



## 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-609-P5

Case Number: 45226

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7016 3010 0001 0588 7825

The Honorable Temet Aguilar  
Chairman, Pauma Band  
of Luiseno Mission Indians  
P.O. Box 369  
Pauma Valley, CA 92061

### NOTICE OF DECISION

Dear Chairperson Aguilar:

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

The following described real property in the City of Valley Center, County of San Diego, State of California:

That portion of Fractional Sections 33 and 34 in Township 9 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to the Official Map thereof filed in the office of the United States Surveyor General dated May 1, 1914, Patent No. 537483 on July 11, 1916, being a plat of Homestead Entry Survey No. 79 in Cleveland National Forest, described as follows:

Beginning at Corner No. 1 from which the South common corner of said Sections 33 and 34 bear South 23°46' West 39.76 chains; thence North 68°59' East 30.72 chains to Corner No. 2; thence North 62°38' West 13.88 chains to Corner No. 3; thence North 74°52' West 23.49 chains to Corner No. 4; thence South 64°51' West 28.23 chains to Corner No. 5; thence South 36°33' East 2.9 chains to Corner No. 6; thence South 88°49' East 12.09 chains to Corner No. 7; thence South 64°1' East 20.31 chains to the point of beginning.

The above-described real property, also known as the "Gomez Trail Property", is identified in San Diego County records as Assessor's Parcel Number 111-160-02-00, containing 72.18 acres, more or less. The parcel is contiguous to the exterior boundaries of the Pauma & Yuima Reservation.

Federal Law authorizes the Secretary of the Interior, or her authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of 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 June 23, 2023, 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; 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; County of San Diego Office of the Chief Administrative Officer; 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; Pala Band of Mission Indians; Pechanga Band of Indians; Rincon Band of Luiseno Indians; San Pasqual Band of Diegueno Mission Indians; Iipay Nation of Santa Ysabel; Sycuan Band of Kumeyaay Nation; and Viejas Band of Mission Indians. By 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 July 28, 2023, from the County of San Diego, Planning and Development Services stating the following:
  - The County collected \$1,008.32 for taxes and special assessments levied on the property for fiscal year 2022-2023;
  - A table was provided showing the current distribution of taxes and special assessments;
  - The Property is currently forested land and will remain so. Cal Fire currently can provide emergency fire services to the Reservation and will be available to support the Pauma Fire Department in the event of a future emergency, if needed; and
  - The property is currently zoned as Rural Lands. The Pauma Band does not intend to develop the property and it will remain rural, forested land. The County supports the Pauma Band's continued efforts to protect and preserve the environment. The County looks forward to supporting them in those efforts.
2. Letter dated August 18, 2023, from the County of San Diego, Assessor's Office, provided



copies if the Assessor's Master Property Records, a printout of the tax information and the list showing the distribution of taxes for the 2022-2023 roll.

***By correspondence dated October 3, 2023, the Pauma Band of Luiseno Mission Indians stated no response would be provided due to the informational and positive nature of the comment.***

Pursuant to 25 CFR §151.10, the Secretary will consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located within and/or contiguous 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; and 151.10(h) whether or not contaminants or hazardous substances may be present on the property. 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), determined the following:

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

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

Section 5 of the IRA (Section 5)<sup>1</sup> 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.<sup>2</sup> As relevant here, the first definition includes all persons of Indian descent who are members of "any recognized Indian tribe now under federal jurisdiction."<sup>3</sup> In 2009, the United States Supreme Court (Supreme Court) in *Carcieri v. Salazar*<sup>4</sup> (*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.<sup>5</sup> 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.<sup>6</sup> Accordingly, we rely on M-37029 to guide our analysis here.

<sup>1</sup> IRA, § 5, codified at 25 U.S.C. § 5108.

<sup>2</sup> *Id.* at § 19, codified at 25 U.S.C. § 5129.

<sup>3</sup> *Id.*

<sup>4</sup> 555 U.S. 379 (2009) ("*Carcieri*").

<sup>5</sup> 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").

<sup>6</sup> 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*

## The Tribe's Section 18 Election Under the IRA:

The IRA was a statute of general applicability but included an opt-out provision.<sup>7</sup> 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.<sup>8</sup> 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,<sup>9</sup> the results of which were compiled by the Department in what later became known as the Haas Report.<sup>10</sup>

The Department recognizes that the calling of a Section 18 election serves as unambiguous evidence demonstrating federal jurisdiction over a federally recognized tribe.<sup>11</sup> 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.<sup>12</sup> This is true irrespective of whether the Section 18 election resulted in the adoption or rejection of the IRA.<sup>13</sup>

In 1934, the United States understood that the Tribe 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 June 10, 1935, the Pauma Band voted on the IRA.<sup>14</sup> Thirty-seven members of the Tribe residing at the Reservation were eligible to vote, and twenty-three members voted against accepting the IRA while no members voted in favor.<sup>15</sup>

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*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).

<sup>7</sup> IRA, § 18, codified at 25 U.S.C. § 5125.

<sup>8</sup> *Id.*

<sup>9</sup> Theodore Haas, *Ten Years of Tribal Government Under the IRA*, 3 (U.S. Indian Service Tribal Relations Pamphlets 1947) [hereinafter "Haas Report"].

<sup>10</sup> Haas Report, Table A at 15.

<sup>11</sup> Sol. Op. M-37029 at 21.

<sup>12</sup> 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 UFI); *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.").

<sup>13</sup> *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.

<sup>14</sup> Haas Report, Table A at 15.

<sup>15</sup> *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.

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 United States recognized Pauma in 1891 and established the Pauma Reservation in 1892. Tribal members, who make up the General Council, govern the Tribe. The General Council holds the responsibility and power for conducting Tribal affairs. The Tribe's governing document is the Pauma "Articles of Association," adopted by the Tribe in 1966. The General Council, by appropriate ordinance or resolution, delegates authority to the Pauma Tribal Council/Business Committee or other Tribal committees.

The Reservation itself consists of multiple parcels including the Main Reservation, the Mission Reserve and two Yuima Tracts. Currently, the total Reservation is approximately 5980 acres. The Tribe has endeavored to provide its members with housing, while at the same time maintaining the diverse habitats and species on the Reservation, as well as invaluable cultural resources. For instance, the Mission Reserve is generally uninhabitable and is essentially being preserved for its natural and cultural values. Currently there are 242 Tribal Members, of which less than half currently reside on the Main Reservation.

Placing the Gomez Trail Property into trust will have significant and direct benefits to the Tribe and its members. The transfer of the Gomez Trail Property would increase Pauma's Reservation land base for future generations by consolidating its holdings for purposes of consistent planning, regulatory and development practices under the single jurisdiction of the Tribe, enhancing the Tribe's self-determination, addressing the Tribes need for long range highest and best use, beautification of the Reservation and surrounding properties, and protection and preservation of invaluable cultural resources.

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

The Gomez Trail Property contains 72.18 acres, more or less, commonly referred to as Assessor's Parcel Number 111-160-02-00. The subject property is contiguous to the exterior boundaries of the Pauma Reservation. Currently, the property is forest property. The Tribe does not propose to change the use of the property.

**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 CFR § 151.10(e) – Impact on State and its political subdivisions resulting from the removal of this property from the tax rolls**

Parcels accepted into federal trust status are exempt from taxation and would be removed from the County's taxing jurisdiction. In the 2022-2023 tax years, the total tax assessed on the Gomez Trail Property was \$1,008.32. During the comment period, the San Diego County Assessor's Office provided copies of each parcels tax information but did not indicate 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.



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. Currently, there is no commercial activity on the property subject to this application and the property does not produce lease income. Therefore, neither the County nor the State of California will lose any sales tax, use tax, or franchise tax revenues if the property is placed in trust status. Since the property will remain undeveloped after the property is transferred in to trust, the County will not be requested to provide any additional emergency medical services, law enforcement services or other public services.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject property.

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

The acceptance of the Gomez Trail Property into federal trust status for the benefit of the Pauma Band of Luiseno Mission Indians will remove the property from State and local laws concerning real property taxation and other land use regulations.

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. During the comment period, the County of San Diego Planning and Development, stated that the property is currently zoned as Rural Lands.

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. Cal Fire can provide emergency fire services to the Reservation and will be available to support the Pauma Volunteer Fire Department in the event of a future emergency, if needed.

Based on our analysis, we have determined that there will be no jurisdictional problems or potential conflicts that will arise from the transfer of this land into trust status.

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

The Pauma Band of Luiseno Mission Indians does not anticipate any additional responsibility being placed on the BIA should the Gomez Trail Property be taken into trust.

The 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.

**25 CFR § 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**

The BIA's guidelines for National Environmental Policy Act of 1969 (NEPA) compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion for the acquisition of the Pauma Band of Luiseno Mission Indians was approved by this agency on August 10, 2023. Compliance with NEPA has been completed.

**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 Compliance**

The Endangered Species Act 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 Substance 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 May 31, 2022, and approved on July 28, 2023. 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. If an updated Phase I ESA is needed, it will be conducted within six months of the acceptance of title to ensure there are no significant changes to conditions on the property.

**25 CFR § 151.13 Title Examination**

Title review by the Office of the Solicitor, Pacific Southwest Region, was requested on June 9, 2023, and a favorable opinion of title was issued on June 14, 2023. The procedure for acquiring title to the 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 Pauma Band of Luiseno Mission Indians. The subject acquisition will vest title in the United States of America in trust for the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California 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: 2023.10.31  
14:17:38 -07'00'

Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List



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SACRAMENTO, CA 95814  
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**SARA DRAKE, DEPUTY ATTORNEY GENERAL  
STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
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**UNITED STATES SENATOR LAPHONZA BUTLER  
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SAN DIEGO COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
5510 OVERLAND AVE., SUITE 110  
SAN DIEGO, CA 92123  
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SAN DIEGO, CA 92123  
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BARONA GROUP OF CAPITAN GRANDE BAND OF MISSION INDIANS OF  
THE BARONA RESERVATION, CALIFORNIA  
1095 BARONA ROAD  
LAKESIDE, CA 92040  
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CAMPO BAND OF DIEGUENO MISSION INDIANS  
OF THE CAMPO INDIAN RESERVATION, CALIFORNIA  
36190 CHURCH ROAD, SUITE 1  
CAMPO, CA 91906  
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EWILAAPAAYP BAND OF KUMEYAAY INDIANS, CALIFORNIA  
4054 WILLOWS ROAD  
ALPINE, CA 91901  
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JAMUL, CA 91935  
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8 CRESTWOOD ROAD  
BOULEVARD, CA 91905  
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WARNER SPRINGS, CA 92086  
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BOULEVARD, CA 91905  
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MESA GRANDE BAND OF DIEGUENO MISSION INDIANS  
OF THE MESA GRANDE RESERVATION, CALIFORNIA  
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SANTA YSABEL, CA 92070  
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PALA BAND OF MISSION INDIANS  
35008 PALA-TEMECULA ROAD  
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PALA, CA 92059  
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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



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

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

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

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

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

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

#### §4.311 Briefs on appeal.

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

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

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

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

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

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

#### §4.312 Decisions.

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

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

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



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

#### § 4.314 Exhaustion of administrative remedies.

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

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

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

#### § 4.315 Reconsideration.

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

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

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

#### § 4.316 Remands from courts.

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

#### § 4.317 Standards of conduct.

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

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

#### § 4.318 Scope of review.

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

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

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

#### § 4.320 Who may appeal.

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

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

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

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

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

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

#### **§4.321 Notice of transmittal of record on appeal.**

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

#### **§4.322 Docketing.**

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

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

#### **§4.323 Disposition of the record.**

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

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

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

#### **§4.330 Scope.**

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

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

(1) Tribal enrollment disputes;

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

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

**§4.331 Who may appeal.**

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

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

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

(c) Where otherwise provided by law or regulation.

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

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

(1) A full identification of the case;

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

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

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

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

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

(54 FR 6487, Feb. 10, 1989, as amended at 67 FR 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.



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

#### **§4.334 Extensions of time.**

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

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

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

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

(1) The decision appealed from;

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

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

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

#### **§4.336 Docketing.**

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

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

#### **§4.337 Action by the Board.**

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

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

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

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

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

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

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

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

**§4.340 Disposition of the record.**

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

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

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

**§4.350 Authority and scope.**

(a) The rules and procedures set forth in §§4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-153 (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 13383, 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: