U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Decision

Matter of: U.S. Department of the Interior—Applicability of the Congressional Review Act to Decision Letter on the Acquisition of Land for the Koi Nation in Sonoma County, California and its Eligibility for Gaming

File: B-337380

Date: September 11, 2025

DIGEST

In January 2025, the U.S. Department of the Interior (Interior) issued a letter announcing its decision to acquire a parcel of land in Sonoma County, California in trust for the Koi Nation of Northern California, as well as to allow gaming pursuant to the Restored Lands Exception of the Indian Gaming Regulatory Act on that parcel once acquired (Decision Letter).

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as the Comptroller General. CRA adopts the Administrative Procedure Act (APA) definition of a rule and therefore does not cover those types of agency action that APA defines separately, including orders. We conclude that Interior's Decision Letter is an order and therefore not a rule subject to CRA's submission requirements. In addition, we note that even if the Decision Letter met the APA definition of a rule, it would fall within CRA's exception for rules of particular applicability and would similarly not be subject to CRA's submission requirements.

DECISION

On January 13, 2025, the U.S. Department of the Interior (Interior) issued a letter explaining its decision to acquire a parcel of land in Sonoma County, California in trust for the Koi Nation of Northern California (Koi Nation, or the Tribe), as well as to allow gaming pursuant to the restored lands exception of the Indian Gaming

Regulatory Act (IGRA)[1] on the parcel of land once acquired (Decision Letter).[2] We received a request for a decision as to whether the Decision Letter is a rule for purposes of the Congressional Review Act (CRA).[3]

Our practice when rendering decisions is to contact the relevant agencies to obtain factual information and their legal views on the subject of the request.[4] Accordingly, we reached out to Interior on May 6, 2025.[5] We received Interior's response on July 18, 2025 (Response Letter).[6]

BACKGROUND

Indian Reorganization Act

The Indian Reorganization Act (IRA)[7] authorizes the Secretary of the Interior (Secretary) to acquire land in trust for Tribes in certain circumstances.[8] Through

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[1] Pub. L. No. 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. §§ 2701–2721.

[2] Letter to Chairman, Koi Nation of Northern California, from Director, Bureau of Indian Education, Exercising by Delegation the Authority of the Assistant Secretary–Indian Affairs (Jan. 13, 2025), *available at* https://www.bia.gov/sites/default/files/media_document/2025.01.13_koi_nation_final_decision_package.pdf (last visited Sept. 9, 2025).

[3] Letter from Representative Mike Thompson to Comptroller General (Apr. 4, 2025).

[4] GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), *available at* https://www.gao.gov/products/gao-24-107329.

[5] Letter from Assistant General Counsel, GAO, to Acting Solicitor, Interior (May 6, 2025).

[6] Letter from Acting Associate Solicitor, Division of General Law, Interior, to Assistant General Counsel, GAO (July 18, 2025).

[7] Ch. 576, 48 Stat. 984 (June 18, 1934), 25 U.S.C. §§ 5101–5129.

[8] 25 U.S.C. § 5108 (describing authority to acquire land in trust generally); *see also* 25 C.F.R. § 151.12(c) (2023) (specifying that land acquisition decisions made by the Secretary, or the Assistant Secretary—Indian Affairs pursuant to delegated authority, constitute final agency actions). In the Decision Letter, Interior explains that it applied its IRA regulations in effect prior to January 11, 2024, because the Tribe's application was submitted prior to the effective date of its revised regulations and the Tribe did not request the application be processed under the revised regulations.

(continued...)

regulations, Interior prescribed three specific conditions under which the Secretary may exercise this authority: (1) when the land is located within the exterior boundaries of the Tribe's reservation or adjacent thereto, or within a tribal consolidation area; (2) when the Tribe already owns an interest in the land; or (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or housing.[9]

When acquiring land outside of and noncontiguous to a reservation in a non-mandated acquisition, as at issue in the Decision Letter, Interior's regulations required the Secretary to consider a number of factors, including: the existence of statutory authority for the acquisition; the need for additional land; the purposes for which the land would be used; the impact on the state and its political subdivisions resulting from the removal of the land from the tax rolls; jurisdictional problems and potential conflicts of land use; whether the Bureau of Indian Affairs (BIA) was equipped to discharge additional responsibilities resulting from the acquisition; information provided by the applicant to allow Interior to comply with departmental policy on the National Environmental Policy Act of 1969 (NEPA)[10] and hazardous substances; location of land relative to state boundaries and its distance from the boundaries of the Tribe's reservation; the Tribe's plan specifying the anticipated economic benefits associated with the proposed use of the land if it is being acquired for business purposes; and contact with state and local governments.[11]

Indian Gaming Regulatory Act

IGRA established the regulatory structure for Indian gaming on Indian lands in the United States.[12] Among other things, IGRA generally prohibits gaming on lands acquired in trust for a Tribe after October 17, 1988.[13] IGRA carves out several exceptions to the general rule, including an exception known as the "Restored Lands

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See Decision Letter, at 22; *see also* 25 C.F.R. § 151.17(a) (2024) (specifying that requests pending on January 11, 2024 will continue to be processed under the regulations in effect before that date unless a Tribe requests to proceed under the revised regulations).

[9] 25 C.F.R. § 151.3(a) (2023).

[10] Pub. L. No. 91-190, 83 Stat. 852 (Jan. 1, 1970), 42 U.S.C. §§ 4321–4347.

[11] 25 C.F.R. § 151.11 (2023).

[12] Pub. L. No. 100-497, 102 Stat. 2467 (Oct. 17, 1988), 25 U.S.C. §§ 2701–2721.

[13] 25 U.S.C. § 2719(a).

Exception."[14] The Restored Lands Exception allows gaming to take place on lands acquired in trust after October 17, 1988, when the lands are taken into trust as part of "the restoration of lands for an Indian [T]ribe that is restored to [f]ederal recognition."[15]

In order to qualify for the Restored Lands Exception, a Tribe must show: (1) that it qualifies as a restored Tribe,[16] and (2) that the land in question qualifies as restored lands.[17] Interior's regulations establish requirements for lands to qualify as restored lands.[18] Relevant here,[19] to qualify as restored land, the Tribe must demonstrate: (1) that the land is located within the state or states where the Tribe is now located and that it has a modern connection to the land; (2) a significant historical connection to the land; (3) a temporal connection between the date of the acquisition of the land and the date of the Tribe's restoration; and (4) that the Tribe does not already have an initial reservation proclaimed after October 17, 1988.[20] According to

[14] *See id.* § 2719(b)(1)(B)(iii); Decision Letter, at 10.

[15] 25 U.S.C. § 2719(b)(1)(B)(iii).

[16] 25 C.F.R. §§ 292.7(a)–(c). The Decision Letter notes that Interior is bound by a federal district court finding that "the Koi Nation is a [T]ribe restored to [f]ederal recognition within the meaning of IGRA's Section 20 restored lands exception." Decision Letter, at 12; *Koi Nation of N. Cal. v. United States Dep't of the Interior*, 361 F. Supp. 3d 14 (D.D.C. 2019) (internal quotations omitted). Because the Tribe was already determined by a federal court to qualify as a "restored Tribe" under the exception, Interior did not conduct further analysis under this prong of the test in the Decision Letter. *See* Decision Letter, at 12.

[17] 25 C.F.R. § 292.7(d).

[18] *Id.* § 292.11.

[19] Interior's regulations implementing the Restored Lands Exception prescribe different requirements depending on the manner in which a Tribe is "restored." *See* 25 C.F.R. § 292.11. At the Tribe's request, Interior waived the Part 83 federal acknowledgement requirements of 25 C.F.R. §§ 292.10(b) and 292.11(b) to permit Interior "to review the Tribe's application on equal footing as Tribes acknowledged pursuant to Part 83, consistent with the court's finding in *Koi Nation* that [Interior] improperly excluded certain administratively restored Tribes from the benefits of IGRA." Decision Letter, at 12. Interior, therefore, analyzed the Tribe's request under the requirements of 25 C.F.R. §§ 292.11(b).

[20] 25 C.F.R. § 292.11(b); Decision Letter, at 17–21.

Interior, the restored lands analysis "is, necessarily, fact-intensive, and will vary based on the unique history and circumstances of a particular [T]ribe."[21]

Decision Letter

On September 15, 2021, Interior's Office of Indian Gaming[22] received an application from the Koi Nation, requesting that BIA take the Shiloh Site, a 68.6-acre parcel of land in Sonoma County, California owned in fee simple by the Koi Nation, into trust on behalf of the Tribe.[23] The Tribe also requested a determination as to whether the land is eligible for gaming pursuant to the Restored Lands Exception of IGRA, once acquired.[24]

On January 13, 2025, Interior issued the Decision Letter, explaining its determination with respect to both issues.[25] First, with respect to the fee-to-trust application, Interior determined that the Koi Nation's application satisfied the criteria in IRA and its regulations, concluding that Interior would "acquire the Shiloh Site in trust for the Tribe."[26] Second, Interior determined the Shiloh Site was eligible for gaming pursuant to IGRA, once acquired.[27] Interior noted that it would immediately acquire the Shiloh Site in trust, and that its decision was a final agency action.[28]

As required by NEPA when a federal agency proposes to take a "major federal action" that is "determined to significantly affect the quality of the human

[21] Decision Letter, at 11 (citation and internal quotations omitted).

[22] The Office of Indian Gaming "acts as the primary advisor to the Secretary and Assistant Secretary—Indian Affairs on Indian gaming and the requirements of [IGRA]." BIA, *Office of Indian Gaming*, *available at* https://www.bia.gov/as-ia/oig (last visited Sept. 9, 2025).

[23] Decision Letter, at 1.

[24] *Id*.

[25] *Id.*

[26] *Id.* at 29.

[27] *See id.* at 21.

[28] *Id.* at 29.

environment,"[29] the Decision Letter also incorporates a Record of Decision (ROD) and Final Environmental Impact Statement.[30] The ROD explains that BIA evaluated a range of alternatives to meet the purpose and need of the proposed land acquisition and gaming determination, "including a reduced-intensity alternative and a non-gaming alternative."[31] The ROD describes BIA's decision to adopt a plan, Alternative A, that transfers the Shiloh Site into federal trust status for gaming purposes and authorizes the development of a resort facility on the land that includes a "casino, hotel, ballroom/meeting space, event center, spa, and associated parking and infrastructure."[32]

The ROD also identifies a variety of potential environmental impacts of the proposed gaming activities on the Shiloh Site and prescribes mitigation measures for those and other impacts to be taken by the Koi Nation, along with an accompanying mitigation monitoring and compliance plan.[33] The ROD states that "[t]he Tribe has committed to the implementation of these mitigation measures as a matter of Tribal Law."[34]

The Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and to the Comptroller General for review before a rule can take effect.[35] The report must contain a copy of the rule, "a concise general statement relating to the rule," and the rule's proposed effective date.[36] CRA allows Congress to review and disapprove of federal agency rules for a period of 60 days using special

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[29] Environmental Protection Agency, *National Environmental Policy Act Review Process*, *available at* https://www.epa.gov/nepa/national-environmental-policy-act-review-process (last visited Sept. 9, 2025).

[30] Decision Letter, Enclosure 2.

[31] *Id.* at 4.

[32] *Id.* at 5–6.

[33] *Id.* at 35.

[34] *Id*.

[35] 5 U.S.C. § 801(a)(1)(A).

[36] *Id.*

procedures.[37] If a resolution of disapproval is enacted, then the new rule has no force or effect.[38]

CRA adopts the definition of rule under the Administrative Procedure Act (APA),[39] which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[40] However, CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.[41]

Interior did not submit a CRA report to Congress or the Comptroller General on the Decision Letter. In its response to us, Interior provided additional information and stated that the Decision Letter is an order, rather than a rule under APA.[42]

DISCUSSION

At issue here is whether the Decision Letter meets CRA's definition of a rule, which adopts APA's definition of a rule with three exceptions. We conclude that the Decision Letter is an order, not a rule under APA, and therefore is not subject to CRA's submission requirements. In addition, we conclude that even were the Decision Letter to meet the APA definition of a rule, it would fall within CRA's first exception for rules of particular applicability and would similarly not be subject to CRA's submission requirements.

The Decision Letter is an Order

APA provides for two mutually exclusive ways to implement agency actions, either rules or orders.[43] Any agency action meeting the definition of an order cannot be a

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[37] *See id.* § 802.

[38] *Id.* § 801(b)(1).

[39] *Id.* § 551(4).

[40] *Id.* § 804(3).

[41] *Id.*

[42] Response Letter, at 2.

[43] *See* 5 U.S.C. §§ 551(5)–(6); *see also* B-334995, July 6, 2023.

rule under APA, and thus cannot be a rule for purposes of CRA.[44] APA defines an order as "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing."[45] Orders result from adjudications, which are "case-specific, individual determination[s] of a particular set of facts that ha[ve] immediate effect on the individual(s) involved."[46] We have explained that adjudications apply existing criteria and processes from an agency's regulations and the statutes they implement to a given set of facts.[47]

We previously determined that a revision to the U.S. Food and Drug Administration's (FDA's) risk evaluation and mitigation strategy (REMS) for the drug mifepristone was an order because "FDA's process involved a review and approval of applications submitted by specific companies, and the resulting REMS had an immediate effect on those companies, as they became directly responsible for implementation and compliance with the REMS upon its approval."[48] Similarly, we concluded that a Federal Housing Finance Agency (FHFA) determination to approve two new credit score model applications for use by Fannie Mae and Freddie Mac was an order because FHFA applied the standards in its existing regulations to the facts of the applications before it.[49]

Here, like in B-336260, Oct. 1, 2024 and B-334995, July 6, 2023, the Decision Letter reflects Interior's application of the existing statutory and regulatory framework established by IGRA and IRA to the facts and circumstances of the Tribe and the Shiloh Site.[50] For example, Interior's regulations implementing the Restored Lands Exception of IGRA require the Tribe to demonstrate the land is located within the

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[44] B-334995, July 6, 2023.

[45] 5 U.S.C. § 551(6).

[46] B-334309, Nov. 30, 2023, at 5 (citing *United States v. Florida East Coast Railway Co.*, 410 U.S. 224, 245–246 (1973); *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017).

[47] B-334995, July 6, 2023.

[48] *Id.* at 5.

[49] B-336260, Oct. 1, 2024.

[50] There are several lawsuits involving Interior's conclusions in the Decision Letter. *See, e.g.,* Supplemental Complaint for a Declaratory Judgment and Injunctive Relief, *Federated Indians of Graton Rancheria v. Interior*, 3:24-cv-08582 (N.D. Cal. Mar. 10, 2025), Complaint for Declaratory and Injunctive Relief, *California v. Interior*, 3:25-cv-03850 (N.D. Cal. May 2, 2025). GAO takes no position on the conclusions reached by Interior in applying its regulations.

state or states where the Tribe is now located and that the Tribe has a modern connection to the land by satisfying one of four conditions.[51] In the Decision Letter, Interior applied these standards, to conclude that the Tribe demonstrated an in-state and modern connection to the Shiloh Site.[52] In addition, Interior's regulations implementing IRA required the Secretary to consider, among other things, the Tribe's need for additional land.[53] In the Decision Letter, Interior applied these regulations to find that the facts and circumstances of the Koi Nation sufficiently demonstrated a need for the Shiloh Site to be acquired in trust.[54]

Additionally, the determination made in the Decision Letter is a "case-specific determination," which we have said is characteristic of an order.[55] Here, the Decision Letter only has effect with respect to the Koi Nation, as evidenced by the ROD incorporated therein, which prescribes particular actions that the Tribe must take with respect to mitigation of environmental and economic impacts on the surrounding area.[56] Because the Decision Letter involves a case-specific determination of a specific set of facts using existing statutory and regulatory criteria, it constitutes an order under APA.

In the request letter, the requester made note that we have consistently found that in certain circumstances, an ROD—like the one incorporated into the Decision Letter here—is a rule subject to CRA's submission requirements.[57] While we have previously determined RODs are rules subject to CRA,[58] those actions are distinguishable from the action at issue in this decision. For example, in B-337059, May 28, 2025, we determined that the Bureau of Land Management's (BLM's) ROD for the Barred Owl Management Strategy was a rule because it applied to any federal, state, or tribal government agency, or private landowner engaged in barred owl management within Washington, Oregon, and California. We also found that the

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[51] 25 C.F.R. §292.12(a).

[52] Decision Letter, at 18.

[53] 25 C.F.R. § 151.10(b) (2023).

[54] Decision Letter, at 23.

[55] *See, e.g.,* B-336260, Oct. 1, 2024.

[56] *See* Decision Letter, Enclosure 2, at 35; *see also* Response Letter, at 2 (stating that the Decision Letter "applies only to the application submitted by the Koi Nation for the Shiloh Site and defines the present rights of the Koi Nation").

[57] Request Letter, at 1.

[58] *See, e.g.*, B-337059, May 28, 2025.

Barred Owl ROD was intended to set new barred owl management policy.[59] In contrast, the Decision Letter applies only to the Koi Nation.[60] Additionally, the Decision Letter evaluates facts and circumstances of the Tribe and the Shiloh Site through an existing regulatory framework, rather than establishing new law or policy. Therefore, the Decision Letter is more similar to actions that we have said constitute orders under APA.

Rule of Particular Applicability

We note that even if the Decision Letter met the APA definition of a rule, it would still not be subject to CRA as it would fall within CRA's first exception for rules of particular applicability. We have explained that rules of particular applicability are those rules that are addressed to an identified entity and also address actions that entity may or may not take, taking into account facts and circumstances specific to that entity.[61]

Applying this principle, we concluded that even if FDA's REMS for mifepristone met the APA definition of a rule, it would be a rule of particular applicability because it was addressed to specific parties, and addressed specific actions the parties may take based on specific facts and circumstances.[62] Similarly, the Decision Letter applies only to the Koi Nation and the ROD prescribes specific actions the Koi Nation must take. Therefore, if it were a rule, it would be a rule of particular applicability, which is also not subject to CRA's submission requirements.

In reaching the conclusion that the Decision Letter would alternatively fall within CRA's first exception for rules of particular applicability, we note that we're aware the Decision Letter may affect parties other than the Koi Nation. For example, Interior determined in the ROD that taking the land into trust and allowing gaming on it could result in increased costs to local agencies resulting from the provision of services such as police, fire, and emergency services.[63] Interior also noted that the acquisition of the land in trust for the Tribe would result in a loss of property tax

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[59] *Id.*

[60] Response Letter, at 2.

[61] B-330843, Oct. 22, 2019.

[62] B-334995, July 6, 2023.

[63] Decision Letter, Enclosure 2, at 21. The Decision Letter notes that mitigation measures "would reduce impacts to governmental services to less-than-significant levels." *Id.*

revenue that could no longer be collected by state, county, and local governments.[64] Furthermore, Interior acknowledged that the opening of a casino on the land could result in a negative competitive impact on other tribal casinos in the surrounding area, including the possible closure of the River Rock Casino owned and operated by the Dry Creek Rancheria Band of Pomo Indians, California and local cardrooms.[65]

However, we have previously determined that rules of particular applicability are not limited to those actions that exclusively affect the subject of agency action. For example, we concluded that FDA's REMS for mifepristone would constitute a rule of particular applicability "although the REMS appears to impose duties and obligations on pharmacies, doctors and patients" because only the mifepristone sponsors were subject to it.[66] Likewise here, the Decision Letter only applies to the Koi Nation, even if downstream effects from the determinations may extend to additional parties, such as state, county, and local governments, as well as other tribes in the surrounding area. Additionally, as described in the ROD, the mitigation measures put in place to limit the environmental and other impacts of the proposed gaming activities apply only to the Koi Nation.[67] Therefore, if the Decision Letter were to meet the APA definition of a rule, it would fall under CRA's first exception for rules of particular applicability, which are not subject to CRA's submission requirements.

CONCLUSION

The Decision Letter is an order, and therefore not a rule subject to CRA's submission requirements. We note that even were the Decision Letter to meet the APA definition of a rule, it would fall under CRA's first exception for rules of particular applicability and would similarly not be subject to CRA's submission requirements.

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[64] *Id*. The Decision Letter here also notes that potential effects of lost property tax revenues would be offset by increased state, county, and local tax revenues resulting from the operation of the selected Alternative A. *Id.*

[65] *Id.* at 20.

[66] B-334995, July 6, 2023, at 6.

[67] *See* Decision Letter, Enclosure 2, at 35.