

ML 9557



United States Department of the Interior

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

SEP 18 2003

IN REPLY REFER TO:

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7004 2510 0001 5639 6546

Nicholas H. Fonseca, Chairman
Shingle Springs Rancheria
P.O. Box 1340
Shingle Springs, CA 95862

Dear Mr. Fonseca:

This is notice of our decision upon the application by the Shingle Springs Band of Miwok Indians (Tribe) to have the below described real property accepted by the United States in trust for the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California.

The land referred to herein is situated in the State of California, County of El Dorado, unincorporated area, and is described as follows:

Parcel 1:

A portion of Sections 29, 30, 31 & 32, Township 10 North, Range 10 East, M.D.B. & M., and a portion of Section 6, Township 9 North, Range 10 East, M.D.B. & M., more particularly described as follows:

Parcel 9, as shown on the parcel map filed August 31, 1972 in Book 1 of Parcel Maps, at page 163, El Dorado County Records. Assessor's Parcel Numbers: 319-210-18, 319-230-48, and 319-230-49

Parcel 2:

Parcel 13, as said Parcel is shown on that certain Parcel Map entitled "Portion of Sections 29, 30, 31 and 32, Township 10 North, Range 10 East, and Portion of Section 6, Township 9 North, Range 10 East, M.D.M.", filed August 31, 1972 in the Office of the County Recorder of said County in Book 1 of Parcel Maps at page 163. **Assessor's Parcel Number: 319-220-18**



The above-described parcels contain approximately 77.03 acres, more or less, and are commonly referred to as El Dorado County Assessor's Parcel Numbers 319-210-18, 319-230-48, 319-230-49, and 319-220-18. In relation to the Shingle Springs Rancheria, the subject parcels are located less than 1-mile, across U.S. Route 50, southwest of the Rancheria.

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 exterior boundaries of the tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 U.S.C. §2202, et seq). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

On April 1, 2003, by certified mail, return receipt requested, we issued notice of, and sought comments, regarding the land acquisition application from: El Dorado County Tax Assessor; El Dorado County Tax Collector; El Dorado Planning Department; El Dorado County Board of Supervisors; El Dorado County Fire Department; El Dorado County Sheriff's Department; El Dorado Irrigation District; California State Clearinghouse, Office of Planning & Research; Deputy Legal Affairs Secretary, Office of the Governor; Deputy Attorney General, State of California; President, Auburn Rancheria; and James Peterson, District Director, Office of U.S. Senator Dianne Feinstein.

In response to our notification, we received a letter dated April 22, 2003 from Conrad B. Montgomery, Planning Director, El Dorado County Planning Department. Mr. Montgomery's comments are summarized as follows:

Assessor's Parcel Number 319-210-18: The subject parcel is planned for commercial land use and is zoned Planned Development. The commercial land use designation is intended to provide a full range of commercial retail, office, and service uses to serve the residents, businesses, and visitors of El Dorado County. The purpose of Planned Development zoning is, in part, to allow the use of modern planning and development techniques that effect more efficient utilization of land and to allow flexibility of development.

The proposed use of Assessor's Parcel Number 319-210-18 for a health clinic is generally consistent with commercial land use designation. The impact of acquisition would result in loss of discretionary land use controls that are intended to control the architectural, landscape, signs, lighting, parking and circulation/access, and overall visual design of the facility for the purpose of providing for quality development and ensuring compatible land uses in the area. In addition, the Planning Department would not collect PD application fees, and the County would experience a decline in other direct and indirect economic activities, including application fees to other development services departments that produce income to the County that fund vital public services.

Assessor's Parcel Numbers 319-230-48 and 319-230-49: Subject parcels are planned for low-density residential development and zoned Planned Development. The low-density residential land use designation provides for single-family residential development in rural settings. We are not able to determine, except for loss of property tax revenue, the impacts of acquisition as no land use is proposed by the applicants at this time.

Assessor's Parcel Number 319-220-181: The subject parcel is planned for low-density residential development and zoned Estate Residential Five-Acre (RE-5). The low-density residential land use designation provides for single-family residential development in rural settings. The proposed use for single family residential development is generally consistent with the low density residential land use designation and RE-5 zoning. The impact of acquisition would result in loss of discretionary application fee revenues to the Planning Department, and application fees collected by other development services departments, and the County would experience a decline in other direct and indirect economic activities that produce income to the County that fund vital public services. Acquisition would also impact the ability of the County to ensure that the proposed land use is compatible with surrounding land uses and is consistent with the intent of low density residential land use category policy statements.

The impact of acquisition of said parcels will vary based upon potential alternative use of said parcels. Generally, commercial-health clinic use of parcels of land planned and zoned for residential use is not permitted by County land use regulations, except when the zoning ordinance allows for such use by approval of a special use permit. Mixed commercial/residential land use is allowed by the County when proposed as a planned development and subject to approval of a planned development application. Commercial use of residential zoned parcels, and/or mixed use planned development zoned parcels, will create similar financial impacts to the County as discussed in previous paragraphs.

In order to avoid said impacts, the subject parcels could be developed as proposed but not acquired to include in tribal trust. Another option would include identification of alternative sites of either public or private lands whereby the project could be developed in accordance with project/tribal objectives exclusive of acquisition.

Additionally, we received a letter dated May 1, 2003, and by incorporation, a letter dated April 25, 2003 from Thomas D. Cumpston, General Counsel, El Dorado Irrigation District (EID). Mr. Cumpston's comments are summarized as follows:

- *In the most recent tax year, EID received \$2,980.92 in property taxes and \$1,057.00 in voter-approved debt proceeds from the subject property.*
- *EID does not provide any governmental services to the subject property. However, in developing the Tribe's proposed uses for the subject property, the Tribe may seek EID water and wastewater service.*
- *El Dorado County, not EID, has zoning authority over the subject property. It is EID's understanding, however, that the Tribe's stated proposed uses of the property are consistent with current zoning.*

EID questions the appropriateness of the application to have this property accepted into trust for the Tribe. If the Tribe intends to develop the stated proposed uses on the property, no basis exists for exempting the property from local land-use authority because the proposed development is consistent with that authority. Given these circumstances, the only effect of putting the property into trust is to deny local government needed property tax revenues. EID does not believe that tax avoidance alone is a valid basis for taking a property into trust, absent the consent of all taxing authorities. Therefore, the trust application should be denied unless all affected taxing jurisdictions consent. EID does not consent at this time.

Because placing the property into trust would also immunize it from local land-use authority, however, another scenario exists in which the Tribe could devise new and different proposed uses for the property after it attains trust status. To preclude the possibility that trust status could be abused in this fashion, the application should be approved only if a binding restriction, enforceable by third parties, is put on the property's title, restricting development on the property to the uses as proposed.

The comments/concerns outlined above will be given consideration in the analysis to follow. Additionally, the letter dated April 25, 2003 from EID provided comments on the Environmental Assessment (EA) prepared for this project. Comments on the EA were considered during compliance with the National Environmental Policy Act, as summarized below in **Factor 6**.

Pursuant to 25 CFR 151.10 and 151.11, 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 conflict 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; (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; (7) the location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation; and (8) the anticipated economic benefits associated with the proposed use. Accordingly, the following analysis of the application is provided.

Historical Overview

Under the authority of the Interior Appropriation Acts of June 21, 1906 and April 30, 1908, parcels of land were purchased by the United States for Indian use from time to time in the early years of this century – a program triggered by an inquiry into the landless, homeless or penurious state of many California Indians.

In 1916, under the above-mentioned authority, the United States purchased 80 acres of land in trust for the benefit of the El Dorado Band of landless California Indians. This 80-acre tract became commonly known as the El Dorado Rancheria. In 1920, under the same congressional authority, the United States purchased an additional 160 acres of land in trust, located adjacent to and contiguous to the El Dorado Rancheria, for the use and occupancy of the Sacramento-

Verona Band of Homeless Indians. To date only the land purchased in 1920 remains in trust. The 80 – acre tract was deeded to individuals under the authority of the California Rancheria Act.

Factor 1- Need for Additional Land

As part of its long-term planning efforts, the Tribe has determined that a very substantial portion of the buildable land within the existing Rancheria is required for the construction of a dedicated interchange, economic development facilities, and related infrastructure and buffer areas. The acquisition of the subject land will among other things, enable the Tribe to expand health care services to its community and provide for the additional housing needs of its members.

The Tribe currently operates a health clinic in a leased facility, located on fee land that is 4,800 square feet. It provides full medical, dental and mental health services to approximately 4,300 active patients – including American Indian/Alaska Natives, non-Indians of Indian households and low-income residents of El Dorado County. The current leased facility has become insufficient for the needs of the program in that a number of programs are restricted to part-time availability due to lack of space. These limitations have prevented the Tribe from extending health care services to approximately 300 individuals who are currently on a waiting list.

The proposed health clinic is three times the size of the current facility which will enable the Tribe to expand services under various specialties such as nutrition education, diabetes screening, podiatry, dental and mental health services. According to the Bureau of Primary Health Care, U.S. Department of Health and Human Services, El Dorado County contains 16 recognized Health Professional Shortage Areas. The new clinic would enable the health program to better serve its existing patients, and to address these shortages by hiring additional healthcare professionals.

With regard to the proposed housing, tribal membership consists of approximately 285 individuals, only 40 of which reside on the Rancheria. The Tribe estimates that approximately 50 tribal members are seeking residence on the Rancheria. The proposed development would provide single-family housing to six families, or approximately 30 individuals.

It is our determination that the Tribe has an established need for the acquisition of trust land to facilitate tribal self-determination, economic development and tribal housing.

Factor 2 - Proposed Land Use

The subject parcels are approximately 1 mile, southwest of the Shingle Springs Rancheria, located near the town of Shingle Springs, off U.S. Route 50.

The proposed land use for the parcel identified as Assessor's Parcel No. 319-210-18, containing 33.77 acres more or less, is the construction and development of a health clinic. The proposed project would consist of a 14,335 square foot facility, parking area and a paved access road to Shingle Springs Drive. The development will alter approximately 3 acres of the site, all presently undeveloped. The healthcare facility will provide medical and dental services to

American Indian/Alaska Natives, non-Indians of Indian households and low-income residents of El Dorado County, California.

Assessor's Parcel Numbers 319-230-48 and 319-230-49 are adjacent to each other and immediately east of APN 319-210-18. In the Notice of Application dated April 1, 2003, we indicated that the proposed health clinic would encumber these three parcels. However, subsequent review revealed that there is no planned change in land use for APN's 319-230-48 and 49, both of which are undeveloped. These two parcels comprise 8.63 acres and are very narrow strips of land, approximately 325 feet at its widest point. These two parcels are bounded on one side by U.S. Route 50, railroad tracks on the other, with the eastern boundary of APN 319-230-49 adjacent to APN 319-210-18.

The parcel identified as Assessor's Parcel No. 319-220-181, encompassing 34.63 acres, more or less, is presently undeveloped. Tribal housing consisting of six 3-bedroom single-family residences is proposed for development on this site. The housing units are proposed for construction on the southeast corner of the parcel, with proposed square footage of 1,800 feet.

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

Property and supplemental taxes for the subject parcels for fiscal year 2001-2002 were:

319-210-18	-	\$12,460.24
319-230-49	-	1,415.62
319-230-48	-	1,704.54
319-220-18	-	7,458.42

Combined taxes totaled \$23,038.82. Secured taxes collected by El Dorado for the same period was just under \$153.0 million. The tax loss contemplated here represents .015% of secured taxes collected by the County.

As commented by El Dorado County, other financial consequences of the acquisition would be the, "loss of discretionary application fee revenues and application fees collected by other development services departments, and ... a decline in other direct and indirect economic activities that produce income to the County." EID also commented that, "no basis exists for exempting the property from local land-use authority because the only effect of putting the property into trust is to deny local government needed property tax revenues".

The application fees referred to by the County represent a one-time collection. The impact on the County and the State should be offset by a reduction in reliance on welfare and housing assistance due to availability of tribal housing and related services. Additionally, Impact-Aid funding may be available to the local school district for the enrollment of Indian children that could potentially be increased as a result of the proposed housing. Lastly, the extension of medical, dental and mental health services to current and future patients will more than offset the loss of relatively insignificant property tax revenues.

Factor 4 - Jurisdictional Problems/Potential Conflicts

Tribal jurisdiction in California is subject to P.L. 83-280; therefore, there will be no change in criminal jurisdiction.

With regard to other jurisdictional issues, the County of El Dorado through its Planning Department and Irrigation District commented on the affect of an approve acquisition. Their comments in this regard are reiterated below:

El Dorado County Planning Department

“The impact of acquisition would result in loss of discretionary land use controls that are intended to control the architectural, landscape, signs, lighting, parking and circulation/access, and overall visual design of the facility for the purpose of providing for quality development and ensuring compatible land uses in the area.

Acquisition would also impact the ability of the County to ensure that the proposed land use is compatible with surrounding land uses and is consistent with the intent of low density residential land use category policy statements.

In order to avoid said impacts, the subject parcels could be developed as proposed but not acquired to include in tribal trust. Another option would include identification of alternative sites of either public or private lands whereby the project could be developed in accordance with project/tribal objectives exclusive of acquisition”.

El Dorado Irrigation District

“Because placing the property into trust would also immunize it from local land-use authority, however, another scenario exists in which the Tribe could devise new and different proposed uses for the property after it attains trust status. To preclude the possibility that trust status could be abused in this fashion, the application should be approved only if a binding restriction, enforceable by third parties, is put on the property’s title, restricting development on the property to the uses as proposed”.

The gist of the above concerns is the loss of jurisdiction over the subject property. The County will in fact lose jurisdictional control with an approved acquisition. However, the very essence of a “trust” acquisition is to enable tribes, in this case, the Shingle Springs Band of Miwok Indians, the opportunity to plan and implement programs for the benefit of its community. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination. It is our determination that the needs of the Tribe in this case out weigh any jurisdictional issues that may arise as a result of a trust conversion.

Factor 5 – Whether the BIA is equipped to discharge the additional responsibilities

The subject property does not contain any natural resources requiring BIA management assistance. The Tribe will maintain all roadways and utilities. The Tribe will be prepared to pay

for whatever municipal services that may be required in connection with the newly acquired properties.

The California Department of Forestry and Fire Protection (CDF) currently, and will continue to, provide wildfire protection. Reimbursement of any fire protection services would be in accordance with the CDF/BIA Cooperative Fire Protection Agreement. Therefore, conveyance to trust status will not impose any significant additional responsibilities or burdens on the BIA beyond those already inherent in the federal trusteeship over the existing reservation.

Additionally, the Tribe will continue to receive fire protection for structural improvements from its own fire department and the El Dorado County Fire Protection District.

With regard to the proposed housing, the Tribe plans to assign the homes to individual tribal members in accordance with its Land Assignment Ordinance.

This trust acquisition will result in increased tribal self-sufficiency and, ultimately, less dependence on the Interior Department. With no leases, rights of ways or any other trust transactions forthcoming, any additional responsibilities resulting from this transaction will be minimal. As a result, it is our determination that the BIA is equipped to administer any additional responsibilities resulting from this acquisition.

Factor 6 – Compliance with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

National Environmental Policy Act Compliance

A requirement that must be taken into account 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 Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1.

To that end, an Environmental Assessment (EA), dated March 2003, was distributed for public review and comment for the period beginning March 26, 2003 and ending April 25, 2003. Comments were also solicited directly from the California Attorney General, Governor of the State of California, the El Dorado County Board of Supervisors, U.S. Fish and Wildlife Service, Region of the U.S. Environmental Protection Agency and the Office of U.S. Senator Dianne Feinstein. A time extension of the comment period was requested and granted to Voices for Rural Living.

Twenty-two comment letters were received during the EA public review and comment period. Much of the opposition expressed was based on concerns that a casino would be established on the subject property. The Tribe does not propose such a facility on the subject property. More importantly, this trust acquisition would not automatically make the subject property eligible for gaming. The decision to place land into trust for the benefit of an Indian tribe is usually at the discretion of the Secretary of the Department of the Interior after consideration of the criteria for

land acquisitions in 25 C.F.R. Part 151. When an acquisition is intended for gaming, consideration of the requirements in Section 20 of the Indian Gaming Regulatory Act also applies. Section 20 prohibits Indian tribes from conducting Class II and Class III gaming activities on lands acquired in trust after October 17, 1988, unless one of the several exceptions applies. The enumerated exceptions in Section 20 do not apply in this instance; e.g., contiguous to existing reservation lands, restored land (see 25 U.S.C. §2719).

Based upon the analysis documented in the EA and consideration of comments received during the public review period, a Finding of No Significant Impact (FONSI) was completed on February 12, 2004. The FONSI was circulated for public review for the period beginning February 13, 2004 and ending March 15, 2004.

Compliance with the requirements of Section 106 of the National Historic Preservation Act has been documented with a letter from the State Historic Preservation Officer dated November 27, 2002. Similarly, compliance with Section 7 of the Endangered Species Act has been documented with a memorandum from the U.S. Fish and Wildlife Service dated December 19, 2002.

In summary, no comments objecting to the FONSI were received, and compliance with NEPA, the National Historic Preservation Act and the Endangered Species Act has been achieved.

Hazardous Substances Determinations

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 for, hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" of July 24, 2003 reflecting that there were no hazardous materials or contaminants.

Factor 7 - Location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

The subject parcels are located less than 1-mile from the Shingle Springs Rancheria, across U.S. Route 50, southwest of the Rancheria. The Rancheria/subject parcels are located in central California, approximately 65 miles from the Nevada border to the east and approximately 130 miles from the Pacific Ocean to the west.

Factor 8 - Anticipated economic benefits associated with the proposed use

As previously stated, the proposed use for APN 319-210-18 is the construction of a health clinic to replace the current facility due to size limitations. The services provided by the current facility include nutrition education, diabetes screening, podiatry, and dental and mental health services. The benefits that the health clinic provides are immeasurable, particularly to the low-income and uninsured clients. The facility has a client base of 4,300 and is the largest provider of healthcare services in El Dorado County to Medicare and MediCal patients.

An additional use being proposed by the Tribe is the construction of residential homes on APN 319-220-181. There are 285 tribal members distributed throughout the West and approximately 40 individuals currently living within the borders of the Rancheria. The Tribal Government serves about 334 individuals (including dependents), residing in 180 households. Of the tribal members, 174 or 62% live within the Rancheria's tribal service area.

Many homes in the Rancheria are shared by two or more households or families. Forty-one percent (41%) of the 180 households share housing. The remaining 59% are split evenly between owner-occupied and rental housing. Housing conditions at the Rancheria tend to be poor, with only 36 % meeting structural standards, and 14% with serious structural problems.

The proposed construction of 6 homes is projected to meet the housing needs of 6 families, or a total of approximately 30 people. As previously stated, there are approximately 50 tribal members in need of housing. The benefit of the Tribe's plan is clear given the serious housing shortage faced by tribal members.

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 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria, California in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202, et seq).

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 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).

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

Sincerely,

Acting


Regional Director

Enclosure

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECIEPTS REQUESTED TO:

El Dorado County Tax Assessor – 7004 2510 0001 5639 6553
360 Fair Lane, Bldg., D
Placerville, CA 95667

El Dorado County Tax Collector – 7004 2510 0001 5639 6584
360 Fair Lane, Bldg., D
Placerville, CA 95667

El Dorado County Planning Department – 7004 2510 0001 5639 6560
2850 Fair Lane Ct.
Placerville, CA 95667

El Dorado County Board of Supervisors 7004 2510 0001 5639 6591
330 Fair Land
Placerville, CA 95667

El Dorado County Fire Department – 7004 2510 0001 5639 6577
P.O. Box 807
Camino, CA 95709

El Dorado County Sheriff's Department – 7004 2510 0001 5639 6607
300 Fair Lane
Placerville, CA 95667

El Dorado Irrigation District – 7004 2510 0001 5639 6614
2890 Mosquito Rd.
Placerville, CA 95667

State Clearinghouse – 7004 2510 0001 5639 6621
Office of Planning and Research
State of California
P. O. Box 3044
Sacramento, California 95814

Mr. Paul Dobson – 7004 2510 0001 5639 6638
Deputy Legal Affairs Secretary
Office of the Governor
State Capitol Building
Sacramento, California 95814

Ms. Sara Drake – 7004 2510 0001 5639 6645
Deputy Attorney General
State of California
Department of Justice
P. O. Box 944255
Sacramento, California 94244-2550

Ms. Jessica Tavares, President – 7004 2510 0001 5639 6652
Auburn Rancheria
661 Newcastle Road, Suite 1
Newcastle, CA 95658

James Peterson, District Director – 7004 2510 0001 5639 6669
Office of U.S. Senator Dianne Feinstein
750 “B” St., Ste 1030, San Diego, CA 92101

Voices for Rural Living – 7004 2510 0001 5639 6676
P.O. Box 2327
Shingle Springs, CA 95682

Cheryl Langley – 7004 2510 5639 6683
5010 Mother Lode Drive
Shingle Springs, CA 95682

Regular Mail:

Superintendent, Central California Agency
Bureau of Indian Affairs
650 Capitol Mall
Sacramento, CA 95814

Office of the Secretary, Interior

~~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 shall 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: 54 FR 6485, Feb. 10, 1989, 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) shall be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings shall 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 shall 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 shall 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 shall be 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 shall 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. Opening parties or counsel shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall 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 shall be attached to the answer filed with the Board.

§4.312

(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 shall 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 Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau 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 shall 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 an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall 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 shall 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 shall 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 shall 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 shall be

43 CFR Subtitle A (10-1-01 Edition)

served in the same manner as appeal briefs.

§4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge or an official of the Bureau of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall 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.

[54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

§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 shall 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 shall not stay the effect of any decision or order and shall 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 court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall 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.

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§ 4.321

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall 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 shall determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall 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: 54 FR 6487, Feb. 10, 1989, 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 administrative law judge 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 shall 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, 4015 Wilson Boulevard,

Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

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

(d) *Action by administrative law judge; record inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall 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 shall be conformed to the original by the Land Titles and Records Office and shall 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 administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[54 FR 6487, Feb. 10, 1989, as amended at 64 FR 46152, Aug. 24, 1999; 65 FR 25450, May 2, 2000; 66 FR 32890, June 18, 2001; 66 FR 33741, June 25, 2001]

§ 4.321 Notice of transmittal of record on appeal.

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

§ 4.322

§ 4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall 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, shall 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 shall 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 dele-

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gation 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, 4015 Wilson Boulevard, 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

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appeal not timely filed and dismissed for lack of jurisdiction of appeal shall include:

- (1) A full identification of the appeal and of the relief requested;
- (2) A statement of the relief requested;
- (3) The names and addresses of all interested parties, including tribes, tribal corporations, and individuals having rights or interests which may be affected by a change in the decision, whether or not they are interested parties in the proceedings.

(b) In accordance with 43 CFR 4.332, a notice of appeal shall be filed for 20 days from receipt of the notice of appeal during which time the appellant shall review the appeal. If the appellant does not review the appeal, any documents filed with the Board shall be transmitted to the Secretary—Indian Affairs.

(c) When the appeal is reviewed by the Secretary—Indian Affairs, the official who reviewed the appeal shall, upon request, render such assistance as is appropriate in the proceedings.

(d) At any time during the pendency of an appeal, an appeal may be required to protect the interests of any Indian, Indian tribe, or Indian land involved.

§ 4.333 Service of notice.

(a) On or before the date of filing of the notice of appeal, the appellant shall serve a copy of the notice of appeal on each known interested party, including the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The appellant shall certify that service of the notice of appeal has been made by this section. The names and addresses of the parties to be served shall be provided. If the appellant is an Indian tribe, the appellant shall, upon request, provide the name and address of the official of the Bureau of Indian Affairs to whom the notice of appeal should be sent. A copy of the notice of appeal shall be filed with the Assistant Secretary—Indian Affairs. A notice of

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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.

§ 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.

(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 100-155 (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.

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

(3) The term Project Director means the Superintendent of the Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority in the Minneapolis Area Division, Office of the Project Director, Earth Reservation Project.

(4) The term par means the Project Director, presumptive or actual decedent, or of any other person who is the legal heir of the decedent.

(5) The term compensation means a monetary sum, as determined by the Project Director, §(c) of the Act.

(6) The term administrative law judge means an administrative law judge, or other official of the Office of Hearings and Appeals, or other person acting in his authority, as determined by the Project Director, for making determinations as provided in the Act.

(7) The term aggrieved means a person who is aggrieved by a final decision of the Board upon reconsideration of an administrative judge with the Board.

[56 FR 61383, Dec. 3, 1991, as amended at]

§4.351 Commencement of the determination proceeding.

(a) Unless an heir which is recognized exists, the Project Director shall determine the decedent of those persons who receive compensation; the administrative law judge shall determine the purpose of the proceeding being submitted, relative to the facts.

(b) The data shall be limited to:

(1) A copy of the data one exists. If the data does not exist, then another