

SCH# 2011-02



IN REPLY REFER TO:

## United States Department of the Interior

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

NOV 30 2011

### NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7010 1670 0001 7402 9087

Honorable Robert Smith  
Chairman, Pala Band of Luiseno Mission Indians  
35008 Pala Temecula Road  
PMB - 50  
Pala, CA 92059

Dear Chairman Smith:

This is our Notice of Decision for the application of the Pala Band of Luiseno Mission Indians to have the below-described property accepted by the United States of America in trust for the Pala Band of Luiseno Mission Indians of the Pala Reservation:

The land referred to herein is situated in the State of California, County of San Diego, and is described as follows:

All that real property situated in the County of San Diego, unincorporated area, State of California, and more particularly described as:

The North half of the Southeast quarter of Section 23, Township 9 South, Range 2 West, San Bernardino Meridian, in the County of San Diego, State of California, according to the Official Plat thereof.

APN: 110-040-13

The subject property consists of a parcel of land, encompassing approximately 78.5 acres more or less, commonly referred to as Assessor's Parcel Number: 110-040-13. The parcel is approximately one (1) mile east of Pala Temecula Road and approximately one and one-quarter (1 ¼) mile north of Highway 76. The property is surrounded on all but its western boundary by the Pala Indian Reservation and is contiguous to trust lands.

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The Subject Parcel is currently used for agricultural purposes. Approximately 80% of the property is used to grow citrus and the remaining 20% is used to grow avocados. There is a single family dwelling on the property which is currently occupied by an individual who works on the property for the Tribe. The subject property will continue to be used for agricultural purposes.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation of 1983 (25 U.S.C. § 2202). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

On March 23, 2011 by certified mail, return receipt requested, we issued notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Mr. Jacob Appelsmith, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; James Peterson, District Director, Office of the Honorable Senator Diane Feinstein; U.S. House of Representatives, 52<sup>nd</sup> District; San Diego County Assessor; San Diego County Treasurer and Tax Collector; County of San Diego, Office of the Chief Administrative Officer; San Diego County Sheriff's Department; San Diego County Department of Public Works; Department of Planning and Land Use; Barona Group of Capitan Grande Band; Campo Band of Mission Indians; Ewiiapaayp Band of Kumeyaay Indians; Inaja-Cosmit Band of Mission Indians; Jamul Indian Village; La Jolla Band of Luiseno Indians; La Posta Band of Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Mission Indians; Mesa Grande Band of Mission Indians; Pauma Band of Mission Indians; Rincon Band of Mission Indians; Santa Ysabel Band of Mission Indians; Sycuan Band; and the Viejas Band of Mission Indians.

In response to our notification, we received the following comments:

- 1. Letter dated April 6, 2011 from the County of San Diego, Assessor/Recorder/County Clerk providing information on the assessed value and property tax information on the subject property.**
- 2. Letter dated April 7, 2011 from the State of California Native American Heritage Commission stating that they have no comments.**
- 3. Letter dated April 26, 2011 from the County of San Diego, Land Use and Environmental Group, which states:**

- The application does not show any assurances that the land use will not change in the future, and such change may adversely affect County resources and the surrounding environment;
- The annual property tax loss will be compounded based on assessed value of the property projected in future years, and that the proposed land acquisition, in combination with other approved or pending acquisitions in San Diego County, will have a cumulative impact and should be analyzed as part of the Bureau's consideration;
- Lost tax revenue may affect entities and services in San Diego County, including the County General Fund, County Library, Upper San Luis Rey Resource Conservation, Bonsall Elementary School, Fallbrook High School, Palomar Community College, County Office of Education, Educational Revenue Augmentation Fund, and Palomar Pomerado healthcare;
- While the subject property is contiguous to the Pala Indian Reservation, it is not adjacent to the Pala Casino Spa and Resort;
- The SANDAG Trip Generation rate for Agricultural land use, the estimated trip generation for the parcel is 157 Average Daily Trips;
- If the land is developed in the future, there may be impacts to traffic and circulations, and states that the Tribe should be required to enter into an agreement with the San Diego County to mitigate any offsite impacts that may result from future development;
- The Tribe should be required to contribute to the County's Transportation Impact Fee Program as a mitigation mechanism for any proposed project development;
- It is stated that, given the "uncertainty" of the Tribe's intentions with respect to future use of the subject property, it cannot determine whether the proposed acquisition is consistent with the County's General Plan or zoning regulations;
- The subject property is designated as MRZ-2, indicating that significant minerals are present or there is a high likelihood that minerals exist on the property;
- The subject property may have been subject to soil and groundwater contamination as a result of historic agricultural use, and that, if the Tribe were to change the use of the property, a Phase I/II Environmental Site Assessment should be prepared;
- Additional information regarding future proposed development is needed in order to determine the impacts on air quality;
- Analysis should be prepared for any future change in land use or expansion in accordance with San Diego County requirements as they relate to biological resources;
- A new cultural resource survey should be completed;
- The subject property is considered agricultural resource, and states that any land use that eliminates or reduces the on-site agricultural use should be supported by an analysis that addresses the potential impact of such use on surrounding agricultural lands;

- Given the “uncertainty” of the Tribe’s intent with respect to future use of the property, San Diego County staff cannot determine if the intended use is consistent with the County’s Noise Control Ordinance;
- It is recommended that all lighting on the subject property conform to the Pala-Pauma Sub regional Plan;
- The Property is located in an area designated as a very high fire hazard severity zone and is not currently serviced by a fire department;
- Additional information is needed in order to determine the impacts of the proposed acquisition on water quality;

***By letter dated July 22, 2011, the Pala Band’s response is as follows:***

- *The County’s statements about future land use changes are inaccurate. The Tribe’s trust application explicitly states that the Tribe will continue to use the property for agricultural purposes. The County’s concerns about future land use changes are purely speculative.*
- *The Bureau need not consider the potential effects of any speculative future use of the subject property. See Village of Ruidoso, 32 IBIA at 130. The proposed land acquisition does not contemplate development, gaming-related or otherwise, thus there is no impact on traffic, groundwater, or biological, or other resources should the subject property be accepted into trust.*
- *The Tribe is cognizant of the fact that acceptance of the subject property in trust will result in property tax losses for San Diego County. Still the annual loss of a de minimus portion of the County’s annual property tax revenue does not justify denial of the Tribe’s request for acceptance of the property in trust. The Tribe’s fiscal contributions in the County far outweigh any real or potential impacts that may result should the Bureau decide to accept the subject property in trust. The Tribe is one of the largest employers in San Diego County, with approximately 1,900 casino and 258 tribal administration employees. Many of the goods and services consumed by the Tribe in connection with its economic development ventures are purchased in the County. Moreover, the Tribe makes sizeable contributions to state and county coffers through its Tribal-State Gaming Compact with the State of California. Additionally, through the Pala Community Giving Program, the Tribe made approximately \$247,420.00 in philanthropic contributions.*
- *The Tribe has made, and continues to make, significant contributions to several of the entities identified by the Land Use and Environmental Group. In 2010, the Tribe donated nearly \$65,600.00 to the Bonsall Union School District for transportation costs. They also contributed approximately \$1,100.00 to the Fallbrook Union High School and Fallbrook Booster Club, collectively. Finally, the Tribe made the first of what will be a total of four payments to the Fallbrook Library of \$50,000.00.*

- *With respect to the location of the subject property in relation to the Pala Casino Spa and Resort, it is noted that the proposed land acquisition is completely unrelated to the Tribes gaming activities.*
- *The County's suggestion to have the Tribe be required to enter into an agreement with San Diego County for mitigation of any offsite traffic impacts that may result from future development of the property appears to be based on an inaccurate assumption that the Tribe has plans to develop the property. The Tribe's application states that the Tribe will continue to use the property for agricultural purposes. The County's concerns about future land use changes are purely speculative.*
- *There is no basis to conclude that the proposed acquisition will have any impact on traffic, and therefore, no mitigation is required.*
- *The Tribe's trust application explicitly states that the Tribe will continue to use the property for agricultural purposes. There is no uncertainty surrounding the Tribe's intentions with respect to the subject parcel, now or in the future.*
- *A Phase I Environmental Site Assessment (ESA) has already been prepared and submitted to the Bureau in connection with the land acquisition. The ESA revealed one historic, and no current recognized environmental conditions on the subject property. The historic condition is the previous use of an underground petroleum tank, and there are no indications that the tank caused soil or groundwater contamination. Because the Phase I ESA did not uncover any potential or contaminated substances on the subject property, a Phase II ESA is unnecessary.*
- *The Tribe does not plan or propose to develop the subject property. For that reason, the proposed land acquisition will not have any effect on air quality, biological resources, agricultural resources, noise, visual resources, and water quality.*
- *A Cultural Resources Inventory has already been prepared and submitted to the Bureau in connection with the land acquisition. The Inventory provides that there are no previously recorded cultural resources on the subject property, and also that no prehistoric, ethno historic, or historic-era cultural resources were newly identified in conducting the survey.*
- *The Pala Fire Department, which is owned and operated by the Tribe, has provided, and will continue to provide fire suppression and emergency response for the subject property and surrounding community. The Department as established in 1978 and today employs 30 full time and 4 part time emergency personnel, consisting of firefighters, explorers, paramedics and emergency medical technicians. The Department currently runs 3 fire engines, 2 water tenders, 3 command vehicles, and 2 trucks. It covers an area approximately twenty one square miles in size, providing fire suppression and emergency services to residents within the service area. In 2009, the Department received approximately 1164 emergency calls, 450 (39%) of which originated outside of the Pala Indian Reservation.*

**4. Letter dated May 4, 2011 from the Pala-Pauma Sponsor Group, which states:**

- It is opposed to the proposed acquisition because “the transfer could be a disadvantage of the vast majority of the residents of the PPSG sphere of influence” and County of San Diego.
- Absent irrevocable mitigation or remediation, disadvantages would arise from two factors. The first factor being that the Tribe would no longer contribute through the payment of property taxes for the subject parcel to the costs of providing services which the Tribe would continue to enjoy. It is suggested that reasonable financial remediation would alleviate this problem. The second factor being that the Tribe will not be bound by its intent to continue to use the subject property for agricultural production and that since regulations applicable to the subject parcel would differ from those applicable to non-trust lands, development of the subject parcel may result in impacts to off-trust lands. PPSG states that mitigation may alleviate this problem, such as including a binding obligation to maintain the land for agricultural purposes or in any way consistent with the zoning of land proximate to the subject parcel.
- PPSG suggests development of a “Good Neighbor” policy where residents of trust lands do not have an advantageous position over residents of fee lands in matters including cost of government, environment, education, permitted land use, public safety, and other community benefits supported by the community property tax base and enjoyed by all residents. Also, states that a binding “Good Neighbor” policy should be a prerequisite to acceptance of fee land into trust.

***By letter dated July 22, 2011, the Pala Band’s response is as follows:***

- *The Tribe is cognizant of the fact that the acceptance of the subject property in trust will result in property tax losses for San Diego County. The annual loss of what amounts to be a de minimus portion of the County’s annual property tax revenue does not justify denial of the Tribe’s request for acceptance, particularly in light of the Tribe’s fiscal contributions within the County. The Tribe’s fiscal contributions in the County far outweigh any real potential impacts that may result as stated above.*
- *The fire suppression and emergency services, which are generally provided by the counties using property tax revenue, are already provided on and near the subject property by the Tribe. Also, the Tribe currently provides funding to San Diego County for three deputy sheriff units, as well as contributions to assist the San Diego District Attorney in processing the County’s criminal caseload.*
- *Section 5 of the Tribe’s request for acquisition of the subject property in trust clearly states that the Tribe will continue to use the property for agricultural purposes. The comments regarding potential future uses, and*

*the impact of such uses on non-trust lands, are based on pure speculation.*

- *The Bureau should reject PPSG's comment that the Bureau should impose binding obligation upon the Tribe to continue to use the subject property for agricultural purposes, or other purposes consistent with zoning and land proximate to the subject property, because the statutory authority for the acquisition does not authorize the Bureau to unilaterally impose restrictions on the Tribe's future use of the land which is taken into trust. See City of Lincoln, Oregon v. Portland Area Director, 33 IBIA 102, 107 (1999).*
- *Nothing in the statute authorizing the trust acquisition, nor its implementing regulations, requires (or even suggests) that a "Good Neighbor" policy is a prerequisite to acceptance of land in trust for the Tribe.*

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations. Accordingly, the following analysis of the application is provided.

#### Factor 1 - Need for Additional Land

An Executive Order of December 27, 1875 set aside land for this Reservation and Executive Orders of May 3, 1877 and July 24, 1882 restored portions to public domain. An Act of May 27, 1902 appropriated \$100,000.00 for purchase of land in Southern California for Mission Indians (32 Stat. 257 c. 888). An Act of March 31, 1903 permitted use of part of the \$100,000.00 appropriated above for removing the Indians to the purchased land (32 Stat. 999 c. 994).

The Pala Reservation was issued a trust patent on February 10, 1893, for lands described as: The S1/2NE1/4 of Section 33; NW1/4NW1/4 and NE1/4NE1/4 of Section 34, Township 9 South, Range 2 West, San Bernardino Meridian, California, containing 160.00 acres. To date, the Pala Band has a total of 11,093 acres of tribal land with 1,132.04 acres of allotted land for a total of 12,225.21. The Pala Band of Mission Indians is a federally recognized Indian Tribe by the Secretary of the Interior and is organized under its "Articles of Association" that were adopted on August 15, 1959 and approved by the Assistant Secretary on November 6, 1960, as amended July 3, 1961, November 27, 1973, March 11, 1974 and October 2, 1980.

The Tribe wants to ensure that the Duker property continues to be used for agricultural purposes and is adequately maintained and protected for future generations, and that the Tribe has the ability to exercise its jurisdiction as a sovereign tribal government over the property. Transfer of the property will be a benefit to the Pala Indian Reservation as it will result in the elimination of a large "gap" in the Reservation because the land is almost entirely surrounded by tribal trust lands. The property can also act as a "buffer zone" between existing trust land and non-tribal land, helping to protect tribal lands from the adverse effects that may potentially result from development of nearby non-tribal lands.

Of the 12,225.21 acres, more or less, a large portion is of this acreage is steep and not appropriate for commercial, agricultural or residential development. A large percentage of the reservation consists of steep rocky slopes that are generally inaccessible and either not capable of being developed, or may only be developed with considerable, and perhaps cost prohibitive, expense. The transfer of the Duker property into trust will result in an additional  $\pm$  78.5 acres of land that the Tribe can put to profitable use. While the Tribe currently operates a successful gaming operation, it is imperative that the Tribe diversify, undertaking business endeavors other than Indian gaming. The subject property is contiguous to the current Pala Reservation.

The Band's ability to exercise governmental authority over the lands and it uses, and to protect it for future generations, will promote the health, welfare, and social needs of its members and their families. The Pala Band has sought to diversify its economy and land base so that it is not as heavily dependent on its gaming enterprise, which is not a guaranteed future source of revenue.

It is our determination that the Pala Band has established a need for additional lands to protect the environment and preserve the reservation.

#### Factor 2 - Proposed Land Use

The property is currently being used to grow citrus and avocados. The Tribe will continue to use the property for these purposes. There is no planned change in land use.

#### Factor 3 – Impact on State and Local Government's Tax Base

Parcels accepted into federal trust status are exempt from taxation and would be removed from the County's taxing jurisdiction. In the 2010-2011 tax years, the total tax assessed on the subject parcels was \$20,176.46. During the comment period, *County of San Diego, Land Use and Environmental Group* and *Pala-Pauma Sponsor Group* indicated adverse impacts would result from the removal of the subject parcel from the tax rolls. The Tribe responded to the comments in letter dated July 22, 2011. The Pala Band of Mission Indians and its seven business entities is one of the larger employees in northern San Diego County. As such, the Pala Band makes significant positive overall economic distribution in San Diego County



It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel and the financial contributions provided to the local community by the Tribe through employment and purchases of goods and services.

#### Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and San Diego County. Once the land is accepted into trust and becomes part of the Reservation, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons and transactions on the land as the State has over other Indian counties within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land. All emergency medical and fire protection services will continue to be provided by the Pala Tribal Fire Department, centrally located in the Pala Village.

The Tribe will no longer be bound by San Diego County's zoning regulations with respect to the Duker property, which will not present a problem as the current and proposed property use is consistent with the County's zoning for the area. The property is currently zoned A70 (Limited Agricultural) with a four-acre minimum parcel size. Permitted uses generally include single-family residential, fire protection services, and agricultural uses. Because the Tribe's plans for use fall squarely within the current San Diego County zoning regulations applicable with respect to the property, no jurisdictional conflicts in connection with the use of the property will arise.

#### Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the acquired land into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Pala Reservation. This acquisition anticipates no change in land use; and therefore, any additional responsibilities resulting from this transaction will be minimal.

#### Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey

Checklist" dated November 17, 2011, reflecting that there were no hazardous materials or contaminants.

### National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion requires a qualifying action in this case, 516 DM 10.5I, Land Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on January 7, 2011, and compliance with NEPA has been completed.

### Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Pala Band of Luiseno Mission Indians of the Pala Reservation in accordance with the Indian Land Consolidation Act of January 12, 1983, (25 U.S.C. §2202).

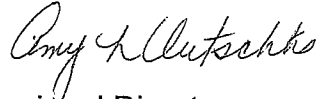
Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.

Sincerely,

Handwritten signature of Amy H. Clute in cursive script.

Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

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Legal Affairs Secretary  
Office of the Governor  
State Capitol Building  
Sacramento, CA 95814

Ms. Sara Drake - 7010 1670 0001 7402 9117  
Deputy Attorney General  
State of California  
Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

Mr. James Peterson, District Director - 7010 1670 0001 9124  
Office of the Honorable Dianne Feinstein  
750 "B" Street, Suite 1030  
San Diego, CA 92101

U.S. House of Representatives - 7010 1670 0001 7402 9131  
52<sup>nd</sup> District  
1870 Cordell Court, Suite 206  
El Cajon, CA 92020

San Diego County Assessor - 7010 1670 0001 7402 9148  
600 Pacific Highway, Suite 162  
San Diego, CA 92101

San Diego Treasurer & Tax Collector - 7010 1670 0001 7402 9155  
1600 Pacific Highway, Suite 162  
San Diego, CA 92101-2480

County of San Diego - 7010 1670 0001 7402 9162  
Office of the Chief Administrative Officer  
1600 Pacific Highway  
San Diego, CA 92101-2480

San Diego County Sheriff's Department - 7010 1670 0001 7402 9179  
9621 Ridge Haven Court  
San Diego, CA 92120

San Diego County Department of Public Works - 7010 1670 0001 7402 9186  
5555 Overland, Suite 6101, MS O-340  
San Diego, CA 92123

Department of Planning and Land Use - 7010 1670 0001 7402 9139  
5201 Ruffin Road, Suite B, MS O-650  
San Diego, CA 92123

San Diego Chief Administrative Office - 7010 1670 0001 7402 9209  
1600 Pacific Highway, Room 212, MS O-336  
San Diego, CA 92101

Chairperson - 7010 1670 0001 7402 9216  
Barona Reservation  
1095 Barona Rd.  
Lakeside, CA 92040

Chairperson - 7010 1670 0001 7402 9223  
Campo Band of Mission Indians  
36190 Church Rd., Suite 1  
Campo, CA 91906

Chairperson - 7010 1670 0001 7402 9230  
Ewiiapaayp Band of Kumeyaay Indians  
4054 Willows Road  
Alpine, CA 91901

Chairperson - 7010 1670 0001 7402 9810  
Inaja-Cosmit Band of Mission Indians  
309 S. Maple Street  
Escondido, CA 92025

Chairperson - 7010 1670 0001 7402 9827  
Jamul Indian Village  
P.O. Box 612  
Jamul, CA 91935

Chairperson - 7010 1670 0001 7402 9834  
La Jolla Band of Luiseno Indians  
22000 Highway 76  
Pauma Valley, CA 92061

Chairperson - 7010 1670 0001 7402 9841  
La Posta Band of Mission Indians  
P.O. Box 1120  
Boulevard, CA 91905

Chairperson - 7010 1670 0001 7402 9858  
Los Coyotes Band of Cahuilla & Cupeno Indians  
P.O. Box 189  
Warner Springs, CA 92086

Chairperson - 7010 1670 0001 7402 9865  
Manzanita Band of Mission Indians  
P.O. Box 1302  
Boulevard, CA 91905

Chairperson - 7010 1670 0001 7402 9872  
Mesa Grande Band of Mission Indians  
P.O. Box 270  
Santa Ysabel, CA 92070

Chairperson - 7010 1670 0001 7402 9889  
Pauma Band of Mission Indians  
P. O. Box 369  
Pauma Valley, CA 92061

Chairperson - 7010 1670 0001 7402 9940  
Pechanga Band of Mission Indians  
P.O. Box 1477  
Temecula, CA 92593

Chairperson - 7010 1670 0001 7402 9896  
Rincon Band of Mission Indians  
P.O. Box 68  
Valley Center, CA 92082

Chairperson - 7010 1670 0001 7402 9902  
San Pasqual Band of Mission Indians  
P.O. Box 365  
Valley Center, CA 92082

Chairperson - 7010 1670 0001 7402 9919  
Santa Ysabel Band of Mission Indians  
P.O. Box 130  
Santa Ysabel, CA 92070

Chairperson - 7010 1670 0001 7402 9926  
Sycuan Band of Mission Indians  
5459 Sycuan Road  
El Cajon, CA 92021

Chairperson - 7010 1670 0001 7402 9933  
Viejas (Baron Long) Band of Mission Indians  
P.O. Box 908  
Alpine, CA 91903

Regular Mail:

Superintendent, Southern California Agency, BIA  
1451 Research Park Drive, Ste 100  
Riverside, California 92507-2154

## Office of the Secretary, Interior

## § 4.310

state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in § 4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§ 4.310 through 4.323. The OHA deciding official must lodge the complete record relating to the demand for hearing with the title plant as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

**§ 4.306 Time for payment.**

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with § 4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

**§ 4.307 Title.**

Upon payment by the tribe of the interests purchased, the Superintendent must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in

support thereof as the OHA deciding official may require. The OHA deciding official will then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

**§ 4.308 Disposition of income.**

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with § 4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

**§ 4.310 Documents.**

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service must be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or

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representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days are excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

#### §4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receipt of appellant's brief

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to file answer briefs, copies of which must be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The BIA is considered an interested party in any proceeding before the Board. The Board may request that the BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

#### §4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion, or order of a BIA official or an OHA deciding official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

#### §4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section will be liberally construed.



(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

**§ 4.314 Exhaustion of administrative remedies.**

(a) No decision of an OHA deciding official or a BIA official, which at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

**§ 4.315 Reconsideration.**

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

**§ 4.316 Remands from courts.**

Whenever any matter is remanded from any federal court to the Board for further proceedings, the Board will either remand the matter to an OHA deciding official or to the BIA, or to the extent the court's directive and time limitations will permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

**§ 4.317 Standards of conduct.**

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals will determine the matter of disqualification.

**§ 4.318 Scope of review.**

An appeal will be limited to those issues which were before the OHA deciding official upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN  
APPEALS IN PROBATE MATTERS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

**§ 4.320 Who may appeal.**

(a) A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) Notice of appeal. Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. A

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statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed. The notice of appeal must include the names and addresses of parties served. A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) Service of copies of notice of appeal. The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy must be served upon the OHA deciding official whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) Action by the OHA deciding official; record inspection. The OHA deciding official, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record must be conformed to the original by the Land Titles and Records Office and will thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the OHA deciding official will have a transcript prepared which must be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[66 FR 67656, Dec. 31, 2001, as amended at 67 FR 4368, Jan. 30, 2002]

#### § 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

#### § 4.322 Docketing.

The appeal will be docketed by the Board upon receipt of the administrative record from the Land Titles and

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Records Office. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

#### § 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, must be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part must be conformed to the original and forwarded to the Superintendent concerned.

#### APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

#### § 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

- (1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

**§ 4.331 Who may appeal.**

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

**§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.**

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by § 4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

[54 FR 6487, Feb. 10, 1989, as amended at 67 FR 4368, Jan. 30, 2002]

**§ 4.333 Service of notice of appeal.**

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

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(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

#### § 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended.

#### § 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

- (1) The decision appealed from;
- (2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

#### § 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown

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by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

#### § 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

#### § 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other

comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

**§ 4.339 Exceptions or comments regarding recommended decision by administrative law judge.**

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

**§ 4.340 Disposition of the record.**

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

**WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION**

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

**§ 4.350 Authority and scope.**

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-153 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *administrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

**§ 4.351 Commencement of the determination process.**

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to: