4, 1980); Antoine S. Le Page Du Pratz, *The History of Louisiana* 312 (LSU Press 1975) (1774).

[26] American Indian Policy Review Commission (Task Force 10), *Report on Terminated and Nonfederally Recognized Indians* 199 (Government Printing Office) (1976) [hereinafter *AIPRC Report*] (written by Ernest C. Downs, an expert on Tunica history); *see generally* John C. Ewers, *Symbols of Chiefly Authority in Spanish*

D'Abbadie (acting on behalf of Spain under the Family Compact) negotiated peace between the Tunica Chiefs and the English after the Tunicas attacked the English.[27]

During the 1770s, eager to strengthen its relationship with the strategically-located Tunicas, the Spanish made substantial gifts to the Tribe.[28] In 1779, Spanish Governor Bernardo de Galvez issued a general order that officially recognized the sovereign rights of the Tribe:

In consequence of the proofs of the Fidelity and friendship of the Indian named Panroy of the tribe of Thonicas and his union with His Catholic Majesty, we have thought proper to name Condianacole [member of the Tribe] as captain for said tribe, and we request all officers and soldiers and inhabitants under His Catholic Majesty to *respect and protect the right or rights of the aforesaid Indians*.[29]

During this same time period, Governor de Galvez instituted a policy of inviting tribes to relocate from the English controlled eastern bank of the Mississippi to the Spanish controlled west bank to serve as a barricade against encroachment by the English and their Indian allies.[30] After assisting the Spanish in attacks on the English posts during the American Revolution, the Tunicas accepted Spain's invitation to settle in Avoyelles Prairie, the area surrounding present-day Marksville, Louisiana (part of their traditional hunting territory).[31] Between 1779 and 1786, the Tunicas obtained approximately a league of land from the Spanish authorities.[32] This land included the area of the current Tunica Village. Spanish authorities also protected this land on behalf of the Tribe. In October 1786, in response to a non-Indian's land claim over the Tunica's land Governor Esteban Miro, de Galvez's successor, instructed Jacques Gaignard, his commander:

Having informed myself of the Indians, about their abandonment of the land which you speak of in yours of the 10th of June last, they exclaim very much against it, saying that they have but a league of land, that consequently they have use for their land and cattle. You will, therefore, tell M. Bordelon and M. Vitrine to look out for some other part to place themselves as the lands they demand belong to the Indians and that they have known rights which ought to be respected everywhere.[33]

Thus, the Spanish followed through on their commitment to defend the Tunica and their land. In fact, the Spanish established a military post (the Avoyels Post) no later than 1783

Louisiana, in *The Spanish in the Mississippi Valley*, 1762-1804 272 (John F. McDermott ed., 1974) (medals used to recognize and reward allegiance of tribal leaders).

[27] D'Abbadie's Journal, translated and printed in Clarence Walworth, Clarence Alvord and Edwin Carter, *The Critical Period,* Collections of the Illinois State Historical Library, Vol. X at 191-193 (Springfield 1915); *see also* Proposed Finding, History Report at 3-4.

[28] *AIPRC Report supra* note 26, at 199 (the Spanish "showered" gifts on the tribe).

[29] *Id.* at 200 (emphasis added).

[30] *Id.* at 200.

[31] *Id.*

[32] Proposed Finding, History Report at 5.

[33] Archivo General de Indias, Mexico, legajo 199, pp. 200-209. *See also* Proposed Finding, History Report at 5; Proposed Finding, Anthropology Report at 7.

near the Tunica Village to protect the Tribe and settlers from the English and American colonists.[34]

As the U.S. Supreme Court later recognized, in those areas of the United States under Spanish and French dominion, many Indian tribes had complete and perfect fee title to their tribal land subject only to a significant restraint on alienation: they could not sell their land without the prior approval of the appropriate royal officials.[35] Before the Louisiana Purchase, the Tunicas held complete and perfect fee title to their land. Consequently, the Spanish recognized and protected the Tribe's right to this land.

B. The Treaty of Paris of 1803 and the Tribe's Jurisdictional Relationship with the United States

1. Nineteenth and Early Twentieth Century History

The United States acquired the Louisiana Territory from France in the Treaty of Paris of 1803. Significantly, under Article VI of the Treaty, the United States assumed the same obligations to the tribes in that territory as those held by Spain:

> The United States promises to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.[36]

Although the United States did not enter into a separate treaty with the Tribe, in 1804 Congress expressly extended the protections of the Nonintercourse Act to the tribes in the Louisiana territory.[37] This act, one of several iterations of the Nonintercourse Act, protected Indian land within the territory, including the land held by the Tunica-Biloxi, in order to maintain peace and to establish federal authority over Indian lands (mainly the inalienability of Indian land without federal consent):

> And in order to maintain peace and tranquility with the Indian tribes who reside within the limits of the Louisiana, as ceded by France to the United States, the act of Congress, passed on the thirtieth day of March, one thousand eight hundred and two, entitled, "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers," is hereby extended to the territories erected and established by this act . . . .[38]

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[34] Proposed Finding, Anthropology Report at 7 (*citing* Corrine Saucier, *The History of Avoyelles Parish, Louisiana* 14-15 (Pelican Publishing) (1943)).

[35] *See Chouteau v. Molony*, 57 U.S. (16 How.) 203, 237-239 (1853); *United States v. Joseph*, 94 U.S. 614, 617-618 (1876); *United States v. Candelaria*, 271 U.S. 432, 441-444 (1926); Memorandum, Associate Solicitor, Division of Indian Affairs 6-7 (May 30, 1996) (analysis of the Tunica-Biloxi Land Claim in Louisiana). Note that this same legal principle was adopted by the United States in the Nonintercourse Act.

[36] *See* Treaty of Paris, *supra* note 19, at Art. 6.

[37] Act of March 26, 1804, 2 Stat. 283, § 15.

[38] *See id*; *see also* Act of March 30, 1802, 2 Stat. 139, *et seq.*

Establishing title for non-Indians under Spanish law involved a series of steps, including an expensive survey.[39] As a result, at the time of the Louisiana Purchase, many non-Indian properties had incomplete title as no survey had been completed or other documents had not been acquired.[40] When the United States assumed control of the territory pursuant to the Louisiana Purchase, it extinguished title to all land with incomplete title.[41] This process was not applied to Indian lands as they were deemed to have complete or perfect title to the lands they occupied.[42]

Thus, the Tribe's title to its land recognized by Spain was complete and perfect when the territory passed to the United States under the Louisiana Purchase. The application of the Nonintercourse Act to Indian lands within the Louisiana territory, which obligates the United States to protect the Tribe's complete and perfect title to its land, is the underpinning of the Federal Government's relationship with the Tribe that remains in force and effect today.

Shortly after the Louisiana Purchase, the United States also sought to protect the Tribe's title to its land by invoking the Nonintercourse Act. The Secretary of War appointed Dr. John Sibley as Indian agent for the Territory of Orleans. As part of his official duties, in 1805 Sibley compiled a list of the Indian tribes under his jurisdiction that included the Tribe.[43] Then in 1806, Sibley asserted protections of the Nonintercourse Act in a dispute before the Louisiana land commissioners by two non-Indians who claimed that the Tribe transferred its land to them to settle a debt.[44]

> Gentlemen: As United States agent for Indian affairs for the Territory of Orleans, it appears to me to be my duty to represent to you such information as I am possessed of, relative to lands belonging to Indians that may be claimed by other persons. * * * According to my apprehension, the act of Congress provided for such cases, declares "all purchases of lands made of Indians by individuals, null and void," and makes it besides a misdemeanor and punishable in an individual to make such purchase. I have been instructed by the Executive of the United States *to assure all the Indian tribes that the lands belonging to them should be and remain their property.* * * * I have done so to those tribes, as well as others, by a written certificate, and have been informed of some very extraordinary conversation of Mr. Fulton, on the Indians showing him my certificates, which certainly would be noticeable, if other than Indian proof of it could be procured. The extinguishment of the Indian claim to lands by an individual certainly *does not*

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[39] Memorandum, Associate Solicitor, Division of Indian Affairs 2 (May 30, 1996).
[40] *Id.* at 2.
[41] *Id.* at 3.
[42] *Id.* at 2; *see United States v. Candelaria*, 271 U.S. 432, 442 (1926) (Indians have "full title to their lands" under Spanish law) (*citing Choteau v. Molony*, 57 U.S. (16 How.) 203, 237 (1854)); *Spencer's Heirs v. Grimball*, 6 Mart. (n.s.) 355, 357 (La. 1827) ("[T]ribes of Indians, to whom lands were allotted by the Spanish officers of Louisiana, in pursuance of the laws of the Indies, acquired a legal title to the soil. That they were in every respect as completely owners of it, as those who held under a complete grant, although being considered in a state of pupillage [sic], the authority of the public officers, who were constituted their guardians, was necessary to a valid alienation of their property."). *See also Smyth v. New Orleans Canal & Banking Co.*, 93 F.899 (5th Cir. 1899
[43] Dr. John Sibley, *Historical Sketches of the Several Indian Tribes in Louisiana, south of the Arkansas, and between the Mississippi and River Grande*, 1 American State Papers, Indian Affairs 721 (1832).
[44] John Sibley, *Copy of Letter from Dr. T. Sibley*, 2 American State Papers, Public Lands 666 (1811).

extinguish the United States' (sic) claim to the same lands, and cannot give the individual any good right.[45]

Significantly, Sibley's assertion of the Nonintercourse Act to protect the Tribe's interests in its land clearly demonstrated the Tribe's jurisdictional relationship with the Federal Government.

The objective of the Nonintercourse Act was "to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties, except the United States, without the consent of Congress, and to enable the Government, acting as *parens patriae* for the Indians, to vacate any disposition of their lands made without its consent." *Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 119 (1960). *See also Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 668 (1974) *quoting United States v. Santa Fe Pac. R.R.*, 314 U.S. 339, 345 (1941). "In enacting the Nonintercourse Act Congress codified the widely accepted principles that Indian nations held aboriginal title to land they had lived on from time immemorial and that discovering nations held title in fee, subject to the Indians rights to occupancy and use of the land. From these two principles flowed the notions that aboriginal title could not be extinguished without a sovereign act and, therefore, any conveyance without the sovereign's consent was invalid." *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 56 (2d Cir. 1994). Thus, the objectives of the Nonintercourse Act, as amended and further extended to the Louisiana Territory, support a finding that the Tribe, which held land that Sibley asserted was protected by the Act, was under federal jurisdiction.[46]

The next step is to ascertain whether the tribe's jurisdictional status remained intact in 1934. In the present case, there are no actions of the United States that terminated the Tribe's jurisdictional status before or after 1934. After the 1805 intervention of the Indian Agent Dr. Sibley, the United States continued to acknowledge the Tribe and to interact with it as a sovereign. Subsequent claims to the Tribe's land, however, produced mixed results.[47]

In 1825 Congress recognized a non-Indian's claim to the Tribe's land, including the Tunica Village parcel (the Tribe's present day Reservation).[48] This recognition of the non-Indian claim to the land did not eliminate the obligations of the United States under the Nonintercourse Act because the Tribe continued to occupy and assert its legal rights to the land,[49] and ultimately reestablished clear title to the land. A later attempt to eject the Tribe

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[45] *Id.* (emphasis added).

[46] See, e.g., *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*, 528 F.2d 370, 379 (1st Cir. 1975) ("when the Federal Government enters into a treaty with an Indian tribe or enacts a statute that benefits the tribe, the Government commits itself to a 'guardian-ward relationship' with that tribe").

[47] *See, e.g.*, Levin Wailes & William Garrard, *Land Claims in the Western District of Louisiana*, 3 American State Papers, Public Lands 165 (1816) (Claim No. 176-150).

[48] Proposed Finding, Historical Report at 6-10. *See also* Act of February 25, 1825, 4 Stat. 81.

[49] Proposed Finding, Historical Report at 9 (in 1842 trespass action the Tribe's attorney asserted the Tribe had lived at the Tunica Village site since 1779; in other words, notwithstanding the Congressional confirmation of the claim adverse to the Tribe, tribal members continued to occupy the land).

from its land[50] resulted in a December 1848 settlement (referred to as an *arrangement*) that acknowledged the Tribe's rightful ownership of 130 acres (part of the land recognized by Spain). The Tribe retained possession of this land, which comprises the Tunica Village parcel -- the Tribe's current Reservation.[51] Since the 1848 settlement, the Tribe's land continuously has been identified as an "Indian reservation" on county surveys.[52]

Other important indices of federal jurisdiction include congressional appropriation of funds to support the Tribe. In an early report of expenditures, Indian Agent John Jamison wrote to the Secretary of War regarding expenditures of the agency and the provision of services and items to the tribes under the agency's superintendence.[53] The November 20, 1816 report indicated that "[f]rom the best information that can be obtained, it appears that for a period of ten years, the sum of fourteen thousand three hundred and sixty-seven dollars has been distributed . . . [to the tribes] under the superintendence of this agency." From 1812 through 1816, the agency provided more than 45,000 rations of meat to the tribes under the agency's superintendence. The report lists "[t]he names and probable numbers of the several tribes of Indians within the limits of Louisiana and under the superintendency of the Natchitoches Agency."[54] The first tribe listed is Biloxies (one of the four components of the now recognized Tunica-Biloxi Tribe), with a population of 375.[55]

Such reports clearly evidence federal superintendence and jurisdiction through the provision of goods and services to the Tribe (through its predecessors). These collective facts demonstrate that the Indian agents recognized that the Federal Government had oversight and jurisdiction over the Tribe. Moreover, these actions show no intent to abrogate the relationship between the United States and the Tribe and the Federal Government's obligation under the Nonintercourse Act.

The actions of federal agents in the late nineteenth and twentieth centuries include some misstatements regarding the relationship between the United States and the Tribe. At no time, however, did the President or Congress terminate the under federal jurisdiction status of the Tribe.

2. Recent Substantiation of the Tribe's Spanish Land Grant and Aboriginal Title

Two recent matters confirm the Tribe's Spanish land grant and aboriginal title to its Tunica Village Reservation and the Federal Government's obligation to protect that land under the Nonintercourse Act. One is a court analysis of the status of the Tribe's land status and the other is a departmental determination that the Tribe's land constitutes a reservation for purposes of section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq*. After formal recognition in 1981, the Tribe sought to place its land in trust. On June

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[50] *See* Proposed Finding, History Report at 9-10.
[51] Proposed Finding, Anthropology Report at 27; *see also,* Proposed Finding, History Report at 10.
[52] Proposed Finding, Anthropology Report at 13.
[52] Proposed Finding, Anthropology Report at 13-15.
[53] RG75, BIA, M271, Letters Received by the Secretary of War Relating to Indian Affairs, Roll #1, 1800-1816 (note that Jamison succeeded Sibley as the Indian Agent).
[54] *Id.*
[55] *Id.*

29, 1989, in *Tunica-Biloxi Tribe of Indians v. State of Louisiana,* the district court issued a quiet title decree to the Tribe confirming its title to the 130 acres of the Spanish land grant and aboriginal territory that the Tribe had occupied continuously since the 18th Century.[56] In reaching its determination in favor of the Tribe, the court rejected the conflicting claim of a private third party based upon "the tribe's right to protection under the Trade and Intercourse Act."[57] With respect to the Tribe's claim to the land, the court determined that:

The evidence thus submitted indicates that the plaintiff has been recognized as a sovereign Indian nation by the United States; that the plaintiff tribe, which has enjoyed uninterrupted existence as an Indian tribe since time immemorial, migrated to and settled on the subject land at least as early as 1780, predating United States sovereignty over the land; and that the tribe occupied the subject land continuously and without interruption since the nomadic occupancy in the eighteenth century.[58]

As such, the Tribe's lands continued to be protected from third party claims under the authority of the Nonintercourse Act. On March 28, 1990, the Tribe's Tunica Village parcel was formally placed into trust.

Thereafter, the Tribe sought trust status for another parcel of land located adjacent to its Tunica Village trust land on which it sought to construct a gaming facility. In order to determine whether the Tribe could conduct gaming on the adjacent land, the Department had to determine whether it was within or contiguous to the Tribe's Reservation.[59] Initially, the Department concluded that the parcel did not qualify for this exception since the Department had never issued a reservation declaration with respect to the Tribe's original aboriginal land that was put into trust.[60] The Tribe sought and obtained reconsideration of the Department's position. Upon reconsideration, the Department noted that "[t]he Tunica-Biloxi Tribe, as its name suggest, is an amalgam of tribes that located in the area as early as 1700. Thus, when the United States acquired the Territory of Louisiana in 1803, the Tunica-Biloxi Tribe was in existence and occupied the village lands."[61] Relying on the District Court's ruling quieting title of the Tribe's aboriginal land, the Regional Solicitor then concluded:

The Court's ruling can only mean that the tribe's title to the village lands is an original, sometimes referred to as an aboriginal[] title that has never been extinguished. In 1989 the Tribe conveyed its village lands to the United States to be held in trust for it. The United States accepted the conveyance, thereby becoming the record title owner in 1990. This act

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[56] *Tunica-Biloxi Tribe v. Louisiana,* Civ. No. 87-885 (W.D. La. June 29, 1989).
[57] *Id.* slip op. at 4.
[58] *Id.* slip op at 3.
[59] The Indian Gaming Regulatory Act prohibits gaming on lands acquired after Oct. 17, 1988, unless it meets one of the Act's exceptions to gaming. 25 U.S.C. § 2719.
[60] Memorandum, Regional Solicitor, Southeast Region (Dec. 3, 1992) (Proposed Trust Conveyance on Behalf of the Tunica-Biloxi Tribe of Louisiana).
[61] Memorandum, Regional Solicitor, Southeast Region 2 (Oct. 5, 1993) (Proposed Trust Conveyance by the Tunica-Biloxi Tribe of Louisiana).

of trust conveyance merely placed on the public record a legal relationship that has existed for 190 years.[62]

The Regional Solicitor further concluded that although not formally declared a reservation, the Tribe's Tunica Village parcel previously had been treated as a Reservation and should also be treated as such for purposes of IGRA.[63]

Both of these findings confirm that the Tribe possesses aboriginal and recognized title to its land. Furthermore, because this title pre-dates the Treaty of Paris, the United States – through the treaty – committed to honoring and protecting the Tribe's title to its land, and Congress reaffirmed this commitment by passing the Nonintercourse Act.

Additional Legal Basis for Approval of Fee-to-Trust Application

Section 18 of the IRA, 25 U.S.C. § 478, required the Secretary to call a vote on all reservations with one year of passage of the Act. If "a majority of the adult Indians" on that reservation voted against the IRA, certain provisions of that Act would not apply. The existence of a reservation -- rather than an analysis of whether there was a "recognized tribe now under federal jurisdiction" -- served as the predicate for holding such a vote. The Department similarly permitted groups of Indians living on a reservation to organize, even if a vote had not been held. Examples include the Yavapai Prescott and the Clallam. The Yavapai Camp was recognized as a reservation that should be eligible to organize, and the acquisition of land for the Clallam Indians created a reservation so that the Tribe could organize.[64] The Department. thus, treated the existence of a reservation as a distinct basis for defining the term "Indian." Where a reservation existed, the Interior Department relied on the IRA's definition of "Indian" as "all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation . . . ."

Applying this approach to the Tunica Village parcel, it is now apparent that the Tunica Village parcel was reservation-like in nature in 1934, although the Department failed to recognize it as such in the 1930s. In June 1989, in a quiet title action filed by the Tribe, the Western District of Louisiana determined that "the tribe has occupied the subject land continuously and without interruption since the nomadic occupation in the eighteenth century."[65] Similarly, in October 1993, the Regional Solicitor for the Southeast Region determined that the land had been treated as a reservation by state and local authorities.[66] The parcel also had been deemed a reservation by the Department for the purposes of receiving an Urban Development Action Grant and for entering into a Law Enforcement Services Program contract with the Tribe under the ISDEAA.[67] The Regional Solicitor

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[62] *Id.* at 2.
[63] *Id.* at 3.
[64] Memorandum from Kenneth Meiklejohn, Assistant Solicitor, Jan. 10, 1940; Letter from George P. LaVatta, Field Agent, to Commissioner of Indian Affairs, March 17, 1937.
[65] *Tunica-Biloxi Tribe v. Louisiana,* Civ. No. 87-885, slip op. at 3 (W.D. La. June 29, 1989).
[66] Memorandum, Regional Solicitor, Southeast Region (Oct. 5, 1993) (Proposed Trust Conveyance by the Tunica-Biloxi Tribe of Louisiana).
[67] *Id.* at 3.

also found that the BIA provided services to the Tribe, many of which are for tribes and tribal members on or near a reservation.[68] Based on this, the Regional Solicitor determined that the Tunica Village parcel is a reservation for the purpose of section 20 of IGRA.[69]

Based on this evidence regarding the present and past nature of the Tunica Village parcel, we conclude that this parcel constituted a reservation as of 1934 and therefore also satisfies the IRA's second definition of "Indian."

Conclusion regarding the Existence of Statutory Authority for the Acquisition Application

Based on the foregoing analysis, I conclude that there is statutory authority to acquire land in trust for the benefit of the Tribe.

§ 151.10(b) The need of the tribe for additional land

The Tribe is in need of additional trust lands to facilitate tribal self-determination and self-sufficiency. The Tribe currently has approximately 1270 members and approximately 725.61 acres held in trust for the Tribe. The Tribe currently utilizes their trust lands for housing; economic development/gaming enterprises; tribal court; administration offices; medical clinic; police department and a multiple purpose center. There is an increasing need for suitable areas tribal members can utilize for activities necessary to preserve, protect and provide for the Tribe's culture and tradition. Acquiring this land in trust for the Tribe will facilitate the Tribe's continued self determination efforts.

Based on the information provided with the request, it is my determination that the Tribe has sufficiently justified the need for additional land.

§ 151.10(c) The purposes for which the land will be used

The acquisition consists of 703.26 acres, more or less. This acquisition will facilitate and support the Tribe's tribal self determination efforts. There is no proposed change in use. The Tribe intends to continue to use the property as pasture land, crawfish ponds as well as an area for cultural and recreational purposes for its members which include hunting and fishing. Increasing the Tribe's trust land base is supportive of the Tribe's efforts to preserve and protect the Tribe's culture and tradition. It is my determination that the Tribe has adequately described the purposes for which the land will be used.

§ 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 the land from the tax rolls

The subject property is located approximately 9 miles west and northwest of the Tribe's reservation in Avoyelles Parish, Marksville, Louisiana. The property is not contiguous to any reservation trust land. By letters dated April 21, 2010, notices were sent to the

[68] *Id.*
[69] *Id.* at 4.

Louisiana State Governor's Office and the Avoyelles Parish Police Jury, requesting comments, including the amount of real property taxes and special assessments for the properties, and current zoning. No response was received from Avoyelles Parish Police Jury or the Governor's Office.

Our analysis of the Tribe's request reveals that the proposed acquisition is not for gaming purposes. A change in use to gaming would require compliance with the provisions of Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719, prior to any gaming activities being conducted on the property. Real property taxes, along with sales taxes, fund the operations of Avoyelles Parish which, among other responsibilities, provide for police and fire protection, parish schools, levee maintenance, road construction and maintenance and other municipal government services. The total real property taxes paid in 2010 for the Red River tract was $685.09. No special assessments or other outstanding tax assessments were identified. There are approximately 725.61 acres of trust land currently located in Avoyelles Parish, or .14% of the total county land base.[70] While any loss of revenue might be considered detrimental, no negative impacts to the level of services currently being provided to the property were identified. In addition, the cost of some community services provided to this land will be offset by the contributions of the Tribe by virtue of the land's trust status; such as, Tribal assumption of law enforcement responsibility and road maintenance to the property.

Based on our analysis, I have determined that the acquisition of the property in trust for the Tribe will not have a significant impact on the existing level of services currently being provided by the State and its political subdivisions. Accordingly, it is my determination that the acquisition of the property in trust will result in no significant impacts to the existing local governmental infrastructure.

§ 151.10(f) Jurisdictional problems and potential conflicts of land use which may arise

By letters dated April 21, 2010, notices were sent to the Louisiana State Governor's Office and the Avoyelles Parish Police Jury, requesting comments, including the amount of real property taxes and special assessments for the properties, and current zoning regarding the proposed acquisition of the property into trust. No comments or objections were received from the Avoyelles Parish Police Jury or the Office of the Governor, State of Louisiana.

Our analysis finds that there are other trust lands in Avoyelles Parish, specifically the Tribe's Reservation in Marksville, Louisiana. No zoning ordinances outside of city limits were reported and the proposed use of the property involved in the acquisition does not conflict with existing land use patterns of the surrounding area. The Tribe currently provides law enforcement capability on tribal trust property through its Public Law 93-638 contract with the Bureau and maintains a police department with approximately 8 full-time employees. There are no proposed changes in the jurisdictional arrangements currently in place for the reservation and existing Tribal trust properties. Local governments have had experience in dealing with Indian trust land issues such as law enforcement jurisdiction, changes in land use, and tribal sovereignty. While there is always a potential for

[70] Based on 832 square miles shown for Avoyelles Parish, Louisiana according to National Association of Counties.

jurisdictional problems and/or land use conflicts, the working relationship between the Tribe and local governments has enabled mutually satisfactory resolutions in the past. It is not anticipated that the proposed use of the property will create a need to increase or decrease police protection or forces in the local community.

Accordingly, I find no outstanding problems or potential conflicts of land use resulting from the proposed use of the property to be acquired in trust. I further find that any problems or conflicts that do arise can be resolved through cooperative agreement with the local authorities.

§ 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

The requested property totals 703.26 acres, more or less, and is located approximately 571 miles southwest from the Eastern Regional Office in Nashville, Tennessee. The Eastern Regional Office is responsible for administering trust services to approximately 725.61 acres of land held in trust for the Tribe. Trust resource management program services are provided to the Tribe by the Bureau. The Tribe's Realty staff consists of 1 Realty Planner Manager and 1 Realty Planner Assistant. The Regional Office currently provides technical advice and limited direct field services on trust resources program management matters to the Tribe, as well as, to the other 26 federally recognized tribes and 3 Agency Offices of the Eastern Region. There are approximately 596,000 acres of tribal trust and restricted land in the Eastern Region. The Regional Office's trust resources management programs include real estate services, forestry, archeology, environmental management services, and natural resources management. The Region's Realty staff consists of 1 Realty Officer, 3 Realty Specialists, and 1 Realty Clerk. There are also 11 Natural Resources staff persons with expertise in the fields of forestry, archeology, environmental sciences, and natural resources management. These resources are considered minimally adequate for administering the existing trust and restricted properties of the Region.

While the distance of the properties from the Regional Office limits the number and frequency of onsite monitoring visits, the Tribe regularly provides direct, onsite trust resource management services to its trust lands. The proposed use of the property and its close proximity to the Tribe's other trust lands minimize the need for critical management and regular onsite monitoring by Regional Office Bureau staff. Although Bureau resources are limited and not expected to increase, accepting the property into trust should not impose any significant additional responsibilities or burdens on the level of trust services currently being provided by the Bureau. Accordingly, it is my determination that the Bureau has the capability to assume the additional responsibilities resulting from the acquisition of the property in trust status.

§ 151.10 (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

The record reflects compliance with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. A Categorical Exclusion under exclusion category 516 DM 10.5.I was issued for the property on July 13, 2011. A Level I Contaminant Survey prepared in compliance with 602 DM 2 by Eastern Region staff and signed July 13, 2011, determined that no contaminants or other environmental problems were present on the property and there were no obvious signs of any effects of contamination. Future changes from the current uses of the properties could require an environmental assessment of the impacts.

§151.11(b) - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation.

The property is located approximately 41 miles west of the Mississippi State Line and 8 miles northwest of Marksville, Louisiana. It is approximately 9 miles from the Tribe's reservation in Marksville, Louisiana, and within the historical range and aboriginal territory of the Tribe. Accordingly, I find that the property is within the geographic range of the Tribe's traditional and ancestral lands, and is readily accessible to the Tribe and its members for the intended uses and purposes.

§151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

The Tribe proposes no change in use of the property which it intends to use as an additional area for such culturally significant activities as, hunting and fishing by its members. Accordingly, no business plan for this property is required.

§151.11-(d) - Contact with state and local governments pursuant to §151.10(e) and (f) shall be completed.

See discussion under §151.10(e) and (f) above.

§151.12 Actions on request.

For the reasons identified above, it is my decision to approve the proposed fee-to-trust land acquisition request, subject to the notification requirements of 25 C.F.R. § 151.12 and a satisfactory title examination as required by section 151.13. Provided the Tribe delivers a marketable title in the form of a title insurance policy and in a manner as required by 25 C.F.R. § 151.13, it is my intent to accept the land into trust for the benefit of the Tribe.

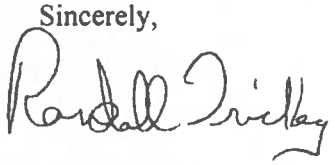
This decision may be appealed to the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St. Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to

this office. It should clearly identify the decision being appealed. If possible, enclose a copy of this decision.

You must send copies of your notice of appeal to: (1) The Assistant Secretary - Indian Affairs. 4140 MIB, U. S. Department of the Interior, 18th and C Street, NW, Washington, D.C. 20240; (2) Each interested party known to you; (3) and, this office.

Your notice of appeal sent to the Interior Board of Indian Appeals must certify that you have sent copies to these parties. If you file a notice of appeal, the Interior Board of Indian Appeals will notify you of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,



Acting Director, Eastern Region

Enclosure

cc:

Honorable Bobby Jindal
Governor, State of Louisiana
Office of Indian Affairs
P.O. Box 94004
Baton Rouge, Louisiana 70804-9004

Avoyelles Parish Police Jury
Parish Courthouse
312 North Main Street
Marksville, Louisiana 71351-2450

Exhibit A

Those certain tracts of land being portions of Sections 3, 4 & 9, Township 2 North, Range 3 East, and Section 60, Township 3 North, Range 3 East, Louisiana Meridian, situated on the right descending bank of the Red River, and Avoyelles Parish, Louisiana, to-wit:

Tract 1. Called 659.90 acres, more or less, being seven (7) tracts of land, including accretion, acquired by Act of Donation Inter Vivos dated March 21, 1997 and April 7, 1997 filed for record on April 9, 1997 under Original No. 97022440 of the records of Avoyelles Parish, Louisiana, and containing 687.06 acres as more fully shown on Boundary Survey for Tunica-Biloxi Indians of Louisiana prepared by M.P. Mayeux Surveying & Boundary Consulting, LLC, dated October 26, 2009 filed for record on February 7, 2010 in Book 30 of Plat, page 737, of the records of Avoyelles Parish, Louisiana. LESS & EXCEPT : 16.2 acres of accretion being more fully described by metes and bounds in the Stipulated Judgment dated July 3, 2007, The Tunica-Biloxi Tribe of Louisiana v. John Blalock and Barbara Bohrer Blalock, 12th Judicial District Court, Docket Number 2005-8606-B, Avoyelles Parish, Louisiana, shown cross-hatched on said above referenced Boundary Survey.

See Affidavit of Lydia F. Singleton filed for record in Book 552, Page 281, under Original No. 2007-00004686 and Affidavit of Sylvia R. Persley filed for record in Book 552, Page 279, under Original No. 2007-00004685 for area designated "Tract 1" of the seven (7) tracts on the plat attached to the above reference Act of Donation Inter Vivos.

See Affidavit of Robert J. Gagnard filed for record in Book 552, Page 277, under Original No. 2007-00004684 for area designated "Tract 5" of the seven (7) tracts on the plat attached to the above reference Act of Donation Inter Vivos. Also, Confirmation of Donation filed for record in Book 587, Page 35, under Original No. 2009-00008220.

Tract 2. 16.2 acres of accretion being more fully described by metes and bounds in the Stipulated Judgment dated July 3, 2007, The Tunica-Biloxi Tribe of Louisiana v. John Blalock and Barbara Bohrer Blalock, 12th Judicial District Court, Docket Number 2005-8606-B, Avoyelles Parish, Louisiana, shown cross-hatched on said above referenced 2009 Boundary Survey.

Tract 1 and Tract 2 contain a total of 703.26 acres including accretion.