

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

IN REPLY REFER TO:
Real Estate Services
TR-4609-P5

Case Number: 16292

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7021 2720 0001 0165 7489

The Honorable Robert Smith
Chairman, Pala Band of Mission Indians
35008 Pala Temecula Road
PMB-50
Pala, CA 92059

NOTICE OF DECISION

Dear Chairman Smith,

This is notice of our decision as a result of our analysis of the application filed by the Pala Band of Mission Indians (Tribe) to have the below described real property accepted by the United States of America in trust:

THE FOLLOWING DESCRIBED REAL PROPERTY IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, IS DESCRIBED AS FOLLOWS:

PARCEL 1: (ASSESSOR'S PARCEL NO. 125-063-09 AND 10) (125-100-10)

THAT PORTION OF THE RANCHO MONSERATE, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, IN BOOK 1, PAGE 108 OF PATENTS, DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT IN THE EASTERLY BOUNDARY OF THE TRACT OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED NOVEMBER 23, 1948 IN BOOK 3026, PAGE 490 OF OFFICIAL RECORDS FORMED BY THE COURSES "SOUTH 44° 25' 30" WEST, 814.80 FEET" AND "SOUTH 0° 44' 30" WEST 1856.81 FEET"; THENCE SOUTH 0° 44' 30" WEST 1856.81 FEET; THENCE SOUTH 4° 58'

08" EAST 301.50 FEET; THENCE SOUTH 0° 44' 30" WEST 816.15 FEET TO THE NORTHWESTERLY LINE OF THE LAND CONVEYED TO DOUGLAS GRAHAM SHEARER AND WIFE, BY DEED RECORDED JANUARY 6, 1950 IN BOOK 3444, PAGE 457 OF OFFICIAL RECORDS; THENCE ALONG SAID NORTHWESTERLY LINE NORTH 45° 25' 30" EAST 3024.78 FEET; THENCE NORTH 25° 30' 45" EAST 1152.79 FEET TO POINT "A" OF THIS DESCRIPTION; THENCE NORTH 26° 39' WEST 591.28 FEET; THENCE NORTH 46° 13' WEST 102.01 FEET; THENCE NORTH 57° 48' WEST 360.41 FEET; THENCE NORTH 33° 42' 30" WEST 120.42 FEET; THENCE NORTH 4° 01' 30" WEST 302.11 FEET; THENCE NORTH 20° 45' EAST 117.71 FEET TO THE CENTER LINE OF HIGHWAY COMMISSION COUNTY ROAD, ROUTE 18, DIVISION 1 BEING POINT "B" OF THIS DESCRIPTION; THENCE ALONG SAID CENTER LINE SOUTH 66° 47' WEST 909.01 FEET TO THE BEGINNING OF A TANGENT 700.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22° 35' 00" A DISTANCE OF 275.91 FEET; THENCE TANGENT TO SAID CURVE SOUTH 44° 25' 30" WEST 509.32 FEET TO SAID EASTERLY BOUNDARY OF THE STATE OF CALIFORNIA LAND; THENCE ALONG SAID BOUNDARY SOUTH 43° 34' 30" EAST 50.00 FEET AND SOUTH 44° 25' 30" WEST 814.80 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE NORTHEASTERLY 30.00 FEET LYING BETWEEN POINTS "A" AND "B"; THE SOUTHWESTERLY LINE OF SAID 30.00 FEET BEING DRAWN PARALLEL WITH AND MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE THEREOF.

ALSO EXCEPTING THOSE PORTIONS CONDEMNED TO THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION RECORDED MARCH 21, 1973 AS FILE NO. 73-073740 OF OFFICIAL RECORDS.

PARCEL 2: APN 125-063-02

THAT PORTION OF RANCHO MONSERATE, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER IN SAID COUNTY, IN BOOK 1, PAGE 108 OF PATENTS, LYING WITHIN A STRIP OF LAND 30.00 FEET IN WIDTH, THE NORTHEASTERLY LINE OF SAID 30.00 FOOT STRIP OF LAND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT AN ANGLE POINT IN THE EASTERLY BOUNDARY OF THE TRACT OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED IN BOOK 3026, PAGE 490 OF OFFICIAL RECORDS FORMED BY THE COURSES "SOUTH 44°25'30" WEST 814.80 FEET" AND SOUTH 0°44'30" WEST 1856.81 FEET"; THENCE SOUTH 0°44'30" WEST 1856.81 FEET; THENCE SOUTH 4°58'08" EAST 301.50 FEET; THENCE SOUTH 0°44'30" WEST 816.15 FEET TO THE NORTHWESTERLY LINE OF THE LAND CONVEYED TO DOUGLAS GRAHAM SHEARER AND WIFE, BY DEED RECORDED IN BOOK 3444, PAGE 457 OF OFFICIAL RECORDS; THENCE ALONG SAID NORTHWESTERLY LINE NORTH 45°25'30" EAST 3024.78 FEET; THENCE NORTH 25°30'45" EAST 1152.79 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 26°39' WEST 591.28 FEET; THENCE NORTH 46°13' WEST 102.01 FEET; THENCE NORTH

57°48' WEST 360.41 FEET; THENCE NORTH 33°42'30" WEST 120.42 FEET; THENCE NORTH 4°01'30" WEST 302.11 FEET; THENCE NORTH 20°45' EAST 117.71 FEET TO THE CENTER LINE OF HIGHWAY COMMISSION COUNTY ROAD, ROUTE 18, DIVISION 1.

THE SOUTHWESTERLY LINE OF SAID 30.00 FOOT STRIP OF LAND SHALL BE DRAWN PARALLEL WITH AND MEASURED AT RIGHT ANGLES TO SAID NORTHEASTERLY LINE AND SHALL BE PROLONGED OR SHORTENED AS TO TERMINATE ON THE SOUTH WITH A LINE BEARING SOUTH 25°30'45" WEST AND ON THE NORTH WITH A LINE BEARING SOUTH 66°47' WEST.

EXCEPTING THEREFROM THOSE PORTIONS CONVEYED TO THE STATE OF CALIFORNIA IN PARCEL 1 IN DEED RECORDED FEBRUARY 19, 1975 AS FILE NO. 75-036967 OF OFFICIAL RECORDS.

The above-described real property, also known as the "Gateway" property, is identified in San Diego County records as Assessor's Parcel Numbers: 125-063-02; 125-063-09; and 124-100-10. (The fourth parcel referred to as 125-063-10 was created by the County to define a lease agreement for cell-phone towers), containing 92.44 acres, more or less, and is not contiguous to the Pala Reservation.

Federal Law authorizes the Secretary of the Interior, or her authorized representatives, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of an Indian reservation, or adjacent thereto, or within a tribal consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Reorganization Act (IRA) of June 18, 1934 (25 U.S.C § 5108 (Formerly § 465)). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

On March 4, 2022, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee to trust application from the Senior Advisor for Tribal Negotiations, Deputy Legal Affairs Secretary, Office of the Governor; Sara. J. Drake, Deputy Attorney General, State of California; Office of U.S. Senator Dianne Feinstein; Office of U.S. Senator Alex Padilla; U.S. Representative Darrell Issa, 50th District; Assemblywoman Marie Waldron, 75th District; San Diego County Assessor; San Diego Treasurer and Tax Collector; San Diego Board of Supervisors; San Diego County Sheriff's Department; San Diego County Department of Public Works; San Diego County Department of Planning and Development; San Diego County Fire Department; Barona Band of Mission Indians; Campo Band of Diegueno Mission Indians; Ewiiapaayp Band of Kumeyaay Indians, Jamul Indian Village; La Jolla Band of Luiseno Indians, La Posta Band of Diegueno Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Diegueno Mission Indians; Mesa Grand Band of Diegueno Mission Indians; Pechanga Band of Luiseno Mission Indians; Rincon Band of Luiseno Mission Indians; San Pasqual Band of Diegueno Mission Indians; Iipay Nation of Santa Ysabel; Sycuan Band of Kumeyaay Nation; and Viejas Band of Mission Indians. Regular Mail: Inaja Band of Diegueno Mission Indians, and Superintendent Southern California Agency.

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

1. Letter dated March 30, 2022, from the County of San Diego, Assessor's Office providing copies of the Assessor's Master Property Records, tax information, and a listing showing the distribution of taxes.

By letter dated May 13, 2022, the Pala Band of Mission Indians response was as follows:

With respect to the County's response from its Assessor's Office dated March 30, 2022, and the de minimis property tax of 96,037.14, please note that the County's healthy tax roll have significantly increased over time with 2019's being \$550 billion; 2020's \$605 billion; and 2021's \$627 billion.

2. Letter dated April 15, 2022, from the County of San Diego, Planning and Development stating the following:
 - The acreage of 92.44 differs slightly from the County records, which indicates a total of approximately 90.53 acres;
 - The County will collect \$96,037.14 for taxes and special assessments levied on the property for the current year;
 - A Table was provided showing the current distribution of taxes and special assessments. In addition, what organizations are supported through the collection of taxes;
 - Pankey Road, which ends in a cul-de-sac at the Gateway Property and provides access to the Gateway Property as well as neighboring properties, is maintained by the County's Department of Public Works. The Sheriff's Department also provides law enforcement services. The County also provides library services with its Fallbrook Branch approximately 7 miles northwest of the Gateway Property, and it operates the Horse Creek Ridge County Park, approximately 1 mile to the north with a playground, ballfields, picnic areas, exercise stations, and footpath loop;
 - The property includes the following zones: C44 Freeway Commercial Use Regulations, S88 Specific Planning Area Use Regulations, and A72 General Agricultural Use Regulations;
 - The intended uses-a cultural center, traditional village site, and orchard-are civic and agricultural in nature and could be used for community gatherings or to educate visitors on the Pala Band's rich history. These activities are similar to the Community Recreation, Cultural Exhibits, Small Schools, Tree Crops, and Civic Assembly uses listed in the County's Zoning Ordinance and allowable with discretionary permit approval. Consequently, the intended use is consistent with the current zoning.
 - Once development on the property begins, the County can support the Pala Band's continued efforts on protecting and preserving the environment by sharing best practices and lessons learned on a variety of topics listed in this letter.
 - Protecting Water Resources and Improving Water Quality
 - Protecting Biological and Habitat Resources

- Wildland Fire Protection
- Floodplain Management
- Community Connectedness and Healthy Living
- Economic Benefits of the Project
- Easements

During the meeting with the County on April 12, 2022, the Pala Band indicated it would welcome the County's assistance in discussing ways to mitigate impacts of future development. The County looks forward to continued dialogue on any of the following topics with the Pala Band and is available to assist in their evaluation of future development.

By letter dated May 13, 2022, the Pala Band of Mission Indians response was as follows:

On behalf of the Pala Band of Mission Indians ("Pala"), we are happy to inform you that we met last month with representatives from San Diego County ("County"). The parties discussed Pala's Gateway fee-to-trust application ("Gateway"), and the result was a collaborative and beneficial meeting. We thank the County and its Board of Supervisors for developing a new and more enlightened consultation process with Pala and the other County Indian tribes.

We reiterate that no County services will be affected. In fact, Pala already has an MOU with San Diego Sheriff's Office for law enforcement so there will be no change in law enforcement services. In addition, the intended use is consistent with current zoning, and Pala will protect the area's water, biological, and other habitat resources. Moreover, we appreciate the County for realizing that Pala's project will positively impact the local economy.

Pursuant to 25 CFR §151.10 and 151.11, the Secretary will consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated: 151.10(a) existence of Statutory Authority for the acquisition and any limitations contained in such authority; 151.10(b) need of the tribe for additional land; 151.10(c) the purpose for which the land will be used; 151.10(e) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; 151.10(f) jurisdictional problems and potential conflict of land use which may arise; 151.10(g) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status, 151.10(h) and whether or not contaminants or hazardous substances may be present on the property; 151.11(a) criteria listed in § 151.10(a) through (c) and (e) through (h); 151.11(b) the location of the land relative to state boundaries of the tribe's reservation; 151.11(c) 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; and 151.11(d) contact with state and local governments pursuant to §151.10(e) and (f). Accordingly, the following analysis of the application is provided.

Our review and analysis of the requirements to evaluate this Tribal request as set forth in 25 Code of Federal Regulations, §151.10(a) through (h), and 151.11(a) through (d) determined the following:

25 CFR §151.10(a) Statutory authority for the acquisition of the property

25 U.S.C. §5108 INDIAN REORGANIZATION ACT (IRA) OF JUNE 18, 1934 (48 STAT. 984).

Section 5 of the IRA (Section 5)¹ authorizes the Secretary to acquire land in trust for “Indians.” Section 19 of the Act (Section 19) defines “Indian” to include several categories of persons.² As relevant here, the first definition includes all persons of Indian descent who are members of “any recognized Indian tribe now under federal jurisdiction.”³ In 2009, the United States Supreme Court (Supreme Court) in *Carcieri v. Salazar*⁴ (*Carcieri*) construed the term “now” in the IRA’s first definition to refer to 1934, the year of the IRA’s enactment. The Supreme Court did not consider the meaning of the phrases “under federal jurisdiction.”

In 2014, the Department’s Solicitor issued Sol. Op. M-37029 (M-37029) interpreting the statutory phrase “under Federal jurisdiction” (UFJ) for purposes of determining whether an Indian tribe can demonstrate that it was UFJ in 1934 for purposes of Section 5 of the IRA.⁵ Multiple federal court decisions have held that the Department’s interpretation of the IRA’s first definition of “Indian” memorialized in M-37029 was reasonable.⁶ Accordingly, we rely on M-37029 to guide our analysis here.

The Tribe’s Section 18 Election Under the IRA:

The IRA was a statute of general applicability but included an opt-out provision.⁷ Section 18 directed the Secretary of the Interior (Secretary) to conduct elections to allow Indians residing on a reservation to vote to accept or reject application of the Act.⁸ In order for the Secretary to conclude that a reservation was eligible for an election, a determination had to be made that the residents satisfied one of the IRA’s definitions of “Indian”. Between 1934 and 1936, the Department conducted 258 Section 18 elections,⁹ the results of which were compiled by the Department in what later became known as the Haas Report.¹⁰

¹ IRA, § 5, codified at 25 U.S.C. § 5108.

² *Id.* at § 19, codified at 25 U.S.C. § 5129.

³ *Id.*

⁴ 555 U.S. 379 (2009) (“*Carcieri*”).

⁵ The Meaning of ‘Under Federal Jurisdiction’ for Purposes of the Indian Reorganization Act, Op. Sol. Interior M-37029 (Mar. 12, 2014) (“Sol. Op. M-37029”).

⁶ See, e.g., *Confederated Tribes of the Grand Ronde Cmty. of Oreg. v. Jewell*, 75 F. Supp. 3d 387 (D.D.C. 2014), *aff’d*, 830 F. 3d 552 (D.C. Cir. 2016); *Stand Up for California! v. U.S. Dep’t of the Interior*, 204 F. Supp. 3d 212, 278 (D.D.C. 2016), *aff’d*, 879 F. 3d 1177, 1183-86 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 786 (2019); *No Casino in Plymouth v. Jewell*, 136 F. Supp. 3d 1166, 1184 (E.D. Cal. 2015), *vacated and remanded sub nom., No Casino in Plymouth v. Zinke*, 698 F. App’x 531 (9th Cir. 2017) (vacated on other grounds); *County of Amador v. U.S. Dep’t of the Interior*, 136 F. Supp. 3d 1193, 1200, 1207-10 (E.D. Cal. 2015), *aff’d*, 872 F. 3d 1012 (9th Cir. 2017), *cert. denied*, 139 S. Ct. 64 (2018); *Cachil Dehe Band of Wintun Indians v. Zinke*, 889 F. 3d 584, 594-96 (9th Cir. 2018); *Cent. N.Y. Fair Bus. Ass’n v. Jewell*, 2015 WL 1400384 (N.D.N.Y. Mar. 26, 2015) (not reported), *aff’d*, 673 F. App’x. 63 (2nd Cir. 2016) (not reported), *cert den.*, 137 S. Ct. 2134 (2017).

⁷ IRA, § 18, codified at 25 U.S.C. § 5125.

⁸ *Id.*

⁹ Theodore Haas, *Ten Years of Tribal Government Under the IRA*, (1947) (hereinafter “Haas Report”).

¹⁰ *Id.*, Table A at 13-20 (listing Section 18 elections conducted).

The Department recognizes that the calling of a Section 18 election serves as unambiguous evidence demonstrating federal jurisdiction over a federally recognized tribe.¹¹ Federal courts and the Interior Board of Indian Appeals have repeatedly held that Section 18 elections constitute conclusive evidence that the Department considered a tribe or reservation to be under federal jurisdiction in 1934.¹² This is true irrespective of whether the Section 18 election resulted in the adoption or rejection of the IRA.¹³

In 1934, the United States understood that the Pala Band of Mission Indians was under the federal jurisdiction and supervision of the United States, and that the adult residents of the Tribe met the IRA's definition of "Indian." As detailed in the Haas Report, on December 18, 1934, the Pala Band of Mission Indians voted on the IRA.¹⁴ One hundred and twenty-one members of the Tribe residing at the Reservation were eligible to vote, and sixty-six members voted against accepting the IRA while seven members voted in its favor.¹⁵

Based on the foregoing we conclude that the Tribe was "under Federal jurisdiction" in 1934 and the Secretary is authorized to acquire land in trust for the Tribe under Section 5 of the IRA.

25 C.F.R. §151.10(b) - The need of the individual Indian or a Tribe for additional land

The existing Reservation of the Pala Band of Luiseno Mission Indians is located approximately five miles east of Interstate 15 at the intersection of State Route 76. The Pala Reservation was originally created for the Tribe in 1875 in a very reduced size of approximately 500 acres. Over the next 30 years, additional land adjacent to the original Reservation was added by the federal government totaling approximately 10,000 acres by 1901. In 1903 the Cupa people were forcibly removed from their homeland in the Palomar range to the Pala Reservation. Land was subsequently added to the Reservation to create the current size of 13,222 acres. The Tribe purchased the proposed acquisition property in April 2007, a total of 90.53 acres of fee land. Developments on the Reservation and fee lands include Tribal governmental offices, single-family housing, agricultural activities, the Pala Casino and Hotel and related facilities, recreational facilities, the Pala fire station, the Pala Mission, a school, and various small commercial enterprises run by Tribal members. Since establishment of the Reservation, the Tribe itself has lost approximately 27,000 acres due to allotment and assimilation policies with approximately 9,600 acres having passed into fee simple ownership. The Tribe continuously

¹¹ Sol. Op. M-37029 at 21.

¹² See, e.g., *Stand Up for California! v. U.S. Dept. of the Interior*, 919 F.Supp.2d 51, 67-68 (D.D.C. 2013) (Section 18 elections conclusive evidence of being under federal jurisdiction); *Stand Up for California! v. United States Dep't of Interior*, 879 F.3d 1177 (D.C. Cir. 2018), cert den., 139 S.Ct. 786 (Jan. 7, 2019); *Cachil Dehe Band of Wintun Indians of Colusa Indian Cmty. v. Zinke*, 889 F.3d 584, 596 (9th Cir. 2018); *Village of Hobart, Wisc. v. Acting Midwest Reg. Dir., Bureau of Indian Affairs*, 57 IBIA 4, 21 (2013) (Sec. 18 election provides "brightline test" for determining UFJ); *Shawano County, Wisc. v. Acting Midwest Reg. Dir., Bureau of Indian Affairs*, 53 IBIA 62, 74 (2011) (Sec. 18 vote necessarily recognized and determined that a tribe was under federal jurisdiction, "notwithstanding the Department of the Interior's admittedly inconsistent dealings with the Tribe in previous years.").

¹³ *Carcieri* at 394-95. The *Carcieri* majority confirmed that the Indian Land Consolidation Act's amendments to the IRA in 1983 allowed tribes that rejected the IRA pursuant to a Section 18 election to benefit from Section 5 of the IRA; see also Sol. Op. M-37029 at 21.

¹⁴ Haas Report at 14.

¹⁵ *Ibid.*

seeks to re-establish its historic land base with a particular focus on acquiring parcels with cultural significance.

The connection of the Luiseno people along the San Luis Rey from Pala to Oceanside has been lost since the first creation of their reservations in 1875, and people of the San Luis Rey west of Pala were driven away from their lands over the next 130 years (Carrico, R.L., 2008). Historic and recent project processing on nearby properties along the river have failed to preserve the Native American connection to the river, choosing either to build homes to the river's edge (Rancho Viejo Estates immediately to the south of the river) or to bury village sites disconnected from the river (private property development immediately north of the Property). Within the Pala Valley, the project site holds a unique location to allow re-creation of the Tribal connection to the river, with high visibility from those entering the Pala Valley.

Historically, the Property was controlled and occupied by the Tribe prior to the creation of the Pala Reservation. Consequently, transferring the Property into Trust will restore Tribal control and administration of part of the Tribe's aboriginal territory. Accepting the Project Site into trust status would facilitate Tribal self-determination and allow the Tribe to exercise sovereignty over lands currently owned in fee-title. This expansion is, therefore, necessary in order to allow the Tribe to effectively preserve culturally valuable lands and manage future development initiatives (i.e., a cultural center, trail and historical interpretive village site), which provides educational opportunities to Tribal members and local communities.

From an economic standpoint, the existing orchards allow the Tribe to continue to diversify its economy, which is an important feature of creating a diversified economic base for current and future generations. The active avocado and citrus orchards on the property currently encompass 17.5 acres and would continue to be managed by and for the Tribe's benefit. The active groves also provide a modern example of Pala's present day economic operations that do not involve casinos, working to dispel a current stereotype of Native Americans. Although gaming has allowed the Tribe to gain some economic independence, the Tribe needs to expand its revenue generating resources to diversify its economic base. The transfer would help ensure future stability for the Tribe and its members.

25 C.F.R. §151.10(c) – Purpose for which the property will be used

The Gateway property contains 92.44 acres, more or less, commonly referred to as Assessor's Parcel Numbers: 125-063-02; 125-063-09; and 125-100-10. (The fourth parcel referred to as 125-063-10 was created by the County to define a lease agreement for cell-phone towers. It is of de minimis size). Currently, the property is developed with a concrete pond and irrigation system, with some associated outbuildings and facilities related to agricultural activity (avocado and citrus orchards). The Tribe would like to utilize the project site to assist in the appropriate preservation, display and education of past and current Tribal artifacts and culture and connection to the River. The Pala Gateway Cultural Center (Gateway Project) would be primarily outdoors designed as a mock river village with features including traditional amenities including a meeting area, a traditional gaming area, a dancing arena, native plant garden and native agricultural crop garden. The Gateway Project affords the Tribe the opportunity to participate first hand in the education of its members, community residents and visitors of lives

and traditions of California's first residents. A portion of the site will remain as an orchard or undeveloped.

25 C.F.R. §151.10(d) – If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs

This regulatory requirement is not applicable to Tribal acquisitions.

25 C.F.R. §151.10(e) – Impact on State and its political subdivisions resulting from the removal of this property from the tax rolls

In the 2021-2022 tax years, the total tax assessed on the subject property was \$96,037.14. The reduction in secured property tax revenue that would result from the removal of the subject property from the County's jurisdiction would be insignificant in comparison to the total amount of revenue collected by San Diego County. The loss of future taxes will be mitigated by the educational benefits that the Pala Gateway project will provide to the community in the region and the continued benefits which the tribe provides to the County and local districts. None of the solicited agencies indicated that any adverse impacts would result from the removal of the subject property from the tax rolls. This acquisition should not pose any significant impact to the state or county.

Police Services

The Tribe has a Security Department which governs general security issues on the Reservation. Pala provides \$200,000 per year to the San Diego Sheriff's Department to fund their assistance. The Pala Security and Pala Fire Department also respond when there are traffic accidents on area roads to prevent further injuries, initiates emergency first aid, and assists the California Highway Patrol and the Sheriff with traffic control.

Fire and Paramedic Services

The Pala Fire Department (PFD) has its own facilities along State Route 76. The PFD has relieved the need for external fire services for the Reservation and other trust lands and has significantly enhanced the level of fire and paramedic response service in the areas surrounding the Reservation. Approximately 70% of the calls to which the PFD responds involve non-Reservation lands. The PFD has executed reciprocal service agreements with all north San Diego Fire Districts and other area Tribal Fire Districts.

The Tribe will continue funding these and other related programs, and fire and emergency response activities will remain the same on the Property after it is transferred into Trust.

Traffic Improvements

The Tribe already has made significant contributions to improving roads in the following projects. These include improvements to SR-76 (\$1.3 million), Pala Mission Road (\$300,000), Pala Temecula Road (\$350,000), and Valley Center Road (\$278,000).

Utilities

No uses of the Property are expected to impact utility services in the area. A sewer easement that extends through a portion of the Property, parallel to the river, is consistent with the intended use of the Property and would not be affected. The Tribe has benefited County residents by extending or improving utilities around the Reservation along County roads and to in-holdings (non-Tribal lands within the outer boundaries of the reservation).

Schools

The Tribe's annual contribution to the Bonsall School District (\$140,000 annually since 2003) are in addition to any amounts currently paid in school bonds, which are included in County tax assessments. Furthermore, as part of its Community Outreach program, the Tribe has made financial contributions to the Bonsall School District, to fund the district's bussing program in its entirety when this service was dropped by the District for budgetary reasons, as well as many individual schools in San Diego County and runs a charter school on the Reservation in coordination with the Bonsall School District. Sixty percent of the 180 Charter school students are non-Tribal members. These gifts are anticipated to continue in the future and would ensure that local schools would not see a substantial loss in revenues from the Property being taken into Trust.

Other

The Tribe currently pays approximately \$1.7 million per month to the State pursuant to Agreement with the State and County governments. These funds benefit the State by assisting the State to resolve difficult budget concerns. A portion of these funds is targeted to assist County programs as well. In addition, the Tribe adds approximately \$1 million annually to non-gaming tribes. By assisting non-gaming tribes, Pala indirectly alleviates the burdens on the local government budgets. The Tribe's involvement with State and local programs that benefit the County and its residents also reduce the burden on the County and local districts in providing these services.

In addition, the transfer of the Gateway property into trust would not increase the burdens of the State or Local governments in any way, nor would it affect government service patterns. The property is surrounded by State highway right of way on 2 sides and the San Luis Rey River on a third side. Access to the property is at the end of a County road, and there is no through-access that could be interrupted. As a result, the property is isolated from outside activity or adjacent land use consistency issues and is not integral to any governmental pattern of zoning or services.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls. The \$96,037.14 in taxes is insignificant compared to the identified monetary contribution of \$5,268,000 with additional invaluable non-monetary contribution to the surrounding community including safety and security protection, educational services and fire protection on non-reservation lands.

25 C.F.R. §151.10(f) – Jurisdictional problems and potential conflicts of land use

The Tribe does not anticipate any adverse impacts or conflicts as a result of the transfer of the subject property into trust, or the intended land use. In the event that such adverse impacts are

claimed, the Tribe will continue its long-standing working relationship with the local community, area residents, and the County to address any concerns that may arise.

During the comment period, the County of San Diego Planning and Development, stated that the property includes the following zones: C44 Freeway Commercial Use Regulations, S88 Specific Planning Area Use Regulations, and A72 General Agricultural Use Regulations. In addition, it was stated that the intended uses including a cultural center, traditional village site, and orchard-are civic and agricultural in nature and could be used for community gatherings or to educate visitors on the Pala Band's rich history. These activities are similar to the Community Recreation, Cultural Exhibits, Small Schools, Tree Crops, and Civic Assembly uses listed in the County's Zoning Ordinance and allowable with discretionary permit approval. Consequently, the intended use is consistent with the current zoning.

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

Based on our analysis, we have determined that there will be no jurisdictional impacts or conflicts in land use, and that the economic and social benefits of the planned use of this property have been properly addressed.

25 C.F.R. §151.10(g) – Whether the Bureau of Indian Affairs (BIA) is equipped to discharge the additional responsibilities

Acceptance of the subject property in trust status will not impose any significant additional responsibilities or burdens upon the Agency beyond those already inherent in the Federal trusteeship over the existing Reservation. Additional responsibilities resulting from the transaction are foreseen to be minimal. Currently, the BIA provides realty services such as right-of-way preparation or granting of utility easements, as well as preparation of leases on Trust Lands. The Tribe will continue to work toward Tribal self-determination and will remain primarily responsible for providing services to its Tribal members.

25 C.F.R. §151.10(h) – Environmental Compliance: The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM 3-H). An environmental assessment (EA) for the

proposed action was distributed for public review and comment for the period beginning May 7, 2010 and ending June 7, 2010. The EA documents and analyzes potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resources use patterns (transportation and land use and agricultural), public services, public health/hazardous materials, and other values (noise and visual resources). Additionally, a Finding of No Significant Impact (FONSI) was signed February 4, 2011. Due to the lapse in time between the FONSI and the current administrative process to take land into trust, a Supplemental Information Report (SIR) was developed to assist BIA in determining if significant changes in background environmental conditions or the regulatory setting have occurred since the signing of the FONSI that would require additional environmental analysis pursuant to the National Environmental Policy Act and its implementing regulations. Based on the analysis disclosed in the EA, review and consideration of the public comments received during the review period, responses to the comments, and mitigation measures imposed, and the Supplemental Information Report, the Bureau of Indian Affairs has determined that the proposed Federal action is not a major Federal action significantly affecting the quality of human environment within the meaning of NEPA. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.

National Historic Preservation Act (NHPA) Compliance

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effects of their land acquisition approvals with the potential to affect historic properties. The BIA has determined there is no potential effect on historic properties on the subject property.

Endangered Species Act (ESA) Compliance

The Endangered Species Act (ESA) requires federal agencies to determine if its action may affect a threatened or endangered species. The BIA reviews concluded no affects to endangered or threatened species would result from the Tribe's acquisition.

Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. A Phase 1 Environmental Site Assessment (ESA) was conducted on the subject property August 8, 2022, and approved f on August 16, 2022. The ESA did not find any hazardous materials contamination rising to level of a "Recognized Environmental Condition." Thus, no further investigation or remediation is required. An updated Phase I ESA will be conducted within six months of the acceptance of title to ensure there are no significant changes to conditions on the property.

25 C.F.R. §151.11(a) – The criteria listed in § 151.10 (a) through (c) and (e) through (h)

The Regional Director has determined these criteria are complete as addressed above.

25 C.F.R. §151.11(b) – The location of the land relative to the State boundaries, and its distance from the boundaries of the tribe’s reservation

The subject property is located within the County of San Diego, approximately five miles west of the Tribe’s Reservation, at the intersection of Interstate 15, the main north-south corridor in the region, and State Route 76. This does not constitute a distance requiring any additional consideration.

25 C.F.R. §151.11(c) – 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 subject property is not being obtained for business purposes; therefore A business plan is not required.

25 C.F.R. §151.11(d) – Contact with state and local governments pursuant to §151.10 (e) and (f)

On March 4, 2022, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee to trust application from the Senior Advisor for Tribal Negotiations, Deputy Legal Affairs Secretary, Office of the Governor; Sara. J. Drake, Deputy Attorney General, State of California; Office of U.S. Senator Dianne Feinstein; Office of U.S. Senator Alex Padilla; U.S. Representative Darrell Issa, 50th District; Assemblywoman Marie Waldron, 75th District; San Diego County Assessor; San Diego Treasurer and Tax Collector; San Diego Board of Supervisors; San Diego County Sheriff’s Department; San Diego County Department of Public Works; San Diego County Department of Planning and Development; San Diego County Fire Department; Barona Band of Mission Indians; Campo Band of Diegueno Mission Indians; Ewiiapaayp Band of Kumeyaay Indians, Jamul Indian Village; La Jolla Band of Luiseno Indians, La Posta Band of Diegueno Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Diegueno Mission Indians; Mesa Grand Band of Diegueno Mission Indians; Pechanga Band of Luiseno Mission Indians; Rincon Band of Luiseno Mission Indians; San Pasqual Band of Diegueno Mission Indians; Iipay Nation of Santa Ysabel; Sycuan Band of Kumeyaay Nation; and Viejas Band of Mission Indians. Regular Mail: Inaja Band of Diegueno Mission Indians, and Superintendent Southern California Agency.

See discussion of 25 C.F.R. §151.10 (e) and (f) above.

25 CFR 151.13 Title Examination

Title review by the Office of the Solicitor, Pacific Southwest Region, was requested on February 2, 2011, a favorable opinion of title was issued on July 1, 2021. The procedure for acquiring title to subject property by the United States of America in trust for the Tribe is acknowledged and in accordance with the Department’s procedures.

Conclusion

Based on the foregoing analysis, and a finding that all applicable legal requirements have been satisfied, the Regional Director, Pacific Region is issuing this notice of our intent to approve the taking of the subject property into trust status for the benefit and welfare of the Pala Band of Mission Indians. The subject acquisition will vest title in the United States of America in trust for the Pala Band of Mission Indians in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5108).

Any party who wishes to seek judicial review of this decision must first exhaust administrative remedies. The Regional Director's decision may be appealed to the Interior Board of Indian Appeals (IBIA) in accordance with the regulations in 43 C.F.R. 4.310-4.340.

If you choose to appeal this decision, your notice of appeal to the IBIA must be signed by you or your attorney and must be either postmarked and mailed (if you use mail) or delivered (if you use another means of physical delivery, such as FedEx or UPS) to the IBIA within 30 days from the date of receipt of this decision. The regulations do not authorize filings by facsimile/fax or by electronic means. Your notice of appeal should clearly identify the decision being appealed. You must send your original notice of appeal to the IBIA at the following address: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203. You must send copies of your notice of appeal to (1) the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, MS-4141-MIB, 1849 C Street N.W., Washington, D.C. 20240; (2) each interested party known to you; and (3) the Regional Director. Your notice of appeal sent to the IBIA must include a statement certifying that you have sent copies to these officials and interested parties and should identify them by names or titles and addresses.

If you file a notice of appeal, the IBIA will notify you of further procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

AMY
DUTSCHKE

Digitally signed by
AMY DUTSCHKE
Date: 2022.10.31
11:51:13 -07'00'

Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

SENIOR ADVISOR FOR TRIBAL NEGOTIATIONS
DEPUTY LEGAL AFFAIRS SECRETARY
OFFICE OF THE GOVERNOR
STATE CAPITAL BUILDING, SUITE 1173
SACRAMENTO, CA 95814
Certified Mail ID: 7021 2720 0001 0165 7496

SARA DRAKE, DEPUTY ATTORNEY GENERAL
STATE OF CALIFORNIA DEPARTMENT OF JUSTICE
P.O. BOX 944255
SACRAMENTO, CA 94244-2250
Certified Mail ID: 7021 2720 0001 0165 7502

UNITED STATES SENATOR DIANNE FEINSTEIN
331 HART SENATE BUILDING
WASHINGTON, DC 20510
Certified Mail ID: 7021 2720 0001 0166 0052

UNITED STATES SENATOR ALEX PADILLA
B03 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
Certified Mail ID: 7021 2720 0001 0166 0199

CONGRESSMAN DARRELL ISSA
UNITED STATES HOUSE OF REPRESENTATIVES 50TH DISTRICT
2300 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
Certified Mail ID: 7021 2720 0001 0166 0205

ASSEMBLYWOMAN MARIE ALDRON
75TH ASSEMBLY DISTRICT
350 WEST 5TH AVENUE, SUITE 110
ESCONDIDO, CA 92025
Certified Mail ID: 7021 2720 0001 0166 0212

SAN DIEGO COUNTY ASSESSOR
1600 PACIFIC HIGHWAY, SUITE 103
SAN DIEGO, CA 92101
Certified Mail ID: 7021 2720 0001 0166 0229

SAN DIEGO COUNTY TREASURER & TAX COLLECTOR
1600 PACIFIC HIGHWAY, SUITE 162
SAN DIEGO, CA 92101-2480
Certified Mail ID: 7021 2720 0001 0166 0236

COUNTY OF SAN DIEGO BOARD OF SUPERVISORS
1600 PACIFIC HIGHWAY, ROOM 335
SAN DIEGO, CA 92101
Certified Mail ID: 7021 2720 0001 0166 0243

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT
JOHN F. DUFFY ADMINISTRATIVE CENTER
P.O. BOX 939062
SAN DIEGO, CA 92193
Certified Mail ID: 7021 2720 0001 0166 0250

SAN DIEGO COUNTY DEPARTMENT OF PUBLIC WORKS
5510 OVERLAND AVE., SUITE 410
SAN DIEGO, CA 92123
Certified Mail ID: 7021 2720 0001 0166 0267

SAN DIEGO COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT
5510 OVERLAND AVE., SUITE 110
SAN DIEGO, CA 92123
Certified Mail ID: 7021 2720 0001 0166 0274

SAN DIEGO COUNTY FIRE ADMINISTRATIVE OFFICE
5510 OVERLAND AVENUE
SUITE 250
SAN DIEGO, CA 92123
Certified Mail ID: 7021 2720 0001 0166 0281

BARONA GROUP OF CAPITAN GRANDE BAND OF MISSION INDIANS OF
THE BARONA RESERVATION, CALIFORNIA
1095 BARONA ROAD
LAKESIDE, CA 92040
Certified Mail ID: 7021 2720 0001 0166 0298

CAMPO BAND OF DIEGUENO MISSION INDIANS
OF THE CAMPO INDIAN RESERVATION, CALIFORNIA
36190 CHURCH ROAD, SUITE 1
CAMPO, CA 91906
Certified Mail ID: 7021 2720 0001 0166 0304

EWIIAAPAAYP BAND OF KUMEYAAY INDIANS, CALIFORNIA
4054 WILLOWS ROAD
ALPINE, CA 91901
Certified Mail ID: 7021 2720 0001 0166 0311

JAMUL INDIAN VILLAGE OF CALIFORNIA
P.O. BOX 612
JAMUL, CA 91935
Certified Mail ID: 7021 2720 0001 0166 0328

LA JOLLA BAND OF LUISENO INDIANS, CALIFORNIA
22000 HIGHWAY 76
PAUMA VALLEY, CA 92061
Certified Mail ID: 7021 2720 0001 0166 0335

LA POSTA BAND OF DIEGUENO MISSION INDIANS
OF THE LA POSTA INDIAN RESERVATION, CALIFORNIA
8 CRESTWOOD ROAD
BOULEVARD, CA 91905
Certified Mail ID: 7021 2720 0001 0166 0342

LOS COYOTES BAND OF CAHUILLA & CUPENO INDIANS, CALIFORNIA
P.O. BOX 189
WARNER SPRINGS, CA 92086
Certified Mail ID: 7021 2720 0001 0166 0359

MANZANITA BAND OF DIEGUENO MISSION INDIANS
OF THE MANZANITA RESERVATION, CALIFORNIA
P.O. BOX 1302
BOULEVARD, CA 91905
Certified Mail ID: 7021 2720 0001 0166 0366

MESA GRANDE BAND OF DIEGUENO MISSION INDIANS
OF THE MESA GRANDE RESERVATION, CALIFORNIA
P.O. BOX 270
SANTA YSABEL, CA 92070
Certified Mail ID: 7021 2720 0001 0166 0373

PECHANGA BAND OF LUISENO MISSION INDIANS
OF THE PECHANGA RESERVATION, CALIFORNIA
P.O. BOX 1477
TEMECULA, CA 92593
Certified Mail ID: 7021 2720 0001 0166 0380

RINCON BAND OF LUISENO MISSION INDIANS
OF THE RINCON RESERVATION, CALIFORNIA
ONE GOVERNMENT CENTER LANE
VALLEY CENTER, CA 92082
Certified Mail ID: 7021 2720 0001 0166 0397

SAN PASQUAL BAND OF DIEGUENO MISSION INDIANS OF CALIFORNIA
P.O. BOX 365
VALLEY CENTER, CA 92082
Certified Mail ID: 7021 2720 0001 0166 0403

IIPAY NATION OF SANTA YSABEL, CALIFORNIA
P.O. BOX 130
SANTA YSABEL, CA 92070
Certified Mail ID: 7021 2720 0001 0166 0410

SYCUAN BAND OF KUMEYAAY NATION
1 KWAAYPAAY COURT
EL CAJON, CA 92019
Certified Mail ID: 7021 2720 0001 0166 0427

VIEJAS (BARON LONG) GROUP OF CAPITAN GRANDE BAND OF MISSION INDIANS
OF THE VIEJAS RESERVATION, CALIFORNIA
P.O. BOX 908
ALPINE, CA 91901
Certified Mail ID: 7021 2720 0001 0166 0434

BY FIRST CLASS MAIL:

INAJA BAND OF DIEGUENO MISSION INDIANS
OF THE INAJA AND COSMIT RESERVATION, CALIFORNIA
2005 ESCONDIDO BOULEVARD
ESCONDIDO, CA 92025

BUREAU OF INDIAN AFFAIRS
SOUTHERN CALIFORNIA AGENCY
1451 RESEARCH PARK DRIVE, SUITE 100
RIVERSIDE, CA 92507

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.

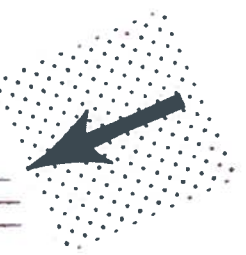
GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

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



§4.311

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

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

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 43668, 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.

§ 4.334

(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

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

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

Office of the Secretary, Interior

§ 4.351

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 99-284 (100 Stat. 61), amended by Public Law 100-153 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

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

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

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

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

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

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

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

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

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

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

§ 4.351 Commencement of the determination process.

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

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