



IN REPLY REFER TO:

United States Department of the Interior

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

AUG 8 2013

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7009 3410 0000 1318 9888

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

Dear Mr. Lawson:

This is notice of our decision upon the application of the San Pasqual Band of Diegueno Mission Indians to have the below described real property accepted by the United States of America in trust for the San Pasqual Band of Diegueno Mission Indians of California. The land referred to herein is situated in the State of California, County of San Diego, being more particularly described as follows:

The land referred to herein is situated in the State of California, County of San Diego, and is described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA OF SAN DIEGO COUNTY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL THOSE PORTIONS OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 11 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SITUATED AND LYING NORTHERLY OF THE CENTER LINE OF THE COUNTY ROAD SHOWN AND DELINEATED ON ROAD SURVEY NO. 575, ACCORDING TO UNITED STATES GOVERNMENT SURVEY.

Assessor's Parcel Number: portion of 190-110-01

PARCEL 2:

THE NORTH HALF OF THE NORTHWEST QUARTER, SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND

**TAKE PRIDE
IN AMERICA** 

NORTHEAST QUARTER OF THE NORTHEAST QUARTER, ALL BEING IN SECTION 33, TOWNSHIP 11 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY.

EXCEPTING THEREFROM THAT PORTION THEREOF INCLUDED WITHIN THAT CERTAIN STRIP OF LAND 40.00 FEET WIDE AS DESCRIBED AND CONVEYED TO THE COUNTY OF SAN DIEGO FOR ROAD PURPOSES BY MRS. A. LANGER, ET AL, IN DEED RECORDED APRIL 15, 1925 IN BOOK 1071, PAGE 442 OF DEEDS, AND DESIGNATED ON THE MAP OF SAID ROAD IN THE OFFICE OF THE COUNTY SURVEYOR OF SAN DIEGO COUNTY AS NEW SURVEY NO. 375.

EXCEPTING THEREFROM THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33 HEREINABOVE DESCRIBED LYING SOUTHERLY OF THE CENTER LINE OF THE COUNTY ROAD SURVEY NO. 575, AS SAID CENTER LINE IS DESCRIBED IN DEED TO COUNTY OF SAN DIEGO, RECORDED MAY 9, 1945 IN BOOK 1875, PAGE 28 OF OFFICIAL RECORDS, SAID CENTER LINE BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, DISTANT THEREON SOUTH $89^{\circ}32'08''$ WEST, 46.50 FEET FROM THE SOUTHEAST CORNER OF SAID QUARTER QUARTER SECTION; THENCE NORTH $28^{\circ}09'00''$ EAST, 119.70 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1800.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $14^{\circ}52'10''$ A DISTANCE OF 467.14 FEET; THENCE NORTH $13^{\circ}16'50''$ EAST, 6.56 FEET TO THE BEGINNING OF A TANGENT TO THE RIGHT HAVING A RADIUS OF 400.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $116^{\circ}44'22''$ A DISTANCE OF 815.00 FEET; THENCE SOUTH $49^{\circ}58'48''$ EAST 133.00 FEET TO THE BEGINNING OF A TANGENT TO THE LEFT HAVING A RADIUS OF 500.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $50^{\circ}35'12''$ A DISTANCE OF 441.45 FEET; THENCE NORTH $79^{\circ}26'00''$ EAST, 46.83 FEET TO A POINT ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, DISTANT THEREON SOUTH $00^{\circ}12'26''$ WEST, 769.92 FEET FROM THE NORTHEAST CORNER OF SAID QUARTER QUARTER SECTION.

THE SIDELINES OF SAID 60.00 FOOT STRIP SHALL BE PROLONGED OR SHORTENED AT THEIR EASTERLY EXTREMITY SO AS TO TERMINATE IN SAID EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33.

Assessor's Parcel Number: portion of 190-110-01

PARCEL 3:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 11 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33; THENCE ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER NORTH $89^{\circ}58'47''$ WEST, 465.63

FEET TO A POINT; THENCE ALONG A LINE MEASURED AT RIGHT ANGLES FROM SAID SOUTHERLY LINE NORTH 00°01'13" EAST 611.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°58'47" WEST, 80.00 FEET; THENCE NORTH 29°58'47" WEST, 60.00 FEET; THENCE SOUTH 89°58'47" EAST, 80.00 FEET, THENCE SOUTH 29°58'47" EAST, 60 FEET TO THE TRUE POINT OF BEGINNING.

Assessor's Parcel Number: 190-110-03

PARCEL 4:

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28; LOTS 4, 5, 6, 11, 15 AND 16 OF SECTION 29 AND LOT 2 OF SECTION 32, ALL BEING IN TOWNSHIP 11 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY.

Assessor's Parcel Numbers: 190-100-01, 190-020-01, 05, and 190-031-06

The above described real property is identified in San Diego County records as Assessor's Parcel Numbers: 190-110-01; 190-110-03; 190-100-01; 190-020-01; 190-020-05; and 190-031-06, containing 533 acres, more or less. Based on a legal opinion obtained from our Office of Solicitor, the subject parcels are contiguous to the San Pasqual Reservation.

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 Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. 465). . The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

On May 6, 2011, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee to trust application from the California State Clearinghouse; Mr. Jacob Appelsmith, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California Department of Justice; James Peterson, District Director, Office of Senator Diane Feinstein; U.S. House of Representatives, 52nd District; San Diego County Assessor; San Diego County Treasurer and Tax Collector; County of San Diego, Office of the Chief Administrative Officer; San Diego County Sheriff's Department; San Diego County Department of Planning and Land Use; San Diego County Department of Public Works; Chairperson, Barona Band of Mission Indians; Chairperson, Campo Band of Mission Indians; Chairperson, Ewiiapaayp Band of Kumeyaay Indians; Chairperson, Inaja-Cosmit Band of Mission Indians; Chairperson, Jamul Indian Village; Chairperson, La Jolla Band of Luiseno Indians; 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 Reservation; Chairperson, Pauma Band of Mission Indians; Chairperson, Rincon Band of Mission Indians; Chairperson, Santa Ysabel Band of Mission Indians; Chairperson, Sycuan Band of Mission Indians; and Chairperson, Viejas Band of Mission Indians.

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

1. Letter dated July 6, 2011, from the State of California, Department of Justice states:

- The Tribe has made no showing of a need to have the land taken into trust;
- Objection to the classification of the entire acquisition as an on-reservation acquisition;
- Opposition to the issuance of a Reservation Proclamation on the ground that the Tribe's intended use of the land is inconsistent with the established reasons for creating Indian reservations, and that the primary effect of such proclamation in this instance might be to insulate a potential future application to conduct gaming on the parcels from the two-part determination provided by 25 U.S.C. §2719(b)(1)(A), irrespective of whether the acquisition, or affect parcel, is deemed an on-reservation acquisition or an off-reservation acquisition.
- The Tribe's intended use of the land is inconsistent with the established reasons for creating Indian reservations, and that the primary effect in this instance might be to insulate the potential future application to conduct gaming on the parcels from the two-part determination.
- While the Secretary may be authorized to issue a Reservation Proclamation that enlarges an existing Indian reservation in California, doing so in this instance would be contrary to the historical definition, meaning the purpose of Indian Reservations.

By letter dated August 8, 2011, the San Pasqual Band's response is as follows:

- *The Tribe has a great need for the land as their current reservation is limited in acreage, continuity, and by the character of the landscape. When the Tribe's reservation was established, the land they obtained consisted of marginal property with steep slopes and no consistent water supply. Their retained reservation land lacked the basic components of a tribal homeland such as useable land and has negatively impacted the cultural and political continuity of the Tribe for over a century. The Tribe's original reservation is comprised of 1,380 acres consisting of five separate parcels in a semi-checkerboard configuration. Much of the land is not useable. The Tribe seeks to consolidate its land holdings by obtaining the flatter parcels in the connecting valleys in order to increase access to its five parcels and provide a sense of cultural and political continuity. Acquiring the 533 acre parcel addresses both of these tribal goals. Furthermore, the Tribe currently operates a Tribal Cultural Resource Center on the land and wants to see it and the surrounding land protected for future generations to appreciate and enjoy. The Tribe needs to have the land placed into trust to achieve these goals.*
- *The Tribe maintains that this acquisition is adjacent and contiguous to its other trust land holdings and thus within the definition of on-reservation. The Secretary should classify this acquisition as on-reservation for the purpose of making its decision to take the land into trust.*
- *The modern purpose of reservations has been expanded to encompass a broad spectrum of tribal land uses. The Federal Indian Law Handbook states, "Since the Indian Reorganization Act of 1934 (IRA), Congress has supported the policy of protecting and increasing the Indian trust land base." (F. Cohen, Handbook of Federal Indian Law, 1009 (2005 ed.). Carole E. Goldberg, an Executive Editor of the Federal Indian Law handbook, recently testified before the Senate Committee on Indian Affairs on June 23,*

2011 on the purpose of the IRA. In her written testimony submitted for the Congressional Record, she writes:

“Today, trust status is sought for lands where tribes are locating housing, medical clinics, education and early childhood programs, and government offices, among others uses vital to tribal self-determination. Trust status is used to afford protection to sacred and culturally significant sites that would otherwise become the targets for culturally destructive projects...”

The Tribe considers the 533 parcel a culturally significant site and therefore intends to maintain the land in its current undeveloped state. Thus, the fact that the acquisition is for non-housing purposes is not a basis to deny the Tribe’s application because protection of culturally significant sites fits within the purpose of the IRA. Furthermore, Congress has enacted other federal statutes such as the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001) and National Historic Preservation Act (16 U.S.C. 470), which both demonstrate the federal policy of protecting cultural resources.

- *The State insinuates the Tribe’s acquisition of the 533 is really a plot to skirt the rules of a two-part determination under the Indian Gaming Regulatory Act (25 U.S.C. §2719(b)(1)(A)). The Tribe takes offense at the State’s suggestion of untrustworthiness as it has a history of fair dealing demonstrated through its current State gaming compact and Memorandum of Understanding for County law enforcement services. Furthermore, the Tribe does not need to go through the two-part determination process as it already operates a casino on another parcel of trust land 3.25 miles from the 533 parcel. In October 2010, the Tribe continued its investment in that location by adding a hotel facility suggesting its permanent attachment to the site. It would not make financial sense for the Tribe to open a new casino in such close proximity to its current casino, nor to move from its current gaming site after a recent expansion. The Tribe’s stated purpose is its true purpose, which is to maintain the land in its undeveloped state.*
- *The State adopts the County of San Diego’s reasoning that the Tribe’s current land use is compatible with County land use regulations and thus does not need to be placed into trust. However, in the same letter the State raises questions as to the Tribe’s future use for the parcel as justification for its opposition to trust status. In the same vein, the Tribe has no guarantee the rural quality of the land will be compatible with the County of San Diego’s future land use plans or regulations. Thus the only way the Tribe can guarantee the land can be maintained as open space for conservation and culturally significant events, is to assume Tribal jurisdiction over the parcel.*

2. Letter dated June 9, 2011, from the County of San Diego Land Use and Environmental Group states:

- The San Pasqual Band does not have a need to place additional land into trust.
- The County is opposed to the proposed action to take the land into trust.
- By removing this land from the County’s jurisdiction would be deleterious to the County Planning efforts, both under the General Plan and Multiple Species Conservation Plan.
- There are additional concerns regarding the location of the parcels are adjacent to an area previously proposed by the San Pasqual Band for development. There was a proposed construction of a resort, hotel, golf course, restaurants and equestrian facilities on the

southernmost parcel of the Reservation overlooking Lake Wohlford (which is directly adjacent to the proposed parcels).

- When these lands are taken into trust, the impacts of gaming and other uses of the property are expanded outside of existing reservations at an intensity that may not be compatible with the surrounding area.

By letter dated August 8, 2011, the San Pasqual Band's response is as follows:

- *The County also fails to see the Tribe's need for this parcel. As stated in our response to the State on this point, much of the Tribe's current acreage is steep, mountainous and disconnected from other tribal land holdings. The Tribe needs this flat parcel to help connect its holdings on the surrounding hillsides. The Tribe also operates a cultural center for its citizens and wants to preserve the land for future generations. Both goals fit within the concept of self-determination and the purpose of the IRA and can only be accomplished through trust status. Thus, the Tribe has more than one significant and demonstrated need for the land.*
- *The County is concerned that the Tribe will undertake future development of the site. However, the Tribe's stated proposed use is to maintain the site in its current undeveloped state. The County acknowledges this fact in its letter, stating "there is currently no proposal to change any of the lands uses, and the land is mostly undeveloped at this time..." (page 2). The County's analysis should end there but instead, devotes the majority of its letter to a discussion of hypothetical concerns. The County's cites concerns ranging from traffic, fire safety, endangered species, hazardous materials, air quality, etc. are all based on the pure speculation of future development. As the Tribe does not plan to develop this parcel, concerns related to development are moot.*
- *Furthermore, if the parcel is placed into trust status and removed from the County's jurisdiction, it will remain under federal jurisdiction. The County is concerned the Tribe will undertake a major development project. However, such a project would likely be a deemed a major federal action and in which case federal statutes such as the National Environmental Policy Act (NEPA) will apply and the County will again have a voice in the process to mitigate its array of concerns related to development. Thus, the County should not use the threat of speculative future development as an argument against trust status.*
- *The County argues both the Tribe's current use is compatible with land use plans and also is incompatible based on speculative land development as a basis to oppose the Tribe's acquisition. The Tribe intends to preserve the parcel in its current state for future generations. Just as the County has no guarantee from the Tribe regarding future uses of the land, the Tribe has no such assurance from the County about its future land use plans or regulations. However, the County will always have the protection of federal statutes to address its concerns, while no federal statutes would afford the tribe parallel protection of its goals. Thus if land remains under County jurisdiction and the County were to change its plans regarding the 533 parcel, the Tribe would have little recourse. Therefore, the Tribe's exercise of its jurisdiction via trust status remains necessary for the Tribe to achieve its goals of cultural protection and maintenance of the property's rural and undeveloped character.*

3. Letter dated June 2, 2011, from the Endangered Habitats League states:

- The subject property has been designated as Pre-Approved Mitigation Area (PAMA) by virtue of its biological value, including the critical function of providing connectivity for wildlife movement.
- There is concern about the removal of land from County environmental protection. However, it is mentioned that EHL applauds the Tribe's intention to conserve these lands, and for that reason has no objection to the transfer provided that alternative conservation mechanisms are implemented.

By letter dated August 8, 2011, the San Pasqual Band's response is as follows:

- *The League raised concerns about the removal of land from County environmental protections. However, the League is supportive of the transfer provided that "alternative conservation mechanisms" are implemented. It must be noted that once in trust status, the land will continue to be governed by federal statutes such as: National Environmental Protection Act, the Clean Air Act, the Clean Water Act, and the Endangered Species Act, designed to address the League's concerns. These federal protections provide ample assurance to the League that alternative conservation mechanisms are already in place to ensure the highest level of future conservation of the 533 parcel and its diverse biological resources.*

- 4. Letter dated May 19, 2011, from the County of San Diego Assessor's Office,** provided a copy of the Assessor's master Property Record, a tax bill from the Tax Collector's Office, and a list of taxes due for the 2010-2011 roll.

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 San Pasqual Band of Diegueno Mission Indians was originally established by Secretarial request of January 27, 1870 and the Executive Order dated January 31, 1870 authorizing reservations for Mission Indians. Additionally, the Tribe has adopted a Constitution and By Laws dated January 14, 1971.

The current San Pasqual Reservation is relatively small, consisting of five separate parcels totaling approximately 1,380 acres mostly rolling hills and steep inclines. The Subject Parcel is owned in fee by the Tribe and is generally unimproved with the exception of approximately 20 acres developed by prior owners for agricultural purposes. The existing land base is situated primarily on steep and rolling hills; only about fifteen percent, or 207 acres, of the Reservation is considered appropriate for development. Because of this limitation, beginning in 2001 the Tribe started purchasing additional lands contiguous to

and surrounding the Reservation in order to provide an economically viable land base for its membership and to re-establish and consolidate its traditional land base. The trust acquisition of the Subject Parcel will facilitate the Tribe's self-determination and self-governance by allowing San Pasqual to exercise tribal jurisdiction over land now owned by Tribal government. The ability to exercise self-determination and self-governance over the Subject Parcel will further allow the Tribe to preserve and protect the integrity and natural beauty of the Tribe's lands for future generations.

Factor 2 - Proposed Land Use

Currently the property is undeveloped consisting of boulder-strewn chaparral brush hills with steep slopes and outcroppings of granite bedrock whose natural beauty the Tribe seeks to preserve and protect for future generations. Twenty (20) acres of the subject parcel was developed by previous owners for agricultural use, which included two houses (destroyed by wildfires in 2003), a paved access road from the highway, and three dug wells. The Tribe is currently rebuilding the residential structures in compliance with the San Diego County zoning regulations and intends to use one as a Tribal cultural resources center. The Tribe has no foreseeable plans to change the current use of the Subject Parcel after it is taken into trust.

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 2012-2013 tax years, the total tax assessed on the subject parcels was \$28,068.18. 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.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel.

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 real property taxation and other land use regulations. Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now on existing trust lands.

San Diego County now has jurisdiction over the land use zoning of the subject parcel. The lands comprising the Subject Parcels are currently zoned by San Diego County for general rural use (S92) (APNs 190-110-01-00, 190-110-03-00, and 190-100-01-00) and for limited agricultural use (A70) (APNs 190-031-06-00, 190-020-05-00, and 190-020-01-00). Because the Tribe does not intend to change the current use of the land, the proposed use will remain consistent with the current zoning.

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.

The Tribe has a history of cooperation with the State and local government on mitigation of any negative effects from tribal developments. For example, the Tribe has entered into a

Cooperative Agreement with the County of San Diego with respect to road improvements associated with the Tribe's casino. Similarly, the Tribe worked with local authorities to develop a control plan to mitigate dust produced by Tribal construction on fee lands owned by the Tribe. The Tribal fire station serving the San Pasqual Reservation provides back-up support to the Valley Center Fire Protection District through a mutual aid agreement. San Pasqual has also entered into mutual aid agreements with Yuima Municipal Water District, Pauma Municipal Water District, and Moutamai Municipal Water District. Together, these documents evidence the tribe's commitment to working with the surrounding community.

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. Emergency services, such as fire support, will be provided by the Tribe. The parcels are not currently nor will they in the future be used for mining of natural resources or forestry requiring BIA management. The Tribe expects that the Bureau will be able to discharge any responsibilities that may arise in connection with the 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 22, 2010, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM).

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion requires a qualifying action in this case, 516 DM 10.5I, Land Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on January 7, 2011, and compliance with NEPA has been completed.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the San Pasqual Band of Diegueno Mission Indians of California in accordance with the Indian Reorganization Act of (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. §465). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

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

Sincerely,



Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

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Office of the Governor
State Capitol Building
Sacramento, CA 95814

Sara Drake, Deputy Attorney General - 7009 3410 0000 1318 9918
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Devin Rhinerson - 7009 3410 0000 1318 9925
U.S. Senator Dianne Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510

U.S. House of Representatives - 7009 3410 0000 1318 9932
52nd District
1870 Cordell Court, Suite 206
El Cajon, CA 92020

San Diego County Assessor - 7009 3410 0000 1318 9949
1600 Pacific Highway, Suite 103
San Diego, CA 92101

San Diego Treasurer & Tax Collector - 7009 3410 0000 1318 9956
1600 Pacific Highway, Suite 162
San Diego, CA 92101-2480

San Diego County Sheriff's Department - 7009 3410 0000 1318 9963
9621 Ridge Haven Court
San Diego, CA 92120

San Diego County Department of Public Works - 7009 3410 0000 1318 9970
5555 Overland, Suite 6101, MS O-340
San Diego, CA 92123

Department of Planning and Land Use - 7009 3410 0000 1318 9987
5201 Ruffin Road, Suite B, MS O-650
San Diego, CA 92123

San Diego Chief Administrative Office - 7009 3410 0000 1318 9994
1600 Pacific Highway, Room 209
San Diego, CA 92101

Chairperson - 7009 3410 0000 1319 0006
Campo Band of Mission Indians
36190 Church Rd., Suite 1
Campo, CA 91906

Chairperson - 7013 0600 0001 1876 3328
Ewiiapaayp Band of Kumeyaay Indians
4054 Willows Road
Alpine, CA 91901

Chairperson - 7013 0600 0001 1876 6635
Inaja-Cosmit Band of Mission Indians
309 S. Maple Street
Escondido, CA 92025

Chairperson - 7013 0600 0001 1876 6642
Jamul Indian Village
P.O. Box 612
Jamul, CA 91935

Chairperson - 7013 0600 0001 1876 6659
La Jolla Band of Luiseno Indians
22000 Highway 76
Pauma Valley, CA 92061

Chairperson - 7013 0600 0001 1876 6666
La Posta Band of Mission Indians
P.O. Box 1120
Boulevard, CA 91905

Chairperson - 7013 0600 0001 1876 6673
Los Coyotes Band of Chauilla & Cupeno Indians
P.O. Box 189
Warner Springs, CA 92086

Chairperson - 7013 0600 0001 1876 6680
Manzanita Band of Mission Indians
P.O. Box 1302
Boulevard, CA 91905

Chairperson - 7013 0600 0001 1876 6697
Mesa Grande Band of Mission Indians
P.O. Box 270
Santa Ysabel, CA 92070

Chairperson – 7013 0600 0001 1876 6703
Pala Reservation
35008 Pala Temecula Rd. PMB 50
Pala, CA 92059

Chairperson - 7013 0600 0001 1876 6710
Pauma Band of Mission Indians
P. O. Box 369
Pauma Valley, CA 92061

Chairperson - 7013 0600 0001 1876 6727
Rincon Band of Mission Indians
P.O. Box 68
Valley Center, CA 92082

Chairperson - 7013 0600 0001 1876 6734
Santa Ysabel Band of Mission Indians
P.O. Box 130
Santa Ysabel, CA 92070

Chairperson – 7013 0600 0001 1876 6741
Sycuan Band of Mission Indians
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Office of the Secretary, Interior

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state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in §4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The OHA deciding official must lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in

support thereof as the OHA deciding official may require. The OHA deciding official will then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

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

SOURCE: 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

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

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

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

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

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

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

§4.311 Briefs on appeal.

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

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

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

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

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

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

§4.312 Decisions.

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

§4.313 Amicus Curiae; intervention; joinder motions.

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

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

§ 4.314 Exhaustion of administrative remedies.

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

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

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

§ 4.315 Reconsideration.

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

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

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

§ 4.316 Remands from courts.

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

§ 4.317 Standards of conduct.

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

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

§ 4.318 Scope of review.

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

APPEALS TO THE BOARD OF INDIAN
APPEALS IN PROBATE MATTERS

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

§ 4.320 Who may appeal.

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

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

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

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

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

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

§4.321 Notice of transmittal of record on appeal.

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

§4.322 Docketing.

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

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

§4.323 Disposition of the record.

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

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

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

§4.330 Scope.

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

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

- (1) Tribal enrollment disputes;

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

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

§4.331 Who may appeal.

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

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

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

(c) Where otherwise provided by law or regulation.

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

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

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

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

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

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

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

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

§4.333 Service of notice of appeal.

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

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

§ 4.334 Extensions of time.

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

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

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

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

- (1) The decision appealed from;
- (2) The notice of appeal or copy thereof; and

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

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

§ 4.336 Docketing.

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

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

§ 4.337 Action by the Board.

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

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

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

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

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

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comments regarding the recommended decision with the Board in accordance with §4.339 of this part.

§4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

§4.350 Authority and scope.

(a) The rules and procedures set forth in §§4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-153 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *administrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

§4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to: