



IN REPLY REFER TO

United States Department of the Interior

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

AUG 21 2015

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7013 2630 0001 5557 6094

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 P: (APN: 110-240-01)

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION TWENTY-SEVEN, TOWNSHIP NINE SOUTH, RANGE TWO WEST, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAN BERNARDINO MERIDIAN.

PARCEL Q: (APN: 110-090-10 & 11)

THE SOUTH HALF OF THE SOUTHEAST QUARTER; THE SOUTH HALF OF THE SOUTHWEST QUARTER; ALL THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, LYING SOUTHERLY OF THE PUBLIC ROAD RUNNING WESTERLY FROM PALA TO OCEANSIDE, KNOWN AS OLD ROAD SURVEY NO. 120, AS SAID ROAD SURVEY NO. 120, AS SAID ROAD WAS LOCATED ON SEPTEMBER 24, 1890, IN SECTION TWENTY-EIGHT, TOWNSHIP NINE SOUTH, RANGE TWO WEST, SAN BERNARDINO MERIDIAN; EXCEPTING THEREFROM THAT PORTION OF SAID SOUTHWEST QUARTER, DESCRIBED AS FOLLOWS:

TAKE PRIDE
IN AMERICA 

COMMENCING AT A POINT ON THE WESTERN LINE WHERE SAID PUBLIC ROAD CROSSES SAID LINE; THENCE RUNNING EAST, 312 FEET; THENCE SOUTH 312 FEET; THENCE WEST 312 FEET; THENCE NORTH 312 FEET TO THE POINT OF COMMENCEMENT. ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY: ALL THAT PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER AS FOLLOWS:

COMMENCING ON THE WEST LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER AT A POINT WHERE THE PUBLIC ROAD, AS SAME WAS LOCATED AND ESTABLISHED ON THE GROUND ON MAY 13, 1887, CROSSES SAID LINE; THENCE SOUTH 312 FEET TO THE TRUE POINT OF COMMENCEMENT; THENCE EAST 256 FEET TO A POINT; THENCE SOUTH 170 FEET TO A POINT; THENCE WEST 256 FEET TO A POINT; THENCE NORTH 170 FEET TO THE TRUE OF POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM THE FOLLOWING:

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, T.9 S., R. 2 W., S.B.B. & M., LYING SOUTHERLY OF THE PUBLIC ROAD RUNNING WESTERLY FROM PALA TO OCEANSIDE, KNOWN AS OLD ROAD SURVEY NO. 120, AS SAID ROAD WAS LOCATED ON SEPTEMBER 24, 1890, INCLUDED WITHIN THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, DISTANT THEREON N.0°26'54" E., 783.91 FEET FROM A 1-1/2 INCH CAPPED PIPE MARKED "1/16", SET FOR THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, SAID POINT ALSO BEING DISTANT THEREON, S.0°26'54" W., 584.42 FEET FROM A TWO INCH IRON PIPE SET FOR THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, WHICH POINT IS ENGINEER'S STATION 527+76.40 ON THE CENTER LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY, MADE IN 1950, BETWEEN BONSALE AND PALA, ROAD XI-SD-195-B; THENCE ALONG SAID EAST LINE, S. 0°26'54" W., 60.52 FEET; THENCE LEAVING SAID EAST LINE ALONG A LINE PARALLEL WITH AND DISTANT 60 FEET SOUTHEASTERLY, AT RIGHT ANGLES, FROM THE CENTER LINE OF SAID DEPARTMENT OF PUBLIC WORKS' SURVEY, S. 82°54' W., 31.25 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 740 FEET, THROUGH AN ANGLE OF 37°11'10", A DISTANCE OF 480.27 FEET; THENCE S. 45°42'50" W. 217.97 FEET; THENCE LEAVING SAID PARALLEL LINE, N.44°17'10" W., 60.00 FEET TO A POINT WHICH BEARS N. 60°27'58" E., 756.99 FEET FROM AN "X" ON A ROCK LEDGE MARKED "1/4 - 1/4" SET FOR THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 28, SAID POINT BEING ENGINEERS' STATION 520+00 ON THE CENTER LINE OF SAID DEPARTMENT OF PUBLIC WORKS' SURVEY; THENCE CONTINUING N. 44°17'10" W., 60.00 FEET; THENCE ALONG A LINE PARALLEL WITH AND DISTANT 60 FEET NORTHWESTERLY, AT RIGHT ANGLES, FROM THE CENTER LINE OF SAID SURVEY, N.45°42'50" E. 217.97 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 860 FEET, THROUGH AN ANGLE OF 37°11'10", A DISTANCE OF 558.16 FEET; THENCE NORTH 82°54' E., 47.17 FEET TO A POINT ON SAID EAST LINE; THENCE ALONG SAID < LINE, S. 0°26'54' W., 60.52 FEET TO THE POINT OF BEGINNING.

PARCEL R: (APN: 110-160-08, 12, 14, 15 & 16)

THE NORTH HALF OF THE NORTHWEST QUARTER AND THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION THIRTY-THREE, TOWNSHIP NINE SOUTH, RANGE TWO WEST, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAN BERNARDINO MERIDIAN.

The subject property consists of eight parcels totaling 367.89 acres more or less, commonly referred to as Assessor's Parcel Numbers: 110-240-01, 110-090-10, 110-090-11, 110-160-08, 110-160-12, 110-160-14, 110-160-15, and 110-160-16. Note: The total acreage is consistent with the Bureau of Indian Affairs; GIS Cartographer's Legal Description Review dated September 19, 2009. The parcels are located along the San Luis Rey River south of SR 65, approximately seven miles east of Interstate 15 in north San Diego County. The property lies immediately south of the Rancho Luna Mia property, which is held in Trust by the United States for the Tribe, and forms most of the parcel's north boundary. The property is contiguous to the Pala Reservation.

The Pala Band's goal is to manage natural resources and to protect tribal sovereignty, self-determination, and to plan, implement and monitor viable ecosystem based on all tribal resources. The Band proposes no change in land use or ground disturbing activity, while keeping the existing uses of the land.

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, etal, 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 February 20, 2014 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. Daniel Powell, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; 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 Capitán 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; Pechanga Band of Mission Indians; Rincon Band of Mission Indians; San Pasqual 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 March 13, 2014 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 March 19, 2014 from the State of California Native American Heritage Commission stating that they have no objections.**
3. **Letter dated March 28, 2014 from the County of San Diego, Planning and Development Services, which states:**

Annual amount of property taxes currently levied on the subject property.

- The annual loss of property taxes totaling \$40,654.78 annually will be further compounded based on the assessed value of the property projected in future years. In addition, this application in combination with other approved or pending application for local tribal nations has a cumulative fiscal impact on the County.

Any special assessments and amounts thereof that are currently assessed against the property in support of your organizations.

- The loss of tax revenue that is collected for several agencies may affect public services in the area. Tax revenues are currently collected for the County General Fund, the County Library, Bonsall Union Elementary, Fallbrook Union High, Palomar Community College, County Office of Education, Educational Revenue Augmentation Fund, Palomar Pomerado Health Care District, county Vector Control, County Street Lighting, the San Luis Rey Municipal Water District and the Upper San Luis Rey Resource Conservation District;
- It is not clear whether the Tribe intends no future change in land use or only no change for as long as it chooses to keep the existing uses of a commercial nursery and a youth camp. Once the property is transferred into trust, the County will lose land use regulatory authority over all future development, and the California Environmental Quality Act (CEQA) will no longer apply;

The County provides the following concerns regarding potential impacts to County plans and programs:

Zoning

- The proposed properties are designated by the General Plan for low density residential use (one dwelling unit per 40 acres. The properties are zoned for agricultural use except for approximately half of parcel 110-160-08 (20 acres) which is zoned S82 (extractive uses are permitted such as mining, quarrying or oil extraction).

Biological Impacts

- Transferring the parcels in trust would remove approximately 367.89 acres from the North County Plan Area (NC Plan) and the Pre-Approved Mitigation Area (PAMA). The loss would be detrimental to the NC Plan because it would remove a section of the San Luis Rey River and its associated habitat from the PAMA. Future unregulated development could fragment the PAMA by separating the uplands, south of the fee-to-trust parcels, from the river. Loss of these parcels from the NC Plan PAMA would eliminate the County's ability to ensure that habitat connectivity and wildlife movement remain along the river;
- Though there are no projects associated with the fee-to-trust transfer, future development next to the river would likely be agriculture and residential uses as is much of the Pala Reservation. Development of these parcels would constrain access to the river for native animal species and may introduce exotic species into the riparian habitat and the nearby native upland habitats, which would cause habitats to degrade. Measures to protect the native habitats should be developed and enforced. All wetlands should be avoided and preserved onsite and should contain wetland buffers of an appropriate size to protect the environmental and functional habitat values of the wetland;
- The site appears to contain sensitive habitats and several species that should be prioritized for protection. ;
- Prior to any habitat impacts, surveys should be completed to detect the presence or absence of sensitive, rare and endangered plant animal species on the site;

Agriculture

- The subject property is located in a County-designated agricultural preserve and contains a commercial nursery. If this use is displaced, a Local Agricultural Resource Assessment model should be completed to determine the importance of the lost agricultural resources and appropriate mitigation measures should be taken.

Groundwater Resources

- Under the San Diego County Groundwater Ordinance, low density residential uses in this area require a minimum lot size of between five and eight acres per dwelling unit. Prior to any other more intensive development, well-interference analysis would be conducted to evaluate potential impacts on the nearest offsite well users.

Hydrology/Water Quality

- Future development on the proposed FTT property may generate hydrological and/or water quality offsite impacts on adjacent County lands and the San Luis Rey River;

Water Resource Impacts would be considered significant if development:

- Violates any water quality standards or waste discharge requirements, creates new sources of polluted runoff, or otherwise substantially degrades water quality;
- Substantially depletes groundwater supplies or interferes substantially with groundwater recharge;
- Places within a watercourse or 100-year flood hazard area structures which would impede or redirect flood flows, or otherwise substantially alter the existing drainage pattern of the site or area;
- Substantially increases the rate or amount of surface runoff in a manner which would result in flooding on site/off site;
- Results in or is subject to damage from inundation of mudflow;
- Results in substantial erosion or the loss of topsoil;
- Places housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map; and
- Exposes people or structures to a significant risk of loss, injury or death involving flooding.

Flood Control

- The Federal Emergency Management Agency (FEMA) and County-mapped San Luis Rey River runs through most of the parcels. Any future development would be subject to all federal floodplain/floodway regulations.

Mineral Resources

- Approximately 254 acres of the parcels have been designated as Mineral Resource Zone 2 (MRZ-2) by the State of California. Parcels are given an MRZ-2 designation when there are significant minerals present or where it is judged there is a high likelihood that they exist.

Traffic/Transportation

- Based on the proximity of the existing Pala Casino Spa Resort to the parcels proposed for acquisition, increased development and expansion of resort related activities could be accomplished once the land is taken into trust. Expansion of existing and/or related uses could significantly increase traffic and may result in significant impacts on Pala Road (SR-76) and regional roadways;
- Transfer of the parcels into trust would eliminate the County's ability to collect revenue sources, such as the Transportation Impact Fee (TIF), which are utilized to maintain public roadways;
- If future development occurs that is not consistent with the County's General Plan, potential traffic impacts should be analyzed; and
- Future road improvements should include a 10-foot wide decomposed granite pathway on the south side of SR-76. This proposed pathway is included in the Pala Pauma Community Trails Plan and is part of the County-wide interconnected trails plan.

Unanticipated Impacts

- The County opposes the expansion of tribal lands without appropriate mitigation for the community from resulting impacts.

Cumulative Fiscal Impact

- Significant cumulative impacts on the County should be analyzed as part of any BIA application that proposed to acquire land currently under the jurisdiction of the County.

By letter dated April 9, 2015, the Pala Band's response for the County of San Diego follows each concern below.

Annual amount of property taxes currently levied on the subject property.

- *San Diego Planning and Development Services ("San Diego") objects generally to the Tribe's proposed acquisition, noting the San Diego County Board of Supervisors' resolutions of March 29, 1994 and November 1, 2000 opposing all "additional lands into trust" for tribes within the area of San Diego's jurisdiction;*
- *The County speculates about potential development projects that are neither contemplated nor proposed as part of the subject acquisition;*
- *The Bureau need not indulge in the speculative "analysis" suggested by San Diego. Both the Interior Board of Indian Appeals and the federal courts have held that the Bureau, in evaluating a trust land acquisition request, need only evaluate the purpose(s) for which the subject property is proposed to be used. 25 C.F.R.0020§ 151.10(c) (requiring that the Secretary consider "the purposes for which the land will be used"); Shawano County, Wisconsin v. Acting Midwest Regional Director, 53 IBIA 62, 79 (2011) (tribe decides intended use of potential trust lands, and Bureau evaluates tribe's request to accept land into trust in context of tribe's stated intended use); accord South Dakota v. U.S. Dep't of Interior, 314 F.Supp.2d 935, 943-44 (D.S.D. 2004). The Bureau need not consider potential uses which are merely speculative. See City of Lincoln City v. U.S. Dep't of Interior, 229 F.Supp.2d 1109, 1124 (D. Or. 2002) (the Secretary need not consider speculative future uses of the land);*
- *The Tribe has clearly stated that its proposal includes no change in the land use of the Salesian Property and no ground-disturbing activity;*
- *The Bureau need only consider the actual and current, not speculative or cumulative, tax loss that would result from acquisition of the Salesian Property in trust. See 25 C.F.R. § 151.10(e) (requiring that the Bureau consider "removal of the land from the tax rolls" in reviewing a trust land acquisition request); South Dakota v. U.S. Dept. of Interior, 314 F. Supp. 2d 935, 945 (D.S.D. 2004) ("A reasonable interpretation of section 151.10(e) is that the Secretary must consider the impact of removing the land from the tax rolls at the time the application is filed."); South Dakota, County of Charles Mix v. Acting Great Plains Regional Director, 49 IBIA 84, 106-07 (2009);*
- *The Tribe is cognizant of the fact that acceptance of the Salesian Property in trust will result in property tax losses for San Diego County. Still, the annual loss of a de minimus portion¹ of San Diego's annual property tax revenue does not justify denial of the Tribe's*

¹ For the fiscal year ending June 30, 2014, San Diego County reported an annual property tax revenue of \$627,709,000, and property tax receivable amount of \$104,080,000, totaling \$731,789,000. See County of San Diego Basic Financial Statements (June 30, 2014), available at <http://www.sandiegocounty.gov.pdf>. The annual property taxes for the Salesian Property represents less than .00006% of the County's annual property tax revenue.

request, particularly in light of the Tribe's significant fiscal contributions to and within San Diego County;

- *The Tribe is one of the largest employers in San Diego County, purchases many of the goods and services used in its governmental and economic development activities from local vendors, makes sizable contributions to state and county coffers through its gaming compact with the State of California, and perhaps more importantly, the Tribe makes very significant philanthropic contributions with the County through the Pala Community Giving Program (amounting to over \$650,000 in 2013 alone — nearly 16 times the taxes collected on the Salesian Property);*
- *Recipients of funds through the Pala Giving Program include several educational, sports, and local community programs;*
- *These contributions far outweigh the loss in annual property tax revenues that would result from the acquisition of the Salesian Property in trust.*

Any special assessments and amounts thereof that are currently assessed against the property in support of your organizations.

- *Several of the agencies identified by San Diego as receiving funds through special assessments were recipients of grant funding through the Pala Giving Program;*
- *The Tribe notes that it already provides services to the Salesian Property that are normally provided by local governments. For example, the Pala Fire Department — which is wholly owned, operated and funded by the Tribe — provides fire suppression and emergency services to the Salesian Property and surrounding community. The Department was established in 1978, and today employs 30 full-time suppression personnel and 15 reserve firefighters. The Department currently runs 3 fire engines, 2 water tenders, 3 command vehicles, and 2 trucks. The Department covers an area approximately 21 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 with local fire protection districts. Indeed, the Tribe's extensive efforts to provide fire protection and emergency services extend to areas that are within San Diego's jurisdiction and responsibility. The value of these services far eclipses the value of the government services currently provided to the Salesian Property by San Diego.*

Zoning

- *Land use at the Salesian Property will not change, existing uses (previously approved by the County) will continue, and no ground-disturbing activity will occur;*

Biological Impact

- *The National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA"), and the Clean Water Act ("CWA") — will continue to protect on-site environmental resources after the Property is placed in trust for the Tribe;*
- *The County's website indicates that the Draft NCMSCP has remained "in development" (i.e., draft form) for several years. The document is neither final nor approved;*

- *The County's own informational materials make it clear that property designated "PAMA" is not subject to mandatory preservation or restoration.² Rather, the "PAMA" designation establishes "mitigation ratios" designed to "favor developing outside the PAMA and mitigating inside the PAMA." The Tribe has not proposed "developing" inside the PAMA. Therefore, the value of the PAMA will not be affected.*
- *The Draft NCMSCP area encompasses 294,849 acres.³ The Property constitutes approximately one-tenth of one percent of that total;*
- *The Property will remain subject to the ESA, which protects endangered species and their habitats. The Property will also remain subject to other federal environmental laws (including NEPA and the CWA) which protect additional rare and sensitive species about which the County has expressed concern;*

Agriculture

- *The Tribe has conducted due diligence in preparation for a Phase 1 environmental site assessment, and the Bureau will complete a Phase 1 prior to the land going into trust for the Tribe;*

Groundwater Resources, Hydrology/Water Quality and Flood Control

- *Existing groundwater, hydrology, water quality, and flood control will be unaffected because no ground disturbing activity or change in land use is proposed;*
- *The property will remain subject to federal environmental law, including federal floodplain and floodway requirements. Among other things, federal environmental law ensures protection of water resources and determines the significance of any potential impacts thereto;*

Traffic/Transportation

- *The Tribe has not proposed any development of the Salesian Property. On the contrary, the Tribe has repeatedly stated that it does not have any plans to change the Property's current uses;*
- *The Tribe has not proposed or planned any expansion of the Pala Casino Spa Resort. As the County is surely aware, any such expansion would be subject to the environmental impact assessment requirements of the Tribe's gaming compact with the State of California (among other requirements).⁴;*
- *As a sovereign entity, the Tribe is not subject to San Diego's Transportation Impact Fee;*
- *CEQA does not apply to the proposed trust acquisition;*

² See "North County Plan -- Frequently Asked Questions" available at http://www.sandiegocounty.gov/dplu/mscp/docs/NCPlan_FAQs.pdf.

³ See http://www.sandiegocounty.gov/content/sdc/pds/mscp/NCMSCP_Overview.html.

⁴ See Tribal-State Gaming Compact between Pala Band of Mission Indians and the State of California, Section 10.8, available at <http://www.cgcc.ca.gov/documents/compacts.pdf>.

- *No road improvements are required, planned, or contemplated as part of the proposed trust acquisition. Therefore, the decomposed granite pathway referenced by the County is not relevant;*

As stated in the Tribe's application, the Tribe has no plans to change the current use of the Salesian Property and is not proposing to engage in any new ground-disturbing activities on the Property. Instead, existing land uses (a commercial nursery and a camp) will continue. As such, the use is consistent with the County's zoning of the property. The proposed acquisition does not contemplate any action that would affect habitat connectivity, wildlife movement, existing habitat (and species, agriculture resources, existing groundwater, hydrology, water quality, flood control, existing mineral resources, existing roads and streets. Additionally, the trust acquisition will not cause impacts related to incompatible uses, traffic generation, groundwater capacity, biological resources, or infrastructure.

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);

4. Letter dated March 28, 2014 from the Department of Fish and Wildlife, which states:

San Diego County Draft North County Multiple Species Conservation Program (DNCMSCP)

- The proposed action would remove 367 acres of land from the Pre-Approved Mitigation Area (PAMA), in an area along San Luis Rey River that is surrounded by existing conserved federal and local lands, and contains several sensitive species;
- The fee-to-trust documentation should disclose that the proposed parcels are identified with being in the PAMA for the County's Draft North County Multiple Species Conservation Program (DNCMSCP);
- The documentation should include an analysis of how the proposed annexation may potentially conflict with DNCMSCP including effects on existing conserved open space, fragmentation habitat, and direct/indirect effects to sensitive species and wildlife movement corridors;
- Concerns with the incremental loss of PAMA lands from these annexations and how they may affect preserve assembly and habitat connectivity in the forthcoming NCMSCP;
- Concerns of the annexation of these properties could affect the County's ability to assemble the preserve in this area, including; (1) providing an east-west link along San Luis Rey river through this area connecting areas within the Lower San Luis Rey River area (Subunit 19), and (2) constraining the north-south connection to the foothills and Mount Olympus areas (Subunit 3) to the north and Keys Creek area (Subunit 21) to the south;

Conserved Lands

- The Department requests that the project documentation be updated to include an analysis of how the proposed annexation may result in potential conflicts with the existing conserved open space and other similar land uses in the area;

Habitat and Species

- Request that the documentation fully disclose of any potential impacts to sensitive habitats and species (including ESA and/or CESA listed species);
- For any mitigation planning, the Department requests that habitat and/or species impacts from the annexation property and any related future development be mitigated in the same area and located to help maintain wildlife connectivity;

Wildlife Corridors

- The Departments concerns for this area is preserving regional and local east-west connectivity between undeveloped and public lands along the San Luis Rey River Valley and Gregory Mountain foothills and providing connections to the Mount Olympus area to the north and Keys Creek to the South;
- The Department believes that if the proposed property is further developed (or existing uses expand) in the future, could undermine regional conservation planning efforts by creating an incompatible land use that may significantly impact the areas listed in the above point. This could result in direct and/or indirect biological impacts, such as habitat fragmentation; detrimental edge effects from residential landscaping, lighting, drainage, domestic pets, uncontrolled access, and an increase in traffic;
- Recommend that any future development be located in areas that have the least long-term biological value and be designed in a manner that is consistent with the DNCMSCP preserve design;
- Recommend appropriate mitigation (including possible land exchange) consistent with the DNCMSCP; and
- For this annexation (and future proposals), the Department recommends that the project documentation include a policy that would limit annexations and any related development (if absolutely necessary) to existing developed areas with little or no habitat/species value that are located outside of (and setback from) the PAMA.

By letter dated April 9, 2015, the Pala Band's response to the Department of Fish and Wildlife are as follows:

- *The Tribe has not proposed any development of the Salesian Property. On the contrary, the Tribe has repeatedly stated that it does not have any plans to change the Property's current uses. The Bureau need only address environmental impacts that are reasonably foreseeable; there is no requirement to address possibilities that are merely speculative. See City of Lincoln City v. U.S. Dep't of Interior, 229 F.Supp.2d 1109, 1124 (D. Or. 2002);*
- *Because the Tribe has not proposed any change of land use or ground-disturbing activity, existing habitat, including habitat connectivity, nearby "existing and anticipated conserved lands and species will be unaffected. Mitigation is neither necessary nor appropriate;*

- *The County's website indicates that the Draft NCMSCP has remained "in development" (i.e., draft form) for several years.⁵ The document is neither final nor approved;*
- *The County's informational materials indicate that property designated "PAMA" is not subject to mandatory preservation or restoration.⁶ Rather, the "PAMA" designation establishes "mitigation ratios" designed to "favor developing outside the PAMA and mitigating inside the PAMA." The Tribe has not proposed "developing" inside the PAMA. Therefore, the value of the PAMA will not be affected;*
- *The Draft NCMSCP area encompasses 294,849 acres.⁷ The Property constitutes approximately one-tenth of one percent of that total; and*
- *CDFW's comment letter makes reference to the protection of "existing and anticipated conserved lands" that are "associated with" (i.e., serve as mitigation for) development projects permitted and approved by the County.⁸ The reference appears to confirm that the need to conserve and protect San Diego County's remaining sensitive habitats is attributable to decades of irresponsible land use decision-making by the County, **not** to any fee-to-trust decision-making by the Bureau or the Tribe. Under these circumstances, CDFW's concerns about preserving County land use authority are entirely misplaced.*
- *The Property will remain subject to federal environmental law (including NEPA, the ESA, and the CWA), which ensures environmental protection and the mitigation of environmental impacts, protecting the habitats, species, and resources about which the CDFW has expressed concern;*
- *CDFW's "recommendation" that the Tribe be subject to the County's conservation planning efforts is entirely inappropriate. The Tribe is a separate sovereign. Just as CDFW is not bound by the State of Arizona's policies on endangered species, tribal trust land is not subject to the County's land use authority;*
- *It bears repeating that the need to conserve and protect San Diego County's remaining sensitive habitats and species is attributable to decades of irresponsible land use decision-making by local governments, **not** to any fee-to-trust decision-making by the Bureau or the Tribe. The Tribe understands (and shares) CDFW's general interest in preserving species and habitats for future generations. But that general interest provides no valid basis for rejecting or conditioning the specific trust acquisition proposed here. See, e.g., *City of Lincoln City v. United States Dep't of Interior*, 229 F. Supp. 2d 1109, 1124 (D. Or. 2002) (no authority to acquire trust property conditionally).*

5. Letter dated April 15, 2014 from the State of California, Department of Justice, which states:

Appropriate Environmental Due Diligence Must be Proposed, Mandatory Planning Completed, and Conservation Measures Adopted

⁵ See http://www.sandiegocounty.gov/content/sdc/pds/mscp/NCMSCP_news-events.html.

⁶ See "North County Plan -- Frequently Asked Questions" available at http://www.sandiegocounty.gov/dplu/mscp/docs/NCPlan_FAQs.pdf.

⁷ See http://www.sandiegocounty.gov/content/sdc/pds/mscp/NCMSCP_Overview.html.

⁸ See, e.g., CDFW at 2 (referring to "the County's Warner Ranch development").

- The State opposes the approval of the Trust Acquisition at this time on the ground that the Application fails to contemplate the federally mandated environmental review process, federally required planning, and appropriate conservation measures;
- Prior to consideration of the Trust Acquisition, the Band must at least propose the appropriate environmental review. The transfer of jurisdiction is a final agency action under the National Environmental Policy Act (42 U.S.C. § 4321 et seq., hereafter NEPA). (See *Anacostia Watershed Society v. Babbitt* (1994) 871 F. Supp. 475.)
- Contrary to the NEPA requirements, there is no indication in the NOA or the Application that the Band plans the necessary environmental due diligence in connection with the transfer;
- All of the parcels are either adjacent to, or are traversed by the San Luis Rey River. Furthermore, the parcels are within the Distinct Population Segment boundary area of the federally listed endangered Southern California Steelhead Trout (*Oncorhynchus mykiss irideus*);
- Concerned that if the parcels are accepted into Trust, alterations to the riverbed and its tributaries by the Band could occur and there would be no recourse to restore passage for the Steelhead;
- The Band's jurisdiction over the river and its tributaries could result in the State's inability to work with San Diego County and the federal government to effectively protect critical habitat for this federally listed endangered species;
- Contrary to the requirements of NEPA, the Application does not propose an environmental assessment to evaluate the impact of the proposed transfer of jurisdiction on the habitat for the species;
- The parcels are located within a Multiple Species Conservation Program (MSCP) planning area and are proposed MSCP preserve to be designated pursuant to the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.), and to be administered by San Diego County together with the California Department of Fish and Wildlife, and the United States Fish and Wildlife Service;
- Nine different endangered and sensitive species of flora and fauna are listed;
- The state is concerned that the Trust Acquisition would complicate the establishment of the proposed MSCP preserve encompassing the parcels;
- The Application does not include any discussion of the Band's alternative to the proposed preserve nor does the Application provide any details of the Band's proposed management to maintain important habitat;
- The Application does not propose an environmental assessment to evaluate the impact of the proposed transfer of jurisdiction of this critical habitat;
- 25 C.F.R. 151.11(c) requires the submission of a business plan detailing the economic benefit to a tribe of a proposed economic activity where, as here, some of the parcels at issue are not contiguous to the Band's existing "reservation";
- If the Trust Acquisition is approved, the approval should be contingent on the inclusion of appropriate management restrictions to ensure that the parcels are managed in accordance with existing State and County directives for resource protection that are already in place or planned for the parcels; and
- The approval should be contingent on the Band entering into cooperative agreements with the State and County to provide continued evaluation and management of the critical habitat. An example, in 2012 the Sycuan Band of the Kumeyaay Nation entered into an

agreement ceding approximately 608 acres to a conservation entity for the land to be managed exclusively for conservation purposes from a total of approximately 1,966 acres originally proposed to be taken into trust. Similar measures should be adopted in this instance prior to any decision regarding approval of the Trust Acquisition.

By letter dated April 9, 2015, the Pala Band's response to the State of California, Department of Justice is as follows:

Environmental Review – NEPA Compliance

- *NEPA is a procedural statute that does not dictate particular results. See, e.g., Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989). NEPA's procedural requirements apply to federal agency decision-making, not to the conduct of applicants for federal approvals. The Bureau, not the Tribe, has the discretion to determine the most appropriate level of environmental review under NEPA. In fact, it would be improper for the Tribe's application to (purport to) specify the "environmental review process" that the Bureau must take;*
- *Under the Bureau's procedures for implementing NEPA, fee-to-trust acquisitions that do not propose any change in land use are categorically excluded from further review (i.e., the preparation of an EA or an EIS). The Tribe's proposed trust acquisition does not involve any change in land use. Nor, for that matter, has the Tribe proposed any ground-disturbing activity. Current uses of the Property (a commercial nursery and a youth camp) will remain unaltered. Accordingly, it would be appropriate for the Bureau to determine that the proposed trust acquisition is categorically excluded from further NEPA review;*
- *The scope of a NEPA analysis is bounded by the concept of reasonable foreseeability. An environmental impact that is reasonably foreseeable must be identified and evaluated; on the other hand, there is no requirement to address possibilities that are merely speculative. The Tribe has repeatedly stated that it has no plans to change the current use of the Salesian Property, and the Bureau is not required to speculate about what other uses might occur in the future in order to comply with NEPA. Rio Arriba, New Mexico Board of County Commissioners v. Acting Southwest Regional Director, 38 IBIA 18, 22 (2002);*
- *The State has not identified any statute or regulation requiring the Tribe to affirmatively "propose the appropriate environmental review." The Tribe is not aware of any such statute or regulation;*
- *To date, the Tribe has submitted to the Bureau a biological resources assessment and a hazardous materials survey. An updated Phase I environmental site assessment will be completed before the Property is taken into trust. This is more than enough to satisfy the Tribe's responsibilities under relevant fee-to-trust regulations and guidance. See, e.g., 25 C.F.R. § 151.10(h); 516 DM 6, appendix 4; 602 DM 2;*

San Luis Rey River

- *Federal environmental law (including NEPA, the ESA, and the CWA, each of which protects the San Luis Rey River and associated habitat) will continue to apply after the Property is acquired in trust. As the State candidly admits, federal agencies are actively "working toward the recovery" of Southern California Steelhead Trout;*

- *Although the Tribe is a separate sovereign, it is willing to work collaboratively, on a government-to-government basis, with the County, State, and Federal governments. The State has presented no reason to believe otherwise;*
- *For decades, the Tribe has fought to protect the San Luis Rey River and its tributaries against damage from projects such as the County-approved Gregory Canyon dump. There is no basis for the State's (apparent) belief that the Tribe will interfere with efforts to protect the River;*
- *Under the Bureau's procedures for implementing NEPA, fee-to-trust acquisitions that do not propose any change in land use are categorically excluded from further review (i.e., the preparation of an EA or an EIS). The Tribe's proposed trust acquisition does not involve any change in land use. Nor, for that matter, does it include any development or other ground-disturbing activity. Current uses of the Property (a commercial nursery and a youth camp) will remain unaltered. Accordingly, it would be appropriate for the Bureau to determine that the proposed trust acquisition is categorically excluded from further NEPA review;*
- *To date, the Tribe has submitted to the Bureau a biological resources assessment and a hazardous materials survey. An updated Phase I environmental site assessment will be completed before the Property is taken into trust. This is more than enough to satisfy the Tribe's responsibilities under relevant regulations and guidance. See, e.g., 25 C.F.R. § 151.10(h); 516 DM 6, appendix 4; 602 DM 2.*

Multiple Species Conservation Program

- *The Tribe has not proposed any development of the Salesian Property. On the contrary, the Tribe has repeatedly stated that it does not have any plans to change the Property's current uses. The Bureau need only address environmental impacts that are reasonably foreseeable; there is no requirement to address possibilities that are merely speculative. See *City of Lincoln City v. U.S. Dep't of Interior*, 229 F.Supp.2d 1109, 1124 (D. Or. 2002).*
- *Because the Tribe has not proposed any change of land use or ground-disturbing activity, existing habitat (including habitat connectivity) and species will be unaffected by the trust acquisition; "Management restrictions" are neither necessary nor appropriate;*
- *The County's website indicates that the Draft NCMSCP has remained "in development" (i.e., draft form) for several years.⁹ The document is neither final nor approved.*
- *The County's informational material makes it clear that property designated "PAMA" is not subject to mandatory preservation or restoration.¹⁰ Rather, the "PAMA" designation establishes "mitigation ratios" designed to "favor developing outside the PAMA and mitigating inside the PAMA." The Tribe has not proposed "developing" inside the PAMA. Therefore, the value of the PAMA will not be affected;*
- *The Draft NCMSCP area encompasses 294,849 acres. The Property constitutes approximately one-tenth of one percent of that total;*

⁹ See http://www.sandiegocounty.gov/content/sdc/pds/mscp/NCMSCP_news-events.html.

¹⁰ See "North County Plan -- Frequently Asked Questions" available at http://www.sandiegocounty.gov/dplu/mscp/docs/NCPlan_FAQs.pdf.

- *The Property will remain subject to federal environmental laws (including NEPA, the CWA, and the ESA) protecting the habitats, species, and resources about which the State has expressed concern;*
- *The State's assertion that the Tribe will somehow interfere with efforts to preserve sensitive species or habitats are both unsupported and inappropriate. Although the Tribe is a separate sovereign, it has always been willing to work collaboratively, on a government-to-government basis, with other jurisdictions;*
- *Contrary to the State's contentions, the Bureau need not consider each separate assessor's parcel separately in making a contiguity determination; instead, the Bureau considers the proposed trust parcels as a whole, evaluating whether the property as a whole (not each "tax" parcel separately), is contiguous to the reservation. See, e.g., Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director, 58 IBLA 278, 331 (2014) (upholding Regional Director's determination that proposed trust property was contiguous to reservation, where property consisted of 7 separate tax parcels, and a portion of the southwest boundary of the property as a whole was contiguous to the reservation);*
- *The State's comment that the Tribe should be required to enter into an agreement similar to that entered into by the Sycuan Band of the Kumeyaay Nation and the County of San Diego is inappropriate, and misconstrues the nature and intent of that agreement. Importantly, that agreement was an intergovernmental agreement entered into exclusively by the Sycuan Band and San Diego County; the Bureau was not a party to the agreement, nor was the agreement required as a condition to approval of a fee-to-trust application submitted by Sycuan. Instead, as the terms of the agreement clearly state, the purpose of the agreement was, in pertinent part, to: mitigate for off-reservation impacts resulting from development contemplated as part of the proposed trust acquisition; , secure the County's non-opposition for the proposed acquisition; and, vacate certain existing title restrictions.¹¹ Further, unlike the subject application, the Sycuan Band's application contemplated significant development, including: a combined outdoor events center/RV spaces development to be managed as part of the Band's gaming operation; fifty new homes in three separate development areas; pow wow grounds for the Band's annual Traditional Gathering and Pow Wow Event; a secondary access road to provide for controlled access to and from the Band's Reservation; and relocation of an existing Equestrian Center. Here, there are no reasonably foreseeable impacts requiring mitigation that would result from approval of the Tribe's request, as the Tribe has not proposed any development of the Salesian Property;*
- *It bears repeating that the need to conserve and protect San Diego County's remaining sensitive habitats and species is attributable to decades of irresponsible land use decision-making by local governments, not to any fee-to-trust decision-making by the Bureau or the Tribe. The Tribe understands (and shares) the State's general interest in preserving species and habitats for future generations. But that general interest provides no valid basis for rejecting or conditioning the specific trust acquisition proposed here.*

¹¹ See County of San Diego Approval of Intergovernmental Agreement (January 9, 2011 (sic)), available at <http://www.standupca.org/off-reservation-gaming/contraversial-applications-in-process/sycuan/BL%20Sycuan%20Agreement.01.02.12.pdf>.

See, e.g., City of Lincoln City v. United States Dep't of Interior, 229 F. Supp. 2d 1109, 1124 (D. Or. 2002).

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.

While the United States currently holds approximately 11,592 acres more or less of land in trust for the Tribe, a large portion of their land base is of a mountainous rocky terrain with elevations ranging from 330 feet to 550 feet above mean sea level, surrounded by foothills of the Palomar Mountain range and within a major flood zone and terrace of the San Luis Rey river and its tributaries; Pala Creek and Trujillo Creek. Much of the land is owned in a pattern which leads to inefficient housing sites for their tribal members, limits future economic development and self-determination of the Pala Band of Mission Indians.

The parcels are requested to be acquired by the United States in trust for the Pala band of Mission Indians to promote, enhance, and achieve the maximum degree of self-governments, self-sufficiency and self-determination in all tribal affairs. The Pala Band exerts their continued recognition and treatment as sovereigns to protect the rights of their tribal members and their land. Sovereignty is an internationally recognized power of a nation to govern itself. Treaties were agreements between sovereigns that granted peace, alliances, trade, and land rights to the newcomers. Tribal Governments used treaties to confirm and retain such rights as the sovereign

rights of self-government, fishing and hunting rights and jurisdictional rights over their lands. Treaties did not, as is commonly assumed, grant rights to Indians from the United States. Tribes ceded certain rights to the United States and reserved rights they never forfeited.

The Band's ability to exercise governmental authority over the lands and its uses, and to protect it for future generations, will promote the health, welfare, and social needs of its members and their families.

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

Currently the Salesian parcels consist of widely variable terrain, including flood plain areas of the San Luis Rey River and the steep, heavily vegetated foot of Gregory Mountain. The northern portion is occupied by a commercial nursery. Several buildings and structures are located in the southwest corner. These buildings make up a non-operational Pala Rey Youth Camp and Retreat, which includes a kitchen/mess hall, chapel, swimming pool, and six dormitory cabins.

The Pala Band proposes no change in land use or ground disturbing activity as part of the fee-to-trust request. For the foreseeable future, the Band intends to continue the existing uses of the lands.

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 2014-2015 tax years, the total tax assessed on the subject parcels was \$40,654.78. 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 April 9, 2015. The Pala Band of Mission Indians and its seven business entities is one of the larger employees in northern San Diego County. As such, the Pala Band makes significant positive overall economic distribution in San Diego County.

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 Salesian property into trust. The Pala Band of Mission Indians is prepared to assume jurisdiction over the lands. The property is contiguous and compact, thereby facilitating the Band's successful governance and minimizing potential impacts to the state and local governments.

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.

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. All emergency medical and fire protection services will continue to be provided by the Pala Tribal Fire Department, centrally located in the Pala Village. 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 July 17, 2015, 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 July 5, 2007, 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 US.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

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San Diego Treasurer & Tax Collector - 7013 2630 0001 5557 5875
1600 Pacific Highway, Suite 162
San Diego, CA 92101-2474

County of San Diego - 7013 2630 0001 5557 5882
Office of the Chief Administrative Officer
1600 Pacific Highway, Room 209
San Diego, CA 92101

San Diego County Sheriff's Department - 7013 2630 0001 5557 5899
P.O. Box 939062
San Diego, CA 92193-9062

San Diego County Department of Public Works - 7013 2630 0001 5557 5905
5510 Overland Avenue, Suite 410
San Diego, CA 92123

Department of Planning and Development Services - 7013 2630 0001 5557 5912
5510 Overland Ave. Suite 310
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Jack Wood- 7013 2630 0001 5557 5929
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3191 Los Verdes Drive
Fallbrook, CA 92028

Chairperson – 7013 2630 0001 5557 5936
Barona Reservation
1095 Barona Rd.
Lakeside, CA 92040

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36190 Church Rd., Suite 1
Campo, CA 91906

Chairperson - 7013 2630 0001 5557 5950
Ewiiapaayp Band of Kumeyaay Indians
4054 Willows Road
Alpine, CA 91901

Chairperson - 7013 2630 0001 5557 5967
Jamul Indian Village
P.O. Box 612
Jamul, CA 91935

Chairperson - 7013 2630 0001 5557 5974
La Jolla Band of Luiseno Indians
22000 Highway 76
Pauma Valley, CA 92061

Chairperson - 7013 2630 0001 5557 5981
La Posta Band of Mission Indians
8 Crestwood Road, Box 1
Boulevard, CA 91905

Chairperson - 7013 2630 0001 5557 5998
Los Coyotes Band of Cahuilla & Cupeno Indians
P.O. Box 189
Warner Springs, CA 92086

Chairperson - 7013 2630 0001 5557 6001
Manzanita Band of Mission Indians
P.O. Box 1302
Boulevard, CA 91905

Chairperson - 7013 2630 0001 5557 6018
Mesa Grande Band of Mission Indians
P.O. Box 270
Santa Ysabel, CA 92070

Chairperson - 7013 2630 0001 5557 6025
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Pauma Valley, CA 92061

Chairperson - 7013 2630 0001 5557 6032
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Santa Ysabel, CA 92070

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2005 S. Escondido Blvd.
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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

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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: 56 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.310 Documents.

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

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

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

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

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

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

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

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

§4.311 Briefs on appeal.

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

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

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

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

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

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

§4.312 Decisions.

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

§4.313 Amicus Curiae; intervention; joinder motions.

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

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

§4.314 Exhaustion of administrative remedies.

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

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

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

§4.315 Reconsideration.

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

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

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

§4.316 Remands from courts.

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

§4.317 Standards of conduct.

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

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

§4.318 Scope of review.

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

APPEALS TO THE BOARD OF INDIAN
APPEALS IN PROBATE MATTERS

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

§4.320 Who may appeal.

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

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

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

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

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

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

§ 4.321 Notice of transmittal of record on appeal.

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

§ 4.322 Docketing.

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

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

§ 4.323 Disposition of the record.

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

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

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

§ 4.330 Scope.

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

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

- (1) Tribal enrollment disputes;

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

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

§4.331 Who may appeal.

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

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

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

(c) Where otherwise provided by law or regulation.

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

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

(1) A full identification of the case;
(2) A statement of the reasons for the appeal and of the relief sought; and

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

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

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

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

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

§4.333 Service of notice of appeal.

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

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

§ 4.334 Extensions of time.

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

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

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

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

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

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

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

§ 4.336 Docketing.

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

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

§ 4.337 Action by the Board.

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

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

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

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

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

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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: