

## NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7004 2510 0001 5639 7062

Daniel Tucker, Chairperson  
Sycuan Band  
5459 Sycuan Road  
El Cajon, CA 92021

Dear Mr. Tucker:

This is notice of our decision upon the application of the Sycuan Band, to have the below-described real property, accepted by the United States of America in trust for the Sycuan Band of Kumeyaay Nation. The land referred to herein is situated in the State of California, San Diego County, and is described as follows:

That portion of the west half of the east half and the east half of the west half of Section 12, Township 16 south, range 1 east, San Bernardino Meridian, in the County of San Diego, State of California, according to the Official Plat thereof, described as follows:

Commencing at Engineer's Station B.C. 495+82.20 on the centerline of County Road Survey No. 631 as said land is described in Deed to the County of San Diego, recorded August 21, 1940 in Book 1059, Page 371 of Official Records, being the westerly terminus of an 875.00 foot radius curve, concave northwesterly in said centerline, the radius of said curve bears south 06°24'30" east to said point; thence easterly along said curve 36.40 feet through an angle of 02°33'00" to the southeast corner of land in deed to Wilbur M. Ballinger and wife, recorded April 1, 1957 as Document No. 47679 in Book 6417, Page 493 of Official Records, thence continuing easterly along said curve 202.37 feet through an angle of 13°15'04" to the true point of beginning; thence radially to said curve north 22°15'44" west, 30.00 feet; thence north 02°38'30" west, 356.15 feet; thence north 11°48'30" west, 43.85 feet; thence north 66°47'00" east, 138.63 feet; thence along a radius of the above described 875.00 foot radius curve south 52°05'48" east, 340 feet to a point in said curve; thence southwesterly along said curve to the true point of beginning.

The above-described real property contains 2.26 acres, more or less, is contiguous to the exterior boundaries of the Sycuan Reservation, and is commonly referred to as Assessor's Parcel Number 513-073-17.

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. The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 USC §2202 et seq). Additionally, as previously stated, the lands that are the subject of this decision notice are located contiguous to the exterior boundaries of the Sycuan Reservation.

On February 1, 2006, we issued notice of, and sought comments regarding the fee-to-trust application from the California Office of Planning and Research; Governor Schwarzenegger; Eric George, Office of the Governor, State of California; State of California, Deputy Attorney General; Honorable Barbara Boxer; Honorable Dianne Feinstein; Honorable Duncan Hunter; Deputy Attorney General, California Department of Justice; County of San Diego Board of Supervisors; San Diego Department of Public Works; San Diego County Assessor's Office; San Diego Treasure & Tax Collector; San Diego County Sheriff's Department; San Diego Planning & Land Use; Barona Group of Capitan Grande Band of Mission Indians; Campo Band of Mission Indians; Ewiiapaayp Band of Kumeyaay Indians; Inaja & Cosmit Band of Mission Indians; Jamul Indian Village; La Jolla Band of Luiseno Indians; La Posta Band of Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Mission Indians; Pala Band of Mission Indians; Pauma & Yuima Band of Mission Indians; Rincon Band of Mission Indians; San Pasqual Band of Mission Indians; Santa Ysabel Band of Mission Indians; Viejas (Baron Long) Group of Capitan Grande Mission Indians; Mesa Grande Band of Mission Indians; Sycuan Band Diegueno Mission Indians; Bureau of Indian Affairs, Pacific Region; Anthony W. Norton, Attorney at Law.

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

- Letter dated February 13, 2006 from Gregory Smith, County Assessor with a printout of the tax bill for the subject property.
- Five letters from community residents opposing the acquisition because the property would be taken off the tax rolls and the local community would lose control over the use and development of the property.
- Letter dated March 1, 2006 from the County of San Diego, Chief Administrative Office stating the proposed acquisition does not pose any fiscal, environmental or jurisdictional concerns.

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) the impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities

resulting from the acquisition of the land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with the implementing procedures of the Department of the Interior, 516 DM 1-7, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination.

#### Factor 1 – Need of the Tribe for Additional Land

The Sycuan Indian Reservation was originally established (640 acres) by Executive Order dated December 27, 1875. Currently 379.54 acres of the original purchase is in tribal ownership and the balance in individual ownership (allotted). Additional lands have been purchased by the Tribe. Thus, the existing trust tribal land base consists of +547 acres. Suitable residential and other development sites within the reservation are limited due primarily to the topography. The tribal lands are comprised primarily of mountainous terrain with variations of rolling to steep hillsides. Additionally, large portions of the reservation is home to sensitive biological habitat including coastal sage scrub and the willow riparian which is potential home of three federally endangered species.

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 casino, government center, fire department, health clinic, library, day care facility, and the Cumeyaay Community College.

The additional land contemplated in this land acquisition request will address some of the Tribe's housing needs. The Tribe currently has twenty-nine tribal members who are in immediate need of housing. It is our determination that the Sycuan Band has an established need for additional trust land in order to facilitate tribal housing and self-determination.

#### Factor 2 – The Purposes for Which the Land Will be Used

The subject property is currently zoned A72 General Agricultural and residential. Improvements on the property include a single family residence, attached three car garage, swimming pool, fencing and an appurtenant structure that houses a water well. Land uses north, east and west, although zoned A72, are primarily residential in nature. The parcel is contiguous to the reservation separated by Dehesa Road, a San Diego County Road. The Tribe has no plans currently or in the future to change the existing use of this parcel.

#### Factor 3 – Impact on State and its Political Subdivisions Resulting From the Removal of the Land from the Tax Rolls

According to information obtained from the County Tax Assessor, taxes assessed against the subject property in 2005/2006 were \$2,598.46. Taxes assessed for fiscal year 2001-2002 by San Diego County exceeded 2.3 billion based on the State's Fiscal Year 2001-2002 Property Tax Collection Statistical Report.

The Tribe makes significant contributions to the local community by employing over 2,300 people with a payroll of approximately \$61 million annually. Income taxes withheld by the State and the IRS totaled approximately \$6.2 million in 2004. Additionally, the Tribe's casino charges State sales taxes on all of the casino's off-reservation purchases.

It is our determination that no significant impact will result from the removal of this property from the county tax roles given the relatively small amount of tax revenue assessed on the subject parcel, balanced with the financial offsets provided by the Tribe through employment and purchases of goods and services.

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

There will be no change in criminal jurisdiction as jurisdiction in California is subject to P.L. 83-280. With no change in land use contemplated, it does not appear that transfer to trust status would result in jurisdictional conflict.

#### Factor 5 - Whether the Bureau of Indian Affairs is Equipped to Discharge the Additional Responsibilities Resulting From the Acquisition of the Land in Trust Status

The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for Tribes. This acquisition anticipates no change in land use; and therefore, any additional responsibilities resulting from this transaction will be minimal. As such, the Bureau of Indian Affairs will administer any additional responsibilities that may result from this acquisition.

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

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" dated December 14, 2005, 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 3-H). Within 59 IAM 3-H, 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 10.5 I, 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 this Agency on December 22, 2005.

### 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 Sycuan Band of Kumeyaay Nation in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within 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 copies of the notice to said party or timely provide our office with the name and address of said party.

Sincerely,

  
Regional Director

Enclosures  
Distribution List  
43 CFR 4.310-4.340

## DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

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Sacramento, CA 95812-3044

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State of California  
Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

Paul Dobson – 7005 2570 0000 6695 0099  
Deputy Legal Affairs Secretary  
Office of the Governor of California  
State Capitol Building  
Sacramento, CA 95814

James Peterson, District Director – 7005 2570 0000 6695 0105  
Office of Senator Diane Feinstein  
750 B Street, Suite 1030  
San Diego, CA 92101

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San Diego, California 92101

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County of San Diego  
1600 Pacific Highway, Room 335  
San Diego, California 92101

Honorable Charlene Zettel – 7003 1680 0002 3878 9947  
California Legislature, 75<sup>th</sup> District  
15708 Pomerado Road, Suite 110  
Poway, California 92064

County of San Diego – 7003 1680 00002 3878 9954  
Planning & Land Use  
5201 Ruffin Road, Suite B  
San Diego, California 92123

San Diego Treasurer & Tax Collector – 7003 1680 0002 3878 9961  
1600 Pacific Highway 162  
San Diego, California 92101

Department of Public Works – 7003 1680 0002 3878 9978  
5201 Ruffin Road, Suite D  
San Diego, California 92123

Chairperson – 7003 1680 0002 3878 9985  
Los Coyotes Band of Cahuilla Mission Indians  
P.O. Box 189  
Warner Springs, California 92086

Chairperson – 7003 1680 0002 3878 9992  
Sycuan Band of Mission Indians  
5459 Sycuan Road  
El Cajon, California 92021

Chairperson – 7003 1680 0002 3879 0004  
San Pasqual Band of Mission Indians  
P.O. Box 365  
Valley Center, California 92082

Chairperson – 7005 2570 0000 6695 0303  
San Ysabel Band of Mission Indians  
P.O. Box 130  
San Ysabel, California 92070

Chairperson – 7005 2570 0000 6695 0310  
Rincon Band of Mission Indians  
P.O. Box 68  
Valley Center, California 92082

Chairperson – 7005 2570 0000 6695 0327  
Mesa Grande Band of Diegueno Mission Indians  
P.O. Box 270  
San Ysabel, California 92070

Chairperson – 7005 2570 0000 6695 0334  
Manzanita Band of Diegueno Mission Indians  
P.O. Box 1302  
Boulevard, California 91905

Chairperson – 7005 2570 0000 6695 0341  
Inaja Band of Diegueno Mission Indians  
P.O. Box 186  
Santa Ysabel, California 92070

Chairperson – 7005 2570 0000 6695 0358  
Jamul Indian Village  
P.O. Box 612  
Jamul, California 91935

Chairperson – 7006 0810 0001 4950 8544  
La Jolla Band of Luiseno Mission Indians  
22000 Highway 76  
Pauma Valley, California 92061

Chairperson – 7006 0810 0001 4950 8551  
La Posta Band of Diegueno Mission Indians  
P.O. Box 1120  
Boulevard, California 91905

Chairperson – 7006 0810 0001 4950 8568  
Pala Band of Luiseno Mission Indians  
35008 Pala Temecula Rd. PMB 50  
Pala, California 92059



Chairperson – 7006 0810 0001 4950 8575  
Pauma Band of Mission Indians  
P.O. Box 369  
Pauma, California 92061

Chairperson – 7006 0810 0001 4950 8582  
Barona Group of the Capitan Grande Band of Mission Indians  
1095 Barona Rd.  
Lakeside, California 92040

Chairperson – 7006 0810 0001 4950 8599  
Campo Band of Diegueno Mission Indians  
36190 Church Road, Suite I  
Campo, California 91906

Chairperson – 7006 0810 0001 4950 8605  
Ewiiapaayp Band of Kumeyaay Indians  
P.O. Box 2250  
Alpine, CA 91903-2250

Chairperson – 7006 0810 0001 4950 8612  
Viejas (Baron Long) Band of Mission Indians  
P.O. Box 908  
Alpine, California 91903

Chief Administrative Officer – 7006 0810 0001 4950 8629  
County of San Diego  
1600 Pacific Highway  
San Diego, California 92101-2472

Tribal Liaison – 7006 0810 0001 4950 8636  
County of San Diego  
1600 Pacific Highway  
San Diego, California 92101-2472

Regular Mail:

Patricia Riggs, President  
Dehesa Valley Community Council  
P.O. Box 1631  
El Cajon, CA 92022

Superintendent, Southern California Agency, BIA  
2083 Iowa Ave., Suite 101  
Riverside, California 92507-0001

Office of the Secretary, Interior

§4.311

~~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. Opposing 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.

1. 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.  
1. §4.308 Disposition of income.  
1. 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.  
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1. §4.310 Documents.  
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1. (c) Computation of time for filing and service. Except as otherwise provided by law, in computing any period of time  
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1. (2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.  
1. (3) For good cause the Board may grant an extension of time on its own initiative.  
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1. §4.311 Briefs on appeal.  
1. (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. Opposing 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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§ 4.317 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 shall be dismissed for lack of jurisdiction of appeal shall include:

(1) A full identification of the parties to the appeal and of the relief sought;

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

(3) The names and addresses of all interested parties, tribes, tribal corporations, or individuals having rights or privileges which may be affected by a change in the decision, whether or not they are parties to the proceedings.

(b) In accordance with the notice of appeal shall be filed with the Secretary—Indian Affairs within 20 days from receipt of the notice of appeal.

(c) The Secretary—Indian Affairs shall review the appeal. If the Secretary—Indian Affairs determines that the Board should review the appeal, any documents filed with the Secretary—Indian Affairs shall be transmitted to the Board.

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

(e) At any time during the pendency of an appeal, an appeal may be required to provide any Indian, Indian tribe, or Indian organization involved.

(f) At any time during the pendency of an appeal, an appeal may be required to provide any Indian, Indian tribe, or Indian organization involved.

(g) At any time during the pendency of an appeal, an appeal may be required to provide any Indian, Indian tribe, or Indian organization involved.

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Office of the Secretary, Interior

§ 4.336

appeal not timely filed shall be dis-  
missed for lack of jurisdiction. A no-  
tice 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

#### §4.337

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 100-158 (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*: Hearings and Appeals. Secretary.

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

(4) The term *party* means the Project Director, presumptive or decedent, or of any other party to the appeal.

(5) The term *monetary sum*, as used in §4.330(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, acting in his authority, as Secretary, for making determinations as provided in this part.

(7) The term *aggrieved party* means a party aggrieved by a final decision upon reconsideration by the Board.

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

#### §4.351 Commencement of proceedings

(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, upon receiving the purpose being submitted, relative to the facts.

(b) The data shall be limited to:

(1) A copy of the data, if one exists. If the data, then another