



United States Department of the Interior

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

IN REPLY REFER TO:

MAR 3 2014

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7009 3410 0000 1318 7938

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:

PARCEL 1:

ALL THAT PORTION OF THE WEST HALF OF THE WEST HALF OF SECTION 15, TOWNSHIP 9 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS DESCRIBED IN PARCEL 1 OF CERTIFICATE OF COMPLIANCE RECORDED JULY 31, 1980 AS FILE NO. 80-242819 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF THE WEST HALF OF THE WEST HALF OF SAID SECTION 15, LYING EASTERLY OF THE CENTERLINE OF COUNTY ROAD SURVEY NO. 319, ACCORDING TO PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY ENGINEER OF SAID SAN DIEGO COUNTY AND LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

TAKE PRIDE
IN AMERICA 

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE WEST HALF OF SAID SECTION 15; THENCE ALONG THE EASTERLY LINE THEREOF NORTH 01°06'05" EAST 3100.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH 50°34'20" WEST 835.04 FEET MORE OR LESS TO A POINT IN THE CENTER LINE OF SAID ROAD SURVEY NO. 319.

EXCEPTING FROM THAT PORTION LYING WITHIN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, 1/16TH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND, AS RESERVED TO THE STATE OF CALIFORNIA IN THE PATENT TO SAID LAND RECORDED IN BOOK 15, PAGE 259 OF PATENTS, RECORDS OF SAN DIEGO COUNTY.

PARCEL 2:

ALL THAT PORTION OF THE WEST HALF OF SECTION 15 AND THAT PORTION OF THE EAST HALF OF SECTION 16, TOWNSHIP 9 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS DESCRIBED IN PARCEL 2 OF CERTIFICATE OF COMPLIANCE RECORDED JULY 31, 1980 AS FILE NO. 80-242819 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF THE WEST HALF OF SAID SECTION 15 LYING WESTERLY OF THE CENTERLINE OF COUNTY ROAD SURVEY NO. 319, ACCORDING TO PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY ENGINEER OF SAID SAN DIEGO COUNTY AND LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN THE WEST LINE OF SAID SECTION 15, DISTANT ALONG SAID LINE NORTH 3845.67 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 15, THENCE NORTH 59°56'15" EAST 802.00 FEET MORE OR LESS TO A POINT IN THE CENTERLINE OF SAID COUNTY ROAD SURVEY NO. 319.

TOGETHER WITH THAT PORTION OF THE EAST 195.00 FEET OF SAID SECTION 16, LYING SOUTHERLY OF A LINE WHICH BEARS SOUTH 59°56'15" WEST FROM A POINT IN THE EAST LINE OF SAID SECTION, DISTANT ALONG SAID EAST LINE NORTH 3845.67 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 16.

EXCEPTING FROM THAT PORTION LYING WITHIN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, 1/16TH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND, AS RESERVED TO THE STATE OF CALIFORNIA IN THE PATENT TO SAID LAND RECORDED IN BOOK 15, PAGE 259 OF PATENTS, RECORDS OF SAN DIEGO COUNTY.

EXCEPTING FROM THAT PORTION LYING WITHIN SECTION 16, ALL OIL, GAS, OIL, SHALE, COAL, PHOSPHATE, SODIUM, GOLD, SILVER AND ALL OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND AS RESERVED BY PATENT RECORDED OCTOBER 20, 1954, IN BOOK 5404, PAGE 188 OF OFFICIAL RECORDS.

PARCEL 3:

ALL THOSE PORTIONS OF THE WEST HALF OF THE WEST HALF OF SECTION 15 AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS DESCRIBED IN PARCEL 3 OF CERTIFICATE OF COMPLIANCE RECORDED JULY 31, 1980 AS FILE NO. 80-242819 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF THE WEST HALF OF THE WEST HALF OF SAID SECTION 15 LYING EASTERLY OF THE CENTERLINE OF COUNTY ROAD SURVEY NO. 319 ACCORDING TO PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY ENGINEER OF SAID SAN DIEGO COUNTY LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE WEST HALF OF SAID SECTION 15; THENCE ALONG THE EASTERLY LINE THEREOF NORTH $01^{\circ}06'05''$ EAST 3100.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH $50^{\circ}34'20''$ WEST 835.04 FEET MORE OR LESS TO A POINT IN THE CENTERLINE OF SAID COUNTY ROAD SURVEY NO. 319.

TOGETHER WITH THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 10 LYING EASTERLY OF SAID COUNTY ROAD SURVEY NO. 319 AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 10; THENCE ALONG THE EASTERLY LINE THEREOF NORTH $00^{\circ}35'42''$ WEST 920.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH $67^{\circ}29'52''$ WEST 626.60 FEET, MORE OR LESS TO A POINT IN THE CENTERLINE OF SAID COUNTY ROAD SURVEY NO. 319.

PARCEL 4:

THAT PORTION OF SECTION 10, TOWNSHIP 9 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS DESCRIBED IN PARCEL 4 OF CERTIFICATE OF COMPLIANCE RECORDED JULY 31, 1980 AS FILE NO. 80-242819 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER WHICH LIES WESTERLY OF THE CENTERLINE OF COUNTY ROAD SURVEY NO. 319 ACCORDING TO PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY ENGINEER OF SAID SAN DIEGO COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER WHICH LIES EASTERLY OF THE CENTERLINE OF SAID COUNTY ROAD SURVEY NO. 319 AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 10; THENCE ALONG THE EASTERLY LINE THEREOF NORTH 00°35'42" WEST 920.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE NORTH 67°29'52" WEST 626.60 FEET MORE OR LESS TO A POINT IN THE CENTERLINE OF SAID COUNTY ROAD SURVEY NO. 319.

APN: 109-141-03-00 and 109-371-04-00 and 109-160-05-00

The subject property consists of three adjoining parcels totaling 345.32 acres more or less, commonly referred to as Assessor's Parcel Numbers: 109-141-03-00, 109-371-04-00 and 109-160-05-00. Note: The total acreage is consistent with the Bureau of Indian Affairs; GIS Cartographer's Legal Description Review dated September 19, 2009. The parcel is approximately two and a half (2 ½) miles north of Highway 76 and approximately one (1) mile south of Rancho Heights Road in the unincorporated area of North San Diego County. The property is entirely undeveloped but for a small, old and abandoned adobe structure located in the southern portion of the property, on the east side of Temecula Road. The property is contiguous to the Pala Reservation.

While portions of the parcels are level or gently sloping, much of the property contains steeply sloping topography. The steep sloping renders much of the property inaccessible and therefore unusable for development purposes. Only approximately 67 acres (or 20%) of the property are appropriate for development purposes. The Tribe has no plans at the present to develop the 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 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.

The Pala Reservation was originally established on December 27, 1875 by Executive Order.

Pursuant to 25 U.S.C. § 478, the Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted to reject the provisions of the Indian Reorganization Act of June 18, 1934. See *Ten Years of Tribal Government Under I.R.A., United States Services, 1947*, at Interior's website at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>. The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934, *See, Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA, 53 IBIA 62 (February 28, 2011) and Stand Up for California, et al, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.*

On July 12, 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, 52nd 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; Jack Wood, Fallbrook Planning Board; Barona Group of Capitan Grande Band; Campo Band of Mission Indians; Ewiiapaayp Band of Kumeyaay 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. Regular Mail: Inaja-Cosmit Band of Mission Indians and Superintendent, Southern California Agency.

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

1. **Letter dated July 26, 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 July 29, 2011 from the State of California Native American Heritage Commission stating that they have no comments.**
3. **Letter dated August 17, 2011 from the County of San Diego, Land Use and Environmental Group, which states:**
 - Need of the Tribe for Additional Land - The Notice of Application does not indicate that there is was any evaluation of the criterion;

- A portion of Pala Temecula Road included within the FTT application is on the County Road Register as a County maintained road;
- The County's road easement is a "floating easement" and that the limits of the easement are undefined and can fluctuate as the County's needs to provide drainage and support for the right-of way change;
- The floating easement in favor of the County for road purposes presents the possibility of significant jurisdictional problems and conflicts;
- The County can potentially be held liable for accidents on the road (Streets & Highways Code 941);
- If the Pala Band retains any regulatory control over the area covered by the road and immediately adjacent to it, this could lead to significant liability problems for the County and result in conflict between the Tribe and the County;
- There is no assurance that the land use will not change in the future;
- The County of San Diego has undertaken extensive General Plan and Multiple Species Planning efforts, which included this property;
- Removing this land from the County's jurisdiction would be deleterious to the County's planning efforts, both under the General Plan and the Multiple Species Conservation Plan;
- The Notice states that 345.32 acres will be moved into trust. County records show that the actual acreage of the three parcels is 330.22 acres. The discrepancy includes the taking of road easements;
- Should the land be developed, the County is concerned that the infrastructure needed to support development may adversely affect County resources and the surrounding environment;
- The impact on residents of adjacent communities may exceed anything that could have been reasonably anticipated;
- Impacts can occur not only due to incompatible land uses, but also can occur due to traffic generation, groundwater capacity, biological resources, and a host of other sensitive resources;
- Any future development on the parcels, including expanding casino or hotel center, should require the Pala Band to enter into an Intergovernmental Cooperative Agreement with the County of San Diego to mitigate off-reservation impacts that would result from any future proposed development;
- The County currently collects \$34,762.50 per year of taxes and special assessments;
- The land is mostly undeveloped which lowers the assessed value; this annual loss will be further compounded based on the assessed value of the property projected in future years;
- This current application in combination with other approved and pending applications for local Tribal Nations has accumulative fiscal impact on the County that should be analyzed as part of the Bureau's consideration; and
- The loss of tax revenue that is collected for several agencies may affect public services in the area;

The County provides services to this area and states the following:

Transportation and Circulation

- Pala Temecula Road (PTR) traverses along the frontage and through the parcels;
- PTR is a County of San Diego maintained road;
- County easements and rights to maintain the existing road must remain with the County;
- The Notice identifies 345.32 acres;
- The creation of any future access points to Pala Temecula Road from the three parcels will require an encroachment permit;
- Pala Temecula Road is classified as a 2.2D Light Collector with improvement options on the County's General plan Mobility Element;
- Provisions and or dedications should be made at this time to ensure and not preclude construction of the ultimate road classification when needed in the future;
- Realignment of several curves is needed to improve Pala Temecula road to current County standards;
- Measures should be enacted prior to acquisitions of the parcels to ensure that future needed road improvements to Pala Temecula Road will not be precluded in the future;
- The County currently has and maintains drainage easements and structures on the proposed parcels;
- The proposed transfer of the parcels into trust will remove the County's jurisdiction over the parcels and remove the County's ability to collect revenue sources utilized to maintain these public roadways;
- Without a clear plan identifying the future use of the parcels, the full impact and potential need for mitigation to the FTT action on Lake Wohlford Road has not been identified or analyzed; and
- The Certificate of Compliance is in effect on at least one of the parcels. The conditions and requirement contained therein should remain in effect and be satisfied prior to any future development.

Fire and Emergency Services

- The property is currently in the County Fire Authority service area (CSA-135);
- Shift from the County jurisdiction to trust will eliminate tax revenues used to support the fire authority services;
- The San Diego County Fire Authority has a good partnership with the Pala Reservation Fire Department;
- If the property is moved into trust, formalization of the partnership through an agreement between the County and the Pala Band is encouraged to ensure continuity of fire and emergency medical services to that area, for mutual benefit;
- The property is currently in designated "Wildland Urban Interface" area, and State Responsibility Area. It is ranked as "Very High" fire Severity Zone – the highest risk category;
- These parcels would be subject to the Public Resources Code, CCR Title 14 "SRA Fire Safe Regulations"; the County Building Code and the County Consolidated Fire Code if they remained under the jurisdiction of the County;

- Wildfire is a major on-going threat with the native vegetation (“fuel”) being among the oldest in the County;
- The most critical fire and life safety issue on both sides of tribal boundaries is firefighting access and emergency evacuation; and
- Roads through the properties and through the reservation, in addition to Pala Temecula road, should be established to legally and reliably accommodate emergency access and evacuation for the benefit of all tribal and non-tribal land occupants.

An impact to Federal and State Permits for Connectivity and Protected Habitat

- The County has been working with the Department of the Interior, Fish and Wildlife Service, and California Department of Fish and Game in the establishment of a multiple species Habitat Conservation Plan for the northern region of San Diego County. Removing these parcels from County jurisdiction has the potential to impact the success of this plan.

General Plan

- Given the uncertainty of possible future uses of the property, the County cannot determine if the intended use is consistent with the County General Plan and Zoning Regulations;
- The subject property is located in the Rural Lands Regional Category; a category that consists of large open space and very low-density private and publicly owned lands used for agriculture, managed resource production, conservation, and recreation; and
- Property within this category is not appropriate for intensive residential or commercial uses.

Zoning

- Current zoning for the three parcels are A70 (Limited Agriculture).

Community Plan

- The parcels are located in the Pala/Pauma Subregion. This Subregional Plan focuses on the preservation of biological resources.

Groundwater

- If the parcels were developed under County regulations, it would be subject to the San Diego County Groundwater Ordinance and the County Guidelines for Determining Significance – Groundwater Resources; and
- If anything other than low density residential is proposed, well interference analysis should be conducted.

Flood Control

- Any future developments along the Pala Creek would impact the Pala Creek floodplain and the San Luis Rey River.

Hydrology and Water Quality

- If the land is developed it may generate offsite impacts to adjacent County lands and into Pala Creek;

- It is important that a significant criterion that is based on the California Environmental Quality Act (CEQA) Guidelines are followed for any development within the Pala FTT property;
- Water resource impacts would be considered significant if future development of the property were to violate water quality standards or waste discharge requirements, create new sources of polluted runoff, or otherwise substantially degrade water quality; and
- Any development of the property while under the County's jurisdiction would be required to follow County Ordinances and Design Manuals in order to address offsite impacts including the County's: Watershed Protection, Stormwater Management, and Discharge Control Ordinance, Resource Protection Ordinance, Standard Urban Stormwater Mitigation Plan, Final Hydromodification Management Plan, Hydrology Manual, and Drainage Design Manual.

Public Health

- Additional information on future proposed development is needed to determine impacts;
- Any existing water wells should conform to or exceed the standards set forth by the State of California Water Well standards, and any water wells that do not conform should be destroyed;
- The adobe structure that exists on the property most likely has some type of wastewater disposal system that should be properly destroyed/abandoned if it is no longer planned for use, and any existing septic tanks and/or seepage pits should be pumped clean and backfilled to prevent any future collapse;
- Use of any existing water wells as a potable water source should involve an evaluation of the wells' construction and condition, and that water provided by such wells should be tested for compliance with potable water standards to ensure it is safe for consumption;
- Hazardous wastes that exists on the property should be disposed of in accordance with applicable federal guidelines/standards, and vacant parcels are subjected to illegal dumping and may contain hazardous waste;
- It is recommended that a survey of the property be completed to evaluate if such wastes are present.

Air Quality

- Additional information on future proposed development is needed to determine impacts on air quality; and
- An Air Quality analysis would provide qualitative and quantitative analysis of all air quality impacts related to all phases of the project.

Biological Resources

- Any deviation from the stated use of keeping the property undeveloped may impact regional planning efforts and habitat conservation efforts;
- Pala Creek, which runs through the property, qualifies as wetlands under the County's Resource Protection Ordinance, and that wetlands should be avoided and preserved on the site;
- A survey should be completed to detect the presence or absence of sensitive, rare and endangered species on the subject property, and that measures should be taken to avoid or mitigate impacts on such species;

- All mitigation efforts should comply with the County's Guidelines for Determining Significance of Biological Resources;
- A focused survey or site assessment should be completed for the Quino Checkerspot Butterfly, Arroyo Toad, and Stephen's Creek Kangaroo Rat;
- Pala Creek serves as critical habitat for the Arroyo Toad. The Arroyo Toad is covered by San Diego County's North County Plan, and the subject property will be excluded from the designated Arroyo Toad critical habitat should the property be accepted in trust;
- Future development of the subject property may effect nearby Mt. Olympus Preserve;
- Several sensitive species that would be covered by the North County Plan may occur on the property, and that by removing the property from the North County Plan would result in loss of the protections afforded these species by the Plan.

Agriculture

- A Local Agricultural Resource Assessment model should be completed to determine the importance of agricultural resources on the property and that mitigation measures should be implemented should proposed development directly or indirectly impact such resources; and
- A Phase I and partial Phase II Environmental Site Assessment should be conducted to identify the effects of the land, and evaluate the effect of any historic agricultural practices that may have taken place on the subject property.

Noise

- County staff cannot determine if the intended use is consistent with the current County Code Noise Ordinance or Noise Element, Policy 4b.

Visual Resources

- The subject property falls within the County of San Diego Zone A Lighting Regulations for its property's proximity to the Palomar Observatory. The County recommends that all lighting on the subject property conform to the Pala-Pauma Subregional Plan.

The County opposes the expansion of tribal lands, and believes that the Pala Band's objectives for the property to remain vacant can be accomplished under existing land use jurisdiction. Further, cumulative fiscal impact of all proposed trust applications on the County and other local agencies should be analyzed and mitigated. The current application in combination with other applications has significant cumulative impacts that should be evaluated as part of any BIA applications that proposes to acquire land currently under the jurisdiction of the County.

By letter dated November 15, 2013, the Pala Band's response for the County of San Diego follows each concern below.

- *While the regulations governing the fee-to-trust process require that the United States consider the Tribe's need for additional trust land (25 C.F.R. 151.10(b)), those regulations do not mandate that the United States make this evaluation part of the Notice of Application. Furthermore, the fact that the United States already holds land in trust for the Tribe does not prohibit the United States from acquiring the*

Rimsa property in trust for the Tribe's benefit. A tribe need not be landless (i.e., having no lands held in trust by the United States for its benefit) in order to establish the requisite "need" for trust land. See, e.g., Kansas v. Acting Southern Plains Regional Director, Bureau of Indian Affairs, 36 IBIA 152, 155 (2001) (noting that the language of the Indian Reorganization Act does not limit fee-to-trust acquisition to landless tribes, and federal court decisions rejecting the argument that land may be taken into trust for only "landless Indians");

- *There are no foreseeable conflicts between the trust acquisition and the County's easement for Pala-Temecula Road. The Tribe noted in its letter requesting that the Rimsa property be accepted in trust, the County's roadway easement does not and will not interfere with the Tribe's current or planned future use of the Rimsa property. The Tribe has no plans for development of the Rimsa property, thus the acquisition of the property in trust would have no effect on the County's roadway easement. The County's liability with regard to the roadway easement is not dependent on who exercises jurisdiction over the land underlying and adjacent to the roadway, but instead on the County's failure to maintain the easement. Cal. Street and Highways Code § 941(b);*
- *The County's comments regarding the "floating" of the easement are unclear, as an easement that is not identified by exact location in a deed (a "floating" easement) becomes fixed by the first usage of the easement, unless the deed expressly includes the right to change or expand the usage. See, e.g., Winslow v. City of Vallejo, 148 Cal. 723, 726 (1906) citing Jennison v. Walker, 11 Gray 423, 426 (Mass. 1858) ("Where an easement in land is granted in general terms, without giving definite location and description to it, so that the part of the land over which the right is to be exercised cannot be definitely ascertained, the grantee does not thereby acquire a right to use the servient estate without limitation as to the place or mode in which the easement is to be enjoyed. When the right granted has been once exercised in a fixed and defined course, with the full acquiescence and consent of both parties, it cannot be changed at the pleasure of the grantee.");*
- *The County's roadway easement includes the right to access the easement and surrounding area for purposes of maintaining the easement. Accordingly, the County will retain its easement, and the ability to properly maintain that easement, should the Rimsa property be accepted in trust;*
- *As noted in the Tribe's land acquisition application, the Tribe has no plans to develop the Rimsa property, and instead intends to continue to use the property as vacant, open space. The Bureau is required to only consider facts presented to it regarding the purpose for which the property will be used, and need not consider speculative uses in deciding whether to exercise its discretion to accept the Rimsa property in trust. See City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director, 49 IBIA 75, 82 (2009); Village of Ruidoso, 32 IBIA 130 (1998);*
- *While the County is correct that San Diego County records reflect the acreage of the Rimsa property, in the aggregate, as ± 330.22 acres, the minor discrepancy between the actual acreage and acreage shown in the Notice of Application amounting to roughly 15 acres. The Notice of Application included the correct Assessor's Parcel Numbers, putting the County (and public, generally) on notice of the parcels proposed by this trust acquisition; and*

- *The legal land description of the Rimsa property does not exclude Pala-Temecula Road, but instead makes reference to the "centerline of" Pala-Temecula road in the legal land descriptions for the property. See Cal. Civ. Code § 831 ("An owner of land bounded by a road or street is presumed to own to the center of the way...").*

Note: The total acreage is consistent with the Bureau of Indian Affairs; GIS Cartographer's Legal Description Review dated September 19, 2009.

- *The Bureau need not consider potential future development of the Rimsa property in evaluating the Tribe's request to accept the property in trust because such development is purely speculative;*
- *Even assuming the Bureau has authority to require the Tribe to enter into an agreement with the County (a legal issue the Tribe respectfully declines to concede), such an agreement would be unnecessary because the Tribe's Tribal State Gaming Compact ("Compact") already provides for the mitigation of off-reservation impacts associated with any future expansion of the Tribe's gaming facility. Specifically, the Compact requires that the Tribe prepare a Tribal Environmental Impact Report ("TEIR") identifying all significant environmental and public service impacts of such an expansion, as well as mitigation measures to minimize these effects. See Compact, Section 10.8.1. The TEIR serves as a resource for the Tribe and County in negotiating an intergovernmental agreement addressing, among other things, mitigation efforts and compensation to the County. Compact, Section 10.8.8. It is also worth noting that **if**, at some point in the future, the Tribe proposed a major federal action of the sort about which the County appears be concerned, that action would be subject to the National Environmental Policy Act ("NEPA"), and mitigation would be evaluated as part of the NEPA process. See, e.g., 40 C.F.R. § 1502.14(f).*
- *The Bureau need only consider the actual and current, not speculative or cumulative, tax loss resulting from the proposed trust land acquisition. See 25 C.F.R. § 151.10(e) (requiring that the Bureau consider "removal of the land from the tax rolls" in reviewing a land acquisition request); Shawano County, Wisconsin, v. Acting Midwest Regional Director, 53 IBIA 62, 80 (2011); State of South Dakota, County of Charles Mix and City of Wagner v. Acting Great Plains Regional Director, 49 IBIA 84, 106 (2009);*
- *The County provides no specific information regarding the real or potential impacts resulting from the acquisition of the Rimsa property in trust and removal from the County's property tax rolls;*
- *The Tribe is cognizant of the fact that acceptance of the Rimsa property in trust will result in property tax losses for San Diego County. 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, particularly in light of the Tribe's fiscal contributions within the County. The Tribe is one of the largest employers in San Diego County; it purchases many of the goods and services consumed by the Tribe in connection with its governmental and economic development ventures from within the County; it makes significant philanthropic contributions within the County through the Pala Community Giving Program (amounting to over \$500,000 — more than 15 times the taxes collected on the Rimsa property — in 2012 alone); and it makes sizable*

contributions to state and County coffers through the Compact. These contributions far outweigh the loss in annual property tax revenue that would result from acquisition of the Rimsa property in trust; and

- *As noted by the County, the special assessments assessed against the Rimsa property in the 2010-2011 tax years totaled \$12,219.16. This tax loss is de minimus and, as with the annual property tax assessment, is far outweighed by the significant contributions by the Tribe within and to the local community and San Diego County.*

Transportation and Circulation

- *The County's comments regarding the potential effect of acquisition appear to be based on the erroneous assumption that the Tribe has plans for development of the Rimsa property. There are no plans for future development of the property that would require the issuance of an encroachment permit or mitigation efforts;*
- *The County's road easement will not be affected in the event the Rimsa property is accepted in trust, as the United States will accept title subject to the easement;*
- *As the County concedes in its comment letter, the County's easement includes the ability to extend drainage structures and excavation and embankment slopes beyond limits of the easement where required for the construction and maintenance of the easement;*
- *Neither the easement, nor the rights attendant thereto, will be affected by the acquisition of the Rimsa property in trust; and*
- *The Tribe notes that, as a sovereign entity, it is not subject to the County's TIF, and because this acquisition does not contemplate a development action requiring any sort of County permit or approval, the program would not apply.*

Fire and Emergency Services

- *The Pala Fire Department, which is wholly owned and operated by the Tribe, has provided, and will continue to provide, fire suppression and emergency response services to the Rimsa property and surrounding community. The Department was established in 1978, and today employs 30 full time suppression personnel (consisting of firefighters, explorers, paramedics and emergency medical technicians) and 15 reserve firefighters. The Department currently runs 3 fire engines (one Type I and two Type II engines), 2 water tenders, 3 command vehicles, and 2 trucks. The Department covers an area approximately twenty-one (21) square miles in size, providing fire suppression and emergency services on approximately 13,350 acres and to a population of roughly 650 people. Notably, the Department has entered into several mutual aid agreements, including long-standing agreements with the Deer Springs Fire Protection District, North County Fire Protection District, Pauma Reservation Fire Department, Rincon Reservation Fire Department, San Pasqual Reservation Fire Department, and Valley Center Fire Protection District. The Tribe also provides fire protection services to private entities. Indeed, many lives have been saved as a result of the Tribe's establishment of the Department and commitment to providing emergency services of the highest caliber both on and near the Pala Indian Reservation; and*
- *The Tribe's extensive efforts to provide fire protection and emergency services on and near the Pala Indian Reservation, including the Rimsa property, far eclipse the value*

of property taxes currently assessed on the Rimsa property that is attributable to fire protection and emergency services. The County acknowledges the Tribe and the County's Fire Authority have enjoyed a positive working relationship for many years, a relationship the Tribe intends to continue should the Rimsa property be accepted in trust. Finally, given the services available from the Pala Fire Department, coupled with the fact that the Rimsa property is and will continue to be vacant open space, the Tribe does not agree that the construction of emergency access roads through the property are necessary.

Impacts to Federal and State Permits for Connectivity and Protected Habitat

- *The Rimsa property would no longer be subject to the County's jurisdiction once transferred into trust; they would be held in trust by, and subject to the jurisdiction of, the United States Department of the Interior who, as the County notes, has partnered with the County and other agencies in establishing a Habitat Conservation Plan for northern San Diego County.*

General Plan

- *This use is consistent with the County's General Plan and with its designation of the Rimsa property as falling within the Rural Lands Regional Category.*

Zoning

- *The Tribe's intended use of the Rimsa property is consistent with the County's zoning.*

Community Plan

- *Biological resources on the Rimsa property would not be affected as a result of acquisition of the property in trust.*

Groundwater

- *The Bureau need not take into consideration the County's comments about what might occur in the future. See City of Eagle Butte, 49 IBIA at 82. Since the use of groundwater on the Rimsa property is not contemplated by this land acquisition request, the Bureau need not evaluate the potential impacts of such groundwater use on nearby water users.*

Flood Control

- *The acquisition of the Rimsa property in trust will have no effect on flood control in the area.*

Hydrology and Water Quality

- *The proposed acquisition does not contemplate any action that would affect hydrology or water quality, as no change in land use is proposed. Accordingly, none of the ordinances, regulations, plans or requirements governing the extraction or use of water, or water quality, would be implicated by the Tribe's proposed use of the property; and*
- *CEQA is not relevant to the Bureau's decision here. Any potential future major federal actions involving development of the Rimsa property, of which the County*

appears to be concerned, would be subject to NEPA and other federal environmental laws.

Public Health

- *The County's comments regarding "future proposed development" of the Rimsa property are misplaced, as the Tribe has clearly indicated that it has no plans to develop the property. The County's comments regarding potential existing wells and sewage systems, and the continued use thereof, are similarly misplaced;*
- *The Phase I site assessment confirms there are no visible wells on the Rimsa property. The Phase I site assessment also noted that, while it is unknown whether the historic adobe structure located on the property was serviced by a septic system, the Rainbow Municipal Water District is currently the regional sewer provider; and*
- *The Tribe has already cleared all waste on the property (including those items noted in the Phase I survey), and will ensure that the property remains free of debris.*

Air Quality

- *The County's comments regarding the preparation of an air quality analysis report, addressing the effect of "proposed development" on air quality need not be considered as such comments are based on speculation. City of Eagle Butte, 49 IBIA at 82; and*
- *Federal air quality laws and regulations governing air quality will continue to apply to the Rimsa property if the property is accepted in trust. Pala EPA regularly monitors air quality on and near the Pala Indian Reservation, and has done so for the past eleven years.*

Biological Resources

- *The proposed land acquisition will have no effect on biological resources on or near the Rimsa property. Indeed, each and every one of the County's comments regarding the potential effect of the proposed trust acquisition on biological resources is based solely on speculation, and as such, need not be considered by the Bureau in determining whether to approve the Tribe's request. See City of Eagle Butte, 49 IBIA at 82; and*
- *As the biological resources survey prepared in anticipation of the proposed acquisition indicates, no special habitats were encountered on the Rimsa property (save the riparian corridor associated with Pala Creek), nor were any threatened or endangered species located on the property. Even if threatened or endangered species were found on the Rimsa property, such species would nevertheless be protected by federal laws and regulations (such as the Endangered Species Act) regardless of whether the Rimsa property is accepted in trust for the Tribe.*

Agriculture

- *The County's comments regarding the potential effect of proposed development of the Rimsa property on agricultural resources are speculative—as the Tribe has no plans to develop the property—and therefore need not be considered in evaluating the Tribe's trust land acquisition request. See City of Eagle Butte, 49 IBIA at 82. Also, and consistent with the Phase I prepared in anticipation of this trust land application,*

there is nothing to indicate that historical agricultural practices took place on the Rimsa property, or that any such practices resulted in environmental hazards or contamination requiring the preparation of a Phase II analysis.

Noise

- *The proposed land acquisition will not have any effect on noise. The County's comments regarding potential future uses and the potential for increased and/or permanent noise are based on speculation and need not be considered by the Bureau in evaluating this application. See City of Eagle Butte, 49 IBIA at 82; and*
- *Finally, we note that although County standards may be one of several indirectly relevant considerations in the context of a NEPA analysis, such standards are not directly binding upon either the Tribe or the Bureau.*

Visual Resources

- *No visual resources will be affected as a result of the proposed trust land acquisition. We note that although County standards may be one of several indirectly relevant consideration in the context of a NEPA analysis, such standards are not directly binding upon the Bureau.*

As stated in the Tribe's application, the Tribe intends to continue to use the Rimsa property as vacant, open space. The Tribe has no plans for development of the Rimsa property, and thus the subject acquisition will not have any effect on the biological diversity, the County's General Plan, and is consistent with the County's zoning of the property. Accordingly, biological resources on the Rimsa property would not be affected and there would be no effect on flood control in the area. The proposed acquisition does not contemplate any action that would affect hydrology, water quality, or air quality. Accordingly, the proposed land acquisition will have no effect on biological resources, agricultural resources, noise, or visual resources on or near the Rimsa property.

The Bureau need only consider the impacts of the proposed land acquisition, not the cumulative impacts resulting from acquisition of other lands within San Diego County for the Tribe or other tribes. Shawano County, Wisconsin v. Acting Midwest Regional Director, 53 IBIA 62, 80 (2011); State of South Dakota, County of Charles Mix and City of Wagner v. Acting Great Plains Regional Director, 49 IBIA 84, 106 (2009). The Tribe has adequately addressed the minor impacts that would result from acquisition of the subject property in trust (essentially limited to minimal tax loss and loss of state/county regulatory jurisdiction), and has demonstrated that the benefits borne by the County and the State of California as a result of the Tribe's governmental and economic development activities outweighed the minor impacts that would result from the Bureau's approval of the proposed land acquisition. Finally, whether the Tribe can continue to use the Rimsa property for the stated purposes without acquisition of the property in trust is irrelevant, as the Tribe's need not demonstrate that it cannot accomplish its stated goals with respect to the Rimsa property as a prerequisite to approval of its trust land acquisition request.

4. Letter dated August 17, 2011 from the Pechanga Indian Reservation, which states:

- Pechanga states that it is concerned about the Tribe's proposed trust land acquisition request because the subject property lies 1.25 miles from the southern border of the Pechanga Indian Reservation and is located in an area that is culturally important to the Luiseño people. Pechanga has significant interest in the above application because taking the land into trust by a reservation which includes non-Luiseño peoples will have an impact on the cultural resources located within and around the subject property. Pechanga further states that, as a result of the Bureau's obligation to comply with both NEPA and the National Historic Preservation Act ("NHPA"), the Bureau must engage in consultation with Pechanga to discuss their specific concerns regarding the proposed trust land acquisition.

By letter dated November 15, 2013, the Pala Band's response is as follows:

- *The Tribe not only understands and appreciates Pechanga's concerns regarding the preservation of cultural resources on the Rimsa property, but indeed shares these same concerns as members of the Tribe are also of Luiseño ancestry. Accordingly, while the Tribe is not legally obligated to do so—as no NEPA process or NHPA consultation is required here, as explained below—the Tribe is willing to work with Pechanga to develop mutually agreeable guidelines for the preservation of valuable cultural resources on the Rimsa property. In light of Pechanga's comments on the proposed trust land acquisition, the Tribe intends to contact Pechanga to initiate discussions between the two tribal governments.*

Regarding Pechanga's comments relating to the NEPA process and consultation under the NHPA, the Tribe avers that no further analysis or consultation is required under either statute. To be sure, the Tribe's request for acquisition of the Rimsa property in trust does not contemplate any change in land use and does not present any "extraordinary circumstances." Therefore, this project qualifies for a categorical exclusion from NEPA. See 516 DM 10.5, Section I; 43 C.F.R. § 46.215.

Similarly, the NHPA's consultation requirements only apply to "undertakings" that have "potential to cause effects on historic properties." 36 C.F.R. §800.3. The proposed trust land acquisition does not involve any development or land use change and, for that reason, it will not "cause effects on any historic properties." Therefore, the Bureau has no obligation to initiate consultation under the NHPA. See 36 C.F.R. § 800.3(a)(1).

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. The Pala Band of Mission Indians is a federally recognized Indian Tribe 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 Rimsa property 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 parcels. Transfer of the property can also be a benefit to existing tribal trust lands by expanding the exterior boundaries of the reservation and increasing the area between developed tribal land and non-tribal land. 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.

While the United States currently holds approximately 11,247 acres more or less of land in trust for the Tribe, a large portion 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. While only twenty-percent (20%) of the Rimsa property is usable for development purposes, the sixty-seven (67) acres of developable land can be a great benefit to the tribal community. The Tribe has no intention of developing the property at the present; nevertheless, it is entirely possible that the sixty-seven (67) acres can be used to expand the Tribe's current agricultural operations or even to provide much needed housing for tribal members.

The Tribe is fully aware of the effect of conveying the subject parcels to the United States to be held in trust for the Tribe, including the significant degree of oversight that will be exercised by the Bureau of Indian Affairs once the parcels are accepted into trust.

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 undeveloped, open space. The Tribe will continue to use the property for these purposes. There is no plan at present to develop the property.

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 2013-2014 tax years, the total tax assessed on the subject parcels was \$25,475.22. During the comment period, *County of San Diego, Land Use and Environmental 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 November 15, 2013.

Transferring the subject property into trust will not have a significant impact on the State of California or San Diego County’s tax revenue because the amount of property taxes assessed on these parcels is small in comparison to the County’s annual property tax revenue.

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 Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the Rimsa property into trust. The property is located in a rural area, completely surrounded by undeveloped open space and is surrounded on its southern and eastern boundaries by tribal trust lands. With the exception of the Reservation, the closest commercial and residential development is in the City of Temecula, approximately 6.5 miles to the north of the Rimsa property.

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.

The Tribe will no longer be bound by San Diego County’s zoning regulations with respect to the Rimsa property, which will not present a problem as the property lies in a rural unincorporated area of San Diego County and is entirely surrounded by undeveloped land. 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. Given the topography of the property, it is unlikely that all of the currently permitted uses can be

attained. Perhaps the only plausible use would be minimal residential and/or agricultural use of the developable sixty-seven (67) acres. Still, the Tribe's anticipated use of the property as undeveloped open space is entirely consistent with San Diego County's zoning of the property. It is unlikely that jurisdictional conflicts in connection with the use of the property will arise, as the Tribe does not have any plans to develop the property.

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. The Tribe will ensure that all essential services – security, fire protection, education, natural resource protections, etc. – are provided to the property using existing federal allocations and/or profits from the Tribe's economic enterprises. 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 April 18, 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 December 12, 2013, 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-3071-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,



Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse (10 copies) - 7009 3410 0000 1318 7945
Office Planning and Research
P.O. Box 3044
Sacramento, CA 95814

Mr. Daniel Powell - 7009 3410 0000 1318 7952
Legal Affairs Secretary
Office of the Governor
State Capitol Building
Sacramento, CA 95814

Ms. Sara J. Drake, Deputy Attorney General – 7009 3410 0000 1318 7969
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

U.S. Senator Dianne Feinstein – 7009 3410 0000 1318 7976
331 Hart Senate Office Building
Washington, DC 20510

U.S. House of Representatives - 7009 3410 0000 1318 7983
52nd District
1870 Cordell Court, Suite 206
El Cajon, CA 92020

San Diego County Assessor - 7009 3410 0000 1318 7990
600 Pacific Highway, Suite 103
San Diego, CA 92101

San Diego Treasurer & Tax Collector - 7009 3410 0000 1318 8003
1600 Pacific Highway, Suite 162
San Diego, CA 92101-2474

County of San Diego - 7009 3410 0000 1318 8010
Office of the Chief Administrative Officer
1600 Pacific Highway, Room 209
San Diego, CA 92101

San Diego County Sheriff's Department - 7009 3410 0000 1318 8027
P.O. Box 939062
San Diego, CA 92193-9062

San Diego County Department of Public Works - 7009 3410 0000 1318 8034
5510 Overland Avenue, Suite 410
San Diego, CA 92123

Department of Planning and Development Services - 7009 3410 0000 1318 8041
5510 Overland Ave. Suite 310
San Diego, CA 92123

Jack Wood- 7009 3410 0000 1318 8058
Fallbrook Planning Board
3191 Los Verdes Drive
Fallbrook, CA 92028

Chairperson - 7009 3410 0000 1318 8065
Barona Reservation
1095 Barona Rd.
Lakeside, CA 92040

Chairperson - 7009 3410 0000 1318 8072
Campo Band of Mission Indians
36190 Church Rd., Suite 1
Campo, CA 91906

Chairperson - 7009 3410 0000 1318 8089
Ewiiapaayp Band of Kumeyaay Indians
4054 Willows Road
Alpine, CA 91901

Chairperson - 7009 3410 0000 1318 8096
Jamul Indian Village
P.O. Box 612
Jamul, CA 91935

Chairperson - 7009 3410 0000 1318 8102
La Jolla Band of Luiseno Indians
22000 Highway 76
Pauma Valley, CA 92061

Chairperson - 7009 3410 0000 1318 8119
La Posta Band of Mission Indians
8 Crestwood Road, Box 1
Boulevard, CA 91905

Chairperson - 7009 3410 0000 1318 8126
Los Coyotes Band of Cahuilla & Cupeno Indians
P.O. Box 189
Warner Springs, CA 92086

Chairperson - 7009 3410 0000 1318 8133
Manzanita Band of Mission Indians
P.O. Box 1302
Boulevard, CA 91905

Chairperson - 7009 3410 0000 1318 8140
Mesa Grande Band of Mission Indians
P.O. Box 270
Santa Ysabel, CA 92070

Chairperson - 7009 3410 0000 1318 8157
Pauma Band of Mission Indians
P. O. Box 369
Pauma Valley, CA 92061

Chairperson – 7009 3410 0000 1318 8164
Pechanga Band of Mission Indians
P.O. Box 1477
Temecula, CA 92593

Chairperson - 7009 3410 0000 1318 8171
Rincon Band of Mission Indians
1 West Tribal Road
Valley Center, CA 92082

Chairperson – 7009 3410 0000 1318 8188
San Pasqual Band of Mission Indians
P.O. Box 365
Valley Center, CA 92082

Chairperson - 7009 3410 0000 1318 8195
Santa Ysabel Band of Mission Indians
P.O. Box 130
Santa Ysabel, CA 92070

Chairperson – 7009 3410 0000 1318 8201
Sycuan Band of Mission Indians
1 Kumeyaay Court
El Cajon, CA 92019

Chairperson - 7009 3410 0000 1318 8218
Viejas (Baron Long) Band of Mission Indians
P.O. Box 908
Alpine, CA 91903

Regular Mail:

Chairperson - Fax
Inaja-Cosmit Band of Mission Indians
2005 S. Escondido Blvd.
Escondido, CA 92025

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

Email:

Assistant Secretary- Indian Affairs

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.

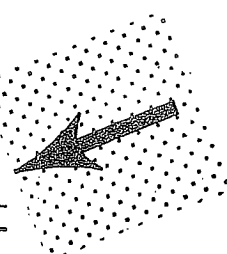
GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

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



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

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

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

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;

Office of the Secretary, Interior

§4.333

(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.

§ 4.334

43 CFR Subtitle A (10-1-03 Edition)

(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

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:

2011/10/01 10:10 AM
OFFICE OF THE SECRETARY OF THE INTERIOR

74:01NW 9-18911

INTERNAL