



United States Department of the Interior

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

FEB 16 2016

IN REPLY REFER TO:

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7015 0640 0003 6796 1429

Honorable Vincent P. Armenta
Chairperson, Santa Ynez Band
of Chumash Mission Indians
P.O. Box 517
Santa Ynez, CA 93460

Dear Chairman Armenta:

This is our Notice of Decision for the application of the Santa Ynez Band of Chumash Mission Indians to have the below described property accepted by the United States of America in trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California.

Real property in the unincorporated area of the County of Santa Barbara, State of California, described as follows:

PARCEL ONE: (APN: 143-242-01)

THOSE PORTIONS OF LOTS 5 TO 9 INCLUSIVE, OF BLOCK 20 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, AS SAID LOTS AND BLOCK ARE DELINEATED ON THE MAP THEREOF, RECORDED OCTOBER 13, 1882, IN VOLUME B OF MISCELLANEOUS RECORDS, AT PAGE 441, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF MAIN STREET WITH THE NORTHERLY LINE OF VALLEY STREET AS DELINEATED ON THE ABOVE SAID MAP; THENCE (1) ALONG THE SAID WESTERLY LINE OF MAIN STREET NORTH 0° 24' 40" WEST 61.68 FEET; THENCE (2) FROM A TANGENT WHICH BEARS SOUTH 75° 32' 55" WEST ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 1950 FEET THROUGH ANGLE OF 6° 09. 44" FOR A DISTANCE OF 209.73 FEET TO A POINT ON THE ABOVE SAID NORTHERLY LINE OF VALLEY STREET; THENCE (3) ALONG



SAID NORTHERLY LINE, NORTH 89° 35' 20" EAST 206.68 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF THE WESTERLY HALF OF MAIN STREET, WHICH WAS ABANDONED BY BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA, BY RESOLUTION #14448 AND RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610, IN BOOK 1314, PAGE 337 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ALL MINERALS, OIL, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAMES KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREIN ABOVE DESCRIBED AS RESERVED TO SHERMAN T. MANSFIELD, ET UX., IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 4, 1954 AS INSTRUMENT NO. 2111, IN BOOK 1213, PAGE 417 OF OFFICIAL RECORDS OF SAID COUNTY.

PARCEL TWO: (APN: 143-242-02)

THOSE PORTIONS OF LOTS 10 TO 18 INCLUSIVE OF BLOCK 19 IN THE TOWN OF SANTA YNEZ, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SAID LOTS AND BLOCK ARE DELINEATED ON THE MAP THEREOF RECORDED OCTOBER 13, 1882 IN BOOK B OF MISCELLANEOUS RECORDS, AT PAGE 441, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THE ABOVE SAID LOT 18, BEING THE INTERSECTION OF THE WESTERLY LINE OF TYNDALL STREET WITH THE NORTHERLY LINE OF VALLEY STREET, ACCORDING TO THE ABOVE SAID MAP; THENCE (1) ALONG SAID WESTERLY LINE OF TYNDALL STREET NORTH 0° 24' 40" WEST 103.34 FEET; THENCE (2) NORTH 74° 07' 45" WEST 59.31 FEET; THENCE (3) FROM A TANGENT WHICH BEARS SOUTH 89° 35' 20" WEST ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1950 FEET THROUGH AN ANGLE OF 11° 37' 44" FOR A DISTANCE OF 395.78 FEET TO A POINT IN THE EASTERLY LINE OF MAIN STREET, AS SAID STREET IS DELINEATED ON THE ABOVE SAID MAP; THENCE (4) ALONG SAID EASTERLY LINE OF MAIN STREET, SOUTH 0° 24' 40" EAST 79.95 FEET TO AN INTERSECTION WITH THE ABOVE MENTIONED NORTHERLY LINE OF VALLEY STREET; THENCE (5) ALONG SAID NORTHERLY LINE OF VALLEY STREET, NORTH 89° 35' 20" EAST 450.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS OILS, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREIN ABOVE DESCRIBED AS RESERVED TO SHERMAN T. MANSFIELD ET UX., IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 4, 1954 AS INSTRUMENT NO. 2112, IN BOOK 1213, PAGE 421 OF OFFICIAL RECORDS OF SAID COUNTY.

TOGETHER WITH THE PORTION OF THE EAST ½ OF MAIN STREET, ABANDONED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA BY RESOLUTION #14448 AND RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610, IN BOOK 1314, PAGE 337 OF OFFICIAL RECORDS, RECORDS OF SAID COUNTY.

SAID LAND IS ALSO SHOWN ON A MAP RECORDED IN BOOK 148, PAGE 16 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL THREE:

THAT PORTION OF MAIN STREET NOW ABANDONED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, SAID ORDER TO ABANDON RECORDED MAY 12, 1955 AS INSTRUMENT NO. 8610 IN BOOK 1324, PAGE 337 OF OFFICIAL RECORDS, WHICH LIES SOUTHERLY OF THE SOUTHERLY LINE OF HIGHWAY AND NORTHERLY OF THE NORTHERLY LINE OF VALLEY STREET.

PARCEL ONE: (APN: 143-252-01)

THOSE PORTIONS OF LOTS 10, 11, 12, 13, 14 AND 15 IN BLOCK 15 OF THE TOWN OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SAID BLOCK AND LOTS ARE DELINEATED ON THE MAP THEREOF RECORDED IN BOOK 1 AT PAGE 41 OF MAPS AND SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT INTERSECTION OF THE LINE COMMON TO SAID LOT 15 AND LOT 16 IN SAID BLOCK 15 WITH THE NORTHERLY LINE OF VALLEY STREET AS DELINEATED ON THE ABOVE SAID MAP; THENCE 1) ALONG SAID NORTHERLY LINE OF VALLEY STREET, SOUTH 89° 35' 20" WEST 300.00 FEET TO AN INTERSECTION WITH THE EASTERLY LINE OF TYNDAL STREET, AS SAID STREET IS DELINEATED ON SAID MAP; THENCE 2) ALONG SAID EASTERLY LINE OF TYNDAL STREET, NORTH 0° 24' 40" WEST 79.98 FEET; THENCE 3) NORTH 89° 35' 20" EAST 147.14 FEET; THENCE 4) SOUTH 85° 30' 15" EAST 153.42 FEET TO A POINT ON THE EASTERLY LINE OF THE ABOVE SAID LOT 15; THENCE 5) ALONG SAID EASTERLY LINE OF SAID LOT 15, SOUTH 0° 24' 40" EAST 66.86 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS, OIL, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE THEREOF BY DEED RECORDED JULY 10, 1957 AS INSTRUMENT NO. 13634 IN BOOK 1458, PAGE 542 OF OFFICIAL RECORDS.

PARCEL TWO: (APN: 143-252-02)

LOTS 16, 17 AND 18 IN BLOCK 15 OF THE TOWN OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED IN BOOK 1, PAGE 41 OF MAPS AND SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITHIN THE LAND GRANTED TO THE STATE OF CALIFORNIA ON FEBRUARY 23, 1954 AS INSTRUMENT NO. 3105 IN BOOK 1218, PAGE 446 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

The subject property encompasses approximately 2.13 acres, more or less, commonly referred to as Assessor's Parcel Numbers: 143-242-01 and 143-242-02 (Mooney); and 143-252-01 and 143-252-02 (Escobar). The property is adjacent to highway 246 which runs along the Santa Ynez Reservation and is contiguous to the Reservation.

Note: The total acreage is consistent with the Bureau of Indian Affairs; Bureau of Land Management Indian Land Surveyor Legal Description Review dated April 22, 2015.

The Tribe has no plans to change the uses of the properties from its current landscaping and recycled water irrigation uses.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Reorganization Act of 1934 (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. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

In his comments, Mr. Marino states that the Santa Ynez Band are not an Indian tribe eligible to transfer land under the provisions of the Indian Reorganization Act (*Carcieri v. Salazar*), particularly because they did not become a political governmental entity and Indian tribe until 1964 and was not acknowledged by the United States as an Indian tribe until 1979.

The Santa Ynez Reservation was originally established pursuant to Departmental Order under the authority of the Act of January 12, 1891 (26 Stat. 712).

On February 24, 2009, the United States Supreme Court issued its decision in *Carcieri v. Salazar*. The decision held that Congress granted limited authority to the Secretary of the Interior under the Indian Reorganization Act (IRA) to acquire land-in-trust for Indian tribes. To acquire land-in-trust under section 465 of the IRA, a tribe must have been "under Federal jurisdiction" at the time the IRA was passed in June 1934.

Pursuant to 25 U.S.C. § 478, the Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted to accept the provisions of the Indian Reorganization Act of June 18, 1934¹. The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934.²

On August 12, 2015, and again on August 24, 2015 we issued, by certified mail, return receipt requested, notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Mr. Joe Dhillon, Senior Advisor for Tribal Negotiations, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; Office of the Honorable Senator Diane Feinstein; Santa Barbara County Assessor; Santa Barbara County Treasurer and Tax Collector; Santa Barbara County Sheriff's Department; Santa Barbara County Department of Public Works; Santa Barbara County Department of Planning and Development; Chair, Santa Barbara County Board of Supervisors; County Executive Officer, Santa Barbara County; Doreen Far, Third District Supervisor, Santa Barbara County; Kevin Ready, Senior Deputy County Counsel, Santa Barbara County; City of Santa Barbara; Buellton City Hall; City of Solvang; Lois Capps, U.S. House of Representatives; Stand Up for California; Santa Ynez Valley Concerned Citizens; Women's Environmental Watch; Santa Ynez Valley Alliance; Santa Ynez Community Service District; Andi Culbertson, Cathy Christian, Attorney at Law, Nielson Merksamer Parrinello Gross & Leoni LLP; Rob Walton; Kathy Cleary; Preservation of Los Olivos; Linda Kastner; Erica Williams/Ryan Williams; Kelly Patricia Burke/Sean Wiczak; William Devine, Esq.; and Superintendent, Southern California Agency.

Note: Both Notices that went to Erica Williams/Ryan Williams and Kelly Patricia Burke/Sean Wiczak were unclaimed and returned after three notice attempts from USPS.

In response to our notices dated August 12, 2015 and August 24, 2015, we received the following comments:

1. Letter dated September 29, 2015 from Kenneth R. Williams, Attorney at Law for Preservation of Los Olivos P.O.L.O. stating the following:
 - The land currently occupied by the Santa Ynez Band was not reserved from federal domain lands and is not "reservation" under federal law;
 - The subject parcel is part of a previous, and still pending, 5.68 acre fee-to-trust application submitted by Santa Ynez on April 25, 2005. Comment letters and related file information should be included in the record for this new application for the same property;

¹ See "Ten Years of Tribal Government Under I.R.A", United States Services, 1947, at Interior's website at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>.

² See, *Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA*, 53 IBIA 62 (February 28, 2011) and *Stand Up for California, etal, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians*, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.

- Requested to include POLO's comments and pleadings on the 6.9 acre and the 1400 acre fee-to-trust applications;
- The Supplemental Notice description of the application is ambiguous regarding the applicable regulations. It states that the application was made pursuant to both 25 CFR Section 151.10 and 151.11. There should be no ambiguity – the proposed acquisition is not contiguous to the claimed reservation;
- The cumulative impacts of all the Santa Ynez Band's fee-to-trust applications should be included in the environmental documents. The applications are part of a long term program to connect the Santa Ynez Band's current properties and the proposed 400 acquisition and beyond. It should be assessed as such;
- POLO urges that BIA delegate the preparation of environmental documents to a separate and independent agency. The BIA's obligation to resolve issues in favor of tribes and Indians contradicts the NEPA mandate that agencies fairly evaluate, and take an unbiased "hard look" at the environmental impacts of the proposed actions.

2. Letter dated October 12, 2015 from James E. Marino, Attorney at Law stating the following:

- The assertion that the 2 parcels are adjacent to or abutting a tribal reservation is false. The approximate 75 acre parcel that abuts the proposed parcels are merely lands gifted to the United States and owned in fee simple. The United States has allowed the Santa Ynez Band of Mission Indians to occupy and use this land and is either not fully aware of the facts or is ignoring the fact that the land is being used to construct and operate and continue to operate a class III gaming casino in violation of 25 U.S.C. 2703 (4) and 25 C.F.R. 573.5 (12) and (13);
- The application asserts that the land must be brought in trust to utilize "grey-water" irrigation is false and an excuse to cover the real purpose, which is an improper attempt to extend the boundary of lands owned by the Santa Ynez Band in the direction toward other fee lands. The Santa Ynez Band believes they can evade the criteria required for all fee to trust transfers set out in 25 C.F.R. 151.11 for off-reservations acquisitions and instead claim they have the ability to use a lesser standard for fee-to-trust approval set out in 25 C.F.R. 151.10 for reservation lands;
- The Santa Ynez Band of Mission Indians did not become a political governmental entity and Indian tribe until 1964 and was not acknowledged by the United States as an Indian tribe until 1979. The original unorganized community of individual Indians did not exist as an Indian tribe on or before June 18, 1934 and had no government and no intergovernmental relationship with the United States. The unorganized community was not under the jurisdiction of the United States.

Accordingly they are not an Indian tribe eligible to transfer land into trust under the provisions of the Indian Reorganization Act [I.R.A. 25 U.S.C. 465] [Carciari v. Salazar, [2009] 555 U.S.] 379.

- The Consortium is a patent conflict of interest and improperly corrupts the fee to trust process by law.³
- The proposed transfer does not contain any of the analysis required by law including the National Environmental Policy Act or any assessment of the cumulative impacts of several fee to trust proposals nor does it demonstrate any credible need for the band currently earning millions of dollars from their gambling casino and business enterprises; and
- The proposed transfer is also violative of the tribal-state gaming compact.

By letter dated November 11, 2015 the Santa Ynez Band's responses for each of the concerns listed above are:

- *The comment period expired on October 9, 2015 for all but one party which was granted an extension of time to respond. The comments received by Mr. Marino dated October 12, 2015 for some unnamed clients. The Tribe contends that the comments were received after the deadline and should not be considered;*
- *Any environmental issues would have been addressed during NEPA, which is a separate process;*
- *The issue regarding the Tribe's Reservation has been successfully litigated by the Tribe in both federal and state court. The Tribe has a Reservation and is a legitimate Tribe;*
- *The POLO/POSY letter is in error regarding the prior 5.68 application. That application was withdrawn by the Tribe and therefore it is not applicable to this application;*
- *The Department of Interior has determined the Tribe was "under Federal Jurisdiction in 1934" by Solicitor's Opinion dated May 23, 2012. Further, the Tribe participated in IRA elections and voted to accept the provisions of the IRA, which the IBIA has held to be dispositive of the fact and thus the statutory authority for this acquisition is Section 5 of the IRA;*
- *Mr. Marino claims the Tribe does not need the land because it has "wealthy" members. The policies set forth in §151.3 are subsumed in the criteria for need and purpose of the acquisition. Thus, it is permissible for the BIA to consider both whether the Tribe already owns an interest in the land and whether the acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing. It has long been held by the IBIA and courts that it is unreasonable to require the Secretary to specify why holding the land in trust is more beneficial for tribes. The IBIA and courts have also long held that tribes need not be suffering financially to need more land in trust; and*

³ James Marino, Attorney at law comments received by the BIA on October 19, 2015, p. 2.

- *The status of the tribe or its members' economic well-being is not determinative of being able to further the policies of self-determination, self-government and self-sufficiency.*

Both of the commenters stated that the land was not a Reservation. According to our records the Santa Ynez Reservation was established pursuant to Departmental Order under the authority of the Act of January 12, 1891 (26 Stat. 712).

Additionally, it was mentioned that the current land that houses the gaming facility is not trust land for the Tribe. The property in question is under the jurisdiction of the Bureau of Indian Affairs in trust for the Santa Ynez Band with a Tract number of T5061. With that said, the proposed property of 2.13 acres is contiguous to the Reservation.

The regulation at 25 CFR § 151.10 states, "The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation..." The definition of "Indian reservation" in 25 CFR 151.2(f), states:

Unless another definition is required by the act of Congress authorizing a particular trust acquisition, *Indian reservation* means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the state of Oklahoma or **where there has been a final judicial determination that where a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary (emphasis added).**

The Department defined "contiguous" as "two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point." The regulations are consistent with the Interior Board of Indian Affairs conclusion, in *County of Sauk v. Midwest Regional Director*, 45 IBIA 201 (2007), *Aff'd, Sauk County v. U.S. Department of the Interior*, No. 07-cv-543-bbc (W.D. Wisc. May 29, 2008), finding parcels to be contiguous despite surface easements for public roads that separated the land surfaces of the properties.

It was stated by both commenters that the cumulative impacts analysis of all of the fee-to-trust applications by the Santa Ynez Band should be included within the NEPA documents. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on January 27, 2016 and states that the proposed action is not related to other actions with individually insignificant but cumulatively significant environmental effects. A 6.9-acre property across SR-246 from the subject property was recently taken into trust for the Tribe for recreational/educational/commercial purposes. Also, the Tribe has submitted an application for the acquisition of approximately 1,400 acres nearby for residential purposes. Finally, the Tribe previously submitted an application for the trust acquisition of a 5.68-acre property that included the subject property but was subsequently withdrawn. Also, the Tribe owns several other properties in the general area. No significant impacts, cumulative or otherwise were found to result from the 6.9-acre or 1400-acre acquisitions. As noted above, the proposed action would

not result in any change in land use and would therefore not result in environmental impacts. Thus, it would not contribute to significant environmental effects.

Mr. Marino mentioned that the assertion that the land must be brought in trust to utilize "grey-water" irrigation is false and an excuse to cover the real purpose, which is an improper attempt to extend the boundary of lands owned by the Santa Ynez Band in the direction toward other fee lands. The Tribe has recently been granted a permit by the Central Coast Regional Water Quality Control Board to conduct recycled water irrigation on the subject property. This irrigation is currently being conducted using high quality recycled water (Title 22 disinfected tertiary effluent) within the landscaped areas of the subject property.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations. Accordingly, the following analysis of the application is provided.

Factor 1 - Need for Additional Land

Mr. James Marino states that there is no demonstrable need to transfer this 2 acre parcel in this latest fee to trust transfer proposal amongst many others currently being sought, and any approval is arbitrary, capricious, contrary to law and should not be allowed.

The regulation states that the Secretary will consider the Tribe's need for additional land, not whether the Tribe needs additional land held in trust. Also, Section 5 of the IRA indicates that the taking of land in trust is not limited to landless or impoverished Tribes. Thus, a financially secure tribe may also need additional trust land to facilitate self-determination, Indian housing and economic development, especially if the existing trust land base is already developed.

The members of modern day Santa Ynez Band of Chumash Mission Indians are the direct decedents of the original Chumash peoples, whose numbers totaled 18,000-22000 prior to Spanish contact. Prior to the Mission Period, there were around 150 independent Chumash villages along the coast of California. Subsequent to Spanish contact, the Chumash population dwindled to a mere 2700 in 1831.

Once the Mission period began, the Chumash contributed both skilled craftsmen and religious leaders to the benefit of the Santa Ines Mission. Subsequent to the Mission Period, the Mexican governors of California issued land grants to tribal leaders and several heads of families of the "Santa Ines Indians." The land grants were not honored by the United States Government after taking over California, therefore the Tribe was forced from the lands near the Mission where they had lived throughout the Mexican occupation/rule of California.

The Band eventually resettled at Sanja de Cota creek area which was owned by the Catholic Church. Although it was documented that many of the tribal families resided on the land since about 1835, a formal lease of the land from the Catholic Church was not made until 1877. In 1898, the Catholic Church entered into an agreement with the United States to convey the property in trust for the tribe. In 1903, the Santa Ynez Land and Improvement Company also conveyed land to the United States to be held in trust for the tribe.

The original hundred acres makes up the Southern portion of the reservation. In July of 1979, approximately 26.35 acres (the Northern portion) was added for tribal housing. In February of 2004, an irregularly shaped 12.6 acre parcel of land which is primarily riparian in nature and separated the Northern and Southern portions of the reservation, was acquired in Trust for the Tribe. The reservation now includes a total holding of approximately 139 acres in Trust. However, even with uniting the reservation, the Tribe continues to have a very limited useable trust land base.

The Santa Ynez Band of Chumash Mission Indians is a strong functioning tribal government with many capabilities and a growing economy. These are some of the tools necessary to sustain future generations, increase the Tribal enrollment, and build an ever-stronger functioning Tribe in the future. Another critical element is land as a basic resource. The Santa Ynez Tribal Government, and the life of its members, relies on the highest and best use of its land resources to provide for government infrastructure, housing, service facilities and to generate income and opportunities that contribute to Tribal self-sufficiency. While the Tribe has managed to move ahead on its existing land base, it recognizes the need to acquire more useable land for the Reservation to both develop a portion for housing, as well as land-bank and hold for development by future generations. The proposed action of transferring the land into trust for the benefit of the Tribe will meet the following needs:

1. Allow more controlled management of the Tribe's natural resources, such as water.
2. Bring land within the jurisdictional control of the Tribe, meeting the need for consistent planning, regulatory, and development practices under the single jurisdiction of the Tribe.
3. Help meet the Tribal long range needs to establish a greater reservation land base to meet its needs by increasing the reservation land base by approximately 2.13 acres.
4. Help meet the need for a land base for future generations.
5. Help to increase the Tribe's ability to exercise self-determination and to expand Tribal Government.
6. Help meet the need to preserve cultural resources in the area by returning land to Tribal and DOI control in order to protect Tribal land from dumping, environmental hazards, unauthorized trespass, or jurisdictional conflict.

The current Reservation lands are highly constrained due to a variety of physical, social, and economic factors. A majority of the lands held in Trust for Santa Ynez are located in a flood plain. This land is not suitable for much, if any, development because of flooding and drainage problems. The irregular topography and flood hazards are associated with the multiple creek corridors which run throughout the property resulting in severe limitations of efficient land utilization. The current reservation has a residential capability of approximately 26 acres, or

18%, and an economic development capability of approximately 16 acres, or 11%. The remaining 99 acres, or 71%, of the reservation is creek corridor and sloped areas, which are difficult to impossible to develop. Therefore, the size of the usable portion of the Santa Ynez Reservation amounts to approximately 50 acres, much of which has already been developed.

Undeveloped property is at a minimum within the Santa Ynez Reservation. Lands that are undeveloped are of insufficient size for development. The northern portion of the reservation has the Tribal Health Clinic and Tribal Government facilities, and the remainder of the land utilization is specifically designed to provide residential opportunities for tribal members and lineal descendants. Any further development in the area would be appropriate only for small scale residential or, as on these parcels, landscape improvements.

The remaining acreage held in Trust for the Tribe constitutes the southern Reservation. This is a long, narrow parcel of land which at times narrows to only a couple of hundred feet in width. Such narrowness imposes severe constraints on development of the property. Given the limited usable land the Tribe has to work with, it is in need of additional lands for purposes of enhancing its self-determination, beautification of the Reservation and surrounding properties, and protection and preservation of invaluable cultural resources.

A significant archaeological/cultural resource was discovered on property adjacent to the Reservation. This resource includes portions of an ancient village site which the Tribe is making every effort to preserve and protect. Nevertheless, the proximity of that property to the properties which are the subject of this application suggests the potential for such significant resources to be encountered as well.

Further, placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property and its natural resources. Once the lands are placed under the jurisdiction of the Federal and tribal governments, the tribal right to govern the lands and resources becomes predominant. This is important, as the inherent right to govern its own lands is one of the most essential powers of any tribal government. As with any government, the Tribe must be able to determine its own course in addressing the needs of its government and its members. Trust status is crucial to this ability.

Specifically, the Tribe must be able to manage and develop its property pursuant its own interests and goals. If the land were to remain in fee status, tribal decisions concerning the use of the land and resources would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals. Thus, in order to ensure the effective exercise of tribal sovereignty and development prerogatives with respect to the land, trust status is essential.

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

Factor 2 - Proposed Land Use

The Tribe has no plans to change the use of the subject property. The purpose of the proposed fee-to-trust transfer will be to maintain such landscaping, access, and recycled water irrigation uses under the jurisdiction of the Tribe for future long range planning, including the ability to use its resources in a more environmentally proactive way. The property will serve to enhance the Tribe's land base, which supports tribal self-determination.

Factor 3 – Impact on State and Local Government's Tax Base

Santa Barbara County would experience a de minimis decrease in the amount of assessable taxes in the County by placing the property into trust and removing it from the County tax rolls. The County of Santa Barbara expected to generate \$651 million for the fiscal year 2013-2014. Parcels accepted into federal trust status are exempt from taxation and would be removed from the County's taxing jurisdiction. In the 2013-2014 tax years, the total taxes assessed on the subject parcels were as follows:

143-252-01	\$4,513.94
143-252-02	\$2,602.56
143-242-01	\$2,363.72
143-242-02	\$14,567.00

The total collectable taxes on the property for 2013-2014 were \$24,047.22, which represents less than 1% of the total which the County expects to generate from property taxes. Therefore, the percentage of tax revenue that will be lost by transferring the land into trust would be insignificant in comparison to the total amount.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel and the financial contributions provided to the local community by the Tribe through employment and purchases of goods and services.

Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

Santa Barbara County has current jurisdiction over the land use on the property subject to this application. The County's land use regulations are presently the applicable regulations when identifying potential future land use conflicts. The subject property is currently zoned Commercial Highway. The surrounding areas are zoned either Commercial Highway or C-2 Commercial Retail.

There is great need for the land to be taken into trust so the Tribe may consolidate its land base and solidify its jurisdiction over the property. The Tribe does not anticipate that any adverse jurisdictional impacts to the County because the Tribe has already developed these properties under County regulations. The Tribe's intended purpose of land consolidation is not inconsistent with the surrounding uses. Further, the County would not have the burden or

responsibility of maintaining jurisdiction over the Tribal property or have any additional impacts of trying to coordinate incompatible uses.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and Santa Barbara County. Once the land is accepted into trust and becomes part of the Reservation, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons, and transactions on the land as the State has over other Indian Country within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land.

With respect to impacts to the State and County, the Tribe has consistently been cooperative with local government and service providers to assist in mitigating any adverse effects their activities may cause. For instance, in 2002 the Tribe established an agreement with the Santa Barbara County Fire Department which pays for fire protection; the Tribe also has its own Wild Lands Fire Department. The Tribe has also been able to make generous contributions to the surrounding communities. They have sponsored numerous organizations and events, including youth programs, sports programs, and local emergency service providers such as the Sheriff's Department and Fire Department. For instance, the Tribe also pays for County Sheriff and Fire through the Special Distribution Fund created by the Tribal-State Compact and has donated over \$4.5 million to the Sheriff's Department. Thus the Tribe has made every effort to help mitigate any impacts to County service organizations and hopes to continue to support such community activities and services in the future.

Finally, the Tribe, as part of its Highway 246 Mitigation Measures (unrelated to the instant application), has installed signalization of the Edison intersection which is an improvement the County has wanted for some time. Both parcels included in this application were necessary for the Tribe to complete the improvements for the County.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the acquired land into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Santa Ynez Reservation. Most of the property is currently vacant and has no forestry or mineral resources which would require BIA management. The Tribe has and will continue to maintain the property through its Environmental Department. Emergency services to the property are provided by the City and County Fire and Police through agreements between those agencies and the Tribe.

The Tribe has no current plans for the property other than to maintain it in its current state. Therefore, there are no easements or leases which are anticipated for the property. Thus, the acquisition of these lands into Federal trust status will place no discernable burdens on the BIA.

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 for and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 “Contaminant Survey Checklist” dated July 21, 2014, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA’s guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion requires a qualifying action in this case, 516 DM 10.5I, Land Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on January 27, 2016, and compliance with NEPA has been completed.

Conclusion

Based on the foregoing, we at this time do hereby 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 Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California in accordance with the Indian Reorganization Act of 1934 (25 U.S.C. § 465).

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

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

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

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

Sincerely,


Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse (10 copies) - 7015 0640 0003 6796 1436
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Mr. Joe Dhillon - 7015 0640 0003 6796 1443
Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

Sara Drake, Deputy Attorney General - 7015 0640 0003 6796 1450
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

U.S. Senator Dianne Feinstein - 7015 0640 0003 6796 1467
331 Hart Senate Building
Washington, DC 20510

Santa Barbara County Assessor - 7015 0640 0003 6796 1474
105 East Anapamu Street, Suite 204
Santa Barbara, CA 93101

Santa Barbara County Treasurer & Tax Collector - 7015 0640 0003 6796 1481
105 East Anapamu Street
Santa Barbara, CA 93101

Santa Barbara County Sheriff's Department - 7015 0640 0003 6796 1498
4434 Calle Real
Santa Barbara, CA 93110

Santa Barbara County Department of Public Works - 7015 0640 0003 6796 1504
123 East Anapamu Street
Santa Barbara, CA 93101

Santa Barbara County Department of Planning and Development - 7015 0640 0003 6796 1511
123 East Anapamu Street
Santa Barbara, CA 93101-2058

Chair, County Board of Supervisors - 7015 0640 0003 6796 1528
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101

County Executive Officer - 7015 0640 0003 6796 1535
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101

Santa Barbara County - 7015 0640 0003 6796 1542
Kevin Ready, Senior Deputy County Counsel
105 E. Anapamu Street, Suite, 201
Santa Barbara, CA 93101

County of Santa Barbara - 7015 0640 0003 6796 1559
Doreen Farr, Third District Supervisor
105 East Anapamu Street
Santa Barbara, CA 93101

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P.O. Box 1990
Santa Barbara, CA 93102-1990

Buellton City Hall - 7015 0640 0003 6796 1573
P.O. Box 1819
Buellton, CA 93427

City of Solvang - 7015 0640 0003 6796 1580
1644 Oak Street
Solvang, CA 93463

Lois Capps - 7015 0640 0003 6796 1597
U.S. House of Representatives
301 E. Carrillo Street, Suite A
Santa Barbara, CA 93101

Stand Up For California - 7015 0640 0003 6796 1603
Cheryl Schmit- Director
P.O. Box 355
Penryn, CA 95663

Santa Ynez Valley Concerned Citizens - 7015 0640 0003 6796 1610
Klaus M. Brown, Treasurer
P.O. Box 244
Santa Ynez, CA 93460

Women's Environmental Watch - 7015 0640 0003 6796 1627
Cathie McHenty, President
P.O. Box 830
Solvang, CA 93464

Santa Ynez Valley Alliance - 7015 0640 0003 6796 1634
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Santa Ynez, CA 93460

Santa Ynez Community Services District - 7015 0640 0003 6796 1641
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William Devine, Esq. - 7015 0640 0003 6796 1733
1900 Main Street, 5th Floor
Irvine, CA 92614-7321

James E. Marino - 7015 0640 0003 6796 1740
Attorney at Law
1026 Camino del Rio
Santa Barbara, CA 93110

Regular Mail:

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

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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

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

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

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

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

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

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

§4.311 Briefs on appeal.

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

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

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

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

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

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

§4.312 Decisions.

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

§4.313 Amicus Curiae; intervention; joinder motions.

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

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

§4.314 Exhaustion of administrative remedies.

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

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

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

§4.315 Reconsideration.

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

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

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

§4.316 Remands from courts.

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

§4.317 Standards of conduct.

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

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

§4.318 Scope of review.

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

**APPEALS TO THE BOARD OF INDIAN
APPEALS IN PROBATE MATTERS**

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

§4.320 Who may appeal.

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

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

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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 4365, 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;

Office of the Secretary, Interior

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(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

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: