

# TULARE COUNTY COUNSEL

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February 7, 2011

The Board of Indian Appeals  
Office of Hearing and Appeals  
U.S. Department of the Interior  
801 North Quincy Street  
Arlington, Virginia 22203

Re: Notice of Appeal by Tulare County, California, Request for Subpoena of Witness, and Petition for Stay Pending Appeal. Proposed Trust Acquisition Decision for Tule River Indian Tribe 40-Acre Airpark Property. Our file No. 20101069.

Dear Members of the Board of Indian Appeals:

## I. IDENTIFICATION OF APPEAL:

The County of Tulare, State of California ("County") hereby files this Notice of Appeal ("Notice"), pursuant to 43 CFR 4.332, indicating its challenge to the Proposed Decision of the Bureau of Indian Affairs ("BIA") to take land into trust status on behalf of the Tule River Indian Tribe. Tulare County is an "interested party" as the Proposed Decision authorizes real property to be taken into trust by the United States that is within the political subdivision (and under the regulatory and taxation authority) of the County. The Notice pertains to the Proposed Decision of the United States Department of the Interior, Bureau of Indian Affairs issued by Amy Dutschke, Director for the Pacific Regional Office and received by Cathy Christian, Esq., representing Tulare County, on January 6, 2011 ("Proposed Decision"). The Proposed Decision grants the application of the Tule River Indian Tribe to take into trust approximately 40-acres of real property located in the City of Porterville, County of Tulare, State of California. The proposed trust land is neither contiguous nor within the existing boundaries of the Tule River Indian Reservation and is located as more particularly described in the Proposed Decision ("Proposed Trust Land" or "Subject Property"), which is attached hereto as **Exhibit A**.

Please serve any documents regarding this appeal on Tulare County Counsel representing the County of Tulare at 2900 W. Burrel, County Civic Center, Visalia, CA 93291 and Special

Counsel, Cathy Christian at Nielsen Merksamer Parinello Gross & Leoni LLP, 1415 L Street, Suite 1200, Sacramento, California 95814 (telephone: 916.446.6752, fax: 916.446.6106).

## **II. STATEMENT OF REASONS**

### **a. The BIA Abused Its Discretion by Not Giving Sufficient Weight to Local Government Concerns.**

The Code of Federal Regulations requires that for off-reservation acquisitions, the BIA must give “greater weight to the concerns raised [by local government]” when a tribe is attempting to place land into trust that is not directly connected to the reservation. (25 CFR 151.11 (b) and (d).) “[A]s the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition.” (25 CFR 151.11 (b).) The Proposed Trust Land is located approximately 20 miles from the Tribe’s current reservation (Proposed Decision, page. 5.) The Proposed Decision does not reflect that any “greater weight” was given to the concerns expressed by local governments including the comment letters from the County dated April 28, 2010, July 26, 2010 and September 10, 2010, hereby incorporated by reference, and from the Office of the Governor dated February 10, 2010 and July 26, 2010, hereby incorporated by reference. The Amended Finding of No Significant Impact, dated September 17, 2010, (“Amended FONSI”, hereby incorporated by reference) states there would be no impacts to State and Local Government Tax Base because the Tribe’s Cooperation Agreement with the City of Porterville (effective April 1, 2010, hereby incorporated by reference) states the Tribe will compensate the City for lost revenues related to taxes, licenses and development fees. The Proposed Decision fails to address the issue of the County’s and State’s lost revenues related to taxes, licenses and/or development fees, as well as impacts on regulatory jurisdiction such as County services and infrastructure that will be impacted by any intense commercial use on the property.

The County’s opposition to the trust acquisition was joined by the Office of the Governor. Among the concerns stated by the Office of the Governor was that the project could have a reasonably foreseeable result of developing a casino and the tribe’s need for the land is questionable. These concerns were not given any weight, much less “greater weight,” as required under the regulatory scheme.

### **b. The Proposed Decision Was Not Supported By Substantial Evidence.**

To the extent the factors analyzed by the agency under 25 CFR 151.10 and 151.11 apply to an off-reservation acquisition, the BIA provided only the most cursory analysis and did not have substantial evidence upon which each of the mandated criterion could be satisfied

#### **i. Factual Errors and False Assumptions.**

The Proposed Decision contains critical factual errors and false assumptions upon which the agency relied in granting the application. Examples of these errors, which relate to the

sufficiency of mitigation intended to reduce to insignificance the environmental concerns and impacts identified by the County, are cited below.

1. The Cooperation Agreement does not guarantee there will be no change in land use and allows for Commercial Recreation development on the subject property.

The Cooperation Agreement between the Tribe and the City waive the tribe's sovereign immunity, however do not place a deed restriction on the property going into Trust to preclude any change in land use or prohibit intense commercial uses. The Cooperation Agreement states the Tribe will comply with the City General Plan, which currently designates the property as "Light Industrial-Airport Safety" and alternatively, "Commercial Recreation." The BIA failed to recognize and analyze a reasonably foreseeable land use on the property, Commercial Recreation, that would conflict with the Amended FONSI and the Environmental Assessment dated June 2010 ("EA", hereby incorporated by reference) statements that there will be no change in land use. There are no limitations upon the trust transfer to justify the tribe and BIA's statement of no change in land use.

Further, the Cooperation Agreement does not restrict the City from rezoning the property in its General Plan at any time, allowing for any change in land use. The Environmental Assessment (EA) states on page 4, "The purpose of this action is to continue to expand the Tule River Tribe's land base to satisfy needs in areas of Tribal self-determination, housing, economic self-sufficiency and alleviation of poverty." Page 37 of the EA also states housing will be created. A stated purpose for "housing" references another intended change in land use, as the property is currently zoned in the City's General Plan and used for "Light Industrial-Airport Safety" with an alternate use of "Commercial Recreation." Any use for housing would currently require a zone change with the City of Porterville, so should be considered a change in land use and reasonably foreseeable alternative use.<sup>1</sup>

2. Casino development was considered by the tribe and BIA for this property while the trust application was pending and the tribe continues to consider casino development.

The Proposed Decision states the fee-to-trust application for this property never mentioned gaming and that the County and Office of Governor are confusing the matter with another property on which there was a proposed casino. (Proposed Decision, page 4.) We disagree, as there is much evidence the Tribe and BIA considered gaming on this specific Subject Property while the trust application was pending, including the previous Memorandum of Understanding (MOU) between the Tribe and the City, fully executed on March 7, 2008 (herein incorporated by

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<sup>1</sup> The County is unaware if the Cooperation Agreement was ever submitted to the United States Department of Interior for approval as likely required by 25 U.S.C. §81. This requirement was not discussed in the Proposed Decision.

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reference), and an email dated May 8, 2009 between the Tribe and BIA agents (herein attached as **Exhibit B**).

The Southern San Joaquin Valley radio station, KTIP AM 1450 located in Porterville, CA (internet address: <http://www.ktip.com/site/>), has recently broadcast a daily advertisement from the Tule River Tribal Council indicating plans "...for the move of Eagle Mountain Casino to its intended home near the Porterville airpark. This will bring hundreds of construction jobs and more positions at the new casino..." (See **Exhibit C**, Declarations of Nina Dong and Michael Washam.) (See 25 CFR §2.21 Scope of Review.) These are further proof of the tribe's intentions for the proposed trust land to be developed as a casino and clearly discredits the statement by the BIA that the County and Officer of the Governor's concerns of plans for a casino are "*mere speculation* by a third party that a tribe might, at some future time, attempt to use trust land for gaming purpose." (Emphasis added, Amended FONSI, page. 6.)

Further, the cases cited by the BIA on page 6 of the Amended FONSI, implying 'mere speculation' of gaming purposes, may be distinguished from the facts of this case because in this case the County has presented substantial evidence that gaming is being considered for the proposed trust land. In the first three cases cited by the BIA, there was little proof of plans for gaming on the proposed trust lands. (*Town of Charleston, R.I. v. E. Area Dir., BIA*, 35 IBIA 93, 103 (2000), *aff'd sub nom. Carcieri v. Norton*, 290 F. Supp. 2d 167 (D.R.I. 2003), *aff'd sub nom. Carcieri v. Kempthorne*, 497 F.3d 15 (1<sup>st</sup> Cir. 2007) (en banc), *rev'd on other grounds sub nom. Carcieri v. Salazar*, 129 S. Ct. 1058 (2009).) Further, in the first three cases cited by the BIA (*Town of Charleston, Carcieri v. Norton*, and *Carcieri v. Kempthorne*), there were plans for housing developments on the proposed trust lands for the BIA to review that supported a decision that gaming was not intended for the property. In the facts of this case, the tribe represents there are no specific, concrete plans for development on the Proposed Trust Land, however the County has presented contrary evidence that the tribe is considering intense commercial development such as a casino/resort. The tribe also briefly stated in the EA that it intends to develop housing on the proposed trust land. (EA pages 4 and 37.) In this case, there is evidence the tribe is being disingenuous when it states there will be no change in land use and the BIA failed to consider relevant evidence of gaming and housing purposes on the proposed trust land.

The County of Tulare hereby requests pursuant to 43 CFR § 4.26 that the Administrative Law Judge issue a subpoena requiring the attendance at a hearing of a representative of KTIP radio station qualified to appear and produce testimony and documents regarding the dates and times of broadcast on the radio station, the person or entity who placed and paid for the advertisement, and terms of agreement regarding the advertisement set forth in **Exhibit C** or any similar advertisement stating there will be a new casino or other development at or near the Porterville airpark, in order to determine the tribe's intent for a casino or intense commercial use on the proposed trust land.

The Amended FONSI mentions the Tulare County Indian Gaming Local Community Benefit Committee (LCBC) grant funding distributed to the County of Tulare and City of Porterville by

the Tribe in response to the County's concerns of adverse effects on local government if this proposed trust land is approved. (Amended FONSI, page 7, EA page 24.) These grants are to alleviate the impacts of a casino. The BIA's reference to LCBC grant funding indicates they reasonably foresee a casino will be developed on the property, and an EIS should evaluate this alternative. Further the current grant funding is to alleviate the impacts on local governments from the existing casino located on the reservation and has a strict nexus requirement pursuant to California Government Code §12715 (h) and (i), meaning the existing grant funding is completely unrelated to impacts from the Proposed Trust Land and any future development on the Proposed Trust Land.

- ii. The relevant factors enumerated in the applicable federal regulations were not adequately considered and there was a clear error of judgment.

In *McAlpine v. U.S.A. Bureau of Indian Affairs*, the 10<sup>th</sup> Circuit Court of Appeals upheld the BIA's decision to deny a land trust application where there was no discussion of relevant regulatory factors. (*McAlpine v. U.S.A. Bureau of Indian Affairs* (10<sup>th</sup> Cir. 1997) 112 F.3d 1429.) The appellate court approved the BIA's denial based on the following findings:

"... (1) that the 1871 appropriations act cited by Mr. McAlpine as statutory authority did not apply to the two tracts of land because they were not part of the diminished Osage reservation in Kansas; (2) that there was no justifiable reason to place the land in trust status; (3) that Mr. McAlpine failed to demonstrate a need to place the land in trust status; (4) that there was no impelling need for the land to be taken off the local tax rolls; and (5) that because the land was located outside the present Osage reservation in Oklahoma, the BIA office in Pawhuska was not equipped to discharge the additional responsibilities of administering the two parcels of land in Kansas." (Id., 1436.)

It is clear that the BIA is required to consider the relevant factors enumerated in the applicable federal regulations. (Id., 1435) In this case, the BIA failed to do so and there was a clear error of judgment, making the BIA's Proposed Decision arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law. (5 U.S.C. § 706 (2)(A).)

1. The Proposed Decision fails to state a need of the tribe for additional land.

The BIA failed to show substantial evidence to support the need for additional land (25 CFR 151.11 (a) and 25 CFR 151.10 (b)) and the necessary determination that "the acquisition of land is necessary to facilitate tribal self-determination, economic development, or Indian housing." (25 CFR 151.3.) Such a finding reflects the policy that there must be a compelling basis to take land into trust that is neither within (or adjacent) to the tribe's reservation or already in tribal ownership. (Id.) The Proposed Decision did not give any findings, analysis or conclusion to support the need for additional land, and merely made an irrelevant statement on page 4, under "Factor 1-Need for additional land," stating the location of the current existing reservation. The

Proposed Decision lacks the consideration and analysis required by 25 CFR 151.11 (a) and 25 CFR 151.10 (b).

The tribe does not need the proposed trust land. There are no current, specific plans for development of the proposed trust land and, as a gaming tribe operating a casino; the tribe has another lucrative basis upon which to generate revenue. Further, as the tribe states, there are no current plans for economic development on the property and there will be no change in land use, then the current use on the property is a sufficient use for the tribe and there is no current, expressed need by the tribe for the land to go into trust. The Amended FONSI states on page 5, "The Porterville Airpark is in an area of great historical importance to the Tribe as part of its aboriginal heritage and the Tribal Council is required by the Tribal Constitution and bylaws to reclaim such lands and assert Tribal self-determination and jurisdiction by taking such lands into trust." The tribe should not be allowed or encouraged to stockpile land in trust that is miles away from the reservation with no particular plan or reason to have the land in trust except to reclaim historical territories. The Amended FONSI also refers to tax credits, accelerated depreciation for power lines, water systems and telecommunication facilities, and tax-exempt financing for economic development, but fails to specify any specific plans for economic development. The Amended FONSI merely made conclusory statements that the land is necessary to facilitate tribal self-determination and economic development without providing plans as to how the land will help achieve this goal as required by 25 CFR 151.11 (c). These statements do not provide substantial evidence of a need for this additional trust land.

Finally the failure to analyze the significant impacts of the proposed trust acquisition and the lack of analysis concerning the tribe's alleged need for land are highlighted by the fact that the Proposed Decision's discussion of the need for additional land tracks, word for word, Section 3(b) of the *tribe's 2002* fee to trust application (dated March 26, 2002). Notwithstanding the fact that nearly eight years have passed since the application was filed, the BIA fails to provide any support for its conclusory statements. It is manifestly clear that the only reason the BIA found that the tribe needs additional land is because the tribe wants additional land. Such arbitrary and baseless administrative action should not be allowed to stand.

2. The purposes for which the land will be used are vague and insufficient.

The BIA failed to show substantial evidence for approval of the purpose for which the land will be used. (25 CFR 151.11 (a) and 25 CFR 151.10 (c).) The BIA only considered the vague concepts of no change of land use and undetermined future projects that may benefit economic development. The Environmental Assessment (EA) states on page 4, "The purpose of this action is to continue to expand the Tule River Tribe's land base to satisfy needs in areas of Tribal self-determination, housing, economic self-sufficiency and alleviation of poverty." Under "Factor 2-Proposed Land Use," the Proposed Decision merely states: "There is no planned change in land use." (Proposed Decision, page. 5) These stated purposes are vague and insufficient, making it premature to place the property into trust at this time. The tribe's purpose of no planned change in land use may be achieved without the property going into trust.

3. There will be an impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls if the trust is approved.

The BIA failed to show substantial evidence that it considered impacts on the State and the County, a political subdivision, resulting from removal of the land from the tax rolls. (25 CFR 151.11 (a) and 25 CFR 151.10 (e).) The Proposed Decision indicates there will be no impact on local governments because the City of Porterville has a Cooperative Agreement with the tribe to compensate the City of Porterville for loss revenues from taxes. However, The Proposed Decision fails to acknowledge that the County and State do not have such an agreement with the tribe and fails to analyze and weigh the impacts to the County and State although each submitted letters to convey concerns for BIA consideration pursuant to 25 CFR 151.11 (a) and 25 CFR 151.10 (e) and should be afforded greater weight due to the distance between the tribe's current reservation and the proposed trust land. 25 CFR 151.11 (b). The BIA's inattention to the County and State's concerns is an abuse of discretion and failure to comply with federal regulations.

4. Insufficient information to review jurisdictional problems and potential conflicts of land use which may arise.

There was not sufficient information provided to allow the Secretary to determine that the establishment of a tribal sovereign enclave within the City of Porterville city limits would not result in jurisdictional conflicts. (25 CFR §§ 151.10 (f) and 151.11 (a).)

5. No plan is provided to specify anticipated economic benefits associated with the proposed use.

The Proposed Decision and Amended FONSI states the tribe's need for economic development on the property and no change in land use from the current uses, indicating a business purpose. "Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use." (25 CFR 151.11 (c).) The tribe did not submit a financial plan and economic analysis as required by law. This information was particularly critical given the Secretary's stated policy for off-reservation land acquisition which specifically considers the degree of economic benefit to the tribe. (See 25 CFR 151.3(a)(3); 25 CFR 151.11(b) and (c).)

The Proposed Decision states on page 7:

"...This is consistent with Tule River Tribal Council Resolution No. 83-94 adopted on September 27, 1994, which recognized that 'the Tule River Tribal Council has approved a thirty (30) year Economic Development Plan,' and which same Tribal Council Resolution approved ANA Grant application 93612-951 dated October 21, 1994 and its attached Business Plans No. 1 and No. 2 for the Airport Industrial Park."

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There is no indication that the BIA has reviewed this Resolution No. 83-94 or the "Economic Development Plan" for the consideration and analysis required by 25 CFR 151.11 (c). Further, these documents were not provided to the County or other commenters on this Proposed Land Trust. To our knowledge, these documents are not a part of the record for this Proposed Land Trust and should not be considered unless provided to all interested parties, including but not limited to the County of Tulare.

As stated in the July 26, 2010 letter from Andrea Lynn Hoch, Legal Affairs Secretary of the Office of the Governor:

"The EA states that the 'project's contribution to cash is obtained through trust status designation.' There are no details provided regarding how a cash infusion would result from the land being taken into trust status. As we commented regarding the Tribe's application, the DEA provides no information regarding the specific economic benefits to the Tribe with the proposed use of the land."

Ms. Hoch's February 10, 2010 letter also raised this concern with the application for this land to go into trust. It is clear that the BIA has consistently ignored concerns of insufficient explanation of economic benefits in approving this trust.

c. The BIA Failed to Comply with the National Environmental Policy Act (NEPA)

The County submitted comment letters on April 28, 2010, July 26, 2010 and September 10, 2010 (hereby incorporated by reference) to the BIA regarding the Draft EA and the FONSI issued September 2, 2010 (hereby incorporated by reference). The comment letters detailed the significant long-term impacts on the human environment that would be caused by approval of the trust application as well as a lack of an appropriate reasonable alternatives analysis. In its Proposed Decision and Amended FONSI, the BIA failed to follow its own requirements for NEPA compliance as set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1 and Part 59 of the Indian Affairs Manual (59 IAM), Chapter 3. For example, the County comments identified significant impacts that, pursuant to 30 BIAM, Supp.1, 5.1 and NEPA, required preparation of an Environmental Impact Statement (EIS). (42 U.S.C.A. §§ 4332 (2)(C) and 4333, 40 CFR Parts 1502.1 et. seq. and 1508.11) Further, contrary to the BIA's statements in the Proposed Decision that this action is administrative, it is actually a discretionary decision of the Secretary of the Interior. Therefore, NEPA review is required.

The County listed numerous significant environmental and socioeconomic impacts that needed to be evaluated in an EIS, based on the reasonably foreseeable alternative of an intense commercial use including but not limited to a casino/resort and gas station/truck stop. The County emphasized that the Cooperation Agreement between the tribe and City of Porterville requires the tribe to comply with the City's General Plan, which currently designates the property as having an alternative use of "Commercial Recreation," which should be evaluated as a reasonable alternative. The County respectfully submits that the BIA cannot lawfully have approved the proposed project on the basis of the EA and the agency abused its discretion in not



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requiring an EIS. The County hereby resubmits the environmental concerns set forth in the above-mentioned comment letters.

The Amended FONSI states there is no planned change in land use, however the City's General Plan, with which the Cooperation Agreement requires the Tribe to comply, states this property may be used for "Commercial Recreation." An Environmental Impact Study (EIS) should be issued to address the social and environmental impacts of these potential and feasible intense commercial uses, including a casino/resort or gas station/truck stop. These uses are considered viable alternatives and reasonably foreseeable future actions that should be considered in an EIS.

The Amended FONSI mentions the Tulare County Indian Gaming Local Community Benefit Committee (LCBC) grant funding distributed to the County of Tulare and City of Porterville by the Tribe in response to the County's concerns of adverse effects on local government if this proposed trust land is approved. (Amended FONSI, page 7.) The purpose of these grants are to alleviate the impacts of a casino. The BIA's reference to LCBC grant funding indicates they reasonably foresee a casino will be developed on the property, and an EIS should evaluate this alternative.

The Environmental Assessment (EA) states on page 4, "The purpose of this action is to continue to expand the Tule River Tribe's land base to satisfy needs in areas of Tribal self-determination, housing, economic self-sufficiency and alleviation of poverty." The EA states on page 37, "The future industrial or commercial development could create employment opportunities, and there is evidence to indicate that the *housing units created* would be made available to Tribal members, other Native Americans and residents of the Reservation..." (Emphasis added.) A stated purpose for "housing" references another intended change in land use, as the property is currently zoned and used for "Light Industrial-Airport Safety" with an alternate use of "Commercial Recreation." Any use for housing would currently require a zone change with the City of Porterville, and is a change in land use and reasonably foreseeable alternative use that should be evaluated in an EIS pursuant to NEPA.

The economic benefits claimed by the Tribe in the Amended FONSI were based on future commercial development and therefore inconsistent with the Proposed Decision and statements that the proposed conveyance would not result in any change in the current land use.

The Amended FONSI dismisses Tulare County and Tulare County Airport Land Use Commission's (TC ALUC) concerns that any future development will not be subject to TC ALUC's review once the land is taken into trust. (Letter from Jason Lobue-TC ALUC to Dale Risling-BIA dated July 23, 2010, hereby incorporated by reference.) The BIA states the property will be subject to the Porterville Municipal Airport Master Plan as the controlling General Plan element. However, the Amended FONSI and Proposed Decision fail to address the TC ALUC's concerns, comments and proposed conditions for reasonably foreseeable projects on the proposed trust land such as a casino, intense commercial development or housing. The

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Porterville Municipal Airport Master Plan may not cover TC ALUC's concerns or have the same regulations. TC ALUC's comments should be analyzed in an EIS.

d. The BIA's Approval Process was Defective.

In approving the acquisition, the BIA improperly relied upon a FONSI despite the significant impacts associated with the proposed project and should have conducted an EIS. In addition, a financial plan and economic analysis were never provided. This information was particularly critical given the Secretary's stated policy for off-reservation land acquisition which specifically considers the degree of economic benefit to the tribe. (See 25 CFR 151.3(a)(3); 25 CFR 151.11(b) and (c).) If there will be no change in land use as considered in the Amended FONSI and Proposed Decision, and there are no current plans for economic development, then the proposed trust action would have no economic benefit for the tribe and should not be approved without evaluation of a concrete, proposed use for tribal self-determination, economic development, or Indian housing. (25 CFR 151.3.) A decision to place this property into trust at this time is evidently premature. Further, several applicable federal regulations were inadequately considered.

If no further review of environmental and socioeconomic impacts will be adequately evaluated, then a deed restriction must be included at the time the land is taken into trust precluding any change in land use and prohibiting intense commercial uses including a casino. Otherwise, the County and State will not be able to address their concerns when the tribe proceeds with further development and a change in land use after the property goes into trust.

The County hereby reserves its right, pursuant to 25 CFR 2.10 and 43 CFR 4.412, to file a separate and/or supplemented Statement of Reasons within 30 days of service of this Notice.

e. NOTICE TO INTERESTED PARTIES

The Proposed Decision was received by the County on or about December 26, 2000. Pursuant to 25 CFR 4.333, the County hereby certifies that this Notice was served on the Assistant Secretary – Indian Affairs and to all other required known interested parties as shown in the attached Proof of Service. The attached proof of service shall constitute the list of interested parties required pursuant to 43 CFR 4.332 (a)(3) and is incorporated by reference.

**III. PETITION FOR STAY PENDING APPEAL**

Pursuant to 43 CFR 4.21, the County of Tulare hereby petitions for a stay pending appeal of the above-mentioned decision approving Trust Acquisition. The County shows sufficient justification based on the following standards:

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- a. The relative harm to the parties if the stay is granted or denied.

If the stay is denied, there is relative harm to the County, the State of California and the public welfare because the tribe may be entitled to proceed with a development project for intense commercial use without input from the County or State, and without consideration of impacts to the human environment, County and State. If a stay is granted, the impacts to the Tribe will not be greater than the aforementioned impact to the County or State, nor will the impact to the Tribe be significant because the Tribe has not disclosed any immediate plans for development on the property and has proposed "no change in land use."

- b. The likelihood of the appellant's success on the merits.

The County has set forth the merits of its case in the above Statement of Reasons and has established a likelihood of success on the merits. The BIA's Proposed decision and Amended FONSI are arbitrary, capricious, an abuse of discretion, or otherwise contrary to law, without substantial evidence to support its decisions, and in violation of NEPA and the Administrative Procedure Act (APA) for failure to follow its regulations.

- c. The likelihood of immediate and irreparable harm if the stay is not granted.

If the stay is denied and the tribe will be unrestricted in what it may develop on this trust land, then development may occur with irreversible impacts to the human environment and to County/State tax-supported infrastructure and services without compensation from the tribe for the impacts.

- d. Whether the public interest favors granting the stay.

The public interests favors granting the stay to ensure that the tribe continues with no change in land use pending a decision on this appeal. One of the County's requests is to place a restriction on the deed if the property will go into trust prohibiting any change of land use and any intense commercial or casino use. A stay will favor the public by ensuring this deed restriction remains an option regarding this trust and ensuring impacts to the human environment and local economy from any further development on the property will be mitigated appropriately and in accordance with the law.

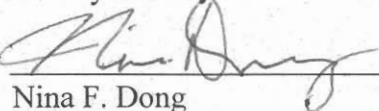
#### **IV. CONCLUSION AND REQUEST FOR RELIEF**

The BIA's actions in approving the Proposed decision and Amended FONSI are arbitrary, capricious, an abuse of discretion, or otherwise contrary to law, without substantial evidence to support its decisions, and in violation of NEPA and the Administrative Procedure Act (APA) for failure to follow its regulations. The County requests that the Notice of Decision be rescinded, the proposed land trust be denied and that full review and consideration pursuant to the above Statement of Reasons and an EIS be implemented prior to any further action on this proposed land trust. If the land will go into trust, the County requests a deed restriction prohibiting any

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change of land use, including but not limited to a casino, resort, gas station, other intense commercial use or housing project, without further review and approval by the Department of Interior and a requirement for State and local agencies (including the County of Tulare) to be noticed and given the opportunity to comment.

Very truly yours,  
KATHLEEN BALES-LANGE  
County Counsel

By   
Nina F. Dong  
Deputy County Counsel

Enclosures

**EXHIBIT A**



IN REPLY REFER TO:

## United States Department of the Interior

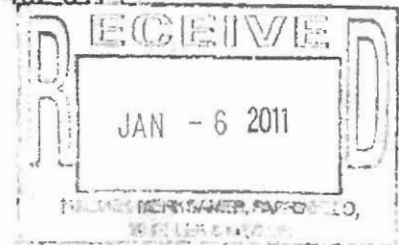
BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

JAN 1 - 2011

### NOTICE OF DECISION

CERTIFIED MAIL RECEIPT REQUESTED - 7010 1670 0001 7402 5171

Honorable, Ryan Garfield  
Chairman, Tule River Reservation  
P.O. Box 589  
Porterville, CA 93258



Dear Chairman Garfield:

This is notice of our decision upon the Tule River Tribe's application to have the below described real property accepted by the United States of America in trust for the Tule River Indian Tribe of the Tule River Reservation, California.

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

Parcel No's 1 through 17 inclusive, of Parcel Map No. 4343, in the City of Porterville, County Tulare, State of California, according to the map thereof recorded in Book 44, Page 47 of Parcel Map, in the office of the County Recorder of said County and by certificates of correction recorded 118, 1982 as Instrument No. 51166, June 1, 1999 as Instrument No. 99-0041612 and August 12, 1999 as Instrument No. 99-0061851.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances, in on, or under said land, as reserved by the City of Porterville, a Municipal Corporation, in a Deed recorded October 29, 1990 as file No. 71536 of Official Records.

Said lands comprise approximately 40.00 acres.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Reorganization Act of 1934 (25 U.S.C. § 465). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title

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25, INDIANS, Part 151, as amended. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

On December 28, 2009, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee to trust application from the following: California State Clearinghouse; Sara J. Drake, Deputy Attorney General; Ms. Andrea Lynn Hoch, Deputy Legal Affairs Secretary, Office of the Governor; James Peterson, District Director, Office of Senator Feinstein; Tulare County Office of Public Works; Tulare County Board of Supervisors; Tulare County Tax Assessor; Tulare County Fire Department; Tulare County Sheriff's Department; and California Department of Forestry & Fire Protection.

In response to our notification dated December 28, 2009 for Assessor's Parcel Numbers 302-400-001 through 302-400-017, we received the following comments:

- Facsimile from Cal Trans dated January 26, 2010 with no comments to the Notice of Application dated December 28, 2009.
- Via e-mail from the State of California, Department of Justice, dated January 22, 2010, requesting a seven day extension (February 11, 2010) to comment on the Notice of Application.
- Letter from City of Porterville dated February 4, 2010 requesting a 30 day extension.
- Letter from the Office of the Governor dated February 10, 2010, stating concerns with the Tribes application, which include: (1) the Tribe's application does not demonstrate that, absent approval, the Tribe will be unable to provide housing for its members, facilitate tribal self-determination or economic development. (2) it does not provide any intergovernmental agreements reached with the City; (3) there is no analysis of how future commercial activities on the undeveloped 15 parcels would be consistent with the surrounding City land uses; and (4) based on new reports regarding the potential relocation of its casino the Tribe's plans for the subject property may have changed during the interim and may plan to utilize this land for gaming and/or other commercial development.

***By letter dated April 20, 2010, the Tule River Tribe response was as follows:***

***(1) The Secretary of the interior may take land into trust when the "acquisition is necessary to facilitate tribal self-determination," 25 C.F.R. Sec. 151.3(a)(3). The Porterville Airpark is within the historical (sometimes called "aboriginal") lands of the Tribe. The Porterville Airpark is less than 20 miles from the Tribe's current Reservation as established by Executive Order in 1873. There are several ways in which the Airpark fits within the history, and they include but are not limited to: Historical Yokuts Bands, The Treaty of Guadalupe Hidalgo and the 18 Unratified Treaties; (2) the development of the industrial park at the Porterville Airport has so far taken***

**over 20 years. This project pre-dates the passage of the Indian Gaming Regulatory Act (IGRA) in 1988 and has required hundreds of thousands of tribal man hours and the investment of tribal funds. It took three years, but the Tribe and the City of Porterville entered into a Purchase Agreement dated May 9, 1989 and closed with a Corporation Grant Deed dated September 27, 1990 and recorded October 29, 1990. In 1992, the Tribe and the City of Porterville were joint applicants for a grant from the Economic Development Administration of the U.S. Department of Commerce to fund infrastructure development for the industrial Park on the subject site. In 1992, the EDA awarded money in support of the construction program. In 1994, this grant was amended in support of the construction project. In 1993, an engineering firm engaged in the design of sewer, water, storm drainage facilities, and road improvements with connection to the City of Porterville existing systems. To date, the Tribe has invested over 20 years in its plan to use the Porterville Airpark as an industrial park pursuant to 25 C.F.R. 151.11(c) which economic benefits to date include, leases for Indian Health Services, the USDA Forest Service, the Tule River Economic Development Corporation separately and as the manager for Tule River Aero-Industries; (3) additionally, the Tribe and the city have entered into a Cooperation Agreement effective April 1, 2010. In that Agreement, the Tribe agrees to follow the City of Porterville's General Plan and zoning in effect for the Porterville Airport and to obtain the written approval of the City before initiating any development project at the Porterville Airpark; and (4) the Tribe has never submitted any request to the Office of the Governor for any consideration of off-reservation gaming at the Porterville Airport. The Tribe has submitted an Environmental Assessment (EA) to the Office of Indian Gaming for a different location. The Tribe's application has never mentioned gaming nor has ever been amended to include gaming.**

**Additionally, the application now provides an "Intergovernmental agreement reached with the City that "analyzes how future commercial activities on the undeveloped 15 parcels would be consistent with surrounding City land uses as requested by the Office of the Governor.**

- Letter from Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, for the County of Tulare, Board of Supervisors, dated April 28, 2010, stating: (1) that Tulare County never received proper notice of the BIA notice; (2) they are concerned that the fee-to-trust application would likely be deemed subject to a categorical exclusion from the requirements of the National Environmental Policy Act (NEPA) because it is alleged by the Tribe that there is no planned change of use for the airport parcels; (3) the MOU in March of 2008 between the Tule River Indian Tribe and the City of Porterville which specifically commits the Tribe to use the airport parcels for "gaming and resort use."

**By letter dated May 11, 2010, the Tule River Tribe response was as follows: (1) The County received a copy of the notice through the State Clearinghouse dated January 15, 2010; various departments within the**



**County received notice; contact was made from the County to the Bureau of Indian Affairs (BIA) staff on February 16, 2010 and February 24, 2010; the County did not respond until April 28, 2010 after receipt from the Clearinghouse on January 15, 2010. The comments were received after the comment period ended; (2) the BIA and the IBIA have consistently decided that "mere speculation by a third party that a tribe might, at some future time, attempt to use trust land for gaming purposes does not require BIA to consider gaming as a use of the property in deciding whether to acquire the property in trust." Town of Charston, R.I. v. E. Area Dir., BIA, 35 IBIA 93, 103 (2000), aff'd sub nom. Carcieri v. Norton, 290 F. Supp. 2d 167 OD.R.I. 2003), aff'd sub nom. Carcieri v. Kempthorne, 597 F. 3d 15 (1<sup>st</sup> Cir. 2007) (en band), rev'd on other grounds sub nom. Carcieri v. Salazar, 129 S. Ct. 1058 (2009); (3) Section 9 of the Cooperation Agreement with the City of Porterville expressly terminates the MOU as follows: "That the MOU entered into in and around March 2008 by and between the City and the Tule River Indian Tribe is of no further force or effect and no provisions or obligations contained in the MOU shall be binding upon or inure to the benefit of either party." The fee-to-trust application that was submitted in 2002 never mentioned gaming or has never been amended to include or even mention gaming to this date. The Tribe has submitted an EA to the BIA Office of Indian Gaming (OIG) for a different off-reservation parcel located east of the City of Porterville along State Highway 190 or just west of the Lake Success Reservoir (the "Highway 190 Property"). The Highway 190 Parcel is not the same and the Porterville Airport parcel and they should not be confused.**

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

#### **Factor 1 – Need for additional land**

The current reservation was established by Executive Orders of January 9, 1873, October 3, 1873, and August 3, 1878. The current acreage of the reservation covers 55,396 acres, which is held in trust by the United States. The reservation is located in south-central California, approximately 75 miles southeast of Fresno in Tulare County. The reservation is situated on the western slope of the Sierra Nevada Mountains and lies almost entirely within the South Fork Tule River drainage basin. The topography is generally steep, with elevations from about 1,000 to 7,500 feet. Most of the inhabited

land is along the lower head of the South-fork Tule River on the western side of the reservation.

**Factor 2- Proposed Land Use**

Currently, there are two buildings on the property which are used for the Tule River Economic Development Corporation (TREDC) and the U.S. Department of Agriculture (USDA) warehouse for distributing food to low-income families. There is no planned change in land use.

The Industrial Park property is located approximately 20 miles from the Tribe's current Reservation.

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

Assessed property taxes for 2009-2010:

302-400-001 - \$	11,115.72
302-400-002 - \$	5,757.68
302-400-003 - \$	419.44
302-400-004 - \$	726.74
302-400-005 - \$	2,101.44
302-400-006 - \$	2,080.68
302-400-007 - \$	2,105.64
302-400-008 - \$	730.92
302-400-009 - \$	423.60
302-400-010 - \$	423.60
302-400-011 - \$	834.70
302-400-012 - \$	834.70
302-400-013 - \$	830.60
302-400-014 - \$	415.22
302-400-015 - \$	415.22
302-400-016 - \$	830.60
302-400-017 - \$	834.70

Total - \$36,292.54

In the Cooperation Agreement between the City of Porterville and the Tule River Indian Tribe states, that in any such agreement any and all appropriate monetary and community contributions shall be committed to the City to account for the City's share of lost revenues related to taxes, licenses, and developments fee.

**Factor 4 – Jurisdictional Problems/Potential Conflicts**

As California is a P.L. 93-280 State, California will still retain State criminal law enforcement jurisdiction after the land is taken into trust status. However, State civil regulatory laws will not apply.

In the Cooperation Agreement between the City of Porterville and the Tule River Indian Tribe states that the Tribe will not engage in any new development, construction or new operation of any land use unless a written agreement is executed by the parties in effect at the time of the proposed development.

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

The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for Tribes. This acquisition anticipates the land use will remain the same; and therefore, any additional responsibilities resulting from this transaction will be minimal. Accepting the property into trust would not impose any significant additional burdens on the BIA beyond those already inherent in the Federal trust relationship between the BIA and the tribe. As such, it our determination that the BIA is equipped to provide the trust services that are anticipated from approval of this action.

**Factor 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**

In accordance with the Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated November 19, 2003, reflecting that there are no hazardous materials or contaminants.

**National Environmental Policy Act Compliance**

An additional requirement which must 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 NEPA Handbook 59 IAM 3.

The Environment Assessment (EA) identifies potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns (transportation, land use and agriculture), public services, public health/hazardous materials, and other values (noise and visual resources). The Environment Assessment (EA) and Amended Finding of No Significant Impact (FONSI), dated June 2010 and September 17, 2010 respectively, were distributed concurrently for public review and comment during the period beginning June 24, 2010, and ending July 26, 2010. Comments were also solicited directly from the Caltrans District 6, Legal Affairs Secretary of the Office of the Governor, Tulare County, Tulare County Airport Land Use Commission and four individuals.

After review and independent evaluation, the BIA has determined that the proposed federal action, to approve the Tule River Indian Tribe's request to take the proposed 40.00-acre site into trust for the purpose of operating the Porterville Airpark, does not constitute a major federal action that would significantly affect the quality of the human environment within the meaning of NEPA. Therefore, an Environmental Impact Statement is not required.

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

The subject parcels are approximately located approximately 20 miles from the Tribe's current reservation trust land of 55,395.93 acres, 140 miles from the west coast ocean line and 150 miles from the Nevada state line.

**Factor 8 – Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.**

The original 40 acre parcel was also divided into 17 lots for industrial development through a parcel map approved by the City of Porterville in 1995. Since that time, industrial development has been gradual but ongoing on the subject site. To date, two large buildings have been constructed on two parcels out of the 17 total parcels at the Porterville Airpark.

The Office of the Governor requests "a plan which specifies the anticipated economic benefits associated with the proposed use" pursuant to 25 C.F.R. 151.11(c). To date, the Tribe has invested over 20 years in its plan to use of the Porterville Airpark as an industrial park pursuant to 25 C.F.R. 151.11(c) which economic benefits to date include, as stated in the letter from the Office of the Governor, leases for Indian Health Services, the USDA Forest Service, the Tule River Economic Development Corporation separately and as the manager for Tule River Aero-Industries. This is consistent with Tule River Tribal Council Resolution No. 83-94 adopted on September 27, 1994 which recognized that "the Tule River Tribal Council has approved a thirty (30) year Economic Development Plan," and which same Tribal Council Resolution approved ANA Grant application 93612-951 dated October 21, 1994 and its attached Business Plans No. 1 and No. 2 for the Airport Industrial Park.

In the Cooperation Agreement between the City of Porterville and the Tule River Indian Tribe states, that in any such agreement any and all appropriate monetary and community contributions shall be committed to the City to account for the City's share of lost revenues related to taxes, licenses, and developments fee, that the Tribe will not engage in any new development, construction or new operation of any land use unless a written agreement is executed by the parties in effect at the time of the proposed development, and that in the event the proposed development is not consistent with the City's applicable regulations, development will not proceed unless and unit a written agreement between the parties is executed addressing any additional impacts.

**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 Tule River Indian Tribe of the Tule River Reservation, California in accordance with the Indian Reorganization Act of 1934 (25 U.S.C. § 465). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.


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

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior, 1849 C. Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final Agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

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

Sincerely,



Regional Director

Enclosure

cc: Distribution List  
43 CFR 4.310-4.340

## DISTRIBUTION LIST

California State Clearinghouse (ten copies) - 7010 1670 0001 7402 5072  
Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

Ms. Sarah J. Drake, Deputy Attorney General - 7010 1670 0001 7402 5089  
State of California  
Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

Ms. Andrea Lynn Hoch, Legal Affairs Secretary - 7010 1670 0001 7402 5096  
Office of the Governor of California  
State Capitol Building  
Sacramento, CA 95814

James Peterson, District Director – 7010 1670 0001 7402 5102  
Office of U.S. Senator Feinstein  
750 "B" Street, Suite 1030  
San Diego, CA 92101

Tulare County Office of Public Works – 7010 1670 0001 7402 5119  
291 N. Main St.  
Porterville, CA 93257

Tulare County Board of Supervisors – 7010 1670 0001 7402 5126  
2800 W. Burrel Avenue  
Visalia, CA 93291

Tulare County Tax Assessor – 7010 1670 0001 7402 5133  
221 S. Mooney Blvd., 104E  
Visalia, CA 93291

Tulare County Fire Department – 7010 1670 0001 7402 5140  
1968 S. Lover's Lane  
Visalia, CA 93292

Tulare County Sheriff's Department – 7010 1670 0001 7402 5157  
County Civic Center  
Visalia, CA 93291

California Department of Forestry & Fire Protection – 7010 1670 0001 7402 5164  
P.O. Box 798  
Springville, CA 93265

Regular Mail:

Cathy Christian, Attorney  
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP  
1415 L Street, Suite 1200  
Sacramento, CA 95814

Superintendent  
Central California Agency  
Bureau of Indian Affairs  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814

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



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

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

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

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

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

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

#### §4.311 Briefs on appeal.

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

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

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

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

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

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

#### §4.312 Decisions.

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

#### §4.313 Amicus Curiae; intervention; joinder motions.

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

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

**§4.314 Exhaustion of administrative remedies.**

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

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

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

**§4.315 Reconsideration.**

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

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

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

**§4.316 Remands from courts.**

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

**§4.317 Standards of conduct.**

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

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

**§4.318 Scope of review.**

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

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

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

**§4.320 Who may appeal.**

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

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

#### § 4.321

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

#### 43 CFR Subtitle A (10-1-03 Edition)

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

#### § 4.323 Disposition of the record.

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

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

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

#### § 4.330 Scope.

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

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

- (1) Tribal enrollment disputes;

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

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

#### § 4.331 Who may appeal.

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

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

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

(c) Where otherwise provided by law or regulation.

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

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

- (1) A full identification of the case;
- (2) A statement of the reasons for the appeal and of the relief sought; and
- (3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

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

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

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

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

#### § 4.333 Service of notice of appeal.

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

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

**§ 4.334 Extensions of time.**

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

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

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

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

(1) The decision appealed from;

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

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

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

**§ 4.336 Docketing.**

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

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

**§ 4.337 Action by the Board.**

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

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

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

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

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

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

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

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

**§4.340 Disposition of the record.**

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

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

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

**§4.350 Authority and scope.**

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

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

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

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

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

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

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

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

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

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

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13963, Mar. 18, 1999]

**§4.351 Commencement of the determination process.**

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

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

**EXHIBIT B**



"Maryhellen A. Medrano"  
<legalasst@tulerivertribe-nsn.gov>

05/08/2009 02:48 PM

To <Arvada.Wolfin@bia.gov>, <lorrae.dietz@bia.gov>, <terisadraper@bia.gov>

cc

bcc

Subject Tule River

Hello ladies.

It was a pleasure to have met with the three of you this morning. Attached you will find my contact information. Here are the notes that I gathered from our meeting, please feel free to correct, add or delete any part of it. I want to be able to present my Tribal Council with the most accurate and up to date information. I have highlighted some parts that I need help with. Thanks!!!

Meeting location:

BIA Office

2800 Cottage Way, Room W-2820

Sacramento, CA.

Meeting attendees:

Maryhellen Medrano	Arvada Wolfin, Realty Specialist
Legal Assistant, Office of General Council Tule River Tribal Council PO Box 589	Fee-to-Trust Consortium Bureau of Indian Affairs Pacific Regional Office 2800
Porterville, CA 93257 (559) 781-4271 ext 1212 (559)	Cottage Way, Room W-2820 Sacramento, CA 95825



784-3944	(916)
Fax	978-6069
(559)	Office
920-1921	(916)
Cell	978-6099
<u>legalasst</u>	Fax
<u>@tulerive</u>	<u>arvada.w</u>
<u>rtribe-nsn</u>	<u>olfin@bi</u>
<u>.gov</u>	<u>a.gov</u>

Terisa Lorrae  
 Draper, Dietz,  
 Superviso Realty  
 ry Realty Specialist  
 Specialist Fee to  
 Fee-to-Tr Trust  
 ust Consorti  
 Consorti um  
 um Bureau  
 Bureau of Indian  
 of Indian Affairs  
 Affairs Pacific  
 Pacific Regional  
 Regional Office  
 Office 2800  
 2800 Cottage  
 Cottage Way,  
 Way, Room  
 Room W-2820  
 W-2820 Sacrame  
 Sacramen nto, CA  
 to, CA 95825  
 95825 (916)  
 (916) 978-6071  
 978-6064 Office  
 Office (916)  
 (916) 978-6099  
 978-6099 Fax  
 Fax lorrae.die  
 (916) tz@bia.go  
 849-3314 v  
 Cell  
terisadra  
per@bia.g

Tribe must decide what they want to do with each Fee-to-Trust application. Once its decided the plan should be to follow through. Much time has passed and all has come to a halt with the following applications. Teresa, Arvada, Lorrae and I discussed the following:

**40 Acre Airpark**

If Tribe wants to have gaming on this property Teresa suggests that we withdraw the application and start all over. The application was original submitted for commercial leasing, not gaming. The application cannot be amended because all notices that have been sent to the public, local governments, etc., were done stating that commercial leasing was the intent NOT gaming. Teresa also stated that this particular piece of property doesn't seem to be eligible to be taken into trust for gaming under the 3 exceptions as described in IGRA (§292.16). in this case, the two part determination can be filed thus, both applications – Fee to Trust and Two part determination will run concurrently.

If it's determined that the Tribe wishes to move forward with Fee-to-Trust for gaming we should speak to Patrick O'Mallen the Environmental Specialist at (916) 978-6044 for his suggestion on having the EA vs. the EIS done for the property.

The difference of the EA and EIS is \_\_\_\_\_

**Springville Drive**

If housing is still going to be the main purpose this property then the application is fine. The main hold-up was clean-up. Maryhellen advised Teresa that they clean-up had just been completed.

What do we need to do to move forward with this since the cleanup is done? \_\_\_\_\_

**Highway 190**

Teresa suggests that this application be withdrawn and started with a clean slated. Too many changed and inconsistencies have occurred in this application. Tribe had indicated no plan for development but then the BIA received an EA. If we move forward with this application the public will be entitled to the file/documents of the application and they too will see the inconsistency of the Tribe.

**Harry Lowe**

The plan for this property was housing. However, Teresa recalls the Tribe stating they were going to purchase property making Harry Lowe run contiguous to the Reservation.

Off Reservation Fee-to-Trust is more constringent where if its contiguous then the local BIA office has the final say of authorization.

This piece of property also has the Williamson Act attached to it. The Williamson Act is \_\_\_\_\_. William Act renews every year. In this case it may be best to file a notice of non-renewal





"Maryhellen A. Medrano"  
<legalasst@tulerivertribe-nsn.gov>  
05/11/2009 09:06 AM

To <Arvada.Wolfin@bia.gov>  
cc  
bcc  
Subject RE: two final questions.....

History:

✉ This message has been replied to.

Thank you! Please keep me advised on the Springville property. Also, Charm asked me a question that brought on another question..... when we talked about the hwy 190 property..... we have two on 190..... what is the acre amount that we were talking about?

**From:** Arvada.Wolfin@bia.gov [mailto:Arvada.Wolfin@bia.gov]  
**Sent:** Monday, May 11, 2009 8:43 AM  
**To:** Maryhellen A. Medrano  
**Subject:** Re: two final questions.....

Good morning Maryhellen,

The difference of the EA and EIS is:

2.2 NEPA Requirement. The primary requirement of §102(2) of NEPA (Appendix 1) is that an Environmental Impact Statement (EIS) be prepared for major federal actions (see §1508.18) significantly affecting the quality of the human environment. An Environmental Assessment (EA) is a less detailed document that may be used to determine whether or not an EIS is required. If, based on an EA, it is determined that a proposed action will not significantly affect the quality of the human environment, the decision maker may fulfill the documentation required by the CEQ regulations by issuing a Finding of No Significant Impact (FONSI). In addition, certain kinds of actions, called Categorical Exclusions, may be taken without the preparation of either an EA or an EIS. Chapters 3 and 5 of this Handbook provide guidance on how to determine whether a Categorical Exclusion, an EA or an EIS is appropriate for the proposed action.

Attached is the NEPA HANDBOOK for you reference.

### Springville Drive

If housing is still going to be the main purpose this property then the application is fine. The main hold-up was clean-up. Maryhellen advised Teresa that they clean-up had just been

completed.

What do we need to do to move forward with this since the cleanup is done? \_\_\_\_\_

- We will need to take a look at the application and see what is needed to move on.

Arvada

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 8.5.325 / Virus Database: 270.12.24/2107 - Release Date: 05/10/09 07:02:00

**EXHIBIT C**

# TULARE COUNTY COUNSEL

## County Counsel

Kathleen Bales-Lange

## Chief Deputies

Julia J. Roberts

John A. Rozum

Teresa M. Saucedo

Deanne H. Peterson

Harold W. Wood, Jr.



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Nina F. Dong

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 11200 Avenue 368, Room 102, Visalia CA 93291

Telephone: (559) 636-4950 Fax: (559) 737-4319  
Telephone: (559) 735-1505 Fax: (559) 713-3240

The Board of Indian Appeals  
Office of Hearing and Appeals  
U.S. Department of the Interior  
801 North Quincy Street  
Arlington, Virginia 22203

Re. Declaration of Nina F. Dong Regarding Appeal by Tulare County, California to Proposed Trust Acquisition Decision for Tule River Indian Tribe 40-Acre Airpark Property. Our File 20101069

I, Nina F. Dong, declare and state as follows:

1. I am an attorney at law duly licensed before the State of California. I am over the age of majority, and employed by the Tulare County Counsel as a Deputy County Counsel. The information stated herein is true to my own knowledge. If called upon to testify in a court of law, I could, and would testify competently hereto.
2. I was advised by Tulare County Resource Management Agency staff and Tulare County Board of Supervisors staff that an advertisement has been running on KTIP Radio Station AM 1450 regarding the Tule River Tribe.
3. On the afternoon of January 25, 2011, between the hours of 1:00 PM and 3:00 PM I listened to this station. Between 2:52 PM to 2:54 PM I heard an advertisement from the Tule River Tribal Council which was later transcribed by Candice Miller (Civil Office Assistant for the Tulare County Counsel's Office). I have attached a copy of the transcript of this advertisement.

4. I certify that this is a true and correct transcript of the advertisement I heard on the radio. The original cassette tape with this recording is available on file at the office of the Tulare County Counsel.

I declare under the penalty of perjury laws of the State of California that the foregoing is true and correct.

Dated: This 26 day of January, 2011.

KATHLEEN BALES-LANGE  
TULARE COUNTY COUNSEL

  
\_\_\_\_\_  
NINA F. DONG  
Deputy County Counsel

## TRANSCRIPTION OF RADIO BROADCAST ADVERTISEMENT

The Tule River People would like to thank Porterville and surrounding communities for supporting us through the years. Over the last decade Eagle Mountain Casino has brought about our ability to better ourselves and others around us too. We believe in the support and growth in all of our communities. During the freeze we were able to contribute more than \$30,000 to our non Indian neighbors, thanks to funding from Eagle Mountain Casino. We have our own tribal government who are responsible for all government services within our community ranging from public works and social services to our own law enforcement. The Tule River Tribal Council has a diversified economic development plan which includes Eagle Mountain Casino, Eagle Feather Trading Post and the Tule River Economic Development Corporation. We plan to continue our growth, which will include a tribal courthouse, more homes for our people and the move of Eagle Mountain Casino to its intended home near the Porterville airpark. This will bring hundreds of construction jobs and more positions at the new casino. Thanks again to all the people businesses and agencies for their continued support. The Tule River Tribal Council continues to work to insure the success of our people and the economic well being of the greater Porterville area for generations to come.





# RESOURCE MANAGEMENT AGENCY

5961 SOUTH MOONEY BLVD  
VISALIA, CA. 93277.  
PHONE (559) 624-7000  
FAX (559) 730-2653

Jake Raper, Jr. Planning  
Britt L. Fussel Public Works  
Roger Hunt Administration/  
Community Development

JAKE RAPER JR., AICP, DIRECTOR

The Board of Indian Appeals  
Office of Hearing and Appeals  
U.S. Department of the Interior  
801 North Quincy Street  
Arlington, Virginia 22203

Re. Declaration of Michael Washam Regarding Appeal by Tulare County, California to Proposed Trust Acquisition Decision for Tule River Indian Tribe 40-Acre Airpark Property.

I, Michael Washam, declare and state as follows:

1. I am employed by the County of Tulare Resource Management Agency as a Planner III. I am over the age of majority. The information stated herein is true to my own knowledge. If called upon to testify in a court of law, I could, and would testify competently hereto.
2. On the afternoon of January 24, 2011, between 2:15 PM and 2:40 PM I was driving back to work from lunch and listening to the radio. It was tuned to KTIP Radio Station AM 1450. I heard an advertisement regarding the Tule River Tribe.
3. The advertisement thanked the people of Porterville and surrounding area for their support over the years. It mentioned how the tribe had bettered itself over the past decade and donated \$30,000 to its "non-Indian" friends during the freeze. What caught my attention was the statement that said how they were going to continue their growth with more homes for their people and move the casino near the Porterville airport.
4. During a 4:30 PM staff meeting later that day, I told Cynthia Echavarria what I had heard on the radio earlier. She indicated that she would pass the information on to Tulare County Counsel.
5. After reading the transcription of the advertisement made by County Counsel's office on January 25, 2011, I can attest that this was the same advertisement that I heard on January 24, 2011.

I declare under the penalty of perjury laws of the State of California that the foregoing is true and correct.

Dated: This 26 day of January, 2011.

  
Michael Washam, Planner III

1  
2 PROOF OF SERVICE

3 STATE OF CALIFORNIA )  
4 ) ss.

5 COUNTY OF TULARE )

6 I am employed in the County of Tulare, State of California. I am over the age of  
7 eighteen (18) years and not a party to this action; and, my business address is 2900 West  
8 Burrel Avenue, Visalia, CA 93291.

9 On February 7, 2011, I served the following documents: **Notice of Appeal by**  
10 **Tulare County, California, Request for Subpoena of Witnesses, and Petition for**  
11 **Stay Pending Appeal. Proposed Trust Acquisition Decision for Tule River Indian**  
12 **Tribe 40-Acre Airpark Property** on the parties to this action by placing a true copy  
13 thereof enclosed in a sealed envelope addressed as follows: See Attached Distribution  
14 List.

15  (BY MAIL) I am "readily familiar" with The County of Tulare's practice of  
16 collection and processing correspondence by mailing. Under that practice, mail is  
17 deposited with the U.S. Postal Service on the same day with postage fully prepaid  
18 at Visalia, California, in the ordinary course of business. I am aware that on  
19 motion of the party served, service is presumed invalid if postal cancellation date  
20 or postage meter date is more than one day after date of deposit for mailing in  
21 affidavit.

22  (BY TELECOPIER) With the addressee(s)' consent and agreement, I caused  
23 such document to be delivered by telecopy transmission to the addressee(s).

24  (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand  
25 to the addressee(s).

26  (BY FEDERAL EXPRESS OR UPS NEXT DAY SERVICE) I caused such  
27 envelope to be delivered to Federal Express or UPS with a fully prepaid  
28 airbill/invoice for next business day delivery to the addressee(s).

Executed on February 7, 2011, at Visalia, CA.



29 /2/7/11/20101069/355742

## DISTRIBUTION LIST OF INTERESTED PARTIES

Larry EchoHawk  
Assistant Secretary  
Indian Affairs  
U.S. Department of the Interior  
MS-3658-MIB  
1849 C Street, N.W.  
Washington, D.C. 20240

Larry EchoHawk  
Assistant Secretary  
Indian Affairs  
U.S. Department of the Interior  
MS-4140-MIB  
1849 C Street, N.W.  
Washington, D.C. 20240

Interior Board of Indian Appeals  
Office of Hearings and Appeals  
U.S. Department of the Interior  
801 N. Quincy Street, Suite 300  
Arlington, VA 22203

Larry Roberts, General Counsel  
National Indian Gaming Commission  
1441 L Street NW, Suite 9100  
Washington, DC 20005

Superintendent  
Central California Agency  
Bureau of Indian Affairs  
650 Capitol Mall, Suite 8-500  
Sacramento, CA 95814

California State Clearinghouse  
Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

Sara Drake, Acting Senior Assistant  
Attorney General  
California Attorney General's Office  
Department of Justice  
1300 I St  
Sacramento, CA 95814

Jacob Appelsmith  
Senior Advisor to the Governor  
Office of the Governor of California  
State Capitol Building  
Sacramento, CA 95814

Jonathan Renner  
Legal Affairs Secretary  
Office of the Governor of California  
Sacramento, CA 95814

U.S. Senator Dianne Feinstein  
Office of Senator Diane Feinstein  
2500 Tulare St., Suite 4290  
Fresno, CA 93721

U.S. Senator Barbara Boxer  
2500 Tulare Street, Suite 5290  
Fresno, CA 93721

Ameen Khan  
Office of US Senator Barbara Boxer  
Director for Central and Eastern California  
2500 Tulare Street, Suite 5290  
Fresno, CA 93721

Devin Nunes  
21<sup>st</sup> Congressional District  
113 North Church Street, Suite 208  
Visalia, CA 93291

Connie Conway  
California State Assembly Member 113 N.  
Church Street, Suite 505  
Visalia, CA 93291

## DISTRIBUTION LIST OF INTERESTED PARTIES

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California State Senator  
1800 30th Street, Suite 350  
Bakersfield, CA 93301

Jean Fuller  
California State Senator  
State Capitol, Room 3063  
Sacramento, CA 95814

Shelly Abajian  
District Director – Central California  
Office of Senator Diane Feinstein  
2500 Tulare St., Suite 4290  
Fresno, CA 93721

Ryan Garfield  
Chairperson  
Tule River Indian Tribe  
P.O. Box 589  
Porterville, CA 93258

Administrator  
Tule River Indian Tribe  
P.O. Box 589  
Porterville, CA 93258

Tule River Indian Tribe  
Tribal Council  
340 Indian Reservation Rd.  
Porterville, CA 93258

Tule River Indian Tribe  
Tribal Council  
P.O. Box 589  
Porterville, CA 93258

Ms. Charmaine McDarment  
Tule River Tribal Council  
P.O. Box 589  
Porterville, CA 93258

John D. Lollis  
City Manager  
City of Porterville  
291 N. Main Street  
Porterville, CA

Ron Irish  
Mayor/Chairperson  
City of Porterville, City Council  
291 N. Main Street  
Porterville, CA

Cheryl Schmit  
Stand up California  
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Penryn, CA 95663

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Sierra Minit Mart  
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Porterville, CA 93257

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Porterville, CA 93257

Amy Dutschke  
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Pat O'Mallen  
Environmental Protection Specialist  
Pacific Regional Office  
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Sacramento, CA 95825