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**CITY OF GLENDALE FILES SUIT TO BLOCK
ESTABLISHMENT
OF INDIAN RESERVATION LAND WITHIN ITS BORDER**

GLENDALE, Ariz. – The city of Glendale filed suit in federal court today in its continuing effort to protect the community around 91st and Northern avenues from the impact of having 54 adjacent acres declared reservation land by the U.S. Department of the Interior. The Tohono O’odham tribe, from southern Arizona, whose ancestral lands are located 100 miles away, intends to build a casino on the property.

The lawsuit asserts that the federal government has not properly made its determination that the land qualifies for reservation status and that the federal government has no authority under the United States Constitution to remove land from the State of Arizona without the consent of the state’s legislature.

On the local level, the city’s longstanding objections to the federal government creating a reservation within the city’s boundaries without any local approval is based on a variety of social, financial and legal issues.

Social Impacts –

- The state, county and city will lose all authority over activity on the proposed site.
- The Tohono O’odham may put or allow activity on land without any concern for area residents and business.
- The Tohono O’odham would have no obligation to protect the interests and future of the surrounding area and the city will have no authority to enforce any laws on the land.

Home
of the NFL’s
2008 Super Bowl

Home
of Arizona’s
Best Hometown
Festivals

Home
of the
NHL Coyotes,
Arizona
Cardinals and
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Home
of Luke AFB,
the largest F-16
training base
in the world

City of Glendale
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- Glendale would be unable to protect the surrounding community from the potential effects of the decision to permanently remove this area from state jurisdiction.

Financial Impacts –

- No tax revenue will come directly to the city from the operation of the proposed casino, resort or any other development on the site.
- The city, however, may have to provide services related to activity on the site at the expense of taxpayers who will have no say over that activity. These services include water, sewer, roads, police and fire protection.
- While other developments and the citizens of Glendale pay for city services, if a reservation is created, the Tohono O’odham would not be required to contribute any money toward the costs that arise from its use of the property.

Legal Impacts –

- In 2002, Arizona voters enacted Proposition 202—a proposition that the Tohono O’odham vocally supported—that was based on promises about how Indian gaming would be conducted in the state. The Tohono O’odham’s proposal disregards these promises and the intention of Arizona voters, disrupts the Indian gaming compacts, and skirts the laws enacted by the people and the legislature of this state.

The Tohono O’odham’s reservation land in Southern Arizona is approximately the size of the state of Connecticut. While the Tohono O’odham has approximately 28,000 enrolled members, more than 33,000 Glendale residents live within two miles of the disputed land. Approximately a third of these residents are less than 20 years old, including the students of Raymond C. Kellis High School located directly across the street from the land upon which the Tohono O’odham seeks to create a reservation for gaming purposes.

For more information, visit www.glendaleaz.com/indianreservation.

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18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 CITY OF GLENDALE, ARIZONA,

21 Plaintiff,

22 v.

23 THE UNITED STATES OF AMERICA;
24 THE UNITED STATES DEPARTMENT OF
25 THE INTERIOR; KENNETH L. SALAZAR,
26 in his official capacity as Secretary of the
27 United States Department of the Interior,

27 Defendants.

Case No.

COMPLAINT

1 Plaintiff City of Glendale (“Glendale” or the “City”) brings this action to
2 prevent the creation of an Indian reservation—and the construction of a massive
3 casino and gaming complex—right in the midst of the city. Six years after buying
4 approximately 135 acres of undeveloped land within Glendale’s city limits, the
5 Tohono O’odham Nation (“the Nation”) submitted an application urging
6 Defendants to take the property into trust as reservation land. The Nation plans to
7 make that land home to a \$600 million, 1.2 million square foot gaming center,
8 complete with a 150,000 square foot casino, eight restaurants, and parking for
9 4,000 cars. All of this development would abut a mixed use development with a
10 significant residential component and would lie within a quarter-mile of
11 established residential neighborhoods, churches, and parks—not to mention a high
12 school located across the street from the eastern portion of the Nation’s original
13 application land. The complex, and the influx of visitors and traffic to and from
14 the complex, would significantly boost Glendale’s infrastructure and public safety
15 costs while simultaneously cutting into residents’ quality of life, reducing the
16 revenues of local businesses, and eroding Glendale’s tax base. The creation of a
17 new reservation at this location would extinguish Glendale’s power to regulate the
18 parcel’s land use, eradicating the local community’s control, through its
19 representative government, over the site’s development.

20 Needless to say, Glendale opposed the Nation’s request. Glendale pointed
21 out that the land—which sits over 100 miles from the Nation’s main reservation
22 and governmental headquarters—did not meet statutory requirements for Indian
23 trust property, in part due to its urban location. Glendale also identified other legal
24 flaws with the Nation’s application. Defendants nonetheless granted that
25 application and decided to take the land into trust—a step that, once completed,
26 will irrevocably remove the land from all state and local control.

27 Defendants’ decision was unlawful. Glendale requests that this Court set
28 aside that decision as arbitrary, capricious and contrary to law; declare

1 unconstitutional the land-acquisition provision of the federal statute upon which
2 Defendants relied; and enjoin Defendants from taking title to the parcel.

3 NATURE OF CASE

4 1. Glendale seeks injunctive and declaratory relief against Defendants
5 the United States; the United States Department of the Interior; and Kenneth L.
6 Salazar, Secretary of the United States Department of the Interior pursuant to the
7 Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”); the Gila Bend
8 Indian Reservation Lands Replacement Act, Pub. L. No. 99-503, 100 Stat. 1798
9 (1986) (“Gila Bend Act” or “Act”); the Indian Gaming Regulatory Act, 25 U.S.C.
10 §§ 2701 *et seq.* (“IGRA”); and the United States Constitution.

11 2. Glendale’s claims stem from Defendants’ July 23, 2010 decision
12 granting the Nation’s application asking the federal government to take title to,
13 and create an Indian reservation on, a parcel of land that sits completely within the
14 exterior boundaries of Glendale’s corporate limits (“Parcel 2”). Parcel 2
15 comprises approximately 54 acres of land in Glendale that the Nation purchased in
16 2003. Glendale faces imminent and grievous injury as a result of the Defendants’
17 decision.

18 3. The Defendants’ decision that Parcel 2 qualifies for trust acquisition
19 under the Gila Bend Act is contrary to law and arbitrary, capricious, an abuse of
20 discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). The
21 Gila Bend Act forbids Defendants from placing into trust for the Nation land that
22 is “within the corporate limits of any city or town.” Gila Bend Act § 6(d). The
23 land at issue here meets that description and cannot be taken into trust under the
24 Gila Bend Act. The Defendants’ decision also is “not in accordance with law” for
25 other reasons, including, *inter alia*, Defendants’ failure to determine whether the
26 Parcel is gaming-eligible under IGRA.

27 4. The Defendants’ decision violates the Tenth Amendment to the
28 United States Constitution by entrenching upon state sovereignty.

1 **PARTIES**

2 5. Plaintiff Glendale is a political subdivision of the state of Arizona.

3 6. Defendant Kenneth L. Salazar is the Secretary of the United States
4 Department of the Interior (the “Secretary”). The Secretary is sued in his official
5 capacity.

6 7. Defendant United States Department of the Interior (the
7 “Department”) is an agency of the United States.

8 8. Defendant United States of America is the entity in whose name the
9 Secretary purports to take Parcel 2 into trust for the purpose of creating an Indian
10 reservation.

11 **JURISDICTION AND VENUE**

12 9. The Court has jurisdiction over Glendale’s claims pursuant to 28
13 U.S.C. § 1331, as this civil action arises under the Constitution, laws, and/or
14 treaties of the United States.

15 10. The Court has jurisdiction pursuant to 5 U.S.C. §§ 701-706 to
16 conduct judicial review of this final agency action taken by the Department and its
17 respective divisions and bureaus.

18 11. Glendale seeks declaratory and other appropriate relief from the
19 Court pursuant to 28 U.S.C. §§ 2201 and 2202 for the purpose of determining a
20 question of actual controversy between the parties as set forth herein.

21 12. Venue is proper under 28 U.S.C. §§ 1391(b)(2), 1391(e)(2)-(3); and
22 5 U.S.C. § 703 because a substantial part of the events giving rise to this action
23 occurred in this District and the real property that is the subject of the action is
24 located in this District.

25 **BACKGROUND**

26 **The City of Glendale**

27 13. At the time of its incorporation in June 1910, Glendale was a 1.01
28 square mile municipality. It has grown substantially larger over the intervening

1 century. Its borders presently enclose approximately 100 square miles of land.
2 Within that area, Glendale has annexed approximately 59 square miles through the
3 use of its state-law annexation authority.

4 14. Glendale has adopted a Municipal Planning Area that covers the
5 approximately 100 square miles enclosed by Glendale's corporate limits. Parcel 2
6 is wholly within Glendale's Municipal Planning Area. "Municipal Planning Area"
7 is a term of art under Arizona law that refers to all the land, incorporated and
8 otherwise, (i) that is encompassed within the city's land-use plan and (ii) in which
9 the city may offer public facilities and services. Pursuant to state law, Glendale
10 has promulgated the Glendale General Plan to govern land use within its
11 Municipal Planning Area.

12 15. Glendale's annexation authority stems from state law, which
13 empowers cities to annex land pursuant to certain requirements. The City has
14 made use of that authority to effectively manage urban development, to efficiently
15 plan and provide city services, to create a stronger community, to increase the
16 City's economic base, and to ensure high-quality development up to City
17 standards. This authority is exercised on behalf of Glendale's citizens and in
18 accordance with decisions made by their representatives acting upon delegated
19 authority.

20 16. Glendale annexed a large area to the west of the city center in 1977.
21 That annexation enclosed Parcel 2 within the City's boundaries. By setting its city
22 limits in this way, Glendale established its exclusive authority under Arizona law
23 to annex all unincorporated land enclosed by the 1977 annexation, including
24 Parcel 2.

25 17. Since that time Glendale has, as required by state law, carefully
26 planned for this area's permissible uses, infrastructure, and public safety consistent
27 with the health, safety and welfare of the entire community.
28

1 18. The parcel at issue in this case, Parcel 2, is an undeveloped 53.54-
2 acre property physically located within Glendale. Parcel 2, while planned and
3 protected by Glendale, is unincorporated. It is surrounded and enclosed by land
4 that has been annexed into Glendale’s jurisdictional limits.

5 19. Aware that Arizona law protects the City’s exclusive authority to
6 annex all unincorporated land fully enclosed within its city limits, Glendale has
7 invested significant resources to develop the area surrounding Parcel 2. Since
8 2003, city, state, and private interests have invested hundreds of millions of dollars
9 to develop the area. Public funds were invested in a \$450 million stadium, a \$240
10 million arena, and a \$120 million Major League Baseball Spring Training facility,
11 all in accordance with Glendale’s General Plan.

12 20. Private entities also have invested, or planned to invest, hundreds of
13 millions of dollars to construct several large residential and commercial
14 developments in the general area around Parcel 2.

15 21. The area has several existing residential developments and is home
16 to more than 30,000 people, most within two miles of the Nation’s proposed
17 reservation and casino. More than 30 percent of these residents are under 20 years
18 old. A community of more than 300 residential units abuts the proposed
19 reservation site.

20 22. Residents of the area have stated that they chose to buy property
21 there because it is “family friendly.”

22 23. In 2005, one of the school districts that serve Glendale residents
23 opened a new high school that serves nearly 2,000 students. The high school sits
24 only 50 feet from land subject to the Nation’s original application – for which,
25 without any doubt, the Nation will also seek reservation status – and only 1,000
26 feet from Parcel 2.

27
28

1 **The Tohono O’odham Nation & The Gila Band Act**

2 24. The Tohono O’odham Nation, previously known as the Papago
3 Tribe, is a federally recognized Indian tribe. In the Nation’s own words, it “has
4 the second largest Tribal land base in the U.S., 2.8 million acres, and it has over
5 28,000 Tribal members.” January 2009 Letter of the Tohono O’Odham Nation,
6 available at http://www.tonation-nsn.gov/west_valley_resort.aspx. The Nation’s
7 2.8 million acre (4,375 sq. mi.) reservation lands in south and central Arizona
8 make its land base larger than Delaware or Rhode Island, and nearly the size of
9 Connecticut.

10 25. Until the mid-1980s, the Nation counted among its lands
11 approximately 10,000 acres along the banks of the Gila River near Gila Bend,
12 Arizona. This was referred to as the “Gila Bend Indian Reservation.”

13 26. In 1950, Congress enacted a law authorizing the construction of the
14 Painted Rock Dam, ten miles downstream from the Nation’s Gila Bend
15 Reservation, to address serious problems regarding the downriver flooding of
16 Indian and non-Indian agricultural land. The federal government obtained a
17 flowage easement through parts of the Gila Bend Reservation through a stipulated
18 judgment in condemnation.

19 27. Notwithstanding the easement and the Nation’s vast land holdings in
20 Arizona, in 1981 the Nation petitioned Congress “for a new reservation on lands in
21 the public domain which would be suitable for agriculture.” Congress responded
22 by enacting the Gila Bend Act, Pub. L. No. 99-503, 100 Stat. 1798 (1986) (the
23 “Act” or “Gila Bend Act”). The Act did not resolve or respond to any dispute
24 over the title or possession of the Gila Bend reservation land.

25 28. Under the Act’s terms, the Nation was authorized to acquire by
26 private purchase not more than 9,880 acres to replace its reservation lands, and the
27 Secretary was authorized to hold those replacement lands in trust for the Nation, if
28 certain conditions were met. Before the Nation could exercise its rights under the

1 statute, it was required to assign “to the United States all right, title, and interest of
2 the Tribe in nine thousand eight hundred and eighty acres of [existing] land within
3 the Gila Bend Indian Reservation,” Gila Bend Act § 4(a), for an agreed-upon price
4 of \$30 million.

5 29. The Gila Bend Act imposes specific limitations on the land the
6 Secretary can place in trust for the Nation’s benefit. Particularly relevant to this
7 case is Section 6(d), which provides:

8 The Secretary, at the request of the Tribe, shall hold in trust
9 for the benefit of the Tribe any land which the Tribe acquires
10 pursuant to subsection (c) which meets the requirements of
11 this subsection. Any land which the Secretary holds in trust
12 shall be deemed to be a Federal Indian Reservation for all
13 purposes. Land does not meet the requirements of this
14 subsection if it is outside the counties of Maricopa, Pinal, and
15 Pima, Arizona, or within the corporate limits of any city or
16 town. Land meets the requirements of this subsection only if
17 it constitutes not more than three separate areas consisting of
contiguous tracts, at least one of which areas shall be
contiguous to San Lucy Village. The Secretary may waive
the requirements set forth in the preceding sentence if he
determines that additional areas are appropriate.

18 30. Pursuant to the Act, the Nation assigned most of its reservation to
19 the United States in exchange for \$30 million. The Nation retained approximately
20 417 acres of its original reservation, all within five miles of San Lucy Village—the
21 Tohono community referred to in the statute, which sits some 60 miles southwest
22 of Glendale.

23 31. The Nation first invoked the Act’s land-purchase provisions in the
24 late 1980s. Pursuant to those provisions, it purchased and had taken into trust a
25 non-contiguous, 3,200-acre parcel in central Arizona now known as “San Lucy
26 Farms.”

27 32. By letter dated January 25, 2000, the Nation asked the Secretary to
28 waive two of the Section 6(d) requirements—namely, the requirements that one

1 area of land be contiguous to San Lucy Village and that the Nation be allowed up
2 to three separate areas as trust property. The Nation asked for clearance to place
3 into trust up to five separate areas, regardless of their contiguity with San Lucy
4 Village. A regional official with the Bureau of Indian Affairs, a division of the
5 Department, granted those requests on May 31, 2000.

6 33. In 2002, the Nation purchased two contiguous parcels in Maricopa
7 County, together totaling approximately 3,700 acres, known as the “Painted Rock
8 property.” Four years later the Nation requested that the Secretary place the
9 Painted Rock property in trust under the Act.

10 34. After the Nation submitted its trust application for the property in
11 Glendale, the Nation tabled the Painted Rock application, apparently because of
12 (well-justified) concerns that the 2000 waiver was unlawful. The Nation’s
13 strategy is to give Parcel 2 the highest priority: If the Painted Rock property were
14 taken into trust without a valid waiver in place, the Nation’s current application
15 concerning Parcel 2 would be its third under the Act, none involving areas
16 “contiguous to San Lucy Village.” Gila Bend Act § 6(d). In that circumstance
17 Parcel 2 could not be placed into trust.

18 **The Nation’s Request for the Glendale Parcel**

19 35. In August 2003, the Nation quietly purchased a large (134.88 acre)
20 swath of unincorporated land located entirely within Glendale’s incorporated
21 limits. The Nation did so using the guise of a Delaware corporation, “Rainier
22 Resources, Inc.,” which the Nation wholly owned. Rainier Resources had no
23 obvious association with the Nation and did not reveal at the time that the real
24 owner of the land would seek to have the property turned into an Indian
25 reservation featuring a large casino.

26 36. The Nation, operating as “Rainier,” held the land in secret for six
27 years, watching as the residential area around the parcel grew and a new high
28

1 school was built directly across the street from the property. All the while, the
2 Nation was developing plans for a \$600 million casino complex.

3 37. On January 28, 2009, “Rainier” formally deeded the property to the
4 Nation. One day before that transfer, the Nation shocked Glendale officials by
5 revealing for the first time that it owned the property, laying out its casino
6 development plan, and asserting that the City was powerless to stop it.

7 38. The Nation then immediately filed an application requesting that the
8 Secretary take the property into trust and grant the Nation permission to establish a
9 Class III (Las Vegas-style) gaming complex on the site. The Nation specifically
10 sought a finding that the Glendale parcel was eligible for Indian gaming because it
11 was acquired as “settlement of a land claim”—one of the statutory exceptions that
12 allows tribes to run gaming operations on land taken into trust after 1988. 25
13 U.S.C. § 2719(b)(1)(A).

14 39. Glendale quickly announced its opposition to the Nation’s plan—as
15 did Senators McCain and Kyl, Congressmen Franks and Shadegg, the Governor of
16 Arizona, a host of nearby cities, and a number of other Arizona tribes. U.S. Senate
17 Majority Leader Reid and Senators Feinstein, Boxer, and Ensign also expressed
18 their strong opposition to “taking off-reservation lands into trust for gaming
19 purposes” because “the recent practice of tribes . . . seeking advantageous gaming
20 opportunities on lands that are not traditionally tribal lands . . . is an abuse of the
21 land into trust process and violates the spirit of IGRA.”

22 40. In filings with the Department, Glendale pointed out that the parcel
23 in question sat “within the corporate limits of a[] city or town”—namely,
24 Glendale itself—and that it therefore was ineligible for trust acquisition under the
25 Gila Bend Act. Glendale also raised several other statutory and constitutional
26 objections to the Nation’s application.

27 41. Glendale further noted, as a practical matter, that the parcel upon
28 which the Nation sought to create a reservation sat more than 60 miles across the

1 desert from San Lucy Village, more than 100 miles from the Nation’s main
2 reservation and governmental headquarters, and lacked any historic relationship to
3 the Nation. Indeed, the proposed reservation is located in an ancestral area of a
4 different Indian nation altogether: the Akimel O’odham people, who include the
5 Gila River Indian Community. The Nation’s only interest in the land is for
6 gaming.

7 42. Meanwhile, Glendale officials were studying the legal status of the
8 land in and around the Nation’s parcel. They determined that approximately one-
9 third of the 134.88 acres of land purchased by the Nation in fact had been annexed
10 by Glendale in 2001, and that while the City Council had later purported to revoke
11 that annexation, the revocation had no legal effect. On June 23, 2009, Glendale
12 adopted an ordinance acknowledging the legal effectiveness of the 2001
13 annexation. The Nation contested the 2009 ordinance in state court but lost.

14 43. With the 2001 annexation in effect, the Nation’s original 134.88-acre
15 property was split into thirds—a middle third that was incorporated into Glendale,
16 with an unincorporated parcel on either side. The Nation responded on August 18,
17 2009 by amending its trust application and asking the Secretary to take into trust
18 only the unincorporated parcel on the western portion of its 134.88 acre-
19 property—the parcel known as “Parcel 2.”

20 44. The Nation also amended its application in another way: On July 8,
21 2009, it withdrew its request for a gaming eligibility determination. The Nation
22 has admitted that it still plans to develop its planned gaming complex once Parcel
23 2 is taken into trust.

24 45. On March 22, 2010, the Nation filed a mandamus action against the
25 Secretary in the District Court for the District of Columbia, claiming that the
26 Department had “unreasonably delay[ed]” in granting its application and taking
27 the Glendale parcel into trust—even though the Nation had substantially amended
28 its own application several times in the months prior to filing suit. Before the

1 District Court issued any ruling in that action, Defendants issued the July 23, 2010
2 decision at issue in this case. The Secretary then moved to dismiss that the
3 Nation’s action on mootness grounds.

4 **The Department’s Decision**

5 46. On July 23, 2010, the Department issued a decision letter (the
6 “Decision”) finding that Parcel 2 was “eligible to be taken into trust.” The
7 Decision is attached to this Complaint as Exhibit 1.

8 47. The Decision rejected Glendale’s argument that Parcel 2 failed to
9 qualify under the Gila Bend Act because it was “within the corporate limits” of the
10 city. The Department reasoned that Parcel 2 does not fall within Glendale’s
11 “corporate limits”—despite the fact that it is within the “city limits” and the city’s
12 “geographic boundaries”—because it has not been incorporated into the city.

13 48. The Decision explicitly declined to address whether the Nation will
14 be able to game on Parcel 2. It took that approach even though IGRA regulations,
15 and the Secretary’s policies, require that an IGRA gaming-eligibility
16 determination must be made before land is taken into trust for the purpose of
17 gaming. The regulations provide that “[i]f the tribe seeks to game on newly
18 acquired lands that require a land into-trust application . . . the tribe must submit a
19 request for an opinion to the Office of Indian Gaming.” 25 C.F.R. § 292.3(b). A
20 Department Memorandum of Understanding provides that “that whether a tribe
21 meets” the gaming criteria of IGRA “is a decision made by the Secretary when he
22 or she decides to take land into trust or restricted fee for gaming.” And the
23 Department’s formal “Checklist” for gaming-related acquisitions states, in no
24 uncertain terms, that Section 20 of the IGRA, 25 U.S.C. § 2719, “governs the use
25 of land acquired in trust *when the intended use of the land is for gaming*,” and that
26 “[a]ll applications for the trust acquisition of land intended for gaming must be
27 processed with Section 20 considerations in mind.” (emphases added).

28

1 49. On August 26, 2010, the Department published notice in the Federal
2 Register announcing its “final agency determination to acquire Parcel 2 consisting
3 of 53.54 acres of land into trust for the Tohono O’odham Nation of Arizona.”

4 **Impacts of Secretary’s Decision on Glendale**

5 50. The Secretary’s Decision will cause Glendale severe and irreparable
6 harm.

7 51. Glendale will be stripped of all authority over the parcel if it is taken
8 into trust. Under Arizona law, the fact that Parcel 2 lies within Glendale’s city
9 limits gives Glendale the exclusive authority to annex it and requires any county
10 regulation of the parcel to conform to Glendale’s zoning rules and land-use plan.
11 Moreover, Parcel 2 has long been incorporated in Glendale’s planning area and
12 included within the City’s General Plan, and development surrounding the site was
13 planned in conformance with the General Plan. Glendale will lose these
14 fundamental incidents of authority under the Decision.

15 52. The Decision will seriously harm Glendale due to the Nation’s
16 proposed gaming facility. It is undisputed that the Nation still intends to construct
17 its massive casino and entertainment complex. Indeed, the Nation has never
18 proposed any other use for the property, and has repeatedly reaffirmed that it will
19 push ahead with the casino once the land is in trust. The costs imposed on the city
20 to provide basic services to the influx of visitors to the site would be substantial
21 once the facility is opened. At a minimum, it would require the construction of a
22 new fire station, add as much as \$3.5 million in annual public safety costs, and
23 create additional water, wastewater, roadway, and traffic management issues.

24 53. The Nation’s gaming complex also will have a deleterious impact on
25 local Glendale business and, by extension, on the City’s coffers. Approximately
26 670 businesses employing more than 10,500 people are located within two miles
27 of the proposed reservation site. Studies have shown that casinos produce a
28 spending substitution effect: Casino patrons decrease their spending on local

1 goods and services to reserve discretionary income for gambling. As Glendale's
2 businesses lose customers and income, Glendale's tax base will decrease
3 proportionately.

4 54. The Nation's proposal also would have adverse social effects for
5 Glendale. The proposed gaming complex would operate within a quarter-mile of
6 established neighborhoods, churches, parks, and a high school. Approximately
7 12,000 homes with 34,000 residents are located within two miles of the proposed
8 casino site. Glendale has worked diligently to plan the area to make it attractive to
9 citizens who want to establish families, educate children, and buy homes there.
10 Local residents made these choices in reliance on the fundamental premise that the
11 area would not be subject to land uses over which they, through their state and
12 local governments, have no say.

13 **FIRST CAUSE OF ACTION**

14 **DECLARATORY AND INJUNCTIVE RELIEF – VIOLATION OF THE**
15 **ADMINISTRATIVE PROCEDURE ACT BY FAILURE TO ADHERE TO**
16 **REQUIREMENTS OF THE GILA BEND ACT**

17 55. Glendale reasserts and incorporates the allegations stated in
18 Paragraphs 1 through 54.

19 56. The Secretary's Decision, as published in the Federal Register on
20 August 26, 2010, constitutes final agency action that is subject to judicial review.
21 *See* 5 U.S.C. § 704; 25 U.S.C. § 2714; 25 C.F.R. § 524.3.

22 57. The Secretary's decision that Parcel 2 is eligible to (and will) be
23 taken into trust pursuant to the Gila Bend Act was arbitrary, capricious, an abuse
24 of discretion, and otherwise contrary to law. Parcel 2 does not satisfy the
25 requirements of the Gila Bend Act, and the Secretary accordingly was required to
26 reject the Nation's application, because Parcel 2 lies "within the corporate limits"
27 of Glendale. The fact that Parcel 2 is located within the corporate limits of
28 Glendale is an absolute bar to the parcel qualifying for acquisition under the Act.

1 **THIRD CAUSE OF ACTION**

2 **DECLARATORY AND INJUNCTIVE RELIEF – VIOLATION OF THE**
3 **TENTH AMENDMENT TO THE U.S. CONSTITUTION**

4
5 66. Glendale reasserts and incorporates the allegations stated in
6 Paragraphs 1 through 65.

7 67. The Tenth Amendment of the United States Constitution forbids the
8 federal government to invade the province of sovereignty reserved to the states
9 and the people.

10 68. A state’s sovereignty is, at its core, based on its governmental
11 authority over the land under its jurisdiction, its power to make land-use decisions,
12 and its exercise of the police power over land within its borders.

13 69. The taking of Parcel 2 into trust will effectively oust Arizona from
14 jurisdiction and sovereign control over Parcel 2 – land that has been under state
15 authority ever since Arizona gained statehood. Arizona and its subdivisions would
16 no longer be able to make land-use decisions, collect taxes, enforce most laws, or
17 engage in most other aspects of the police power on the trust property. Nor would
18 it be able to legislate with respect to the trust property – an essential underpinning
19 of sovereignty.

20 70. Neither the State of Arizona, nor any authorized representative of the
21 State, has consented to the displacement and diminishment of its sovereign control
22 over Parcel 2.

23 71. The Department’s Decision to take Parcel 2 into trust purportedly
24 was authorized by Section 6(d) of the Gila Bend Act.

25 72. By displacing, diminishing and infringing on the inherent sovereign
26 rights of Arizona without the state’s consent, Section 6(d) of the Gila Bend Act
27 violates the Tenth Amendment.

28 73. Glendale, a political subdivision of the State, may assert Arizona’s
rights in this regard as a component of state government. In addition, Glendale

1 may also maintain a claim under the Tenth Amendment because the Amendment
2 exists to protect individuals—here, individuals who are residents of both Glendale
3 and Arizona—and because allowing Glendale to assert the claim serves interests
4 of judicial economy.

5 74. Glendale accordingly is entitled to a declaration that the Gila Bend
6 Act, as applied, violates the Tenth Amendment.

7 75. Glendale likewise is entitled to an injunction barring the Secretary
8 from taking Parcel 2 into trust pursuant to the Gila Bend Act.

9
10 **PRAYER FOR RELIEF**

11 The City of Glendale respectfully requests the following relief:

12 a) Declare that Parcel 2 does not qualify for acquisition under the Gila
13 Bend Act;

14 b) Declare that the Secretary’s July 23, 2010 Decision is unlawful, and
15 vacate and set aside the decision;

16 c) Declare that the Secretary must issue a decision concerning the
17 eligibility of casino gaming on Parcel 2 prior to acquiring trust title to Parcel 2, if
18 acquiring such title were otherwise determined to be lawful;

19 d) Declare that the Gila Bend Act as applied in the Secretary’s July 23,
20 2010 Decision is in excess of federal constitutional authority and in violation of
21 the sovereign rights of Arizona and the City of Glendale;

22 e) Enjoin the Secretary and his agents and employees from taking title
23 to Parcel 2 into trust for the benefit of the Nation;

24 f) Enjoin the Secretary and his agents and employees from taking
25 Parcel 2 into trust for the benefit of the Nation, if otherwise lawful, prior to issuing
26 a determination whether Parcel 2 is eligible for gaming under the IGRA;

27 g) Award Glendale its costs and reasonable attorney fees to the extent
28 permitted by law; and

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h) Award Glendale such other relief as the Court deems equitable and just.

Respectfully submitted,

Dated: September 21, 2010

By: s/ Jose de Jesus Rivera

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OFFICE OF THE CITY ATTORNEY
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Attorneys for Plaintiff
City of Glendale, Arizona

**pro hac vice* applications submitted

EXHIBIT 1



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

The Honorable Ned Norris, Jr.
Chairman, Tohono O'odham Nation
P.O. Box 830
Sells, Arizona 85634

JUL 23 2010

Dear Chairman Norris:

On January 28, 2009, the Tohono O'odham Nation (Nation) submitted to the Bureau of Indian Affairs an application to acquire in trust 134.88 acres of land (Glendale parcels) held in fee by the Nation and located in Maricopa County, Arizona (*Tohono O'odham Nation (TON) Application*). Over the past year, the Nation has modified its request, as described in further detail below. The authority for this acquisition is the Gila Bend Indian Reservation Lands Replacement Act, P.L. 99-503, 100 Stat. 1798 (1986) (Gila Bend Act) (*TON Exhibit 3*).

Before land is eligible for acquisition under the Gila Bend Act, section 6(d) of the Act requires the Secretary to determine if certain conditions are met:

The Secretary, at the request of the Tribe, shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (c) which meets the requirements of this subsection. Any land which the Secretary holds in trust shall be deemed to be a Federal Indian Reservation for all purposes. Land does not meet the requirements of this subsection if it is outside the counties of Maricopa, Pinal, and Pima, Arizona, or within the corporate limits of any city or town. Land meets the requirements of this subsection only if it constitutes not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village. The Secretary may waive the requirements set forth in the preceding sentence if he determines that additional areas are appropriate.

By memorandum dated June 30, 2009, the Regional Director, Western Region Office (WRO) transmitted to the Assistant Secretary – Indian Affairs (AS-IA), his recommendation that the property be accepted into trust (*Office of Indian Gaming (OIG) Tab 1*), along with the Nation's request and supporting documentation.

The Nation's application originally sought the acquisition of 134.88 acres consisting of five parcels. By letter dated March 12, 2010, the Nation modified its application and now only seeks to have Parcel 2 of the 134.88 acre property, consisting of 53.54 acres, taken into trust, and asked that the Department of the Interior hold the rest of the Nation's application in abeyance. (*TON Exhibit 2*). See Letter dated March 12, 2010, from Mr. Seth Waxman, regarding "Tohono O'odham Nation Mandatory Trust Land Acquisition Request." The Nation indicated that it made this request following the March 10, 2010, decision by the Superior Court of Maricopa County that entered an order granting summary judgment to the City of Glendale (City) in an

annexation suit brought by the Nation. The ruling, which held that a 2001 annexation attempt by the City for certain parcels of the 134.88 acres held in fee by the Nation was valid. *See Tohono O'odham Nation v. City of Glendale* (Ariz. Sup. Ct., No. CV 2009-023501) (March 10, 2010).¹ The ruling does not, however, affect Parcel 2. We, therefore, are making a fee-to-trust determination only for Parcel 2, consistent with the Nation's March 12, 2010 request.

We have completed our review of applicable law, the Nation's request, supporting documentation, the WRO's recommendation, and, among other items, materials submitted by the City and the Gila River Indian Community. For the reasons set forth below, it is our determination that the Parcel 2, consisting of 53.54 acres, is eligible to be taken into trust.

BACKGROUND

The Nation is a federally recognized Indian Tribe. The Constitution of the Nation was adopted by the qualified voters on January 18, 1986, and approved by the Deputy Assistant Secretary – Indian Affairs on March 6, 1986 (*OIG Exhibit 2*). The Nation's headquarters are located in Sells, Arizona.

Pursuant to Article VI, Section 1(i) and 1(j) of the Constitution of the Tohono O'odham Nation, Resolution No. 09-049 adopted by the Tohono O'odham Legislative Council dated January 27, 2009, (*TON Exhibit 7*) requests the Secretary to acquire in trust the 134.88-acre property pursuant to the Gila Bend Act. As noted above, the Nation has since requested that the Secretary hold in abeyance that request with respect to all parcels of the 134.88 acre property other than Parcel 2.

Additionally, the Nation originally sought an Indian lands opinion in a letter dated January 28, 2009, but the Nation withdrew its request in a letter dated July 17, 2009. Consequently, this determination does not address whether the Nation is authorized to game in accordance with the requirements of the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2719 (*See "Compliance with the Indian Gaming Regulatory Act," infra.*)

DESCRIPTION OF THE PROPERTY

The legal description of the property is as follows (*TON Exhibit 8*):

PARCEL NO. 2

THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER AND THE WEST HALF OF THE EAST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THE WEST 360.14 FEET (MEASURED), WEST 360.00 FEET (RECORD) OF THE NORTH 484.19 FEET (MEASURED), NORTH 484.00 FEET (RECORD); AND

¹ The Nation has appealed the court's decision.

EXCEPT THE NORTH 258.00 FEET OF THE WEST 460.00 FEET OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 4; AND

EXCEPT THE NORTH 40.00 FEET, THEREOF; AND

EXCEPT THOSE PORTIONS THEREOF WHICH LIE NORTHERLY OF THE FOLLOWING DESCRIBED LINE;

BEGINNING AT A POINT ON THE NORTH-SOUTH MIDSECTION LINE OF SAID SECTION 4, WHICH POINT BEARS SOUTH 01 DEGREES 36 MINUTES 34 SECONDS WEST (RECORD AS SOUTH 00 DEGREES 16 MINUTES 56 SECONDS WEST ACCORDING TO ADOT PARCEL 7-4241), 55.01 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 4;

THENCE EAST (RECORDED AS NORTH 88 DEGREES 40 MINUTES 28 SECONDS EAST, ACCORDING TO ADOT PARCEL 7-42410), 503.20 FEET;

THENCE NORTH (RECORDED AS NORTH 01 DEGREES 19 MINUTES 32 SECONDS WEST ACCORDING TO ADOT PARCEL 7-4241), 55.00 FEET TO THE POINT OF ENDING ON THE NORTH LINE OF SAID SECTION 4, WHICH POINT BEARS NORTH 88 DEGREES 40 MINUTES 28 SECONDS EAST, 501.66 FEET FROM SAID NORTH QUARTER CORNER OF SECTION 4, AS CONVEYED TO THE STATE OF ARIZONA IN DEED RECORDED IN RECORDING NO. 86-652262 OF OFFICIAL RECORDS; AND

EXCEPT THAT PARCEL OF LAND LYING WITHIN SAID NORTHEAST QUARTER OF SECTION 4 AND BEING A PORTION OF THAT CERTAIN PARCEL DESCRIBED IN RECORDING NO. 95-490799 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 4;

THENCE NORTH 88 DEGREES 40 MINUTES 25 SECONDS EAST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, 998.19 FEET;

THENCE SOUTH 00 DEGREES 09 MINUTES 14 SECONDS WEST, 40.01 FEET TO THE NORTHEAST CORNER OF SAID PARCEL ON THE SOUTH LINE OF THE NORTH 40.00 FEET OF SAID NORTHEAST QUARTER AND THE POINT OF BEGINNING;

THENCE SOUTH 00 DEGREES 09 MINUTES 14 SECONDS WEST, ALONG THE EAST LINE OF SAID PARCEL, 28.05 FEET;

THENCE NORTH 68 DEGREES 29 MINUTES 09 SECONDS WEST, 42.26 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 51.64 FEET OF SAID NORTHEAST QUARTER;

THENCE SOUTH 88 DEGREES 40 MINUTES 25 SECONDS WEST, ALONG SAID SOUTH LINE, 455.83 FEET TO A POINT ON THE EAST LINE OF THAT PARCEL CONVEYED TO

ARIZONA DEPARTMENT OF TRANSPORTATION IN RECORDING NO. 86-652262 OF OFFICIAL RECORDS;

THENCE NORTH 01 DEGREES 19 MINUTES 35 SECONDS WEST, ALONG SAID EAST LINE, 11.64 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 40.00 FEET OF SAID NORTHEAST QUARTER;

THENCE NORTH 88 DEGREES 40 MINUTES 25 SECONDS EAST, ALONG THE SOUTH LINE, 495.50 FEET TO THE POINT OF BEGINNING, AS CONVEYED TO MARICOPA COUNTY IN DEED RECORDED IN RECORDING NO. 99-332877 OF OFFICIAL RECORDS.

TITLE TO THE PROPERTY

The commitment for title insurance No. 5089214, Second Amended, issued by First American Title Insurance Company dated January 21, 2009, reflects the title to be vested in the Nation, a federally recognized Indian Tribe (*TON Exhibit 9*).

On June 5, 2009, the Regional Director requested a Preliminary Title Opinion (PTO) from the Office of the Solicitor, Phoenix Field Office. On June 17, 2009, the Field Solicitor determined that the grantors should be able to convey title to the property in a manner that meets the standards set forth in "Department of Justice Title Standards," provided the various observations, conclusions, and needed actions listed in the PTO are taken prior to closing (*OIG Exhibit 1B*). These actions do not prevent the Secretary from making a final determination on the Nation's application.

COMPLIANCE WITH 25 C.F.R. PART 151 AND THE GILA BEND ACT

The Secretary's authority, procedures, and policy for accepting land into trust are set forth at 25 C.F.R. Part 151. Section 151.3 sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe or individual Indian, but states that it is "subject to the provisions in the acts of Congress which authorize land acquisition." If an acquisition statute is determined to be "mandatory," certain provisions of the Part 151 regulations do not apply to the application. The notice and comment provisions of 25 C.F.R. §§ 151.10 and 151.11(d), requiring that the BIA notify state and local governments of the land-into-trust application, are not applicable, and compliance with the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.*, is not required. Further, the Secretary is not required to consider the criteria for discretionary acquisitions listed at 25 C.F.R. §§ 151.10(a) - (h) and 151.11(a) - (c).

The Department construes mandatory acquisitions to be those authorized by legislation expressly stating that land "shall" be acquired in trust, as well as some additional restriction on the Secretary's discretion. *See* Memorandum dated April 17, 2002, from the Deputy Commissioner of Indian Affairs regarding "Processing of Mandatory Lands into Trust Applications." Here, the Gila Bend Act meets both of these requirements. The Act includes the word "shall" and limits the Secretary's discretion by limiting acquisitions under the Act to a specific geographic area. Gila Bend Act, section 6(d). The Field Solicitor, Phoenix Field Office, has repeatedly found the

Gila Bend Act to be a mandatory acquisition statute, most recently in an opinion dated April 30, 2009, (*OIG Exhibit 1A*).

Before land is eligible for acquisition under the Gila Bend Act, section 6(d) requires the Secretary to determine if certain conditions are met:

The Secretary, at the request of the Tribe, shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (c) which meets the requirements of this subsection. Any land which the Secretary holds in trust shall be deemed to be a Federal Indian Reservation for all purposes. Land does not meet the requirements of this subsection if it is outside the counties of Maricopa, Pinal, and Pima, Arizona, or within the corporate limits of any city or town. Land meets the requirements of this subsection only if it constitutes not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village. The Secretary may waive the requirements set forth in the preceding sentence if he determines that additional areas are appropriate.

As discussed below, the Secretary concludes that Parcel 2 meets all the requirements of section 6(d), and its acquisition is therefore mandatory.

County location

Section 6(d) requires that land acquired pursuant to the Gila Bend Act be within the counties of Maricopa, Pinal or Pima. Parcel 2 lies wholly within Maricopa County, and therefore, meets this requirement (*OIG Tab 1*).

Location within or without “corporate limits”

Section 6(d) also requires that land acquired pursuant to the Gila Bend Act not be “within the corporate limits of any city or town.” Though Parcel 2 sits in an unincorporated island within the City of Glendale’s broader geographical boundary, the City of Glendale has never annexed Parcel 2, and the parcel receives no regular services from the City (*OIG Tab 1*). The parcel is unincorporated land under the jurisdiction of Maricopa County (*OIG Tab 1*).

In addressing whether the Glendale Parcels meet the “corporate limits” requirement, the Field Solicitor initially reviewed applicable facts, Arizona law, and Federal law to determine whether or not the Glendale parcels are within the “corporate limits” of the City.² The Field Solicitor reasoned that Arizona law leads to the conclusion that the Glendale parcels are not part of the City of Glendale because they are not within the City’s “corporate limits” as that term is used by Arizona’s statutes and courts. The Field Solicitor concluded that Arizona law supports the

² The Field Solicitor completed his analysis prior to the state court ruling in *Tohono O’odham Nation v. City of Glendale*. His analysis does not, therefore, distinguish between Parcel 2 and the remaining Glendale parcels. (*OIG Tab 1*).

interpretation that the term “corporate limits” is a term of art delineating the incorporated area of a city.³

In reaching a final determination as to whether Parcel 2 is within the City of Glendale’s corporate limits, we have reviewed the numerous submissions and legal arguments presented by the Nation, the City, and the Gila River Indian Community.⁴ We find that Parcel 2 is not “within the corporate limits of any city or town.” We base our conclusion on the plain meaning of “corporate limits,” as used by Congress in the Gila Bend Act.

While there is no statutory definition of “corporate limits” in the Gila Bend Act, the plain meaning of the phrase is clear. The use of “corporate limits” shows a clear intent to make a given piece of property eligible under the Act if it is on the unincorporated side of a city’s boundary line.⁵ Congress chose to use the term “corporate limits” in the Gila Bend Act, rather than phrases that would have expressed the intent to further insulate cities from trust acquisition, such as “exterior boundary,” “within one mile of any city or town,” or even “city limits.” If Congress had intended the “corporate limits” bar to extend beyond a city’s boundary lines, it would have stated so. Annexation is a recognized practice for increasing corporate limits, but the City of Glendale has never annexed Parcel 2, and it is therefore not within the City’s corporate limit. Nor, as the Field Solicitor found, does Arizona law clearly support a conclusion that Parcel 2 is within the “corporate limits” of the City of Glendale. Parcel 2 therefore meets the “corporate limit” requirement of section 6(d) of the Gila Bend Act.⁶

³ See *Speros v. Yu*, 207 Ariz. 153, 159 (2004) (“It is possible for property to be within the exterior boundary of a city yet not be part of that city”); *Sanderson Lincoln Mercury Inc. v. Ford Motor Company*, 205 Ariz. 202, 206 (2003) (“It follows that an area excluded from the defined area of incorporation is not part of the city, as is true of a county island.”). Opponents to the Nation’s application rely on *Flagstaff Vending Company v. Flagstaff*, 118 Ariz. 556 (1978), to argue that the Glendale parcels are within corporate limits. *Flagstaff* is limited by the holdings in *Speros* and *Sanderson*, and is distinguishable, from the present facts in this dispute. In *Flagstaff*, the land in question had previously been annexed by the City whereas the Nation’s Parcel 2 has never been annexed. The Court in *Flagstaff* also found that the relevant land received fire protection from the city, whereas the Nation’s Parcel 2 does not receive any regular services from the City.

⁴ Gila River Indian Community and City Glendale have submitted various legal arguments claiming that the 134.88 acres (including Parcel 2) are located “within the corporate limits” of the City. Essentially, Glendale and Gila River argue that the 134.88 are located within the geographic boundaries of Glendale. As this determination makes clear, however, the Gila Bend Act’s use of the phrase “within the corporate limits of any city or town” requires the Department to analyze the jurisdictional nature of the fee land in question rather than the geographic location.

⁵ *Black’s Law Dictionary* defines the noun “limit” as: “a bound, a restriction; a restraint; a circumscription, boundary, border or outer line of thing. Extent of power, right or authority conferred.” *Black’s Law Dictionary* 6th Ed., at 926. The plain language of the term “corporate limits” is thus a boundary or border of the corporate body, which in this case is the City of Glendale.

⁶ The Field Solicitor applied the canon of construction from Federal Indian law and Indian jurisprudence that “statutes are to be construed liberally in favor of the Indians.” *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 269 (1992) (quoting *Montana v. Blackfeet Tribe*, 471 U.S. 759, 767-768 (1985)). The Field Solicitor found that applying this canon to the “corporate limits” language of the Gila Bend Act leads to a finding that the Glendale parcels are not within the City’s “corporate limits.” The canon is unnecessary here because we have determined that the meaning of “corporate limits” is plain. Even if Congress’s intent was less clear, however, we interpret the term not to support a conclusion that Parcel 2 is ineligible under the Act, with or without consideration of the canon.

Number of parcels acquired

Section 6(d) further requires that acquisitions pursuant to the Gila Bend Act meet the requirements of this Act only if they “constitute not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village.” The provision goes on, however, to allow the Secretary to “waive the requirements set forth in the preceding sentence if he determines that additional areas are appropriate.”

The Nation applied for two parcels to be acquired in trust pursuant to the Gila Bend Act prior to its application for the Glendale property.⁷ The first, and so far only, land acquired in trust for the Nation pursuant to the Gila Bend Act was acquired on September 28, 2004, when the United States acquired 3,200.53 acres on behalf of the Nation (*OIG Tab 1*). This parcel is located near the City of Casa Grande, Arizona, and while formerly known as the Schramm Ranch, it is now referred to as San Lucy Farms. The second application to acquire land pursuant to the Gila Bend Act was for a parcel known as the Painted Rock property, consisting of 3,759.52 acres (*OIG Tab 1*). This parcel is owned in fee by the Nation and has not been acquired in trust for the Nation (*OIG Tab 1*) and, therefore, is not included in an analysis of the number of acquisitions under the Gila Bend Act. With the acquisition of the Glendale property and San Lucy Farms, there will have been only two areas acquired in trust pursuant to the Gila Bend Act.

In summary, the requirements of section 6(d) have been met.

National Environmental Policy Act (NEPA)

Although NEPA compliance is generally required on trust acquisitions under the provisions of 25 CFR §151.10, as well as the terms of NEPA and the Council on Environmental Quality (CEQ) regulations, NEPA compliance is not required for non discretionary actions. *See, e.g., Accord Minnesota v. Block*, 660 F.2d 1240, 1259 (8th Cir. 1981), cert. denied, 455 U.S. 1007 (1982) (“Because the Secretary has no discretion to act, no purpose can be served by requiring him to prepare an EIS, which is designed to insure that decisionmakers fully consider the environmental impact of a contemplated action.”); *Sierra Club v. Hodel*, 848 F.2d 1068, 1089 (10th Cir. 1988) (“The EIS process is supposed to inform the decision maker. This presupposes he has judgment to exercise.”). In this instance the acquisition of Parcel 2 for the Nation is explicitly mandated by the Gila Bend Act, and NEPA is not, therefore, required.

⁷ The Western Regional Director of the BIA, acting under authority of the Secretary, issued a waiver under Section 6(d) on May 31, 2000, that allowed the Nation to purchase up to five (5) separate areas of replacement lands, rather than three, and further waived the requirement that one of these areas be contiguous to the San Lucy reservation. However, since the Nation has to date only acquired in trust one such replacement area, this waiver is not directly pertinent to this analysis.

Hazardous Substance Determination

The BIA must comply with the requirements of Departmental Manual at 602 DM 2, Land Acquisitions: Hazardous Substance Determinations, to determine whether potential environmental liabilities may exist.

In a memorandum dated June 18, 2009, to the Regional Realty Officer, the Regional Environmental Specialist provided assurances that appropriate inquiry, assessment, and review had been conducted in accordance with 602 DM 2 to support acceptance of the land in trust status without any prior remedial action being required (*OIG Exhibit 1B*).

COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

The Nation withdrew its request for an Indian lands opinion in a letter to then-Deputy Assistant Secretary Skibine, Director Hart and Director Anspach, dated July 17, 2009. Nonetheless, the Nation must comply with all applicable requirements of the Indian Gaming Regulatory Act (IGRA) in order to game on Parcel 2. Because the land will be acquired in trust after October 18, 1988, the Nation must comply with 25 U.S.C. § 2719 before engaging in any gaming activities on the land. This final determination on the Nation's application to take land into trust does not address or determine the Nation's eligibility to game on Parcel 2 under IGRA.

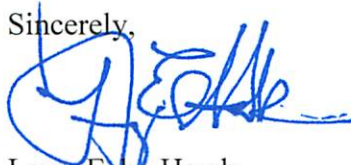
The Tohono O'odham Nation and the State of Arizona entered into a Class III gaming compact that was approved on July 30, 1993, and a notice of effect was published in the *Federal Register* on August 18, 1993. The compact was subsequently amended and approved on January 24, 2003, and the notice of effect published on February 5, 2003.

The Tohono O'odham Nation Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on October 15, 1993, and subsequently amended and approved by the NIGC on September 29, 1997, on July 30, 1999, on May 7, 2003, and on August 17, 2007.

DECISION

Our evaluation of the Nation's request indicates that the legal requirements under the Gila Bend Act for acquiring Parcel 2 in trust have been satisfied. The Regional Director, Western Region, will be authorized to approve the conveyance document accepting the property in trust for the Nation subject to any condition set forth herein, approval of all title requirements by the Office of the Regional Solicitor, and expiration of the thirty day period following publication in the *Federal Register* of the notice required in 25 C.F.R. § 151.12(b). Per the Nation's request, consideration of the remaining Glendale parcels will be held in abeyance.

Sincerely,



Larry Echo Hawk
Assistant Secretary – Indian Affairs