



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: 28624

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7021 0950 0000 7170 5376

Honorable Agustin Garcia
Chairman, Elem Indian Colony
1400 North Dutton, Suite 7
Santa Rosa, CA 95401

NOTICE OF DECISION

Dear Chairman Garcia:

This is notice of our decision as a result of our analysis of the application filed by the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California (Elem Indian Colony or Tribe) to have the below described real property accepted by the United States of America in trust:

Grant Deed recorded July 8, 2019 as Instrument No. 2019008158 of Official Records.

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CLEARLAKE, COUNTY OF LAKE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING at a ½ inch iron rod at the Northwest corner of Lot 16, Block 1, as shown on that certain map entitled "PLAT NO. 1 TRACT B, CLUB HOUSE ADDITION TO CLEAR LAKE HIGHLANDS," filed in the office of the County Recorder of said Lake County on July 2, 1924 in Book 3 of Town Maps at Pages 105 to 106; said point of beginning being also the Northeast corner of that certain tract as described in a Quit Claim Deed from the Clearlake Highlands Rod and Gun Club to Anthony Giosso and Thelma Giosso dated October 3, 1950, of record in Book 215 of Official Records of Lake County at Page 171, and running thence, from said point of beginning West, along the North line of lands so conveyed to Giosso, 128.74 feet to a ½ inch iron rod; thence, leaving said North line South 123.0 feet to a "T" iron that is due West of the Southwest corner of Lot 16 in said Block 1; thence East 128.74 feet to a ½ inch iron pipe at the Southwest corner of said Lot 16; thence North 123.00 feet to the point of beginning, said parcel being within the East one-half of the Northeast quarter of Section 28, Township 13 North, Range 7 West, M.D.M.

APN: 040-240-070

Grant Deed recorded July 8, 2019 as Instrument No. 2019008132 of Official Records.

REAL PROPERTY IN THE CITY OF CLEARLAKE, COUNTY OF LAKE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN A DEED FROM GLORIA MARIGANIAN, AS ADMINISTRATRIX OF THE ESTATE OF FRANK DIGRANDE, DECEASED, TO MARIO LUCCHESI AND DAISY A. LUCCHESI, HIS WIFE, AS JOINT TENANTS, DATED JUNE 7, 1965 AND RECORDED FEBRUARY 28, 1966 IN BOOK 485 OF OFFICIAL RECORDS OF LAKE COUNTY, CALIFORNIA AT PAGE 265, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 12.40 CHAINS NORTH AND 11.56 CHAINS WEST OF THE QUARTER SECTION CORNER BETWEEN SECTIONS 27 AND 28, TOWNSHIP 13 NORTH, RANGE 7 WEST M.D.M., AND RUNNING THENCE NORTH 1.85 CHAINS; THENCE WEST 5.41 CHAINS; THENCE SOUTH 1.85 CHAINS; AND THENCE EAST 5.41 CHAINS TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO JOHN C. MILLER, ET UX., BY DEED DATED AUGUST 28, 1959, RECORDED SEPTEMBER 13, 1959 IN BOOK 317 OF OFFICIAL RECORDS OF LAKE COUNTY, AT PAGE 334, DESCRIBED AS FOLLOWS:

BEGINNING AT A ½ INCH IRON ROD AT THE NORTHWEST CORNER OF LOT 16, BLOCK 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PLAT NO. 1 TRACT B, CLUB HOUSE ADDITION TO CLEAR LAKE HIGHLANDS," FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID LAKE COUNTY ON JULY 2, 1924 IN BOOK 3 OF TOWN MAPS AT PAGES 105 TO 106; SAID POINT OF BEGINNING BEING ALSO THE NORTHEAST CORNER OF THAT CERTAIN TRACT AS DESCRIBED IN A QUIT CLAIM DEED FROM THE CLEARLAKE HIGHLANDS ROD AND GUN CLUB TO ANTHONY GIOSSO AND THELMA GIOSSO DATED OCTOBER 3, 1950, OF RECORD IN BOOK 215 OF OFFICIAL RECORDS OF LAKE COUNTY AT PAGE 171, AND RUNNING THENCE, FROM SAID POINT OF BEGINNING WEST, ALONG THE NORTH LINE OF LANDS SO CONVEYED TO GIOSSO, 128.74 FEET TO A ½ INCH IRON ROD; THENCE, LEAVING SAID NORTH LINE SOUTH 123.0 FEET TO A "T" IRON THAT IS DUE WEST OF THE SOUTHWEST CORNER OF LOT 16 IN SAID BLOCK 1; THENCE EAST 128.74 FEET TO A ½ INCH IRON PIPE AT THE SOUTHWEST CORNER OF SAID LOT 16; THENCE NORTH 123.00 FEET TO THE POINT OF BEGINNING, SAID PARCEL BEING WITHIN THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 13 NORTH, RANGE 7 WEST, M.D.M.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE COUNTY OF LAKE, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, BY DEED DATED APRIL 15, 1960, RECORDED APRIL 3, 1961 IN BOOK 348 OF OFFICIAL RECORDS OF LAKE COUNTY, AT PAGE 414, DESCRIBED AS FOLLOWS:

THE WEST 10 FEET OF THAT PARTICULAR TRACT OF LAND LYING IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 13 NORTH, RANGE 7 WEST, M.D.M., AND ADJOINING THAT CERTAIN SUBDIVISION ENTITLED, "PLAT NO. 1 TRACT B, CLUB HOUSE ADDITION TO CLEAR LAKE HIGHLANDS," FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID LAKE COUNTY ON JULY 2, 1924 IN BOOK 3 OF TOWN MAPS AT PAGES 105 TO 106, AS THE SAME IS DESCRIBED IN A QUIT CLAIM DEED FROM THE CLEARLAKE HIGHLANDS ROD AND GUN CLUB TO ANTHONY AND THELMA GIOSSO, DATED OCTOBER 3, 1950, OF RECORD IN BOOK 215 OF OFFICIAL RECORDS OF LAKE COUNTY, AT PAGE 171, SAID WEST 10 FEET BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF GOLF AVENUE, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PLAT NO. 1 TRACT B, CLUB HOUSE ADDITION TO CLEAR LAKE HIGHLANDS," FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID LAKE COUNTY ON JULY 2, 1924 IN BOOK 3 OF TOWN MAPS AT PAGES 105 TO 106, SAID POINT OF BEGINNING BEING SITUATED 3.94 FEET EAST FROM THE SOUTHEAST CORNER OF BLOCK 40 OF SAID SUBDIVISION, AND FROM SAID POINT OF BEGINNING, RUNNING THENCE NORTH, ALONG THE WEST LINE OF SAID TRACT OF LAND SO CONVEYED TO ANTHONY AND THELMA GIOSSO, A DISTANCE OF 123 FEET TO THE NORTHWEST CORNER THEREOF; THENCE EAST, ALONG THE NORTH LINE OF SAID TRACT SO CONVEYED TO ANTHONY AND THELMA GIOSSO, AND ALONG THE SOUTH LINE OF CLUB DRIVE, A DISTANCE OF 10 FEET; THENCE SOUTH, PARALLEL TO THE WEST LINE OF SAID TRACT SO CONVEYED TO ANTHONY AND THELMA GIOSSO, A DISTANCE OF 123 FEET TO THE SOUTH LINE THEREOF; THENCE SOUTH 40 FEET; THENCE WEST 10 FEET; AND THENCE NORTH 40 FEET TO THE POINT OF BEGINNING.

APN: 040-240-080

The above-described real property is identified in Lake County records as Assessor's Parcel Numbers 040-240-070 and 040-240-080 (Travel Center), containing 0.97 acres, more or less. The Travel Center property is not contiguous to land currently held in trust for the Tribe.

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.

The Tribe has also requested that certain lands be proclaimed "reservation" pursuant to Section 7 of the Indian Reorganization Act of June 18, 1934 (Stat. 984; 24 U.S.C. 5110 (Formerly §467)), which provides that the Secretary of the Interior may proclaim an Indian reservation or add lands

to existing reservations. A Proclamation is simply an administrative function that allows the Tribe to take advantage of special federal assistance programs. The Office of the Assistant Secretary – Indian Affairs review all requests for adding land to a reservation and prepares the proclamation and Federal Register notice.

The Bureau of Indian Affairs (BIA) has reviewed the Tribe's Proclamation request and has determined that, immediately following the expiration of the 30-day administrative appeal period, if no appeal is filed, the BIA official will recommend that the Assistant Secretary – Indian Affairs issue the Proclamation. If an appeal is filed, a final decision is issued affirming the BIA official's decision, BIA will immediately recommend that the Assistant Secretary – Indian Affairs issue the Proclamation. Reservation proclamations will only be issued after land is acquired in trust.

On August 31, 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, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California, Department of Justice; U.S. Senator Diane Feinstein; U.S. Senator Alex Padilla; Congressman John Garamendi, U.S. House of Representatives-3rd District; Lake County Board of Supervisors; Lake County-Office of the Assessor; Lake County-Planning Department; Lake County Public Works; Lake County Treasurer & Tax Collector; Lake County Sheriff's Department; Northshore Fire Protection District; City of Clearlake – City Council; Clearlake Police Department; Lake County Fire Protection District; Big Valley Rancheria; Elem Indian Colony; Hopland Rancheria; Middletown Rancheria; Robinson Rancheria; Scotts Valley Rancheria; and Upper Lake Rancheria. Regular Mail: Superintendent, Central California Agency.

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

1. Letter dated October 18, 2022, from the City of Clearlake (City) that provided a response to information requested in the Notice of Application. Overall, the City supports the Tribe's interest and need in economic sustainability and welcomes the investment in the community, however, they are concerned about the impacts the Travel Center will have on City resources, infrastructure, and the larger community. The City identified that the combined assessed value of the property currently is \$406,000, and the City's share of the 1% property tax is approximately 13%. The City stated that the current property taxes are a very minimal amount but expressed concern over the loss of future potential earning based upon the development of a similarly sized project in fee ownership. Further, the City expressed concern related to the loss of potential future sales tax revenue after the travel center was built. The City stated that they are currently responsible for providing law enforcement, code enforcement, permitting (Community Development) services, roads, and the storm drainage network for the property. Further, the City identified that the water service is provided by Highlands Mutual Water Company, sewer by Lake County Special Districts, and fire service by the Lake County Fire Protection District. The City stated that without seeing a detail project description and site plan that it would be nearly impossible to determine whether the project would be consistent with current zoning or the general plan. However, generally speaking this type of use would be

allowed in the zoning district, subject to a conditional use permit, which would allow a thorough review of the projects impact to the City infrastructure and services and mitigation of these impacts. The City offered to provide a more detailed response upon the receipt and review of a detailed project description and site plan.

By letter dated June 5, 2023, the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California's response was as follows:

The Elem Indian Colony has reviewed the City of Clearlake's response and disagrees that there will be as large as an alleged loss of sales tax due to the Tribe's trust acquisition. Although the City provided the Tribe its "rational" concerning the alleged development impact, the rational did not include any analysis or fiscal study of the alleged tax loss. Further, there were no assumptions provided to the Tribe that would have identified how the City arrived at its final alleged tax loss numbers. These assumptions would have included the number of similar businesses and sales tax source analyzed to arrive at the City's alleged tax losses. For example, as stated the alleged tax loss cited by the city purportedly represents 25-28% of the projected 2022 City tax revenue as reported on its budget analysis available on the City's website. Providing these assumptions is critical to understanding the City's position and how it arrived there.

The City also appears to have made its comment based on a fully "completed" project generating revenue, not the present state of the property being an empty lot with a sixty plus year old building in need of repair. The City's assumptions also did not consider the fact that City resources, such as its Planning or Code departments, etc., will not be utilized by the Tribe in its building process resulting in a savings to City resources.

The City's comment also did not take into consideration the millions of dollars of Tribal investment in the Community necessary to produce revenue which could be taxed or the benefit to the Community in the form of employment and employment spend within the Community. Again, these missing assumptions are vitally important to understanding the City's position. In short, the City basically receives millions of dollars in tribal investment, a future state of the art development, while minimally, if at all, impacting City resources to acquire it.

Despite the City's information short comings, the Tribe is committed to working with the City to arrive at a mutually beneficial agreement concerning both parties interests moving forward. In closing, please remember the Tribe has been in the region and in the community since before the existence of the City, it is a member of the community and desires to assist the City to continue being a success.

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 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.”

The first definition of “Indian” applies to “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction.”⁵ In *Carcieri*, the Supreme Court considered the ordinary meaning of the term “now,” its sense within the context of the IRA, as well as contemporaneous Departmental correspondence,⁶ and concluded that the phrase “now under the federal jurisdiction” unambiguously referred to tribes “that were under the federal jurisdiction of the United States when the IRA was enacted in 1934.”⁷ The majority did not, however, address the meaning of the phrase “under federal jurisdiction.”⁸

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.⁹

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 IRA, § 19, codified at 25 U.S.C. § 5129.

⁶ *Carcieri* at 388-90.

⁷ *Id.* at 395.

⁸ *Id.* at 382, 395.

⁹ 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”).

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.¹⁰ Accordingly, we rely on M-37029 to guide our analysis here.

The IRA was a statute of general applicability but included an opt-out provision.¹¹ Section 18 directed the Secretary to conduct elections to allow Indians residing on a reservation to vote to accept or reject application of the Act.¹² 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,¹³ the results of which were compiled by the Department in what later became known as the Haas Report.¹⁴

The Department recognizes that the calling of a Section 18 election serves as unambiguous evidence demonstrating federal jurisdiction over a federally recognized tribe.¹⁵ 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 1934.¹⁶ This is true irrespective of whether the Section 18 election resulted in the adoption or rejection of the IRA.¹⁷

In 1934, the United States understood that the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California 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

¹⁰ 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).

¹¹ IRA, § 18, codified at 25 U.S.C. § 5125.

¹² *Id.*

¹³ Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.* (1947) (hereafter "Haas Report").

¹⁴ *Id.*, Table A at 13-20 (listing Section 18 elections conducted).

¹⁵ Sol. Op. M-37029 at 21.

¹⁶ 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.").

¹⁷ *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.

detailed in the Haas Report, on June 14, 1935, the Tribe (listed as “Sulphur Banks”) voted on the IRA.¹⁸ Twenty members of the Tribe residing at the Reservation were eligible to vote, and seven members voted against accepting the IRA while eleven members voted in its favor.¹⁹

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 Elem Indian Colony’s aboriginal territory included much of Lake County, including the area that is now the location of the City of Clearlake. However, the Tribe currently only has approximately 49.5 acres in held in trust, that is located less than five miles Northwest of the Travel Center property and not sufficient to support economic development. One of the long-range objectives of the Tribe is to reestablish its presence within its aboriginal area. Further, the Tribe has long sought to become self-sufficient, the acquisition and development of the Travel Center property will enable the Tribe to provide much needed support to tribal members directly through employment as well as through increased funding to support tribal programs and tribal members health and welfare.

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

The Travel Center property currently contains one office building. The Tribe plans to build a travel center/convenience store on the subject 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 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 2022-23 tax year, the total tax assessed on the Travel Center property was \$7,984.50. During the comment period, none of the solicited agencies indicated that any significant adverse impacts would result from the removal of the subject parcels from the tax rolls at this time.

The City of Clearlake raised concerns about the impact of the potential loss of tax revenue based upon the increased value of the subject property after the travel center is built and becomes fully operational. The Tribe is committed to working with the City to arrive at a mutually beneficial agreement moving forward.

It is our determination that no significant impact will result from the removal of this property from the Lake County tax rolls given the relatively small amount of tax revenue assessed on the subject property at this time. Additionally, the loss in taxes will be more than offset by the contribution to the community through employment, income taxes and employment spend within the community.

¹⁸ Haas Report at 16.

¹⁹ *Ibid.*

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

The acceptance of the Travel Center property into federal trust status for the benefit of the Tribe will remove the property from State and local laws concerning real property taxation and other land use regulations. Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now on existing trust lands. The City of Clearlake currently has jurisdiction over the land use zoning of the subject property, which is zoned as mixed use.

There will be no change in criminal jurisdiction as jurisdiction in California is subject to 18 U.S.C. §1162 and 28 U.S.C. §1360 (P.L. 83-280). The State of California would retain its jurisdiction to enforce its criminal/prohibitory laws against all persons and conduct occurring on the land.

It is our determination that there are no anticipated jurisdictional problems or potential conflicts regarding land use.

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

Additional responsibilities resulting from the transaction are foreseen to be minimal and acceptance of the Travel Center 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 trust lands. The Agency will be required to maintain trust title. The Agency would be able to discharge any additional responsibilities associated with the acceptance of the parcel into trust status. The Tribe will continue to manage the Travel Center property and will maintain accessibility for the BIA.

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

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). An Environmental Assessment ("EA") for the proposed action was completed in March 2021 and distributed for public review beginning January 10, 2022, for a period of 30 days. Public comments were received and addressed with a revised EA in March 2023. The EA documents and analyzes potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resource use patterns (transportation, land use, and agricultural), public services, public health/hazardous materials, and other values (noise and visual resources).

Based on the analysis presented in the revised EA, our review and consideration of the public comments received during the review period, responses to the comments, and mitigation measures imposed, the BIA has determined that the proposed federal action is not a major federal

action significantly affecting the quality of the human environment, as defined by NEPA. A Finding of No Significant Impact (FONSI) was signed on May 10, 2023. Therefore, preparation of an Environmental Impact Statement 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 adverse effects on historic properties on the subject property. The State Historic Preservation Officer concurred with this determination.

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 review 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 I Environmental Site Assessment (ESA) and Phase II Site Assessment Report (SAR) was conducted for the Travel Center property in September 2019 and December 2020, respectively. During the Phase I ESA site visit it was concluded that there was one potential Recognized Environmental Condition (REC) and two historic RECs identified. It was recommended that a Phase II be completed to further investigate the sites identified. It was concluded no further investigation or remediation is required. A Phase I certification memo was completed on December 27, 2021. An updated Phase I ESA was completed and an updated Phase I certification was completed on November 11, 2022. 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 Lake, located approximately 4.33 miles from the nearest property held in trust for the Tribe, which 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 Tribe has prepared a business plan specifying the anticipated economic benefits associated with the Tribe's travel center/convenience store. The Tribe's travel center/convenience store is designed to provide additional revenue for existing and future tribal government programs, employment opportunities and convenience services to the surrounding area, which will in turn improve the general health and welfare of all tribal members.

Per the project description, the Tribe's travel center/convenience store will be appropriately sized and designed to be aesthetically compatible with the surrounding environment. The Tribe intends to provide the sale of general merchandise and fuel to customers in its targeted market located off Highway 20 in Clearlake, California. The proposed site is connected to existing water, wastewater and other utility services infrastructure. It is expected that the Tribe will work with local municipalities for services.

Through our analysis process we have taken into consideration the concerns of the City of Clearlake with regard to anticipated losses and determined the Tribe's benefit through the planned development will additionally benefit the local community with convenience products and services as well as employment opportunities. The Tribe is committed to working with the City of Clearlake to come to an agreement of mutual benefit from the proposed development.

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

On August 31, 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, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California, Department of Justice; U.S. Senator Diane Feinstein; U.S. Senator Alex Padilla; Congressman John Garamendi, U.S. House of Representatives-3rd District; Lake County Board of Supervisors; Lake County-Office of the Assessor; Lake County-Planning Department; Lake County Public Works; Lake County Treasurer & Tax Collector; Lake County Sheriff's Department; Northshore Fire Protection District; City of Clearlake – City Council; Clearlake Police Department; Lake County Fire Protection District; Big Valley Rancheria; Elem Indian Colony; Hopland Rancheria; Middletown Rancheria; Robinson Rancheria; Scotts Valley Rancheria; and Upper Lake Rancheria. Regular Mail: Superintendent, Central California Agency.

There was no further contact with state and local governments.

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 July 21, 2022, and a favorable opinion of title was issued on August 1, 2022. 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 Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California. The subject acquisition will vest title in the United States of America in trust for the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, 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

Regional Director

Digitally signed by
AMY DUTSCHKE
Date: 2023.07.26
10:09:53 -07'00'

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

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Certified Mail ID: 7017 2680 0000 6243 8257

Lake County Planning Department
255 North Forbes St.
Lakeport, CA 95453
Certified Mail ID: 7017 2680 0000 6243 8264

Lake County Public Works
255 North Forbes St.
Lakeport, CA 95453
Certified Mail ID: 7017 2680 0000 6243 8271

Lake County Treasurer & Tax Collector
255 North Forbes St.
2nd Floor, Rm 215
Lakeport, CA 95453
Certified Mail ID: 7017 2680 0000 6243 8288

Lake County Sheriff's Department
1220 Martin St.
Lakeport, CA 95453
Certified Mail ID: 7017 2680 0000 6243 8295

Lake County Fire Protection District
14815 Olympic Drive
Clearlake, CA 95422
Certified Mail ID: 7017 2680 0000 6243 8301

City of Clearlake
City Council
14050 Olympic Drive
Clearlake, CA 95422
Certified Mail ID: 7017 2680 0000 6243 8318

Clearlake Police Department
14050 Olympic Drive
Clearlake, CA 95422
Certified Mail ID: 7017 2680 0000 6243 8325

Big Valley Rancheria
2726 Mission Rancheria Road
Lakeport, CA 95453
Certified Mail ID: 7017 2680 0000 6243 8332

Hopland Rancheria
3000 Shanel Road
Hopland, CA 95449
Certified Mail ID: 7017 2680 0000 6243 8349

Middletown Rancheria
P.O. Box 1035
Middletown, CA 95461
Certified Mail ID: 7017 2680 0000 6243 8356

Robinson Rancheria
P.O. Box 4015
Nice, CA 95464
Certified Mail ID: 7017 2680 0000 6243 8363

Scotts Valley Rancheria
1005 Parallel Drive
Lakeport, CA 95453
Certified Mail ID: 7017 2680 0000 6243 8370

Habematolel Pomo of Upper Lake, California
P.O. Box 516
Upper Lake, California 95485
Certified Mail ID: 7017 2680 0000 6243 8387

BY FIRST CLASS MAIL:

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

Office of the Secretary, Interior

§ 4.310

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

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

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

§ 4.306 Time for payment.

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

§ 4.307 Title.

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

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

§ 4.308 Disposition of income.

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

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

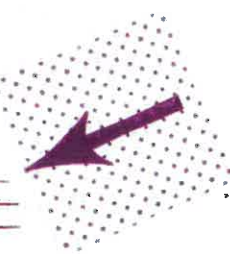
GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

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

§ 4.310 Documents.

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

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



§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 67856, Dec. 31, 2001, as amended at 67 FR 4368, Jan. 30, 2002]

§4.321 Notice of transmittal of record on appeal.

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

§4.322 Docketing.

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

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

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

§4.323 Disposition of the record.

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

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

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

§4.330 Scope.

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

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

- (1) Tribal enrollment disputes;

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

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

§4.331 Who may appeal.

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

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

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

(c) Where otherwise provided by law or regulation.

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

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

(1) A full identification of the case;
(2) A statement of the reasons for the appeal and of the relief sought; and

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

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

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

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

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

§4.333 Service of notice of appeal.

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

§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

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 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: