



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

SEP 18 2006

IN REPLY REFER TO:

To: Director, Pacific Region, Bureau of Indian Affairs

From: Director, Bureau of Indian Affairs

Re: Appeal of decision to acquire 6.9 acres in trust for Santa Ynez Band of Mission Indians, *Preservation of Los Olivos et al. v. Department of the Interior et al.*, No. CV-06-1502 AHM (CTx) (C.D. Cal.)

As you know, as a result of an error in the appeal proceeding before the Interior Board of Indian Appeals (IBIA) in the above-referenced matter, which caused the IBIA to render a decision based on an incomplete Administrative Record, the Department has moved the district court to remand the matter to the Department in order to correct the error. The Pacific Regional Office should work to compile the complete Administrative Record in an orderly and expeditious manner. The Solicitor's Office will advise the Pacific Regional Office in this regard.

Once the complete Administrative Record has been compiled and after the district court orders remand to the Department (assuming that the court grants the Department's motion), you shall request the IBIA to reopen the matter. The request shall be for a limited reopening to allow the IBIA to reconsider its determination that the plaintiffs lack standing to challenge the Bureau's decision to acquire the 6.9 acres in trust, in light of the documents that were inadvertently omitted from the Administrative Record that was certified to the IBIA. While the Administrative Record upon which you made your decision was complete, the record was forwarded inadvertently to the IBIA with some documents not attached. As such, you are not obligated to reconsider this matter. It is important, however, that the IBIA reviews the same evidence that was before you when you made your determination.

Compiling and certifying a complete Administrative Record is fundamental to an Agency's decision-making process. The legal standard for review of an Agency's decision is whether it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), and this determination is based upon the Administrative Record. An incomplete Administrative Record may impact a court's ability to review a challenged Agency decision and delay implementation of the decision, as this case exemplifies. As you know, pursuant to 25 C.F.R. § 151.12(b), if the court orders remand the earliest that the Department would be able to acquire the land in trust is after the close of the 30-day period for filing appeals of a notice of decision to acquire land in trust. Please review and amend your Office's process for compiling and certifying Administrative Records as necessary to avoid such mistakes and resulting delay in the future.

Please contact Daniel Shillito, Regional Solicitor, Pacific Southwest Regional Office, at 916-978-5671 or Thomas Blaser, Attorney-Advisor, Office of the Solicitor, Division of Indian Affairs, at 202-208-5811 if you have any questions.