



IN REPLY REFER TO:

All BOS, Wendy Chaitin, Carolyn Ruth
Tom Mattson, Kirk Girard, Tom Hofweber

United States Department of the Interior

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



MAR 22 2010

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED -- 7009 3410 0000 1124 0338

Leonard Bowman, Chairperson
Rohnerville Rancheria
27 Bear River Drive
Loletta, CA 95551

Dear Mr. Bowman:

This is notice of our decision upon the application of the Rohnerville Rancheria to have the below described real property accepted by the United States of America in trust for the Bear River Band of the Rohnerville Rancheria of California. The land referred to herein is situated in the State of California, County of Humboldt, being more particularly described as follows:

That portion of the South Half of the Northwest Quarter and of the Southwest Quarter of Section 20, Township 3 North, Range 1 West, Humboldt Meridian, according to the Official Plat of said land, more particularly described as follows:

BEGINNING on the North line of said South Half of the Northwest Quarter at a point distant Westerly thereon 194.46 feet from the Northeast corner of said South Half of the Northwest Quarter;

thence West along said North line to the Easterly line of the Freeway as described in Deed to the State of California recorded June 5, 1956 in Book 398 of Official Records, Page 298, under Recorder's Serial No. 10072, in the Office of the County Recorder of said County;

thence along the Easterly and Northerly line of said Freeway as follows:

South 23 degrees 09 minutes 09 seconds West, 1130.95 feet to a point that bears North 6 degrees 32 minutes 09 seconds East, 3009.66 feet from the corner common to Sections 19, 20, 29 and 30, Township 3 North, Range 1 West, Humboldt Meridian, and from which point Engineer's Station "G-1" 184+50.00 P.O.T. bears North 69 degrees 14 minutes West 100 feet;

South 1 degree 02 minutes 05 seconds East 215.41 feet;

South 57 degrees 12 minutes 52 seconds West 134.66 feet;

South 12 degrees 19 minutes 56 seconds West, 410.76 feet;

**TAKE PRIDE
IN AMERICA** 

South 18 degrees 32 minutes 28 seconds East, 1094.30 feet;
South 49 degrees 00 minutes 34 seconds East, 696.68 feet;
South 76 degrees 22 minutes 29 seconds East, 358.41 feet; and
South 89 degrees 36 minutes 56 seconds East, 50 feet to the Westerly line of Singley Road (formerly Table Bluff County Road);
thence North 3 degrees 41 minutes 01 seconds West, along said Westerly line 394.26 feet;
thence North 86 degrees 15 minutes 30 seconds East 17.75 feet more or less to a point on the centerline of Singley Road (formerly Table Bluff County Road) as shown on the Record of Survey for the Bear River Band of Rohnerville Rancheria recorded October 9, 2009 in Book 67 of Surveys, Pages 43 and 44, in the Office of the County Recorder of said County;
thence Northerly and Easterly along said centerline of said Singley Road to its intersection with the East line of the Northwest Quarter of Section 20;
thence Northerly along said East line of the Northwest Quarter of Section 20 to the most Southerly corner of land described in Deed to Eugene Grover Lee and wife, recorded December 9, 1947 under Recorder's Serial No. 11661, in the Office of the County Recorder of said County;
thence North 48 degrees 30 minutes West, 259.64 feet to the most Westerly corner of said Lee land;
thence North, along the West line of land conveyed to Knudt Fidjeland and wife, by Deed recorded October 14, 1947 in Book 21 of Official Records, Page 111, in the Office of the County Recorder of said County, 672 feet to the point of beginning.

EXCEPTING therefrom an undivided one-half interest in and to all the oil, gas and other minerals on, in and under said land as reserved by George Sterling Edwards in Deed, dated October 9, 1956, and recorded December 28, 1956 under Recorder's Serial No. 21187, in the Office of the County Recorder of said County.

ALSO EXCEPTING therefrom those portions thereof conveyed to Elbert Ray Cooper and wife, by Deed recorded September 25, 1958 in Book 504 of Official Records, Page 437, under Recorder's Serial No. 13531, Humboldt County Records, in the Office of the County Recorder of said County, and to Clifford Detlefsen and wife, by Deed recorded February 27, 1962 in Book 675 of Official Records, Page 146, under Recorder's Serial No. 3456, Humboldt County Records.

ALSO EXCEPTING therefrom that portion thereof conveyed to the State of California, by Deed recorded August 5, 1994, as Instrument No. 1994-21664-3, Humboldt County Records, in the Office of the County Recorder of said County.

ALSO EXCEPTING therefrom all sub-surface oil, gas, minerals, and other commercially valuable substances lying below a depth of five-hundred feet (500'), measured vertically from the surface thereof, as reserved in the Deed recorded (to be recorded), which Deed provides as follows:

"EXPRESSLY WITHOUT ANY RIGHT TO ENTER UPON OR USE THE SURFACE OF SAID LAND"

The above described real property is identified in Humboldt County records as Assessor's Parcel Numbers 309-051-004 and 309-071-016 containing 113 acres, more or less. Based on a legal opinion obtained from the Office of Solicitor, Department of Interior, all subject parcels are contiguous to, and located adjacent to, the western side of the Rohnerville Rancheria.

Federal Law authorizes the Secretary of the Interior, or his authorized representatives, 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 exterior boundaries of an Indian reservation, or adjacent thereto, or within a tribal 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 Act of 1983 (25 U.S.C. §2202, et seq.). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

On January 22, 2007, 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; Sara J. Drake, Deputy Attorney General; Paul Dobson, Deputy Legal Affairs Secretary; James Peterson, District Director, Office of Senator Dianne Feinstein; Jimmy Smith, County Supervisor, County of Humboldt; Humboldt County Sheriff; Lolita Volunteer Fire Protection; Humboldt County Assessor; Community Development Services; Chairperson, Big Lagoon Rancheria; Chairperson, Blue Lake Rancheria; Chairperson, Hoopa Reservation; Chairperson, Karuk Tribe; Chairperson, Table Bluff Rancheria; Chairperson, Trinidad Rancheria; and Chairperson, Yurok Reservation.

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

1. Letter dated January 22, 2007 from Steven and Maretta Calkins, stating:

- *They strongly object to the proposed trust acquisition.*
- *That this is a rural agricultural property with million dollar views.*
- *They are not opposed to the Bear River Band of Rohnerville Rancheria developing the property, providing that the safeguards put in place by the State of California and the County of Humboldt are met, and the property and all of its improvements are taxed according to the State of California.*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- *The EA [environmental assessment] assesses the impact to the physical environment and appropriate safeguards have been incorporated into the project design or mitigation to ensure a less than significant impact.*
- *The tribe would not be subject to local property tax. The EA assesses the property tax loss in Section 4.1.6, which would be de minimus.*

2. Letter dated January 25, 2007 from Mike and Valerie Holmes stating:

- *They are opposed to the Tribe's transfer of property into trust.*
- *They believe there have been negative impacts on the local community, such as safety, crime, and quality of life.*
- *The Tribe has not completed the necessary road improvements concerning the casino development.*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- *The commenter's do not specify what impacts have occurred from the development of the Rancheria. Agricultural activity and rural residential continues on properties adjacent to the Rancheria.*
- *The Tribe and casino have made contributions to the local community in an amount exceeding \$200,000 since the casino's opening. In addition, the Tribe has made a \$66,000 per year commitment to the Humboldt County Sheriff's Department to fund an additional patrol officer for the southern Humboldt area and given \$500 annually to the Loleta Fire Department.*
- *No mitigation was necessary as stated in the approved Environmental Evaluation prepared in 2004 pursuant to the Compact, which analyzed the impacts of construction the existing casino.*
- *Safety and crime issues are addressed in Section 4.1.10 of the EA.*

3. Letter dated January 30, 2007 from Mike Thompson, Member of Congress

- *Requests that the deficiencies in the Environmental Assessment be fully addressed and have the document re-circulated before the BIA makes a decision on a proposed action.*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- *After careful review and consideration of the various comments received, re-circulation of the EA was not necessary as the required environmental issues were adequately addressed.*
- *The Tribe is separately involved in a road widening project with the County to address the safety concerns.*
- *The land use consistency was evaluated and the use of the land for the proposed project would not preclude the planned rural residential and agricultural uses in the immediate vicinity or the use of northern and southern portions of the Fearrien property for grazing.*
- *Effects to water quality, land use, agriculture, and traffic were assessed in Section 4 of the EA and mitigation to reduce any significant impacts was included in Section 5.*

4. Letter dated February 6, 2007 from Abigail Hudson-Crim, stated concerns that the mitigation on environmental issues is inadequate, such as:

- *Impacts on water resources including pollution of runoff, erosion, and water supply.*
- *percolation of storm water;*
- *wastewater and the proper maintenance of leachfields;*
- *solid waste disposal;*
- *The recommendation of a gravel parking lot for the RV Park.*
- *compatibility with the surrounding land use;*
- *impacts to water of the U.S.;*
- *increased emergency medical;*
- *transportation impacts;*
- *noise; and*
- *Suggestion that there be greater distance between project element and a reduced number of homes.*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- *The environmental issues have been addressed in the EA.*
- *Mitigation includes both construction and operation measures to reduce impacts to water quality from stormwater runoff. Issues concerning wastewater and proper maintenance of leachfields are addressed in Section 2.1, Section 4.2.2, and Section 5.2 of the EA.*
- *Solid waste disposal is addressed in Section 4.1.10 and represents a minimal contribution to regional landfill capacity.*
- *Hazardous materials issues related to the development are discussed in Section 4.1.12.*
- *Gravel areas can increase erosion and sedimentation impacts to downstream waterways. Impacts to waters of the U.S. are addressed in Section 4.1.4.*
- *The Tribe would be subject to Federal law regarding wetland protection and is restricted from putting dredge material or fill into the waters of the U.S.*
- *Increased emergency medical are addressed in Section 4.1.10. The Tribe provides funding to the Loleta Fire Department.*
- *Transportation impacts are analyzed in Section 4.1.7. The traffic study shows that intersections and roadways operate at an acceptable level and would continue to operate at an acceptable level of service with the project.*
- *Noise is addressed in Section 4.1.11.*
- *The project design is intended to minimize the development of the property and keep patrons of the minimart, gas station, and RV Park on the western portion of the property, near Singley Road, where they would be less likely to go on unmonitored portions of the property.*

5. Letter dated February 8, 2007 from the Native American Heritage Commission, stating that:

- *the Tribe should contact the California Historic Resources Information Center (CHRIS) to determine if the area of potential affect (APE) has been previously surveyed for cultural resources, if any known cultural resources have already*

been recorded in or adjacent to the APE. If a survey is required to determine whether previously unrecorded cultural resources are present;

- contact the Native American Heritage Commission (NAHC) for A Sacred Lands File (SLF) search of the project area; and*
- lead agencies, as the Tribe is in this case, should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, provisions for the disposition of recovered artifacts, and for the discovery of Native American human remains and unmarked cemeteries.*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- It was determined by the BIA through the issuance of the FONSI that an Environmental Impact Statement was not required.*
- A record search was conducted at the North Coast Information Center of the California Historic Resources Information System in Klamath, California, which is the official State repository of archaeological and historical records for Humboldt County, as noted in Section 3.5.3 of the EA.*
- A Cultural Resources Survey was conducted on the property and included as a confidential appendix to the EA. The review found that no prehistoric or historic-period cultural resources have been recorded within the project site.*
- The NAHC reviewed the Sacred Land file for information on July 1, 2005. They responded on July 26, 2005, indicating they had no knowledge of sacred sites in the project area. A list was provided for consultation, in which a letter was sent out. There has been no response to date.*

6. Letter dated March 1, 2007 from the State Water Resource Control Board (SWRCB) states its concern about losing enforcement over water quality impacts from the development of the land, specifically:

- Who will be able to take enforcement actions against the Tribe if the Tribe does not follow through with its obligations to protect water quality during the development of the property, or if there is an accident that causes discharge of waste to surface or groundwater?*
- What reporting requirements will be in place to notify the North Coast Water Board and neighboring property owners of discharges of waste?*
- Will the Tribe agree to waive its sovereign immunity and pay penalties to the U.S. EPA for violations of a Federal permit, or to the State Water Resources Control Board if there is an unpermitted discharge to groundwater or surface waters of the State?*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- Water quality on and near the Fearrien property is currently subject to the jurisdiction of the SWRCB and the RWQCB North Coast Region.*
- The EPA has enforcement authority for violations of Federal water quality law and the Tribe reports to the EPA regarding water quality issues.*

- *A waiver of sovereign immunity from the Tribe is not required.*
- *The Tribe will be subject to Federal law regarding wetland protection and is restricted from putting dredge material or fill into the waters of the U.S. National Pollutant Discharge Elimination System.*
- *The Tribe currently operates a wastewater treatment plant.*
- *Leachfields will be subject to EPA Underground Injection Control Program.*

7. Letter dated March 5, 2007 from the County of Humboldt, Community Development Services, Planning Division stating:

- *The current zoning is Unclassified and the current land use designation is general agriculture and single family residential (one per legal parcel).*
- *The subject property is designated as Agricultural Exclusive under the Humboldt County General Plan.*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- *Once land is transferred into trust, local land use designations and zoning would no longer apply.*
- *The Tribe acknowledges that the current zoning is Unclassified and the current land use designation is Agricultural Exclusive.*
- *The project is not consistent with the housing density or allowable uses for Unclassified zoning.*
- *The project is compatible with surrounding development, land uses, and/or zonings regarding environmental effects.*
- *The project would not preclude the use of surrounding land for agricultural or residential purposes.*
- *Non-trust lands would continue to be zoned and designated by the County.*
- *The proposed uses do not preclude use of the northern portion or southern half of the site for grazing.*

8. Letter dated March 12, 2007 from Jeff Farley, Mayor of the City of Ferndale:

- *Requests a revised environmental assessment be re-circulated to interested parties.*

By letter dated August 28, 2007, the Bear River Band's response is as follows:

- *After careful review and consideration of the various comments received, re-circulation of the EA was not necessary as the required environmental issues were adequately addressed.*

Further consideration of the issues raised by the commenting entities is contained in the analysis to follow.

Pursuant to CFR 151.10, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purpose for which the land will be used; (3) impact

on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and (6) the extent to which the applicant has provided information that allows the Secretary to comply with the implementing procedures of the Department of the Interior, 516 DM 1-7, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination. Accordingly, the following analysis of the application is provided.

Factor 1 - Need for Additional Land

The Bear River Band of Rohnerville Rancheria was originally established by deed dated December 28, 1910 by a purchase consisting of fifteen (15) acres by the United States of America, under the authority of the under the authority of the Act of April 30, 1908 (35 Stat. 70, 77). In accordance with the Act of August 18, 1958 (72 Stat. 619), the Rancheria was terminated and the lands were subdivided and distributed in fee status to eligible individual Indians and an association created under California law for purposes of managing "community" properties.

Pursuant to the California Rancheria Act (*Act of August 18, 1958, P.L. 85-671, 72 Stat. 619, as amended*), the United States terminated the federally-recognized status of the Bear River Band of Rohnerville Rancheria, California, and the status of the Rancheria as "Indian lands." Congress intended termination of the trust relationship to take place only after specific services were provided to prepare Tribes for the discontinuation of Federal aid and supervision, and only after the affected tribe consented to termination. In practice, however, Federal status was terminated without providing the preparatory services.

The Bear River Band of the Rohnerville Rancheria was included in the litigation in the Northern District of California against the U.S. Government for illegal termination and sought restoration of their trust status. A final judgment was issued on December 22, 1983, Tillie Hardwick v United States of America, C-79-1910-SW, wherein the Court ordered the Secretary of the Interior to restore the Tribe's trust status.

The Indians of the Rohnerville Rancheria were determined eligible as a Tribe, Band or Indian Community to vote in the acceptance or rejection of the Indian Reorganization Act in June 1934.

Despite the fact that the termination policy has been expressly repudiated by both Congress and the Executive branch, those tribes that have been restored are still seeking adequate federal assistance in reestablishing and strengthening their own governments, and in acquiring lands to replace those lost through termination. The lack of an adequate land base is the primary limiting factor in the efforts of restored tribes to reconstitute their tribal governments, provide housing for tribal members, and develop local economies.

Termination continues to reveal its devastating effect on the Bear River Band of the Rohnerville Rancheria as is demonstrated by their inadequate trust land base. Although the Tribe and small portions of land within the Rancheria boundaries (2.16 acres) were restored by court order, the Tribe only has 60 acres of land in Federal trust.

The Tribe currently has 300 members and only 18 residences on the existing trust land. There are 127 Tribal members living on or near the reservation and of those only 21 are under the age of 16. Therefore, the number of tribal members who are in need of a residence on the Rancheria drastically exceeds the current housing inventory and the land available for additional housing. There are an estimated 88 local Tribal members that are in need of a residence on the Rancheria. In order for the Tribe to address its Tribal member housing needs, the Tribe recognizes the need for additional land, thereby purchasing the subject parcels that are contiguous to the existing Rancheria and within the boundaries of the Tribe's ancestral homelands.

As a sovereign, the Tribe has an inherent responsibility to provide for the welfare of its members. One of those duties is clearly the re-establishment of governmental jurisdiction over ALL lands within the restored boundaries of the Rancheria.

It is our determination that the Tribe has an established need to protect and preserve the Rancheria and to provide for the cultural, economic, and self determination needs of its members in a manner consistent with tribal practices. Additionally, reestablishment of a tribal land base and assumption of jurisdiction by the Tribe will in our opinion, not only facilitate self-determination, but will aid in the promotion of economic stability.

Factor 2 - Proposed Land Use

The purpose for which the land will be used is for Tribal housing, an RV Park, a gas station with a mini mart and some associated Tribal facilities. This property would provide an area for Tribal residences near the current Rancheria and allow additional members to live in their Tribal Community, which currently is not available.

Initially, the residential site will provide for 29 residential lots, each consisting of approximately a half acre. The acquired land will also provide the Tribe with the ability to increase their financial stability and diversify the revenue base for continued effort to be self supportive, while providing services to members as well as the surrounding community. The proposed site plan, shown in the EA shows the proposed location of the RV Park and the gas station.

The subject acquisition request was received in our office on October 5, 2006. Our Notice of Application was dated January 22, 2007. The Environmental Assessment (EA) distributed for this project in July of 2007 did provide more detailed information regarding the proposed land uses.

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 2009-2010, the total tax assessed on the subject parcels was \$22,656.16. During the comment period, none of the solicited agencies indicated that any adverse impacts would result from the removal of the subject parcels from the tax rolls.

On the tax statements there are GO Bonds from Fortuna High School, Loleta Union, and College of the Redwoods. By letters dated October 16, 2006 from the Fortuna Union High School

District and letter dated June 21, 2006 from the Loleta Union School District states that it was the determination that this fee-to-trust application will not cause severe harm to their government agency. The letter dated June 23, 2006 from the College of the Redwoods states that there would be little effect to their institution. Additionally, the Bear River Casino, has made voluntary financial contributions to various programs of the Loleta and Fortuna school districts in amounts exceeding the school district's annual GO Bond assessment on the two subject parcels.

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 parcels 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 acceptance of the property into Federal trust status for the benefit of the Tribe will remove the property from State and local laws concerning health, environment, safety, labor, etc. Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now.

There will be no change in criminal jurisdiction as jurisdiction in California is subject to 18 U.S.C. § 1163 and 28 U.S.C. § 1360 (P.L. 83-280). The State of California would retain its jurisdiction to enforce its criminal/prohibitory laws against all persons and conduct occurring on the land and to adjudicate in the State courts civil causes of action arising on the land involving Indians as Parties. Police services would continue to be the responsibility of the Humboldt County Sheriff's Department which is covered by an MOU, whereby the Tribe provides \$66,000 per year to fund an additional officer in the service area.

We have had the legal land description referenced herein reviewed by the Bureau's Land Surveyor and have concluded that the legal descriptions are sufficient for the transaction. Additionally, it has determined that all subject parcels are contiguous to each other and contiguous at the southeastern boundary of the Rohnerville Rancheria at Assessor's Parcel Numbers, 309-071-01 and 309-051-09.

With regard to the County's statement that the proposed uses are not compatible uses in the Unclassified Zone District, the Tribe responded by stating the project is not consistent with the housing density or allowable uses for Unclassified zoning, but is compatible with surrounding development, land uses, and/or zonings regarding environmental effects. The project would not preclude the use of surrounding land for agricultural or residential purposes. The proposed uses do not preclude use of the northern portion or southern half of the site for grazing. Additionally, when considering the Tribe's land acquisition request, the Department recognizes the Tribe's ongoing struggle to reestablish its land base since its restoration in 1983. With its limited land base, the Tribe, as a sovereign government, has implemented a utilization plan that best meets the needs of its members. It is our determination that the needs of the Tribe in this case outweigh any jurisdictional conflicts that may exist.

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

The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for Tribes. The proposed RV Park and gas station/mini mart will be tribally owned and operated. The residences will be individually owned by Tribal members and the land status will remain as tribal land; therefore, any additional responsibilities resulting from this transaction will be minimal. However, the Department acknowledges that this whole exercise would not be required if not for the wrongful termination of the Bear River Band of Rohnerville Rancheria. As such, the Bureau of Indian Affairs will administer any additional responsibilities that may result from this acquisition.

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 January 11, 2007 reflecting that there were no hazardous materials or contaminants. An additional inspection will be required prior to formal acceptance of title by the United States.

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). An environmental assessment (EA) for the proposed action was distributed for public review and comment for the period beginning December 7, 2006 and ending January 8, 2007. Extensions of the comment period were granted to those who requested it until January 26, 2007. The EA documents and analyzes potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resources use patterns (transportation and land use and agricultural), public services, public health/hazardous materials, and other values (noise and visual resources).

Based on the analysis disclosed in the EA, review and consideration of the public comments received during the review period, responses to the comments, and mitigation measures imposed, the Bureau of Indian Affairs has determined that the proposed Federal action is not a major Federal action significantly affecting the quality of human environment within the meaning of NEPA. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.

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 Bear River Band of the Rohnerville Rancheria, California in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202).

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

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

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

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

Sincerely,


Acting Regional Director

Enclosures

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL -- RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse (10 copies) – 7009 3410 0000 1124 0192
Office of Planning and Research
P.O. box 3044
Sacramento, CA 95812-3044

Sara J. Drake, Deputy Attorney General – 7009 3410 0000 1124 0208
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Paul Dobson – 7009 3410 0000 1124 0215
Deputy Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

James Peterson, District Director – 7009 3410 0000 1124 0222
Office of Senator Diane Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

Humboldt County Supervisor – 7009 3410 0000 1124 0239
Office of County Supervisor
825 5th Street, Room 111
Eureka, CA 95501

Humboldt County Sheriff – 7009 3410 0000 1124 0246
826 4th Street
Eureka, CA 95501

Lolita Volunteer Fire Protection – 7009 3410 0000 1124 0253
P.O. Box 119
Lolita, CA 95551

Humboldt County Assessor – 7009 3410 0000 1124 0260
825 5th Street
Eureka, CA 95501

Community Development Services – 7009 3410 0000 1124 0277
County of Humboldt
3015 H Street
Eureka, CA 95501-4484

Department of Public Works – 7009 3410 0000 1124 0284
3033 H Street Room 17
Eureka, CA 95501

Chairperson – 7009 3410 0000 1124 0291
Big Lagoon Rancheria
P.O. Drawer 3060
Trinidad, CA 95570

Chairperson – 7009 3410 0000 1124 0307
Blue Lake Rancheria
P.O. Box 428
Blue Lake, CA 95525

Chairperson – 7009 3410 0000 1124 0314
Hoopa Reservation
P.O. Box 1348
Hoopa, CA 95546

Chairperson – 7009 3410 0000 1124 0321
Karuk Tribe
P.O. Box 1016
Happy Camp, CA 96039

Chairperson – 7009 3410 0000 1124 0345
Table Bluff Rancheria
1000 Wiyot Dr.
Loleta, CA 95551

Chairperson – 7009 3410 0000 1124 0352
Trinidad Rancheria
P.O. Box 630
Trinidad, CA 95570

Chairperson – 7009 3410 0000 1124 0369
Yurok Reservation
P.O. Box 1027
190 Klamath Blvd.
Klamath, CA 95548

Mayor – 7009 3410 0000 1124 0376
City of Ferndale
834 Main Street
P.O. Box 1095
Ferndale, CA 95536

Regular Mail:

Superintendent
Bureau of Indian Affairs
Northern California Agency
1900 Churn Creek Rd., Suite 300
Redding, CA 96002

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.

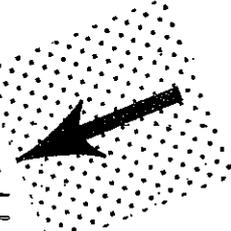
GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 65 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



§4.311

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

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

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

§ 4.321

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

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

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: