

ML13475



United States Department of the Interior

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

AUG 1 2013

IN REPLY REFER TO:

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED # 7012 1640 0001 2248 7393

Mr. Daniel Tucker, Chairperson
Sycuan Band of the Kumeyaay Nation
5459 Dehesa Road
El Cajon, California 92021

Dear Mr. Tucker:

This is notice of our proposed decision upon the Sycuan Band's application to have the below-described off-reservation real property accepted by the United States of America in trust for the Sycuan Band of the Kumeyaay Nation of California:

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

PARCEL A:

PARCEL 3 OF PARCEL MAP NO. 5227, FILED OCTOBER 21, 1976 AS FILE NO. 76-350025 OF OFFICIAL RECORDS BEING A DIVISION OF A PORTION OF THE NORTHEAST QUARTER SECTION 14, TOWNSHIP 16 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL A1:

AN EASEMENT AND RIGHT OF WAY FOR ROAD AND PRIVATE UTILITY PURPOSES, OVER THE NORTHERLY 20 FEET OF PARCEL 1 OF PARCEL MAP NO. 5227, AND THE EASTERLY 20 FEET OF PARCELS 1 AND 2 OF SAID PARCEL MAP NO. 5227 AND THE NORTHERLY 20 FEET AND EASTERLY 40 FEET OF PARCEL 4 OF SAID PARCEL MAP NO. 5227.

PARCEL A2:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE SOUTHERLY 20 FEET OF PARCEL 2 OF PARCEL MAP NO. 3915, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1975.

PARCEL B:

PARCELS 1 AND 2 OF PARCEL MAP 5393, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP FILED IN THE OFFICE OF THE COUNTY



RECORDER OF SAN DIEGO COUNTY, DECEMBER 17, 1976 AS INSTRUMENT NO. 76-423591 OF OFFICIAL RECORDS.

PARCEL C:

PARCEL 3 OF PARCEL MAP NO. 5393, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 17, 1976 AS INSTRUMENT NO.76-423591 OF OFFICIAL RECORDS.

PARCEL C1:

EASEMENTS FOR INGRESS AND EGRESS, IN, OVER, ALONG AND ACROSS THOSE PORTIONS OF THE NORTH ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 16 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY MORE PARTICULARLY DESCRIBED IN PARCELS 1 AND 2 BELOW AS FOLLOWS:

PARCEL 1:

A STRIP OF LAND 40.00 FEET IN WIDTH LYING 20.00 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF PARCEL 3 IN SAID NORTHEAST QUARTER OF SECTION 14, ACCORDING TO PARCEL MAP THEREOF NO. 3915, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, JULY 10, 1975 DISTANT ALONG SAID NORTHERLY LINE SOUTH 85°24' 24" EAST, 735 .00 FEET FROM THE NORTHWEST CORNER OF SAID PARCEL 3; THENCE LEAVING SAID NORTHERLY LINE SOUTH 18°42' 58" WEST, 436.38 FEET TO THE TERMINATION OF SAID CENTERLINE IN THE SOUTHERLY LINE OF SAID PARCEL 3.

THE SIDE LINES OF SAID STRIP OF LAND TO BE PROLONGED OR SHORTENED TO BEGIN ON THE SOUTHERLY LINE OF THE NORTHERLY 20.00 FEET OF SAID PARCEL 3 AND END ON THE SOUTHERLY LINE OF SAID PARCEL 3.

PARCEL 2:

A STRIP OF LAND DESCRIBED AS THE EASTERLY 40.00 FEET OF PARCEL 3, OF PARCEL MAP NO 3915, DESCRIBED ON PARCEL 1 ABOVE.

EXCEPTING FROM SAID STRIP OF LAND THAT PORTION THEREOF LYING WITHIN THE NORTHERLY 20.00 FEET OF SAID PARCEL 3.

PARCEL C2:

AN EASEMENT FOR INGRESS AND EGRESS, IN, OVER, ALONG, AND ACROSS THE NORTHERLY 20 FEET OF PARCEL L OF PARCEL MAP NO. 5227, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OCTOBER 21, 1976, AS INSTRUMENT NO. 75-178658 OF OFFICIAL RECORDS.

PARCEL C3:

AN EASEMENT FOR INGRESS AND EGRESS IN, OVER, ALONG AND ACROSS THE SOUTHERLY 20 FEET OF PARCEL 2 OF PARCEL MAP NO. 5227, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, OCTOBER 21, 1976, AS INSTRUMENT NO. 75-178658 OF OFFICIAL RECORDS.

PARCEL C4:

AN EASEMENT FOR INGRESS AND EGRESS, IN, OVER, ALONG AND ACROSS THE NORTHERLY 20 FEET OF PARCEL 3 OF PARCEL MAP NO. 5227, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, OCTOBER 21, 1976, AS INSTRUMENT NO. 76-350025 OF OFFICIAL RECORDS.

PARCEL C5:

AN EASEMENT FOR INGRESS AND EGRESS, IN, OVER, ALONG AND ACROSS THE NORTHERLY 20 FEET OF PARCEL 4 OF PARCEL MAP NO. 5227, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAID MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, OCTOBER 21, 1976 AS INSTRUMENT NO. 76-350025 OF OFFICIAL RECORDS.

The above-described real property is identified in San Diego County record as Assessor's Parcel Nos. 516-030-16-00 AND 516-030-18-00 AND 516-030-19-00 AND 516-030-20-00, containing 17.51 acres, more or less.

The regulations specify that it is the Secretary's policy to accept lands "in trust" 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 Regulations (CFR), Title 25, Indians, Part 151, as amended.

On, October 18, 2011 by certified mail, return receipt requested, we issued notice of, and sought comments regarding, the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Office of the Governor; San Diego County Assessor; Ms. Sara J. Drake, Deputy Attorney General, State of California; Honorable Duncan Hunter, U.S. House of Representatives; Office of the Honorable Dianne Feinstein; San Diego Treasurer and Tax Collector; County of San Diego Board of Supervisors; San Diego County Sheriff's Department; Chairperson, Barona Group of Capitan Grande Band; Chairperson, Campo Band of Mission Indians; Chairperson, Ewiiapaayp Band of Kumeyaay Indians; Chairperson, Inaja-Cosmit Band of Mission Indians; Chairperson Jamul Indian Village; Chairperson, Los Coyotes Band of Cahuilla Mission Indians; Chairperson, Manzanita Band of Diegueno Mission Indians; Chairperson, Manzanita Band of Diegueno Mission Indians; Chairperson, Mesa Grande Band of Diegueno Mission Indians; Chairperson, Pala Band of Luiseno Mission Indians; Chairperson, San Pasqual Band of Mission Indians; Chairperson, Santa Ysabel Band of Mission Indians; Chairperson, Rincon Band of Mission Indians; Chairperson, La

Jolla Band of Luiseno Mission Indians; Chairperson, La Posta Band of Diegueno Mission Indians; Chairperson, Pauma Band of Mission Indians; Chairperson, and the Viejas (Baron Long) Band of Mission Indians.

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

1. Kamala D. Harris, Attorney General, State of California, Department of Justice, responded with a comment letter dated December 7, 2011, objecting to the acceptance into trust by the United States of America:

- **Any aboriginal claims the Tribe possessed were extinguished by U.S. Supreme Court decisions construing the Land Claims Act of 1851.**
- **The State requests that the Tribe's application be denied. The Tribe has not shown that the "acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing" 25 CFR §151.3(a)(3)."**
- **It is the State's view that Interior Board of Indian Appeals (IBIA) decisions and federal court decisions (e.g. South Dakota v. United States Department of Interior, 314 F. Supp. 2d 935, 943 (D.S.D. 2004)) misconstrue fee to trust regulations and are inconsistent with the purpose and intent of the Indian Reorganization Act.**
- **The BIA should reconsider its approach and return to its past policies in Handbook I in regards to demonstration of need for trust status to accomplish tribal housing goals.**
- **No offer or agreement has been made to provide the State with lost income tax revenues. The federal government should not force states to pay the cost of programs due to lost tax revenues.**
- **The Handbook I requires tribes to commit to adopting "standards that provide at least comparable safeguards" in the areas of fire safety, building codes, health codes, and zoning requirements.**
- **The County will lose property tax revenue if the Proposed Trust Acquisition is approved. The current tax payments of \$17,780.38 per year do not take into account lost income tax revenue to the State should additional tribal members receive an exemption from that tax because they reside on trust lands.**
- **Intergovernmental Agreement**
- **Transportation**

- **Property Taxes/Transient Occupancy Taxes/Sales Taxes**
- **Current and Ongoing Support of Local Agencies and Public Services**
- **The State adopts by reference San Diego County's November 18, 2011 comment letter.**
- **The State does not object to a trust application that seeks to provide housing for tribal citizens. The need for trust acquisition for this purpose is not adequately shown.**
- **The federal government may not impose a burden on the State to decline tax revenue without reimbursement and without assurances of adequate mitigation of lost civil regulatory jurisdiction.**

By letter dated November 14, 2012, the Sycuan Band's response was as follows:

- 25 CFR § 151 enables land to be taken into trust by the United States on behalf of federally recognized Native American Indian tribes. While the proposed 17.51-acre subject property is within the Tribe's aboriginal territory, this fee to trust application is filed under 25 CFR § 151.3, which allows tribes to take land into trust to facilitate tribal housing and self-determination. The goal of the Tribe is for all its tribal members to have housing under tribal jurisdiction. As stated in the Tribe's fee to trust application, the properties are necessary to facilitate tribal self-determination in that they provide the Tribe with a land base from which to provide tribal housing. The Proposed Action supports the Tribe's self-determination such that once under the Tribe's jurisdiction, the Tribe can control all issues related to tribal housing for its members, access, utilities, taxation, and other related issues to ensure a consistent and uniform provision of services to tribal members living in tribal housing.
- As stated in the Environmental Overview prepared for the Proposed Action, the purpose for taking the 17.51 acres of land into trust is for the Tribe to be able to exercise Tribal sovereign powers over land that is currently owned by the Tribal Government. Owning the 17.51 acre project site in fee-title does not allow the Tribal Government to exercise sovereign powers. Further, sufficient land resources are critical for any Tribe's long-term success and survival as a united and self-governed community in close proximity to the existing Reservation.

The Tribe intends to use the existing homes on the parcels as single family homes for tribal housing; therefore, no change in land use will occur as a result of the Proposed Action. The Tribe wishes to continue all existing uses on the parcels. No new impacts are anticipated from the Proposed Action. The Tribe will become the primary provider of services such as police, fire and emergency response to these parcels once the land goes into trust.

Thus, the purpose and need for the Proposed Action satisfies 25 CFR § 151.3, refer to the response to Comment above.

- The Proposed Action is consistent with existing federal regulations pertaining to fee to trust land acquisitions. As stated in the Environmental Overview, the United States has recognized the Tribe as a Native American Indian Tribe under federal jurisdiction continuously since at least 1875, when President Grant set the Reservation aside from the public domain pursuant to Executive Order of December 27, 1895. The Tribe remained under federal jurisdiction in 1934 when Congress enacted the Indian Reorganization Act (IRA). Although the Tribe rejected reorganization under the IRA in 1934, the Tribe organized under its own Articles of Association on May 7, 1972. The Deputy Commissioner of Indian Affairs approved the Articles on August 18, 1972, and the Tribe amended them once since then, on November 9, 1986. Therefore, the Secretary of the Interior is authorized to acquire and hold land in trust for the Tribe pursuant to Title 25, Code of Federal Regulations, Part 151, and the statutory authority within Section 203 of the Indian Land Consolidation Act (25 U.S.C. § 2202), as amended.
- No change in land use or development would occur under the Proposed Action. If the land is taken into trust, the subject property will be under the jurisdiction of the Tribe and will therefore be subject to tribally adopted ordinances for occupied structures and public safety. No change in land use would occur; however, future issues regarding zoning will be made consistent with the land use requirements under the Tribe's now adopted Natural and Cultural Resources Management Plan (NRMP).
- The Tribe has engaged in a number of current and past activities that offset its impacts on service demands from the County and affected service districts. The following is a summary of such activities.
- On January 9, 2012, an intergovernmental agreement was formed between the Tribe and the County of San Diego. The County, as a political subdivision of the State of California, entered the agreement as a responsible exercise of its

sovereignty, recognizing the importance of fostering a government-to-government relationship between the Tribe and the County. The Tribe has entered into the agreement as a responsible exercise of its sovereignty, recognizing that its long-term governmental and business interests are best served by implementing the agreement.

Payments to be made to the County by the Tribe to mitigate for impacts on the present 1,411 acre fee to trust property will ensure loss of tax revenue from the present 17.51 acre fee to trust is functionally offset by implementation of the terms of the recent intergovernmental agreement.

- Per the terms of the intergovernmental agreement, the Tribe agrees to pay the County a total sum of \$800,000.00 to be used exclusively by the County to design and construct a dedicated northbound right-turn lane on Dehesa Road at Harbison Canyon Road virtually adjacent to the four parcel subject property. Furthermore, since no change in land use would occur no additional impacts to traffic are anticipated from this 17.51-acre fee to trust application. Additionally, the Tribe shall pay the County's one-time Transportation Impact Fee (TIF) to mitigate cumulative traffic impacts from the operations that will take place on the pending 1,357 acre fee to trust land. This TIF will total \$162,520.00. These payments to the County by the Tribe will improve local transportation infrastructure in the vicinity of the subject property and will more than cover the associated impacts of taking the 17.51-acre subject property into trust. As a result, no significant impacts to local transportation infrastructure and services will occur due to the 17.51-acre fee to trust.
- As agreed to between the Tribe and the County in the recent intergovernmental agreement, the Tribe shall pay annually to the County the sum of \$123,928.00 for a period of seven years and six months to mitigate lost County revenues from property taxes as a result of the Tribe's pending fee to trust land acquisition for 1,357.47 acres of land. Additionally, the Tribe shall pay annually to the County the sum of \$149,825.00 for a period of seven years and six months, with a Cost of Living Adjustment to this amount annually in the amount of two percent (2%) each year on the anniversary date of the Tribe's first payment, to mitigate lost County revenue from transient occupancy taxes. The Tribe shall pay annually to the County the sum of \$47,479.00 for a period of seven years and six months, with a Cost of Living Adjustment to this amount annually in the amount of two percent (2%) each year on the anniversary date of the Tribe's first payment, to mitigate lost County revenues from sales taxes. These payments to the County by the Tribe will more than offset fiscal impacts of the pending 1,357-acre fee to

trust in the vicinity of the subject property and as a result will cover any impacts associated with the 17.51-acre subject property. As stated in the Tribe's fee to trust application, clearly the removal of the 17.51 acres from the County tax rolls will have no significant impacts on the State or the County property tax revenues.

- Presently, the Tribe budgets a total of \$2.5 million each year to staff, equip, and operate its own fire and emergency medical service department and police department on trust lands, at no expense to the County. The Sycuan Fire Department has a reciprocal agreement with the San Diego Rural Fire District, and approximately 80% of the calls that the Sycuan Fire Department responds to are off reservation lands. The Tribe makes a substantial contribution to off reservation firefighting services through the mutual aid program. The Tribe has provided the avenue for funding (through the DOI and BIA) for a County Fire Service helicopter, and has supported the Hotshots seasonal fire protection personnel in the amount of \$560,000. The Sycuan Police and Fire Departments are often the first responders at incidents in areas surrounding the Reservation, with one engine and an ambulance, where both responders are medics (call volume is approximately 468, with 80% of all calls off-Reservation). Tribal fire and emergency has mutual aid agreements with San Miguel Fire, Cal Fire, the U.S. Forest Service and other Indian Reservations. Within the jurisdiction of Cal Fire, Sycuan response to most incidents is preferred owing to consistent response over that from volunteer or paid call county engines. If the Proposed Action is approved, the County would no longer be responsible for providing all emergency response to the four parcels, but would benefit from the continued funding of the above fire suppression services, especially the ongoing mutual aid.

Currently, the Sycuan Police Department responds to calls from the community about suspicious or criminal activity near the reservation, and responds to traffic collisions on surrounding roadways and highways to prevent further injury and initiate emergency first aid, and assist the County Sheriff's Department and California Highway Patrol with traffic control. The Sycuan Tribal Police Department entered into Deputation Agreement with the DOI, commissioning Sycuan's tribal police officers as federal law enforcement officers.

Cooperatively working with the County's Sheriff's Department, the Sycuan Tribal Police Department responds to calls-for-service to these parcels of land (including the resort property) as well as in surrounding off-Reservation areas. As a result, Tribal Police activities have substantially reduced the impact of Sycuan operations on existing County resources, and the County Sheriff's Department has not been required to increase deployment of deputies in and around the reservation, thus freeing those resources for increased patrol and

investigative activities in other areas of the County. The Tribal Police would become the primary patrol for four parcels proposed for trust. They would enforce Tribal ordinances on the proposed trust lands.

The Indian Gaming Special Distribution Fund (SDF) was established as a way to help mitigate effects of Tribal gaming on communities. As a Tribe that was operating more than 200 gaming devices prior to September 1, 1999, the Sycuan Band contributes to the SDF, and also appoints a representative to the Indian Gaming Local Benefit Committee (a Committee comprised of representatives from the County, adjacent City and Tribal members) to identify grant recipients. On average, the Tribe contributes \$500,000 annually to the fund, and the County of San Diego, as well as local cities and Special Districts (Fire, Water, and Sewer Districts), may apply for grants for specific programs or projects to mitigate effects of Tribal gaming. Since 2003, the Local Benefit Committee has distributed more than \$23.5 million to fund programs for fire safety, law enforcement, emergency medical services, behavioral health, and road improvements. These grants would still be available following the fee-to-trust transfer, and would offset any losses in direct tax revenues. As part of its Community Outreach program, the Tribe has made financial contributions to several local school districts, including the Grossmont Union High School District, the Cuyamaca Community College District, and the Dehesa Elementary School District, as well as many individual schools in San Diego County. Furthermore, if school-age children are residents of the proposed reservation housing, the local Dehesa Elementary and Grossmont High School Districts may be eligible to apply for grants under Title VIII of the U.S. Elementary and Secondary Education Act of 1965, which provides special funding from the U.S. Department of Education to school districts impacted by federal acquisition of land.

The Tribe has also made over \$21.8 million in contributions to traffic improvements for the local community, including \$17.5 million to the SDF, \$4 million for improving Dehesa and Sycuan Roads, \$300,000 for turn lanes on Dehesa Road and \$80,000 for Dehesa School Speed Control Devices. In addition, the Tribe has benefited county residents by expending over \$7 million on improving utilities around the reservation, including \$5 million for a Padre Dam Municipal Water District water line extension in Harbison Canyon Road, \$2 million for extension of a SDG&E natural gas line and \$100,000 towards an Otay Water District water line extension to Dehesa Elementary School.

The State of California already is obligated under 18 U.S.C. § 1162 to provide law enforcement services in connection with the arrest and prosecution of persons violating State criminal laws on lands of the Sycuan Indian Reservation. Except as provided in Sycuan's Class III gaming compact with the State of California, Sycuan is not obligated to reimburse the County for such services. However, through Sycuan's payments into the SDF, and other agreements with County agencies and special districts, Sycuan has been more than offsetting all actual costs incurred in connection with County law enforcement and other public safety activities on Sycuan's lands, including its casino. Sycuan already has funded the capital improvements necessary to offset any impacts of its gaming activities on the off-reservation environment, and for the remainder of the term of Sycuan's Compact, funds would be available to maintain and repair those facilities. Thus, going forward, Sycuan's continuing payments into the SDF should more than offset the County's lost tax revenue.

As shown above, the Proposed Action for the 17.51 acres will not result in any significant fiscal impacts to the County and State regarding related local public services and infrastructure due to the provisions agreed to in the intergovernmental agreement between the Tribe and the County as well as the existing support services, including fire and emergency response, that the Tribe currently provides to the local community. Even if the loss of revenue were not offset as described, the total loss is insignificant relative to these four parcels.

- The Tribe's purpose and need for placing the 17.51-acre subject property into federal trust is to: improve tribal self-governance and self-determination by allowing the Tribal Government to exercise its sovereign authority over tribal land and to enable the Tribe to reestablish its traditional land base for land within a tribal consolidation area on which the Tribal Government will provide uniform services to all of its tribal members.

Currently, ownership of the 17.51-acre parcel in fee-title does not allow for the exercise of sovereign authority by the Tribal Government. Implementation of the Proposed Action, however, will allow the Tribe to exercise sovereignty over tribal lands, which will lead towards the advancement and security of the Tribe's goal of preserving traditional tribal lands for future generations. As stated in the Tribe's application, there will be no change in land use to the proposed trust property. The current uses of the parcels as single family residences for tribal members will be maintained; however, incorporation of the parcels into trust will unite the land and tribal members within the Tribe's culture and under the control of the Tribal Government.

2. **County of San Diego, Land Use and Development Group, letter objecting to this application dated November 18, 2011, commented that placement of these parcels into trust may impact the environment and public services if they are developed.**

- **The parcels are not contiguous to the Tribe's Reservation. Placement of these parcels into trust may impact the environment and public services if they are developed.**
- **For all development, a thorough environmental analysis is prepared. The property can be used for tribal housing without taking it into trust, there is no justified need for the fee to trust to occur.**
- **This current application in combination with other approved and pending applications for local Tribal Nations has a cumulative fiscal impact on the County that should be analyzed.**
- **This action will result in an annual loss of \$17,780.38 of property taxes and special assessment revenues for the County and other local agencies, schools and the state.**
- **If the property is developed beyond the three existing single family homes, an Environmental Impact Statement (EIS) should be prepared.**
- **The County opposes the incorporation of any easements held by the County and other agencies into trust lands because it would constitute a taking of public property.**
- **Dedication for bike lanes on Dehesa Road should be maintained.**
- **Utility easements on the four parcels should be maintained.**
- **The creation of future access points from the parcels to Dehesa Road will require an encroachment permit and improvements.**
- **Once the land is taken into trust, increased development beyond the current zoning limitations could occur.**
- **Revenue lost would include the Transportation Impact Fee (TIF).**
- **The reduction of revenue to San Diego Rural Fire Protection District will negatively affect an already over-extended coverage capability.**

- **An agreement should be made between the County and Tribe to ensure continuity of fire and emergency medical services.**
- **The parcels are ranked as “Very High” Fire Severity Zone. The parcels should be maintained for fire safety such as fire fighter emergency access and civilian evacuation.**
- **An EIS should be prepared which evaluates fire safety.**
- **A future roadway connection between Sycuan Road and Dehesa Road could provide improvements for fire safety.**
- **Transferring these parcels into trust would eliminate County and federal FEMA floodplain management requirements.**
- **The parcels are located within the boundaries of the County’s MSCP.**
- **A future development exceeding the current three dwelling units would not be allowed by the current zoning in the General Plan. The number of tribal housing units has not been disclosed.**
- **Policies of the Crest/Dehesa/Harbison Canyon/Granite Hills Community plan are provided.**
- **The onsite wastewater disposal systems should be maintained. Future development on the parcels should take the existing system into account.**
- **The County recommends sampling of the onsite wells to determine if potential contamination exists that might pose a risk to public health.**
- **The vacant parcel (APN 516-030-20) has not been approved for development in the past and may be limited to support the construction of a single family residence.**
- **An EIS should be prepared to ensure groundwater resources are not impacted by future development.**
- **An EIS should be developed to analyze potential impacts to agricultural resources.**
- **An EIS should be developed to analyze potential impacts to visual resources.**

- **An EIS should be developed to analyze potential impacts to air quality.**
- **An EIS should be prepared which provides adequate information to demonstrate that the soils and groundwater have not been contaminated by hazardous materials as a result of historic agricultural uses. An analysis should be prepared to reflect that significant hazardous materials will not be released as a result of the project.**
- **An EIS should be prepared to ensure the project or proposed uses do not impact biological resources.**
- **An EIS should be prepared to demonstrate the project is consistent with the County's noise element and to ensure impacts from existing and proposed uses are properly analyzed.**
- **An EIS should be prepared to assure impacts from future development are adequately analyzed.**
- **An intergovernmental agreement should be formed between the Tribe and the County.**

By letter dated November 14, 2012, the Sycuan Band's response was as follows:

- The fee to trust application does not misconstrue this fact, but states that the proposed trust parcels are separated from the Tribe's existing Reservation by only one parcel. Nevertheless, the Tribe is still eligible to apply for fee to trust land acquisition as a federally recognized Native American Indian tribe pursuant to 25 CFR 151.11.

An Environmental Overview was prepared to document the existing environmental setting associated with the 17.51-acre subject property. The description of the affected environment found in the Environmental Overview provides the basis for determining that the Proposed Action would not result in any of the extraordinary circumstances as found in the Exception Checklist for BIA Categorical Exclusions (Appendix 7 of the BIA NEPA Handbook). Therefore, on July 19, 2010 BIA issued a Categorical Exclusion for the Proposed Action.

- As stated in the response to Comment above, no change in land use would occur as a result of the Proposed Action, therefore, no new impacts to the environment would occur.

- As stated in the response to Comment above, no change in land use would occur as a result of the Proposed Action, therefore, no impacts to the environment would occur. No new development is contemplated for the subject property in the reasonably foreseeable future.
- As discussed in the response to above, the Tribe and the County have formed an intergovernmental agreement to offset losses in tax revenue to the County due to the Tribe's pending 1,357-acre fee to trust action located in the vicinity of the 17.51-acre subject property. This agreement in addition to the ongoing funding and support services the Tribe currently provides to the benefit of the local community and agencies would ensure that no significant cumulative fiscal impacts would occur from this Proposed Action.
- No change in land use would occur as a result of the Proposed Action and no new future development is contemplated; therefore, an EIS would not be warranted.
- Easements and dedicated rights of way presently on title would be maintained as a result of the Proposed Action. This would not constitute a taking of public property.
- No change in land use would occur under the Proposed Action. No future access points are anticipated to be needed on the subject property.
- The Sycuan Tribal Fire Department currently serves this area under a mutual aid agreement and will continue to do so once the subject property is placed into trust. Presently ongoing mutual aid agreements between the Tribe and the San Diego Rural Fire Protection District will be maintained, therefore, no significant impacts to fire and emergency services would occur as a result of the Proposed Action. Furthermore, once the land goes into trust the Sycuan Tribal Fire Department will become the lead fire responder for the subject property.
- If and/or once the subject property is placed into trust, the land will be under the jurisdiction of the Sycuan Tribal Fire Department, which currently provides fire protection and emergency services to this area under mutual aid. No change in land use would occur and the parcels will be maintained to ensure fire fighter emergency access and civilian evacuation. Further, as noted above, the Sycuan Tribal Fire Department will become the lead responder for these trust lands.
- No change in land use would occur on the proposed trust parcels. Future development on the subject property, including road construction of a future

roadway connection between Sycuan Road and Dehesa Road, is not anticipated in the reasonably foreseeable future on this property. As covered in the recent intergovernmental agreement between the Tribe and the County, a new safety access between Sycuan Road and Dehesa road via Sloane Canyon has been agreed to.

- If and/or once the land is taken into trust, federal regulations will still apply on trust land. Therefore, FEMA floodplain management requirements will continue to be adhered to by the Tribe. The Tribe's NRMP acknowledges the flood zones present on these parcels. Under the NRMP, the Tribe will honor federal FEMA rules and regulation especially when it comes to the safety of its tribal members who will be residing on these lands. Any current issues with flooding should have been addressed by the County when they authorized the existing housing already constructed on these properties.
- No change in land use would occur as a result of the Proposed Action. The riparian creek corridor located on the subject property will be conserved consistent with the Tribe's adopted Natural and Cultural Resources Management Plan (NRMP). The NRMP will guide future land use planning and resource management on undeveloped portions of the Tribe's reservation, as well as any future land that is either taken into trust on behalf of the Tribe, or is land over which the Tribe exercises jurisdiction, in a manner consistent with its directives. These directives include the designation of specific Conservation Areas that will be actively managed and Preservation Areas that will be passively managed in accordance with scientific monitoring and reporting to ensure the preservation of natural and cultural resources in balance with ongoing tribal development activities.

The NRMP's implementation and conservation methods have been approved by the USFWS to be similar to and consistent with the biological and habitat preservation goals and standards of the Multiple Species Conservation Program for San Diego County. The Multiple Species Conservation Program serves as a multiple species Habitat Conservation Plan permitted by the USFWS pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act. The provisions of this plan and the County's Biological Mitigation Ordinance (Sections 86.501-86.509 of the San Diego County Code of Regulatory Ordinances) do not apply to the Sycuan Reservation or tribal trust lands. Thus, the NRMP was prepared to provide the natural resources guidance for trust lands under the control and oversight of the Tribe in a similar manner as the County acts under the Multiple Species Conservation Program, especially for lands covered as "Pre-Approved Mitigation Areas" in the County. While the Multiple Species Conservation

Program does not apply to trust lands, the Sycuan Tribal Council acts in a functionally equivalent manner as the County in addressing biological conservation issues addressed in the NRMP for its trust lands.

- The community plan would no longer apply to the subject property once it is placed in trust. However, no changes in land use would occur that would conflict with the current plan.
 - No change in land use would occur under the Proposed Action. The onsite wastewater disposal system shall be maintained consistent with Tribal ordinances for health and safety.
 - As stated above, no change in land use would occur under the Proposed Action. The onsite wells will be maintained consistent with Tribal ordinances for health and safety.
3. Crest/Dehesa/Harbison Canyon/Granite Hills Community, letter dated November 15, 2011, expressed concerns that the community plan would no longer apply to the subject property once it is placed in trust. No changes in land use would occur that would conflict with the current plan.

The Tribe did not respond to the above letter.

4. County of San Diego, Assessor/Recorder/County Clerk, letter provided 2011-2012 tax information on the proposed trust parcels.

No response is required.

5. Crest/Dehesa/Granite Hills-Harbison Canyon Sub-regional Planning Group, letter dated November 15, 2011, commented loss of tax revenue will burden local schools and the community.
- **Requests that Tribe's application be denied. Loss of \$17,780.33 in tax revenue on the subject parcels in addition to Tribe's larger fee-to-trust for 1,340 acres will burden local schools and the community.**
 - **Approval of the application will reduce the ability of the County to provide community services due to reduced funding.**
 - **APN 516-030-20 is extremely steep.**
 - **Two parcels are in the flood plain, by removing these parcels from County control Tribe could conceivably build in the flood plain.**

- **The authority of state environmental laws over trust land is very narrow as evidenced by activities taking place on other trust lands.**

By letter dated November 14, 2012, the Sycuan Band's response was as follows:

- No response is required. Refer to the response to Comment above which states that no change in land use or development would occur.
 - Refer to the response to Comment above, regarding the Tribe' adopted NRMP which is deemed as the functional equivalent to the County's MSCP.
6. Dehesa Valley Community Council, Inc., letter dated November 17, 2011, expressed concern by placing additional land "in trust" creates a reduction of tax revenue for the Dehesa community as well as Dehesa School District.

- **Loss of \$17,780.33 in tax revenue on the subject parcels in addition to Tribe's larger fee-to-trust for 1,340 acres will burden local schools and the community.**
- **Tribe does not list the number of houses they own not in trust. The homes already put in trust are a considerable loss for the community.**
- **The Tribe has a pending application to add 1,357.47 acres of land in trust. Statistics are provided on tribal housing based on the Tribe's website.**
- **Two of the four parcels in the application are being lived in by tribal members.**
- **Zoning ordinances may not be applied to trust lands; these homes are in a neighborhood where zoning ordinances are needed.**

By letter dated November 14, 2012, the Sycuan Band's response was as follows:

- The existing number of houses on the Sycuan Reservation is not relevant to the current application. Since the houses are already owned by the Tribe, they are not "community housing."
- No response is required as this comment does not mention the 17.51-acre subject property, which is the focus of the present fee to trust application.

- This information is noted and is also provided in the BIA’s Notice of (Non-gaming) Land Acquisition Application.
- If and/or once the land goes into trust, County ordinances would not be applicable. However, the Tribe will follow Tribal ordinances maintained for its Reservation, which provide sufficient guidance on the maintenance of tribal housing.

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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 DM6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations. Accordingly, the following analysis of the application is provided.

Factor 1 – Need for Additional Land

The Sycuan Band of the Kumeyaay Nation is pursuing placement of APN’s 516-030-16-00, 516-030-18-00, 516-030-19-00, and 516-030-20-00, located in San Diego County, California, in trust.

The Sycuan Band was a “recognized tribe now under Federal jurisdiction” in 1934 (25 U.S.C. § 469). President Ulysses S. Grant set the Reservation aside from the public domain pursuant to the Executive Order of December 27, 1875. The DOI has held land in trust for the Tribe continuously since it issued trust patents to the Sycuan Reservation and several allotments between December 29, 1891 and January 18, 1896 pursuant to an Act for the Relief of the Mission Indians in the State of California (26 Stat. 712) [1891].

Historically, the Sycuan Property was controlled and occupied by the Tribe prior to the creation of the Sycuan Reservation. Consequently, transferring the Sycuan Property into trust for the benefit of the Tribe will restore Tribal control and administration part of the Tribe’s aboriginal territory.

Prior to the establishment of the reservation, the Kumeyaay Indian’s land base extended south well beyond the Mexican border, and many miles north into what is now Riverside County. The original Sycuan Indian Reservation was established by Executive Order dated December 27, 1875, and the subsequent 1891 Act for the Relief of the Mission Indians. A trust patent, dated February 10, 1893, was issued to the Tribe. The Sycuan Band has survived on the diminutive one-square mile reservation, most of which is a steep, undevelopable mountainside, until the recent property acquisitions were accepted into trust. Much of the original reservation was long ago allotted to individuals, with the result that Sycuan has only approximately 30% of usable tribal land available on the original Sycuan Reservation for economic development and /or housing for Sycuan’s growing population. On its limited tribal lands, Sycuan has built its

government center, fire department, health clinic, library, day care facility, its accredited learning center (which includes the Mountain Empire Unified School District Hillside High School satellite campus) and other critical units of its government. The use designation of the trust properties is for tribal housing, and with more Tribal members moving back to the Reservation, and with growing families, the need for tribal housing is critical.

The Tribe's recent success in economic and social development continues to create jobs and improves living standards – essential elements of true self-determination. However, it has also accentuated the “growing pains” that accompany such success. Tribal members are returning to the reservation, families are growing and Sycuan needs more space for tribal housing, and infrastructure. This tiny reservation's steep, mountainous topography together with the multiplicity of individual allotments reduced the amount of available land for tribal use, including tribal housing, dramatically.

Given these realities, the Tribe purchased the parcel referred to as APN 516-030-16-00, 516-030-18-00, 516-030-19-00, and 516-030-20-00 between 2006 and 2009 for a total of 17.51 acres, and all four parcels are contiguous to one another and only separated from the exterior boundaries of the reservation by one 3.5 acre parcel.

Factor 2 - Proposed land Use

In order to further Sycuan's fulfillment of its right to self-determination, providing land for tribal housing is imperative. Assessor's Parcel Nos. 516-030-16-00, 516-03018-00, and 516-030-19-00 are currently zoned for general agricultural and residential; 516-030-18-00, and 516-030-19-00, contain single family residences and some outbuildings for storage and are currently occupied by tenants and Parcel 516-030-20-00 is currently vacant land containing some storage structures. Sycuan plans to use all properties for tribal housing.

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

As agreed to between the Tribe and the County in the recent intergovernmental agreement, the Tribe shall pay annually to the County the sum of \$123,928.00 for a period of seven years and six months to mitigate lost County revenues from property taxes as a result of the Tribe's pending fee to trust land acquisition for 1,357.47 acres of land. Additionally, the Tribe shall pay annually to the County the sum of \$149,825.00 for a period of seven years and six months, with a Cost of Living Adjustment to this amount annually in the amount of two percent (2%) each year on the anniversary date of the Tribe's first payment, to mitigate lost County revenue from transient occupancy taxes. The Tribe shall pay annually to the County the sum of \$47,479.00 for a period of seven years and six months, with a Cost of Living Adjustment to this amount annually in the amount of two percent (2%) each year on the anniversary date of the Tribe's first payment, to mitigate lost County revenues from sales taxes. These payments to the County by the Tribe will more than offset fiscal impacts of the pending 1,357-acre fee to trust in the vicinity of the subject property and as a result will cover any impact associated with the 17.51-acre subject property. As stated in the Tribe's fee to trust application, clearly the removal of the 17.51 acres from the County tax rolls will have no significant impacts on the State or the County property tax revenues.

The Tribe has also made over \$21.8 million in contributions to traffic improvements for the local community, including \$17.5 million to the Special Distribution Fund (SDF), \$4 million for improving Dehesa and Sycuan Roads, \$300,000 for turn lanes on Dehesa Road and \$80,000 for

Dehesa School Speed Control Devices. In addition, the Tribe has benefited county residents by expending over \$7 million on improving utilities around the reservation, including \$5 million for a Padre Dam Municipal Water District water line extension in Harbison Canyon Road, \$2 million for extension of a SDG&E natural gas line and \$100,000 towards an Otay Water District water line extension to the Dehesa Elementary School.

The State of California is already is obligated under 181 U.S.C. § 1162 to provide law enforcement services in connection with the arrest and prosecution of persons violating State criminal laws on lands of the Sycuan Indian Reservation. Except as provided in Sycuan's Class III gaming compact with the State of California, Sycuan is not obligated to reimburse the County for such services. However, through Sycuan's payments into the SDF, and other agreements with County agencies and special districts, Sycuan has been more than offsetting all actual costs incurred in connection with County law enforcement and other public safety activities on Sycuan's lands, including its casino. Sycuan already has funded the capital improvements necessary to offset any impacts of its gaming activities on the off-reservation environment, and for the remainder of the terms of Sycuan's Compact, funds would be available to maintain and repair those facilities. Thus, going forward, Sycuan's continuing payments into the Special Distribution Fund (SDF) should more than offset the County's lost tax revenue.

As shown above, the Proposed Action for the 17.51 acres will not result in any significant fiscal impacts to the County and State regarding related local public services and infrastructure due to the provisions agreed to in the intergovernmental agreement between the Tribe and the County as well as the existing support services, including fire and emergency response, that the Tribe currently provides to the local community.

Clearly, removal of APN 516-03016-00, 516-030-18-00, 516-030-19-00, and 516-030-20-00 from the County tax rolls will have no significant impact on the State of California or the County of San Diego property tax revenues, and therefore, no additional mitigation should be needed.

Factor 4 - Jurisdictional Problems/Potential Conflicts

The placement of these properties into trust should create **no** jurisdictional issues or conflicts with the State of California or any local government agency. Sycuan has contracts with SEMPRA (formerly SDG&E) for utility service. The Tribe also has separate contracts for telephones and television. The water source to the parcels is derived from wells on each property and residential sewer is by septic system.

In a significant step to enhance law enforcement on Tribal lands, the Tribe, through its Tribal Police Department, has entered into a federal deputation agreement with the Bureau of Indian Affairs to have all of its officers commissioned as federal police officers. This will provide the Tribal Police Department officers with the same authority as any other federal agent or officer to enforce federal law on Tribal lands. Sycuan has no formal written agreement with law enforcement agencies, and Sycuan maintains its own Police Academy-trained Tribal Police Department, and in most cases Sycuan's officers are P.O.S.T. (Peace Officer Standards and Training) certified. The Sycuan Tribal Police Department has an excellent working relationship with the local Sheriff's Department and the District Attorney's office. In addition, the Tribe has recently enacted a Peace and Order Code to provide among other things an adjudication process including participation in the Inter-Tribal Court system of Southern California.

The nearest non-Tribal fire station is the local volunteer fire department and the nearest full service fire department is the Sycuan Fire Department, with a fully-staffed fire station that

provides both fire protection services and emergency medical services and is located on the Sycuan Indian Reservation. The Sycuan Tribal Fire Department and Paramedic service serves not only the Reservation but also the entire Dehesa Valley/Harbison Canyon, and Valley Center area through mutual aid agreements (the Sycuan Tribal Police and Sycuan Fire Department responds to an average of 700 calls per year). The Tribe is in the process of developing a state of the art fire station near the entrance of the Reservation to enhance the fire department's ability to better serve the Reservation and the community.

Sycuan recognizes the common problems that face both the Tribe and the surrounding community. Representatives of the Sycuan Band meet regularly with members of the Dehesa Valley Community Planning Group, Dehesa Valley Business Group, and the Dehesa Valley Traffic Advisory Committee to obtain community input on environmental and other issues related to Tribal activities. The Tribe has entered into an unprecedented and historic memorandum of understanding with the local planning group to further the commitment of the Tribe and the community to work together to resolve issues of mutual interest.

The land is rural agricultural and residential, and we do not anticipate any jurisdictional problems and/or conflicts related to the provision of services whatsoever resulting from the removal of the land from State and local jurisdiction.

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

Acceptance of the Sycuan Property into trust status would not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Reservation. Responsibilities of the BIA will continue to include realty services, such as right-of-way preparation or granting of utility easements, as well as preparation of any leases for trust lands. The Tribe has continued to work towards self-determination, and will remain primarily responsible for providing services to its Tribal members.

Factor 6 – The extent to whether the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Level 1 "Contaminant Survey Checklist" dated March 2, 2010, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement, which 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 NEPA Handbook (59 IAM). Within 59 IAM, reference is made to actions qualifying as "Categorical Exclusions" (CATEX), which are listed in the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 10.5). The actions listed therein have been determined not to individually or cumulatively affect the quality of the human environment, and therefore, do not require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A CATEX requires a qualifying action, in this case, 516 DM 10.51, Land Conveyance and Other Transfers of interests in land where no change in land

use is planned. A Categorical Exclusion for the acquisition, where no change in land use is anticipated, was approved by the Agency on July 19, 2010.

Factor 7 – The location of the land relative to state boundaries, and its distance from the boundaries of the Tribe’s reservation

Subject site is located approximately 175 miles west of the Arizona state border and approximately 16.5 miles north of the United States/Mexico border. These parcels are separated from the Reservation boundaries by one 3.5 acre parcel. Clearly, the distance of the properties from the exterior boundaries of the Reservation is minimal.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject property into trust. Subject acquisition will vest title in the United States of America in trust for the Sycuan Band of Kumeyaay Nation and in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202).


Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within 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-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

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

Sincerely,


Acting Regional Director

Enclosure

cc: See Distribution List

Distribution List

cc: BY CERTIFIED MAIL – RETURN RECIEPTS REQUESTED TO:

California State Clearinghouse (10 copies) # 7012 1640 0001 2248 7409
Office of Planning and Research
P.O. Box 3044
Sacramento, California 95812-3044

Deputy Legal Affairs Secretary # 7012 1640 0001 2248 7416
Office of the Governor of California
State Capitol Building
Sacramento, California 95814

Deputy Attorney General # 7012 1640 0001 2248 7423
State of California
Department of Justice
P.O. Box 944255
Sacramento, California 94244-2550

Honorable Dianne Feinstein # 7012 1640 0001 2248 7430
750 "B" Street, Suite 1030
San Diego, CA 92101

U.S. House of Representatives # 7012 1640 0001 2248 7447
52nd District
366 South Pierce Street
El Cajon, California 92020

San Diego County Assessor # 7012 1640 0001 2248 7294
1600 Pacific Highway, Room 103
San Diego, California 92101

San Diego Treasurer & Tax Collector # 7012 1640 0001 2248 7454
1600 Pacific Highway, Room 162
San Diego, California 92101

San Diego County Board of Supervisors # 7012 1640 0001 2248 7461
1600 Pacific Highway, Room 355
San Diego, California 92101-2407

San Diego County Sheriff's Department # 7012 1640 0001 2248 7478
9621 Ridge Haven Court
San Diego, CA 92120

County of San Diego # 7012 1640 0001 2248 7485
Planning & Land Use
1600 Pacific Highway
San Diego, California 92101-2472

Deputy Chief Administrative Office # 7012 1640 0001 2248 7492
County of San Diego
1600 Pacific Highway, Room 209
San Diego, California 92101-2472

Department of Public Works # 7012 1640 0001 2248 7508
5555 Overland Ave., Building #2
San Diego, California 92123

Chairperson
Barona Group of the Capitan Grande Band # 7012 2210 0002 1441 7420
of Mission Indians
1095 Barona Rd.
Lakeside, California 92040

Chairperson
Campo Band of Diegueno Mission Indians # 7012 2210 0002 1441 7437
36190 Church Road, Suite I
Campo, California 91906

Chairperson
Ewiiapaayp Band of Kumeyaay Indians # 7012 2210 0002 1441 7444
P.O. Box 2250
Alpine, California 91903-2550

Chairperson
Inaja-Cosmit Band of Mission Indians # 7012 2210 0002 1441 7451
2005 S. Escondido Boulevard
Escondido, California 92025

Chairperson
Jamul Indian Village # 7012 2210 0002 1441 7468
P.O. Box 612
Jamul, California 91935

Chairperson
La Jolla Band of Luiseno Mission Indians # 7012 2210 0002 1441 7475
22000 Highway 76
Pauma Valley, California 92061

Chairperson
La Posta Band of Diegueno Mission Indians # 7012 2210 0002 1441 7482
P.O. Box 1048
Boulevard, California 91905

Chairperson
Los Coyotes Band of Cahuilla Mission Indians # 7012 2210 0002 1441 7499
P.O. Box 189
Warner Springs, California 92086

Chairperson

Manzanita Band of Diegueno Mission Indians # 7012 2210 0002 1441 7505
P.O. Box 1302
Boulevard, California 91905

Chairperson

Mesa Grande Band of Diegueno Mission Indians # 7005 1160 0004 6224 2620
P.O. Box 270
San Ysabel, California 92070

Chairperson

Pala Band of Mission Indians # 7005 1160 0004 6224 2613
35008 Pala Temecula Road
Pala, California 92059

Chairperson

Pauma and Yuima Reservation # 7005 1160 0004 6224 2606
P.O. Box 369
Pauma Valley, California 92061

Chairperson

Rincon Band of Mission Indians # 7005 1160 0004 6224 2590
P.O. Box 68
Valley Center, California 92082

Chairperson

San Pasqual Band of Mission Indians # 7005 1160 0004 6224 2583
P.O. Box 365
Valley Center, California 92082

Chairperson

Santa Ysabel Band of Mission Indians # 7005 1160 0004 6224 2576
P.O. Box 130
San Ysabel, California 92070

Chairperson

Viejas (Baron Long) Band of Mission Indians # 7005 1160 0004 6224 2576
P.O. Box 908
Alpine, California 91903

Kamala D. Harris, Attorney General # 7005 1160 0004 6224 2699
State of California, Department of Justice
1300 I Street, Suite 125
Sacramento, CA 954244

Deputy Chief Administrative Officer # 7005 1160 0004 6224 2682
County of San Diego, Land Use and Environment Group
1600 Pacific Highway, Room 212
San Diego, CA 92101

Crest-Dehesa-Granite Hills # 7005 1160 0004 6224 2675
Harbison Canyon Subregional
Planning Group
P.O. Box 21489
El Cajon, CA 92021

Dehesa Valley Community Council, Inc. # 7005 1160 0004 6224 2668
P.O. Box 1631
El Cajon, CA 92022

Regular Mail:

Bureau of Indian Affairs
2800 Cottage Way, RM. W-2820
Sacramento, CA 95825

Office of the Secretary, Interior

§4.310

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

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

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

§4.306 Time for payment.

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

§4.307 Title.

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

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

§4.308 Disposition of income.

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

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

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

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

§4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service must be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or

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

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

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

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

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

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

§4.311 Briefs on appeal.

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

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

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

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

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

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

§4.312 Decisions.

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

§4.313 Amicus Curiae; intervention; joinder motions.

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

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

§4.314 Exhaustion of administrative remedies.

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

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

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

§4.315 Reconsideration.

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

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

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

§4.316 Remands from courts.

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

§4.317 Standards of conduct.

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

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

§4.318 Scope of review.

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

APPEALS TO THE BOARD OF INDIAN
APPEALS IN PROBATE MATTERS

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

§4.320 Who may appeal.

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

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

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

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

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

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

§ 4.321 Notice of transmittal of record on appeal.

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

§ 4.322 Docketing.

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

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

§ 4.323 Disposition of the record.

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

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

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

§ 4.330 Scope.

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

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

(1) Tribal enrollment disputes;

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

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

§ 4.331 Who may appeal.

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

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

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

(c) Where otherwise provided by law or regulation.

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

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

(1) A full identification of the case;

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

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

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

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

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

[54 FR 6487, Feb. 10, 1989, as amended at 67 FR 4366, Jan. 30, 2002]

§ 4.333 Service of notice of appeal.

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

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

§ 4.334 Extensions of time.

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

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

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

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

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

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

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

§ 4.336 Docketing.

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

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

§ 4.337 Action by the Board.

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

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

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

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

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

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. 13, 1991, as amended at 64 FR 13363, Mar. 13, 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:

ATTORNEY GENERAL
BOOKETING OFFICE
2013 AUG -2 PM 4: 00

RECEIVED
JULY 2013
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DEPARTMENT OF JUSTICE
SACRAMENTO OFFICE

ATTORNEY GENERAL
BOOKETING OFFICE
SACRAMENTO OFFICE
2013 AUG -2 AM 11: 23

