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11 **PRESERVATION OF LOS OLIVOS and**
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13 **UNITED STATES DEPARTMENT OF THE INTERIOR**
14 **OFFICE OF HEARINGS AND APPEALS**
15 **INTERIOR BOARD OF INDIAN APPEALS**

16 **PRESERVATION OF LOS OLIVOS,**
17 **and PRESERVATION OF SANTA YNEZ,**

18 Appellants,

19 v.

20 **PACIFIC REGIONAL DIRECTOR,**
21 **BUREAU OF INDIAN AFFAIRS,**

22 Appellee.

APPELLANTS' RESPONSE TO
MOTION TO REMAND

Docket No. IBIA 05-050-1

1 Pursuant to the March 24, 2010 Order of the Honorable Interior Board of
2 Indian Appeals (hereinafter "Board" or "IBIA") Staying Briefing and Allowing
3 Response to Motion to Remand, Appellants Preservation of Los Olivos and
4 Preservation of Santa Ynez (collectively, "POLO") submit the following Response to
5 the Pacific Regional Director's Motion to Remand the Appeal to said Regional
6 Director for further proceedings, specifically to allow consideration of *Carciari v.*
7 *Salazar*, (2009) 129 S. Ct. 1058.

8 1. POLO objects to remand on the grounds that as a matter of law and
9 uncontested fact the Santa Ynez Band of Mission Indians ("Santa Ynez Band" or
10 "Band") is not a federally recognized tribe under the *Carciari* decision and, therefore,
11 does not qualify to receive fee-to-trust benefits. Thus, remanding the case to the
12 Regional Director serves no legitimate purpose and will unreasonably delay the
13 outcome.

14 2. POLO further objects to the piecemeal remand contemplated by
15 the motion on the grounds that the Regional Director was obligated by regulation prior
16 to granting the Santa Ynez Band's fee-to-trust application to determine whether the
17 applicant qualified *by statute* to place the subject land into federal trust status. 25
18 CFR § 151.10(a). The Regional Director's motion essentially concedes that such a
19 necessary and appropriate jurisdictional determination was never made which
20 constitutes grounds to grant the appeal and direct the Regional Director to deny the
21 Santa Ynez Band's fee-to-trust application. The Regional Director has cited no
22 authority, and we have found none, pursuant to which the IBIA may remand the case
23 in order to permit the BIA to augment the record in order to avoid a material and
24 dispositive fact.

25 3. The Regional Director's motion cites to *Carciari* as the only
26 outstanding jurisdictional issue in this appeal under Title 25, section 151.10(a) of the
27 Code of Federal Regulations. However, in its Opening Brief POLO also raised the
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1 equally dispositive issue that under the Supreme Court decision in *Hawaii v. Office of*
2 *Hawaiian Affairs*, (2009) 129 S.Ct. 1436, the BIA may not take land into federal trust
3 status for an Indian tribe that was once ceded to the State of California:

4 Finally with respect to Section 150.10(a), the present case
5 should be remanded to the BIA for further findings in light
6 of another recent United States Supreme Court case, *Hawaii*
7 *v. Office of Hawaiian Affairs*, (2009) 129 S.Ct. 1436 which
8 puts into question the federal government's authority to
9 grant trust status to land once ceded to a state. Under
10 Hawaii, even if the land is taken into trust, state jurisdiction
11 cannot be removed to allow the Santa Ynez Band to exercise
12 sovereignty over the 6.9 acres. Appellant's Opening Brief,
13 13:18-24.

14 The fact that the subject land was once ceded to the State of California is undisputed
15 and POLO should prevail on this appeal as a matter of law on that issue alone.
16 However, if the Board decides to remand the case to the Regional Director in order to
17 augment the record, then the order of remand should also direct the Regional Director
18 to receive and consider evidence that the subject land was once ceded to the State of
19 California.

20 4. Given the extraordinary length of time that this appeal has been
21 pending and the fact that the Regional Director has already attempted once
22 unsuccessfully to have the case remanded for an indeterminate period in order to
23 permit the BIA to consider unspecified new fee-to-trust regulations, in the event the
24 Board does decide to remand the case it must condition such remand on specific
25 directions as to the nature and scope of the additional proceedings and the time within
26 which to complete such proceedings, under penalty of reversal. POLO's concern
27 that the Regional Director's motion to remand may be for ulterior and dilatory
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1 purposes is more than justified because, among other developments, since receiving
2 the Regional Director's motion POLO has twice requested that counsel for the
3 Regional Director produce the February 24, 2010 memorandum from the Assistant
4 Secretary—Indian Affairs to the BIA Pacific Regional Director upon which the
5 remand motion is predicated but counsel has ignored our request.

6 For the foregoing reasons, the motion to remand should be denied and the
7 IBIA determine the appeal on the current record. Alternatively, if the Board does
8 decide to remand the case, then it should do so only with specific direction and for a
9 limited period of time.

10 DATED: April 6, 2010

Respectfully submitted,

11
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1 *Preservation of Los Olivos, et al. v. Pacific Regional Director, et al.*
2 **United States Department of the Interior**
3 **Office of Hearings and Appeals**
4 **Interior Board of Indian Appeals**
5 **Docket No. IBIA 05-050-1**

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1 *Preservation of Los Olivos, et al. v. Pacific Regional Director, et al.*
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