



IN REPLY REFER TO

# United States Department of the Interior



## BUREAU OF INDIAN AFFAIRS

Sacramento Area Office

2800 Cottage Way

Sacramento, California 95825

### NOTICE OF PROPOSED DECISION

*Cheryl Schmit*  
*663-1415*  
*FAX*

CERTIFIED MAIL - RETURNED RECEIPT REQUESTED - P 074 7:

Mr. Alvis Johnson, Chairman  
Karuk Tribe of California  
P.O. Box 1016  
Happy Camp, California 96039

Dear Mr. Johnson:

This is notice of our proposed decision upon the Karuk Tribe's application to have the below-described real property (commonly referred to as the Miller and Hayes tracts) accepted by the United States of America in trust for the Karuk Tribe of California:

All that real property in the State of California, County of Siskiyou, described as follows:

Lots 5 and 6 and the Southwest quarter of the Northeast quarter of Section 2, Township 16 North, Range 7 East. H.M.

EXCEPTING THEREFROM: BEGINNING at an iron stake imbedded in the ground at an Oak Stump to the West of the County Road and along the Southwest end line of the John Whittaker Homestead which shall be known as the Southwest Corner #1; thence 317 feet in a Southeasterly direction to the Southeast corner #2 at the Center of the County Road; thence 350 feet in a Northerly direction along the center of the County Road, to the Northeast Corner #3; thence 317 feet in a Northwesterly direction to the Northwest Corner #4; thence 350 feet in a Southerly direction to the Southwest Corner 1 or Placing of Beginning.

ALSO EXCEPTING THEREFROM a fraction of the John Whittaker, Sr., Homestead as follows: Beginning on the Southwest side of Ranch Gulch at an iron pin in the right of way of the telephone line from which a ten inch Block Oak scribed 1 BT bears South 75° East 23 feet, thence North 72° West 231 feet to Corner 2 in Ranch Gulch; thence North 55° East 198 feet to corner 3, an iron pipe from which a 16 inch oak scribed #3 BT bears North 73 1/2% East five feet distant; thence running South 72° East 231 feet to corner 4 an iron pin, thence running South 55° West 198 feet to the PLACE OF BEGINNING.

ALSO EXCEPTING THEREFROM: "A portion of Lot 6, Section 2, Township

16 North, Range 7 East, H.M., described as follows. Beginning at a point on the centerline of the old California State Highway from Cade Mountain to Happy Camp, also the Southwest corner of the parcel shown on the certain plat entitled "Right of Way and Lot Survey for Leonard Shelton", recorded in Record Survey Book No. 1, page 63, in the office of the Siskiyou County Recorder; thence South  $25^{\circ} 25'$  West, 65.77 feet along the centerline of said old highway to the Northeast Corner of the Wm. W. Woods property; thence North  $79^{\circ} 31'$  West, 22.40 feet along the Northerly line of said property to the Northwesternly right of way line of the new California State Highway, from Cade Mountain to Happy Camp, the True Point of Beginning; thence North  $79^{\circ} 31'$  West, 195.41 feet along the Northerly line of said Woods property; thence North  $30^{\circ} 33' 40''$  East, 308.14 feet, thence South  $59^{\circ} 07' 30''$  East, 216.73 feet to Northwesternly right of way of said new highway, a point on a curve concave to the Southeast and having a radius of 1460 feet, at which point a tangent to said curve bears South  $43^{\circ} 10' 50''$  West; thence Southerly 242.43 feet along said curve and right of way line thru an angle of  $9^{\circ} 30' 50''$  to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM all that portion of said Lots 5 and 6 lying Southeasterly of the Northwesternly boundary of California State Highway 96 as said boundary is described in the deed recorded November 2, 1955 in Book 358 of Official Records of Siskiyou County, page 503.

ALSO EXCEPTING all that portion lying Southeasterly of the Northwesternly boundary of Siskiyou County Road No. 7C023 (Old Highway 96.)

EXCEPTING THEREFROM all that property conveyed in Grant Deed dated March 24, 1980 to WILLIAM DINNING and JEANNETTE DINNING, Husband and wife as Joint Tenants as to an undivided 1/2 interest and RICHARD A. LIGHTHILL AND CATHERINE LYNN LIGHTHILL, Husband and wife, as Joint Tenants as to an undivided 1/2 interest, recorded April 4, 1980 in Book 885 Official Records, page 864.

APN-016-010-290 and APN-016-360-210, containing 83 acres, more or less, aka, the "Hayes" property.

All that real property situated in the County of Siskiyou, State of California, described as follows:

Parcel 4 of a portion of the Southwest quarter of Section 2, Township 16 North, Range 7 East, M.D.M., according to a parcel of Milton C. Kevershan filed in the Office of the Siskiyou County Recorder on January 6, 1976 in Book 3, Parcel Maps, page 113.

EXCEPTING any portion of that lands as described in Grant Deed dated January 5, 1976 by Milton C. Kevershan and Harriett E. Kevershan to the County of Siskiyou, recorded January 20, 1976 in Book 748 of Official Records, page 80.

APN 016-380-160 and 016-380-340, containing 7.30 acres, more or less, aka. the "Miller" property.

The above described real property is identified in Siskiyou County record as APN 016-010-290, 016-360-210, 016-380-340 and 016-380-160, containing approximately 91 acres, more or less. The site will be used for tribal housing and is located immediately north of the Community of Happy Camp in Siskiyou County. Subject parcel is contiguous to existing trust property.

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 Indian tribes. The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

On June 28, 1996, we issued notice of, and sought comments regarding the proposed fee-to-trust application from the Siskiyou County Board of Supervisors, Siskiyou County Planning Director, Siskiyou County Treasure, the California State Clearinghouse and Manuel M. Medeiros, California Deputy Attorney General. The Siskiyou County Planning Director responded requesting more information. In response to the County Planning Department, the Karuk Tribe met with the Siskiyou County Board of Supervisor's to explain the project. On October 8, 1996, the Siskiyou County Board of Supervisor's voted in support of the Karuk Tribal housing development project at Happy Camp.

On August 2, 1996, we issued notice of, and sought comments regarding the proposed fee-to-trust application from the California State Attorney General's Office. The Attorney General's office responded with the following: (1) The Secretary has no authority to take property into trust for Indians; (2) zoning and land use conflicts; (3) gambling on acquired trust lands; and (4) adoption of local zoning and other laws.

Subsequently, the Karuk Tribe met with California State Attorney General's office and they addressed zoning and land use conflicts, gaming, adoption of local zoning and other laws. The Karuk Tribe has in the past and will continue to contribute to the Happy Camp Water District, the Happy Camp Sewer District and various other improvements in the Happy Camp community. Also, the Karuk Tribe does not intend to use this parcel for gaming, the intended use is tribal-member housing.

In response to the State's assertion that the "Secretary of Interior has no authority to take land into trust for Indians," on October 15, 1996, the U.S. Supreme Court granted the Government's petition for a Writ of Certiorari, based on the case from the Eighth Circuit Court of Appeals, State of South Dakota v. United States Department of Interior, 69 F. 3d., 878. The judgment was

vacated with instructions that the matter was to be remanded back to the Interior Secretary for reconsideration. In response to the 1995 Eighth Circuit decision, the Interior Department established a procedure to ensure the opportunity for judicial review of administrative decisions to acquire title to lands in trust for Indian tribes and individuals Indians. Procedures were promulgated in the Federal Register on April 24, 1996, Volume 61, Number 80, Page 18082-18083, and we are currently following this procedure as is evidenced by the issuance of this notice. Accordingly, the statutory authority for this acquisition is the Indian Reorganization Act of 1934 (25 U.S.C. §465). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our recommendation: (1) need of the tribe for additional land; (2) the purpose for which the land will be used; (3) impact on the State and its political subdivisions resulting from 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 location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation; and (7) whether or not contaminants or hazardous substances may be present on the property.

#### Factor 1 - Need for Additional Land

Our records reflect that the Karuk Tribe of California has approximately 291 acres of existing "trust" lands. The present trust holdings, comprised of several scattered tracts, are in Siskiyou and Humboldt County. These properties are currently being utilized, or are proposed for utilization, for tribal-member housing, a health clinic, and other tribal multi-purpose community services/administrative facilities. The Tribe needs this additional land base to continue to provide housing to their tribal members.

#### Factor 2 - Proposed Land Use

The Karuk Tribe intends to use this property as residential housing for tribal members. The Tribe plans to build 40 homes on subject property. The acquisition of the land and the proposed housing is a Housing of Urban Development project (HUD).

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

Total annual taxes for this acquisition is approximately \$2,150.00 dollars. The Karuk Tribe currently contributes to the Happy Camp Sewer District which provides benefits to the tribe and the local community of Happy Camp. The Tribe has continued to support the local Sheriff's Department for the last three years by donating \$10,000 each year. The Karuk Tribe also donates \$550.00 annually to the local fire department and the Karuk Tribe maintains and operates a Wildland Fire Station. These contribution are over and above the annual assessed taxes levied on these parcels. As such, the removal of these parcels from the tax roll will not significantly

impact the County of Siskiyou.

#### Factor 4 - Jurisdiction Problems/Potential Conflicts

Tribal jurisdiction in California is subject to P.L. 280, therefore, there will be no change in criminal jurisdiction. Civil jurisdiction may be exerted at some future time by the Karuk Tribe of California. The land is currently residential and there will be no change in land use. As such, no jurisdictional problems are anticipated.

#### Factor 5 - Whether the BIA is equipped to discharge the additional responsibilities

The Bureau of Indian Affairs will have the responsibility for approval of the residential leases or any related agreements encompassing the subject property. The Karuk Tribe will lease the property to the Tribal Housing Authority and in turn the Housing Authority will issue occupancy agreements to the respective tribal applicants. As such, the day-to-day oversight for the housing project lies with the Karuk Tribal Indian Housing. Any additional responsibilities resulting from this transaction will be minimal. As such, the Bureau of Indian Affairs is equipped to administer any additional responsibilities.

#### Factor 6 - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

The Karuk Tribe has approximately 291 acres of existing "trust" lands. All of the Tribes "trust" land holdings are located within the State of California. More specifically, these parcels are located in the Siskiyou and Humboldt Counties. This particular acquisition is contiguous to existing tribal "trust" land and is located immediately north of the Community of Happy Camp in Siskiyou County.

#### Factor 7 - Whether or not contaminants or hazardous substances are present

In accordance with Interior Department Policy (602 DM2), we are charged with the responsibility of conducting a site assessment for the purpose of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Level I "Contaminant Survey Checklist" reflecting that there were no hazardous materials or contaminants.

#### National Environmental Policy Act Compliance

An additional requirement which 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 Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1. An environmental assessment (EA) for the subject property was prepared in 1995 with a Finding of No Significant

impact the County of Siskiyou.

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Factor 6 - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

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Factor 7 - Whether or not contaminants or hazardous substances are present

In accordance with Interior Department Policy (602 DM2), we are charged with the responsibility of conducting a site assessment for the purpose of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Level 1 "Contaminant Survey Checklist" reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement which 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 Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1. An environmental assessment (EA) for the subject property was prepared in 1995 with a Finding of No Significant

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Impact (FONSI) issued on March 5, 1998.

### Conclusion

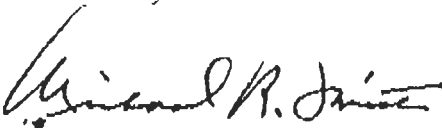
Based on the foregoing, we at this time issue notice of our intent to accept the Grant Deeds dated September 3, 1998 conveying title to the herein subject real property from the Karuk Tribe of California to the United States of America in Trust for the Karuk Tribe of California.

Should any of the below-listed known interested parties feel adversely affected by this proposed decision, an appeal may be filed with the Interior Board of Indian Affairs, U.S. Department of the Interior, 4015 Wilson Boulevard, 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 appeal must be mailed within 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-Indian Affairs, U.S. Department of the 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).

Sincerely,

  
ACTIVE Area Director

Enclosure

cc: See attached

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cc: BY CERTIFIED MAIL.-RETURN RECEIPT REQUESTED TO:

Board of Supervisors - P 074 789 669  
County of Siskiyou  
P.O. Box 338  
Yreka, California 96097

Planning Director, Planning Department - P 074 789 670  
County of Siskiyou  
P.O. 1085  
Yreka, California 96097

Siskiyou County Treasurer - P 074 789 671  
and Tax Collector  
P.O. Box 600  
Yreka, California 96097

State Clearinghouse - P 074 789 672  
Office of Planning and Research  
State of California  
1400 Tenth Street, Rm. 121  
Sacramento, California 95814

Mr. Eric M. George, Deputy Legal Affairs Secretary - P 074 789 673  
Office of the Governor  
State Capitol Building  
Sacramento, Building 95814

Ms. Sara Drake, Deputy Attorney General - P 074 789 674  
State of California  
Department of Justice  
P.O. Box 944255  
Sacramento, California 94244-2550

REGULAR MAIL

Superintendent, Northern California Agency  
1900 Churn Creek, Suite 300  
Redding, California 96002



Title 43, Code of Federal Regulations, Administrative Appeals to the Interior Board of Indian Appeals

§4.306

43 CFR Subtitle A (10-1-94 Edition)

tate in one-half of the interests. The decision shall 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 administrative law judge shall 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.

[35 FR 7186, Apr. 15, 1971, as amended at 65 FR 43133, Oct. 28, 1990]

§4.306 Time for payment.

A tribe shall pay the full fair market value of the interests purchased, as set forth in the appraisal 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 shall issue a certificate to the administrative law judge that this has been done and file therewith such documents in support thereof as the administrative law judge may require. The administrative law judge shall 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 shall 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: Sections 4.310 through 4.318 appear at 54 FR 6485, Feb. 10, 1989, 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) shall be effective the date it is received by the Board.

(b) Service. Notices of appeal and pleadings shall 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 shall 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 representative shall 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

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Office of the Secretary of the Interior

§ 4.314

nonbusiness days shall be 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 shall 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 shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall 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 shall 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 shall 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 Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau 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 shall 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 an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall 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 shall 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 shall 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 shall 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 shall be served in the same manner as appeal briefs.

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge or an official of the Bureau of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall 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.

**§ 4.315**

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

[54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

**§ 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 shall 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 shall not stay the effect of any decision or order and shall 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 court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall 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 shall 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

**43 CFR Subtitle A (10-1-94 Edition)**

Hearings and Appeals shall determine the matter of disqualification.

**§ 4.318 Scope of review.**

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall 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: Sections 4.320 through 4.323 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

**§ 4.320 Who may appeal.**

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(a) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall 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, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall

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include a certificate made as required (c) Action by record inspector law judge, upon notice of appeal perintendent duplicate records and 4.241(d), or part, to the Office designated part. The duplicate formed to the files and Records after be available at the Land Title or at the office. In those cases the hearing administrative transcript prepared forwarded to the from receipt of appeal.

**§ 4.321 Notice on appeal.**

The original forwarded by Records Office filed mail. An constituted Board within notice of docket of this part.

**§ 4.322 Docket**

The appeal Board upon relative record from Records Office as shown by the be notified of the eting notice within which shall cite the governing the

**§ 4.323 Disposit**

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## Office of the Secretary of the Interior

§4.331

include a certification that service was  
made as required by this section. *It*  
*(c) Action by administrative law judge;*  
*record inspection.* The administrative  
law judge, upon receiving a copy of the  
notice of appeal, shall notify the Su-  
perintendent concerned to return the  
duplicate record filed under §4.238(b)  
and 4.241(d), or under §4.242(c) of this  
part, to the Land Titles and Records  
Office designated under §4.238(b) of this  
part. The duplicate record shall be con-  
formed to the original by the Land Ti-  
tles and Records Office and shall there-  
after 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 ad-  
ministrative law judge shall have a  
transcript prepared which shall be for-  
warded to the Board within 30 days  
from receipt of a copy of the notice of  
appeal.

§4.321 Notice of transmittal of record  
on appeal.

The original record on appeal shall be  
forwarded by the Land Titles and  
Records Office to the Board by cer-  
tified mail. Any objection to the record  
as constituted shall 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 shall be docketed by the  
Board upon receipt of the administra-  
tive record from the Land Titles and  
Records Office. All interested parties  
as shown by the record on appeal shall  
be notified of the docketing. The dock-  
eting notice shall specify the time  
within which briefs may be filed and  
shall 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 be-  
cause of the appeal and the Board's de-  
cision, shall be forwarded by the Board  
to the Land Titles and Records Office  
designated under §4.238(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  
shall be conformed to the original and  
forwarded to the Superintendent con-  
cerned.

APPEALS TO THE BOARD OF INDIAN AP-  
PEALS FROM ADMINISTRATIVE AC-  
TIONS OF OFFICIALS OF THE BUREAU  
OF INDIAN AFFAIRS: ADMINISTRATIVE  
REVIEW IN OTHER INDIAN MATTERS  
NOT RELATING TO PROBATE PRO-  
CEEDINGS

SOURCE: Sections 4.330 through 4.340 appear  
at 64 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 ad-  
ministrative actions or decisions of of-  
ficials of the Bureau of Indian Affairs  
issued under regulations in 25 CFR  
chapter 1, and (2) administrative re-  
view 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 Af-  
fairs.

(b) Except as otherwise permitted by  
the Secretary or the Assistant Sec-  
retary—Indian Affairs by special dele-  
gation 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

**§ 4.332**

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, 4015 Wilson Boulevard, 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

**43 CFR Subtitle A (10-1-94 Edition)**

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.

**§ 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.

(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

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taken; all original notices, or application proceeding was initiated documents which interested parties; a upon which all prev based.

(b) The administrator include a Table of Contents

(1) The decision appealed

(2) The notice of appeal

(3) Certification that contains all information utilized by the deciding official

(c) If the deciding official

Secretary—Indian Affairs

review the appeal

tribe record is taken

Board, the administrator

be forwarded to the Secretary—Indian Affairs

the Board.

**§ 4.336 Docketing.**

An appeal shall be numbered by the Board

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Table of Contents

deciding official.

**§ 4.337 Action by the Board.**

(a) The Board may

action, or where the need

for further information

genuine issue of fact

Board may require a

hearing shall be conducted

by a law judge of the

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Appeals. In its discretion,

grant a hearing before the

Board.

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## Office of the Secretary of the Interior

§ 4.340

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taken; all original documents, peti-  
tions, or applications by which the pro-  
ceeding was initiated; all supplemental  
documents which set forth claims of in-  
terested 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 con-  
tains all information and documents  
utilized by the deciding official in ren-  
dering the decision appealed.

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

## § 4.336 Docketing.

An appeal shall be assigned a docket  
number by the Board 20 days after re-  
ceipt of the notice of appeal unless the  
Board has been properly notified that  
the Assistant Secretary—Indian Affairs  
has assumed jurisdiction over the ap-  
peal. A notice of docketing shall be  
sent to all interested parties as shown  
by the record on appeal upon receipt of  
the administrative record. Any objec-  
tion 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 govern-  
ing 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 deci-  
sion, 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 hear-  
ings shall be conducted by an adminis-  
trative law judge of the Office of Hear-  
ings and Appeals. The Board may, in  
its discretion, grant oral argument be-  
fore 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 au-  
thority committed to the Bureau, and  
the Board has not otherwise been per-  
mitted to adjudicate the issue(s) pursu-  
ant 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 As-  
sistant 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 pur-  
suant to § 4.337(a) of this part is con-  
cluded, 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 ad-  
ministrative law judge, shall be for-  
warded to the Board.

(b) The administrative law judge  
shall advise the parties at the conclu-  
sion 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 adminis-  
trative 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 ap-  
peal proceedings, including the Board's  
decision, shall be forwarded to the offi-  
cial of the Bureau of Indian Affairs  
whose decision was appealed for proper  
disposition in accordance with rules

## § 4.350

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 100-312 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, administrative judges shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Land 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 officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, at Cass Lake, Minnesota.

(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 of the

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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]

## § 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:

(1) A copy of the death certificate if one exists. If there is no death certificate, then another form of official written evidence of the death such as a burial or transportation of remains permit, coroner's report, or church registry of death. Secondary forms of evidence of death such as an affidavit from someone with personal knowledge concerning the fact of death or an obituary or death notice from a newspaper may be used only in the absence of any official proof or evidence of death.

(2) Data for heirship finding and family history, certified by the Project Director. Such data shall contain:

(i) The facts and alleged facts of the decedent's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs at law and other known parties in interest;

(iii) Information on whether the relationships of the probable heirs at law to the decedent arose by marriage, blood, or adoption.

(3) Known heirship determinations, including those recognized by the Act determining the heirs of relatives of

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the decedent, and ordered by courts in other states, by tribunals authorized in other countries.

(4) A report of the decedent, included in the decedent's, including the date of the decedent, and an outline of such compensation real property origin of the compensation, citing all heirs at law, the amount and the amount contributed to each of

(5) A certification of the Project Director or his designee provided for the data were furnished after a diligent search.

[56 FR 61383, Dec. 3, 1991]

## § 4.352 Determinative judge and n

(a) Upon review of the Project Director, administrative judge will determine if there are any facts that need to be

(b) If there are no facts requiring determination, the administrative judge will enter a determination of heirship in accordance with inheritance laws in accordance with the Act. Such preliminary determination may be entered without a hearing when possible and the facts are furnished and/or information thereto, including names, birth dates, death date, and share of the decedent, and share of the fact that the decedent's heirs.

(1) Upon issuing a determination, the administrative judge shall issue a notice of determination, together with a copy of the determination, to each party in interest, not less than thirty (30) days before the determination. The notice shall show cause in writing why the determination should not be made. The administrative judge shall issue a certificate to be made in the manner of such mail.

(2) The Project Director shall issue the determination, within seven