

## **B. The BIA Area Office Consideration of the Hudson Casino Proposal**

### **1. Legal Framework and Procedures Governing Land to Trust Acquisitions for Off-Reservation Gaming**

In deciding whether to approve or deny the Hudson application, DOI employees had to apply principally two statutes: the Indian Reorganization Act of 1934 and certain regulations implementing the statute, and the Indian Gaming Regulatory Act of 1988.

#### **a. The Indian Reorganization Act of 1934**

Section five of the Indian Reorganization Act (IRA) authorizes the Secretary of the Interior “in his discretion, to acquire . . . any interest in lands, water rights, or surface rights to lands, within or without existing reservations, . . . for the purpose of providing land for Indians.”<sup>38</sup> Under IRA, land can be taken into trust for Indian governments and individuals.<sup>39</sup> The statute was intended to remedy the effects of legislation passed in the 19<sup>th</sup> Century that enormously decreased tribal-owned land by allotting reservation lands to individual Indians and non-Indians.<sup>40</sup>

Since the passage of IRA, tribes and tribal members have prevailed upon DOI to take land they own into trust for their benefit for a wide variety of purposes – including gaming, as well as other forms of economic development. Tribes with “checkerboard” reservations interspersed

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<sup>38</sup>25 U.S.C. § 465 (1995). The statute authorizes acquisition through "purchase, relinquishment, gift, exchange or assignment . . . for the purpose of providing land for Indians." *Id.*

<sup>39</sup>Under IRA, tribes eligible for land in trust benefits are those federally recognized tribes with constitutions approved by DOI.

<sup>40</sup>McSloy, *Back to the Future: Native American Sovereignty in the 21<sup>st</sup> Century*, 20 N.Y.U. Rev. L. & Soc. Change 217, 248 (1993).