



United States Department of the Interior

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

IN REPLY REFER TO:

SEP 12 2014

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7013 2630 0001 5557 6872

Honorable Bo Mazzetti
Chairman, Rincon Band of Luiseno Indians
P.O. Box 68
Valley Center, CA 92082

Dear Chairman Mazzetti:

This is notice of our decision upon the Rincon Band's application to have the below-described property accepted by the United States of America in trust for the Rincon Band of Luiseno Indians of the Rincon Reservation. The land referred to herein is in the County of San Diego, State of California, being more described as follows:

Mowry - (520.00 acres)

PARCEL 1:

THE SOUTH HALF, THE WEST HALF OF THE NORTHEAST QUARTER, THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.

Assessor's Parcel Number: 133-190-04

PARCEL 2:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.

Assessor's Parcel Number: 133-190-07

TAKE PRIDE
IN AMERICA 

Boris – (5.14 acres)

TRACT 51, TOWNSHIP 11 SOUTH, RANGE I WEST, SECTION 2, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

Assessor's Parcel Number: 188-050-01

Fenske – (5.49 acres)

TRACT 62, BEING A PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP OFFICIAL PLAT THEREOF.

Assessor's Parcel Number: 133-120-12

Page – (60.00 acres)

PARCEL 1:

THE NORTHERLY 660 FEET OF THE SOUTHERLY HALF OF THE NORTHWEST QUARTER OF SECTION 36, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE NORTHERLY 330 FEET THEREOF.

PARCEL 1A:

AN EASEMENT OF INGRESS AND EGRESS OVER THE WESTERLY 30 FEET OF THE SOUTHERLY ONE-HALF OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

Assessor's Parcel Number: 133-190-19

PARCEL 2:

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF .

EXCEPTING THEREFROM THE NORTH 660 FEET THEREOF.

Assessor's Parcel Number: 133-190-17

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 Reservation was originally established by Executive Order of March 2, 1881 and Trust Patent dated September 13, 1893 and January 20, 1971.

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 Department of the 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 November 1, 2011 (Mowry), November 6, 2012 (Boris), July 29, 2013 (Fenske) and re-issued January 15, 2014 (Page), 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; Office of the Governor, State of California, Department of Justice; U.S. Honorable Dianne Feinstein, House of Representatives, 52nd District; San Diego County Assessor; San Diego Treasurer & Tax Collector; County of San Diego, Board of Supervisors; San Diego County Sheriff's Department; Chairperson, Barona Group of Capitan Grande Band; Chairperson, Campo Band of Mission Indians; Chairperson, Ewiiapaayp Band of Kumeyaay Indians; Chairperson, Inaja -Cosmit Band of Mission Indians; Chairperson, La Jolla Band of Luiseno Indians; Chairperson, Jamul Indian Village; Chairperson, La Posta Band of Mission Indians; Chairperson, Los Coyotes Band of Cahuilla & Cupeno Indians; Chairperson, Manzanita Band of Mission Indians; Chairperson, Mesa Grande Band of Mission Indians; Chairperson, Pala Band of Mission Indian; Chairperson, Pauma Band of Mission Indians; Chairperson, San Pasqual Band of Mission Indians; Chairperson, Iipay Nation of Santa Ysabel; Chairperson, Sycuan Band; Chairperson, Viejas Band of Mission Indians. Regular Mail: Bureau of Indian Affairs, Regional Office; and Denise Turner Walsh, Attorney.

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

Mowry:

1. By Letter dated December 8, 2011 from the County of San Diego, Land Use and Environment Group stating its concerns which include:

- **Annual amount of property taxes;**
- **Special assessments and amounts;**
- **Any governmental services provided by the County, transportation and circulation, fire and emergency services, floodplain management, multiple species conservation program; and**
- **Current zoning which includes changes to the General Plan on August 3, 2011, general plan, zoning, community plan, mineral resources, hydrology and water quality, public health, cultural resources, visual resources, air quality, climate change, hazardous materials, biological resources, noise.**

By letter dated February 13, 2012, Rincon Band's response to the above as follows:

- *In the Tribe's application and in the Notice - the Tribe states that it does not intend to change the current use of the property as open space, and have no plans to develop the property. City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director, 49 IBIA 75, 82(2009).*
- *The Tribe noted in its application letter, acceptance of the Mowry property in trust will not have a significant impact on the County's tax revenue because the amount of property taxes assessed is small in comparison to the County's annual property tax revenue. The Tribe contributions to and within the County are extensive, and far more than the property tax loss. The Tribe made a charitable contribution of \$315,000 in 2011 to local businesses, schools and centers.*
- *The Tribe states that the loss of taxes and the annual property tax assessment is de minimus, due to the Tribe's contributions to the local community and San Diego County outweighs the loss of the taxes.*
- *The Tribe states that it will continue to use the Mowry property as vacant, open space and for purposes of habitat preservation. There is no project contemplated by this transaction, and thus no impacts to county maintained roadways or public services will result from acquisition of the property in trust.*
- *The Tribe owns and operates a fire department and abides by the International Fire Code as well as the regulations and procedures governing the Bureau's Fire Department programs. The Rincon Fire Department consists of 21 full time personnel who provide emergency services to the Rincon Reservation and surrounding non-trust lands 24 hours per day, 7 days per week. Several crew members are licensed paramedics at the Rincon Fire Department.*

- *The Mowry property will remain under the jurisdiction of FEMA despite the property going into trust.*
- *The Tribe has no plans to develop the Mowry property, thus, the County's comment regarding the effect of this acquisition on its habitat conservation planning efforts are based on speculation.*
- *As the Tribe indicated in its application, the intended use, of the Mowry property (vacant, open space and habitat preservation) is consistent with the County's current zoning regulations, and is not inconsistent with the Pala-Pauma Subregional Plan.*
- *The Tribe has no intention of conducting mining activities on the Mowry property.*
- *The wells and wastewater system servicing the Mowry property are not considered to be an environmental concern.*
- *No historic or cultural resources will be disturbed as a result of this acquisition.*
- *With no change in land use of the Mowry property the air quality, climate change or greenhouse gas levels, hazardous materials, biological resources and noise will not be an issue.*

The County's comments are directed at potential future development, such comments are merely speculative. The County's generalized complaints about "loss of authority" do not raise any sort of cognizable claim. See e.g., Stop the Casino 101 v, Salazar, 2009 U.S. Dist. LEXIS 38144 (N.D.Cal. April 21, 2009).

2. **Letter dated December 30, 2011, from the State of California, Department of Justice comments which include:**

- **Evaluation as an Off-Reservation Acquisition;**
- **Sufficient need for the acquisition;**
- **Description of the ultimate purpose for which the land will be used and lacks sufficient information to comply with NEPA; and**
- **Result in a loss of tax revenue.**
- **The State objects to the proposed land acquisition because one of the parcels in questions is contiguous only to trust property and not to the Tribe's reservation and it must be evaluated pursuant to the federal regulation for off- reservation.**
- **Plus, the Tribe has not expressed a necessary need for the land to be taken into trust, nor has it adequately represented the purpose for which the land will be used, thus preventing an adequate environmental assessment.**
- **The BIA must also consider the cumulative impacts of all the status of the individual fee parcels that would be completely surrounded by tribal lands if the Trust Acquisition parcels are taken into trust and it fails to address the**

significant question of assess to those non-trust parcels if owned by non-tribal members.

By letter dated June 29, 2012, the Rincon Tribe's response as follows:

- *The Mowry property is contiguous to the Tribe's Reservation, bordering the Reservation on its westerly and northerly boundaries. Therefore, permit the Bureau to evaluate the acquisition of the Mowry property pursuant to 25 C.F.R. 151.10.*
- *There is no requirement that the Tribe show trust status for the land is necessary to achieve its stated need. Aitkin County, Minnesota v. Acting Midwest Regional Director, Bureau of Indian Affairs, 47IBIA 99, 109 (2008); South Dakota v. U.S. Department of the Interior, 423 F.23 790, 801 (8th Cir. 2005); Shawano County, 53 IBIA at 78. In its application, the Tribe's stated desire for transfer of the property into trust is part of its comprehensive plan for restoration of its aboriginal land base to secure the Tribe's ability to exercise governmental authority over the land and ensure the permanency of the Tribe's restoration efforts with respect to its aboriginal reservation land base. The Tribe's application demonstrates detailed information to permit the Bureau to reasonably conclude that the Tribe's stated need is adequate under the applicable criteria.*
- *The Mowry application is consistent with the purposes of the Indian Reorganization Act.*
- *The Tribe response that the loss of taxes and the annual property tax assessment is de minimums, due to the Tribe's contributions to the local community and San Diego County outweighs the loss of the taxes.*
- *The State itself recognizes 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 stated that it does not have plans to change the current use of the Mowry property. The NEPA requirement is addressed in factor 6 of this Notice of Decision.*
- *The Bureau need only consider the present and actual, not speculative or cumulative, tax loss resulting from the proposed land acquisition. Shawano County, 53 IBIA at 80. The Bureau need not consider tax revenue that might accrue as a result of future increases or development. Id. As the Tribe noted in its application letter, acceptance of the Mowry property in trust will not have a significant impact on the County's tax revenue because the amount of property taxes assessed on the property is small in comparison to the County's annual property tax revenue. Moreover, the Tribe's financial contributions to and within the County are extensive, and far outweigh the de minimums property tax revenue*

loss that would result from this acquisition. In addition to funds funneled to San Diego County as a result of the Tribe's operation of its Harrah's Rincon Casino and Hotel, the Tribe made substantial charitable contributions of \$315,000 in 2011, to over 80 organizations.

BORIS:

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

- 1. Letter dated December 27, 2012, from the County of San Diego, Planning & Development Services, opposes the expansion of tribal lands without appropriate mitigation for the community from resulting impacts. Further, no assurance that the land use on the subject property will not change in the future. The County of San Diego concerns are as follows:**
 - **Annual amount of property taxes;**
 - **Special assessments and amounts;**
 - **Governmental services; and**
 - **Zoning.**

By letter dated September 8, 2014, the Rincon Band's response is as follows:

- *Acceptance of the Boris property in trust will not have a significant impact on the County's tax revenue because the amount of property taxes assessed on the property is small in comparison to the County's annual property tax revenue. The total San Diego County property tax revenue in fiscal year 2012/2013 is projected to be over three billion dollars (\$3,821,244,316.40). See <http://www.sdtreastax.com/press-releases.html>. Property taxes paid by the Tribe in the annual amount of \$954.51 for the Boris property is de minimus in comparison to the County's overall property tax revenue. For 2012/2013, of the total property tax revenue received by the County was approximately 0.000000249790362% for APN 188-050-01.*

Moreover, the Tribe's financial contribution to and within the County are extensive, and far outweigh the de minimus property tax revenue loss that would result from this acquisition. In addition to funds funneled to San Diego County as a result of the Tribe's operation of its Harrah's Rincon Casino and Hotel, the Tribe made substantial charitable contributions throughout 2013 in excess of \$256,000.00.

- *In the Tribe's application and the Notice of Application it is reiterated that the Boris property is part of the Tribe's overall plan for restoration of its original reservation land base. The Tribe wants to ensure that the land is maintained and protected and has no plans to develop or change the current use of the property. In addition =, when land is within or contiguous to a reservation, the Secretary need only consider the criteria set forth in 25 C.F.R. 151.10 (a) through (h). Jefferson County, Oregon Board of Commissioners v. Northwest Regional Director, 47 IBLA 187, 188 (2008).*

- *If, the Tribe proposes a major federal action that action would be subject to the National Environmental Policy Act (NEPA). However, this acquisition does not contemplate any actions that would affect traffic generation, groundwater capacity, biological and other sensitive resources, as no change in land use is proposed. None of the County's ordinances, regulations, plans or requirements governing water or biological resources is implicated as a result of this acquisition because the acquisition does not contemplate a change in land use.*
- *Impacts to the San Diego County General Plan, the Tribe intended use for the Boris property is vacant and open space and will not impact the County's current zoning regulations.*

FENSKE:

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

1. **Letter dated August 28, 2013, from the County of San Diego/Planning & Development Services, Services, opposes the transfer of tribal lands to trust, stating the following:**
 - **Annual amount of property taxes;**
 - **Special assessments and amounts;**
 - **Governmental services; and**
 - **Zoning.**

By letter dated January 15, 2014, the Rincon Band's response is as follows:

- *The Fenske parcel is a former allotment located within the exterior boundaries of the Rincon Reservation.*
- *The Notice clearly states that the property is vacant and that the Tribe does not propose any change in land use. Many of the County's comments are directed at potential future development.*
- *The County comments that the loss of taxes for Fiscal Year 2012/2013 is \$928.10 for the Fenske property. Also, the County comments that loss of this revenue on an annual basis will be compounded based on assessed values in future years and future development of the Fenske property. The County further comments that the application, in conjunction with other pending and approved fee-to-trust applications of County Indian tribes, will have a cumulative fiscal impact on the County. The Bureau need only consider the present and actual, not speculative or cumulative, tax loss resulting from the proposed land acquisition. See 25 C.F.R. sec. 151.10(e) (requiring that the Bureau consider "removed of the land from the tax rolls"): Shawano County, Wisconsin v. Acting Midwest Regional Director, 53 IBIA 62, 80 92011).*

- *Prior to fiscal year 2012/2013, the County did not collect taxes on this property. As the Tribe noted in its application letter, the County has indicated to the Tribe that the property is considered "non-taxable". The acceptance of the Fenske property in trust will not have a significant impact on the County's tax revenue because the amount of property taxes assessed on the property is small in comparison to the County's annual property tax revenue.*
- *The Tribe's financial contribution to and within the County are extensive, and far outweigh the de minimus property tax revenue loss that would result from this acquisition. In addition to funds funneled to San Diego County as a result of the Tribe's operation of its Harrah's Rincon Casino and Hotel, the Tribe made substantial charitable contributions in the amount of \$126,209.00 in 2012 and \$130,041.00 in 2013, the recipient of which include: American Cancer Relay for Life, Casa de Amparo, Human Rights Campaign, Multiple Sclerosis Society, San Diego Humane Society, San Diego Pride, Valley Center Sesquicentennial Event, Casa Familiar, Valley Center Rotary Club, Escondido Chamber of Commerce, San Diego North Economic Development Council, The Pacific Arts Movement, Cal State University San Marcos, Chicano Federation of San Diego County, The Japan Society, New Village Arts Association of Carlsbad, San Diego Latino Film Festival, The Angel's Depot, Wildomar Chamber of Commerce, San Diego AIDS Walk, California Center for the Arts Escondido, San Diego Convention & Visitors Bureau, Social Venture Partners, I love a Clean San Diego, Escondido Rotary Foundation, 22nd District Agricultural Association (Jr Livestock Auction) San Diego Asian Film Foundation, San Diego North Chamber of Commerce, Valley Center Chamber of Commerce, Valley Center Chamber of Commerce, Wounded Warrior Foundation, Inland Empire Race for the Cure, San Diego Hispanic Chamber of Commerce, The Movement Foundation, Escondido Humane Society and World Trade Center of San Diego.*
- *The Tribe will continue to use the Fenske property as vacant, open space. There is no project contemplated by this transaction, and thus no impacts to County-maintained roadways or public services will result from acquisition of the property in trust. The County's speculation about what might occur on the Fenske property in the future. City of Eagle Butte, 49 IBIA at 82 (2009).*
- *The County acknowledges that the Fenske parcel is not subject to County land use authority because it is located within the boundary of the Rincon Reservation.*
- *There is no project contemplated by this transaction, and thus no impacts to County-maintained roadways or public services will result from acquisition of the property in trust.*
- *The acquisition does not contemplate any action that would affect hydrology or water quality, as no change in land use is proposed. None of the County's ordinances, regulations, plans or requirements governing traffic impacts, groundwater capacity*

and biological resources is implicated as a result of this acquisition because the acquisition does not contemplate a change in land use.

- *The Tribe has no plans to change the current use of the Fenske property, and the County's concern regarding potential future use – including use for gaming activities is speculation. City of Eagle Butte, 49 IBIA at 82.*

PAGE:

In response to our reissued notification dated January 15, 2014, we received the following comments:

- 1. Letter dated February 14, 2014 from the County of San Diego, Planning & Development Services, opposes the 60 acres Page property because of the following:**
 - **Concerns on transferring the easement identified as Parcel 1A in the legal description;**
 - **The annual amount of property taxes currently levied on the subject property allocated to your organization;**
 - **Any special assessments and amounts thereof that are currently assessed against the property in support of your organizations;**
 - **Any government services that are currently provided to the property by your organization; and**
 - **If subject to zoning, how the intended use is consistent, or inconsistent, with current zoning.**

By letter dated May 1, 2014, the Rincon Tribe's response as follows:

- *Parcel 1A is an easement, a right of use over the property of another which is noted as exceptions 7 and 10 on the Chicago Title Company title commitment and acceptable under the federal standards applicable to trust acquisitions.*
- *The fee interest held by the Tribe in APN: 133-190-17, however, is subject to the use rights of the easement owner. The legal effect of acquisition of the property in trust by the United States will be neutral on, and without detriment to, the rights of the easement holder because the easement is a covenant that runs with the land. The Tribe has expressly acknowledged the existence and force and effect of the easement. In Resolution No. 2011-10, the Tribe explicitly states, in reference to the ALTA Title Policy Order No. 930016564-U50, that it, "has reviewed said commitment, including the Standard and Special Exceptions as contained in Schedule B, Section II, and has determined that these exceptions are acceptable to the Tribe in that they will not interfere with the Tribe's current or future use of the Page property". The Bureau is authorized to accept parcels into trust when the conveyance will not affect or deprive an easement holder of their rights or where the Bureau recognizes the easement rights by acknowledging the same in its*

decision. *Bunney v. Pacific Regional Director, Bureau of Indian Affairs*, 49 IBIA 26, 33 (3/26/2009).

- *The County's letter sets forth very few relevant comments regarding the proposed land acquisition. Instead, the County's comments focus on the speculative future development of the Page property for gaming-related purposes and the cumulative fiscal impacts from loss of tax revenue and regulatory control over the property once it is acquired into trust. The Bureau need not consider the potential effects of any speculative future use of the subject property. City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 75, 82 (2009). *The County's generalized complaints about "loss of authority" do not raise any sort of cognizable claim. See, e.g., Stop the Casino 101 v. Salazar*, 2009 U.S. Dist. LEXIS 38144 (N.D. Cal. April 21, 2009).

2. Letter dated February 20, 2014 from Department of Fish and Wildlife commenting on the Page parcel with the following concerns:

- **Draft North County Multiple Species Conservation Program (DNCMSCP)**
- **Conserved Lands**
- **Wildlife Corridors**
- **Habitat and Species**
- **Future Development**

By letter dated September 3, 2014, the Rincon Tribe's response as follows:

- *The Page property in the Notice that it does not intend to change the current use of the property as open space, and has no plans to develop the property. The Bureau does not need to consider the potential effects of any speculative future use of the Page property. City of Eagle Butte, South Dakota v. Acting Great Plains Regional Director*, 49 IBIA 75, 82 (2009).
- *The DFW's comments regarding the habitat conservation planning has no effect because of there is no change in the land use.*
- *The Tribe is finalizing a Habitat Conservation Plan ("HCP") that has been in development over the past 10 years. Meetings between the Tribe and the Department of the Interior in 2003 regarding conflicts between the Mission Indian Relief Act and Endangered Species Act led to the decision to prepare a habitat conservation plan under section 10 of the ESA. This cooperation allowed for the development of a comprehensive biological database for the Plan Area to be based on the GIS databases established for the NCMSCP. In regard to Preserve design, this HCP looked to the basic tenets applied to the development of the NCMSCP preserve design as guidelines for the development of the Plan Preserve. Importantly, the preliminary Preserve design emphasizes habitat connectivity with the NCMSCP.*

- *With the no change in the land use the NEPA, Conserved Lands, Wildlife Corridors and the Habitat and Species will not be affected.*

The County of San Diego comment letter dated November 6, 2013 was received in response to the Notice of Application for the “Page” parcel, with the following concerns:

- **legal description;**
- **property taxes; and**
- **Zoning.**

By letter dated January 17, 2014, Rincon Tribe’s responded to the County of San Diego, Planning & Development services clarifying the legal description and on all the County’s concerns on taxes and zoning regarding the subject property.

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 516DM 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

The Rincon Band has a total of 4,026 acres (6.29 square miles) and 3,457 acres held in trust for the Tribe; 250 acres are held in trust for the Tribe, but have been assigned to individual tribal members for their exclusive use. 319 acres are held in trust for individual allottees. The Rincon Indian Band of Luiseno Indians is a federally recognized Indian Tribe by the Secretary of Interior and is organized pursuant to the Articles of Association passed and approved on March 15, 1960, as amended, and as such, is the beneficial owner of the Rincon Reservation, over which the Tribe exercised jurisdiction.

Mowry:

The Tribe’s comprehensive plan for the Mowry property acquisition is the restoration of its aboriginal land base. The Tribe wants to ensure that the property is adequately maintained and protected well into the future and that the Tribe continues to be the beneficial owner of the property. The only way to ensure this, is the transfer of the property into trust for the Tribe.

Since the Mowry property is contiguous to the Reservation, acquisition of the property in trust will help expand the “buffer zone” between the Tribe and surrounding non-Tribal lands. The property is almost entirely surrounded by trust and other federal lands, and bordered by fee land

along only its southern boundary. Furthermore, acquisition of the Mowry property closes the gap between the tribe and the neighboring La Jolla Band of Luiseno Indians. Closing the gap between the two reservations not only protects the Tribe, but also the La Jolla Band from encroachment and other problems that may arise as a result of neighboring owners of fee land.

The Tribe'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. The Rincon Tribe has sought to diversify its economy and land base so that it is not as heavily dependent on its gaming enterprise, which is not a guaranteed future source of revenue.

Boris:

The Tribe's comprehensive plan for the Boris property acquisition is the restoration of its aboriginal land base. The Tribe wants to ensure that the property is adequately maintained and protected well into the future and that the Tribe continues to be the beneficial owner of the property. The only way to ensure this is the transfer of the property into trust for the Tribe.

The Tribe has no immediate plans for development of the property, it is expected that, given anticipated population growth, the Boris property may be used for residential purposes for tribal members and families at some point in the future.

Fenske:

The Tribe's comprehensive plan for the Fenske property acquisition is the restoration of its aboriginal land base. The Tribe wants to ensure that the property is adequately maintained and protected well into the future and that the Tribe continues to be the beneficial owner of the property. The only way to ensure this is the transfer of the property into trust for the Tribe

Majority of the Reservation is rugged terrain generally unsuitable for development, or is subject to environmental constraints which would make development difficult or, in some cases, impossible.

The acquisition will allow the Tribe to maintain the property as open space on the Reservation and may provide much needed land for tribal housing and/or economic development should the need arise. Merely forty percent (40%) of the Tribe's membership currently resides on the Reservation. The Tribe anticipates that on-reservation housing needs will grow in the future as a result of tribal population growth as well as an increase in the desire of tribal members to live on the Reservation.

With the Tribal growth, an estimated twenty (20) additional housing units will be needed on the Reservation over the next thirty years to accommodate new housing for the members currently residing on the Reservation.

Page:

The Tribe's comprehensive plan for the Page property is the restoration of its original reservation land base. Additionally, the Tribe wants to ensure that the property is adequately maintained and protected well into the future and that they continue to be the beneficial owner of the property. The only way to ensure this is the transfer of the property into trust for the Tribe.

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

Factor 2 – Proposed Land Use

Mowry:

The Mowry property consists of a small, single family residence which is currently occupied by a tribal member who acts as a caretaker for the residence and property. The property is used as open space. The Tribe intends to continue to use the property as open space and potential habitat preservation for threatened and endangered species. Plans to use this property for something other than open space are merely at the initial stage, no concrete plans for development of the property have been made. The Tribe does not plan to use the property for gaming purposes and, as a result, this fee-to-trust application is not subject to the special provisions as contained in Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. § 2719) as it relates to the transfer of land into trust to be used for gaming.

The Tribe intends to use the Mowry property as open space and potential habitat preservation for threatened or endangered species. Use of a portion of the Mowry property for recreational purposes has been discussed as part of the Tribe's overall plans for future development of its lands. However, no studies have been conducted regarding use of the property for recreation, and no concrete plans for development of the property have been made. Even if a portion of the property is developed for recreational purposes at some point in the future, the vast majority of the property will be used as open space and habitat preservation.

Boris:

The Tribe intends to continue to use the Boris property as vacant, open space. The Tribe has no concrete plans for development of the property. The Tribe has identified the Boris property as a potential site for tribal member and family housing at some point in the future.

Fenske:

The Fenske property is used as open space. The Tribe has no concrete plans for development on the property and intends to continue to use the property as open space. The Tribe has identified the property as a potential site for construction of a senior care facility at some point in the future.

Page:

The Page property is used as vacant, open space for purpose of habitat preservation, and will continue to house the model aircraft runway.

The Tribe proposes no change in land use or ground disturbing activity as part of this request. For the foreseeable future, the Tribe intends to continue the existing use of the land.

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 for the below properties:

Mowry: APN: 133-190-04-00 - \$13,314.38
APN: 133-190-07-00 - \$ 9,073.46

Boris: APN: 188-050-0-00, \$ 0.00 – non- taxable, no property taxes have been assessed.
The property has been zoned as A70 (Limited Agricultural Use Regulation)

Fenske: APN: 133-120-12 \$ 0.00 – non- taxable, no property taxes have been assessed.

Page: APN 133-190-17 - \$3,258.04
APN 133-190-19 - \$1,630.14

All taxes due and owing have been paid in full and there are no prior year delinquencies. Transferring the subject parcels into trust will not have a significant impact on San Diego County’s tax revenue because the amount of property taxes assessed on the subject parcels is small in comparison to the County’s annual property tax revenue.

Factor 4 – Jurisdictional problems and potential conflicts of land use which may arise

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and San Diego County. Once the land is accepted into trust 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 Rincon Reservation. The 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 DM1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisition: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM2), we are charged with the responsibility of conducting a site assessment for the purpose of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 “Contaminant Survey Checklist” dated June 3, 2014 reflecting that there were no hazardous materials or contaminants on all above mentioned parcels. Additional on-site inspection will be conducted prior to any final action to accept title to the subject parcels.

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 Statement (EIS). A Categorical Exclusion requires a qualifying action; in this case, 516 DM 105I, Land Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for each acquisition mentioned above parcels with a total of 590.64 acres, more or less, where no change in land use is anticipated, was approved March 4, 2014 by this Agency.

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 Rincon Band of Luiseno Indians in accordance with to the Indian Land Consolidation Act of January 12, 1983 (96 Stat. 2517; 25 U.S.C.A. §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,

Handwritten signature of Amy H. Blutschick in cursive script.

Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

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Chairperson Barona Group of Capitan Grande Band Of Mission Indians 1095 Barona Road	7013 2630 0001 5557 6681

Lakeside, CA 92040
Chairperson 7013 2630 0001 5557 6698
Campo Band of Mission Indians
36190 Church Rd., Suite 1
Campo, CA 91906

Chairperson 7013 2630 0001 5557 6704
Ewiiapaayp Band of Kumeyaay Indians
4054 Willows Road
Alpine, CA 91901

Chairperson 7013 2630 0001 5557 6711
Inaja-Cosmit Band of Mission Indians
1040 East Valley Parkway, Unit A
Escondido, CA 92025

Chairperson 7013 2630 0001 5557 6728
Pauma Band of Mission Indians
P.O. Box 369
Pauma Valley, CA 92061

Chairperson 7013 2630 0001 5557 6735
Jamul Indian Village
P.O. 612
Jamul, CA 91935

Chairperson 7013 2630 0001 5557 6742
La Jolla Band of Luiseno Indians
22000 Highway 76
Pauma Valley, CA 92061

Chairperson 7013 2630 0001 5557 6759
La Posta Band of Mission Indians
P.O. Box 1120
Boulevard, CA 91905

Chairperson 7013 2630 0001 5557 6766
Los Coyotes Band of Cahuilla & Cupeno Indians
P.O. Box 189
Warner Springs, CA 92086

Chairperson 7013 2630 0001 5557 6773
Manzanita Band of Mission Indians
P.O. Box 1302
Boulevard, CA 91905

Chairperson
Mesa Grande Band of Mission Indians
P.O. Box 270
Santa Ysabel, CA 92070

7013 2630 0001 5557 6780

Chairperson
Pala Band of Mission Indians
35008 Pala Temecula Road PMB-50
Pala, CA 92059

7013 2630 0001 5557 6797

Chairperson
Santa Ysabel Band of Mission Indians
P.O. Box 130
Santa Ysabel, CA 92070

7013 2630 0001 5557 6803

Chairperson
Sycuan Band of Kumeyaay Nation
5459 Sycuan Road
El Cajon, CA 92021

7013 2630 0001 5557 6810

Chairperson
San Pasqual Band of Mission Indians
P.O. Box 365
Valley Center, CA 92082

7013 2630 0001 5557 6827

Chairperson
Viejas (Baron Long) Band of Mission Indians
P.O. Box 908
Alpine, CA 91903

7013 2630 0001 5557 6834

County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123

7013 2630 0001 5557 6841

San Diego, Land Use and Environment Group
1600 Pacific Highway, Room 212
San Diego, CA 92101

7013 2630 0001 5557 6858

Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, CA 92123

7013 2630 0001 5557 6865

Regular Mail:

Bureau of Indian Affairs, Pacific Region
2800 Cottage Way, Rm W-2820
Sacramento, CA 95825

Denise Turner Walsh
Attorney
Rincon Band of Luiseno Indians
P.O. Box 68
Valley Center, CA 92082

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;

(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

(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

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

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:

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