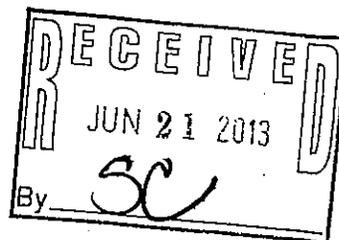


APPENDIX M

TRIBAL CONSOLIDATION AND ACQUISITION PLAN



United States Department of the Interior



BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

JUN 19 2013

IN REPLY REFER TO:

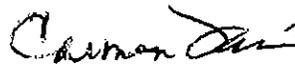
Real Estate Services

Honorable Vincent Armenta
Chairman, Santa Ynez Band of Chumash Indians
P. O. Box 517
Santa Ynez, CA 93460

Dear Chairman Armenta:

In response to your March 27, 2013 letter, the Tribe's Proposed Land Consolidation & Acquisition Plan has been approved. The Plan was submitted and approved pursuant to 25 CFR §151.2(h) and §151.3(a)(1). Enclosed is an original of the approval along with a copy of the Plan. A copy of the Plan will be retained at this office, and a copy is being provided to the Superintendent, Southern California Agency.

Sincerely,

Acting 
Regional Director

Enclosures

cc: Superintendent, SCA, w/enclosures

**TAKE PRIDE
IN AMERICA** 

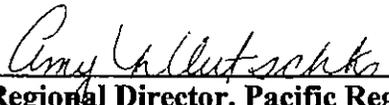


**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PACIFIC REGION**

**APPROVAL OF PROPOSED LAND CONSOLIDATION & ACQUISITION PLAN
SANTA YNEZ BAND OF CHUMASH INDIANS**

The within Proposed Land Consolidation & Acquisition Plan, consisting of pages 1 - 9 with Exhibits A and B and Tribal Resolution #926 dated March 27, 2013, is hereby approved pursuant to 25 CFR §151.2(h) and §151.3(a)(1). All acquisition applications submitted pursuant to said plan shall be considered within the Secretary's discretion and under all applicable laws and regulations, including the National Environmental Policy Act of 1969.

Date: 6/17/13


**Regional Director, Pacific Region
Bureau of Indian Affairs
Sacramento, California**

**Pursuant to the authority
delegated by 209 DM 8, 230 DM 1
and 3 IAM 4**

Santa Ynez Band of Chumash Indians

**PROPOSED LAND CONSOLIDATION AND
ACQUISITION PLAN**

March 2013

Purpose and Scope

Pursuant to 25 C.F.R § 151.2(h)¹, the Santa Ynez Band of Chumash Indians ("Santa Ynez" or "Tribe") submits this Proposed Tribal Consolidation and Acquisition Plan ("Plan") for the approval of the authorized representative of the Secretary of the Interior.² The Federal Government's land acquisition policy at 25 C.F.R. 151.3(a)(1) specifically contemplates tribal consolidation areas to be akin to both on-reservation and adjacent lands with respect to acquisition for trust purposes. This means that tribal consolidation areas, like on-reservation or adjacent lands, do not require the high level of scrutiny that off-reservation acquisitions do, and further affords such acquisitions a greater level of credibility as part of a plan which has already been reviewed and approved by the BIA.

The purpose of this Plan is to assist the Tribe in acquiring additional lands in order to increase the tribal land base and provide sufficient land for housing, economic development and governmental purposes. The Tribe believes that planning for land acquisitions within the area historically held for the Tribe by the Roman Catholic Church will help the Tribe achieve its goals of providing ample housing and governmental services to its members. In addition, the Tribe has been offered restricted public domain allotments held by individual tribal members or descendents of the original Indian allottees within the Los Padres National Forest. Such lands could be used for mitigation or exchange purposes.

The Tribe's plan includes the geographical area which was the subject of the 1897 Quiet Title Action brought by the Roman Catholic Church (Bishop of Monterey), encompassing approximately 11,500 acres of the College

¹ The intent of this Tribal Consolidation and Acquisition Plan is to meet the provisions of 25 C.F.R. §§ 151.2(h) and 151.3(a)(1). See attached Exhibit A, an IBIA case that addresses this provision. The IBIA found that the Regional Director was not acting reasonably when he used the ILCA-derived criteria to assess the appellant's "Land Consolidation and Acquisition Plan." *Absentee Shawnee Tribe. Anadarko Area Director* (1990) 18 IBIA 156, 163.

² 25 C.F.R. 151.2 (Definitions) includes, in part: (h) *Tribal consolidation area* means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe. Further, 151.3(a)(1) (Land acquisition policy) states: (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

Rancho ("Tribal Consolidation Area").³ As described more fully below, this area was part of the Tribe's ancestral territory and comprised most of its historic territory. The Tribal Consolidation Area was once part of the lands of Mission Santa Ines and was part of the subsequent Rancho Canada de los Pinos recognized by the U.S. government as well as being close to an individual land grant made to a Santa Ynez Chumash Indian by Mexican Gov. Micheltoarena. All these lands were considered to have been the property of the Santa Ynez Mission Indians by the Spanish and Mexican governments and the Catholic Church. Even after California statehood, the Catholic Church carried forward this theory of land tenure by the Santa Ynez Chumash.

The Santa Ynez Band of Chumash Mission Indians has clear connections to the Tribal Consolidation Area based on law and cultural use. The tribal government has the opportunity to return the lost land - which it has had to purchase back - to its jurisdiction and stewardship once more through federal trust status. The intent of this Plan is to assist the Tribe with that goal.

History of the Santa Ynez Reservation

The Chumash people have been associated with the property included within this Plan and surrounding territory since time immemorial. In fact, a rich record exists of the Santa Ynez Chumash's historical connections to these lands. Archaeological evidence supports the area's use by the Chumash people before contact with the Spanish. This use continued during and after the Mission Period.

The Santa Ynez Chumash, ultimately, ended up with just a sliver of land under its jurisdiction. In 1906, the federal government placed 99 acres into federal trust around Zanja de Cota Creek. Today the Santa Ynez Indian Reservation comprises about 137 acres. This area includes unusable lands such as a streambed and an easement for a state highway that cuts through the reservation.

The acquisition of additional property within the Plan area represents an opportunity for the Chumash people to return a small portion of their historical territory to their stewardship. The goal is to create a tribal community on the land by building homes for tribal families. This also will

³ See attached Exhibit B, map of the proposed consolidation and acquisition area.

help relieve overcrowded conditions on the present reservation, where much of the housing stock was built through HUD low-income grant programs.

The Chumash have long-standing cultural and spiritual ties to the property encompassed within the Plan and the surrounding territory. The legal record - involving actions by the U.S. government, Mexican government, and the Spanish through their Mission outposts - also demonstrates the land tenure history of Santa Ynez Chumash in this territory.

Except for a brief experience with tribes in the lower Colorado River basin along the present-day Arizona border, the Chumash were the first California tribal group that Europeans encountered in what is now California. Explorer Cabrillo sailed to the islands and coastal areas inhabited by the Chumash in 1542.

The Mission Era

The Spanish built five Catholic missions among the Chumash people. Mission Santa Ines was established in 1804 as a halfway point between the Santa Barbara and La Purisma (Lompoc) missions. Each mission was granted about seven square leagues of land surrounding it for the use and support of the local Indian communities. That would have given Mission Santa Ines more than 441 square miles of land.

In practice, the missionaries and soldiers were brutal men who enslaved the local Chumash people and nearly decimated them through disease, starvation and harsh treatment. Despite this, the sentiment of the Spanish and Mexican governments and the Catholic Church was that the lands of the missions essentially were what we know of today as reservations, for the use and upkeep of the Indians. The tribal members forced to live and work near the missions were considered to be neophytes or Christianized Indians.

The Church viewed the land to be held in trust for the Indians, who had a "natural" right of occupancy. The Church and Spain considered title to the land to be with the Indians as decreed from the "laws of nature and imminent occupation." The priests were just the administrators of the land on behalf of their Indian "wards." That is, the mission activity was not accompanied by a conveyance of land to the missions themselves. Under the

Spanish theory of colonization, the mission establishments weren't intended to be permanent.

The slave-like conditions at the mission led to the Chumash Revolt of 1824. It started when soldiers flogged an Indian from La Purisma mission who was at Santa Ines. The revolt spread to the Santa Barbara and La Purisma missions and led to the burning of the Santa Ines mission. Many Chumash feared the soldiers would kill them and fled to the San Joaquin Valley. The priests and military knew they couldn't keep the missions going without the Indian slave labor so soldiers rounded up the Chumash and brought them back to the mission.

A decade after the revolt, the Mexican government secularized the missions and intended to disperse the lands to the Indians and settlers. The goal never was fully accomplished. Many Chumash did flee the mission after the secularization efforts and ended up in the area around Zanja de Cota Creek in the Canada de la Cota. The area still was considered to be within the lands of the Catholic Church.

California statehood

Statehood for California in 1850 ushered in new attempts to deal with the Chumash land. The United States and California began addressing land claims and Mexican land grants that arose from the Treaty of Guadalupe Hidalgo.

The Bishop of Monterey petitioned the Board of Commissioners in charge of land claims in California on behalf of the Catholic Church and "Christianized Indians" associated with the 20 missions across California. Among his requests: That the government confirm at least one square league area to each mission, and confirm the grants to individual Indians and communities.

The basis of the petition was two-fold. First, the Church stated it held the land in trust for the Indians. Second, the Church had valid grants based upon the laws of the Spanish and Mexican governments and the Catholic Church. The Church's view was this: The land and any revenues from it belonged to the Indians. The role of the missionaries was to make sure that the land and revenues were cared and accounted for.

The Land Claims Commission denied the claims of the individual Santa Ynez Indians. But it did grant the Bishop of Monterey the right to the Canada de los Pinos, the area that is included within the Plan. The federal government in 1861 issued a patent for those lands to the Bishop. The Chumash villages around Mission Santa Ines lands remained within the land grant.

Mission Indian Relief Act

In 1891, Congress passed the Mission Indian Relief Act designed to help those Indians who had been associated with and enslaved by the missions. Many of these communities were destitute because their land had been taken away from them. In fact, much of the land these Indians had lived and worked on was lost through the land claims settlement process and the government later gave it to settlers.

Based on the Act, the federal government created the Smiley Commission which found that the Santa Ynez Indians were primarily living in a village around the Zanja de Cota Creek area on lands they had moved to around 1835 after the secularization of the missions. The commission determined that abundant evidence existed to validate the Chumash's long period of occupancy of the mission land, but the commission could not support creating a federal reservation through the legal theory of adverse possession because the Bishop's earlier petition stated that the Church had long considered the mission lands to be "owned" by the Chumash. The Chumash could not be considered to have been in adverse possession of the land - even though the previous Land Claims Commission denied their land claims.

Church lawsuit

The Smiley Commission developed a different approach. The federal government began negotiating with the Catholic Church to obtain federal trust lands for the Santa Ynez Chumash. Part of this scheme involved the Bishop of Monterey filing a lawsuit against individual Santa Ynez tribal members in a quiet title action. With U.S. government support through the approval of the local Indian agent, the Bishop commenced a quiet title claim. The action concerned about 11,500 acres of the Rancho Canada de los Pinos, or the College Rancho.

The action was necessary because, at least according to the position held by the Bishop in his petition to the Land Claims Commission, the Church actually held the lands around the mission in trust for the Chumash. The negotiations and quiet title action resulted in an agreement in which the Bishop would convey some land to the federal government for a reservation for the Santa Ynez Band of Chumash Mission Indians.

At various times, parcels of land ranging from 5 acres to 200 acres were proposed as the property to be deeded to the United States for the Santa Ynez Chumash. Each of these proposals represented areas that were significantly less than the original mission lands (held for the local Chumash), the Rancho Canada de los Pinos (the mission lands as reconfigured by the United States), and even the combined total of the Santa Ynez individual land grants.

Ultimately, what was transferred to the United States to be held in trust for the tribe was just 99 acres, a tiny fraction of the 11,500 acres of the Rancho Canada de los Pinos that had been that had been given up without Chumash consent.

Previous Land Consolidation/Acquisition Efforts of the Tribe

As noted, the Tribe was originally conveyed a mere 99 acres for use as a Reservation. In the 1970s, the Tribe acquired an additional 27 acres which was used for HUD housing. Since that time, the Tribe has purchased additional lands for inclusion in the Reservation. In 2003, approximately 12 acres were added to the Reservation when the Tribe's fee-to-trust acquisition was granted. The Tribe has a further fee-to-trust acquisition for 6.9 acres of land contiguous to the Reservation which was approved by the Department of Interior currently pending before the IBIA. The Tribe has additionally submitted an application for 6.6 acres of land contiguous to the Reservation.

In 2010, the Tribe was able to purchase the 1390 acre Camp 4 property from Fess Parker. The Camp Four property was once part of the lands of Mission Santa Ines and part of the area included within the Quiet Title Action. Thus, the Tribe has consistently purchased land within their historic territory and within the Tribal Consolidation Area.

Provisions of the Land Consolidation and Acquisition Plan

1. ***Goals.*** Consistent with its prior efforts, the Tribe is pursuing two overall land-related goals. First, to the extent feasible (both financially and otherwise), the Tribe wishes to provide a sufficient land base for the Tribe to house its members, economic development and tribal government activities. Second, the Tribe wishes to promote the highest and best use of any existing and future trust land base by assuring that Tribal goals such as cultural preservation are met while at the same time still providing land for housing, economic development and other governmental functions.
2. ***Need to Set Priorities.*** Due to the high cost of land acquisition in the Consolidation and Acquisition area, the Tribe must prioritize its land acquisitions.
 - a. ***Priorities.*** With the financial and other constraints in mind, as well as the Tribe's goals and prior acquisitions, the Tribe's priority schedule for acquisition of land within the Tribal Consolidation Area will be:

CATEGORY 1 - Highest Priority: Acquisition of parcels which can be used for tribal housing, economic development and tribal governmental facilities.

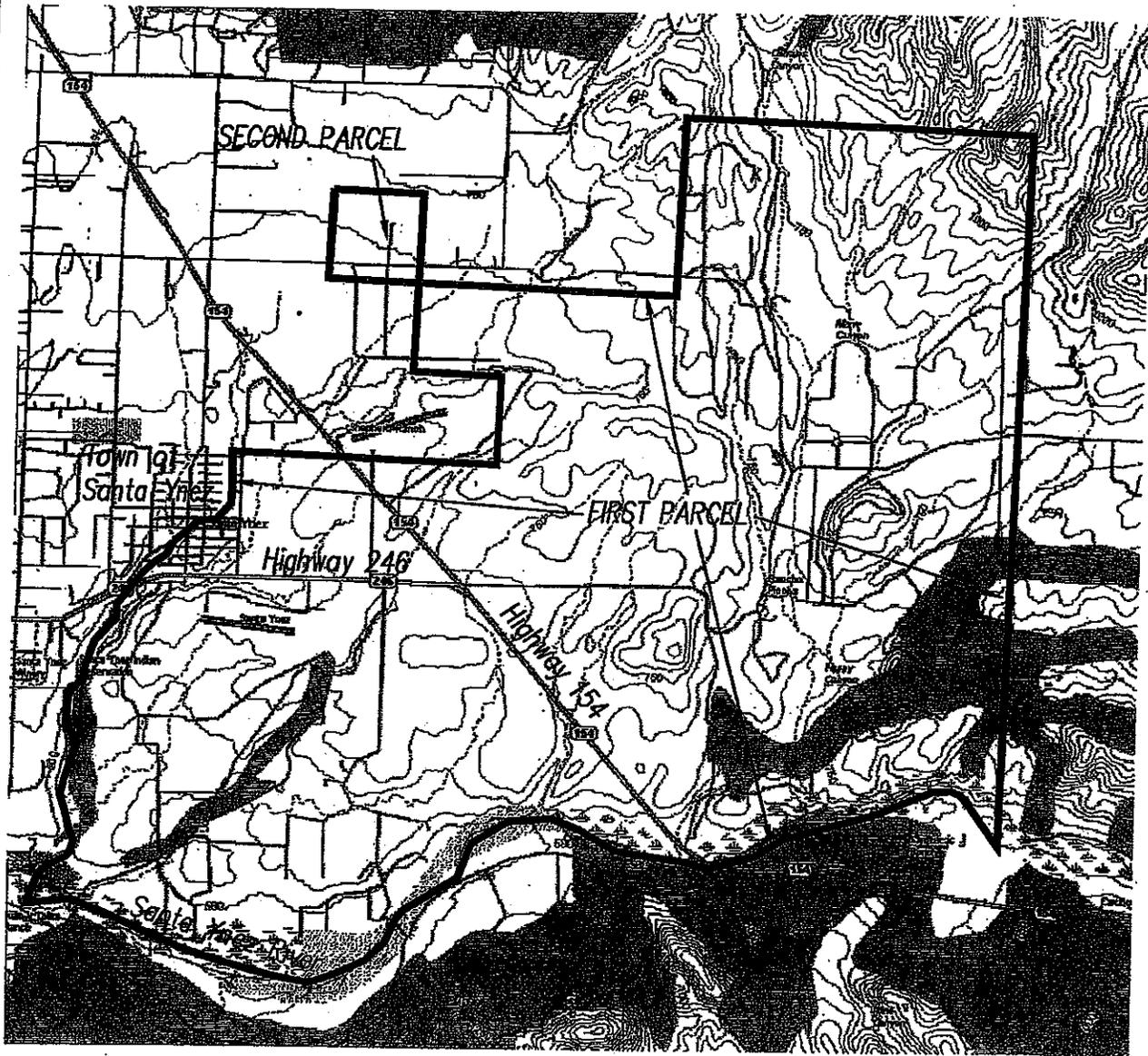
CATEGORY 2 - High Priority: Acquisition of parcels contiguous to existing parcels of tribal trust land that have the potential of being used for projects of importance designated by the Tribe.

CATEGORY 3 - Medium Priority: Acquisition of parcels not contiguous to tribal trust lands, but having development potential.

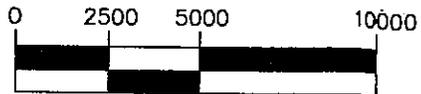
CATEGORY 4 - Low Priority: Acquisition of parcels not contiguous to tribal trust lands for the purpose of increasing the tribal trust land base or of public domain allotments for purposes of increasing the tribal trust land base, exchange or mitigation.

3. *Procedure.* The Business Committee will review each potential land acquisition and determine into which category it falls. Depending on the categorization, and subject to the availability of funds, the Tribe will then determine whether to acquire the parcel or not.

Exhibit A



George Y. Marchenko
 10/23/07



1 inch = 5000 feet

Boundary shown is compiled from record data and is about ± 2500 feet

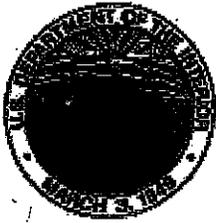


624 Clifton Court
 SAN LUIS OBISPO, CA 93401
 T 805 544-4011
 F 805 544-4284
 www.wallacegroup.us

Sketch of Legal Description of two parcels In Notice of Pendency of Action, The Roman Catholic Bishop of Monterey, Plaintiff, against Salomon Cota et all. Filed 2/23/1897; Superior Court of the County of Santa Barbara, CA. and per B/Miscellaneous Maps/447

JOB No. : 375.40
DRAWING : 1898basedwg
DRAWN BY: GM
DATE : 10/22/07
Sheet 1 of 1

EXHIBIT B



INTERIOR BOARD OF INDIAN APPEALS

Absentee Shawnee Tribe v. Anadarko Area Director, Bureau of Indian Affairs

18 IBIA 156 (02/20/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ABSENTEE SHAWNEE TRIBE OF INDIANS OF OKLAHOMA

v.

ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-48-A

Decided February 20, 1990

Appeal from a decision disapproving a tribal Land Consolidation and Acquisition Plan.

Reversed and remanded.

1. Indians: Lands: Trust Acquisitions

In the absence of any statutory or regulatory criteria for the approval of a "plan for the acquisition of land in trust status for [an Indian] tribe" under 25 CFR 151.2(h), a Bureau of Indian Affairs official may devise and employ reasonable criteria to review such a plan.

2. Indians: Lands: Trust Acquisitions

It was not reasonable for the Bureau of Indian Affairs to disapprove a tribal plan for the acquisition of land in trust status under 25 CFR 151.2(h) on the basis of criteria derived from a provision in the Indian Land Consolidation Act, 25 U.S.C. § 2203 (1983 and 1984 Supps.), concerning sale or exchange of tribal lands.

APPEARANCES: F. Browning Pipestem, Esq., Norman, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Absentee Shawnee Tribe of Indians of Oklahoma seeks review of a January 18, 1989, decision of the Anadarko Area Director, Bureau of Indian Affairs (BIA; appellee), disapproving its Land Consolidation and Acquisition Plan. For the reasons discussed below, the Board reverses that decision and remands this case to appellee for further consideration.

Background

In early 1987, appellant submitted a proposed Land Consolidation and Acquisition Plan to the Shawnee Agency (Agency), BIA, for review and technical assistance. This plan was developed after analysis of appellant's

existing land base and anticipated future needs. Appellant's original reservation, which was concurrent with that of the Citizen Band Potawatomi Tribe of Oklahoma, was generally bounded to the north by the North Canadian River, to the south by the South Canadian River, to the east by the eastern edge of what is presently Potawattomie County, and to the west by the Indian Meridian. Of the original reservation, only 289.25 acres are presently owned by appellant.

Concerned with such factors as a high tribal unemployment rate, low educational level, substandard housing, low standard of living and high disease rate, and its own inability to generate additional income from existing tribal lands to assist its people's economic development, appellant developed a goal of planned acquisition of additional lands in order to increase the tribal land base and gain access to new economic markets within Oklahoma. Through this plan of acquisition, appellant hoped to acquire lands suitable for economic development, develop economic enterprises, increase tribal income through an increased tax base, and create new jobs. As stated at page 18 of its proposed plan, "[t]he overall purpose of this plan is to access the Absentee Shawnee Tribe of Oklahoma to a greater geographic area which meets the aforementioned criteria [for being suitable for economic development] by extending our existing land acquisition area, some thirteen and one-half (13½) miles to the west of our existing reservational boundary." ^{1/}

By letter dated July 16, 1987, the Agency Superintendent (Superintendent) informed appellant that the Anadarko Area Office (Area Office) had reviewed the draft plan and had requested (1) a map showing the intended area of acquisition in relation to the original reservation boundaries and (2) photographs of the "String of Pearls" tract, which would be the first acquisition under the plan, depicting its relation to downtown Oklahoma City.

The requested items were provided and the final plan was submitted in July 1987. The Agency sent the plan to the Area Office on September 3, 1987. The Agency indicated it found no deficiencies in the plan, but was

^{1/} Appellant indicated in its proposed plan that two opportunities had already been presented that were consistent with the plan. The first opportunity concerned a proposal from the Oklahoma City Riverfront Redevelopment Authority for appellant to acquire a tract of land consisting of approximately 60 acres along the North Canadian River within the city limits of Oklahoma City at the intersection of Interstate Routes 35 and 40. The tract, which had been part of a proposed "String of Pearls" development of 7 tracts along the river, had not been developed. The second opportunity consisted of the acquisition of an existing shopping center in Norman, Oklahoma. Both possible acquisitions apparently involved donations of land to appellant. Appellant stated at page 16 of its plan that "[b]oth of these existing situations illustrate the opportunities that the Absentee Shawnee Tribe presently cannot take advantage of as a result of the inability to acquire real property outside its historic reservation area."

concerned about the size of the proposed expansion area and staffing problems that might occur within the Agency if the plan were to be fully implemented. Despite its concerns, the Agency recommended that consideration be given to approval of the plan.

The Area Office concurred with the Agency in its statement that the proposed area of the plan might be excessive, but noted that the area could easily be scaled down. Under instructions then in effect, on September 21, 1987, the Area Office sent the plan to the Washington, D.C., BIA office for approval. The Area Office noted no problem with the plan other than the geographical size.

Subsequently, the Assistant Secretary - Indian Affairs authorized BIA Area Directors to approve off-reservation land acquisitions. Accordingly, on July 5, 1988, appellant was informed that the plan was being returned to appellee for consideration. By letter dated January 18 and received by appellant on January 24, 1989, appellee disapproved the plan, indicating that it did not meet the necessary criteria for approval and stating at page 1:

Congress has enacted a number of laws which authorize the acquisition of land in a trust status for individual Indians and Indian Tribes. None of these laws speak to authorization, recognition or creation of Land Acquisition Plans. The Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1466 [(1982) 2/]) provided for loans and loan guaranty and insurance which could be used to acquire land in a trust status for Indians and Indian Tribes within an Indian Reservation or an approved "Tribal Consolidation Area," and the Indian Land Consolidation Act of January 12, 1983 (Title II of P.L. 97-459; 96 Stat. 2515), as amended by Act of October 30, 1984 (P.L. 98-608; 98 Stat. 3171) (25 U.S.C. §§ 2201-2211 (ILCA)) provides that any tribe is authorized with the approval of the Secretary to adopt a "Land Consolidation Plan." The premise of both laws was for the purpose of

2/ 25 U.S.C. § 1466 provides:

"Title to any land purchased by a tribe or by an individual Indian with loans made from the revolving loan fund may be taken in trust unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or by an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchasers without any restriction on alienation, control, or use. Title to personal property purchased with a loan from the revolving loan fund shall be taken in the name of the purchaser."

All further citations to the United States Code are to the 1982 edition.

eliminating fractional interests in Indian trust or restricted lands or consolidating land holdings. A consolidation area should reflect some rational plan to consolidate land. In this instance the expansion area does not meet that criteria, it gives the appearance that the tribe is seeking carte blanche authority to acquire random tracts all over the area, rather than to further any actual land consolidation plan.

On January 25, 1989, appellant asked appellee to provide it with the specific evaluation criteria that were used in disapproving the plan. When the requested information was not received, by letter dated February 21, 1989, appellant filed a notice of appeal with appellee.

By letter dated February 23, 1989, appellee provided information concerning his evaluation criteria. Appellee stated that BIA did not have specific criteria for evaluating the type of plan appellant had submitted. Therefore, he indicated that the Area Office had developed its own criteria to justify and support the decision. He stated that the phrase "tribal consolidation area" was first used in the Indian Financing Act of 1974 and that the only reference to the phrase in the act's legislative history indicated "that one of the purposes of the proposed legislation was to give tribes a method of consolidating their land base and buying up fractionated interests" (Feb. 23, 1989, letter at 1).

Appellee then looked to ILCA as a source for criteria to evaluate a "land consolidation plan." Appellee quoted 25 U.S.C. § 2203(a), which provides:

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings: Provided, That --

- (1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;
- (2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;
- (3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands. [3/]

Based on the requirements of ILCA, appellee determined that appellant needed to add three sections to its plan in order for it to be approvable:

1. Clearly demonstrate how the Plan will accomplish the purposes of eliminating fractional ownership or consolidating tribal lands,
2. Provide at least a general plan for the reinvestment of proceeds received from the sale of tribal land, and
3. Ensure that all sales of tribal land are for no less than fair market value.

Appellee forwarded appellant's notice of appeal to the Washington, D.C., BIA office, where it was still pending when new appeal regulations for BIA and the Board took effect on March 13, 1989. See 54 FR 6478 and

3/ Appellee's letter also included a definition of "land consolidation plan" from a draft revision of 25 CFR Part 152. Appellee recognized that the revision was not in effect, but stated that he believed the definition was consistent with the Department's position concerning land consolidation plans. The draft definition provides:

"Land consolidation plan means a detailed plan devised by a tribe and approved by the Secretary which contemplates the sale or exchange of any tribal lands or interests in land for the purpose of eliminating undivided lands or consolidating its tribal land holdings. If the reservation does not encompass an area sufficient to permit a meaningful consolidation plan, the plan may contemplate the consolidation of land in a specified area adjacent to the tribe's reservation boundaries. The plan will, at a minimum, include an explanation of how the tribe will accomplish the purposes of eliminating undivided interests or consolidating the tribal land base; a map, depicting in general, what lands or interests are covered by the plan; guidelines for the purchase of new lands with the proceeds of any lands sold or exchanged under the plan; and, designate under what authority the plan was approved or authorized by the tribe. The plan and supporting documents will be submitted to the Superintendent for approval by the Secretary."

6483 (Feb. 10, 1989). The appeal was transferred to the Board for consideration under those new procedures on May 16, 1989. Because the materials in the administrative record indicated that appellant was willing to work with BIA, by order dated May 23, 1989, the Board stayed proceedings before it pending good faith settlement negotiations between the parties.

In June 1989, discussions were held between representatives of appellant, the Area Office, and the Agency, during which the matter of the geographic area covered by appellant's plan was again addressed. However, by letter dated July 5, 1989, appellee reaffirmed his disapproval of appellant's plan, stating:

At this point, the question of area is not paramount. The issue before us is to determine if your recent transmittal complies with the provisions of [ILCA] regarding the adoption of Land Consolidation Plans. At your request, and by letter dated February 23, 1989 we provided the specific criteria utilized in evaluating your plan and also included a proposed definition which we feel is consistent with the department's current position on Land Consolidation Plans.

After receiving this letter, appellant determined that further settlement attempts would be fruitless and requested the Board to lift its stay. By order dated July 17, 1989, the Board lifted the stay and established a briefing schedule. Only appellant filed a brief.

Discussion and Conclusions

Regulations governing the acquisition of land in trust status for Indians and Indian tribes are found in 25 CFR Part 151. 25 CFR 151.3(a) provides:

Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status (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 land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Section 151.2(f) provides that "in the State of Oklahoma * * * 'Indian reservation' means that area constituting the former reservation of the tribe as defined by the Secretary." Section 151.2(h) defines "tribal consolidation area" as "a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe."

Appellant's "Land Consolidation and Acquisition Plan" clearly appears to have been intended as a plan for the acquisition of land in trust status under Part 151. Appellee's initial review of the plan also appears to have been conducted under this assumption. At some point before January 1989, however, appellee began to consider the plan under criteria derived from ILCA, pursuant to which he ultimately disapproved it. The issue in this appeal is whether appellee properly employed these criteria in evaluating appellant's plan, which was ostensibly submitted for approval under 25 CFR Part 151.

[1] The Department's primary statutory authority for the acquisition of land in trust status for Indians is 25 U.S.C. § 465, which vests broad discretion in the Secretary. ^{4/} See State of Florida v. U.S. Department of the Interior, 768 F.2d 1248 (11th Cir. 1985), cert. denied, 475 U.S. 1011 (1986). To the extent the Secretary has promulgated regulations specifying how this authority is to be exercised, he has limited his discretion. Cf. id. at 1257 n.11. However, to the extent he has not so limited it, the discretion vested in the Secretary by section 465 remains:

The authority to approve a tribal "plan for the acquisition of land in trust status" under 25 CFR 151.2(h) is an aspect of the Secretary's discretionary authority to acquire lands in trust status. No criteria for approval of such plans are contained in Part 151. The Board is unaware of any other statutory or regulatory criteria concerning this type of plan.

The Board finds that, in the absence of statutory or regulatory criteria, appellee had the discretionary authority to analyze appellant's plan under reasonable criteria of his own devising. ^{5/} Appellee's initial analysis, which took into account such factors as the geographic extent of the proposed consolidation area vis-a-vis the tribe's need for additional land, and BIA's ability to provide services to the land, appears to be reasonably related to the ultimate development of a realistic and manageable plan for the trust acquisition of additional land for the tribe.

^{4/} 25 U.S.C. § 465 provides:

"The Secretary of the Interior is hereby 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."

Presumably, any trust acquisitions for appellant would be made under authority of this provision. See 25 CFR 151.5.

^{5/} Cf. City of Eagle Butte v. Aberdeen Area Director, 17 IBIA 192, 197, 96 I.D. 328, 331 (1989), in which the Board held that, while approval of a trust acquisition request is discretionary, in order to avoid any allegation of abuse of discretion, BIA's final decision should be reasonable in light of its overall analysis of the factors in section 151.10.

[2] The question remains whether appellee's later analysis, in which he employed "land consolidation plan" criteria derived from ILCA to evaluate a plan prepared for trust acquisition purposes, was reasonable. 25 U.S.C. § 2203, the ILCA provision concerning land consolidation plans, is directed primarily toward authorizing the sale or exchange of existing tribal lands, under certain conditions, rather than toward trust acquisition of new tribal lands. ^{6/} The statutory requirement that such sales or exchanges be for the purpose of "eliminating fractional interests in Indian trust or restricted lands or consolidating tribal landholdings" is clearly intended as a limitation upon alienation, rather than acquisition, of tribal lands. ^{7/}

Appellant's plan does not contemplate the sale or exchange of any lands it presently owns, but only the acquisition of new lands. In this context, the requirements established in appellee's February 23, 1989, letter, *i.e.*, that appellant's plan "demonstrate how [it] will accomplish the purposes of eliminating fractional ownership or consolidating tribal lands, provide at least a general plan for the reinvestment of proceeds received from the sale of tribal land, and ensure that all sales of tribal land are for no less than fair market value," are largely irrelevant.

The Board finds that it was not reasonable for appellee to employ ILCA-derived criteria, related primarily to the sale or exchange of tribal lands, to appellant's "Land Consolidation and Acquisition Plan," which was intended as a plan for the acquisition of land in trust status.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 18, 1989, decision of the Anadarko Area Director is reversed and this case is remanded to him for further consideration. In evaluating appellant's plan, the Area Director should employ criteria bearing a reasonable relation to the

^{6/} Trust acquisitions are the subject of the immediately preceding section of ILCA, 25 U.S.C. § 2202, which provides:

"The provisions of section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title: Provided, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians which respect to any specific tribe, reservation, or state(s)."

^{7/} The draft definition of "land consolidation plan" quoted by appellee in his Feb. 23, 1989, letter is also directed toward transactions involving sales or exchanges of tribal land. See note 3, *supra*. Appellee stated that this definition was intended for inclusion in a revision of 25 CFR Part 152, where provisions concerning sale or exchange of tribal lands (*e.g.*, 25 CFR 152.21, 152.22(b)) are presently located. He did not indicate the intended relation of this definition to Part 151.

purpose of appellant's plan as a "plan for the acquisition of land in trust status" under 25 CFR 151.2(h). 8/

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

8/ The Board notes that appellant has apparently concluded, incorrectly, that land may be taken into trust for it only if the land is located within its historic reservation or within a tribal consolidation area. See note 1, supra, and accompanying text. In fact, land may also be taken into trust under 25 CFR 151.3(a)(3) "when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing." It is possible that the trust acquisitions sought by appellant might qualify under this criterion, regardless of the ultimate decision on its acquisition plan.